



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 10, 2013

Ms. Neera Chatterjee  
Office of the General Counsel  
University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2013-05717

Dear Ms. Chatterjee:

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# 483623 (OGC # 148315).

The University of Texas at Dallas (the "university") received a request for 1) correspondence between or among four named individuals during a specified time period; 2) correspondence between two named individuals during a specified time period; and 3) notes, memoranda, or other documents in the possession of a named individual pertaining to an academic dishonesty case filed against the requestor. You state the university is releasing most of the requested information. You state the university will withhold student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.111 of the Government Code excepts from disclosure “[a]n 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 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. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *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).

You state the submitted information consists of communications between employees and officials of the university relating to student matters affecting the university. You further state these communications “contain the deliberative process by which individuals

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<sup>2</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

recommended review of policy issues.” Upon review, however, we find the information at issue is general administrative and purely factual information. Thus, we find you have failed to show how the information at issue consists of advice, opinions, or recommendations on the policymaking matters of the university. Accordingly, the university may not withhold any portion of the submitted information under section 552.111 of the Government Code. As you raise no further exceptions to disclosure, the submitted information must be released.<sup>3</sup>

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,



Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/bhf

Ref: ID# 483623

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the information being released includes the requestor’s e-mail address, to which he has a right of access under section 552.137(b) of the Government Code. See Gov’t Code § 552.137(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing the withholding of certain categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. Accordingly, if the university receives another request for this same information from a different requestor, the university is authorized to withhold the requestor’s e-mail address pursuant to Open Records Decision No. 684 without requesting an attorney general decision.