



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2010

Mr. Mark Adams
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2010-11572

Dear Mr. Adams:

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# 388836.

The Office of the Governor (the "governor") received a request for e-mail communications from a specified time period that mention "unemployment insurance," "UI," or "TEF." You state some of the requested information will be released. You claim portions of the submitted information are excepted from disclosure under sections 552.111 and 552.131 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. Section 552.111 encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 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, 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, opinions, and other material reflecting 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) (section 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). Further, 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).

This office has also concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

You assert submitted Exhibit B contains draft versions of documents relating to policymaking. Upon review, we agree portions of the information at issue consist of draft documents and discussions of draft documents relating to policymaking. However, you do not inform us whether the governor intends to release these documents in their final form. Therefore, the governor may withhold the information we have marked under section 552.111 of the Government Code; however, the marked draft documents may only be withheld to the extent these documents will be released to the public in their final form. Further, we find the remaining information at issue consists either of general administrative information that does not relate to policymaking or information that is purely factual in nature. Accordingly, you have failed to demonstrate the applicability of section 552.111 to the remaining information, and none of it may be withheld on that basis.

Section 552.131(b) of the Government Code provides as follows:

- (b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business

prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131(b). Section 552.131(b) protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. You assert submitted Exhibit C relates to entities with whom the governor, the Lieutenant Governor's Office, and the Speaker of the House's Office are currently in negotiations with regarding the Texas Enterprise Fund. You state none of these entities has received funding, and there is no final contract in place for any of these entities. After reviewing the submitted information, we agree portions of Exhibit C consist of information about financial or other incentives being offered to business prospects. Accordingly, the governor may withhold the information we have marked under section 552.131(b) of the Government Code. However, you have not demonstrated how the remaining information at issue consists of information about a financial or other incentive being offered to the business prospects. Consequently, none of the remaining information may be withheld under section 552.131.

In summary, to the extent the draft documents we marked will be released to the public in their final form, they may be withheld under section 552.111 of the Government Code. The governor may withhold the information we marked under section 552.131(b) of the Government Code. The remaining submitted 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID# 388836

Enc. Submitted documents

c: Requestor
(w/o enclosures)