



January 12, 2015

Ms. Leticia D. McGowan  
School Attorney  
Dallas Independent School District  
3700 Ross Avenue  
Dallas, Texas 75204-5491

OR2015-00496

Dear Ms. McGowan:

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# 550156 (ORR# 13516).

The Dallas Independent School District (the "district") received a request for information pertaining to Teach for America that was sent to or from several named individuals during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 information protected by other statutes. Section 21.355 of the Education Code provides, in relevant part, "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355(a). The Third Court of Appeals has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because "it reflects the principal's judgment regarding [a teacher's] actions, gives corrective direction, and provides for further review." *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). 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 administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, an "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 as an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

You argue some of the submitted information consists of a confidential evaluation of administrators by the district. You inform us the administrators at issue were certified as administrators by the State Board of Educator Certification and were acting as administrators at the time the evaluation was prepared. Upon review, we find 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. However, we find you have failed to demonstrate how the remaining information at issue consists of a document evaluating the performance of an administrator for purposes of section 21.355 of the Education Code. Accordingly, the remaining information at issue may not be withheld under section 552.101 of the Government Code on that basis.

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 that are 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).

This office has also concluded a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be exempted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

You seek to withhold some of the remaining information under section 552.111 of the Government Code. You state the information at issue consists of advice, opinions, and recommendations of district employees and officials. You further state the information at issue contains draft documents and you inform us the draft documents will be released to the public in their final form. Therefore, the district may withhold the draft documents, which we have marked, in their entireties under section 552.111 of the Government Code. Further, portions of the remaining responsive information consist of advice, opinions, and recommendations related to policymaking. Accordingly, the district may withhold the information we have marked under section 552.111 of the Government Code. However, we find the remaining information consists of general administrative and purely factual information. Thus, we find you have not demonstrated how the remaining information consists of advice, opinions, or recommendations pertaining to policymaking matters of the district. Accordingly, we conclude the district may not withhold any of the remaining information under section 552.111 of the Government Code.

Some of the remaining information may be subject to section 552.117 of the Government Code.<sup>1</sup> Section 552.117(a)(1) exempts 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 a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus,

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, if the cellular telephone number we have marked belongs to an individual who timely requested confidentiality under section 552.024 of the Government Code and a governmental body does not pay for the cellular telephone service, the district must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, if the individual at issue did not timely request confidentiality under section 552.024 or if a governmental body pays for the cellular telephone service, the district may not withhold the information we marked under section 552.117(a)(1).

In summary, 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 may withhold the draft documents in their entirety under section 552.111 of the Government Code. Additionally, the department may withhold the remaining information we have marked under section 552.111 of the Government Code. If the cellular telephone number we have marked belongs to an individual who timely requested confidentiality under section 552.024 of the Government Code and a governmental body does not pay for the cellular telephone service, the district must withhold the information we marked under section 552.117(a)(1) 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 550156

Enc. Submitted documents

c: Requestor  
(w/o enclosures)