



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 29, 2019

Ms. Alicia K. Kreh  
Counsel for the Town of Flower Mound  
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2019-30548

Dear Ms. Kreh:

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# 793711.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a specified item discussed at a town-council meeting. The town states it will withhold information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> The town claims the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

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*,

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<sup>1</sup> Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

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).

The town asserts the submitted information reflects the town's policymaking process regarding the renewal of a contract. Upon review, we find the town has established the deliberative process privilege is applicable to some of the submitted information, which we have marked. Therefore, the town may withhold the information we have marked under section 552.111 of the Government Code. However, we conclude the town has not established the remaining information consists of advice, opinion, or recommendations, or it is purely factual in nature. Accordingly, the town may not withhold any of the remaining information under section 552.111 and the deliberative process privilege.

Section 552.117 of the Government Code may be applicable to some of the remaining information.<sup>2</sup> Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, 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 section 552.024 or section 552.1175 of the Government Code.<sup>3</sup> Gov't Code § 552.117(a)(2). Section 552.117 also encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Accordingly, the town must withhold the information we have marked under section 552.117(a)(2) of the Government Code if the employees at issue are currently licensed peace officers as defined by article 2.12; however, the town may only withhold the cellular telephone number at issue under section 552.117(a)(2) if the cellular telephone

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<sup>2</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

<sup>3</sup> "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

service was not provided to the employee at public expense. If the employees are not currently licensed peace officers as defined by article 2.12, then the town may not withhold this information under section 552.117(a)(2).

Nevertheless, if the employees are not currently a licensed peace officer, then the information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) 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 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 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 who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the employees are not currently licensed peace officers as defined by article 2.12 and they timely requested confidentiality under section 552.024 of the Government Code, then the town must withhold the information at issue under section 552.117(a)(1) of the Government Code; however, the town may only withhold the cellular telephone number at issue under section 552.117(a)(1) if the cellular telephone service was not provided to the employee at public expense. To the extent the former employees are not currently licensed as peace officers as defined by article 2.12 and did not timely request confidentiality under section 552.024, then the town may not withhold the information at issue under section 552.117(a)(1).

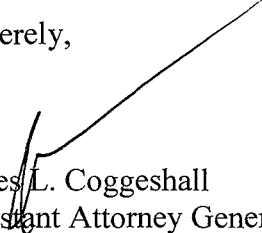
In summary, the town may withhold the information we have marked under section 552.111 and the deliberative process privilege. The town must withhold the information we have marked under section 552.117(a)(2) of the Government Code if the employees at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure; however, if the employees are not currently licensed peace officers as defined by article 2.12 and they timely requested confidentiality under section 552.024 of the Government Code, then the town must withhold the information at issue under section 552.117(a)(1) of the Government Code. Nevertheless, the town may only withhold the cellular telephone number marked under section 552.117 of the Government Code if the cellular telephone service was not provided to the employee at public expense. The town 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/gw

Ref: ID# 793711

Enc. Submitted documents

c: Requestor  
(w/o enclosures)