



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 2, 2010

Ms. Leigh Tomlin
Public Information Officer
Texas Forensic Science Commission
College of Criminal Justice
Sam Houston State University
P.O. Box 2296
Huntsville, Texas 77341-2296

OR2010-09805

Dear Ms. Tomlin:

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# 385640.

The Texas Forensic Science Commission (the "commission") received a request for any communications to a specified individual from the date of the requestor's previous request. You claim that portions of the submitted information are excepted from disclosure under section 552.111 of the Government Code. We have considered the exception 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." Gov't Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, recommendations, and opinions 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, 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 from disclosure only those internal communications that consist of advice, recommendations, and opinions that reflect the policymaking processes of the governmental body. See ORD 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 the governmental body's policy mission. See Open Records Decision No. 631 at 3 (1995). Moreover, 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 state the information you have marked consists of advice, opinions, and recommendations concerning the commission's process for amending its policies and procedures and the commission's policy regarding the composition of one of its committees. Based on your representations and our review of the information at issue, we agree that the commission may withhold the information you have marked under section 552.111 of the Government Code.

We note the remaining information contains a private e-mail address. Section 552.137 of the Government Code states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure.¹ Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. See *id.* § 552.137(c). You do not state that the owner of the address has consented to its release. Therefore, the commission must withhold the marked e-mail address under section 552.137, unless the owner consents to release.²

¹The Office of the Attorney General will raise a mandatory exception, such as section 552.137, on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

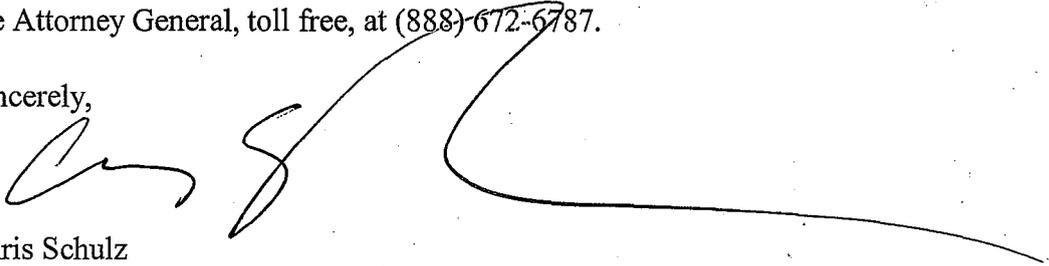
²We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including private e-mail addresses under section 552.137, without the necessity of requesting an attorney general decision.

In summary, the commission may withhold the information you marked under section 552.111. The commission must withhold the information we marked under section 552.137. 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, toll free, at (888) 672-6787.

Sincerely,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/tp

Ref: ID# 385640

Enc. Submitted documents

c: Requestor
(w/o enclosures)