



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 16, 2015

Ms. Laura Hendrickson
Director
House Research Organization
P.O. Box 2910
Austin, Texas 78768-2910

OR2015-14515

Dear Ms. Hendrickson:

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# 571892.

The House Research Organization of the Texas House of Representatives (the "organization") received a request for information pertaining to a specified bill and correspondence pertaining to a named individual and specified entities. You state you have released some information to the requestor. You claim the public availability of portions of the submitted information is governed by sections 306.003 and 306.004 of the Government Code.¹ *See* Gov't Code §§ 306.003(a), .004(a); *see also* Open Records Decision No. 648 at 3–7 (1996). You claim portions of the remaining information are excepted from disclosure under sections 552.106, 552.111, and 552.117 of the Government Code. We have considered the submitted arguments and reviewed the submitted 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[.]" 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

¹Release of information subject to section 306.003(a) or 306.004(a) of the Government Code is governed by chapter 306, not the Act, and it is within the discretion of a legislator to either withhold or release such information.

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 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 Nos. 631 at 2 (section 552.111 encompasses information created for governmental body by outside consultant acting at governmental body's request and performing task that is within governmental body's authority), 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process), 462 at 14 (1987) (section 552.111 applies to memoranda prepared by governmental body's consultants). 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 at 9.

You state the information you marked and indicated consists of discussions and notes between and among policymakers and staff of the organization and members of the Texas House of Representatives. You explain the information at issue consists of advice, opinions, and recommendations pertaining to proposed legislation. Based on your representations and our review, we agree most of the information at issue is subject to section 552.111 and may

be withheld on that basis.² However, we find the remaining information at issue consists of information that is administrative or purely factual in nature or does not pertain to policymaking. Therefore, the organization may not withhold any portion of the remaining information at issue, which we have marked for release, under section 552.111 of the Government Code on the basis of the deliberative process privilege.

Section 552.106 of the Government Code excepts from disclosure “[a] draft or working paper involved in the preparation of proposed legislation.” Gov’t Code § 552.106(a). Section 552.106 of the Government Code resembles section 552.111 in that both exceptions protect advice, opinion, and recommendation on policy matters in order to encourage frank discussion during the policymaking process. *See* Open Records Decision No. 460 at 2 (1987). However, section 552.106 applies specifically to the legislative process and is narrower than section 552.111. *Id.* Therefore, section 552.106 is applicable only to the policy judgments, recommendations, and proposals of persons who are involved in the preparation of proposed legislation and who have an official responsibility to provide such information to members of the legislative body. *Id.* Section 552.106 does not protect purely factual information from public disclosure. *See id.*; *see also* Open Records Decision No. 344 at 3-4 (1982) (for purposes of statutory predecessor, factual information prepared by State Property Tax Board did not reflect policy judgments, recommendations, or proposals concerning drafting of legislation). Upon review of your arguments, we find you have not demonstrated the remaining information at issue consists of policy judgments, recommendations, or proposals pertaining to the preparation of proposed legislation. Accordingly, the organization may not withhold the remaining information at issue under section 552.106 of the Government Code.

Section 552.117(a)(1) 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. Gov’t Code § 552.117(a)(1). Section 552.117 is 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, the organization may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You inform us the employee at issue timely elected confidentiality under section 552.024. Accordingly, the organization must withhold the

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

information you marked and the information we have marked under section 552.117(a)(1) of the Government Code, provided the cellular telephone service is not paid for by a governmental body. Conversely, to the extent the cellular telephone service is paid for by a governmental body, the organization may not withhold the information you marked or the information we have marked under section 552.117(a)(1).

In summary, with the exception of the information we have marked for release, the organization may withhold the information you marked and indicated under section 552.111 of the Government Code. The organization must withhold the information you marked and the information we have marked under section 552.117(a)(1) of the Government Code; however, the personal cellular telephone number may only be withheld if the cellular telephone service is not paid for by a governmental body. The organization 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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 571892

Enc. Submitted documents

c: Requestor
(w/o enclosures)