



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 23, 2022

Mr. Pete Thompson
Counsel for Judson Independent School District
Clark Hill
901 Main Street, Suite 6000
Dallas, Texas 75202

OR2022-08329

Dear Mr. Thompson:

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# 934875 (ORR# JISD0005).

The Judson Independent School District (the "district"), which you represent, received a request for reports and communications involving named individuals containing specified terms, created during a specified period of time.¹ You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.111 and 552.139 of the Government Code. Additionally, the district states release of the submitted information may implicate the interests of the Texas Department of Information Resources and Center for Internet Security, Inc. Accordingly, the district states, and provides documentation showing, it notified these third parties of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code §§ 552.304 (interested party may submit comments stating why information should or should not be released), .305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability

¹ The district states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

of exception in the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

You state some responsive information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2021-28460 (2021), 2021-30370 (2021), and 2021-35424 (2021). In Open Records Letter No. 2021-28460, we determined, in relevant part, the district must: (1) withhold the information we marked under section 552.139 of the Government Code and (2) release the remaining responsive information. In Open Records Letter No. 2021-30370, we determined the district must withhold the responsive information under section 552.139 of the Government Code. In Open Records Letter No. 2021-35424, we determined the district must (1) withhold the information we marked under section 552.139 of the Government Code; (2) withhold the bank account and bank routing numbers under section 552.136 of the Government Code; (3) withhold the information we marked under section 552.110(c) of the Government Code; and (4) release the remaining information. We have no indication the law, facts, and circumstances on which the prior rulings were based have changed. Therefore, the district must continue to rely on Open Records Letter Nos. 2021-28460, 2021-30370, and 2021-35424 as previous determinations and withhold or release the identical information in accordance with those rulings.³ *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).

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from either notified third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude either notified third party has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the district may not withhold the submitted information on the basis of any proprietary interest either notified third party may have in the information.

Section 552.139 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted

² 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.

³ As we are able to make this determination, we need not address your arguments against disclosure of this information.

information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report;

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use; [and]

...

(4) information directly arising from a governmental body's routine efforts to prevent, detect, investigate, or mitigate a computer security incident, including information contained in or derived from an information security log.

Id. § 552.139(a), (b)(1)-(2), (4). Section 2059.055 of the Government Code provides, in pertinent part:

(b) Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a governmental entity;

(2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or

(3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Id. § 2059.055(b). The district states portions of the submitted information provide details about the district's response to a ransomware attack. The district argues release of the information would allow a bad actor to assess potential vulnerabilities in the district's computer system and increase the possibility of cyber attacks against the district by providing information about the district's cybersecurity threat response. Based on these arguments and our review of the information, we find some of the submitted information, which we have marked, relates to computer network security, and the design, operation, or

defense of the district's computer network. Accordingly, the district must withhold the information we marked under section 552.139 of the Government Code.⁴ However, we find you have failed to demonstrate the applicability of section 552.139 of the Government Code to any of the remaining information, and the district may not withhold any of it 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[.]” *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 that are 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

⁴ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* ORD 561.

You claim the remaining information at issue consists of communications relating to how the district manages and responds to cybersecurity threats. Upon review, however, we find the remaining information at issue is general administrative and purely factual information or has been shared with individuals with whom you have not demonstrated the district shares a privity of interest. Thus, we find you have failed to show how the information at issue consists of advice, opinions, or recommendations on the policymaking matters of the district. Accordingly, the remaining information at issue may not be withheld under section 552.111 of the Government Code.

In summary, the district must continue to rely on Open Records Letter Nos. 2021-28460, 2021-30370, and 2021-35424 as previous determinations and withhold or release the identical information in accordance with those rulings. The district must withhold the information we marked under section 552.139 of the Government Code. The remaining information must be released.

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,

Colin Henry
Attorney
Open Records Division

CEH/jm

Ref: ID# 934875

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)