



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 10, 2010

Ms. Destinee Waiters  
Assistant General Counsel  
Houston Community College  
3100 Main Street  
Houston, Texas 77002

OR2010-12085

Dear Ms. Waiters:

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# 389982.

The Houston Community College (the "college") received a request for all signed college police department general orders from a specified time period, a complete itemized college police department budget for 2009 and 2010, the number of complaints filed by employees of the college police department with certain entities during a specified time period, overtime records for two individuals for a specified time period, travel dates for two named individuals for college-paid flights for a specified time period, and all e-mails sent and received by a named individual during a specified time period. You state that you have released some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.111, 552.117, and 552.137 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 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, 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 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) (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). 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 that the information you have marked consists of advice, opinion, and recommendation used in the deliberative process. Based on your representations and our review, we agree that, except where we have marked for release, the college may withhold the information you have marked under section 552.111 of the Government Code. However, you have failed to explain how the remaining information you seek to withhold under section 552.111 consists of advice, recommendations, and opinions that reflect the policymaking processes of the college. Accordingly, the college may not withhold any of the remaining information under section 552.111 of the Government Code.

You claim portions of the remaining information, which you have marked , are protected under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.<sup>1</sup> Gov't Code § 552.117(a)(2). We note that most of the information you have marked under this exception does not pertain to a peace officer. Therefore, this information may not be withheld under section 552.117(a)(2) of the Government Code. We find the information we marked is subject to section 552.117(a)(2).

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<sup>1</sup>"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

Thus, the college must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests this information be kept confidential under section 552.024. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. We note some of the remaining information, which we have marked, is subject to section 552.117(a)(1). You do not inform us whether these officials or employees elected to withhold their personal information prior to the receipt of this request. Accordingly, to the extent the officials and employees whose information is at issue timely elected to restrict access to their personal information under section 552.024 prior to the date of the request, the college must withhold their information under section 552.117(a)(1) of the Government Code.<sup>2</sup>

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). We note section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail addresses we have marked do not appear to be of types specifically excluded by section 552.137(c). Accordingly, the college must withhold the marked e-mail addresses under section 552.137, unless the owners have affirmatively consented to release.<sup>3</sup> *See id.* § 552.137(b). However, we find the remainder of the e-mails are subject to subsection 552.137(c), and the college may not withhold them under section 552.137.

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<sup>2</sup>We note section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See* Gov't Code §§ 552.117, .024(c)).

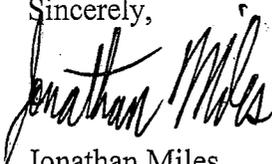
<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, except where we have marked for release, the college may withhold the information you have marked under section 552.111 of the Government Code. The college must withhold the information we have marked under section 552.117(a)(2) of the Government Code. To the extent the officials and employees whose personal information is at issue timely elected to withhold their information under section 552.024, the college must withhold their information under section 552.117(a)(1). The college must withhold the marked e-mail addresses under section 552.137, unless the owners have affirmatively consented to release. 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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/jb

Ref: ID# 389982

Enc. Submitted documents

c: Requestor  
(w/o enclosures)