



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 10, 2015

Ms. Sarah Knippa
Records Coordinator
Travis Central Appraisal District
P.O. Box 149012
Austin, Texas 78714-9012

OR2015-14025

Dear Ms. Knippa:

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# 569535 (PIR No. 10696).

The Travis Central Appraisal District (the "district") received a request for copies of all correspondence between two named employees and any lobbyist working for the district and any officer, employee, attorney, or lobbyist for the Texas Association of Appraisal District during a defined time period. You claim the submitted information is excepted from disclosure under sections 552.106 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the present request because it does not pertain to the specified time period. This ruling does not address the public availability of any information that is not responsive to the request, and the district is not required to release such information in response to this request.

Next, we note some of the submitted responsive information, which we have marked, was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-14018 (2015). In that ruling, we determined the district (1) may withhold the information we marked under section 552.106(a) of the Government Code; (2) may withhold the information we marked under section 552.111 of

the Government Code; (3) must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (4) must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure; and (5) must release the remaining responsive information. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the district must continue to rely on that ruling as a previous determination and withhold or release the information we have marked in accordance with Open Records Letter No. 2015-14018.¹ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, the remaining responsive information you have submitted was not at issue in the prior ruling. Accordingly, we will consider the exceptions you have raised for this information.

Section 552.106(a) of the Government Code excepts from required public disclosure “[a] draft or working paper involved in the preparation of proposed legislation[.]” Gov’t Code § 552.106(a). Section 552.106(a) ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. *See* Open Records Decision No. 460 at 1 (1987). Therefore, section 552.106 is applicable only to the policy judgments, recommendations, and proposals of persons who are involved in the preparation of proposed legislation and who have an official responsibility to provide such information to members of the legislative body. *Id.*; *see also* Open Records Decision Nos. 429 at 5 (1985) (statutory predecessor to Gov’t Code § 552.106 not applicable to information relating to governmental entity’s efforts to persuade other governmental entities to enact particular ordinances), 367 at 2 (1983) (statutory predecessor applicable to recommendations of executive committee of State Board of Public Accountancy for possible amendments to Public Accountancy Act). Section 552.106 does not protect purely factual information from public disclosure. *See* ORD 460 at 2; *see also* Open Records Decision No. 344 at 3-4 (1982) (for purposes of statutory predecessor, factual information prepared by State Property Tax Board did not reflect policy judgments, recommendations, or proposals concerning drafting of legislation). However, a comparison or analysis of factual information prepared to support proposed legislation falls within the scope of section 552.106. *See* ORD 460 at 2.

You assert the remaining responsive information consists of communications between district employees and various entities and individuals, including legislative staff members, that are protected under section 552.106(a). However, upon review, we find you have failed to demonstrate section 552.106 is applicable to the district communications with individuals who are not legislative staff members or that the remaining information was prepared at the

¹As our ruling is dispositive, we need not address your arguments against disclosure of this information.

request of the legislature. *Cf.* Open Records Decision No. 429 (1985) (predecessor to section 552.106 not applicable to materials prepared by person or agency who has no official responsibility to do so but only acts as interested party who wishes to influence legislative process); *see also* Open Records Decision No. 460 at 3 (1987) (predecessor to section 552.106 resembles predecessor to section 552.111 in that both exceptions protect advice, opinion, and recommendations on policy matters in order to encourage frank discussion during the policy-making process). Furthermore, some of the remaining responsive information is purely factual. Thus, we find you have failed to demonstrate the remaining responsive information constitutes advice, opinion, analysis, or recommendations for purposes of section 552.106. Consequently, the district may not withhold any of the remaining responsive information under section 552.106 of the Government Code.

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 that are 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 Nos. 631 at 2 (section 552.111 encompasses information created for governmental body by outside consultant acting at governmental body's request and performing task that is within governmental body's authority), 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process), 462 at 14 (1987) (section 552.111 applies to memoranda prepared by governmental body's consultants). 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 at 9.

You state the submitted information "include[s] advice, opinion, or recommendation intended for use in the [district's] policymaking/deliberative process matters relating to the district." However, the remaining information at issue was sent to or received from representatives of other governmental bodies. We find you have failed to demonstrate how the district shares a privity of interest or common deliberative process with the representatives of the other governmental bodies. Further, we find some of the remaining information at issue is general administrative and purely factual information. Therefore, we find you have failed to demonstrate how any of the remaining responsive information at issue consists of advice, opinions, or recommendations regarding policymaking matters. Consequently, the district may not withhold any of the remaining responsive information at issue under section 552.111 of the Government Code.

We note the information at issue contains e-mail addresses that may be subject to section 552.137 of the Government Code.² Section 552.137 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). 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). Upon review, we find the district must withhold the e-mail addresses in the remaining responsive information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies.

²The Office of the Attorney General will raise a mandatory exception 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 district must continue to rely on Open Records Letter No. 2015-14018 as a previous determination and withhold or release the information we have marked in accordance with that ruling. The district must withhold the e-mail addresses in the remaining responsive information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies. The remaining responsive information must be released.

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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 569535

Enc. Submitted documents

c: Requestor
(w/o enclosures)