



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 1, 2007

Ms. Chelsea Thornton  
Assistant General Counsel  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

OR2007-12749

Dear Ms. Thornton:

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# 291106.

The Office of the Governor (the "governor's office") received a request for "any communication or documents regarding Iran," including "any communication from, to or within the governor's office and any documents regarding Iran, including but not limited to state investment in companies related to Iran." You claim that the requested information is excepted from disclosure under section 552.111 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

You assert that the submitted information is excepted under section 552.111 of the Government Code, which excepts from disclosure "an 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

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<sup>1</sup>Although the governor's office asserts that the submitted information is excepted under sections 552.101, 552.104, 552.106, 552.107, and 552.131 of the Government Code, it does not submit any arguments in support of these exceptions. Therefore, we do not address these exceptions in this ruling. *See* Gov't Code §§ 552.301, .302.

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, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615 (1993), 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 that 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* Open Records Decision No. 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* ORD 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. *See* Open Records Decision No. 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).

The governor's office states that the submitted information consists of advice, opinions, and recommendations relating to policy formation regarding state investments in companies related to Iran. You further explain that this information addresses how to "handle a particular issue relating to state divestment of holdings in companies doing business with Iran" and that the submitted information reveals "preliminary discussions formulating an office position." Upon review, we determine that the governor's office may withhold the information we have marked under section 552.111 because it consists of advice, opinions, and recommendations of the governor's office relating to policymaking regarding state investments in companies related to Iran. However, no part of the remaining information may be withheld on this basis because it is factual information or consists of communications with external third parties who are not privileged.

The remaining information contains e-mail addresses. Section 552.137 of the Government Code 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).<sup>2</sup> Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. We note that the requestor has a right of access to her own e-mail address. *Id.* § 552.023 (person or person's authorized representative has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interest). The governor's office must withhold the e-mail address that we have marked pursuant to section 552.137.

In summary, the governor's office may withhold the information we have marked under the deliberative process privilege of section 552.111 of the Government Code. The governor's office must withhold the e-mail address we have marked pursuant to section 552.137. The remaining information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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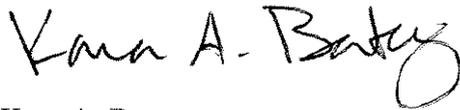
<sup>2</sup>The Office of the Attorney General will raise a mandatory exception like section 552.137 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kara A. Batey  
Assistant Attorney General  
Open Records Division

KAB/jh

Ref: ID# 291106

Enc. Submitted documents

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(w/o enclosures)