



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 23, 2014

Ms. Audra Gonzalez Welter
Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 79701-2902

OR2014-12717

Dear Ms. Welter:

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# 530382 (UT OGC# 156012).

The University of Texas at Austin (the "university") received a request for three categories for information pertaining to the Texas Memorial Museum (the "museum"), including any communications regarding the budget, leadership, and programming of the museum from February 28, 2014 to the time of the request; a formal justification for budget reductions of the museum; and meeting agenda and notes from a specified meeting between two named individuals and museum staff that occurred on May 2, 2014. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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, writ ref'd n.r.e.); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615 (1993), 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, 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). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); ORD 615 at 4-5. 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 indicate the information you marked consists of advice, recommendations, and opinions between and among university employees and officials regarding policy matters. You state the information at issue contains the deliberative process by which university employees and officials discussed policy issues pertaining to the museum and the Texas Natural Science Center, both of which are part of the university. You further inform us the budget to which these communications pertain has not been finalized. Upon review, find the university has demonstrated the applicability of section 552.111 to most of the information you have marked. Upon review, however, we find the information we have marked for release is either general administrative information that does not relate to policymaking, or information that is purely factual in nature. Thus, we find you have failed to demonstrate how this information, which we have marked for release, is excepted under section 552.111. Accordingly, except for the information we have marked for release, the university may withhold the information you have marked under section 552.111 of the Government Code.¹

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

We note the remaining information contains information that may be subject to section 552.117 of the Government Code.² Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Section 552.117 is applicable to cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for the information is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. Accordingly, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024, the university must withhold the cellular telephone numbers we have marked under section 552.117(a)(1) of the Government Code if the cellular telephone service is not paid for by a governmental body. The university may not withhold this information under section 552.117(a)(1) if the individuals whose information is at issue did not make a timely election to keep the information confidential, or if the cellular telephone service is paid for by a governmental body.

In summary, with the exception of the information we have marked for release, the university may withhold the information you have marked under section 552.111 of the Government Code. If the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024, the university must withhold the cellular telephone numbers we have marked under section 552.117(a)(1) of the Government Code if the cellular telephone service is not paid for by a governmental body. 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'JB', with a long horizontal flourish extending to the right.

Joseph Belnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 530382

Enc. Submitted documents

c: Requestor
(w/o enclosures)