



This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 12, 2011

Ms. Michelle Hunter
Executive Director
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2011-11675

Dear Ms. Hunter:

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# 426795.

The State Bar of Texas (the "state bar") received a request for forty categories of information pertaining to the state bar's disciplinary system, its employees, referendums, MCLE programs, and budgets for a specified time period. You state that you have no responsive information with respect to some of the requested categories of information.¹ You also state you will release some responsive information with redactions pursuant to section 552.024 of the Government Code.² You claim a portion of the requested information is not subject to the Act. You also claim the information at issue is excepted from disclosure under

¹In responding to a request for information under the Act, a governmental body is not required to disclose information that did not exist at the time the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

²Section 552.024 of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the home address, home telephone number, emergency contact information, social security number, and family member information of a current or former employee who properly elected to keep his or her information confidential. *See Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 1 (to be codified as an amendment to Gov't Code § 552.024(a)).*

sections 552.102 and 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information, a portion of which is a representative sample.³

Initially, we note the state bar sought clarification with respect to categories twenty and twenty two of the request. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You have not informed us whether the state bar has received clarification of the portions of the request at issue. Thus, for the portions of the requested information for which you have not received clarification, we find the state bar is not required to release information in response to those portions of the request. However, if the requestor clarifies those portions of the request for information, the state bar must seek a ruling from this office before withholding any responsive information from the requestor. *See City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010).

Next, we address your claim that a portion of the submitted information constitutes judicial records that are not subject to the Act. The Act is applicable to “public information.” *See* Gov't Code § 552.021. Section 552.002 provides that “public information” consists of “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it.” *Id.* § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Further, section 81.033 of the Government Code provides that “[a]ll records of the state bar, except for records pertaining to grievances that are confidential under the Texas Rules of Disciplinary Procedure, and records pertaining to the Texas Board of Legal Specialization, are subject to Chapter 552.” *See id.* § 81.033(a).

Information that is “collected, assembled or maintained by . . . the judiciary” is not subject to the Act but is instead “governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) prior to enactment of section 552.0035). You state that a portion of the request seeks the disclosure of drafts of budgets, proposed budgets, and other information concerning the

³This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

budgets for the Chief Disciplinary Counsel and the Commission for Lawyer Discipline. Section 81.022 provides that “[t]he executive director of the state bar shall confer with the clerk of the supreme court and shall supervise the administrative staff of the state bar in preparation of the annual budget.” *See* Gov’t Code § 81.022(a). This section further provides that the state bar’s budget is “subject to approval by the supreme court.” *See id.* § 81.022(d). You argue that “a plain reading of section 81.022 leads to the conclusion that all records relating to the development and approval of the budget by the Court are records that have been collected, assembled, or maintained for the judiciary” and are therefore not subject to the Act. Upon review, we find that the submitted budgetary information was prepared by the administrative staff of the state bar and is maintained by the state bar. Accordingly, we conclude the submitted budgetary information does not constitute a record of the judiciary. *See* Tex. R. Jud. Admin. 12.2 (d) (defining “judicial record”).

You further contend that no records of the Commission for Lawyer Discipline are subject to the Act pursuant to rule 4.09 of the Texas Rules of Disciplinary Procedure. Rule 4.09 provides as follows:

The Commission is not a “governmental body” as that term is defined in Section 551.001(3) of V.T.C.A., Government Code, and is not subject to either the provisions of the Open Meetings Act or the Open Records Act.

Tex. R. Disciplinary P. 4.09. The information at issue consists of budgetary information for the Commission for Lawyer Discipline. Rule 4.08 establishes that it is the responsibility of the state bar to allocate a budget for the Commission for Lawyer Discipline and provides:

The State Bar shall allocate sufficient funds to pay all reasonable and necessary expenses incurred in the discharge of the duties of the Commission; of the Chief Disciplinary Counsel; of the Board of Disciplinary Appeals; of Committees and their individual members; and of witnesses. Further, the State Bar shall allocate funds to pay all other reasonable and necessary expenses to administer the disciplinary and disability system effectively and efficiently.

Tex. R. Disciplinary P. 4.08. Upon review, we conclude the submitted budgetary information constitutes records of the state bar. Therefore, we conclude that the information at issue is subject to the Act and must be released, unless the state bar demonstrates that the information falls within an exception to public disclosure under the Act. *See* Gov’t Code §§ 552.006, .021, .301, .302. Accordingly, we will consider the state bar’s arguments against disclosure of the information at issue.

We note a portion of the requested budgetary information pertains to state bar budgets from previous years, and thus falls within the scope of section 552.022(a)(5) of the Government Code. Section 552.022 provides for required public disclosure of “all

working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate,” unless the information is expressly confidential under other law. Gov’t Code § 552.022(a)(5). Although you seek to withhold this information under section 552.111 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body’s interests, and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). As such, section 552.111 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the state bar may not withhold the draft budgets and related e-mails subject to section 552.022(a)(5) under section 552.111. However, we note a portion of this information is confidential under sections 552.117 and 552.137 of the Government Code, which are “other law” for purposes of section 552.022. Accordingly, we will consider the applicability of these exceptions to the information that is subject to section 552.022.⁴ Additionally, we will consider your claims under sections 552.102 and 552.111 for the information not subject to section 552.022.

We now turn to your claim under section 552.111 of the Government Code, which 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. Section 552.111 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 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 that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. ORD 615 at 5; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). 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). However, a governmental body’s policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information about such matters will not inhibit free discussion of policy issues among agency personnel. ORD 615 at 5-6; *see also Dallas Morning News*, 22 S.W.3d at 364 (section 552.111 not applicable to personnel-related communications that did not involve policymaking).

Further, section 552.111 does not generally except from disclosure facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 157; 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 a preliminary draft of a document that has been or 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 state the information at issue includes draft documents of the state bar's proposed and final budgets. You also state that the annual proposed budget, as approved by the Board of Directors for submission to the Supreme Court, as well as the final budget as approved by the Supreme Court, are published and made available to the public. Upon review, we find the drafts of the upcoming fiscal year's budget and the portions of the e-mails we have marked consists of advice, opinion or recommendations for the purpose of section 552.111. Therefore, the state bar may withhold the information we have marked under section 552.111 of the Government Code. However, we find the remaining information is factual in nature or relates to routine internal administrative or personnel matters that do not rise to the level of policymaking for purposes of section 552.111. Therefore, none of the remaining information may be withheld under section 552.111.

Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we find none of the remaining information

is excepted under section 552.102(a). Thus, none of the remaining information may withheld under section 552.102 of the Government Code.

Section 552.117 excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of current or former officials or employees only if these individuals made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Accordingly, to the extent the individuals whose information is at issue timely-elected confidentiality under section 552.024, the state bar must withhold the cellular telephone numbers we have marked under section 552.117(a)(1) of the Government Code if the cellular telephone services are paid for with personal funds.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail addresses we have marked are not any of the types specifically excluded by section 552.137(c). Accordingly, the state bar must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the addresses have affirmatively consented to their release under section 552.137(b).⁵

In summary, the state bar may withhold the information we have marked under section 552.111 of the Government Code. To the extent the individuals whose information is at issue timely-elected confidentiality under section 552.024, the state bar must withhold the cellular telephone numbers we have marked under section 552.117(a)(1) of the Government Code only if the cellular telephone services are

⁵We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

paid for with personal funds. The state bar must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release under section 552.137(b). 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,



Kirsten Brew
Assistant Attorney General
Open Records Division

KB/em

Ref: ID# 426795

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Filed In The District Court
of Travis County, Texas
on 1/23/2015
at 9:58am M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-11-002625

STATE BAR OF TEXAS,
Plaintiff,

V.

THE HONORABLE GREG ABBOTT,
ATTORNEY GENERAL OF THE
STATE OF TEXAS
Defendant

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IN DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

250th JUDICIAL DISTRICT

AGREED ORDER OF DISMISSAL

On this day, the Court considered the parties' agreed order of dismissal. Plaintiff, State Bar of Texas (State Bar), Defendant, the Honorable Greg Abbott, Attorney General of Texas (Attorney General), and Intervenor, Julie Oliver (Oliver), appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully resolved.

This is an action brought by the State Bar to challenge Letter Ruling OR2011-11675, August 12, 2011 ("the Ruling."). On May 25, 2011, Plaintiff received a request from Ms. Julie Oliver, Executive Director of the Texas Coalition on Lawyer Accountability, pursuant to the Public Information Act (the "PIA"), Texas Government Code chapter 552, for certain documents held by the State Bar. Because the State Bar released most of the documents at issue, at this time the only remaining issue involves one disputed document that the State Bar contends is confidential under the privacy principles incorporated in sections 552.101 and 552.102 of the PIA, and is, therefore, exempt from required public disclosure under the PIA. The Ruling at issue in this case ordered, among other things that are now moot, the release of that document.

The parties represent to the Court that: (1) pursuant to Tex. Gov't Code § 552.327(2) the Attorney General has determined and represents to the Court that the Requestor, Oliver, has in

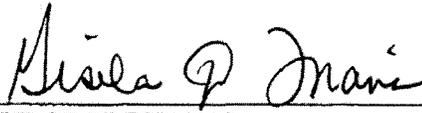


writing voluntarily withdrawn her request for the remaining document in dispute, (2) in light of the withdrawal of the request, Letter Ruling OR2011-11675 and this lawsuit are now moot, and (3) pursuant to Tex. Gov't Code § 552.327(1) the parties agree to the dismissal of this cause.

IT IS THEREFORE ORDERED THAT:

1. Because the request was withdrawn, no information should be released in reliance on Letter Ruling OR2011-11675. Letter Ruling OR2011-11675 should not be cited for any purpose as a prior determination by the Office of the Attorney General under Tex. Gov't Code § 552.301(f).
2. All costs of court are taxed against the parties incurring same.
3. This cause is hereby DISMISSED without prejudice.

SIGNED ON January 23, 2015



JUDGE PRESIDING

AGREED:



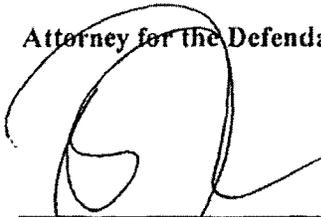
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