



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2012

Mr. Robert Martinez
Director
Environmental Law Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

OR2012-00096

Dear Mr. Martinez:

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# 441200 (PIR 11.10.12.12).

The Texas Commission on Environmental Quality (the “commission”) received a request for the names of individuals involved in editing or altering a specified report authored by a named individual. You state the commission has released some of the requested information. You claim the requested information is excepted from disclosure under section 552.111 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹Although you initially also raised sections 552.101, 552.102, 552.103, 552.104, 552.106, 552.107, 552.108, and 552.110 of the Government Code as exceptions to disclosure of the information at issue, you have provided no arguments regarding the applicability of these sections. Therefore, we assume you no longer assert sections 552.101, 552.102, 552.103, 552.104, 552.106, 552.107, 552.108, and 552.110. See Gov’t Code §§ 552.301(b), (e), .302.

²We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, we note most of the submitted information is not responsive to the instant request because it does not consist of the requested names of individuals involved in editing or altering the specified report. The commission need not release nonresponsive information in response to this request, and this ruling will not address that information.

You claim the responsive information is excepted from disclosure under the deliberative process privilege encompassed by section 552.111 of the Government Code. Section 552.111 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. This exception 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).

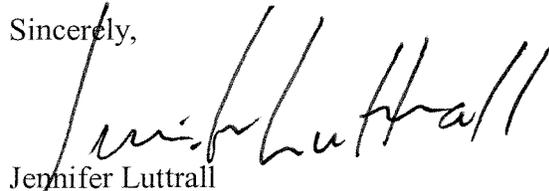
In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal 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.

You contend the responsive information falls within the scope of the deliberative process privilege under section 552.111. We note the responsive information consists solely of the names of commission employees. Accordingly, we find the responsive information does not reveal advice, opinion, or recommendations that implicate the commission’s policymaking processes. Consequently, the commission may not withhold any of the responsive information under section 552.111 of the Government Code based on the deliberative process privilege. As you make no other arguments against disclosure, the responsive 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 441200

Enc. Submitted documents

c: Requestor
(w/o enclosures)