



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2013

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

OR2013-14300

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# 496546 (TCEQ PIR No. 13-12369).

The Texas Commission on Environmental Quality (the "commission") received a request for information used by the commission, including all criminal history reports, used to make licensing determinations pertaining to the requestor. You state you have released some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.111 of the Government Code. Additionally, you state release of some of the remaining information may implicate the interests of the Texas Department of Public Safety ("DPS"). Accordingly, you notified DPS of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have received comments from DPS. We have considered the submitted arguments and reviewed the submitted information.

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. Section 552.101 encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists

of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov’t Code ch. 411, subch. F. Section 411.083 of the Government Code deems confidential CHRI DPS maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* § 411.083. Section 411.122 of the Government Code authorizes the commission to obtain CHRI from DPS. *See id.* § 411.122. However, the commission may not release CHRI except as provided by chapter 411. *See id.* §§ 411.083, .084(c) (agency may not confirm existence or nonexistence of CHRI to any person not eligible to receive the information). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. We have marked the CHRI the commission must withhold under section 552.101 in conjunction with section 411.083 of the Government Code.¹ However, none of the remaining information constitutes CHRI. Accordingly, the commission may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

Next, you assert section 552.111 of the Government Code for some of the remaining information. 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 (1993), 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 that 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). Additionally, section 552.111 does not generally except from disclosure purely factual

¹As the commission and DPS note, an individual may obtain his own CHRI from DPS. *See* Gov’t Code § 411.083(b)(3).

information that is 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 state some of the remaining information consists of recommendations of commission personnel. Upon review, we find the commission may withhold the information we have marked under section 552.111 of the Government Code. However, we find the remaining information at issue consists of routine administrative information or purely factual information. You have failed to establish that any portion of the remaining information constitutes advice, opinions, recommendations, or other material reflecting the policymaking processes of the commission. Accordingly, you may not withhold any portion of the remaining information under section 552.111 of the Government Code.

In summary, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The commission may withhold the information we have marked under section 552.111 of the Government Code. The remaining information must be released.²

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

²We note that the requestor has a special right of access to some of the information being released in this instance. Because such information is confidential with respect to the general public, if the commission receives another request for this information from a different requestor, the commission must again seek a ruling from this office.

Ref: ID# 496546

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001
(w/o enclosures)