



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

May 23, 2003

Ms. Linda S. Wiegman  
Deputy General Counsel  
Office of the General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-7111

OR2003-3508

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181583.

The Texas Department of Health (the "department") received a request for documents regarding certain department positions that are "targeted for removal or elimination at the end of the current fiscal year." The requestor also seeks documents "to or from Dr. Eduardo Sanchez and Debra Stabeno and [department] employees and non-[department] employees concerning the elimination of the office of minority health." Finally, the requestor seeks "[c]opies of the five most recent organizational charts." You state that the department has released some responsive information to the requestor. You claim that some of the information that you have submitted to us for our review is not responsive to the request. You also claim that the remaining requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.111 and 552.137 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, you claim that all information contained within the submitted spreadsheets, other than the "name of the sub-strategy request" at the top of each spreadsheet and the "information in the boxes" on each spreadsheet is not responsive to the request. Based on our review of your representations and this information, we agree and find that this information is not responsive to the request. Accordingly, we need not address whether the

information on the submitted spreadsheets, other than the “name of the sub-strategy request” at the top of each spreadsheet and the “information in the boxes” on each spreadsheet is subject to disclosure under the Public Information Act.

We now address your claim that the remaining submitted information is excepted from disclosure pursuant to section 552.111 of the Government Code. 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. See *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); see also *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin, 2001, no pet.). The purpose of section 552.111 is "to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.). 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. See Open Records Decision No. 615 at 5-6 (1993). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. See *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; see also Open Records Decision No. 615 at 4-5.

Based on our review of your arguments and the submitted information, we agree that portions of this information reflect intraagency communications that consist of advice, opinions, and recommendations reflecting the policymaking processes of the department. Accordingly, we conclude that the department may withhold the information that we have marked within the remaining submitted information pursuant to section 552.111 of the Government Code.<sup>1</sup>

In summary, we need not address whether the information on the submitted spreadsheets, other than the “name of the sub-strategy request” at the top of each spreadsheet and the “information in the boxes” on each spreadsheet is subject to disclosure under the Public Information Act. The department may withhold the information that we have marked within the responsive information pursuant to section 552.111 of the Government Code. The department must release the remaining responsive information to the requestor.

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<sup>1</sup> Because we base our ruling on section 552.111, we need not address the applicability of your remaining claimed exception to disclosure. We note in this regard that no portion of the remaining submitted information consists of e-mail addresses.

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,

A handwritten signature in black ink that reads "Ronald J. Bounds". The signature is written in a cursive style with a large, stylized initial "R".

Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 181583

Enc. Marked documents

cc: Ms. Polly Ross Hughes  
Austin Bureau  
Houston Chronicle  
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(w/o enclosures)