



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 11, 2019

Ms. Ylisse Janssen
General Counsel
Austin Independent School District
1111 West Sixth Street, Suite A-240
Austin, Texas 78703

OR2019-15700

Dear Ms. Janssen:

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# 769976.

The Austin Independent School District (the "district") received a request for all e-mails sent to or received by four named individuals pertaining to a specified report. 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.

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

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

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

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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# 769976.

The Austin Independent School District (the "district") received a request for all e-mails sent to or received by four named individuals pertaining to a specified report. 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.

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

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

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The information we marked consists of a completed report conducted for the district and is thus subject to section 552.022(a)(1) of the Government Code. The district must release the completed report pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although you raise section 552.111 of the Government Code for the information at issue, this section is a discretionary exception to disclosure 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) (waiver of discretionary exceptions), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver). Therefore, the district may not withhold the information subject to section 552.022(a)(1) of the Government Code, which we marked, under section 552.111 of the Government Code. However, because section 552.101 of the Government Code makes information confidential for the purposes of section 552.022, we will consider your argument under this section for the information at issue. Additionally, we will consider your argument under section 552.111 of the Government Code for the remaining information not subject to section 552.022 of the Government Code.

Section 552.101 of the Government Code excepts from public 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 such as section 418.177 of the Government Code, which provides:

Information is confidential if the information:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177.¹ The fact that information may generally be related to emergency preparedness does not make the information per se confidential under section 418.177. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). As with any confidentiality statute, a governmental body asserting

¹Although you cite section 418.117 of the Government Code in your brief, we understand you to raise section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code based on the substance of your argument.

section 418.177 must adequately explain how the responsive information falls within the scope of that provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the submitted information “consist[s] of an internal assessment of the [d]istrict’s [p]olice [d]epartment and its ability, given its infrastructure, to respond to criminal activity and terrorism.” You further state the information at issue “is directly used for training and equipment purposes in the areas of preventing, detecting[,] and investigating criminal activity and terrorism.” You assert the release of the submitted information “could compromise the security of [the district’s] schools.” Based upon these representations and our review, we find portions of the submitted information, which we marked, were collected, assembled, or maintained by or for the district for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity and relate to an assessment of the risk or vulnerability of persons and property to an act of terrorism or related criminal activity. Accordingly, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.² However, upon review, we find you have failed to establish the remaining information at issue is confidential under section 418.177 of the Government Code. Therefore, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 418.177 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[.]” *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.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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).

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party with a privity of interest. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* ORD 561.

You assert the information not subject to section 552.022(a)(1) consists of discussions among district staff and third party consultants consisting of advice, opinions, and recommendations pertaining to the district's policymaking. Based on your representations and our review of the information at issue, we find you have demonstrated portions of the information at issue, which we marked, consist of advice, opinions, or recommendations on the policymaking matters of the district. Accordingly, the district may withhold the information we marked under section 552.111 of the Government Code. Upon review, however, we find the remaining information at issue is either general administrative and purely factual information, or pertains to administrative and personnel matters that do not rise to the level of policymaking for purposes of section 552.111. Thus, we find you have failed to establish that any portion of the remaining information at issue constitutes advice, opinions, recommendations, or other material reflecting the policymaking processes of the district. Therefore, the district may not withhold any portion of the remaining information at issue under section 552.111 of the Government Code.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type

specifically excluded by subsection (c).³ Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). We are unable to determine whether some of the personal e-mail addresses within the remaining information at issue, which are located within e-mails communicating official business of the district, belong to district officials or employees. Thus, we rule conditionally. To the extent the e-mail addresses within the remaining information are the personal e-mail addresses of district officials or employees, or to the extent subsection (c) applies, this information is not subject to section 552.137 and may not be withheld on that basis. *See Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.— Austin 2016, no pet.) (holding personal e-mail addresses of government officials used to conduct official government business are not e-mail addresses of “members of the public” for purposes of Gov't Code § 552.137(a)). However, to the extent the e-mail addresses within the remaining information are not the personal e-mail addresses of district officials or employees and subsection (c) does not apply, this information is subject to section 552.137 and must be withheld under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release.

In summary, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. The district may withhold the information we marked under section 552.111 of the Government Code. To the extent the e-mail addresses within the remaining information are not the personal e-mail addresses of district officials or employees and subsection (c) does not apply, this information must be withheld under section 552.137, unless the owners of the e-mail addresses affirmatively consent to their release. The district must release the remaining information.

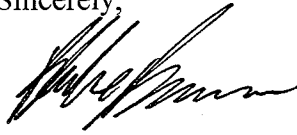
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

³The 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).

[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 'Blake Brennan', written in a cursive style.

Blake Brennan
Attorney
Open Records Division

BB/gw

Ref: ID# 769976

Enc. Submitted documents

c: Requestor
(w/o enclosures)