



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2009

Ms. Neera Chatterjee
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2009-03721

Dear Ms. Chatterjee:

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# 337836 (PIR #16).

The University of Texas Medical Branch at Galveston (the "system") received a request for all information pertaining to a named faculty member and the system Faculty Senate or system Faculty Advisory Council ("FAC"). You state that you will release some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.111 of the Government Code. In addition, you note that release of the requested information may implicate the privacy interests of the FAC. Accordingly, you state that you notified the FAC of their right to submit arguments to this office as to why the requested 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). You inform us that the FAC does not object to the release of the information at issue. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

The system asserts that portions of the submitted information are excepted from public disclosure under section 552.111 of the Government Code, which 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." Gov't Code § 552.111. 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*

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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 a 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). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect a 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. 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).

This office has also concluded that a preliminary draft of a document that is 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.

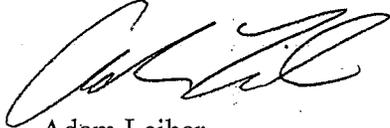
You explain that portions of the submitted information pertain to written exchanges and dialogues by the system's staff regarding the faculty compensation plan. You assert that portions of these communications contain advice and recommendations regarding the compensation plan. Next, you state that some of the information at issue consists of draft minutes of Faculty Senate meetings as well as a draft of a compensation plan recommended by the Faculty Senate. You also state that the university will release the final version of the meeting minutes and compensation plan. Based on these representations and our review, we agree that the draft documents we have marked and portions of the e-mail communications that we have marked are excepted from disclosure under section 552.111 and may be withheld on that basis. However, the remaining information consists of general administrative information that does not relate to policymaking or information that is purely

factual in nature. You have failed to demonstrate, and the remaining information does not reflect on its face, that this information consists of advice, recommendations, or opinions that pertain to policymaking. Accordingly, we find that this information is not excepted from disclosure under section 552.111, and it may not be withheld on that basis. As you raise no further exceptions to disclosure of this information, it must be released to the requestor.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/jb

Ref: ID# 337836

Enc. Submitted documents

c: Requestor
(w/o enclosures)