



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 28, 2017

Mr. Marc C. Kratovil  
Assistant Criminal District Attorney  
Tarrant County  
401 West Belknap, 9th Floor  
Fort Worth, Texas 76196-0201

OR2017-22238

Dear Mr. Kratovil:

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# 677571.

Tarrant County (the "county") received a request for e-mails between two named county officials and three specified county departments during a certain time period. You state some information will be released upon payment of costs. You claim some of the submitted information is excepted from disclosure under section 552.101, 552.111, and 552.117 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

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. This section encompasses information protected by other statutes, such as section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. Section 418.182 provides in part:

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<sup>1</sup>Although you also raise section 552.1175 of the Government Code, we note section 552.117 of the Government Code is the proper exception to raise for information the county holds in its capacity as an employer.

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

*Id.* § 418.182(a). The fact information may generally be related to a security system does not make the information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the information at issue consists of the access code for a secured county building. You indicate release of the information at issue would thwart the security system of the building at issue and compromise building security. Based on your representations and our review, we find the information you marked relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. Accordingly, the county must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 418.182(a) 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[.]” *Id.* § 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 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 the information you marked consists of advice, opinions, and recommendations of employees and officials of the commission regarding policymaking matters. You further state the information at issue consists of draft documents that were released in their final forms. Upon review, we find the county may withhold the information you marked under section 552.111 of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). In this instance we are unable to determine whether the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12; therefore, we must rule conditionally. If the individuals at issue are currently licensed peace officers as defined by article 2.12, then the county must withhold the information we marked

under section 552.117(a)(2) of the Government Code. However, the county may only withhold the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. Conversely, if the individuals at issue are not currently licensed peace officers as defined by article 2.12, the county may not withhold the information at issue under section 552.117(a)(2) of the Government Code.

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 a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code § 552.117(a)(1)*. Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See ORD 506 at 5-6*. 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 the 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. Therefore, to the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the county must withhold the information you marked, and the additional information we marked, under section 552.117(a)(1) of the Government Code; however, the county may only withhold the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. Conversely, to the extent the employees at issue did not timely request confidentiality under section 552.024, the county may not withhold the information under section 552.117(a)(1).

In summary, the county must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. The county may withhold the information you marked under section 552.111 of the Government Code. If the individuals at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, the county must withhold the information we marked under section 552.117(a)(2) of the Government Code. However, the county may only withhold the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. To the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the county must withhold the information you marked, and the additional information we marked, under section 552.117(a)(1) of the Government Code; however, the county may only withhold the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. The county 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](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,

A handwritten signature in black ink that reads "Emily Kunst". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/tdw

Ref: ID# 677571

Enc. Submitted documents

c: Requestor  
(w/o enclosures)