



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 15, 2015

Ms. Jordan Hale  
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Assistant General Counsel  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

OR2015-21680

Dear Ms. Hale:

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# 581495 (OOG ID# 15-291).

The Office of the Governor (the "governor's office") received a request for copies of all communications between employees of the governor's office and employees of the Department of Public Safety (the "department") within a specified time period, excluding information related to the protective detail for the Governor's family and employee background checks.<sup>1</sup> The governor's office states it will redact information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code; motor vehicle record information pursuant to section 552.130(c) of the Government Code; and personal e-mail addresses under section 552.137 of the Government

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<sup>1</sup>You inform us the governor's office sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Code pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> The governor's office states it will release some of the requested information. The governor's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. The governor's office also states release of the responsive information may implicate the interests of the department. Accordingly, the governor's office states it notified the department of the request for information and the department's right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the department. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, we note the governor's office marked some of the submitted information as non-responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the governor's office is not required to release such information in response to this request.

Next, we note portions of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-16961 (2015). In Open Records Letter No. 2015-16961, we concluded: (1) the governor's office may rely on Open Records Letter Nos. 2015-09398 (2015) and 2015-06315 (2015) as previous determinations and withhold or release identical information in accordance with those rulings; (2) the governor's office may withhold the information it marked under sections 552.104, 552.107, and 552.111 of the Government Code; and (3) the remaining information must be released. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the

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<sup>2</sup>Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117. Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

<sup>3</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the governor's office may not now withhold the previously released information, unless its release is expressly prohibited by law or the information is confidential by law. Although the department raises sections 552.106, 552.107, 552.108, and 552.111 of the Government Code for some of the information at issue and the governor's office raises section 552.111 for portions of the submitted information, these exceptions do not prohibit the release of information or make information confidential. *See* Gov't Code § 552.007; Open Records Decision Nos. 676 at 10–11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (governmental body may waive section 552.111), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the governor's office may not now withhold the previously released information under sections 552.106, 552.107, 55.108, and 552.111. However, the department also raises sections 552.101, 552.139, and 552.152 of the Government Code, and the governor's office raises section 552.101, which make information confidential by law. Additionally, we note some of the submitted information is subject to section 552.1175 of the Government Code, which makes information confidential.<sup>4</sup> Thus, we will address sections 552.101, 552.1175, 552.139, and 552.152 for any previously released information. With respect to the information in the previous ruling that was not released, we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Thus, with respect to the information in the previous ruling that was not released, to the extent the responsive information is identical to the information previously requested and ruled upon by this office, we conclude the governor's office may rely on Open Records Letter No. 2015-16961 as a previous determination and withhold the identical 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address the governor's office's and the department's arguments for the remaining responsive information that is not encompassed by Open Records Letter No. 2015-16961.

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<sup>4</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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. This section encompasses part 23 of title 28 of the Code of Federal Regulations, which was established to regulate intelligence databases pertaining to certain criminal activities, such as drug trafficking and extortion, that involve a large number of participants over a broad geographical area. *See* 28 C.F.R. § 23.2 (providing background of part 23). The policy standards of part 23 are applicable to all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3711, *et seq.* *Id.* § 23.3(a). For purposes of part 23, a criminal intelligence system “means the arrangements, equipment, facilities, and procedures used for the receipt, storage, interagency exchange or dissemination, and analysis of criminal intelligence information,” and an intelligence project “means the organizational unit which operates an intelligence system on behalf of and for the benefit of a single agency or the organization which operates an interjurisdictional intelligence system on behalf of a group of participating agencies[.]” *Id.* § 23.3(b)(1), (5).

The release of information within these criminal intelligence databases is governed by section 23.20 of part 23, which provides in relevant part the following:

(e) A project or authorized recipient shall disseminate criminal intelligence information only where there is a need to know and a right to know the information in the performance of a law enforcement activity.

(f)(1) Except as noted in paragraph (f)(2) of this section, a project shall disseminate criminal intelligence information only to law enforcement authorities who shall agree to follow procedures regarding information receipt, maintenance, security, and dissemination which are consistent with these principles.

(2) Paragraph (f)(1) of this section shall not limit the dissemination of an assessment of criminal intelligence information to a government official or to any other individual, when necessary, to avoid imminent danger to life or property.

*Id.* § 23.20(e), (f). For purposes of section 23.20, “criminal intelligence information” means “data which has been evaluated to determine that it: (I) [i]s relevant to the identification of and the criminal activity engaged in by an individual who or organization which is reasonably suspected of involvement in criminal activity, and (ii) [m]eets criminal intelligence system submission criteria[.]” *Id.* § 23.3(b)(3). We understand some of the information the department has indicated under section 552.101 was “acquired and maintained as part of a criminal intelligence system operated pursuant to 28 C.F.R. § 23.20.” Thus, we conclude the information at issue is confidential under section 23.20 and may be released only in accordance with that section. The department states the requestor is not a

member of a law enforcement authority. *See id.* § 23.20(f)(1). The department further states it does not believe disclosure to the requestor is necessary to avoid imminent danger to life or property. *Id.* § 23.20(f)(2). Therefore, we conclude the information at issue, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with section 23.20 of title 28 of the Code of Federal Regulations.<sup>5</sup>

Section 552.101 of the Government Code also encompasses section 414.009 of the Government Code, which provides:

(a) A person who is a member or employee of the [Texas Crime Stoppers Council] or who accepts a report of criminal activity on behalf of a crime stoppers organization commits an offense if the person intentionally or knowingly divulges to a person not employed by a law enforcement agency the content of a report of a criminal act or the identity of the person who made the report without the consent of the person who made the report.

Gov't Code § 414.009(a). The governor's office states some of the submitted information reflects the identity of an individual who made a report to a crime stoppers organization. *See id.* § 414.001(2)(B) (defining "crime stoppers organization" as public organization operated on local or statewide level, that pays rewards to persons who report to organization information about criminal activity, and that forwards information to appropriate law enforcement agency). The governor's office further states the reporting individual did not provide consent to release the individual's information and release of the information at issue will reveal the identity of the reporting individual. Based on the representations of the governor's office and our review, we conclude the governor's office must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 414.009 of the Government Code.

Section 552.101 of the Government Code also encompasses the Texas Homeland Security Act (the "HSA"). As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. Section 418.176 of the Government Code provides, in relevant part:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

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<sup>5</sup>As our ruling is dispositive, we need not address the department's remaining arguments against disclosure of this information.

(1) relates to staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency; [or]

(2) relates to a tactical plan of the provider[.]

*Id.* § 418.176(a)(1)-(2). The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under the provisions of the HSA. See Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). As with any confidentiality statute, a governmental body asserting this section must adequately explain how the responsive information falls within the scope of the provision. See Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The department states some of the information at issue relates to confidential tactical plans utilized by the department and other law enforcement for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity, or to identify potential threats to public safety. The department further states release of the information at issue would provide wrong-doers, drug traffickers, terrorists, and other criminals with invaluable information concerning law enforcement efforts, allowing these groups to identify vulnerabilities and avoid detection. Upon review, we conclude the information we have marked relates to staffing requirements of emergency response providers maintained by the department for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity, or a tactical plan of the emergency response provider. Accordingly, the governor's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.<sup>6</sup> However, we find the department has not demonstrated how any of the remaining information at issue relates to staffing requirements or a tactical plan of an emergency response provider for purposes of section 418.176. Thus, the department has not demonstrated the applicability of section 418.176 to any of the remaining responsive information at issue. Accordingly, the governor's office may not withhold any of the remaining responsive information under section 552.101 of the Government Code in conjunction with section 418.176.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be

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<sup>6</sup>As our ruling is dispositive, we need not address the department's remaining arguments against disclosure of this information.

satisfied. *See id.* at 681–82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information the governor’s office has marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the governor’s office must withhold the information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.106 of the Government Code excepts from disclosure “[a] draft or working paper involved in the preparation of proposed legislation” and “[a]n internal bill analysis or working paper prepared by the governor’s office for the purpose of evaluating proposed legislation[.]” Gov’t Code § 552.106(a), (b). Section 552.106 ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. Open Records Decision No. 460 (1987). The purpose of section 552.106 is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body, and therefore, it does not except from disclosure purely factual information. *Id.* at 2. However, a comparison or analysis of factual information prepared to support proposed legislation is within the ambit of section 552.106. *Id.* A proposed budget constitutes a recommendation by its very nature and may be withheld under section 552.106. *Id.* Section 552.106 protects only policy judgments, advice, opinions, and recommendations involved in the preparation or evaluation of proposed legislation; it does not except purely factual information from public disclosure. *See* ORD 460 at 2.

The department states the information it has indicated consists of communications between the department, legislators’ offices, and the governor’s office regarding the development, analysis, and evaluation of proposed legislation related to the department. Upon review, we find the information we have marked constitutes advice, opinion, analysis, and recommendations regarding legislation related to the department. Therefore, the governor’s office may withhold the information we have marked under section 552.106 of the Government Code.<sup>7</sup>

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* ORD 676 at 6-7. First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the

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<sup>7</sup>As our ruling is dispositive, we need not address the governor’s office’s and department’s remaining arguments against disclosure of this information.

rendition of professional legal services” to the client governmental body. *See* Tex. R. Evid. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *See In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. The mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. *See* TEX. R. EVID. 503(b)(1)(A)-(E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.*, meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

The department claims the information it has indicated is excepted from disclosure under section 552.107(1) of the Government Code. The department states the information consists of communications between attorneys and employees of the department and employees of the governor’s office. Additionally, the department states these communications were made for the purpose of facilitating the rendition of professional legal services, the confidentiality of the communications has been maintained, and the communications were not intended to be shared with any third parties. Based on these representations and our review, we find the department has demonstrated the applicability of the attorney-client privilege to the information we have marked. Thus, the governor’s office may withhold the information at issue pursuant to section 552.107(1) of the Government Code.<sup>8</sup>

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<sup>8</sup>As our ruling is dispositive, we need not address the governor’s office’s and department’s remaining arguments against disclosure of this 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). The department states some of the information at issue relates to an ongoing criminal investigation. Upon review, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information at issue, which we have marked. The governor’s office may withhold the information we have marked under section 552.108(a)(1) of the Government Code.

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 department explains that some of the submitted information details “ongoing operations by the [d]epartment and other law enforcement agencies at the Texas border to protect, prevent, and respond to terroristic threats and other criminal activities.” The department states revealing the information at issue “would provide wrong-doers, drug traffickers, terrorists, and other criminals with invaluable information concerning the efforts of law enforcement at the Texas border, allowing these groups to identify vulnerabilities and avoid detection.” Upon review, we find the department has demonstrated release of the information at issue would interfere with law enforcement. Thus, the governor’s office may

withhold the information at issue, which we have marked, under section 552.108(b)(1) of the Government Code.<sup>9</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, 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 that are 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).

This office has also concluded 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

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<sup>9</sup>As our ruling is dispositive, we need not address the governor’s office’s remaining arguments against disclosure of this information.

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.

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 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. 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.

The governor's office and the department seek to withhold some of the remaining responsive information under section 552.111 of the Government Code. The governor's office and the department state the information at issue consists of communications between and among employees of the governor's office and the department communicating in their policy-making capacities. The governor's office informs us that it, as the state's chief executive office, shares a privity of interest with the department with respect to the information at issue. The governor's office and the department argue the information at issue consists of internal communications involving the advice, opinions, and recommendations of the governor's office and the department pertaining to their policymaking functions. The governor's office and the department also both state some of the information at issue consists of draft documents prepared by the governor's office or department, and the draft documents will be made available to the public in their final form. Upon review, we find the governor's office and the department have demonstrated the applicability of the deliberative process to some of the information at issue. Therefore, the governor's office may withhold the information at issue, which it has marked, and the additional information we have marked based on the department's indications, under section 552.111 of the Government Code. However, we find the remaining information at issue the department has indicated consists of either general administrative information that does not relate to policymaking or information that is purely factual in nature. Thus, we find the department has failed to demonstrate how the remaining information at issue is excepted under section 552.111. Accordingly, the remaining information at issue may not be withheld under section 552.111 of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. We note the protection afforded by section 552.1175

generally does not lapse at death, as it is intended to protect the privacy of both the individual and the individual's family members. Upon review, we find some of the remaining information pertains to a peace officer not employed by the governor's office. Thus, to the extent the information we have marked pertains to a licensed peace officer, and the officer elects to restrict access to his information in accordance with section 552.1175(b), the governor's office must withhold the information we have marked under section 552.1175. If the individual whose information we have marked is no longer a licensed peace officer or no election is made, the governor's office may not withhold this information under section 552.1175 of the Government Code.

Section 552.139 of the Government Code provides, in part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; [and]

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

*Id.* § 552.139(a), (b)(1)–(2). Section 2059.055 of the Government Code provides in part:

(b) Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;

(2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or

(3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

*Id.* § 2059.055(b). The department states some of the submitted information “relates to the defense of a computer network, including computer networks and programs supporting law enforcement efforts across the state.” The department explains release of the information at issue makes the computer systems at issue vulnerable to alteration, damage, erasure, or inappropriate use. Based on the department’s representations and our review of the information, we find the department has demonstrated the information at issue, which we have marked, relates to computer network security, the design, operation, or defense of the department’s computer network, or an assessment of the department’s computer network vulnerabilities. Accordingly, the governor’s office must withhold the information we have marked under section 552.139 of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

*Id.* § 552.152. The department states some of the remaining information reveals information about members of the department’s Executive Protection Bureau (“EPB”), which is tasked with providing protective services to certain elected officials and their families. The department states “revealing the identities of EPB agents would endanger the agents . . . as well as those they are assigned to protect.” Additionally, the department states it does not publicly reveal the identities of the agents who are assigned to the EPB. Based on the department’s representations and our review, we find the department has demonstrated the release of identifying information of the agents at issue, which we have marked, would subject the officers at issue to a substantial threat of harm. Thus, the governor’s office may withhold the information we have marked under section 552.152 of the Government Code. However, we find the remaining information at issue does not subject the agents at issue to substantial threat of harm. Thus, the department may not withhold any of the remaining information under section 552.152 of the Government Code.

In summary, with respect to the information which was not released in the prior ruling, the governor’s office may rely on Open Records Letter No. 2015-16961 as a previous determination and withhold the identical information in accordance with that ruling. The governor’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 23.20 of title 28 of the Code of Federal Regulations. The governor’s office must withhold the information it marked under

section 552.101 of the Government Code in conjunction with section 414.009 of the Government Code. The governor's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The governor's office must withhold the information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. The governor's office may withhold the information we have marked under section 552.106 of the Government Code. The governor's office may withhold the information we have marked under section 552.107(1) of the Government Code. The governor's office may withhold the information we have marked under section 552.108(a)(1) of the Government Code. The governor's office may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The governor's office may withhold the information it has marked, and the additional information we have marked, under section 552.111 of the Government Code. To the extent the information we have marked pertains to a licensed peace officer and the officer elects to restrict access to his information in accordance with section 552.1175(b), the governor's office must withhold the information we have marked under section 552.1175 of the Government Code. The governor's office must withhold the information we have marked under section 552.139 of the Government Code. The governor's office must withhold the information we have marked under section 552.152 of the Government Code. The remaining responsive 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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/dls

Ref: ID# 581495

Enc. Submitted documents

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