



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

April 25, 2003

Ms. Hadassah Schloss  
Open Records Administrator  
Texas Building & Procurement Commission  
P.O. Box 13047  
Austin, Texas 78711

OR2003-2810

Dear Ms. Schloss:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180047.

The Texas Building and Procurement Commission (the "Commission") received a request from a former employee for a copy of his personnel file, e-mails, and personal folders on his D drive, with the exception of music files. You inform us that the Commission has made available to the requestor the portion of the information that it believes to be public, but claims that other requested information is excepted from disclosure under sections 552.111, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted "representative sample."<sup>1</sup>

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." This section encompasses the deliberative process privilege. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000). The deliberative process privilege incorporated by section 552.111 protects from disclosure interagency and intra-agency communications consisting of advice, opinion, or recommendations on policymaking matters of a governmental body. *See id.*; Open Records Decision No. 615 at 5 (1993). An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, the deliberative process privilege does not generally except from disclosure purely factual information that is

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<sup>1</sup>We assume that the submitted "representative sample" of records 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.

severable from the opinion portions of internal memoranda. *Id.* at 4-5; *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). A genuine preliminary draft of a policymaking document that has been released or is intended for release in final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 at 2 (1990). However, when severable factual information appears in the draft of a policymaking document intended for release but does not appear in the final version, the severable information is not excepted by section 552.111. *Id.*

We have reviewed the submitted information and agree that portions of the submitted documents involve internal agency policy deliberations and are excepted from disclosure under section 552.111. You may therefore withhold the information that we have marked under section 552.111.

You also claim that some of the information that you submitted to us for review is excepted from disclosure pursuant to section 552.136 of the Government Code. Section 552.136 provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security 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 program, network, system, 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 is vulnerable to alteration, damage, or erasure.

Gov't Code § 552.136. Based on our review of the submitted information, we do not agree that any of the submitted information relates to computer network security or to the design, operation, or defense of a computer network. Further, we do not agree that any of the submitted information constitutes a computer network vulnerability report or an assessment of the extent to which the Commission's computer network systems are vulnerable to unauthorized access or harm. Consequently, we conclude that the Commission may not withhold any portion of the submitted information under section 552.136 of the Government Code.

Lastly, you argue that the submitted documents contain information that must be withheld under section 552.137 of the Government Code. Section 552.137 provides in relevant part:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Section 552.137 requires the Commission to withhold e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the members of the public have affirmatively consented to their release. There is no indication that the members of the public whose e-mail addresses are at issue have consented to release of these addresses. Accordingly, we have marked the email addresses that the Commission must withhold from disclosure pursuant to section 552.137 of the Government Code.

In summary, the Commission may withhold the information that we have marked under section 552.111. However, the marked draft document may be withheld only upon a factual determination that the final version of the document has been or will be released. The Commission must withhold the information that we have marked under section 552.137. The remaining information must be released.

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 Dep't of Pub. 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 Hadassah Schloss at the Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Heather Pendleton Ross  
Assistant Attorney General  
Open Records Division

HPR/sdk

Ref: ID# 180047

Enc: Submitted documents

c: Mr. Victor J. Villegas  
1800 Lavaca, #104  
Austin, Texas 78701  
(w/o enclosures)