



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

September 4, 2012

Mr. Richard A. Illmer  
Brown McCarroll, L.L.P.  
2001 Ross Avenue, Suite 2000  
Dallas, Texas 75201-2995

OR2012-13933

Dear Mr. Illmer:

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# 464449.

Texas Southmost College (the "college"), which you represent, received a request for the following two categories of information: (1) "documents indicating all real property owned by [the college] and the financial worth of each . . . property"; and (2) "documents indicating all real property owned by [the college] declared 'surplus'." You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.105, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 51.951 of the Education Code. Section 51.951 provides in part:

- (a) Information related to the location, purchase price, or sale price of real property purchased or sold by or for an institution of higher education, as defined by Section 61.003 [of the Education Code], is confidential and exempt from disclosure under Chapter 552, Government Code, until a deed for the property is executed. Information that is confidential and exempted from disclosure under this subsection includes an appraisal, completed report,

evaluation, investigation conducted for the purpose of locating or determining the purchase or sale price of the property, or any report prepared in anticipation of purchasing or selling real property.

Educ. Code § 51.951. We understand the college is an institution of higher education under section 61.003 of the Education Code. You state some of the information at issue relates to real property the college owns and is being considered for lease, and the submitted information reflects some of the remaining information pertains to real property the college owns and is being considered for sale. We note section 51.951 expressly applies to only “real property purchased or sold by or for” the college. The statute does not contemplate leasing of property by or for the college. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999) (in interpreting statutes, goal of discerning legislature’s intent is served by beginning with statute’s plain language because it is assumed that legislature tried to say what it meant and its words are therefore surest guide to its intent); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) (“In applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of the statute as it is written.” (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex. 1994))). As such, we find the college has failed to demonstrate the applicability of section 51.951 of the Education Code to the information pertaining to the property that is being considered for lease, and the information may not be withheld on this basis. As to the information pertaining to the property that is being considered for sale, you do not explain whether the transaction remains pending or if the deed has been executed. Accordingly, we must rule conditionally. If the deed to the property at issue has not yet been executed, we conclude the college must withhold the information we have marked under section 552.101 in conjunction with section 51.951 of the Education Code. If the deed has been executed, the college may not withhold this information under section 552.101 on this basis.

Section 552.105 of the Government Code excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov’t Code § 552.105. This exception is designed to protect a governmental body’s planning and negotiating position in transactions involving the purchase of real or personal property for a public purpose until the transaction has been completed. Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). You state the information at issue pertains to a potential lease of college property. Although you generally assert section 552.105 for the information at issue, you do not explain how the release of the

information at issue would impair the college's negotiating position with respect to the potential lease of the real property at issue. Therefore, we conclude none of the information at issue may be withheld under section 552.105 of the Government Code.

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." 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 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.*

You state the information at issue pertains to the college's plans to "become operationally independent" due to an ongoing partnership dissolution, and the information relates to the college's policy discussions of the college's future. However, you have not identified any of the parties between whom the information at issue was shared, or explained how the information at issue constitutes internal communications containing advice, recommendations, or opinions reflecting the policymaking processes of the college. Thus, we find you have failed to demonstrate how the deliberative process privilege applies to the

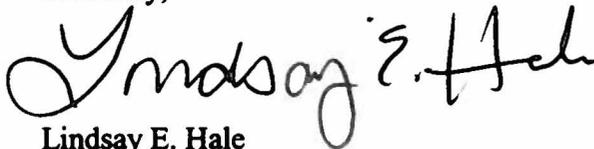
information at issue. Consequently, the college may not withhold any of the information at issue under section 552.111.

In summary, if the deed to the property at issue has not yet been executed, we conclude the college must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 51.951 of the Education Code. The college must release the remaining information.

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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/ag

Ref: ID# 464449

Enc: Submitted documents

c: Requestor  
(w/o enclosures)