



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 2, 2019

Ms. Cynthia Tynan
Senior Attorney & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2901

OR2019-33686

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# 799025 (OGC Nos. 192900, 192901, and 192902).

The University of Texas at Austin (the "university") received three requests from different requestors for certain reports regarding specified topics, including e-mails sent or received by a named individual containing specified terms and phrases during a stated time period. You state the university will release some information to one of the requestors. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by chapter 418 of the Government Code. As part of the Texas Homeland Security Act (the "HSA"), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. Section 418.181 of the Government Code provides the following:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Id. § 418.181; *see also id.* § 421.001(2) (defining “critical infrastructure” to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). The fact that information may relate to a governmental body’s security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the information at issue includes detailed information related to the smoke control system of the university’s Engineering Education and Research Center (the “EERC”). You explain the information at issue includes technical details and reveals specific locations of the EERC’s smoke control system. You assert, and we agree, the university’s EERC constitutes critical infrastructure for the purposes of section 418.181. *See generally id.* § 421.001. You argue release of the information at issue would allow criminals to undermine the collective efforts of the university and law enforcement agencies to safeguard the welfare of students, faculty, staff, and visitors, and undermine the security of the university and expose vulnerabilities to the university’s critical infrastructure to an act of terrorism. Based upon your representations and our review, we find portions of the information at issue, which we marked, reveal the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Accordingly, the university must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.¹ However, we find you failed to establish the remaining information is confidential under section 418.181 of the Government Code. Therefore, the university may not withhold any of the remaining information under section 552.101 in conjunction with section 418.181.

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).

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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 exempts 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; see also *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Tex. 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 protect facts and written observations of facts and events severable from advice, opinions, and recommendations. See *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 No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). 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 *id.*

You state the information at issue consists of advice, opinions, and recommendations of university employees regarding policymaking matters of the university. Based upon your representations and our review, we find portions of the information at issue, which we marked, consist of advice, opinions, or recommendations on the policymaking matters of the university. Accordingly, the university may withhold the information we marked under section 552.111 of the Government Code. However, we find the remaining information is general administrative information that does not relate to policymaking, information that is purely factual in nature, or communications with a third party with whom you have not demonstrated the university shares a privity of interest or common deliberative process. Therefore, the university may not withhold any of the remaining information under section 552.111 on the basis of the deliberative process privilege.

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 or officials of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code.² Gov't Code § 552.117(a)(1). We note section 552.117 is also applicable to personal 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) (section 552.117 is not applicable to cellular telephone numbers paid for by governmental body and intended for official use). 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. Accordingly, if the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the university must withhold the cellular telephone numbers we marked under section 552.117(a)(1) of the Government Code. Conversely, if the individuals at issue did not timely request confidentiality under section 552.024 or the cellular telephone service is paid for by a governmental body, the university may not withhold the marked information 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). Gov't Code § 552.137(a)-(c). Because we are unable to discern whether the e-mail addresses within the remaining information belong to university employees or officials or fall within the scope of section 552.137(c), we must rule conditionally. To the extent the e-mail addresses within the remaining information belong to members of the public, the university must withhold them under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. *See id.* § 552.137(b). However, to the extent an e-mail address within the remaining information is excluded by subsection 552.137(c) or belongs to a university employee or official, that e-mail address may not be withheld under section 552.137 of the Government Code. *See Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.— Austin 2016, no pet.) (holding personal e-mail addresses of government officials used to conduct official government business are not e-mail addresses of “members of the public” for purposes of Gov't Code § 552.137(a)).

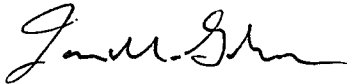
² The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the university must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The university may withhold the information we marked under section 552.111 of the Government Code. If the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the university must withhold the cellular telephone numbers we marked under section 552.117(a)(1) of the Government Code. To the extent the e-mail addresses within the remaining information belong to members of the public, the university must withhold them under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. 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 <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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/mo

Ref: ID# 799025

Enc. Submitted documents

c: 3 Requestor
(w/o enclosures)