



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 8, 2013

Ms. Kristen Pauling Doyle  
General Counsel  
Cancer Prevention and Research Institute of Texas  
P.O. Box 12097  
Austin, Texas 78711

OR2013-03955

Dear Ms. Doyle:

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# 480797 (ORR# 2013-55).

The Cancer Prevention and Research Institute of Texas (the "institute") received a request for eight categories of information related to grants or other funding requested or received by the Texas Medical Association.<sup>1</sup> You state some of the requested information has been released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate

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<sup>1</sup>You state the institute 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).

children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 545 (1990). Upon review, we agree most of the information you have marked in Attachment C pertaining to salaries of private employees, as well as the additional information we have marked, is highly intimate or embarrassing and not of legitimate public concern. However, we find a portion of the information at issue does not pertain to an individual who has been identified, and thus does not implicate the privacy interests of any individual. Therefore, this information, which we marked for release, may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, except for the information we marked for release, the institute must withhold the information you marked, and the additional information we marked, within Attachment C under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.111 of the Government Code excepts from disclosure “[a]n 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. 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).

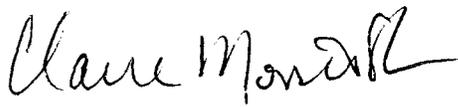
You state the information submitted as Attachments A and B relates to internal communications reflecting the deliberative and policymaking processes of the institute's appointed committee for cancer research. We note you have marked information, a portion of which you state consists of a representative sample, within Attachments A and B, which you do not seek to withhold because you state the marked information is purely factual in nature. Based upon your representations and our review of the information at issue, we generally agree with the exception of the types of information you have marked, the information in Attachments A and B consists of advice, opinions, and recommendations related to policymaking. However, we find some of the information at issue is purely factual in nature. Therefore, you have failed to demonstrate how the deliberative process privilege applies to this information, which we have marked for release. Thus, we find, with the exception of the types of information you have marked and the information we have marked for release, the institute may withhold the information in Attachments A and B under section 552.111 of the Government Code.

In summary, except for the information we marked for release, the institute must withhold the information you marked, and the additional information we marked, within Attachment C under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the types of information you marked as purely factual in nature and the information we marked for release, the institute may withhold the information in Attachments A and B under section 552.111 of the Government Code. The institute 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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 480797

Enc. Submitted documents

c: Requestor  
(w/o enclosures)