



January 26, 2015

Ms. Jennifer E. Bloom
Senior Assistant General Counsel
University of Houston System
311 E. Cullen Building
Houston, Texas 77204-2028

OR2015-01401

Dear Ms. Bloom:

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# 551247.

The University of Houston-Victoria (the "university") received a request for the agendas, minutes, and notes from the university's faculty senate (the "senate") and faculty council (the "council") meetings during a specified time period. You state the university released some of the requested information. 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.

Initially, we note some of the requested information may have been the subject of a previous ruling from this office. In Open Records Letter No. 2014-14554 (2014), this office ruled (1) the university may continue to rely on Open Records Letter No. 2014-10776 (2014) as a previous determination and withhold the identical responsive information in accordance with that ruling; (2) except for the information we marked for release, the university may withhold Exhibit 6 under section 552.107(1) of the Government Code; (3) the university may withhold the information we marked under section 552.111 of the Government Code; (4) if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the information we marked must be withheld under section 552.117(a)(1) of the Government Code; and (5) the university must release the remaining information. We have no indication the law, facts, or circumstances upon which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon, the university must continue to rely on Open Records Letter No. 2014-14554 as a previous

determination, and withhold or release the previously ruled upon information in accordance with that ruling. *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). However, to the extent the submitted information is not encompassed by the prior ruling, we will consider the exception you raise.

Section 552.111 of the Government Code excepts from public 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. Section 552.111 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 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. 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).

This office has also concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter’s advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the

draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

You explain the senate is an elected body of the council. You further explain the senate and council “operate under [their] own constitution and bylaws to consider matters of interest to the faculty and to make recommendations to [various individuals] regarding these matters.” You state the senate and council are advisory in nature and do not have the power to make binding decisions, and, therefore, are not subject to the Open Meetings Act. You seek to withhold the submitted draft meeting minutes and meeting notes under section 552.111 of the Government Code. You explain at each meeting of the senate and council, the minutes from the previous meeting are read and revised as appropriate before being formally approved. We understand the approved minutes will be released to the public. Based upon your representations and our review, we find the university may withhold the submitted information under section 552.111 of the Government Code.

In summary, the university must continue to rely on Open Records Letter No. 2014-14554 as a previous determination and withhold or release the identical responsive information in accordance with that ruling. The university may withhold the submitted information under section 552.111 of the Government Code.

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 'Meredith L. Coffman', with a long, sweeping horizontal line extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 551247

Enc. Submitted documents

c: Requestor
(w/o enclosures)