



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 14, 2015

Ms. Rhonda Crass
Counsel for the Plains Independent School District
Leasor Crass, P.C.
302 West Broad Street
Mansfield, Texas 76063

OR2015-07174

Dear Ms. Crass:

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# 560163.

The Plains Independent School District (the "district"), which you represent, received a request for information related to four named former district employees or officials, including communications between any district school board members and any of the four named former employees or officials. You state you have provided some information to the requestor. You state the district will redact certain information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You also state you will redact information pursuant to

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

sections 552.024(c), 552.130(c), and 552.147(b) of the Government Code.² You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.107, 552.111, 552.136, and 552.137 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless made confidential under this chapter or other law:

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov't Code § 552.022(a)(5). We note a portion of Exhibit H contains internal discussions related to a draft budget. We find the information at issue consists of budget information that constitutes information used to estimate the need for or expenditure of public funds and is subject to section 552.022(a)(5) of the Government Code. Although you seek to withhold this information under section 552.111 of the Government Code, section 552.111 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (governmental body may waive section 552.111). Therefore, the information subject to section 552.022(a)(5) may not be withheld under section 552.111 of the Government

²Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). If a governmental body redacts such information, it must notify the requestor in accordance with subsections 552.024(c-1) and (c-2). *See id.* § 552.024(c-1)-(c-2). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

³Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). The proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107 of the Government Code. *See* Open Records Decision Nos. 677 (2002), 676.

Code. Accordingly, as you raise no other exceptions to disclosure for this information, the district must release the information we have marked under section 552.022(a)(5) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides the following:

(c-1) The results of an examination administered under this section are confidential and are not subject to disclosure under Chapter 552, Government Code, unless:

(1) the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057; or

(2) the educator has failed the examination more than five times.

Educ. Code § 21.048(c-1). Upon review, we find the information in Exhibit E reflects the results of an examination administered under section 21.048 of the Education Code. You state subsections 21.048(c-1)(1) and (2) are not applicable in this instance. Accordingly, the district must withhold the information in Exhibit E under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code, which provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). We have determined that for purposes of section 21.355, “administrator” means a person who is required to and does in fact hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You assert Exhibit D consists of written evaluations that are confidential under section 21.355. You inform us the administrators at issue held the appropriate certification at the time of the evaluations. Based on your representations and our review, we agree the information we have marked constitutes evaluations as contemplated by section 21.355. Accordingly, the district must withhold these documents under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, we find you have failed to demonstrate how the remaining information at issue evaluates the

performance of an administrator for purposes of section 21.355; thus, none of the remaining information at issue may be withheld on that basis under section 552.101.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which deems confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. A school district may obtain CHRI from DPS as authorized by section 411.097 and subchapter C of chapter 22 of the Education Code; however, a school district may not release CHRI except as provided by section 411.097(d). *See id.* § 411.097(d); Educ. Code § 22.083(c)(1) (authorizing school district to obtain from any law enforcement or criminal justice agency all CHRI relating to school district employee); *see also* Gov’t Code § 411.087. Section 411.087 authorizes a school district to obtain CHRI from the Federal Bureau of Investigation or any other criminal justice agency in this state. Gov’t Code § 411.087. Thus, any CHRI the district obtained from DPS or any other criminal justice agency in this state must be withheld under section 552.101 of the Government Code in conjunction with section 411.097(d) of the Government Code. *See* Educ. Code § 22.083(c)(1). You inform us some of the information in Exhibit F was obtained by the district as required by section 22.083 of the Texas Education Code. Upon review, we find the district must withhold the information you have marked under section 552.101 in conjunction with chapter 411 of the Government Code.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). We conclude the district must withhold the information you have marked in the remaining information under section 552.102(a) of the Government Code.

Section 552.102(b) of the Government Code excepts from disclosure all information in a higher education transcript of a professional public school employee other than the employee’s name, the courses taken, and the degree obtained. Gov’t Code § 552.102(b); Open Records Decision No. 526 (1989). Thus, with the exception of the employees’ names,

courses taken, and degrees obtained, the district must withhold the college transcripts in the remaining information under section 552.102(b) of the Government Code.

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 do 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 severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *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 state the remaining information in Exhibit H consists of advice, opinions, and recommendations related to the district’s deliberative process. Based on your representations and our review, we find the district may withhold the information we have marked in Exhibit H under section 552.111 of the Government Code.⁴ However, we find the remaining information at issue consists of general administrative information that does not pertain to policymaking or information that is purely factual in nature. Accordingly, the district may

⁴As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

not withhold any of the remaining information at issue under section 552.111 of the Government Code.

Although you state you will redact certain information subject to section 552.117(a)(1) of the Government Code pursuant to section 552.024 of the Government Code, we note some of the remaining information is subject to section 552.117(a)(1) of the Government Code. As noted above, section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1). *See* Gov't Code §§ 552.117(a)(1), .024. Section 552.024(a-1) of the Government Code provides, "A school district may not require an employee or former employee of the district to choose whether to allow public access to the employee's or former employee's social security number." *Id.* § 552.024(a-1). Thus, the district may only withhold under section 552.117 the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117(a)(1) on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Such information may not be withheld for individuals who did not make a timely election. Thus, the district must withhold the information you have marked, as well as the information we have marked, under section 552.117(a)(1) of the Government Code if the employees at issue made timely requests for confidentiality under section 552.024 of the Government Code.

Section 552.136(b) provides "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, we find you have failed to explain how the confirmation or registration numbers you have marked are access device numbers for the purposes of section 552.136. Thus, the district may not withhold any of the remaining information under section 552.136 of the Government Code.

Section 552.137 of the Government Code provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail addresses you have marked, and the additional e-mail address we have marked, are not excluded by subsection (c), and you do not indicate the owners have consented to release of their e-mail addresses.

Accordingly, the district must withhold the e-mail addresses you have marked, and the additional email address we have marked, under section 552.137 of the Government Code.

In summary, the district must release the information we have marked under section 552.022(a)(5) of the Government Code. The district must withhold the information in Exhibit E under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The district must withhold the information you have marked in the remaining information under section 552.102(a) of the Government Code. With the exception of the employees' names, courses taken, and degree obtained, the district must withhold the college transcripts in the remaining information under section 552.102(b). The district may withhold the information we have marked in Exhibit H under section 552.111 of the Government Code. The district must withhold the information you have marked, as well as the information we have marked, under section 552.117(a)(1) of the Government Code if the employees at issue made timely requests for confidentiality under section 552.024 of the Government Code. The district must withhold the e-mail addresses you have marked, and the additional e-mail address we have marked, under section 552.137 of the Government Code. 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,

A handwritten signature in black ink, appearing to read "Joseph Behnke", with a long horizontal line extending to the right.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 560163

Enc. Submitted documents

c: Requestor
(w/o enclosures)