



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 8, 2020

Ms. Deanne Lin
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2020-10559

Dear Ms. Lin:

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# 820989 (C.A. File No. 20PIA0053).

The Harris County Community Service Department (the "department") received a request for communications sent to and received from a named individual during a specified time period and communications between two named individuals during a specified time period. You indicate you have no information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.111, 552.117, and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the information we indicated, is not responsive to the present request because it either does not pertain to the named individuals or it does not pertain to the time periods specified by the requestor. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release that information in response to the request.²

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

² As we are able to make this determination, we need not address your arguments under sections 552.117 and 552.139 of the Government Code.

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. 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).

You state the information you indicated relates directly to housing assistance program policies. You explain this information is reflective of the deliberative process and consists of advice, opinions, and recommendations of the department pertaining to its policymaking functions. Based on these representations and our review of the information at issue, we find the department has demonstrated most of the information it indicated consist of advice, opinions, or recommendations on the policymaking matters of the department. 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 department has not shown the remaining information at issue consists of internal communications containing advice, opinions, or recommendations on the policymaking matters of the department. Therefore, with the exception of the information we marked for release, the department may withhold the information it indicated under section 552.111 of the Government Code.

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,

Pearlie Gault
Attorney
Open Records Division

PG/eb

Ref: ID# 820989

Enc. Submitted documents

c: Requestor
(w/o enclosures)