



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 13, 2022

Mr. Jeffrey D. Palmer
Deputy General Counsel
The University of Houston System
4302 University Drive, Suite 311
Houston, Texas 77204-2028

OR2022-31447

Dear Mr. Palmer:

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# 977817.

The University of Houston (the “university”) received a request for (1) the requestor’s personnel file and (2) communications sent or received by named individuals during a defined period of time.¹ You state you have released some information to the requestor. 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 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 section 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 You state the university sought clarification of the information requested. *See* Gov’t Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.2d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified). In addition, the university sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov’t Code § 552.2615. The estimate of charges required to requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). The university states it received the deposit on July 25, 2022. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond).

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. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such information 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 2002, no pet.); see ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendations 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 of university employees and officials regarding policymaking matters of the university. Based upon your representations and our review, we find some of the information at issue consists 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 at issue is either general administrative and purely factual information or pertains to administrative or personnel matters that do not rise to the level of policymaking for purposes of section 552.111. Thus, you have failed to demonstrate the remaining information at issue pertains to policymaking matters of the university for the purposes of section 552.111. Therefore, the university may not withhold any of the remaining information under section 552.111 of the Government Code on the basis of the deliberative process privilege. As no further exceptions to disclosure have been raised, the university must release the remaining information.²

² We note the requestor has a right of access to some of the information being released that may otherwise be protected under section 552.117(a)(1) of the Government Code. See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Section 552.024(c)(2) of the Government Code authorizes a governmental body to withhold information subject to section 552.117(a)(1) without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. See Gov't Code §§ 552.024(c)(2), .117(a)(1). Accordingly, if the university receives another request for this information from a different requestor, the university may withhold this information pursuant to section 552.024(c)(2) of the Government Code without seeking another ruling from this office. If a

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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/jxd

Ref: ID# 977817

Enc. Submitted documents

c: Requestor
(w/o enclosures)