



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2007

Mr. Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
P.O. Box 12927
Austin, Texas 78711-2927

OR2007-16893

Dear Mr. Seidenberg:

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# 297810.

The Texas State Library and Archives Commission (the "commission") received a request to review documents from former Texas Governor George W. Bush's records related to policies on juvenile justice. You state that some of the requested information will be made available to the requestor, and you explain that the requestor has agreed to the redaction of some of the responsive information.¹ You further inform us that this office has previously addressed the public availability of some of the requested information in Open Records Letter Nos. 2006-09668 (2006) and 2004-9758 (2004). You state that the Office of the Governor (the "governor") has reviewed the responsive documents and seeks to withhold a portion of the requested information under section 552.111 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

¹We note that the requestor has agreed to the redaction of drivers' license numbers, social security numbers, e-mail addresses, home addresses, home phone numbers, and family information of government officials and employees. *See* Gov't Code § 552.222 (governmental body may ask requestor to clarify or narrow scope of request). As this information is no longer encompassed by the request, it is not responsive and we do not address its public availability.

Initially, we address the commission's assertion that some of the responsive information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2006-09668 and 2004-9758. With regard to information in the current request that is identical to the information previously requested and ruled upon by this office, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior rulings were based have changed, the commission must continue to rely on these rulings as previous determinations and withhold or release this information in accordance with Open Records Letter Nos. 2006-09668 and 2004-9758. *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). To the extent that the submitted information was not the subject of these prior rulings, we will address the governor's argument against disclosure.

Section 552.111 of the Government Code excepts from public disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." The purpose of this exception 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, 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 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. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (Gov't Code § 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 that are severable from advice, opinions, and recommendations. *See* Open Records Decision No. 615 at 5. If, however, the 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 may also be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

In this instance, we find that some of the submitted information consists of advice, opinions, and recommendations that reflect the policymaking processes of the governor's office. We have marked the information that is excepted from disclosure under section 552.111. However, we determine that the remaining information at issue consists of purely factual

information and routine personnel matters that are severable from advice, opinions, and recommendations. Accordingly, this information may not be withheld under section 552.111.

In summary, to the extent that the requested information is encompassed by Open Records Letter Nos. 2006-09668 and 2004-9758, the commission must continue to rely on these previous rulings. The commission must withhold the submitted information we have marked under section 552.111 of the Government Code. The remaining submitted information must be released to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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,



Allan D. Meeseey
Assistant Attorney General
Open Records Division

ADM/eeg

Ref: ID# 297810

Enc. Submitted documents

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