



November 9, 2000

Mr. James R. Hines  
Assistant General Counsel  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

OR2000-4368

Dear Mr. Hines:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141013.

The Office of the Governor (the "office") received three requests from the same requestor for seven categories of information. You have submitted some of the responsive documents that you claim are excepted from disclosure under sections 552.101, 552.106, 552.107, and 552.111 of the Government Code. We assume that you have released the remainder of the responsive documents to the requestor. We have considered the exceptions you claim and reviewed the submitted information, Exhibits A-M.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section also incorporates information considered confidential under the common law right to privacy. Information is protected by the common law right to privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683; *see also* Open Records Decision Nos. 470 (concluding that fact that a person broke out in hives as a result of severe emotional distress is excepted by common law privacy), 455 (1987) (concluding that kinds of prescription drugs a person is taking are protected by common law privacy), 422 (1984) (concluding that details of self-inflicted injuries are presumed protected by common law privacy), 343 (1982) (concluding that information regarding drug overdoses.

acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress is protected by common law privacy).

You state that Exhibit A contains health information that is excepted from public disclosure pursuant to section 552.101 in conjunction with the common law right to privacy. We have reviewed Exhibit A and agree that the health information contained in Exhibit A is excepted from public disclosure under section 552.101 in conjunction with the common law right to privacy. Therefore, the office must withhold this information.

Section 552.106(b) of the Government Code excepts from disclosure “[a]n internal bill analysis or working paper prepared by the governor’s office for the purpose of evaluating proposed legislation.” You state that Exhibit B consists of advice, opinions, and recommendations regarding legislative proposals. You state that Exhibit C consists of advice, opinions, and recommendations regarding legislative funding. You state that Exhibits E and F contain documents that consist of internal analyses for proposed legislation. You state that Exhibit G contains information regarding proposed legislation. You assert that these exhibits fall within the ambit of section 552.106(b). After reviewing your assertions and the submitted exhibits, we agree that section 552.106(b) applies to Exhibits B, C, E, F, and G. Thus, the office may withhold this information from public disclosure under section 552.106(b).

Section 552.107(1) excepts information from disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. ORD No. 574 at 5. Section 552.107(1) does not protect purely factual information. *Id.* For example, section 552.107(1) does not except from disclosure the factual recounting of events or the documentation of calls made, meetings attended, and memoranda sent. *Id.* You claim that Exhibits H, J, K, L, and M contain legal advice and opinion regarding a specific issue. After reviewing your assertions and the submitted exhibits, we agree that Exhibits H, J, K, L, and M fall within the purview of section 552.107(1); therefore, the office may withhold these documents from public disclosure.

Finally, section 552.111 excepts from disclosure “an interagency or intraagency

memorandum or letter that would not be available by law to a party in litigation with the agency.” 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. An agency’s policymaking functions do not encompass internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. Open Records Decision No. 615 at 5-6 (1993); *see also Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex.2000) (personnel communications not relating to agency’s policymaking not excepted from public disclosure pursuant to section 552.111). An agency’s policymaking functions do include, however, administrative and personnel matters of broad scope that affect the governmental body’s policy mission. *See* Open Records Decision No. 631 (1995). In addition, section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 615 at 4-5 (1993). If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld under section 552.111. Open Records Decision No. 313 (1982).

You claim that Exhibit D is an internal memorandum that consists of advice, opinions, and recommendations regarding specific issues. After reviewing the document, we find that portions of it consist of factual information which is severable from the information that consists of advice, opinions, and recommendations. Therefore, this factual information may not be withheld under section 552.111. We have marked the information to be released. The remainder of Exhibit D may be withheld under section 552.111 as this information consists of advice, opinions, and recommendations on policy matters.

Additionally, you state that the highlighted information in Exhibit I consists of advice, opinions, and recommendations regarding a specific Senate bill. We find that Exhibit I does not contain any highlighted information. However, we find that portions of Exhibit I do not fall within the purview of section 552.111 as this information is purely factual information that is severable from the remainder of the exhibit. We have marked the information that must be released to the requestor. We find that the remainder of Exhibit I consists of advice, opinion, and recommendation on policy matters that may be withheld under section 552.111.

In summary, the office must release the marked portions of Exhibit D and I. The office may withhold the remainder of Exhibits D and I under section 552.111. The office must withhold the health information contained in Exhibit A under section 552.101 in conjunction with the common law right to privacy. The office may withhold Exhibits B, C, E, F, and G pursuant to section 552.106(b). The office may withhold Exhibits H, J, K, L, and M under

section 552.107(1).

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).

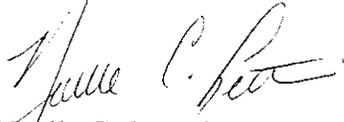
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



Noelle C. Letteri  
Assistant Attorney General  
Open Records Division

NCL/pr

Ref: ID# 141013

Encl. Submitted documents

cc: Ms. Elizabeth Cavendish  
NARAL  
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(w/o enclosures)