



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2014

Mr. J. Eric Magee
Counsel for the County of Victoria
Allison, Bass & Magee, L.L.P.
402 West 12th Street
Austin, Texas 78701

OR2014-16681

Dear Mr. Magee:

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# 536682.

The Victoria County Juvenile Services Department (the "department"), which you represent, received a request for information pertaining to specified incidents, specified correspondence, specified minutes, and specified policies and job descriptions. You state you have released some information. You also state you do not have information responsive to portions of the requested information.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim 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 section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. Section 58.007 provides in relevant part the following:

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

(b) Except as provided by Section 54.051 (d-1) and by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under [Title 3 of the Family Code] may be inspected or copied only by:

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (2) a juvenile justice agency as that term is defined by Section 58.101;
- (3) an attorney for a party to the proceeding;
- (4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or
- (5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

...

(i) In addition to the authority to release information under Subsection (b)(5), a juvenile probation department may release information contained in its records without leave of the juvenile court pursuant to guidelines adopted by the juvenile board.

Fam. Code § 58.007(b), (i). Exhibits A through D consist of records maintained by the department concerning juvenile offenders. We understand the information at issue relates to juveniles who are parties to proceedings under the Juvenile Justice Code, title 3 of the Family Code, and the requestor is not a person or entity authorized to access this information under section 58.007(b). However, as a juvenile probation department, the department has the discretion to release the requested information pursuant to guidelines adopted by the juvenile board. *See id.* § 58.007(i). You do not inform us the juvenile board has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption and based on our review of the submitted information, we conclude the department must withhold Exhibits A through D under section 552.101 of the Government Code in conjunction with section 58.007(b) of the Family Code.²

²As our ruling is dispositive, we need not address your argument against its disclosure.

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 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).

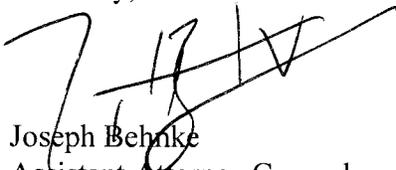
You state Exhibit E consists of advice, opinions, and recommendations relating to policymaking matters of the department. Upon review, however, we find the information at issue is general administrative and purely factual information or does not pertain to policymaking. Thus, we find you have failed to demonstrate how any of the information at issue consists of advice, opinions, or recommendations on policymaking matters. Accordingly, Exhibit E may not be withheld under section 552.111 of the Government Code.

In summary, the department must withhold Exhibits A through D under section 552.101 of the Government Code in conjunction with section 58.007(b) of the Family 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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 536682

Enc. Submitted documents

c: Requestor
(w/o enclosures)