



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 12, 2014

Ms. Cynthia Rincón
General Counsel
Fort Bend Independent School District
16431 Lexington Boulevard
Sugar Land, Texas 77479

OR2014-14031

Dear Ms. Rincón:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 532470 (FBISD ORR 2013-14-803).

The Fort Bend Independent School District (the "district") received a request for e-mails sent to and received by members of the district's board of trustees between March 15, 2014 and April 15, 2014 containing the keywords "Quail Valley," and/or "Marshall," and/or "Marshall High School," and/or "Elkins," and/or "Elkins High School." You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.111 of the Government Code excepts from disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]" Gov't Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of

advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

You argue the submitted information consists of communications between district board members that reveal the advice, opinions, and recommendations of these individuals. You contend the communications at issue pertain to the policymaking functions of the district. Based on your representations and our review of the information at issue, we find the district has demonstrated the applicability of the deliberative process privilege to portions of the information at issue, which we have marked. Thus, the district may withhold the information we marked under section 552.111 of the Government Code. Upon review, however, we find some of the remaining information at issue is purely factual information or does not pertain to policymaking. Further, some of the remaining information was received from individuals with whom you have not demonstrated the district shares a privity of interest or common deliberative process. Thus, we find you have failed to show how the remaining information at issue consists of internal communications containing advice, opinions, or recommendations on the policymaking matters of the district. Accordingly, the district may not withhold any of the remaining information at issue under section 552.111 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail addresses we have marked are not of the types specifically excluded by section 552.137(c). Accordingly, the district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release.

In summary, the district may withhold the information we have marked under section 552.111 of the Government Code. The district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release. The district must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 532470

Enc. Submitted documents

c: Requestor
(w/o enclosures)