



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 4, 2019

Ms. April M. Liwanag  
Assistant General Counsel  
Texas Board of Nursing  
333 Guadalupe Street, Suite 3-460  
Austin, Texas 78701

OR2019-30995

Dear Ms. Liwanag:

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# 795182 (BON Ref. No. 19-33).

The Texas Board of Nursing (the "board") received a request for 1) specified meeting minutes; 2) all e-mails between two named individuals during a defined time period; and 3) any contracts between the board and a specified category of entities. You state you are releasing some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.111, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed 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).

You seek to withhold the information you marked under section 552.111 of the Government Code. You state the information at issue consists of advice, opinions, and recommendations of employees and officials of the board regarding policymaking matters. Upon review, we find the board may withhold the information we marked under section 552.111 of the Government Code. However, we find the remaining information consists of information that is administrative, purely factual in nature, or was shared with third parties with whom you have not demonstrated a privity of interest. Thus, you have failed to demonstrate the remaining information reveals advice, opinions, or recommendations that pertain to policymaking. Accordingly, the board may not withhold any portion of the remaining information under section 552.111 of the Government Code on the basis of the deliberative process privilege.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. See Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. See Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. As you state, and provide documentation demonstrating, the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the board must withhold the information you marked, and the additional information we marked, under section 552.117(a)(1) of the Government Code.

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 § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Accordingly, the board must withhold the personal e-mail addresses you marked, and the additional e-mail addresses we marked, under section 552.137, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release or subsection (c) applies. *See id.* § 552.137(b).

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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 and 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 marked generally satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note some of the information at issue pertains to individuals who will be de-identified under section 552.117 of the Government Code. In that event, the board may not withhold the information pertaining to the de-identified individuals under section 552.101 in conjunction with common-law privacy. However the board must withhold the remaining information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the board may withhold the information we marked under section 552.111 of the Government Code. The board must withhold the information you marked, and the additional information we marked, under section 552.117(a)(1) of the Government Code. The board must withhold the personal e-mail addresses you marked, and the additional e-mail addresses we marked, under section 552.137, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release or subsection (c) applies. With the exception of information pertaining to de-identified individuals, which must be released, the board must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The board must release the remaining information.<sup>1</sup>

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<sup>1</sup> We note the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the board receives another request for this information from a different requestor, the board must again seek a ruling from this office.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Ashley Crutchfield", written in a cursive style.

Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/rm

Ref: ID# 795182

Enc. Submitted documents

c: Requestor  
(w/o enclosures)