



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 20, 2019

Ms. Jennifer Slack
Assistant District Attorney
Lubbock County
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2019-13358

Dear Ms. Slack:

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# 766152 (ORR. 1351).

Lubbock County (the "county") received a request for specified e-mails of a named county official during a specified time period. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.111, 552.117, 552.130, 552.136, 552.137, and 552.147 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note, and you acknowledge, some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-12078 (2019). In that ruling, we concluded the following: (1) with the exception of certain information we marked for release, the county may withhold the information it marked under section 552.111 of the Government Code; (2) the county must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy; (3) to the extent the individuals whose information is at issue are currently-licensed peace officers as defined by article 2.12 of the Code of Criminal

¹Although you also raise section 552.024 of the Government Code, we note this section is not an exception to disclosure. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the governmental body. *See* Gov't Code § 552.024. Additionally, although you do not raise section 552.136 of the Government Code in your brief, we understand you to raise this exception based on your markings.

Procedure, the county must withhold certain information under section 552.117(a)(2) of the Government Code; however, the county may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body; (4) to the extent the individuals whose information we marked are not currently-licensed peace officers, but timely requested confidentiality under section 552.024 of the Government Code, the county must withhold certain information under section 552.117(a)(1) of the Government Code; however, the county may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body; (5) the county must withhold certain motor vehicle record information we marked under section 552.130 of the Government Code; (6) with the exception of certain information we marked for release, the county must withhold the information it marked under section 552.136 of the Government Code; (7) the county must withhold certain e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure; (8) to the extent the social security number of the individual at issue is not confidential under section 552.117 of the Government Code, the county may withhold it under section 552.147 of the Government Code; and (9) the county must release the remaining information. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the county must continue to rely on Open Records Letter No. 2019-12078 as a previous determination and withhold or release the information subject to that ruling in accordance with it.² 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 that information is or is not excepted from disclosure).

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; see also *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37

²As we are able to make this determination, we need not address your arguments against the disclosure of the information subject to Open Records Letter No. 2019-12078.

S.W.3d 152 (Tex. App.—Austin 2001, no pet.). 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). However, 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. ORD 615 at 5-6; *see also Dallas Morning News*, 22 S.W.3d at 364 (section 552.111 not applicable to personnel-related communications that did not involve policymaking).

Further, section 552.111 does not protect facts and written observations of facts and events severable from advice, opinions, and recommendations. *See Arlington Indep. Sch. Dist.*, 37 S.W.3d at 157; 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 a privity of interest. *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. 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 id.* We note a governmental body does not have a privity of interest or common deliberative process with a private party with which the governmental body is engaged in contract negotiations. *See id.* (Section 552.111 not applicable to communication with entity with which governmental body has no privity of interest or common deliberative process).

You seek to withhold the remaining information you marked under section 552.111 of the Government Code. You state the information you marked consists of advice, opinions, and recommendations of employees and officials of the county regarding policymaking matters of the county. You further state the information at issue includes draft documents that, upon request, will be released in their final form. Based upon your representations and our review,

we find some of the information at issue consists of advice, opinions, or recommendations on the policymaking matters of the county. Accordingly, the county may withhold the information we marked under section 552.111 of the Government Code. However, we find the remaining information at issue is general administrative and purely factual information that does not pertain to policymaking. Thus, we find you failed to demonstrate the remaining information at issue consists of advice, opinions, or recommendations on the policymaking matters of the county. Therefore, the county may not withhold the remaining information under section 552.111 of the Government Code.

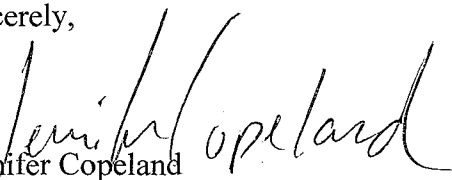
Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body[.]” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Accordingly, the county must withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the county must continue to rely on Open Records Letter No. 2019-12078 as a previous determination and withhold or release the information subject to that ruling in accordance with it. The county may withhold the information we marked under section 552.111 of the Government Code. The county must withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The remaining 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,


Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/mo

Ref: ID# 766152

Enc. Submitted documents

c: Requestor
(w/o enclosures)