



January 7, 2015

Ms. Melanie Barton
Assistant District Attorney
Dallas County
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2015-00210

Dear Ms. Barton:

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# 549483.

The Dallas County Health and Human Services Department (the "department") received a request for e-mails and text messages sent to or received by a named individual regarding the subject of Ebola during a specified time period. You state the department has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. Additionally, you notified the City of Dallas, the Texas Department of State Health Services, and the United States Centers for Disease Control of the request for information and of their right to submit written comments to this office stating why the submitted information should or should not be released. *See* Gov't Code § 552.304. We have received comments from the Texas Department of State Health Services. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

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 that those records contain substantially different types of information than that submitted to this office.

Initially, we note some of the submitted information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2014-23041 (2014), 2014-23231 (2014), 2014-23277 (2014), and 2015-00197 (2015). As we have no indication the law, facts, and circumstances on which the prior rulings were based have changed, the department may continue to rely on those rulings as previous determinations and withhold or release the submitted information in accordance with Open Records Letter Nos. 2014-23041, 2014-23231, 2014-23277, and 2015-00197.² *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note the Texas Department of State Health Services relies upon a previous determination issued by our office in Open Records Letter No. 2010-18849 (2010) as the basis for withholding the information submitted by the department. In that ruling, we determined, in part, the Texas Department of State Health Services may withhold information subject to section 81.046 of the Health and Safety Code without the necessity of requesting a decision from this office. We note Open Records Letter No. 2010-18849 only applies to the Texas Department of State Health Services. Accordingly, Open Records Letter No. 2010-18849 does not authorize the department to withhold information subject to section 81.046 without requesting a ruling from this office. *See* ORD 673 (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Thus, the department may not rely on Open Records Letter No. 2010-18849 as a basis for withholding any of 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. Section 552.101 encompasses section 81.046 of the Health and Safety Code, which provides in part:

(a) Reports, records, and information received from any source, including from a federal agency or from another state, furnished to a public health district, a health authority, a local health department, or the [Texas Department of State Health Services] that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under [the Act], and

²As our ruling is dispositive, we need not address the arguments against disclosure of this information.

may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (d), and (f).

Health & Safety Code § 81.046(a), (b). In Open Records Decision No. 577 (1990), this office concluded that any information acquired or created during an investigation under chapter 81 of the Health and Safety Code is confidential and may not be released unless an exception set out in the statute applies. *See id.* § 81.046(b)-(d), (f); ORD 577. You state the submitted information was furnished to or created by the department during an investigation under chapter 81 of an Ebola virus outbreak. Based on your representations and our review, we agree section 81.046 governs the release of portions of the submitted information. None of the release provisions of section 81.046 appear to be applicable. Accordingly, we determine the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code. However, we find none of the remaining information specifically relates to cases or suspected cases of diseases or health conditions for purposes of section 81.046. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.

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, 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, 364 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body’s policymaking functions 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 severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152, 157 (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, section 552.111 protects the factual information. *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 which the governmental body establishes it has a privity of interest or common deliberative process. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). 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.

The department states the remaining information consists of advice, opinions, and recommendations relating to the department's policymaking. Further, we note some of the communications at issue involve third parties, with which the department shares a privity of interest. Upon review, we find the department may withhold the information we have marked under section 552.111 of the Government Code. However, we find the remaining information consists of either general administrative information that does not relate to policymaking or information that is purely factual in nature. Thus, we find the department has failed to demonstrate how the remaining information is excepted under section 552.111. Accordingly, the department may not withhold the remaining information under section 552.111 of the Government Code.

Section 552.117(a)(1) of the Government Code 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.³ Gov't Code § 552.117(a)(1). Section 552.117 is also 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, the department must withhold the cellular telephone numbers we have marked under section 552.117(a)(1) of the Government Code if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code and the cellular

³The 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).

telephone service is not paid for by a governmental body. The department may not withhold this information if the individuals whose information is at issue did not make a timely election to keep the information confidential or the cellular telephone service is paid for by a governmental body.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506. The department must withhold the cellular telephone number we have marked under section 552.1175 if the individual at issue elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code and the cellular telephone service was not paid for by a governmental body. If the individual at issue does not elect to restrict access to this information in accordance with section 552.1175(b) or the cellular telephone service is paid for by a governmental body, the department may not withhold this information under section 552.1175.

In summary, the department may continue to rely on Open Records Letter Nos. 2014-23041, 2014-23231, 2014-23277, and 2015-00197 as previous determinations and withhold or release the submitted information in accordance with those rulings. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code. The department may withhold the information we have marked under section 552.111 of the Government Code. The department must withhold the cellular telephone numbers we have marked under section 552.117(a)(1) of the Government Code if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body. The department must withhold the cellular telephone number we have marked under section 552.1175 if the individual at issue elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code and the cellular telephone service was not paid for by a governmental body. The department 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.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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/akg

Ref: ID# 549483

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Warren M.S. Ernst
Dallas City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201-6622
(w/o enclosures)

Mr. Timothy E. Bray
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347
(w/o enclosures)

Mr. David Daigle
Centers for Disease Control
1600 Clifton Road
Atlanta, Georgia 30333
(w/o enclosures)