



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

June 24, 2003

Mr. Scott A. Kelly
Deputy General Counsel
Texas A&M University System
301 Tarrow, 6th Floor
College Station, Texas 77840-7896

OR2003-4332

Dear Mr. Kelly:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183208.

Texas A&M University (the "university") received a request for the cost-cutting plans, summaries, and analyses developed by each of the university's academic units in response to proposed state funding cuts for 2004-2005. You indicate that you will release some of the requested information. You claim, however, that the remaining responsive information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and have reviewed the submitted records.

In recent months, this office has issued several rulings regarding budgetary documents. *See* Open Record Letter Nos. 2003-2594 (2003) (concluding that information that was used by Texas Health and Human Services Commission in completing its Unified Budget Reduction plan is expressly public under Gov't Code § 552.022(a)(5)), 2003-2556 (2003) (concluding, among other things, that working papers used by Travis County in completing budgetary estimates for Regional Mobility Authority are expressly public under Gov't Code § 552.022(a)(5)), 2003-2330 (2003) (concluding that information used by Governor in producing completed budget estimate is expressly public under Gov't Code § 552.022(a)(5)). In each of those rulings, the governmental body at issue sought to withhold its budgetary plans and analyses under those exceptions to disclosure that were enacted to protect a governmental body's deliberative processes in making policy decisions. *See generally* Gov't Code §§ 552.106, 111; Open Records Decision No. 460 (1987) (stating that purpose of Gov't

Code §§ 552.106 and 552.111 is to encourage frank discussion on policy matters). However, unlike your situation, in each of those cases, the *governmental body had completed its budgetary estimate before it received the written request*. Consequently, this office determined that the information at issue in those files was subject to section 552.022(a)(5) of the Government Code. Section 552.022 reads in relevant part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate.

Gov't Code § 552.022(a)(5). Thus, information that is subject to section 552.022(a)(5) must be released unless it is expressly confidential by law. Since none of the governmental bodies in the previous files demonstrated that their information was confidential, this office concluded that the information was expressly public and ordered that it be released.

In your brief to this office, you attempt to distinguish the university's situation from that described in the prior rulings. You explain that in late February, the university's president requested that each department, division, and college "evaluate and report uniformly the programmatic impact the budget forecast could have on the university's curricula, strategies and long-term policy mission." You further explain that since the submission of the requested information to the provost's office on March 31, 2003, a mere four business days before the university received the written request, the president and other administrators have been in ongoing discussions regarding these potential strategies and their possible effect on the university's academic programs and personnel. Finally, you indicate that the university has not used this information in completing a budgetary estimate. Based on your representations that at the time the request was received, the university had not used the requested information in completing a budgetary estimate, we conclude that the information is not subject to section 552.022(a)(5). *See generally* Open Records Decision No. 530 at 5 (1989) (stating that determination of whether particular piece of information is public must be made at time request for it is made). Accordingly, we will address your arguments under section 552.111.

Section 552.111 excepts from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ); Open Records

Decision No. 615 at 5 (1993). The purpose of this exception 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, no writ); Open Records Decision No. 538 at 1-2 (1990). In Open Records Decision No. 615 (1993), 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 that section 552.111 excepts only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* Open Records Decision No. 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. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (Gov't Code § 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. *See* Open Records Decision No. 615 at 5. If, however, the 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 may also be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

In Open Records Decision No. 460 (1987), this office ruled that a proposed budget and a comparison or analysis of factual information prepared to support that budget constituted a recommendation by its very nature and could, therefore, be withheld from disclosure. *See* Open Records Decision No. 460 at 2. You indicate that the information at issue consists of the advice, recommendations, and opinions of university personnel regarding potential budgetary cuts and the impact of those cuts on the university's mission of teaching and research. After reviewing your arguments and the submitted information, we agree that the requested information may be withheld under section 552.111 of the Government Code.

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).

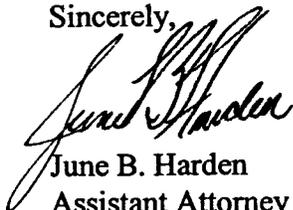
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 183208

Enc: Submitted documents

c: Mr. John LeBas
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(w/o enclosures)