



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 9, 2016

Ms. Patsy Spaw
Secretary of the Senate
The Senate of the State of Texas
Post Office Box 12068
Austin, Texas 78711

OR2016-25028

Dear Ms. Spaw:

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# 633735.

The Office of Senator Charles Schwertner (the "senator's office") received a request for certain information regarding the senator's office and two named organizations. You state the senator's office has released some information to the requestor. We understand the senator's office will withhold the information you have marked pursuant to section 306.003 of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.106 and 552.111 of the Government Code.² We have considered your arguments and reviewed the submitted information.

¹Release of information subject to section 306.003(a) of the Government Code is governed by chapter 306, not the Act, and it is within the discretion of a legislator to either withhold or release such information. See Gov't Code §§ 306.003(a), .004(a); see also Open Records Decision No. 648 at 3-7 (1996).

²Although you initially raised sections 552.103 and 552.107 of the Government Code as exceptions to disclosure, you provided no arguments regarding the applicability of these sections. Accordingly, we assume you no longer assert these sections. See Gov't Code §§ 552.301, .302.

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, orig. proceeding); 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, orig. proceeding). 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. ORD 615 at 5; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). 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). However, 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. ORD 615 at 5-6; *see also Dallas Morning News*, 22 S.W.3d at 364 (section 552.111 not applicable to personnel-related communications that did not involve policymaking).

Further, section 552.111 does not generally except from disclosure facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 157; 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 state the information you have marked consists of advice, opinions, and recommendations of representatives of the senator's office, members of the legislature, and legislature staff relating to policymaking of the senator's office. You explain, with respect to the information at issue, the senator's office shares a privity of interest with these parties. Based on your representations and our review, we find the senator's office may withhold the information we have marked under section 552.111 of the Government Code.³ However, we find the remaining information at issue consists of information that is purely factual in nature. Thus, we find you have failed to demonstrate the remaining information at issue is excepted under section 552.111. Accordingly, the remaining information may not be withheld under section 552.111 of the Government Code.

Section 552.106 of the Government Code excepts from disclosure "[a] draft or working paper involved in the preparation of proposed legislation" and "[a]n internal bill analysis or working paper prepared by the governor's office for the purpose of evaluating proposed legislation." Gov't Code § 552.106(a)-(b). We note section 552.106(b) applies to information created or used by employees of the governor's office for the purpose of evaluating proposed legislation. The purpose of section 552.106 is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body. *See* ORD 615 at 2. 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. *See id.* at 1; *see also* Open Records Decision No. 429 at 5 (1985) (statutory predecessor to section 552.106 not applicable to information relating to governmental entity's efforts to persuade other governmental entities to enact particular ordinances).

You assert the remaining information you have marked is excepted from disclosure under section 552.106. However, you have not demonstrated the information at issue constitutes a draft or working paper involved in the preparation of proposed legislation. Further, you have failed to demonstrate this information constitutes an internal bill analysis or working paper prepared for the purpose of evaluating proposed legislation. Therefore, we conclude the senator's office may not withhold any portion of the remaining information under section 552.106 of the Government Code.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code.⁴ Gov't Code § 552.117(a)(1). Section 552.117 is also applicable to cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for the information is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. Accordingly, the senator's office must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body. The senator's office may not withhold this information if the individual whose information is at issue did not make a timely election to keep the information confidential or the cellular telephone service is paid for by a governmental body.

In summary, the senator's office may withhold the information we have marked under section 552.111 of the Government Code. If the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the senator's office must withhold the cellular telephone number we marked under section 552.117(a)(1) of the Government Code. The senator'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

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 that reads "Britni Ramirez". The signature is written in a cursive style with a large, looping 'y' at the end.

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/bhf

Ref: ID# 633735

Enc. Submitted documents

c: Requestor
(w/o enclosures)