



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2009

Ms. Karin W. Riley
Assistant General Counsel
University of North Texas System
P.O. Box 310907
Denton, Texas 76203-0907

OR2009-06868

Dear Ms. Riley:

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# 343604 (UNT PIR No. 09-085).

The University of North Texas (the "university") received a request for (1) all notes, minutes, and recordings of the Policy Advisory Group (the "PAG") meetings since its inception in July 2008, (2) locations, times, and agendas of currently planned future PAG meetings, and (3) correspondence between the PAG members and other university officials relating to the proposed change to the free speech section of the university policy manual. You claim a portion of the requested information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

You assert a portion of the submitted information, which you have marked, 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. Section 552.111

¹We assume 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 open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

encompasses the deliberative process privilege. See Open Records Decision No. 615 at 2 (1993). In Open Records Decision No. 615, 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, and opinions reflecting the policymaking processes of the governmental body. See *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); see also *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin, 2001, no pet.). The purpose of section 552.111 is “to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes.” *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e.).

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. See ORD 615 at 5-6. A governmental body’s policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body’s policy mission. See Open Records Decision No. 631 at 3 (1995). Further, a 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. See Open Records Decision No. 559 at 2 (1990). Section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. See ORD 615 at 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).

You explain the PAG is a “standing committee of senior university administrators and others . . . [that] reviews proposed new policies as well as revisions to existing policies so that changes to university policy can be vetted and subject to maximum consideration by all impacted university stakeholders prior to implementation.” You state the PAG meeting minutes in Representative Sample A reflect the deliberative discussion of group members, including the members’ opinions and recommendations for policy changes. You assert the information you have marked in Representative Sample A reflects the PAG’s advice, opinion, and recommendation with regard to the final content and form of university policy, and is a written record of frank and open discussions. You state Representative Sample B consists of e-mails between university employees regarding policy issues to be considered by the President’s cabinet and the PAG. You state the information you have marked in Representative Sample B includes content related to the development of a new university free speech policy. After review of your arguments and the information, we agree the university may withhold most of the information you have marked under section 552.111 and

the deliberative process privilege. However, we find the remaining information, which we have marked for release, is mainly factual, and the university has failed to demonstrate how it constitutes internal communications consisting of advice, opinion, or recommendation that reflect the policymaking processes of the university.

In summary, with the exception of the information we have marked for release, the university may withhold the information you have marked under section 552.111 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/rl

Ref: ID# 343604

Enc. Submitted documents

c: Requestor
(w/o enclosures)