



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2013

Ms. Hadassah Schloss
Open Records Coordinator
Legal Services Division
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2013-18619

Dear Ms. Schloss:

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# 503621.

The General Land Office (the "GLO") received a request for: (1) any e-mail sent or received by any employee of the GLO related to a named individual, with information made confidential under law, including non-governmental e-mail addresses, redacted; (2) any e-mail communication sent or received by a named individual relating to two other named individuals; (3) any legal affidavit signed by any employee of the GLO in any civil litigation in which the GLO is not a party from January 1, 2011 to the date of the request; (4) any documents relating to phone calls, letters, or any communication between a named individual and the GLO's commissioner or any employee in his administrative office; (5) any documents detailing any entertainment or gifts provided by the GLO's commissioner to a named individual; and (6) any documents relating to a specified property requested by a named individual or any requests for approval filed by two specified families regarding a specified property. You state the GLO does not have any information responsive to items two and five of the request.¹ You further state the GLO will release some information responsive to item one of the request, and all of the information responsive to items three and

¹We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received or create new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

four of the request, to the requestor. You also state you will make information responsive to item six of the request available to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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).

This office has also concluded 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). 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 state the information you have labeled Attachment C consists of a draft field report and worksheet. You state the worksheet contains advice, opinions, and recommendations of GLO staff to be incorporated into the final field report. You state the field report has not been completed and a final decision has not been made. You further state the information you have labeled Attachment D consists of e-mails exchanged between GLO staff regarding a lease, and that these e-mails consist of advice, opinions, and recommendations of GLO staff and executive management. Finally, you state the information you have labeled Attachment E consists of notes made by a GLO employee during a telephone discussion regarding one of the leases at issue. You state these notes were used to draft letters which have been or will be released to the public. Based on your representations and our review, we determine the GLO may withhold the information we have marked in Attachment C, the information you have marked in Attachment D, and the information you have marked in Attachment E, with the exception of the information we have marked for release, under section 552.111 of the Government Code. However, we find the remaining information you seek to withhold consists of purely factual information. Accordingly, the GLO may not withhold any portion of the remaining information under section 552.111 of the Government Code. As you raise no other exceptions for the remaining information, it 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.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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 503621

Enc. Submitted documents

c: Requestor
(w/o enclosures)