



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 25, 2016

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2016-04548

Dear Ms. Quinn:

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# 599631 (Reference No. 16-176).

The City of Cedar Park (the "city") received a request for communications pertaining to "KXAN and/or racial profiling" for a specified time period. You state you will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.111, 552.117, and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See* Fam. Code § 58.007(c). Section 58.007 provides, in relevant part, the following:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Id. For purposes of section 58.007(c), a “child” means a person who is ten years of age or older and under seventeen years of age when the conduct occurred. *Id.* § 51.02(2). We note some of the information at issue relates to traffic offenses. Section 58.007 does not make information related to traffic offense confidential. *See id.* § 51.02(16) (defining traffic offense); *see also id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). Upon review, we find the information we indicated involves alleged delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. However, we are unable to determine the age of the offenders at issue. Therefore, we must rule conditionally. Thus, if the offenders at issue were ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the offenders at issue were not ten years of age or older and under seventeen years of age at the time of the conduct, then the information at issue is not confidential under section 58.007(c) and the city may not withhold this information under section 552.101 of the Government Code on that basis. Further, we find the city has not demonstrated the applicability of section 58.007(c) of the Family Code to the remaining information at issue. Thus, the city may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family 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 refd 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).

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.

You state Exhibit B consists of draft documents pertaining to the city's policies for racial profiling and mobile/audio recordings. You inform us the city has released the final versions of the policies to the requestor. Upon review, we find you have demonstrated the applicability of the deliberative process to most of the information at issue. Therefore, except for the information we have marked for release, the city may withhold Exhibit B under section 552.111 of the Government Code. However, we find the information we marked for release consists of general administrative and purely factual information. Accordingly, the city may not withhold the information we marked for release under section 552.111.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family

member information of current or former employees or officials of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. You state the employee at issue timely elected confidentiality under section 552.024. Therefore, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code. However, we find none of the remaining information at issue is subject to section 552.117, and the city may not withhold any of the remaining information at issue on that basis.

Section 552.122 of the Government Code excepts from public disclosure “[a] test item developed by a . . . governmental body[.]” Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined the term “test item” in section 552.122 includes “any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated,” but does not encompass evaluations of an employee's overall job performance or suitability. ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976).

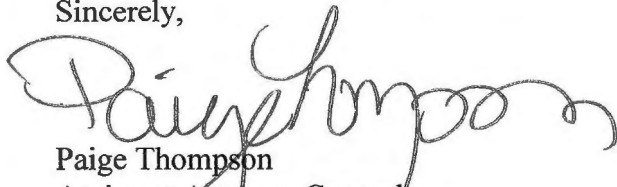
The city argues the information in Exhibit C contains questions that test the knowledge of students taking the exams and release of the information would undermine the effectiveness of future examinations. Upon review, we find the information at issue consists of a practice exam for a Texas Commission on Law Enforcement Exam, which the Texas A&M Engineering Extension Service (“TEEX”) makes publicly available to law enforcement professionals online. Accordingly, we find the city failed to demonstrate release of the information at issue would compromise the effectiveness of future examinations. Further, we note TEEX does not seek to withhold the information at issue under section 552.122. Therefore, the city may not withhold Exhibit C under section 552.122(b) of the Government Code.

In summary, if the offenders at issue were ten years of age or older and under seventeen years of age at the time of the conduct at issue, the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city may withhold Exhibit B under section 552.111 of the Government Code. The city must withhold the information we marked under section 552.117(a)(1) of the Government Code. The city 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 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 599631

Enc. Submitted documents

c: Requestor
(w/o enclosures)