



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 11, 2018

Ms. Cynthia Tynan
Senior Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
210 West Seventh Street
Austin, Texas 78701-2901

OR2018-00859

Dear Ms. Tynan:

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# 691407 (OGC# 177932).

The University of Texas at Austin (the "university") received a request for information pertaining to specified policies, a specified contract, and an accounting for the income derived from sources outside the university pertaining to a named employee. You state the university will release some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have also received and considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit written comments regarding why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the request requires the university to answer questions. The Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. *See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990)*. However, the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See Open Records Decision Nos. 563 at 8, 561 at 8-9 (1990), 555 at 1-2, 534 at 2-3 (1989)*. In this instance, we assume the

university has made a good faith effort to locate any information responsive to this request. Accordingly, we will address your claimed exceptions for the submitted information.

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 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).

This office has also concluded a preliminary draft of a document intended for public release in its final form necessarily represents the drafter’s advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

You seek to withhold the submitted information under section 552.111 of the Government Code. You state the information at issue consists of advice, opinion, and recommendations related to policymaking matters of the university. You further state portions of the submitted information are draft documents that were intended to be released in their final forms. Based on your representations and our review, we find the university has demonstrated some of the submitted information consists of advice, opinions, or recommendations on policymaking matters of the university. Accordingly, the university may withhold the information we marked under section 552.111 of the Government Code on the basis of the deliberative process privilege. However, the remaining information consists of information that is administrative or purely factual in nature. Thus, you have failed to demonstrate the remaining information reveals advice, opinions, or recommendations that pertain to policymaking. Therefore, the university may not withhold the remaining information under section 552.111 of the Government Code.

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 you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information may be subject to section 552.117 of the Government Code.¹ Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service

¹The 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 No. 481 (1987), 480 (1987), 470 (1987).


is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it 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 employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024, the university must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code if the cellular telephone service is not paid for by a governmental body. The university may not withhold the marked cellular telephone numbers under section 552.117(a)(1) if the individual did not make a timely election to keep the information confidential or if a governmental body pays for the cellular telephone service.

In summary, the university may withhold the information we marked under section 552.111 of the Government Code on the basis of the deliberative process privilege. The university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individual whose information is at issue timely requested confidentiality under section 552.024, the university must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code if the cellular telephone service is not paid for by a governmental body. The university 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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/tdw

Ref: ID# 691407

Enc. Submitted documents

c: Requestor
(w/o enclosures)