



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 4, 2007

Mr. Carey E. Smith  
General Counsel  
Texas Health and Human Services Commission  
P. O. Box 13247  
Austin, Texas 78711

OR2007-03749

Dear Mr. Smith:

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# 275370.

The Texas Health and Human Services Commission (the "commission") received a request for the data collected for the January 2005 Texas Integrated Funding Initiative/Community Resource Coordination Group Report to the Governor and 79<sup>th</sup> Legislature on "Systems of Care for Care for Children with Severe Emotional Disturbance and their Families." You claim that the submitted 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.

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.*

*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).

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).

We note section 552.111 can encompass communications between a governmental body and a third party. *See* Open Records Decision Nos. 631 at 2 (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), 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process), 462 at 14 (1987) (section 552.111 applies to memoranda prepared by governmental body’s consultants). For section 552.111 to apply in such instances, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* Open Records Decision No. 561 at 9.

The commission explains it has been directed by the Texas Legislature to coordinate the formation of the Texas Integrated Funding Initiative (“TIFI”) Consortium with other public and private entities to “develop systems of care in local communities for all Texas children with severe emotional disturbances, and their families, through the integration of federal, state, local funds, and other resources.” *See* Gov’t Code § 531.251 (“The commission shall form a consortium to develop criteria for and implement the expansion of the [TIFI] and to develop local mental health care systems[.]”). The commission informs us that the “TIFI focuses on developing systems of care for children and youth with complex mental health needs[.]” The commission further informs us that the Texas Legislature charged the TIFI Consortium “with the development of a summary report based on the evaluations submitted to the [TIFI] Consortium by local Community Resource Coordination Groups [“(CRCG”)].”

*See* Gov't Code § 531.423 (requiring summary report by TIFI Consortium); *see also id.* §§ 531.421, .423, .424 (defining relationship between TIFI Consortium and CRCGs). The commission explains that “[a]ccording to the legislative charge, the [TIFI] Consortium’s report must include recommendations for policy and statutory changes at each agency involved in the provision of system of care services for children with severe emotional disturbances and their families, and the outcomes expected from the implementation of each recommendation.” *See id.* § 531.423.

The submitted information consists of a compilation of CRCG survey responses that the commission informs us “served as the basis for the data contained in the final report” of the TIFI Consortium. *See id.* § 531.422 (regarding CRCG evaluations submitted to TIFI Consortium). The commission asserts the responses “are pre-decisional documents that contain advice, opinion, and recommendations regarding policy matters of a broad scope: the provision of system of care services to emotionally disturbed children.” Based on your arguments, we conclude that the commission and the responding CRCGs share a privity of interest with regard to the submitted information. Furthermore, we agree that this information consists of advice, opinions, and recommendations, and inextricably intertwined factual information, regarding a policy making matter of the commission. Accordingly, based on your arguments and our review of the information at issue, we conclude the submitted information may be withheld under section 552.111 of the Government Code.<sup>1</sup>

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

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<sup>1</sup>As our ruling on this issue is dispositive, we need not address your remaining argument against disclosure.

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

Ref: ID# 275370

Enc. Submitted documents

c: Ms. Claudette Fette  
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Denton, Texas 76209  
(w/o enclosures)