



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2006

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

OR2006-11056

Dear Ms. Longoria:

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# 260624.

The University of Texas Medical Branch at Galveston (the "university") received a request for eleven categories of information regarding the university's Strategic Executive Council, Navigant Consulting Group, the university's budget, and certain communications between various university employees and/or members of the legislature. For reference, you have numbered this request as #8. You state that the university will release some of the requested information, including the Navigant Consulting Group study. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹ We have also considered comments submitted by the requestor's representative. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This ruling does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses confidentiality provisions such as section 161.032 of the Health and Safety Code, which provides in relevant part:

(c) Records, information, or reports of a . . . compliance officer and records, information, or reports provided by a . . . compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under Chapter 552, Government Code.

...

(f) This section . . . do[es] not apply to records made or maintained in the regular course of business by a hospital . . . [or] hospital district [.]

Health & Safety Code § 161.032(c), (f). You state that the submitted information in Tab 8 is part of an internal compliance investigation into a potential conflict of interest between certain university faculty members. You inform us that this investigation was performed in accordance with the university’s compliance program. You further state that these documents are not made or maintained in the regular course of business. *Cf. Texarkana Mem’l Hosp., Inc. v. Jones*, 551 S.W.2d 33, 35 (Tex. 1977) (defining records made or maintained in regular course of business). Based on your representations and our review, we conclude that the information in Tab 8 consists of records, information, or reports of a compliance officer acting under subchapter D of chapter 161 of the Health and Safety Code. Accordingly, the university must withhold the information in Tab 8 under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.

Next, we address your arguments under section 552.111 of the Government Code, which 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.” 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 policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). An agency’s policymaking functions 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. Open Records Decision No. 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; Open Records Decision No. 615 at 4-5. We also note that section 552.111 is applicable to communications that involve a governmental body’s consultants. *See Open*

Records Decision Nos. 631 at 2 (1995) (section 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).

You indicate that the submitted information in Tab 7 consists of communications between university administrators, staff, and outside consultants. You state that these communications contain advice, recommendations, and opinions on various "methods by which the [u]niversity can attain fiscal stability to support its education mission." Based on your representations and our review, we conclude that you have demonstrated the applicability of section 552.111 of the Government Code in this instance, and the information in Tab 7 may be withheld on that basis.

In summary, the information in Tab 8 is confidential under section 161.032 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. The information in Tab 7 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, 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).

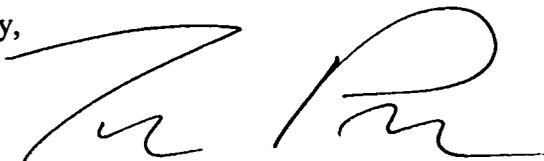
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/dh

Ref: ID# 260624

Enc. Submitted documents

cc: Mr. Charles Zucker
Texas State Teachers Association
316 West 12th Street
Austin, Texas 78701
(w/o enclosures)

Mr. Michael Shirk
Texas State Teachers Association
316 West 12th Street
Austin, Texas 78701
(w/o enclosures)