



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 17, 2014

Mr. Marc Bittner
Chief Juvenile Probation Officer
33rd and 424th Judicial Districts and Gillespie County
220 South Pierce Street, Historical Jail Building
Burnet, Texas 78611

OR2014-16475

Dear Mr. Bittner:

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# 536331.

The 33rd and 424th Judicial Districts Juvenile Probation Department (the "department") received a request for information pertaining to two named department employees and all correspondence to or from any department employee or person working in conjunction with the department pertaining to two named individuals. You state the department will release some of the requested information upon receipt of payment. You claim some of the submitted information is not subject to the Act. Additionally, you claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code and privileged under article 39.14 of the Code of Criminal Procedure.¹ We have considered your arguments and reviewed the submitted information.

We note the Act generally requires the disclosure of information maintained by a "governmental body." *See* Gov't Code § 552.021. The Act's definition of a "governmental body" specifically

¹Although you raise Texas Rule of Civil Procedure 192.5, we note the proper exception to raise when asserting the deliberative process privilege in this instance is section 552.111 of the Government Code. *See* Open Records Decision Nos. 676 at 1-2 (2002), 677 (2002).

excludes “the judiciary.” *See id.* § 552.003(1) (A), (B). In Open Records Decision No. 646 (1996), this office determined that a community supervision and corrections department is a governmental body for purposes of the Act, and that its administrative records, such as personnel records and other records reflecting day-to-day management decisions, are subject to the Act. ORD 646 at 5. On the other hand, we also ruled that specific records regarding individuals on probation and subject to the direct supervision of a court that are held by a community supervision and corrections department are not subject to the Act because such records are held on behalf of the judiciary. *Id.*; *see* Gov’t Code § 552.003.

You have informed this office the documents you have marked are records concerning juvenile probationers maintained by the department on behalf of the judiciary. We note that records held by the department that pertain to juveniles subject to the direct supervision of the court are judicial records. *See* ORD 646 at 2-3; *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ) (in determining whether governmental entity falls within judiciary exception, this office looks to whether governmental entity maintains relevant records as agent of judiciary with regard to judicial, as opposed to administrative, functions). Based on your representation and our review, we find the information you have marked is held by the department on behalf of the judiciary and, therefore, not subject to disclosure under the Act. Our ruling does not address the public availability of this information, and the department need not release it in response to this request.²

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, writ ref’d n.r.e.); 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

²As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

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).

We understand you to assert the remaining information you have marked consists of advice, opinions, and recommendations of department employees pertaining to the policymaking functions of the department. Based on your representations and our review of the information at issue, we find the department has demonstrated portions of the information at issue, which we have marked, consist of advice, opinions, or recommendations on the policymaking matters of the department. Thus, the department may withhold the information we have marked under section 552.111 of the Government Code. Upon review, however, we find the remaining information at issue is general administrative or personnel information or does not pertain to policymaking. Thus, we find you have failed to show how the remaining information at issue consists of advice, opinions, or recommendations on the policymaking matters of the department. Therefore, the department may not withhold any of the remaining information at issue under section 552.111 of the Government Code.

In summary, the information you have marked is not subject to the Act, and the department need not release it in response to this request. The department may withhold the information we have marked under section 552.111 of the Government Code. The department must release the remaining information.

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,

A handwritten signature in black ink, appearing to read "N. A. Ybarra". The signature is fluid and cursive, with the first name "N." and last name "Ybarra" clearly distinguishable.

Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bhf

Ref: ID# 536331

Enc. Submitted documents

c: Requestor
(w/o enclosures)