



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 14, 2011

Ms. Zeena Angadicheril  
Office of the General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701

OR2011-13292

Dear Ms. Angadicheril:

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# 429866.

The University of Texas Southwestern Medical Center (the "university") received a request for all active and archived e-mails contained within a named individual's account that were sent to that named individual during a specified time period and all e-mails sent by that named individual to any person employed by the university with the exception of e-mails sent to or received by legal counsel for the university for the same time period.<sup>1</sup> You claim that the requested information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially we note the requestor excluded addresses, telephone numbers, social security numbers, personal family information, information that would disclose the identity of a

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<sup>1</sup>You state the university sought and received clarification from the requestor regarding 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); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of unclear or over-broad request for public information, ten-day period to request an attorney general ruling is measured from date request is clarified or narrowed).

private donor, credit card, debit card, charge card, bank account, and access numbers from his request. Thus, such information is not responsive to the instant request. This ruling does not address the public availability of non-responsive information and such information need not be released in response to this request.

Section 552.104 excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. This exception protects a governmental body’s interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the “competitive advantage” aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate that it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body’s legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body’s demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

The university contends the information at issue is protected under section 552.104. You explain that the university is a marketplace competitor in the medical care and research marketplace and release of the information at issue would “facilitate the misappropriation of [the university’s business and marketing] ideas and strategies by outside parties, further harming both the university’s and, ultimately, the State’s marketplace standing.” You have not, however, explained, or otherwise demonstrated, how release of the submitted information would harm the university’s interests in a particular competitive situation. Therefore, we find you have failed to demonstrate release of the submitted information would cause specific harm to the university’s marketplace interests. Consequently, the university may not withhold any of the submitted information under section 552.104 of the Government Code.

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. 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.). 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). Section 552.111 can also encompass communications between a governmental body and a third-party, including a consultant or other party with a privity of interest. *See* Open Records Decision No. 561 at 9 (1990). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See id.*

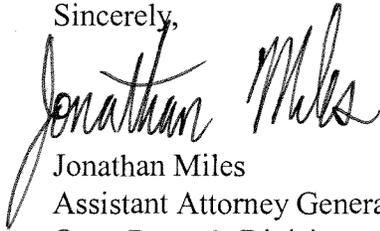
You state the marketing and business strategy of the university is a high profile matter of broad scope and affects the long-term operations, strategy, and policy mission of the university. You state the submitted information concerns the preliminary concepts developed by the university's media employees which will form the basis for subsequent policy decisions about how the university will be marketed in the future. Upon our review, we find the information we have marked constitutes advice, opinion, and recommendations and the university may withhold this information under section 552.111. However, we find the remaining information does not constitute advice, opinion, or recommendations; thus, we find you have failed to demonstrate how the deliberative process privilege applies to the remaining information. Accordingly, the university may not withhold the remaining information at issue on this basis. As you raise no further exceptions, 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,

A handwritten signature in black ink that reads "Jonathan Miles". The signature is written in a cursive style with a large initial "J" and "M".

Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 429866

Enc. Submitted documents

c: Requestor  
(w/o enclosures)