



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 13, 2015

Mr. James Powell
Assistant General Counsel
North Central Texas Council of Governments
P. O Box 5888
Arlington, Texas 76005-5888

OR2015-14196

Dear Mr. Powell:

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# 571811.

The North Central Texas Council of Governments (the "council") received a request for all correspondence to or from a named individual during a specified period of time and containing specified terms. You state you have released some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the interests of a third party. Accordingly, you state and provide documentation demonstrating, you have notified the North Texas Tollway Authority (the "authority") of the request for information and of its right to submit arguments stating why its information should not be released. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released). We have reviewed the submitted information and the arguments submitted by the authority.¹

¹We note the council failed to comply with section 552.301 of the Government Code when requesting this ruling. *See* Gov't Code § 552.301(b), (e). However, because third party interests can provide a compelling reason against disclosure, we will consider whether the submitted information may be withheld based on the interests of the authority. *See* Open Records Decision No. 150 at 2 (1977).

The authority claims the submitted information is excepted from disclosure under section 552.111 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*, 22 S.W.3d 351 (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).

This office has also concluded a preliminary draft of a document 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, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 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 id.* at 2.

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party, with which the governmental body

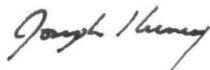
establishes it has a privity of interest or common deliberative process. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body.

The authority states it entered into an agreement with the Texas Department of Transportation (the “department”) and the City of Dallas (the “city”) for a specified development project. Further, the authority states the information at issue was shared with the members of the Regional Working Group (the “RWG”). The authority informs us the RWG consists of representatives of the city, the department, the authority, and the council who meet to discuss and consider options for the design of the development project. Thus, we understand the council, the department, and the city share a privity of interest with the authority regarding the project. The authority informs us the submitted information relates to preliminary studies and projections, if released, will impair frank and open discussion within the RWG in connection with the decision-making process necessary for a proper decision of what involvement the authority will ultimately have in the project. The authority also states the current information is subject to modification or additional adjustments. Based on these representations and our review, we find the submitted information consists of advice, opinions, or recommendations pertaining to policymaking matters of the authority. Accordingly, the council must withhold this information, on behalf of the authority, under section 552.111.

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,



Joseph Keeney
Assistant Attorney General
Open Records Division

JDK/eb

Ref: ID# 571811

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Robert Schell
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(w/o enclosures)