



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 25, 2007

Ms. Chelsea Thornton  
Assistant General Counsel  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711-2482

OR2007-04725

Dear Ms. Thornton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 276792.

The Office of the Governor (the "governor's office") received two requests for copies of all written communications regarding the HPV vaccine and Executive Order RP65. One of the requestors is also seeking any documents relating to the proposed sale of or negotiations to purchase the Texas Lottery. You state that the governor's office has released some of the responsive information. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.111 of the Government Code 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*

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<sup>1</sup>Although you raise all of the exceptions to disclosure found in the Act, you have provided no arguments explaining how any exceptions, other than the three listed above, are applicable to the submitted information. Therefore, we do not address these exceptions. Gov't Code § 552.301(e)(1)(A).

*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. ORD 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; ORD 615 at 4-5. Section 552.111 does not, however, except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. ORD 615 at 4-5. The preliminary draft of a policymaking document that has been released or is intended for release in final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 at 2 (1990).

The governor's office asserts that Exhibits B, C, D, E, and F contain interagency and intraagency communications and drafts regarding the HPV vaccine policy that was developed by the governor's office, and contain advice, opinions, and recommendations relating to that policy. Regarding the preliminary policy drafts submitted by the governor's office, you state that copies have been released to the requestors in final form. Based on your arguments and our review of the submitted information, we agree that much of the information in Exhibits B and E, which we have marked, all of the information in Exhibits C and D, and the information you have marked in Exhibit F may be withheld under section 552.111. The governor's office has failed to demonstrate, however, that the remaining information in Exhibits B and E consists of advice, opinions, or recommendations relating to a policy deliberation of that office. Accordingly, this information may not be withheld under section 552.111. As you raise no other exception for this information, it must be released.<sup>2</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

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<sup>2</sup>Because our ruling is dispositive, we need not address your remaining arguments.

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,

A handwritten signature in cursive script that reads "Amanda Crawford". The signature is written in black ink and is positioned above the typed name and title.

Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/sdk

Ref: ID# 276792

Enc. Submitted documents

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