



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 14, 2014

Ms. Hadassah Schloss
Open Records Coordinator
The Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2014-14299

Dear Ms. Schloss:

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# 533053.

The Texas General Land Office (the "GLO") received a request for information regarding two specified projects. You inform us you have released some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note some of the submitted information consists of budget information used to estimate the need for or expenditure of public funds which is subject to section 552.022 of the Government Code. Section 552.022(a)(5) of the Government Code provides for the required public disclosure of "all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate," unless the information is confidential under the Act or other law. Gov't Code § 552.022(a)(5). You seek to withhold the submitted draft budget under section 552.111 of the Government Code. However, this section is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 6-7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver). Thus,

the GLO may not withhold the draft budget under section 552.111 of the Government Code. As you raise no other exceptions against disclosure of this information, it must 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.” 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.); *see also* Open Records Decision No. 538 at 1-2 (1990).

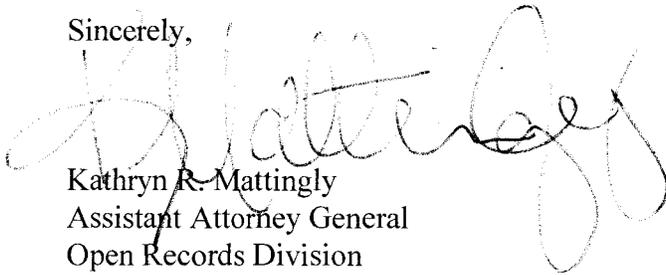
In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts only those internal communications that consist of advice, opinions, recommendations 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. *See id.*; *see also City of Garland v. The 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. *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 assert the remaining information reflects the advice, opinion, and recommendations regarding the projects at issue. You further state the communications include analysis and comments that relate to the ongoing development of the program. Based on your representations and our review, we find the GLO may withhold the information we have marked under section 552.111 of the Government Code. However, we find the remaining information consists of general administrative and purely factual information. Thus, we find you have not demonstrated how this information consists of advice, opinions, or recommendations pertaining to policymaking matters of the GLO. Accordingly, the GLO may not withhold any of the remaining information under section 552.111 of the Government Code. As you raise no further exceptions to disclosure, the GLO must release the remaining information to the requestor.

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 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 'K. Mattingly', is written over the typed name and title.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/ds

Ref: ID# 533053

Enc. Submitted documents

c: Requestor
(w/o enclosures)