



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 8, 2006

Ms. Noelle Letteri  
Staff Attorney  
Legal Services Division  
Texas General Land Office  
P. O. Box 12873  
Austin, Texas 78701-1495

OR2006-08917

Dear Ms. Letteri:

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# 255991.

The Texas General Land Office (the "GLO") received a request for "all 'records' that have been prepared, received, transmitted, collected and/or maintained by the office of [the] Land Commissioner . . . that refer to the Coastal Land Advisory Board and/or the creation of the board that came to be known by that name." You state the GLO will provide the requestor with some of the requested information, but you claim that the submitted information is excepted from disclosure under section 552.111 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Section 552.111 of the Government Code excepts from public 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. 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.*

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<sup>1</sup> Although you initially raised section 552.107 of the Government Code, you have not submitted any arguments regarding the applicability of this exception nor have you identified any information you seek to withhold under this exception. Therefore, we assume you no longer assert this exception to disclosure. See Gov't Code §§ 552.301, .302.

*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 a 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 a governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995). We note that section 552.111 encompasses communications between a governmental body and an entity with which the governmental body shares a privity of interest or common deliberative process. *See* Open Records Decision No. 561 at 9 (1990).

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).

This office also 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 argue that all of the submitted information reflects the deliberative process of the GLO concerning the Texas Coastal Land Advisory Board (CLAB) and, thus, is excepted under section 552.111. In support of your arguments, you inform us that the U.S. Energy Act of 2005 created a program through which the Minerals Management Service (MMS), a division of the U.S. Department of the Interior, will administer grants to oil producing coastal states, including Texas. You further inform us that "[o]ne of the requirements of the

Energy Act of 2005 is that the Governors of the participating states must designate an agency to develop a Coastal Impact Assistance Program to administer the grant program” and that Governor Perry “created the [CLAB] to work with the Governor’s office to approve grants proposals submitted in Texas.” You state that the Governor “designated the [GLO] as the agency to provide the administrative support for the CLAB.”

In support of your claim under section 552.111, you state that the e-mails in the submitted information “represent internal discussions regarding the development of CLAB [and] the program’s policies and procedures.” You explain that “[t]hese discussions resulted in the formation of the CLAB’s goal objectives, project evaluation forms, and grant application forms that are all posted on the GLO’s website” and that have been provided to the requestor. You state that the remaining submitted information “represents GLO staff draft forms of documents and agendas that were later released in their final form” and argue the notations on the drafts, as well as the drafts themselves, “represent the staff’s advice and opinion on the structure and content of the final product.”

Upon review of your arguments and the submitted information, we conclude that a portion of the submitted e-mails, and all of the submitted drafts, consist of advice, opinions, and recommendations regarding a policymaking matter of the GLO. Accordingly, this information is excepted under section 552.111. However, we find that some of the information at issue consists of severable factual information that is not excepted under section 552.111. We have marked the submitted information that may be withheld pursuant to section 552.111; the remaining submitted information must be released.

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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/eb

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Enc. Submitted documents

c: Mr. Josh Harkinson  
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(w/o enclosures)