



August 17, 2000

Mr. Miles T. Bradshaw
Senior Assistant General Counsel
Houston Independent School District
Hattie Mae White Administration Building
3830 Richmond Avenue
Houston, Texas 77027-5838

OR2000-3149

Dear Mr. Bradshaw:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138098

The Houston Independent School District (the "school district") received a request for all electronic correspondence sent and received by a specific board member and a list of contributions from a group called, "Parents and Teachers for Public Schools." You state that the school district intends to release all documents responsive to the second request-item to the requestor. As to the first request-item, you explain that on May 31, 2000, the requestor narrowed the electronic correspondence he seeks to correspondence dated from December 1, 1998 to "the present" which would be May 31, 2000. The school district also intends to release numerous documents that are responsive to this request-item.¹ However, you claim that some of the information responsive to the first request-item is excepted from

¹In regard to the information that is responsive to the first request-item and which the school district intends to release, you state that the school district intends to redact certain information under the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA, and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, we note that you wish to withhold portions of information contained in document numbers 00008, 00009, and 00011.² These documents consist of electronic correspondence which post-date May 31, 2000. Consequently, these documents are not responsive to the request and the school district has no obligation to release them under the Public Information Act.

We turn now to your argument that submitted document number 00003 is excepted under section 552.111. Section 552.111 excepts from disclosure “an interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency.” In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency’s policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 at 4-5 (1990). We agree that all of document number 00003 falls under section 552.111. Therefore, the school district may withhold that document.

Next, we address document number 00010, a portion of which you claim is excepted under section 552.107.³ Section 552.107(1) of the Government Code excepts from disclosure information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. Open

²You have Bates-stamped the submitted documents so that they may be referred to by Bates number.

³You also claim that information contained in this document is excepted under section 552.101 in conjunction with the attorney-client privilege rules found in the Texas Rules of Evidence and the Texas Disciplinary Rules of Professional Conduct. However, section 552.101, which excepts from disclosure information deemed confidential under other law, does not incorporate the attorney-client privilege. See Open Records Decision No. 575 at 2 (1990) (stating that statutory predecessor to section 552.101 does not encompass discovery privileges). The proper exception to raise when claiming attorney-client privilege is section 552.107. ORD No. 575; Gov’t Code § 552.107. Accordingly, we interpret your claim of attorney-client privilege as an assertion of that privilege as it is encompassed by section 552.107.

Records Decision No. 574 at 5 (1990). When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107(1) protects them only to the extent that such communications reveal the attorney's legal opinion or advice. Open Records Decision No. 574 at 3 (1990). In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We agree that the information you have marked is excepted under section 552.107(1). Therefore, the office may withhold the marked portion of document number 00010.

Finally, we turn to your argument that certain portions of document numbers 00012 and 00013 are confidential under section 552.101 in conjunction with common law privacy. Section 552.101 excepts from required public disclosure "information that is confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses common law privacy. Under common law privacy, private facts about an individual are excepted from disclosure. *Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. However, common law privacy does not apply to embarrassing or intimate information "unless the records [at issue] are also of no legitimate interest to the public." Open Records Decision No. 470 at 4 (1987); *see also* Open Records Decision No. 464 (1987). Furthermore, the public has a genuine interest in information concerning a public employee's job performance and the reasons for dismissal, demotion or promotion. Open Records Decision No. 444 at 5-6 (1986); *see also* Open Records Decision No. 208 (1978) (disciplinary action against public employee available to public).

Because the information contained in document number 00012 concerns the conduct of a school district teacher while at school during work hours, we find there is a legitimate public interest in the information. Accordingly, the school district may not withhold document number 00012 under common law privacy as encompassed by section 552.101.⁴ On the other hand, the information that you have marked in document number 00013 pertains to an intimate aspect of a school district employee's private life in which there is no legitimate public interest. Therefore, the school district must withhold the marked information contained in document number 00013.

⁴Moreover, we note that document number 00012 indicates that the information it contains has been broadcast over radio and television. If this is the case, then the information contained in document number 00012 does not pertain to the private affairs of an individual and can therefore not be subject to common law privacy. *See Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d at 682.

In conclusion, the school district has no obligation to release document numbers 00008, 00009, and 00011 under the Public Information Act as those documents are not responsive to the request. The school district may withhold all of document number 00003 under section 552.111. The school district may withhold the marked information contained in document number 00010 under section 552.107. The school district must withhold the marked information contained in document number 00013 under section 552.101 in conjunction with common law privacy. The school district must release the remainder of the submitted information to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

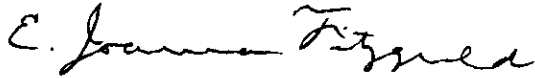
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "E. Joanna Fitzgerald". The signature is written in a cursive style with a large, stylized "E" and "F".

E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\er

Ref: ID# 138098

Encl: Submitted documents

cc: Mr. Tom Abrahams
Reporter, KTRK-TV
3310 Bissonet
Houston, Texas 77005
(w/o enclosures)