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ATTORNEY GENERAL OF TEXAS

July 24, 2022

Mr. Kieran Hillis
Public Information Coordinator
Assistant General Counsel
Office of the Governor
Post Office Box 12428
Austin, Texas 78711

OR2022-21737

Dear Mr. Hillis:

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# 961311 (OOG ID#: 241-22).

The Office of the Governor (the "governor's office") received a request for information pertaining to specified grants. The governor's office has released some information. The governor's office claims some of the submitted information is excepted from disclosure under section 552.111 of the Government Code. Additionally, the governor's office notified the Texas Board of Pardons and Paroles (the "board") of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code §§ 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released), .305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from the board. We have considered the submitted arguments 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).

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 ORD 561.

You and the board state the information at issue consists of advice, opinions, and recommendations of employees of the governor's office and board officials with whom the governor's office states it shares a privity of interest regarding policymaking matters. Upon review, we find the governor's office may withhold the information you marked under section 552.111 of the Government Code. However, we find the board has failed to demonstrate the remaining information at issue constitutes internal communications containing advice, recommendations, or opinions reflecting the policymaking processes of the board. Therefore, the governor's office 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 552.101 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 information protected by other statutes, including section 508.117 of the Government Code which pertains to the board's victim notification procedures. *Id.* § 508.117. Section 508.117 provides in relevant part:

(a) Before a parole panel considers for release on parole an inmate who is serving a sentence for an offense in which a person was a victim, the [pardons and paroles division], using the name and address provided on the victim impact statement, shall make a reasonable effort to notify:

(1) the victim

...

(f) Except as necessary to comply with this section, the board ... may not disclose to any person the name or address of a person entitled to notice under this section unless:

(1) the person approves the disclosure; or

(2) a court determines that there is good cause for disclosure and orders the board . . . to disclose the information.

Id. § 508.117(a)(1), (f). The board asserts the information at issue includes the name of the victim who is entitled to notice under section 508.117(a)(1). *See id.* § 508.117(a)(1). Based on the board's representation, we find section 508.117(f) is applicable to the name of the victim contained in the submitted information. The board has not indicated, nor does the information at issue reflect, either of the exceptions to confidentiality in section 508.117(f) applies in this case. *See id.* § 508.117(f). Accordingly, the governor's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 508.117(f) of the Government Code. However, we find none of the remaining information consists of the name or address of a person entitled to notice under section 508.117, and therefore, it may not be withheld on that basis.

The board also raises section 552.101 of the Government Code in conjunction with section 508.153 of the Government Code. This section allows a victim to make a statement to a parole panel considering an inmate for release on parole or mandatory supervision. *See id.* § 508.153. However, this provision does not make information confidential for purposes of section 552.101 of the Government Code. *See Open Records Decision No. 478 (1987)*. Thus, the governor's office may not withhold any of the remaining information under section 552.101 in conjunction with section 508.153 of the Government Code.

In summary, the governor's office may withhold the information you marked under section 552.111 of the Government Code. The governor's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 508.117(f) of the Government Code. The governor'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 <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,

Sarah E. Reese
Attorney
Open Records Division

SER/mo

Ref: ID# 961311

Enc. Submitted documents

c: Requestor
(w/o enclosures)