



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 28, 2022

Ms. Mariana G. Evans
Counsel for the Clear Creek Independent School District
Rogers, Morris & Grover, L.L.P.
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2022-06074

Dear Ms. Evans:

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# 932736 (Ref. No. 102047).

The Clear Creek Independent School District (the "district"), which you represent, received a request for communications between named individuals and district board members pertaining to the hiring of a named individual during a stated period of time. You claim the submitted information is excepted from disclosure under sections 552.111 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you state some of the requested information was the subject of a previous request for a ruling, in response to which this office issued Open Records Letter No. 2021-06239 (2021). In that ruling, we determined that: (1) the district may withhold certain information under section 552.107 of the Government Code; (2) the district may withhold certain information under section 552.111 of the Government Code; (3) the district must withhold the employee's date of birth under section 552.102(a) of the Government Code; (4) the district must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy; (5) to the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold certain information under section 552.117(a)(1) of the Government Code; (6) the district must withhold certain motor vehicle record information under section 552.130 of

¹ 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.

the Government Code; (7) the district must withhold certain information under section 552.136 of the Government Code; (8) the district must withhold certain e-mail addresses under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure; (9) the district must withhold the social security number within the remaining information under section 552.147(a-1) of the Government Code; and (10) the district must release the remaining information, though any information subject to copyright may only be released in accordance with copyright law. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, the district must continue to rely on Open Records Letter No. 2021-06239 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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).

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.

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 id.*

You assert the submitted information is excepted from disclosure under section 552.111 of the Government Code. You state the information at issue consists of communications containing advice, opinions, and recommendations of district employees and officials and third parties with whom the district shares a privity of interest or common deliberative process. We note some of the remaining information at issue consists of draft documents. However, you do not explain whether the draft documents were intended to be released in their final forms. Thus, we must rule conditionally. Accordingly, if the draft documents we have indicated will be released to the public in their final forms, then the district may withhold the draft documents in their entireties under section 552.111 of the Government Code. However, if the district will not release the final forms of the draft documents, then they may not be withheld under section 552.111 of the Government Code. Nevertheless, upon review, we find the district may withhold the information we have marked under section 552.111 of the Government Code. However, we find the remaining information at issue pertains to routine internal administrative and personnel matters that do not rise to the level of policymaking. Thus, we find you have failed to demonstrate any of the remaining information at issue constitutes internal communications containing advice, recommendations, or opinions reflecting the policymaking processes of the district. Therefore, the district may not withhold any of the remaining information under section 552.111 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications

service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Accordingly, the district must withhold the information we have marked under section 552.136 of the Government Code. However, we find the district has not explained how any of the remaining information at issue consists of a credit card, debit card, or charge card number, or is an access device number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* §§ 552.136(a), .301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, we find you have failed to demonstrate the applicability of section 552.136 of the Government Code to the remaining information at issue, and the district may not withhold it on this ground.

In summary, the district must continue to rely on Open Records Letter No. 2021-06239 as a previous determination and withhold or release the information at issue in accordance with that ruling. The district may withhold the information we have marked and, to the extent they will be released to the public in their final forms, the draft documents we have indicated under section 552.111 of the Government Code. The district must withhold the information we have marked under section 552.136 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 <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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/be

Ref: ID# 932736

Enc. Submitted documents

c: Requestor
(w/o enclosures)