



February 17, 2015

Ms. Stephanie E. Maher  
Counsel For Fort Bend Independent School District  
Rogers Morris & Grover, L.L.P.  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2015-03147

Dear Ms. Maher:

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# 553767 (ORR# 2014-15-454).

The Fort Bend Independent School District (the "district"), which you represent, received a request for sixteen categories of information pertaining to district Board of Trustee ("board") members and the district's Academy programs. You state the district will provide some of the requested information to the requestor. You also state the district has redacted certain information submitted to this office pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, and under section 552.117, as permitted by section 552.024(c) of the Government Code, and section 552.137 of the Government Code in accordance with Open Records Decision

No. 684 (2009).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup> We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note the requestor specifically excluded from his request “any communications with counsel.” Accordingly, this type of information is not responsive to the present request. Further, some of the submitted information, which we have marked, is not responsive to the present request because it was created after the request was received. This ruling does not address the public availability of any information that is not responsive to the request, and the district is not required to release such information in response to this request.<sup>4</sup>

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the “DOE”) has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student 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 FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General’s website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>. Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body. *See* Gov’t Code § 552.117. Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See id.* §§ 552.117, .024(c); *see id.* § 552.024(c-1) (requestor may appeal governmental body’s decision to withhold information under section 552.024(c) to attorney general), .024(c-2) (governmental body withholding information pursuant to section 552.024(c) must provide certain notice to requestor). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>2</sup>Although you also raise Texas Rule of Evidence 503, we note 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 at 6 (2002). Additionally, although you raise section 552.101 of the Government Code in conjunction with section 552.107 of the Government Code and the attorney-client privilege under Texas Rule of Evidence 503, this office has concluded section 552.101 does not encompass other exceptions found in the Act or discovery privileges. *See* Open Records Decision Nos. 676 at 1-2, 575 at 2 (1990).

<sup>3</sup>We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

<sup>4</sup>As our ruling is dispositive for this information, we need not address your arguments against disclosure for the information submitted as Exhibit D.

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[.]” *Id.* § 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).

This office has also concluded a preliminary draft of a document 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 excepted 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 state the responsive information submitted as Exhibits B and C consists of internal communications that reflect the advice, recommendations, or opinions of district

administrators and board members, as well as draft documents that were released to the public in final form. You state the information at issue relates to the district's policymaking functions. Based on your representations and our review, we find the district may withhold the information we have marked in Exhibit B and all of the information in Exhibit C under section 552.111 of the Government Code. However, we find you have failed to demonstrate how any of the remaining responsive information consists of advice, opinions, or recommendations of district administrators or board members regarding policymaking matters. Consequently, the district may not withhold any of the remaining responsive information under section 552.111 of the Government Code. As you have not claimed any other exceptions to disclosure, the district must release the remaining responsive 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,



Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/bhf

Ref: ID# 553767

Enc. Submitted documents

c: Requestor  
(w/o enclosures)