



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 21, 2010

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

OR2010-14293

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# 394266 (ORR No. 166, OGC No. 131127).

The University of Texas System (the "system") received a request for information pertaining to: 1) communications between named individuals, including communications regarding funding for the National Center for Countermeasures to Biological and Chemical Threats ("NCCBCT") for 2002 through 2003 to fund NCCBCT programs at the University of Texas at San Antonio ("UTSA") or to fund UTSA's Center for Excellence in Biotechnology, Bio-processing, Education, and Research ("CEBBER"); 2) the system's/Center for Disease Control's/Federal Bureau of Investigation's ("FBI") knowledge of or participation in UTSA's involvement in the 1999 NCCBCT consortium with Texas Tech University officials, the scope and nature of UTSA CEBBER and biology/chemistry and computer science/information system faculty research activities related to NCCBCT, and named individuals involvement in NCCBCT affiliations/agreements with various federal agencies; 3) system records showing post-2003 NCCBCT U.S. Congressional earmark or other funding requests for CEBBER and/or other faculty and employees, including Lawson Magruder's and UTSA President Romo's activities/affiliations with FBI agents on a specified date at a specified time; 4) system officials' and Office of the General Counsel's knowledge of or participation in President Romo's October 2006 agreement to participate in FBI "CAUSE" and other surveillance programs in order to increase UTSA's eligibility to become the home of the U.S. Department of Agriculture National Biological Agricultural Defense Facility (the "facility"); and 5) UTSA College of Business Dean Lynda da la Vina's

or the Texas Emerging Technology Fund Advisory Committee's plans, knowledge, or involvement in assisting the system to develop and implement a strategy to win the bid to locate the facility in San Antonio. You state the system is handling the release of most of the requested information. You claim 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 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 section 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 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). We determined section 552.111 excepts from disclosure only those internal communications consisting 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 internal administrative or personnel matters, and disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). However, 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 a preliminary draft of a policymaking document that 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 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 state the submitted information consists of communications between system employees regarding recommendations for agenda items for meetings of the Board of Regents. You indicate some of the submitted documents are drafts of agendas that will be released in their final forms. Therefore, we find you have established the deliberative process privilege is applicable to these drafts, which we have marked, and they may be withheld in their entirety under section 552.111. We find the remaining information at issue, however, is purely factual or pertains to routine administrative matters. You have not explained, nor can we discern, how this information consists of advice, recommendations, or opinions reflecting the policymaking processes of the system. You have, therefore, failed to demonstrate the applicability of section 552.111 to the remaining information. As you raise no further exceptions 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](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,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/em

Ref: ID# 394266

Enc. Submitted documents

c: Requestor  
(w/o enclosures)