



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 25, 2018

Ms. Sharen Wilson
Criminal District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196

OR2018-01667

Dear Ms. Wilson:

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# 692930.

The Tarrant County Criminal District Attorney's Office (the "district attorney's office") received a request for a copy of a specified complaint, as well as information and communications pertaining to the specified complaint. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by an interested third party. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note you have only submitted communications for our review. Thus, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note some of the responsive information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-25505 (2017). In that ruling, we determined the district attorney's office may withhold the marked information under section 552.111 of the Government Code and

section 552.137 of the Government Code, but must release the remaining information. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, we conclude the district attorney's office must continue to rely on Open Records Letter No. 2017-25505 as a previous determination and withhold or release the identical information in accordance with that ruling. *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). We consider the arguments of the district attorney's office for information not previously ruled upon.

Section 552.108(a)(2) of the Government Code exempts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The district attorney's office states the submitted information pertains to an investigation with the Texas Rangers that has concluded and did not result in a conviction or deferred adjudication. In this instance, the district attorney's office has not provided our office with any representation to indicate the Texas Rangers wish to have the information at issue withheld. Accordingly, the district attorney's office has failed to demonstrate section 552.108(a)(2) of the Government Code is applicable to the information at issue, and the district attorney's office may not withhold any portion of the submitted information under section 552.108(a)(2).

Section 552.111 of the Government Code exempts 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 exempts 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).

The district attorney's office states the submitted information consists of "interagency and intraagency communications consisting of advice, recommendations, and opinions" of the district attorney's office pertaining to the policymaking functions of the district attorney's office. Based on the district attorney's office's representations and our review of the information at issue, we find the district attorney's office has demonstrated portions of the information at issue, which it marked, consists of advice, opinions, or recommendations on the policymaking matters of the district attorney's office. Thus, the district attorney's office may withhold the information it marked under the deliberative process privilege of section 552.111 of the Government Code.

We note some of the remaining information may be subject to section 552.117 of the Government Code.¹ 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). 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 employee at issue timely requested confidentiality under section 552.024 of the Government Code, the district attorney's office must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the employee at issue did not timely request

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

confidentiality under section 552.024, the district attorney's office may not withhold the information at issue under section 552.117(a)(1).

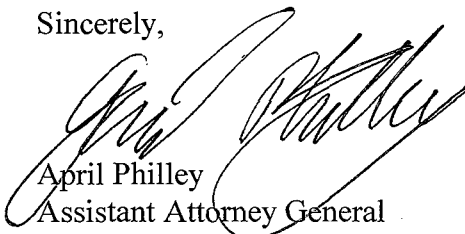
Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov't Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the district attorney's office must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the district attorney's office must continue to rely on Open Records Letter No. 2017-25505 as a previous determination and withhold or release the identical information in accordance with that ruling. The district attorney's office may withhold the information it marked under the deliberative process privilege of section 552.111 of the Government Code. To the extent the employee at issue timely requested confidentiality under section 552.024 of the Government Code, the district attorney's office must withhold the information we marked under section 552.117(a)(1) of the Government Code. The district attorney's office must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The district attorney's office 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,



April Philley
Assistant Attorney General
Open Records Division

AP/som

Ref: ID# 692930

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)