



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 21, 2016

Mr. Kirk Swinney  
Counsel for Edwards Central Appraisal District  
McCreary, Veselka, Bragg & Allen, P.C.  
700 Jeffrey Way, Suite 100  
Round Rock, Texas 78665

OR2016-16467

Dear Mr. Swinney:

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# 619358.

The Edwards Central Appraisal District (the "district"), which you represent, received a request for the resignation letter of a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, the district states the submitted information may be non-responsive to the instant request for information. However, we note a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). Because the district has submitted and raised an exception for the information at issue, we find it has made a good-faith effort to submit information that is responsive to the request. We will therefore address the district's claimed exceptions for 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which

would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. You assert release of the submitted information could damage the reputation of the individuals involved. We note, however, false-light privacy is not an actionable tort in Texas. *See Cain v. Hearst Corp.*, 878 S.W.2d 577, 579 (Tex. 1994). In addition, in Open Records Decision No. 579, the attorney general determined the statutory predecessor to section 552.101 did not incorporate the common law tort of false-light privacy, overruling prior decisions to the contrary. Open Records Decision No. 579 at 3-8 (1990). Thus, the truth or falsity of information is not relevant under the Act. Upon review, we find you have not demonstrated any of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.102(a) 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 has 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). Upon review, we find no portion of the submitted information is subject to section 552.102(a) of the Government Code, and the district may not withhold any of the submitted information 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, 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, 364 (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 severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152, 157 (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, section 552.111 protects the factual information. *See* Open Records Decision No. 313 at 3 (1982).

The district states the submitted information may constitute an intra-agency memorandum subject to section 552.111 of the Government Code. However, upon review, we find the submitted information concerns a personnel matter that does not relate to policymaking or is information that is purely factual in nature. Thus, we find the district has failed to demonstrate the submitted information is excepted under section 552.111. Accordingly, the district may not withhold the submitted information under section 552.111 of the Government Code.

Section 552.117(a)(1) of the Government Code 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.<sup>1</sup> *See* Gov't Code § 552.117(a)(1). 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, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. As you raise no other exceptions to disclosure, the district must release the remaining information.

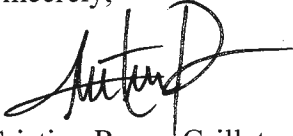
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in black ink, appearing to read 'Cristian Rosas-Grillet', written in a cursive style.

Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/bw

Ref: ID# 619358

Enc. Submitted documents

c: Requestor  
(w/o enclosures)