



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2022

Ms. Kristine Nguyen
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 5DS
Dallas, Texas 75201

OR2022-20589

Dear Ms. Nguyen:

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# 959268 (ORR# Coo4116-050222).

The City of Dallas (the “city”) received a request for information pertaining to the Dallas Economic Board Corporation Board of Director nominations. You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception 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 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.*

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.

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 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 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.

You seek to withhold the submitted information under section 552.111 of the Government Code. You state the information at issue consists of draft documents that are intended to be released in their final forms. However, upon review, we find the submitted information consists of information that is administrative or purely factual in nature or does not pertain to policymaking. Thus, you have failed to demonstrate the submitted information at issue reveals advice, opinions, or recommendations that pertain to policymaking. Accordingly, the city may not withhold any of the submitted information under section 552.111 of the Government Code on the basis of the deliberative process privilege.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.² Gov’t Code § 552.1175. Section 552.1175 applies, in part, to

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

“current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1); *see id.* § 552.003(1-b) (defining “honorably retired” for purposes of the Act). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* ORD 506 at 5-6. The submitted information contains information that may be subject to section 552.1175. Accordingly, to the extent the information we marked relates to current or honorably retired peace officers who elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the city must withhold such information under section 552.1175 of the Government Code; however, the cellular telephone numbers at issue may be withheld only if a governmental body does not pay for the cellular telephone service.

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 exclude by subsection (c). *See* Gov’t Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, the general e-mail address of a business, an Internet website address, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address a governmental entity maintains for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). We are unable to determine if the e-mail addresses within the remaining information fall within the scope of section 552.137(c). Accordingly, we must rule conditionally. To the extent the e-mail addresses in the information at issue are not excluded by section 552.137(c), the city must withhold them under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. *See id.* § 552.137(b). However, to the extent the e-mail addresses are excluded by section 552.137(c), the city may not withhold them under section 552.137 of the Government Code.

In summary, to the extent the information we marked relates to current or honorably retired peace officers who elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the city must withhold such information under section 552.1175 of the Government Code; however, the cellular telephone numbers at issue may be withheld only if a governmental body does not pay for the cellular telephone service. To the extent the e-mail addresses in the remaining information are not excluded by section 552.137(c), the city must withhold them under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The city 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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/eb

Ref: ID# 959268

Enc. Submitted documents

c: Requestor
(w/o enclosures)