



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2010

Ms. Lisa M. Nieman
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2010-15504

Dear Ms. Nieman:

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# 396609 (DSHS File 17754-2010).

The Texas Department of State Health Services (the "department") received a request for (1) all documents between the department and the Texas Department of Agriculture during a specified time pertaining to a specified Peanut Corporation of America plant (the "plant"), and (2) department inspections of the plant and any anonymous complaints filed with the department regarding the plant.¹ You state the department has provided or will provide some of the requested information to the requestor. You claim portions of the submitted briefing documents are excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You claim portions of the submitted information 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

¹The department sought and received clarification from the requestor regarding the second category of the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

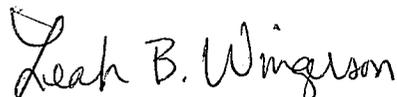
In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 exempts from disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. See ORD 615 at 5. Likewise, section 552.111 does not generally exempt 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.

You contend the information you have marked in the submitted briefing documents pertains to the department's policy discussions regarding food safety. Based on your arguments, we find you have sufficiently demonstrated how the marked information pertains to the department's policymaking processes. You assert the information at issue consists of the advice, recommendations, and opinions of department officials regarding the policy issues. Based on your arguments and our review, we find you have established the deliberative process privilege is applicable to the information you have marked. Accordingly, the department may withhold the marked information under section 552.111 of the Government Code. As you have not claimed any other 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, 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 396609

Enc. Submitted documents

c: Requestor
(w/o enclosures)