



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 23, 2016

Mr. Brian Hodgdon
Chief of Staff
Office of State Representative Justin Rodriguez
P.O. Box 2910
Austin, Texas 78768-2910

OR2016-19045

Dear Mr. Hodgdon:

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# 624580.

The Office of State Representative Justin Rodriguez (the "representative's office") received a request for all records containing four specified terms or that were received from or sent to a named individual on behalf of the Texas County and District Retirement System during a specified time period. You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.106 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.106(a) of the Government Code excepts from required public disclosure "[a] draft or working paper involved in the preparation of proposed legislation[.]" Gov't Code § 552.106(a). Section 552.106(a) ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. *See* Open Records Decision No. 460 at 1 (1987). The purpose of this exception is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body. Therefore, section 552.106 encompasses only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation and does not except purely factual information from public disclosure. *Id.* at 2. However, a comparison or analysis of factual information prepared to support proposed legislation is within the ambit of section 552.106. *Id.*

You state Exhibit B consists of bill analyses created by employees of the representative's office. You also state the information you have indicated in Exhibit C consists of notes made by an employee of the representative's office regarding proposed legislation. You state this information was prepared for the legislative purpose of enacting legislation during the 83rd and 84th Texas Legislature. You further inform us the information at issue was never made public or distributed to any person beyond employees of the representative's office. Upon review, we find you have established the information at issue constitutes advice, opinion, analysis, and recommendation regarding proposed legislation. Therefore, the representative's office may withhold Exhibit B and the information you indicated in Exhibit C under section 552.106 of the Government Code.

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 contend the information you have marked in Exhibit D is excepted from disclosure under section 552.111 of the Government Code. You state the information at issue consists of an e-mail exchange between Representative Rodriguez and employees of the representative's

office concerning a policymaking matter and notes prepared by employees of the representative's office regarding a committee hearing. You state this information consists of advice, opinion, and recommendation of employees of the representative's office. Based on your representations and our review, we find you have demonstrated the applicability of the deliberative process privilege to the information at issue. Therefore, the representative's office may withhold the information you have marked in Exhibit D under section 552.111 of the Government Code.

In summary, the representative's office may withhold Exhibit B and the information you indicated in Exhibit C under section 552.106 of the Government Code and the information you have marked in Exhibit D under section 552.111 of the Government Code. The representative's office 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 624580

Enc. Submitted documents

c: Requestor
(w/o enclosures)