



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 1, 2015

Mr. John Buxie  
Chief of Staff  
Office of Representative Chris D. Paddie  
P.O. Box 2910  
Austin, Texas 78768-2910

OR2015-13185

Dear Mr. Buxie:

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# 569423.

The Office of Representative Chris D. Paddie (the "representative's office") received a request for all electronic written correspondence pertaining to a specified piece of legislation during a specified time frame. You state the representative's office has released some responsive information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed 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 323.018 of the Government Code, which relates to interactions between the Texas Legislative Council (the "council") and certain government officials. Section 323.018 provides "[r]ecords relating to requests of council staff for the drafting of proposed legislation or for assistance, information, advice, or opinion are not public information." *Id.* § 323.018. You inform us Exhibit C consists of communications relating to requests from the representative's office to council staff for the drafting of proposed legislation. Based on your representations and our review, we find Exhibit C is confidential under section 323.018. Accordingly, the representative's office must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 323.018 of the Government Code.<sup>1</sup>

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<sup>1</sup>As our ruling is dispositive, we do not address your remaining argument against disclosure of this information.

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[.]” *Id.* § 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.

You state the information you have marked consists of advice, opinions, and recommendations relating to policymaking. Further, you inform us that, “[w]hen requested, employees of [the Texas Department of Motor Vehicles (“TxDMV”)] provide assistance to legislators in developing proposed legislation affecting TxDMV” and “all parties to the [communications at issue] have privity of interest.” However, we note a portion of the information at issue was shared with a transportation network company. The representative’s office has not demonstrated it shares a privity of interest or common deliberative process with this party. Thus, we find the representative’s office has failed to show how this information consists of internal communications containing advice, opinions, or recommendations regarding policymaking matters of the representative’s office. Further, we

find the remaining information at issue consists of either general administrative information that does not relate to policymaking or information that is purely factual in nature. As a result, we find you have failed to demonstrate how this information consists of advice, opinion, or recommendation relating to policymaking. Accordingly, the representative's office may not withhold any of the information you have marked under section 552.111 of the Government Code.

In summary, the representative's office must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 323.018 of the Government Code. The remaining information must be released.

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](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,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 569423

Enc. Submitted documents

c: Requestor  
(w/o enclosures)