



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2012

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

OR2012-05097

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# 450387 (OGC# 141852).

The University of Texas Medical Branch at Galveston (the "university") received a request for correspondence between the university's Center to Eliminate Health Disparities and the Galveston Housing Authority ("GHA") for a specified time period. You indicate some responsive information, which you have submitted at Tab 8, has been released. You claim the remaining requested information is excepted from disclosure under sections 552.105 and 552.111 of the Government Code. Additionally, you state that the proprietary interests of Galveston County Mutual Assistance Partnership, Inc. ("GC-MAP"); GHA; Georgia State University ("GSU"); and Urban Strategies, Inc. ("Urban"); might be implicated. Accordingly, you provided notice to GC-MAP, GHA, GSU, and Urban of the request and their right to submit arguments to this office explaining why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released). GC-MAP has informed the university it has no objection to release of its information. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We

¹We 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 those submitted to this office.

have also received and considered comments submitted by the requestor and another interested party. *See id.* § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Section 552.111 of the Government Code 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.” *Id.* § 552.111. Section 552.111 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 reexamined 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. *ORD 615 at 5; see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). Further, section 552.111 does not generally except from disclosure facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 157; *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)*.

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)*. 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 id.*

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 the university entered into a contract with GHA “to examine the ways that communities may undermine health by linking physical, mental and social health issues to housing stability, recreation opportunities, employment conditions and early child development and childcare.” Thus, we understand GHA shares a privity of interest with the university. You represent the information you have marked consists of internal deliberations between and among the university, GHA, and GHA’s representatives relating to the contractual relationship. You further state portions of the information at issue consist of drafts of documents intended for public release in their final form. Based on these representations and our review, we find the information we have marked consists of advice, opinion, and recommendations of the university regarding policymaking matters. Therefore, the university may withhold the information we have marked under section 552.111 of the Government Code. However, we find the remaining information is factual or you have not demonstrated it constitutes advice, opinion, or recommendations on a policymaking matter. Accordingly, the university may not withhold any of the remaining information at issue under section 552.111 of the Government Code on the basis of the deliberative process privilege.

You seek to withhold some of the remaining information pursuant to section 552.105 of the Government Code. Section 552.105(1) excepts from disclosure information relating to “the location of real or personal property for a public purpose prior to public announcement of the project[.]” Gov’t Code § 552.105(1). Section 552.105 is designed to protect a governmental body’s planning and negotiating position with respect to particular transactions. Open Records Decision Nos. 564 at 2 (1990), 357 (1982), 310 (1982). Information that is excepted from disclosure under section 552.105 that pertains to such negotiations may be excepted from disclosure so long as the transaction relating to that information is not complete. *See* ORD 310. A governmental body may withhold information “which, if released, would impair or tend to impair [its] ‘planning and negotiating position in regard to particular transactions.’” ORD 357 at 3 (quoting Open Record Decision No. 222 (1979)). The question of whether specific information, if publicly released, would impair a governmental body’s planning and negotiating position with regard to particular transactions is a question of fact. Accordingly, this office will accept a governmental body’s good-faith determination in this regard, unless the contrary is clearly shown as a matter of law. *See* ORD 564.

You state “the marked information relates to the location of real property that [GHA] may be seeking to acquire; certain of these properties may be currently under negotiation[.]” However, you fail to demonstrate how release of the marked information would impair the university’s negotiating position with regard to a particular transaction. As such, the

university may not withhold any of the remaining responsive information under section 552.105 of the Government Code.

We next address any interest a third party may have in the remaining information. An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from GHA, GSU, or Urban explaining why their information should not be released to the requestor. Thus, as no third party has demonstrated that release of the information at issue would implicate its interests, the university may not withhold any of the remaining information on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

In summary, the university may withhold the information we have marked 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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 450387

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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