



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2010

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

OR2010-14404

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# 394374.

The Office of the Governor (the "governor") received a request for all communications during a specified time period between the governor and six categories of entities or individuals pertaining to Regional Centers of Innovation and Commercialization or the Texas Emerging Technology Fund (the "fund"). You state the governor will provide some of the requested information to the requestor. You claim the submitted letters and e-mails with attachments are excepted from disclosure under sections 552.101 and 552.111 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of certain third parties, which you have not identified. Thus, pursuant to section 552.305 of the Government Code, you state the governor notified those parties of the request and of each party's right to submit arguments to this office as to why its information should not be released. Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

You assert the draft letters submitted as Exhibit C are excepted from disclosure under the deliberative process privilege encompassed by section 552.111 of the Government Code.

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 section 552.111 excepts from disclosure only those internal communications consisting 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. 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). Additionally, section 552.111 does not generally except from disclosure purely factual information severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); ORD 615 at 4-5.

This office has also concluded a preliminary draft of a document 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 the letters in Exhibit C are draft versions written by governor staff. The letters pertain to disseminating information about the fund to prospective applicants. Based on your arguments and our review, we find you have sufficiently demonstrated the information in Exhibit C pertains to the governor's policymaking processes. Furthermore, you state the draft letters will be released to the public in their final forms. Thus, we find you have established the deliberative process privilege is applicable to the draft letters submitted as Exhibit C. Accordingly, the governor may withhold Exhibit C under section 552.111 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, such as section 490.057 of the Government Code, which addresses the confidentiality of certain information pertaining to the fund. Section 490.057 provides:

Information collected by the governor's office, the [Texas Emerging Technology Advisory C]ommittee, or the committee's advisory panels concerning the identity, background, finance, marketing plans, trade secrets, or other commercially or academically sensitive information of an individual or entity being considered for an award from the fund is confidential unless the individual or entity consents to disclosure of the information.

Id. § 490.057. You state the information you have marked in Exhibit B is commercially sensitive and reveals the identities, backgrounds, finances, marketing plans, or trade secrets of entities being considered for awards from the fund. You inform us the entities have not consented to disclosure of the information at issue in Exhibit B. Based upon your representations and our review, we find the marked information in Exhibit B concerns the identities, backgrounds, finances, marketing plans, trade secrets, or other commercially or academically sensitive information of entities being considered for awards from the fund. Therefore, the marked information in Exhibit B is confidential under section 490.057 of the Government Code and must be withheld under section 552.101 of the Government Code.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the notified third parties explaining why the remaining information should not be released. Therefore, we have no basis to conclude any of these third parties have protected proprietary interests in the information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Consequently, the governor may not withhold any of the remaining information on the basis of any proprietary interests the notified third parties may have in the information.

In summary, the governor may withhold Exhibit C under section 552.111 of the Government Code, and must withhold the marked information in Exhibit B under section 552.101 of the Government Code in conjunction with section 490.057 of the Government Code. 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/dls

Ref: ID# 394374

Enc. Submitted documents

c: Requestor
(w/o enclosures)