



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 16, 2003

Ms. Carol Longoria  
Public Information Coordinator  
The University of Texas System  
201 West 7<sup>th</sup> Street  
Austin, Texas 78701-2902

OR2003-7394

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188632.

The University of Texas System (the "system") received two requests from the same individual for the itineraries of Chancellor Mark Yudof, Board of Regents Chairman Charles Miller, and the staff of the system's Office of Governmental Relations relating to the regular session of the 78th Legislature, including documentation of e-mails, calls, and meetings with legislators and their staff members pertaining to tuition deregulation since March 19, 2003. You inform us that Chairman Miller had no documents that are responsive to these requests and that Chancellor Yudof had no responsive meeting itineraries or phone messages. We note that chapter 552 of the Government Code does not require the system to release information that did not exist when it received these requests or to create responsive information.<sup>1</sup> You state that the system will release some of the information that is responsive to these requests. You claim that other responsive information relating to the Chancellor and the Office of Governmental Relations is excepted from disclosure under sections 552.106, 552.111, and 552.137 of the Government Code. We have considered the

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<sup>1</sup>See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

exceptions you claim and have reviewed the information you submitted.<sup>2</sup> We also have considered the comments that we received from the requestor.<sup>3</sup>

Section 552.106 of the Government Code excepts from required public disclosure “[a] draft or working paper involved in the preparation of proposed legislation[.]” Gov’t Code § 552.106(a). Section 552.106 resembles section 552.111 in that both of these exceptions protect advice, opinion, and recommendation on policy matters, in order to encourage frank discussion during the policymaking process. *See* Open Records Decision No. 460 at 3 (1987). However, section 552.106 applies specifically to the legislative process and thus is narrower than section 552.111. *Id.* The purpose of section 552.106 is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body. *Id.* at 2. Therefore, section 552.106 is applicable only to the policy judgments, recommendations, and proposals of persons who are involved in the preparation of proposed legislation and who have an official responsibility to provide such information to members of the legislative body. *Id.* at 1; *see also* Open Records Decision Nos. 429 at 5 (1985) (statutory predecessor to Gov’t Code § 552.106 not applicable to information relating to governmental entity’s efforts to persuade other governmental entities to enact particular ordinances), 367 at 2 (1983) (statutory predecessor applicable to recommendations of executive committee of State Board of Public Accountancy for possible amendments to Public Accountancy Act). Furthermore, section 552.106 does not protect purely factual information from public disclosure. *See* Open Records Decision No. 460 at 2; *see also* Open Records Decision No. 344 at 3-4 (1982) (for purposes of statutory predecessor, factual information prepared by State Property Tax Board did not reflect policy judgments, recommendations, or proposals concerning drafting of legislation). However, a comparison or analysis of factual information prepared to support proposed legislation is within the scope of section 552.106. *See* Open Records Decision No. 460 at 2.

The system contends that all of the submitted information at Tabs 5 and 6 is excepted from disclosure under section 552.106. We conclude, however, that only a portion of this information comes within the scope of this exception. We have marked the information that the system may withhold under section 552.106.

The system also contends that the information at Tabs 6 and 7 is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from public disclosure “an interagency or intraagency memorandum or letter that would not be available

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<sup>2</sup>This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the system to withhold any information that is substantially different from the submitted information. *See* Gov’t Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

<sup>3</sup>*See* Gov’t Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

by law to a party in litigation with the agency.” This exception encompasses the deliberative process privilege. The purpose of section 552.111 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. Section 552.111 also can encompass external communications that relate to a governmental body’s policymaking processes. *See* Open Records Decision Nos. 631 at 2 (1995) (Gov’t Code § 552.111 encompasses information created for governmental body by outside consultant acting at governmental body’s request and performing task that is within governmental body’s authority), 563 at 5-6 (1990) (private entity engaged in joint project with governmental body may be regarded as its consultant for purposes of statutory predecessor), 561 at 9 (1990) (statutory predecessor encompassed communications with party with which governmental body has privity of interest or common deliberative process), 462 at 14 (1987) (statutory predecessor applied to memoranda prepared by governmental body’s consultants). 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.

We also have concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter’s advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

You assert that the information at Tabs 6 and 7 consists of advice, recommendations, and opinion pertaining to proposed legislation that will ultimately affect the system’s policies. We assume that the final versions of the submitted draft documents either have been or will be released to the public. Given that assumption, and having considered your arguments, we conclude that section 552.111 is applicable to some of the information that the system seeks to withhold under this exception. We have marked the information that is excepted from disclosure under section 552.111.

Lastly, we address your claim under section 552.137 of the Government Code. As amended by the 78<sup>th</sup> Legislature, this exception provides as follows:

(a) Except as otherwise provided by this section, 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.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Act of June 2, 2003, 78<sup>th</sup> Leg., R.S., ch. 1089, § 1, 2003 Tex. Sess. Law Serv. 3124 (to be codified as amendment to Gov't Code § 552.137). Thus, section 552.137 excepts from public disclosure certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the e-mail address belongs to a member of the public who has affirmatively consented to its disclosure. Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked an e-mail address that is confidential under section 552.137(a). The system must withhold this e-mail address under section 552.137, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure.

In summary, the system may withhold some of the submitted information under sections 552.106 and 552.111 of the Government Code. The system must withhold the marked e-mail address under section 552.137, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. The rest of the submitted information is not excepted from disclosure and must be released to the requestor.

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).

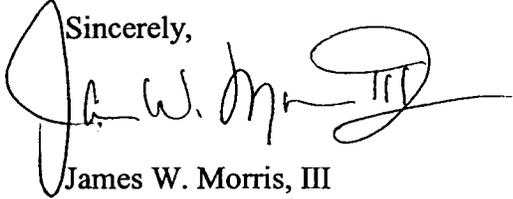
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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, appearing to read "J. W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 188632

Enc: Submitted documents

c: Mr. Austin Van Zant  
P.O. Box 7080  
Austin, Texas 78713-7080  
(w/o enclosures)