ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2006

Mr. Scott Kelly
Deputy General Counsel
The Texas A&M University System
A&M System Building, Suite 2079
200 Technology Way
College Station, Texas 77845-3424

OR2006-04796

Dear Mr. Kelly:

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# 248476.

Texas A&M University-Kingsville (the "university") received a request for "[a]ll correspondence sent or received by staff or administrators regarding the [university] pharmacy school funding during the past two years." You state that you will provide the requestor with a portion of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.111, 552.117, and 552.137 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted information.

[1]Although you also initially raised sections 552.101, 552.102, 552.106, 552.107, and 552.114 of the Government Code, you have not provided any arguments in support of these claims in subsequent correspondence. Thus, we assume that the university no longer asserts sections 552.101, 552.102, 552.106, 552.107, and 552.114 against disclosure. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

You contend that the information in Exhibits D and E is excepted from disclosure under 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." Gov't Code § 552.111. 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 deliberative or policymaking processes of the governmental body. Open Records Decision No. 615 at 5-6.

An agency's policymaking functions, however, 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. *Id.* 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. v. Texas Atty. Gen.*, 37 S.W.3d 152, 160 (Tex. App.–Austin 2001, no writ); Open Records Decision No. 615 at 4-5. But if 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 also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982). When determining if an interagency memorandum is excepted from disclosure under section 552.111, we must also consider whether the agencies between which the memorandum is passed share a privity of interest or common deliberative process with regard to the policy matter at issue. *See* Open Records Decision No. 561 at 9 (1990).

This office has 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 state that the information in Exhibit D you seek to withhold under section 552.111 relates to internal communications among the university, A&M System administrators, state representatives, and other state agencies "regarding strategies to obtain the necessary funding and/or the impact of the lack of funding on the university's mission of teaching and research" with regards to the pharmacy school. You also state that the information in Exhibit E includes drafts of documents that have been released in final form or are intended for release

in final form. Upon review, we agree that the majority of the information in Exhibits D and E contains advice, recommendations, opinions, and other material reflecting the policymaking processes of the university and may be withheld pursuant to section 552.111. However, with regards to the information we have marked for release, you have failed to demonstrate, and the submitted information does not reflect on its face, either that a privity of interest exists between parties to the communication, that the document contains advice, recommendations, or opinions, or that the information not is not solely factual in nature. Accordingly, we find that this information is not excepted from disclosure under section 552.111 and it may not be withheld on that basis.

You assert section 552.117 of the Government Code for the information in Exhibits F and G that you have marked. Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, personal cellular telephone numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(1). Pursuant to section 552.117(a)(1), the university must withhold personal information that pertains to a current or former employee of the university who elected, prior to the university's receipt of the request for information, to keep such information confidential. Whether a particular piece of information is public must be determined at the time the request for it is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). You state that the employees whose information is at issue elected to keep their personal information confidential prior to the date on which the university received this request. Accordingly, the information you have marked in Exhibits F and G must be withheld pursuant to section 552.117(a)(1) of the Government Code.

Section 552.137 of the Government Code provides:

> (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.

Gov't Code § 552.137. Section 552.137 excepts certain e-mail addresses of members of the public that are not within the scope of section 552.137(c), unless the relevant members of the public have affirmatively consented to the release of the e-mail addresses. We note, however, that section 552.137 does not apply to the work e-mail addresses of officers or employees of a governmental body, a website address, or the general e-mail address of a business. The e-mail addresses in the submitted information are not within the scope of section 552.137(c). Therefore, unless the university has received affirmative consent to disclose the e-mail addresses, the university must withhold the e-mail addresses you have marked, as well as the e-mail addresses we have marked, in Exhibits F and G under section 552.137 of the Government Code.

You state that a portion of the remaining information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, with the exception of the documents we have marked for release, the information in Exhibits D and E may be withheld pursuant to section 552.111 of the Government Code. The information you have marked in Exhibits F and G must be withheld pursuant to section 552.117(a)(1) of the Government Code, and the e-mail addresses you have marked, as well as the e-mail addresses we have marked, in Exhibits F and G must be

withheld under section 552.137 of the Government Code. The remaining information must be released. However, any copyrighted material may only be released in accordance with applicable copyright law.

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).

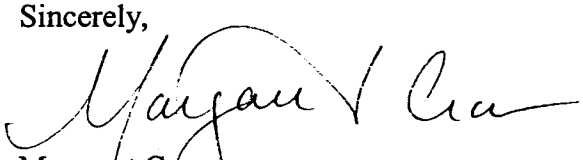
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Margaret Cecere
Assistant Attorney General
Open Records Division

MC/er

Ref: ID# 248476

Enc. Submitted documents

c: Ms. Nancy Martinez
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(w/o enclosures)