



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 1, 2009

Mr. Scott A. Durfee  
Assistant General Counsel  
Harris County  
1201 Franklin, Suite 600  
Houston, Texas 77002-1901

OR2009-12333

Dear Mr. Durfee:

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# 354108.

The Harris County District Attorney's Office (the "district attorney") received a request for nine categories of information pertaining to various voting matters. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the submitted documents contain information that is not responsive to the present request for information because it was created after the date of the request. We have marked the non-responsive information. This ruling does not address the public availability of any information that is not responsive to the request and the district attorney is not required to release that information in response to the request.

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<sup>1</sup>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 that those records contain substantially different types of information than that submitted to this office.

You seek to withhold Exhibit B-2 under section 552.108 of the Government Code. Section 552.108 provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

....  
(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

....  
(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You contend the documents in Exhibit B-2 reflect the mental impressions and legal reasoning of the district attorney that relate to criminal voter fraud investigations, and you indicate that this information was prepared by attorneys representing the state. Upon review, we agree the documents in Exhibit B-2 were either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflect the mental processes or legal reasoning of an attorney representing the

state. Therefore, the district attorney may withhold Exhibit B-2 under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.<sup>2</sup>

You raise section 552.111 of the Government Code for Exhibit B-1. Section 552.111 excepts from disclosure "an interagency or intra-agency 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 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. 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).

You state Exhibit B-1 consists of an internal memorandum created for the district attorney's deliberations regarding matters that were pending in the 81<sup>st</sup> Regular Session of the Texas Legislature. Based on this representation and our review of the information at issue, we agree the information we have marked in Exhibit B-1 is 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

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<sup>2</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

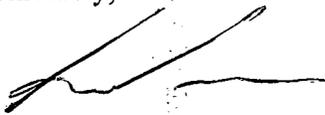
remaining information does not reflect on its face, that this information consists of advice, recommendations, or opinions that pertain to policymaking. Accordingly, we find this information is not excepted from disclosure under section 552.111, and it may not be withheld on that basis. As you raise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

In summary, the district attorney may withhold Exhibit B-2 under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code. The information we have marked in Exhibit B-1 may be withheld under section 552.111 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 [http://www.oag.state.tx.us/open/index\\_orl.php](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, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 354108

Enc. Submitted documents

c: Requestor  
(w/o enclosures)