



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2012

Mr. Frank Battle
General Counsel
Office of the Speaker
P.O. Box 2910
Austin, Texas 78768-2910

OR2012-18020

Dear Mr. Battle:

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# 470953.

The Office of the Speaker (the "speaker's office") received three requests for all correspondence (1) sent to three named individuals from the speaker's office; (2) received by the speaker's office from the three named individuals; and (3) received by the speaker's office that references the three named individuals since January 1, 2009. You state some information has been released. You further state you have withheld other responsive information pursuant to sections 306.003 and 306.004 of the Government Code.¹ Additionally, you state you have redacted e-mail addresses subject to section 552.137 of the Government Code in accordance with the previous determination issued in Open Records Decision No. 684 (2009).² You claim portions of the submitted information are excepted from disclosure under sections 552.111 and 552.117 of the Government Code. We have

¹We note information subject to sections 306.003 and 306.004 is governed by chapter 306 of the Government Code, not the Act, and the legislator concerned has discretion to either withhold or release such information. See Gov't Code §§ 306.003, .004; Open Records Decision No. 648 at 3-7 (1996).

²Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain 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.

considered the exceptions you claim and reviewed the submitted representative sample of information.³

Section 552.111 of the Government Code excepts from public 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 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.

We note section 552.111 can encompass a governmental body’s communications with a third-party, including a consultant or other party with which the governmental body shares a common deliberative process or privity of interest. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 of the Government Code encompasses communications with party with which governmental body has privity of interest or common deliberative process). In order 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

³We assume the “representative sample” of information 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 those submitted to this office.

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* ORD 561 at 9.

You contend the information you have marked falls within the scope of section 552.111. You state the information at issue relates to communications and documents shared among members of the speaker's office staff, as well as between outside advisors and a personal scheduler with which the speaker's office shares a privity of interest. You explain the information at issue relates to policymaking matters pertaining to the Cancer Prevention and Research Institute of Texas Oversight Committee. Based on your representations and our review of the information at issue, we conclude the speaker's office may withhold the information you have marked under section 552.111 of the Government Code.

You state the speaker's office will redact the information you have marked under section 552.117(a)(1) of the Government Code as permitted by section 552.024(c) of the Government Code.⁴ In this instance, however, we note that some of the information you have marked is not subject to section 552.117 of the Government Code. Therefore, we will address the applicability of this exception to the information at issue.

Section 552.117(a)(1) 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 of the Government Code. Gov't Code § 552.117(a)(1). Section 552.117 is also applicable to cellular telephone numbers, provided the cellular telephone service or pager 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). Whether a particular piece of information is protected by section 552.117(a)(1) 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 a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024, the information we have marked under

⁴Section 552.024(c) of the Government Code authorizes a governmental body to redact information protected by section 552.117 of the Government Code without the necessity of requesting a decision from this office if the current or former employee to whom the information pertains properly elected to keep this information confidential. *See* Gov't Code § 552.024(c); *see id.* § 552.024(c-1) (requestor may appeal governmental body's decision to withhold information under section 552.024(c) to attorney general), .024(c-2) (governmental body withholding information pursuant to section 552.024(c) must provide certain notice to requestor).

section 552.117 must be withheld under section 552.117(a)(1), including the personal cellular telephone numbers if the individuals pay for the cellular telephone service with their personal funds. The speaker's office may not withhold the marked information under section 552.117 if the individuals did not make timely elections to keep the information confidential.

In summary, the speaker's office may withhold the information you have marked under section 552.111 of the Government Code. The speaker's office must withhold the information we have marked under section 552.117 of the Government Code if the individuals whose information is at issue timely requested confidentiality and if the individuals pay for the cellular telephone service with their personal funds. The remaining information must be released.⁵

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

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⁵We note the information being released includes the requestor's personal e-mail address that is generally confidential under section 552.137(a) of the Government Code unless the requestor has consented to its disclosure. The requestor has a right of access to his own e-mail address under section 552.137(b). We also note this office issued Open Records Decision 684 (2009), a previous determination authorizing all governmental bodies to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137, without the necessity of requesting an attorney general decision. Thus, if the speaker's office receives another request for this information from an individual without such a right of access, the speaker's office is authorized to withhold the requestor's e-mail address under section 552.137 without the necessity of requesting an attorney general decision.

Ref: ID# 470953

Enc. Submitted documents

c: Requestor
(w/o enclosures)