



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 10, 2015

Ms. Sarah Knippa  
Records Coordinator  
Travis Central Appraisal District  
P.O. Box 149012  
Austin, Texas 78714-9012

OR2015-14018

Dear Ms. Knippa:

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# 569533 (PIR No. 10695).

The Travis Central Appraisal District (the "district") received a request for six categories of information pertaining to efforts regarding the passage of legislation, including Senate Bill 1084, during the 84th regular session of the Texas Legislature. You state the district will provide some of the requested information to the requestor. You also state the district does not have any information responsive to part of the request.<sup>1</sup> 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.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the present request because it was created after the request was received. This ruling does not address the public availability of any information that is not responsive to the request, and the district is not required to release such information in response to this request.

Next, we note the responsive information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[,]" unless the information is

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the district claims sections 552.106 and 552.111 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and do not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver). Therefore, the district may not withhold the court-filed documents under section 552.106 or section 552.111 of the Government Code. As you have not claimed any other exceptions to disclosure for the court-filed documents, the district must release those documents.

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). Therefore, section 552.106 is applicable only to the policy judgments, recommendations, and proposals of persons who are involved in the preparation of proposed legislation and who have an official responsibility to provide such information to members of the legislative body. *Id.*; *see also* Open Records Decision Nos. 429 at 5 (1985) (statutory predecessor to Gov't Code § 552.106 not applicable to information relating to governmental entity's efforts to persuade other governmental entities to enact particular ordinances), 367 at 2 (1983) (statutory predecessor applicable to recommendations of executive committee of State Board of Public Accountancy for possible amendments to Public Accountancy Act). Section 552.106 does not protect purely factual information from public disclosure. *See* ORD 460 at 2; *see also* Open Records Decision No. 344 at 3-4 (1982) (for purposes of statutory predecessor, factual information prepared by State Property Tax Board did not reflect policy judgments, recommendations, or proposals concerning drafting of legislation). However, a comparison or analysis of factual information prepared to support proposed legislation falls within the scope of section 552.106. *See* ORD 460 at 2.

You assert the submitted information consists of communications between district employees and various entities and individuals, including legislative staff members, that are protected under section 552.106(a). Upon review, we agree the information we have marked represents advice, opinions, analyses, and recommendations pertaining to proposed legislation that was prepared in response to legislative inquiries or otherwise used by members of the legislature in addressing issues affecting the district. Accordingly, the district may withhold the information we have marked under section 552.106(a) of the Government Code. However, we find you have failed to demonstrate section 552.106 is applicable to the district communications with individuals who are not legislative staff members or that the remaining information was prepared at the request of the legislature. *Cf.* Open Records Decision No. 429 (1985) (predecessor to section 552.106 not applicable to materials prepared by person or agency who has no official responsibility to do so but only acts as interested party who wishes to influence legislative process); *see also* Open Records Decision No. 460 at 3 (1987) (predecessor to section 552.106 resembles predecessor to section 552.111 in that both exceptions protect advice, opinion, and recommendations on

policy matters in order to encourage frank discussion during the policy-making process). Furthermore, some of the remaining responsive information is purely factual. Thus, we find you have failed to demonstrate the remaining responsive information constitutes advice, opinion, analysis, or recommendations for purposes of section 552.106. Consequently, the district may not withhold any of the remaining responsive information 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).

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party with a privity of interest. *See* Open Records Decision Nos. 631 at 2 (section 552.111 encompasses information created for governmental body by outside consultant acting at governmental body’s request and performing task that is within governmental body’s authority), 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process), 462 at 14 (1987) (section 552.111 applies to memoranda prepared by

governmental body's consultants). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* ORD 561 at 9.

You generally claim some of the remaining information is excepted under the deliberative process privilege because it consists of advice, opinions, and recommendations regarding district policymaking matters. Upon review, we find the district may withhold the information we have marked under section 552.111 of the Government Code. However, some of the remaining information at issue was sent to or received from representatives of other governmental bodies. We find you have failed to demonstrate how the district shares a privity of interest or common deliberative process with the representatives of the other governmental bodies. Further, we find some of the remaining information at issue is general administrative and purely factual information. Therefore, we find you have failed to demonstrate how any of the remaining responsive information at issue consists of advice, opinions, or recommendations regarding policymaking matters. Consequently, the district may not withhold any of the remaining responsive information at issue under section 552.111 of the Government Code.

We note some of the remaining responsive information is subject to sections 552.101 and 552.137 of the Government Code.<sup>2</sup> 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 the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

§ 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. *See id.* § 552.137(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the district must withhold the personal e-mail addresses we have marked in the remaining responsive information under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the district may withhold the information we have marked under section 552.106(a) of the Government Code and under section 552.111 of the Government Code. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The district must release the remaining responsive 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](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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/bhf

Ref: ID# 569533

Enc. Submitted documents

c: Requestor  
(w/o enclosures)