



January 20, 2015

Ms. Melanie Barton
Assistant District Attorney
Dallas County District Attorney's Office
411 Elm Street, Fifth Floor
Dallas, Texas 75202

OR2015-01059

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# 550490.

The Dallas County Health and Human Services Department (the "department") received a request for all e-mails regarding Ebola and the handling of Ebola cases. You state the department is releasing some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. Additionally, you state you have notified the Texas Department of State Health Services ("DSHS") and the Centers for Disease Control of the request for information and of the right of each to submit comments to this office why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from DSHS. 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 those records contain substantially different types of information than that submitted to this office.

Initially, we note some of the requested information may have been 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), 2015-00197 (2015), 2015-00210 (2015), 2015-00212 (2015), 2015-00220 (2015), 2015-00395 (2015), 2015-00437 (2015), 2015-00728 (2015), 2015-01044 (2015), 2015-01045 (2015), and 2015-01051 (2015). We have no indication the law, facts, and circumstances on which these prior rulings were based have changed. Accordingly, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office, we conclude the department must continue to rely on these rulings as previous determinations and withhold or release the information in accordance with them. To the extent the submitted information is not subject to these rulings, we will address your arguments against disclosure.

Next, we note DSHS 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, DSHS may withhold information subject to section 81.046 of the Health and Safety Code under section 552.101 of the Government Code without the necessity of requesting a decision from this office. We note Open Records Letter No. 2010-18849 only applies to DSHS. 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 information other statutes make confidential, such as section 81.046 of the Health and Safety Code, which provides in pertinent 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 department 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 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). 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). You state the submitted information was furnished to or created by the department and relates to the department's investigation into cases of and exposures to Ebola, which constitutes a reportable disease under chapter 81. Based on your representation and our review, we agree section 81.046 governs the release of some of the submitted information, which we have marked. We understand none of the release provisions of section 81.046 are applicable to the information at issue. Accordingly, we determine the department 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. However, upon review, we find none of the remaining information consists of reports, records, and information that relate 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 on that ground.

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, 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).

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party with a privity of interest. *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. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* ORD 561.

You state the remaining information consists of communications containing the advice, opinions, and recommendations of department employees and officials, City of Dallas officials, representatives of the United States Centers for Disease Control and Prevention, and DSHS. You further state these communications were intended to react and respond to the Ebola crisis, as well as security and public safety issues related to the Ebola crisis. Upon review, however, we find the remaining information at issue consists of information that is administrative or purely factual in nature. Thus, you have failed to demonstrate the remaining information reveals advice, opinions, or recommendations that pertain to policymaking. Accordingly, the department may not withhold any portion of the remaining information at issue under section 552.111 of the Government Code on the basis of the deliberative process privilege.

We note some of the remaining information may be subject to sections 552.117 and 552.137 of the Government Code.² Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former 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(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it 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 employee only if the individual made

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 No. 481 (1987), 480 (1987), 470 (1987).

a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individual whose information is at issue timely requested confidentiality under section 552.024 and if 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 552.117(a)(1) of the Government Code. The department may not withhold the marked cellular telephone number under section 552.117(a)(1) if the individual did not make a timely election to keep the information confidential or if the cellular telephone service is paid for by a governmental body.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the department must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

In summary, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office in Open Records Letter Nos. 2014-23041, 2014-23231, 2014-23277, 2015-00197, 2015-00210, 2015-00212, 2015-00220, 2015-00395, 2015-00437, 2015-00728, 2015-01044, 2015-01045, and 2015-01051, the department must continue to rely on the prior rulings as previous determinations and withhold or release the information in accordance with those rulings. To the extent the submitted information is not subject to these 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; if the individual whose information is at issue timely requested confidentiality under section 552.024 and the cellular telephone service is not paid for by a governmental body, must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code; and must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure. 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# 550490

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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

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