



August 23, 2000

Mr. J. Robert Giddings
Office of General Counsel
The University of Texas System
201 West 7th Street
Austin, Texas 78701-2981

OR2000-3226

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138267.

The University of Texas System (the "system") received a request for a "draft copy of the University of Texas-Austin budget for 2000-2001." You claim that the requested information is excepted from disclosure under sections 552.106 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.111 excepts "an 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. In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. The draft of a document that has been released or is intended for release in final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document, and may therefore be withheld under section 552.111 of the Government Code. See Open Records Decision No. 559 (1990). Generally, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 at 4-5 (1993). Yet, where a document is a genuine preliminary draft that has been released or is intended for release in final form, factual information in that draft which also appears in a released or releasable final version is excepted from disclosure by section 552.111. Open Records Decision No. 559 (1990). However, severable factual information appearing in the draft but not in the final version is not excepted by section 552.111. *Id.*

You state that the draft budget is a working document which goes through numerous revisions at different levels of the system's administration until it is approved by the Board of Regents at a public meeting held in August, 2000. You further state that the budget will be subject to release after the Board of Regent's approval. Based on your representations and our review of the information, we conclude that the draft copy of The University of Texas-Austin budget for 2000-2001 is excepted under section 552.111.¹ Therefore, you may withhold the draft budget.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

¹Because we have found that the information is excepted under section 552.111, we need not discuss the applicability of section 552.106.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB\er

Ref: ID# 138267

Encl: Submitted documents

cc: Ms. Sharon Jayson
Higher Education Reporter
Austin American-Statesman
P.O. Box 670
Austin, Texas 78767
(w/o enclosures)