



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 25, 2022

Ms. Audrey R. Shakra
General Counsel
Spring Branch Independent School District
955 Campbell Road
Houston, Texas 77024

OR2022-02054

Dear Ms. Shakra:

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# 923046.

The Spring Branch Independent School District (the "district") received two requests from different requestors for (1) three points of information pertaining to a specified book and (2) five points of information pertaining to a specified topic during a stated time period. You state the district will release some information to the requestors. You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code, which provides, in relevant part:

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

...

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(15). The submitted information includes information the district posts on its website. Thus, we find the district considers this information to be open to the public under the district's policies, and therefore, is subject to section 552.022(a)(15). The information subject to section 552.022(a)(15), which we marked, must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold the information subject to section 552.022(a)(15) under section 552.111 of the Government Code. However, section 552.111 is discretionary in nature 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) (statutory predecessor to section 552.111 subject to waiver).* Therefore, the district may not withhold the information subject to section 552.022, which we marked, under section 552.111 of the Government Code. Accordingly, as no other exceptions to disclosure are raised, the district must release the information we marked pursuant to section 552.022(a)(15) of the Government Code. However, we will consider your argument under section 552.111 of the Government Code for the information not subject to section 552.022 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[.]” 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; see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). 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).* However, 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. *ORD 615 at 5-6; see also Dallas Morning News*, 22 S.W.3d at 364 (section 552.111 not applicable to personnel-related communications that did not involve policymaking).

Further, section 552.111 does not protect facts and written observations of facts and events severable from advice, opinions, and recommendations. *See Arlington Indep. Sch. Dist.*,

37 S.W.3d at 157; 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).

You seek to withhold the remaining information under section 552.111 of the Government Code. You state the information at issue consists of advice, opinions, and recommendations of the district's Reconsideration Committee regarding policymaking matters of the district. Based upon your representations and our review, we find the information at issue consists of advice, opinions, or recommendations on the policymaking matters of the district. Accordingly, the district may withhold the remaining information under section 552.111 of the Government Code

In summary, the district must release the information we marked pursuant to section 552.022(a)(15) of the Government Code. The district may withhold the remaining information under section 552.111 of the Government Code.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/mo

Ref: ID# 923046

Enc. Submitted documents

c: Requestors
(w/o enclosures)