



January 20, 2015

Mr. Christopher Sterner
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2015-01057

Dear Mr. Sterner:

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# 553291 (OOG ID# 364-14).

The Office of the Governor (the "governor's office") received a request for correspondence to and from the Governor during a specified time period "regarding the handling of confirmed and suspected Ebola cases in Dallas." You indicate the governor's office is withholding e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.111

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

We note some of the responsive information may have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2015-00557 (2015) and 2015-00859 (2015).³ There is no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the governor's office must continue to rely on Open Records Letter Nos. 2015-00557 and 2015-00859 as previous determinations and withhold or release the identical information in accordance with those rulings. *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). Next, we address your arguments against the disclosure of the requested information that is not subject to these prior rulings.

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*

²We 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 those records contain substantially different types of information than that submitted to this office.

³In Open Records Letter No. 2015-00557, we concluded (1) to the extent the requested information was previously upon, the governor's office must continue to rely on Open Records Letter No. 2014-23493 (2014) as a previous determination, and withhold or release the requested information that is identical to the information that was at issue in that ruling in accordance with that ruling; (2) the governor's office may withhold the marked information under sections 552.107(1) and 552.111 of the Government Code; (3) the governor's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 81.046(b) of the Health and Safety Code; and (4) the governor's office must release the remaining information. In Open Records Letter No. 2015-00859, we concluded (1) for the requested information that is identical to the information previously requested and ruled upon by this office, the governor's office must continue to rely on Open Records Letter Nos. 2014-23493 and 2015-00557 as previous determinations and withhold or release the identical information in accordance with those rulings; (2) the governor's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code; (3) the governor's office may withhold the information it marked under sections 552.107(1) and 552.111 of the Government Code; and (4) the governor's office must release the remaining information.

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, 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).

The governor's office claims some of the submitted information consists of advice, opinions, and recommendations relating to policymaking of the governor's office. Upon review, we find the governor's office may withhold the information at issue, which you have marked, under section 552.111 of the Government Code.⁴

In summary, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the governor's office must continue to rely on Open Records Letter Nos. 2015-00557 and 2015-00859 as previous determinations and withhold or release the identical information in accordance with those rulings. The governor's office may withhold the marked information under section 552.111 of the Government Code. The governor's office must release the remaining submitted 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.

⁴As our ruling is dispositive, we do not address your remaining argument.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/bhf

Ref: ID# 553291

Enc. Submitted documents

c: Requestor
(w/o enclosures)