



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2009

Ms. Katherine R. Fite
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2009-12209

Dear Ms. Fite:

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# 354545.

The Office of the Governor (the "governor") received a request for information relating to an incentive program administered by the Texas Film Commission. You state the governor has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.106 and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

You contend that Exhibit B is excepted from disclosure under section 552.106(b) of the Government Code. Section 552.106(b) excepts from disclosure "[a]n internal bill analysis or working paper prepared by the governor's office for the purpose of evaluating proposed legislation[.]" Gov't Code § 552.106(b). Section 552.106(b) is intended to encourage frank discussion on policy matters and applies to information created or used by employees of the governor's office for the purpose of evaluating proposed legislation. Section 552.106(b) only protects policy judgments, advice, opinions, and recommendations involved in the preparation or evaluation of proposed legislation; it does not except purely factual information from public disclosure. See House Committee on State Affairs, Public Hearing, 5/6/97, H.B. 3157, 75th Leg. (1997) (stating that protection given to legislative

¹Although you also generally raise the remaining exceptions under the Act, you have provided no arguments regarding the applicability of these sections. Since you have not submitted arguments concerning these exceptions, we assume that you no longer urge them. See Gov't Code §§ 552.301(b), (e), .302.

documents under section 552.106(a) comparable with protection given to governor's legislative documents under section 552.106(b)); *see also* Open Records Decision No. 460 at 2 (1987).

You inform us that Exhibit B consists of drafts and working papers prepared by the governor's staff for the purposes of evaluating proposed legislation relating to the Texas Film Commission. Upon review, we agree that the governor may withhold Exhibit B pursuant to section 552.106 of the Government Code.

You assert that the remaining information is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 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 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, 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* ORD 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* 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* 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 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 inform us that Exhibits C and D consist of draft documents prepared by the governor's staff that necessarily reflect the advice, opinion, and recommendations of the drafter. You further inform us that these documents are available to the public in final form. Upon review, we agree that this information constitutes advice, opinion or recommendations for the purpose of section 552.111. *See* Open Records Decision Nos. 615, 631. Accordingly, the governor may withhold Exhibits C and D pursuant to section 552.111 of the Government Code.

In summary, the governor may withhold Exhibit B under section 552.106(b) of the Government Code and Exhibits C and D under section 552.111 of the Government Code.

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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/eb

Ref: ID# 354545

Enc. Submitted documents

c: Requestor
(w/o enclosures)