



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 7, 2004

Mr. Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
P. O. Box 13247  
Austin, Texas 78711

OR2004-5520

Dear Mr. Aragon:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 204690.

The Texas Health and Human Services Commission (the "commission") received a request for various information produced during a specified amount of time that is related to a report titled the "Call Center Cost Effectiveness Analysis and Discovery Report." You state that most of the requested information, to the extent it exists, has been provided to the requestor. You claim that portions of the remaining requested information, which you have labeled Exhibits A, B-1 and B-2, are excepted from disclosure under sections 552.111 and 552.139 of the Government Code. In the alternative, you claim that the information you have labeled as Exhibits B-1 and B-2 does not constitute public information for purposes of the Act. We have considered the exceptions you claim and your additional arguments and reviewed the submitted information.

Initially, we address your assertion that the information you have labeled as Exhibits B-1 and B-2 does not constitute public information for purposes of the Act. You advise that Exhibit B-1 consists of "agent numbers," or passwords, used by commission employees to access the multi-line telephone system, which is networked through a commission computer system. You further explain that release of these passwords to members of the public would allow unauthorized individuals to access in-coming telephone calls to the commission from clients, thereby compromising network and client security. You advise that Exhibit B-2 pertains to

a particular commission Internet Protocol address, and that the information relates to and could reveal the configuration settings of the commission's computer network. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. Based on the reasoning in Open Records Decision No. 581 and our review of the information at issue, we determine that the information contained in Exhibits B-1 and B-2 does not constitute public information under section 552.002 of the Government Code. Accordingly, this information is not subject to the Act and need not be released.<sup>1</sup>

We next address your claim that section 552.111 of the Government Code is applicable to portions of the information you have marked in Exhibit A. Section 552.111 excepts from required public disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This exception encompasses the deliberative process privilege. See Open Records Decision No. 615 at 2 (1993). 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 from disclosure 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) (section 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. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data

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<sup>1</sup>Because we have determined that Exhibits B-1 and B-2 do not constitute public information for purposes of the Act, we need not address the applicability of section 552.139 to this information.

impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

You inform us that the e-mail communications and intra-agency memoranda at issue “are pre-decisional documents that contain advice, opinion, and recommendations regarding a policy matter that continues to be the subject of discussion at the [c]ommission, i.e., integration of eligibility and enrollment services.” Upon review, we agree that the information you have marked reflects the policymaking processes of the commission. Therefore, we conclude that the commission may withhold the submitted information you have marked pursuant to section 552.111 of the Government Code. The remaining information 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 "Cary Grace", with a long horizontal flourish extending to the right.

Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/krl

Ref: ID# 204690

Enc. Submitted documents

c: Mr. David Mann  
The Texas Observer  
307 West 7<sup>th</sup> Street  
Austin, Texas 78701  
(w/o enclosures)