



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2019

Mr. Lance Kennedy
Counsel for the City of Mineral Wells
Messer, Rockefeller & Fort, P. L. L. C.
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2019-20667

Dear Mr. Kennedy:

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# 777390 (ORR ID# MW050619CW).

The City of Mineral Wells (the "city"), which you represent, received a request for all e-mails sent by named or specified city officials during a specified time period related to a specified topic. You claim the submitted information is excepted from disclosure under sections 552.111 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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*

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 those records contain substantially different types of information than that submitted to this office.

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 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. 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).

You state the submitted information consists of advice, opinions, and recommendations of city employees regarding policymaking matters. Based on your representations and our review of the information at issue, we find you have demonstrated some of the information at issue consists of advice, opinions, or recommendations on the policymaking matters of the city. Thus, the city may withhold the information we have marked under section 552.111 of the Government Code.² However, we find the remaining information is either factual in nature or consists of internal administrative matters that do not rise to the level of policymaking. Therefore, we find you have failed to demonstrate the remaining information constitutes internal communications containing advice, recommendations, or opinions reflecting the policymaking processes of the city. Accordingly, the city may not withhold any of the remaining information under section 552.111 of the Government Code on the basis of the deliberative process privilege.

Section 552.131(b) of the Government Code provides, “[u]nless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

from” required public disclosure. Gov’t Code § 552.131(b). Upon review, we find you have not demonstrated any of the remaining information consists of information about a financial or other incentive being offered to a business prospect by the city. Consequently, the city may not withhold any of the remaining information under section 552.131(b).

In summary, the city may withhold the information we have marked under section 552.111 of the Government Code and 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,

A handwritten signature in black ink, appearing to read "Tim Neal", with a stylized flourish above the name.

Tim Neal
Assistant Attorney General
Open Records Division

TN/jxd

Ref: ID# 777390

Enc. Submitted documents

c: Requestor
(w/o enclosures)