



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 4, 2012

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

OR2012-00165

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# 441276.

The State Bar of Texas (the "state bar") received a request for nine categories of information regarding the Texas Access to Justice Commission (the "commission") and the Supreme Court Task Force on Uniform Forms (the "task force"). You indicate information responsive to parts 1-5 and 7 of the request will be released to the requestor. You inform us the state bar will redact information as permitted by the previous determinations issued to the state bar in Open Records Letter Nos. 2002-02107 (2002) and 2010-17528 (2010).<sup>1</sup> You argue the submitted information responsive to parts 6, 8, and 9 of the request is not public information subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under section 552.111 of the Government Code.<sup>2</sup> We have

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<sup>1</sup>Open Records Letter No. 2002-02107 is a previous determination permitting the state bar to withhold e-mail addresses of the public under section 552.137 of the Government Code without having to request a decision from this office. Open Records Letter No. 2010-17528 is a previous determination permitting the state bar to withhold the personal information protected by sections 552.1175 and 552.1176 of the Government Code without having to request a decision from this office.

<sup>2</sup>Although you also raise section 552.101 of the Government Code, you do not present any arguments explaining how it applies to the submitted information as required by section 552.301. *See* Gov't Code § 552.301(e)(1). Thus, we assume you no longer assert section 552.101.

considered your arguments and reviewed the submitted representative sample of information.<sup>3</sup>

First, we address your assertion that the requested information constitutes judicial records not subject to the Act. The Act generally requires the disclosure of information maintained by a “governmental body.” Gov’t Code § 552.002(a)(1). 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 [the Act].” *See* Gov’t Code § 81.033(a). We note, and you acknowledge, that the Family Law Section is part of the state bar.

However, a governmental body under the Act “does not include the judiciary.” *Id.* § 552.003(1)(B). Information “collected, assembled, or maintained by or for the judiciary” is not subject to the Act, but instead is “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) of the Government Code prior to enactment of section 552.0035 of the Government Code). Texas Rule of Judicial Administration 12.2(b) provides that a task force created by a court or judge is a “judicial agency.” You state the task force was created, and its members appointed, by the Texas Supreme Court, although the state bar provides staff support and funding. You also state the task force is required to file meeting minutes and reports with the supreme court. *See* Misc. Docket No. 11-9046 (Tex. Sup. Ct. Mar. 15, 2011). Further, Texas Rule of Judicial Administration 12.3(a) states the rule does not apply to a judicial agency whose records are subject to disclosure by statute, such as the Act. *See* Tex. R. Jud. Admin. 12.3(b). We note the supreme court order that created the task force does not provide that the task force is subject to the Act. *Id.* In contrast, the supreme court order that created the commission expressly provides that it is subject to section 81.033 of the Government Code, which in turn provides that records of the state bar are subject to the Act. *See* Misc. Docket No. 01-9065, ¶ 13 (Tex. Sup. Ct. Apr 26, 2001); Gov’t Code § 81.033. Therefore, the information that was created and is maintained on behalf of the task force constitutes judicial records not subject to the Act. We have marked

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<sup>3</sup> We 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.

this information, and the state bar need not release it under the Act in response to the instant request. However, you have not established the remaining information was created and is maintained on behalf of the task force. Thus, this information is subject to the Act. Accordingly, we will address the state bar's argument against disclosure of this information.

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. 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, orig. proceeding); 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, orig. proceeding). 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. *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).

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).

This office has also concluded that a preliminary draft of a document that 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 of section 552.111). 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 assert the remaining information subject to the Act consists of advice, opinions, and recommendations concerning the state bar's policymaking processes. You further assert the remaining information contains drafts of documents that either have been or will be publicly released in final form. Upon review, we find portions of the information at issue consist of advice, opinions, or recommendations concerning the state bar's policymaking processes. However, we find a portion of the remaining information was prepared only for internal review by the committee, and you have not established it was intended to be publicly released in final form. Therefore, this information does not consist of draft documents for purposes of section 552.111 and may not be withheld in its entirety on that basis. However, we find that portions of this document, which we have marked, along with the information we have marked in the remaining information, consist of advice, opinion, or recommendations on policy matters of the state bar that may be withheld under section 552.111 of the Government Code. We find the remaining information does not consist of advice, opinions, or recommendations, or is purely factual information. Accordingly, none of the remaining information may be withheld under section 552.111 on the basis of the deliberative process privilege.

We note a portion of the remaining information is protected by common-law privacy.<sup>4</sup> Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right to privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Additionally, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Therefore, the state bar must withhold the marked information under section 552.101 in conjunction with common-law privacy.

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

In summary, the state bar need not release the judicial records we have marked that are not subject to the Act. The state bar may withhold the information we have marked under section 552.111. The state bar must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The remaining requested information must be released to the requestor.

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/agn

Ref: ID # 441276

Enc. Submitted documents

c: Requestor  
(w/o enclosures)