



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

~~September 1, 2009~~

Ms. Cynthia Villarreal-Reyna  
Section Chief  
Agency Counsel  
Legal & Regulatory Affairs Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714

OR2009-12369

Dear Ms. Villarreal-Reyna:

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# 354075 (Department of Insurance request no. 92622).

The Texas Department of Insurance (the "department") received a request for all Farmer's Insurance ("Farmer's") and department information pertaining to the requestor. You state you have released some information to the requestor. You claim that the marked portions of the submitted records are excepted from disclosure under sections 552.111 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Section 552.111 of the Government Code excepts from public 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. Section 552.111 encompasses the deliberative process privilege. *See Open Records Decision No. 615 at 2 (1993)*. 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, 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, and opinions that reflect 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. The 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). Furthermore, 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 that the information you marked under section 552.111 consists of communications exchanged between department employees regarding regulatory matters. You specifically state that this information constitutes "opinions as to violations of law and compliance with legal requirements, as well as investigation and enforcement strategy." After reviewing your arguments and the information at issue, we find that the information you marked in the submitted Consumer Protection Referral Memorandum document reflects the advice, opinion, and recommendation of employees on a policy matter and may be withheld under section 552.111 of the Government Code. However, the remaining information you marked under this exception does not contain department advice, opinions, or recommendations. Accordingly, this remaining information is not protected by the deliberative process privilege and may not be withheld.

Next, the department claims that section 552.137 of the Government Code applies to the marked e-mail addresses. Section 552.137 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). See *id.* § 552.137(a)-(c). The e-mail addresses contained in the submitted information are not of a type specifically excluded by section 552.137(c). Accordingly, the department must withhold the e-mail addresses you have marked pursuant to section 552.137.

In summary, the department may withhold the information you marked in the submitted Consumer Protection Referral Memorandum document under section 552.111 of the Government Code, and must withhold the e-mail addresses you marked under section 552.137. The remaining information must be released.<sup>1</sup>

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 at (512) 475-2497.

Sincerely,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 354075

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>1</sup>The remaining documents contain information that would be excepted from disclosure by laws and exceptions enacted to protect privacy. The requestor, however, has a right of access to her private information. See Gov't Code § 552.023(a) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Thus, if the department receives another request for this particular information from a requestor who does not have a special right of access to this information, then the department should again seek a decision from this office.