



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 5, 2015

Mr. Frank Battle  
General Counsel  
Office of the Speaker of the House  
P.O. Box 2910  
Austin, Texas 78768-2910

OR2015-16136

Dear Mr. Battle:

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# 574266.

The Office of the Speaker of the House (the "speaker's office") received a request for all communications between the speaker's office and the Department of Public Safety (the "DPS") over a specified time period. You state you have released some information to the requestor. The speaker's office does not take a position as to whether a portion of the submitted information is excepted from disclosure under the Act. However, the speaker's office states it notified the DPS of the speaker's office's receipt of the request for information and of the right of the DPS to submit arguments to this office as to why the requested information should not be released. *See Gov't Code § 552.304* (interested party may submit written comments stating why information should or should not be released). We have received arguments from the DPS. You state the speaker's office has withheld some of the responsive information pursuant to sections 306.003 and 306.004 of the Government Code.<sup>1</sup> *See Gov't Code §§ 306.003(a), .004(a); see also Open Records Decision No. 648 at 3-7 (1996)*. You claim the remaining submitted information is excepted from disclosure under

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<sup>1</sup>Release 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.

sections 552.101, 552.111, and 552.117 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. The DPS informs us it objects to disclosure of portions of the information in Exhibit D because it pertains to pending criminal investigations or prosecutions. Based on this representation and our review, we conclude section 552.108(a)(1) is applicable to the information we have marked. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the speaker’s office may withhold the information we have marked in Exhibit D under section 552.108(a)(1) of the Government Code on behalf of the DPS.

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 86 S.W.3d at 327 (Gov’t Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g., Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution)*. The statutory predecessor to section 552.108(b)(1) was not applicable to generally known policies and procedures. *See, e.g., Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body*

failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

The DPS contends release of the portions of the remaining information in Exhibit D “would provide wrong-doers, drug traffickers, terrorists, and other criminals with invaluable information” concerning specified law enforcement efforts. The DPS further states the release of additional portions of the information in Exhibit D “would reveal techniques used to identify potential threats to public safety.” The DPS asserts release of the information at issue “would provide specific information that would hamper [law enforcement techniques] currently and in the future in regard to public safety threats and criminal organization groups and individuals,” and “endanger the safety of both law enforcement personnel and the public.” Upon review, we find the DPS has demonstrated release of the information at issue would interfere with law enforcement. Accordingly, the speaker’s office may withhold the information we have marked under section 552.108(b)(1) of the Government Code on behalf of the DPS.<sup>2</sup>

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, as 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). Moreover, 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

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<sup>2</sup>As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

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).

We note section 552.111 can encompass a governmental body's communications with a third party, including a consultant or other party with which the governmental body shares a common deliberative process or privity of interest. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 of the Government Code encompasses communications with party with which governmental body has privity of interest or common deliberative process). In order 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 assert the information you have marked in Exhibit B falls within the scope of section 552.111. You state the information at issue consists of communications regarding proposed legislation. Thus, you state the information at issue consists of advice, opinions, or recommendations pertaining to the policymaking functions of the speaker's office. You represent all parties to the communications have a privity of interest. Based on your representations and our review of the information at issue, the speaker's office may withhold the information you have marked under section 552.111 of the Government Code.

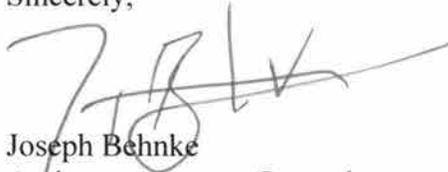
Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. We note section 552.117 is also applicable to personal 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) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). You indicate the information you have marked under section 552.117 of the Government Code pertains to an employee or official of the speaker's office who timely elected to keep the information at issue confidential. Therefore, the speaker's office must withhold the information you have marked under section 552.117(a)(1) of the Government Code.

In summary, the speaker's office may withhold the information we have marked under section 552.108(a)(1) and 552.108(b)(1) of the Government Code on behalf of the DPS. The speaker's office may withhold the information you have marked under section 552.111 of the Government Code. The speaker's office must withhold the information you have marked under section 552.117(a)(1) of the Government Code. The speaker's office 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](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,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 574266

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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