



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 9, 2019

Ms. Lisa Hulsey
Assistant County Attorney
Harris County
1019 Congress, Fifteenth Floor
Houston, Texas 77002

OR2019-31215

Dear Ms. Hulsey:

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# 795685 (ORR# 19PIA0666).

The Office of the Harris County Judge (the "county") received a request for calendars for three named individuals during a specified time period. The county states it is releasing some of the requested information. The county argues some of the submitted information does not consist of public information subject to the Act. The county also claims some of the submitted information is excepted from disclosure under sections 552.111 and 552.152 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Initially, the county argues some of the submitted information is not subject to the Act. The Act applies to "public information," which is defined in section 552.002 of the Government Code as

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

¹ We 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.

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act can also encompass information that a governmental body does not physically possess. Information that is written, produced, collected, assembled, or maintained by a third party, including an individual officer or employee of a governmental body in his or her official capacity, may be subject to disclosure under the Act if a governmental body owns, has a right of access, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov't Code § 552.002(a); *see* Open Records Decision No. 462 at 4 (1987); *cf.* Open Records Decision No. 499 (1988). Information is "in connection with the transaction of official business" if it is "created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a government function on behalf of a governmental body, and pertains to official business of the governmental body." *Id.* § 552.002(a-1). Further, in Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. ORD 581 at 5. Moreover, section 552.001 of the Act provides it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See id.* § 552.001(a).

The county argues some of the information submitted as Exhibit 4 is not subject to the Act because the information is of a purely personal nature that does not concern the business of the county. The county argues this information was not written, produced, collected, or assembled by or for the county and is not maintained pursuant to any law or ordinance or in connection with the transaction of the county's business. The county indicates its policies allow for incidental use of its calendar by employees and officials. Based on these representations and our review of the information at issue, we find some of the information

at issue, which we marked, does not constitute “information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by or for the county. *See id.* § 552.002. Therefore, we conclude the information we marked does not constitute public information for purposes of section 552.002 of the Government Code. *See Open Records Decision No. 635 at 7 (1995)* (section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Accordingly, the county is not required to release the information we marked in response to the request for information. However, we note the remaining information at issue was created and is maintained by the officer or employee in the officer’s or employee’s official capacity. We further note the remaining information at issue pertains to the county’s official business. Accordingly, we find the remaining information was written, produced, collected, assembled, or maintained in connection with the transaction of the county’s official business. Therefore, we conclude the remaining information is subject to the Act and the county must release it unless the county demonstrates the information falls within an exception to public disclosure under the Act. *See Gov’t Code §§ 552.006, .021, .301, .302.*

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 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).

This office has also concluded a preliminary draft of a document that is 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.

The county states some of the information submitted as Exhibit 5, which it marked, addresses policy, security and budget issues, and research and analysis. The county explains this information is reflective of the deliberative process by which it shapes and develops county policy decisions. Thus, the county states the information at issue consists of advice, opinions, and recommendations of the county pertaining to its policymaking functions. Based on these representations and our review of the information at issue, we find the county has demonstrated some of the information at issue, which we marked, consists of advice, opinions, or recommendations on the policymaking matters of the county. Thus, the county may withhold the information we marked under section 552.111 of the Government Code. Upon review, however, we find the remaining information at issue is general administrative and purely factual information or does not pertain to policymaking. Thus, we find the county has not shown the remaining information at issue consists of internal communications containing advice, opinions, or recommendations on the policymaking matters of the county. Further, the county has failed to demonstrate the draft document will be released to the public in its final form. Accordingly, the county may not withhold the remaining information at issue under section 552.111 of the Government Code.

The county seeks to withhold some of the remaining information submitted as Exhibit 4 under section 552.152 of the Government Code. Section 552.152 provides,

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. Although the county states some of the remaining information is subject to section 552.152 of the Government Code, we find the county has not demonstrated the release of any of the information at issue would subject an employee of the county to a substantial threat of physical harm. Thus, the county may not withhold any of the remaining information under section 552.152 of the Government Code.

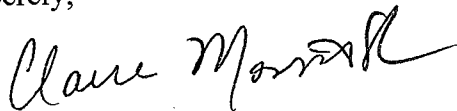
Some of the remaining information is subject to section 552.136 of the Government Code.² Section 552.136 provides, “Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Accordingly, the county must withhold the information we marked under section 552.136 of the Government Code.

In summary, the information we marked does not constitute public information for purposes of section 552.002 of the Government Code and the county is not required to release the information we marked in response to the request for information. The county may withhold the information we marked under section 552.111 of the Government Code. The county must withhold the information we marked under section 552.136 of the Government Code. 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 <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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/be

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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Enc. Submitted documents

c: Requestor
(w/o enclosures)