



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 14, 2011

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

OR2011-08384

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# 422450 (OGC# 136698).

The University of Texas System (the "system") received a request for (1) e-mails between or among regents and the system's general counsel pertaining to several specified topics, (2) e-mails between or among regents and several specified individuals, (3) appointment files for all regents and everyone whose name has been put up for regent during a specified time period, (4) "faculty data" referenced in a specified e-mail and data gathered by or for two specified task forces, and (5) all open records requests received by the system during a specified time period.¹ You state the system will release information responsive to portions of the request. You state the system will redact personal e-mail addresses pursuant to the previous determination issued in Open Records Decision No. 684 (2009).² You claim portions of the submitted information are excepted from disclosure under section 552.111

¹You state the system sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

²We note Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.³

Initially, you have marked information that is not responsive to the request for information. We note additional portions of the submitted information, which we have marked, are also not responsive because they were created after the system received the request for information. This ruling does not address the public availability of any information that is not responsive to the request and the system is not required to release such information in response to this request.

Section 552.111 of the Government Code 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. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *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).

³We 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 those records contain substantially different types of information than that submitted to this office.

This office has also concluded 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.

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party with a privity of interest. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* ORD 561.

You explain most of the submitted information consists of "communications between and among employees and officials of the [s]ystem and its component institutions regarding various policy issues." You state the information at issue also contains draft documents pertaining to the policymaking functions of the system, and you state these draft documents have been released in their final form. Based on your representations and our review of the information at issue, we find the system has demonstrated the applicability of section 552.111 to some of the information at issue. Upon review, however, we find portions of the information at issue is general administrative or purely factual information or was obtained from an individual with whom you have not demonstrated the system shares a privity of interest. Thus, we find you have failed to show how this information consists of advice, opinions, or recommendations on the policymaking matters of the system. Therefore, we find you have failed to demonstrate the applicability of section 552.111 to this information, which we have marked for release. Accordingly, with the exception of the information you have marked for release and the information we have marked for release, the system may withhold the responsive information 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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, appearing to read "Claire V. Morris Sloan". The signature is written in black ink and is positioned above the typed name.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/bs

Ref: ID# 422450

Enc. Submitted documents

c: Requestor
(w/o enclosures)