



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 8, 2017

Ms. Maria Rivera
Open Records Coordinator
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2017-12665

Dear Ms. Rivera:

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# 661128 (TWC Tracking No. 170321-005).

The Texas Workforce Commission (the "commission") received a request for a copy of a blank 1303 Contractor Performance Report form and all 1303 forms filed under a specified business with the commission. You state you have released some information. You also state the commission will withhold information pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.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 section encompasses the deliberative

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 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 the submitted information consists of advice, opinions, and recommendations relating to contract matters. The information consists of communications with individuals with whom we understand the commission shares a privity of interest with respect to the information at issue. Based on your representations and our review, we find the information we have marked consists of advice, opinions, or recommendations relating to policymaking. Therefore, the commission may withhold the information we have marked under section 552.111 of the Government Code. However, we find the remaining information at issue consists of information that is administrative or purely factual in nature or does not pertain to policymaking. Thus, you have failed to demonstrate the remaining information at issue reveals advice, opinions, or recommendations that pertain to policymaking. Accordingly, the commission may not withhold any portion of the remaining information at issue under section 552.111 of the Government Code. As no other exceptions to disclosure are raised, the remaining information must be released.

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 "D. Michelle Case", with a stylized flourish at the end.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/nmd

Ref: ID# 661128

Enc. Submitted documents

c: Requestors
(w/o enclosures)