



TEXAS TECH UNIVERSITY SYSTEM[®]

Office of General Counsel

October 30, 2025

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

The Honorable Ken Paxton
Attorney General of the State of Texas
Open Records Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

RE: Texas Public Information Act Request
Request: October 9, 2025
Requestor: Kevin Bass

Dear Attorney General Paxton:

Texas Tech University System (“TTUS”) respectfully requests an Attorney General’s open records decision under the Texas Public Information Act, Tex. Gov’t Code § 552.001, *et seq* (*the “Act”*).

On October 9, 2025, Texas Tech University System (TTUS) received two requests from Kevin Bass (the “Requestor”) for information related to communications and records regarding the handling of the Requestor’s Texas Public Information Act submissions on October 3, 2025, and the Requestor’s Preservation Notice sent on October 6, 2025. Said requests are attached as Exhibit “A”.¹

According to the Texas Public Information Act, a governmental body must request an open records decision (ORD) of the Attorney General for exceptions to public disclosure on or before the end of the 10th business day after the date of receiving the written request, which would be no later than October 23, 2025. TTUS requested an open records decision on October 23, 2025. TTUS’s request for an open records decision is attached as Exhibit “B”.

Pursuant to the Texas Public Information Act, a governmental body that requests an Attorney General decision for exceptions to public disclosure must, not later than the 15th business day after the date of receiving the written request, submit to the Attorney General written comments stating the reasons why the above-stated exceptions apply. As explained above, since the date of receipt of the Requestor’s request was October 9, 2025, the date by which TTUS must submit its detailed comments is October 30, 2025.

¹ In the interest of efficiency, TTUS has consolidated the requests received from the requestor as the requests were received on the same day and they rely on the same set of facts and/or legal exceptions.

On October 23, 2025, TTUS responded to the Requestor that it is seeking an opinion from the Attorney General on those items it claims should be excepted from public disclosure. The response to the Requestor is attached as Exhibit "C". As indicated above, this letter includes specific comments explaining why the information related to the Requestor's requests are excepted from public disclosure under the Texas Public Information Act. The requested information is attached/included as Exhibit "D".

I. FACTS

The relevant facts are as follows:

1. TTUS is an institution of higher education in the State of Texas as defined by Texas Education Code §61.003.
2. Texas Tech University Health Sciences Center (TTUHSC) is a component of TTUS.
3. TTUS's attorneys are responsible for handling all legal matters for the components of TTUS, including public information act requests. Eric Bentley, Ronny Wall, Vicki Dorris, William Webster, Bronte Staugaard, and Michael Hopkins are part of TTUS's Office of General Counsel.
4. On November 13, 2023, the Requestor filed a lawsuit against Texas Tech University alleging that TTUHSC unlawfully suspended and banned the Requestor from campus in retaliation for exercising his free speech rights. *See* Exhibit "E".
5. On March 6, 2024, the Requestor's Non-Suit, *without* prejudice, was recognized and granted by the 237th District Court in Lubbock County, Texas. *See* Exhibit "F".
6. On October 3, 2025, the Requestor submitted seven (7) public information act requests and three (3) Family Educational Rights and Privacy Act (FERPA)/Transcript Requests. *See* Exhibit "I". On October 6, 2025, the Requestor delivered a preservation notice (as described below). The requests at issue (contained in Exhibit "A") were received on October 9, 2025. The requests at issue (contained in Exhibit "A") deal with the handling, communications, etc. of the October 3, 2025, requests (contained in Exhibit "I") and the October 6, 2025, preservation notice (contained in Exhibit "G").
7. On October 6, 2025, Requestor sent a preservation notice to multiple TTUS and TTUHSC employees and/or departments, a request that TTUHSC Records Custodian, Legal, and IT Leadership a request to "immediate[ly] preserv[e] [] all records and communication potentially responsive to [his] Texas Public Information Act (PIA) and Family Education Rights and Privacy Act (FERPA) requests. *See* Exhibit "G".
8. On October 20, 2025, Requestor sent a litigation hold related to "(i) class/listserv broadcasts (including the message titled "VACATION and other stuff"), drafts/approval chains, distribution lists, and any recall/replace or deletion logs/metadata; (ii) Teams/Slack/SharePoint/Outlook messages; (iii) Threat Assessment Team files and any

campus-access restrictions, BOLOs, site bans, or rotation pulls; (iv) Registrar transcript/notation policies and audit logs; and (v) communications to third parties (residency programs/hospitals/media/donors) conveying stigmatizing statements.” *See Exhibit “G”.*

9. On October 20, 2025, Requestor sent another preservation notice related to “dismissal/disciplinary actions; communications to students or third parties; listserv/broadcast emails (and drafts, approvals, recalls, and deletion logs/metadata); safety-rationale messaging (e.g., BOLOs, campus access, site bans); name-clearing hearing requests, scheduling, and protocols; SDS/ADA/§504 accommodation requests and determinations; LMS/security/IT access logs; calendars; chats (Teams/Slack); texts; DMs; voicemail.” *See Exhibit “G”.*
10. On October 20, 2025, Requestor re-served the litigation hold originally transmitted on October 6, 2024, to include additional TTUS and TTUHSC employees and/or departments. *See Exhibit “G”.*
11. Prior and subsequent to sending the requests subject to this matter herein, Requestor has made multiple posts on the social media platform “X” implicating and threatening “another round” of litigation against TTUS/TTUHSC. *See Exhibit “H”.*

II. RELEVANT EXCEPTIONS

A. TEX. GOV’T CODE §552.103 - Information Relating to Litigation.

1. Under what is commonly referred to as the “litigation exception,” information is excepted from public disclosure “if it is information relating to [civil] litigation...to which the state...is or may be a party or to which an officer or employee of the state..., as a consequence of the person's office or employment, is or may be a party.” TEX. GOV’T CODE §552.103(a).
2. The litigation exception enables a governmental body to protect its litigation position by forcing parties seeking information related to the litigation to obtain such documents through the discovery process. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App. – Austin 2002, no pet.); Open Records Decision No. 551, 2002 WL 31827951, (1990) at 2-3; Tex. Att’y Gen. Op. No. 2009-18105, 2009 WL 5127819 at 3 (December 22, 2009). While the litigation exception may overlap with other exceptions encompassing discovery privileges, it is not conditioned on the applicability of any discovery privilege; therefore, a governmental body may properly assert the litigation exception for privileged information (e.g. work product privilege or attorney-client privilege). Open Records Decision No. 677, 2002 WL 31827951 at 2 (2002). A governmental body is not required to demonstrate both the litigation exception and the applicability of a privilege under

other law in order to except information from disclosure under the litigation exception. Open Records Decision No. 677, 2002 WL 31827951 at 2 (2002).

3. To qualify under TEX. GOV'T CODE §552.103, the information must be "related to" the subject matter of the litigation. TEX. GOV'T CODE §552.103(a); Open Records Decision No. 551, 2002 WL 31827951 (1990) at 3. For purposes of the Public Information Act ("Act"), the phrase "related to" is construed according to its plain language to mean "pertaining to," "associated with," or "connected with." *University of Texas Law School v. Texas Legal Foundation*, 958 S.W. 2d 479, 483 (Tex. App – Austin 1997, no pet.); *In re Texas Dept. of State Health Services*, 278 S.W. 3d 1, 4 (Tex. App. – Austin 2008, no writ); see *E. I. Du Pont de Nemours and Company v. Shell Oil Company*, 259 S.W. 3d 800, 806 (Tex. App. – Houston [1st Dist.] 2007, reh'g den.) (defining "related to" as meaning "have reference to" or "concern"). "Related to" is broader than "relevant to;" therefore, information can be excepted from disclosure under the litigation exception even if it is not relevant to the substantive issues in the lawsuit. *University of Texas Law School* 958 S.W. 2d at 483. The litigation exception allows a governmental body to withhold a wide range of information because the "related to" standard is much broader than the range of information actually used in litigation. *In re Texas Dept. of State Health Services*, 278 S.W. 3d at 4. The Legislature intended the standard to be broad. *Id.*
4. This exception applies if the litigation is pending or reasonably anticipated on the date that the requestor requests the information. TEX. GOV'T CODE §552.103(c). Litigation is "reasonably anticipated" if there is evidence demonstrating that litigation was "realistically contemplated" on the date of the request, and that the possibility of litigation ensuing was "more than 'mere conjecture'." Open Records Decision No. 677, 2002 WL 31827951 at 2 (2002). The determination is based on the totality of the circumstances, and may be demonstrated if particular steps toward filing suit have occurred. *Id.* In cases construing the work-product privilege, courts have held that litigation may be "reasonably anticipated" when (1) circumstances would have indicated to a reasonable person that there was a substantial chance of litigation, and (2) the party asserting the exemption had a good faith belief that litigation would ensue. *In re Texas Farmers Insurance Exchange*, 990 S.W. 2d 937, 342 (Tex. App – Texarkana 1999, orig. proceeding), citing to *Nat'l Tank Co. v. Brotherton*, 851 S.W. 2d 193, 204 (Tex. 1993); Open Records Decision No. 677, 2002 WL 31827951 at 4 (2002). Further, it is sufficient to establish the litigation exception when a case is dismissed without prejudice, the information being sought is related to the subject matter of the lawsuit, and the governmental body anticipates the refiling of the suit. Tex. Atty. Gen. Op. OR 2015-15089, 2015 WL 4634135 (July, 24, 2015) at *2; See also Tex. Atty. Gen. Op. OR 2021-04405, 2021 WL 1375882 (February 24, 2021) at *2.

5. Information in investigatory files related to civil litigation may be withheld from disclosure when the governmental body's attorney determines it should be withheld pursuant to §552.103. Open Records Decision No. 575, 1982 WL 173945 at 1 (1982); Tex. Att'y Gen. Op. OR 2009-16295, 2009 WL 4089419 at 1 (November 17, 2009).
6. In short, there are two prongs that TTUS must satisfy in order for documents to be excepted from disclosure under TEX. GOV'T CODE § 552.103: (1) the documents must be related to litigation and (2) litigation must have been anticipated or in progress at the time the request was received.
7. The documents in Exhibit "D", as marked, are all related to previous and reasonably anticipated litigation with the Requestor. Further, due to the representations and threats of litigation from Requestor on the social media platform "X", it is reasonably anticipated by TTUS legal counsel that, as soon as the first requests were received on October 3, 2025, that the Requestor is attempting to revitalize his previously dismissed lawsuit. *See Exhibit "H"*. This is corroborated by the preservation notices/litigation holds contained in Exhibit "G". The requested documents contained in Exhibit "D", as marked, are related to previous and reasonably anticipated litigation as follows:
 - (1) Requestor's October 9, 2025, requests contained in Exhibit "A" for "records sufficient to show TTUHSC/TTU System's receipt acknowledgment, and internal handling of [the Requestor's] Preservation Notice sent on October 6, 2025" and for "communications and artifacts created after [the Requestor's] earlier TPIA submissions (Oct 2-3, 2025)"² is clearly related to previous and reasonably anticipated litigation as the information requested specifically relates to the subject matter of the original lawsuit. The subject matter of the original lawsuit specifically relates to the allegation that TTUHSC unlawfully suspended and banned the Requestor from campus in retaliation for exercising his free speech rights. *See Exhibit "E"*. Further, it was alleged that TTUHSC violated Requestor's due process rights. *See id.* This lawsuit was then dismissed by the Requestor in 2024 *without* prejudice. *See Exhibit "F"*. The records and communications sought by Requestor are related to his PIA requests submitted on October 3, 2025. The requests submitted on October 3, 2025, are directly related to the same subject matter of the Requestor's lawsuit. It is reasonably anticipated that all of the October 3, 2025, requests are directly

² Note that all of the Requestor's request sent on October 2, 2025, were considered received on October 3, 2025, due to them being received after the close of business on October 2, 2025. This is evidenced by the requests attached as Exhibit "I".

related to the underlying dispute/subject matter of the previous lawsuit.³ For example:

- (a) Request 1 in Exhibit “I”: Asks for all records concerning the “interim suspension, Criminal Trespass Warning (CTW), Appeals Panel and dismissal hearings.” *See Exhibit “I”.*
 - (i) Lawsuit Allegation: The Requestor’s petition is centered on the “Emergency Removal and Interim Suspension” and the “Criminal Trespass Warning” issued on November 4, 2023. It specifically attacks the appeal process, stating, Requestor appealed his suspension and alleging the disciplinary proceedings were a deprivation of his due process rights. *See generally Exhibit “E”.*
- (b) Requests 4, 5, & 7 in Exhibit “I”: These requests all target communications and metadata to or from Dr. Deborah Birx. *See Exhibit “I”.*
 - (i) Lawsuit Allegation: The Requestor’s petition explicitly names Dr. Birx as a central figure in the alleged retaliation. It claims, “On September 15, 2023, TTUHSC hired Dorothy Birx, an individual that has frequently been the subject of criticism by Plaintiff... Three days later... Plaintiff began to be inundated with complaints against him... The Interim Suspension is the culmination of this process of retaliation.” *See Exhibit “E” at p. 2.*
- (c) Request 2 in Exhibit “I”: Asks for all “R2T4 worksheets/calculations,” “Student Business Services/Bursar ledger entries,” and records on “transcript holds.” *See Exhibit “I”.*
 - (i) Lawsuit Allegation: The Requestor’s petition claims Requestor was “deprived of his property rights, in that Plaintiff has been charged tuition and fees, without any refund.” *See Exhibit “E” at p. 8.* It also seeks damages for “irrecoverable... financial... harm.” *See id.* At p. 6.
- (d) Requests 1, 4, and 6 in Exhibit “I”: These requests seek communications from “clerkship/rotation leadership and site directors/coordinates” and “preceptors assigned to [Requestor].” *See Exhibit “I”.*
 - (i) Lawsuit Allegation: The Requestor’s petition claims the suspension was timed to cause academic harm by

³ TTUS recognizes and informed the Requestor that request 8-10 in Exhibit “I” are FERPA and Transcript requests, directed to the registrar, and not handled pursuant to the PIA. Nonetheless, the exceptions set forth herein should still apply to the communications, handling, etc. regarding the October 9, 2025 requests (Exhibit “A”).

preventing him from completing his family medicine clinical rotation. It also alleges unfair academic and professional harassment and criticism from faculty members” led to unfavorable performance assessments. *See generally Exhibit “E”.*

(e) Request 6 in Exhibit “I”: Seeks metadata from high-level administration, including the Chancellor, Board of Regents, and President, about “Kevin Norris Bass” or “student” or “medical student”. *See generally Exhibit “E”.*

(i) Lawsuit Allegation: The Requestor’s petition alleges a coordinated “process of retaliation” and “unfair... harassment” by the administration. *See Exhibit “E” p. 2 & 4.* This metadata request is a classic e-discovery tactic to establish who was communicating about him (or any student based on the request), when, and to whom, in an attempt to prove this alleged conspiracy.

(2) Further, litigation is reasonably anticipated by TTUS based on the preservation notice it received on October 6, 2025. *See Exhibit “G”.* This reasonable anticipation is corroborated by additional preservation notices/litigation holds received on October 20, 2025. *See Exhibit “G”.*

(3) Moreover, litigation is reasonably anticipated by TTUS based on the threats of litigation contained in the Requestor’s posts on the social media platform “X”. *See Exhibit “H”.* For example:

(a) On October 1, 2025, Requestor posted “I have submitted exhaustive public records requests regarding my dismissal from Texas Tech University Health Sciences Center School of Medicine. This will not be a public pressure campaign. This will be a total war for the truth.”

(b) On October 7, 2025, Requestor posted “Texas Tech used a playbook on me that is used to destroy people around the country. I hope to provide a public disincentive for institutions to use it on others, and provide an example counter-playbook for how to fight back.”

(i) In the comments under the October 7, 2025, post, Requestor posted “Suiting up for another round”, implicating and threatening another round of litigation against TTUS and/or TTUHSC.

(c) On October 8, 2025, Requestor reposted a previous post from September 2024 titled “It’s time for war”, commenting “I have the moral obligation to execute what I promised.” The “It’s time for

war” post was related to Requestor’s allegations that he was deprived of his due process rights under the Texas Education Code by TTUHSC as alleged in his previous lawsuit. *See generally Exhibit “E”.*

(d) On October 8, 2025, Requestor posted that he had filed a complaint with the Texas Attorney General’s Office regarding “non-acknowledgment by TTUHSC of [his] public records request and preservation notice.”

(e) On October 10, 2024, Requestor posted that “[a]s for lawsuits, let’s just say [] [i]t’s not out of the question.” Requestor continued in the post by requesting people to get in contact with his lawyer to provide any information related to “what happened” to him at Texas Tech. Further, Requestor requested that people share their story with him to “get more arrows in the quiver” and to “team up” against TTUS and/or TTUHSC.

(f) On October 28, 2025, Requestor posted “[i]t’s time.” “Please support the legal effort.” The post contained a link to a donation website titled “[l]egal fees after being dismissed from med school.”

(4) Thus, the requests in Exhibit “A” pertain to and are connected/related to the previous and reasonably anticipated litigation. The requestor has already filed suit on an almost identical subject matter (Exhibit “E”), which was dismissed *without* prejudice (Exhibit “F”). This history, combined with the discovery-like nature of his new requests, the preservation notices/litigation holds, and the threats of litigation posted on “X”, clearly indicate the Requestor is threatening to refile suit on the same subject matter. *See Exhibits “A” & “E”-“I”.*

Therefore, based on the above facts, TTUS has met both prongs of the TEX. GOV’T CODE § 552.103 exception, and the documents in Exhibit “D”, should be withheld as marked to allow the court’s discovery process to control the disclosure of these documents and protect TTUS’ rights and interests. *See Tex. Att’y Gen. Op. No. OR-2018-08255 and Tex. Att’y Gen. Op. No. OR-2018-15320* [“University may withhold the submitted information under Section 552.103(a) of the Government Code”].

B. Alternatively, The Requested Communications and Records Are Excepted Under Texas Government Code § 552.107 and Should Be Withheld.

1. Information the attorney general is prohibited from disclosing to the public because of a duty to a client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct is excepted from required disclosure. TEX. GOV’T CODE §552.107. The information protected under TEX. GOV’T CODE §552.107 is the same as that which is protected under TEX. R. EVID. 503 (“Rule 503”), the attorney-client privilege. Open Records Decision No. 676, 2002 WL 31827950 at

3 (2002). The purpose of the attorney-client privilege is to secure the free flow of information between attorney and client on legal matters, without the fear that details of the communication will be disclosed. *In re Monsanto*, 998 S.W. 2d 917, 922 (Tex. App. – Waco 1999, orig. proceeding).

2. Except as specifically provided by Rule 503⁴, a governmental body has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of legal services to the governmental body. TEX. R. EVID. 503(b)(1); Tex. Att'y Gen. Op. No. 2010-00024, 2010 WL 24981 at 1 (January 4, 2010). Confidential communications means those not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of legal services to the client or those reasonably necessary for the transmission of the communication. TEX. R. EVID. 503(a)(5); Tex. Att'y Gen. Op. No. 2010-00024, 2010 WL 24981 at 1 (January 4, 2010). Confidentiality is based on the intent of the parties at the time the communication was made. *Osborne v. Johnson*, 954 S.W. 2d 180, 184 (Tex. App.–Waco 1997, no writ).

3. The attorney-client privilege applies to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A)-(D); Open Records Decision No. 676, 2002 WL 31827950 at 5 (2002); Tex. Att'y Gen. Op. No. 2010-00024, 2010 WL 24981 at 1 (January 4, 2010).

a) A “representative” of the client is a person (1) having authority to obtain legal services or act on such advice, or (2) any other person who makes or receives a confidential communication for the purpose of effectuating legal representation of the client while acting in the scope of their employment by the client. TEX. R. EVID. 503(a)(2); *Osborne v. Johnson*, 954 S.W. 2d at 184. Those persons in the first group are members of the entity’s “control group,” and those in the second group are determined under the “subject matter test” to be employees making communications at the direction of the employee’s superiors, where the subject matter of the communication is the performance by the employee of his or her duties, and involves the subject matter on which the attorney’s advice is sought. Open Records Decision No. 676, 2002 WL 31827950 at 5 (2002).

b) The attorney-client privilege only applies when the attorney or representative is involved in the capacity as providing or facilitating professional legal services to the governmental body. *In re Texas Farmers Insurance Exchange*, 990 S.W. 2d 937, 340 (Tex. App.–Texarkana 1999, orig. proceeding); Tex. Att'y Gen. Op. No. 2009-18103, 2009 WL 5127817 at 2 (December 22, 2009).

⁴ Exceptions are (1) furtherance of crime or fraud; (2) claimants through the same deceased client; (3) breach of duty by a lawyer or client; (4) document attested by a lawyer; or (5) joint clients. TEX. R. EVID. 503(d).

4. The attorney-client privilege extends to the entire communication, including the facts contained within the communication. *Huie v. DeShazo*, 922 S.W. 2d 920, 923 (Tex. 1996). According to Tex. Att'y Gen. Op. No. 2010-00024, the governmental body must establish the following to demonstrate the attorney-client privilege applies:
 - a) The information constitutes or documents a communication;
 - b) The communication was made for the purpose of facilitating the rendition of legal advice to the governmental body, and that the attorneys involved were in the capacity of providing legal services;
 - c) The communication was “between or among clients, client representatives, lawyers, and lawyer representatives;” and
 - d) The communication was not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. Tex. Att'y Gen. Op. No. 2010-00024, 2010 WL 24981 at 1 (January 4, 2010).
5. We have marked the documents to which section 552.107, attorney-client privilege, applies.
 - a) In general, the fact that the documents are communications between TTUS General Counsel for TTUS and/or TTUHSC employees should be self-evident as most of them are emails made for the purpose of facilitating the rendition of legal services to TTUS.
 - b) In general, the fact that the documents are to request or provide legal advice or services between TTUS and TTUHSC employees, representatives, lawyers and lawyer representatives should also be self-evident.
 - c) In general, the fact that the documents are email or other communications made for the purpose of providing legal advice to TTUS and TTUHSC should also be self-evident.
 - d) The parties involved in each communication to which this exception applies should be self-evident on the document or will be explained on the document.

The documents in Exhibit “D” were not intended to be disclosed to third parties. TTUS does not intend to disclose the drafts to third parties and in fact, these drafts may contain inaccuracies as part of the drafting process. To our knowledge, none of the documents in Exhibit “D” have been released to the public or to persons not within the classes of TTUS’ or TTUHSC’s “representatives” or “lawyers and their representatives.” Exhibit “D” should

be withheld as marked under 552.107.

C. Alternatively, The Requested Communications and Records Are Excepted Under Tex. Gov't Code §552.111 and Should Be Withheld.

1. An interagency memoranda or letter that would not be available to a party in litigation with the agency is excepted from required disclosure. TEX. GOV'T CODE § 552.111. 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* Open Records Decision No. 615 at 5.
2. 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 City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.); *Lett v. Klein Indep. Sch. Dist.*, 917 S.W. 2d 455, 457 (Tex. App.—Houston [14th Dist.] 1996, writ denied); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W. 2d 408, 412 (Tex. App.—Austin 1992, no writ); Open Records Decision No. 538 at 1-2 (1990); Tex. Atty. Gen. Op. No. 2010-15653; and Tex. Atty. Gen. Op. No. 2010-06608.
3. 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. Open Records Decision No. 615 at 5; *see also City of Garland*, 22 S.W.3d 351 (section 552.111 not applicable to personnel-related communications that did not involve policymaking).
4. 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). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); ORD 615 at 4-5. However, 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); Tex. Atty. Gen. Op. No. 2010-12406; and Tex. Atty. Gen. Op. No. 2010-17898.
5. Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party with privity of interest. *See* Open Records Decision Nos. 631 at 2 (1995); 561 at 9 (1990); Tex. Atty. Gen. Op. No. 2010-15653; and Tex. Atty. Gen. Op. No. 2010-17898. For section 552.111 to apply to communications with a third party, the governmental body must

identify the third party and explain the nature of its relationship with the governmental body. *See* ORD 561 at 9; *and* Tex. Atty. Gen. Op. No. 2010-15653. 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 at 9; *and* Tex. Atty. Gen. Op. No. 2010-15653.

6. A preliminary draft of a document that is 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 and is excepted in its entirety from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor); Tex. Atty. Gen. Op. No. 2010-17898; Tex. Atty. Gen. Op. No. 2010-06608; Tex. Atty. Gen. Op. No. 2010-12406; *and* Tex. Atty. Gen. Op. No. 2010-15653. Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See* ORD 559 at 2-3; *and* Tex. Atty. Gen. Op. No. 2010-17898. Thus, section 552.111 or the "deliberative process privilege" 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* ORD 559 at 2; *and* Tex. Atty. Gen. Op. No. 2010-17898.
7. According to Tex. Atty. Gen. Op. No. 2010-15653, the governmental body must establish the following to demonstrate the deliberative process privilege applies:
 - a) The information constitutes or documents a communication;
 - b) The communication represents the drafter's advice, opinion and recommendation regarding the governmental body's policies or the form and content of a final document that will be released to the public in its final form;
 - c) The communication was between or among the governmental body's employees, representatives, or agents or it was between or among the governmental body and a third party in privity of interest or common deliberative process with the governmental body; and
 - d) If the communication was with a third party, the identity of the third party and the nature of its relationship with the governmental body; and
 - e) The communication was not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the deliberative process or as necessary for the transmission of the communication. Tex. Atty. Gen. Op. No. 2010-15653. *See also* Tex. Atty. Gen. Op. Nos. 2010-06608 and 2010-17898.

8. We have marked the documents to which section 552.111, deliberative process privilege, applies.
 - a) In general, the fact that the documents are communications between or among the governmental body's employees, representatives, or agents should be self-evident on the documents as all of the parties to the documents are TTUS and TTUHSC employees.
 - b) In general, the fact that the documents represents the drafter's advice, opinion and recommendation regarding the governmental body's policies or practices or the form and content of a final document that will be released to the public should also be self-evident as some of these documents are preliminary drafts and discussions regarding policy decisions.
 - c) These documents, and the documents they represent, were all communications between attorneys with the TTUS Office of General Counsel and employees of TTUS or one of its components and they were not intended to be disclosed to outside parties.

Therefore, the documents contained in Exhibit "D" contains information that should be withheld under this exception and as described above. The documents in Exhibit "D" should be withheld as marked under 552.111.

III. CONCLUSION

For the reasons stated above, TTUS requests that the records included for your review in Exhibit "D" be excepted from public disclosure as described above. We await your decision regarding this matter and thank you in advance for your kind assistance.

Should you have any questions or need any additional documentation or documents, please do not hesitate to contact me.

Very truly yours,

Brontë Staugaard

Brontë C. Staugaard
Assistant General Counsel

Enclosures: Exhibit "A" – October 9, 2025, Requests
Exhibit "B" – Attorney General Request for Opinion Letter
Exhibit "C" – Response to Requestor Letter
Exhibit "D" – Documents Requested to be Withheld
Exhibit "E" – Requestor's Original Petition
Exhibit "F" – Order of Nonsuit without Prejudice
Exhibit "G" – Preservation Notices/Litigation Holds

Exhibit “H” – Threats of Litigation-Posts on “X”
Exhibit “I” – October 3, 2025, Public Information Act Requests

xc: (without enclosures)

Kevin Bass
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