



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2010

Ms. Neera Chatterjee
Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2010-12890

Dear Ms. Chatterjee:

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# 391463 (OGC# 130840).

The University of Texas at Austin (the "university") received a request for four categories of information relating to informal classes at the Texas Union. You inform us that some of the requested information either has been or will be released.¹ You claim that the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.²

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

¹You state that this information includes the information responsive to items one, three, and four of the request and some of the information responsive to item two.

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the university to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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 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) (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).

This office also has 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 contend that all of the submitted information is excepted from disclosure under section 552.111 of the Government Code. Having considered your arguments and reviewed the information at issue, we conclude that the information we have marked may be withheld under section 552.111. We find that you have not demonstrated that any of the remaining information at issue consists of advice, opinions, or recommendations relating to the deliberation of university policy. You also argue that because any policy eventually adopted by the university with regard to informal classes at the Texas Union would be released to the public, section 552.111 would be applicable to any draft of and recommendations regarding such a policy. You do not inform us, however, that any of the remaining information at issue constitutes a draft of a policymaking document that will be released to the public in its final form. We therefore conclude that the university may not withhold any of the remaining

information under section 552.111 of the Government Code. As you claim no other exception to disclosure, 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 391463

Enc: Submitted documents

c: Requestor
(w/o enclosures)