



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 1, 2015

Mr. Ian M. Steusloff
Assistant General Counsel
Texas Ethics Commission
P.O. Box 12070
Austin, Texas 78711-2070

OR2015-20569

Dear Mr. Steusloff:

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# 581406 (TEC Ref. No. 33185).

The Texas Ethics Commission (the "commission") received a request for communications between the commission and two named individuals, the Government Accountability Board of Wisconsin, or any employee of the Exempt Organizations Unit of the Internal Revenue Service containing nine specified terms occurring in a specified time period.¹ You state the commission provided the requestor with some information. You claim some information is not subject to the Act. You also claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you inform us the information you redacted is not subject to the Act pursuant to section 571.139(a) of the Government Code. Section 571.139 provides in part:

(a) Except as provided by Section 571.140(b), [the Act] does not apply to documents or any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion.

¹You state the commission sought and received clarification of the request for information. See Gov't Code §552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

Gov't Code § 571.139(a). You explain the information you have redacted is subject to section 571.139 because it consists of communications discussing a decision made by the commission in a closed, confidential sworn complaint proceeding. We have no indication the exception in section 571.140(b) applies. *See id.* § 571.140(b) (stating commission order issued after the completion of preliminary review or hearing that determines violation other than technical or de minimis violation has occurred is not confidential). Because section 571.139(a) expressly excludes information relating to the resolution of a sworn complaint from the provisions of the Act, this information is not subject to the Act and the commission need not release it to the requestor.

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, orig. proceeding); 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, orig. proceeding). 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. ORD 615 at 5; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). 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). However, 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. ORD 615 at 5-6; *see also Dallas Morning News*, 22 S.W.3d at 364 (section 552.111 not applicable to personnel-related communications that did not involve policymaking).

Further, section 552.111 does not generally except from disclosure facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 157; 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).

You state the remaining submitted information consists of communications between employees of the commission. You explain the information at issue consists of advice,

opinions, and recommendations pertaining to policymaking matters of the commission regarding the commission's rulemaking authority. 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. However, we find the remaining information at issue, which we have marked for release, consists of information that is purely factual in nature. Thus, we find you have failed to demonstrate how the information we have marked for release consists of advice, opinion, or recommendation relating to policy making. Accordingly, with the exception of the information we have marked for release, the commission 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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/bhf

Ref: ID# 581406

Enc. Submitted documents

c: Requestor
(w/o enclosures)