



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2010

Mr. Ryan S. Henry
Denton, Navarro, Rocha & Bernal, P.C.
2517 North Main Avenue
San Antonio, Texas 78212

OR2010-18742

Dear Mr. Henry:

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# 402871.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "hospital"), which you represent, received a request for all documents and e-mails sent or received by three named individuals regarding a named individual from January 1, 2010 to the date of the request. You state some of the information will be released. You claim that the submitted information is exempted from disclosure under sections 552.111 and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.111 of the Government Code exempts 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

¹Although you raise section 552.024 of the Government Code as an exception to disclosure of the named individual's personal information, we understand you to claim section 552.117 of the Government Code, which is the proper exception.

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). When determining if an interagency memorandum is excepted from disclosure under section 552.111, we must consider whether the agencies between which the memorandum is passed share a privity of interest or common deliberative process with regard to the policy matter at issue. *See* Open Records Decision No. 561 at 9 (1990).

You state the submitted information consists of communications between hospital officials and their counterparts at the University of Texas Southwestern Medical Center (the "center"). You explain the hospital and the center have a contractual relationship and both entities "coordinate physician placement, development of clinical services, and allocation of certain resources to [the hospital]." You further explain that "numerous coordinated policy decisions occur between the two entities on a regular basis." Thus, we conclude the hospital and center share a privity of interest or common deliberative process. You state the communications at issue deal with policymaking issues regarding the provision of healthcare services to hospital patients and the type and availability of such services. You explain these communications are related to the hospital's core policy mission that it is "[d]edicated to the health and well-being of individuals and communities entrusted to [its] care[.]" Based on these representations and our review, we agree the information we have marked consists of advice, opinion, and recommendations of the hospital regarding policymaking matters. Therefore, the hospital may withhold the marked information under section 552.111 of the Government Code. However, you have not demonstrated how the remaining information consists of advice, opinions, or recommendations about a policymaking decision. Therefore, the hospital may not withhold the remaining information under section 552.111 of the Government Code.

Section 552.117(a)(1) of the Government Code 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 that this information be kept confidential under section 552.024 of the Government Code. *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 information. *See* Open Records Decision No. 530 at 5 (1989). Thus, the hospital may only withhold information under section 552.117(a)(1) on behalf of a current or former 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 information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. We note, however, that we are unable to determine whether the individual at issue is an employee of the hospital or an employee of the center. Therefore, we must rule conditionally. To the extent the individual whose personal information we have marked is a hospital employee who timely elected to withhold his personal information under section 552.024, the marked information must be withheld under section 552.117(a)(1). To the extent the individual at issue is not an employee of the hospital or did not timely elect confidentiality, the marked information may not be withheld under section 552.117(a)(1).

In summary, the hospital may withhold the information we have marked under section 552.111 of the Government Code. To the extent the individual whose personal information we have marked is a hospital employee who timely elected to withhold his personal information under section 552.024 of the Government Code, the hospital must withhold the marked information under section 552.117(a)(1) 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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 402871

Enc. Submitted documents

c: Requestor
(w/o enclosures)