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ATTORNEY GENERAL OF TEXAS

September 15, 2022

Ms. Paige H. Saenz
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The Knight Law Firm, L.L.P.
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2022-28362

Dear Ms. Saenz:

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# 972502.

The City of Austin Employees Retirement System (the "system"), which you represent, received a request for certain information pertaining to a specified investment committee meeting. You state the system is releasing some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.104, 552.111, and 552.143 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.143 of the Government Code provides, in relevant part:

- (a) All information prepared or provided by a private investment fund and held by a governmental body that is not listed in Section 552.0225(b) is confidential and excepted from [required public disclosure].
- (b) Unless the information has been publicly released, pre-investment and post-investment diligence information, including reviews and analyses, prepared or maintained by a governmental body or a private investment fund is confidential and excepted from [required public disclosure], except to the extent it is subject to disclosure under Subsection (c).

Gov't Code § 552.143(a)-(b). You state the information submitted as Exhibit B consists of investment due diligence information that was prepared by system staff and consultants for the system. You also state the information at issue does not consist of the type of information that is subject to section 552.0225(b) of the Government Code, and we understand this information is not subject to disclosure pursuant to section 552.143(c) of the Government Code. Further, you state the information at issue has not been released to the public. Based on these representations and our review, we find the system must withhold Exhibit B under section 552.143 of the Government Code.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[.]” *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, 364 (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. *See 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).

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of the information at issue.

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 state the remaining information consists of advice, opinions, and recommendations of system employees regarding policymaking matters of the system. You also inform us the information submitted as Exhibit C consists of a draft document that reflects the deliberations of the system's staff. However, you do not explain whether the draft document at issue was intended to be released in its final form. Thus, we must rule conditionally with respect to the draft document at issue. To the extent the draft document at issue will be released to the public in its final form, the system may withhold Exhibit C in its entirety under section 552.111 of the Government Code. Conversely, to the extent the draft document will not be released to the public in its final form, the system may not withhold Exhibit C in its entirety under section 552.111. Nevertheless, in that instance, 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 system. Accordingly, to the extent the draft document will not be released to the public in its final form, the system may withhold the information we have marked under section 552.111 of the Government Code. However, we find you have failed to demonstrate the remainder of Exhibit C reveals advice, opinions, or recommendations that pertain to policymaking of the system, and the system may not withhold any portion of it under section 552.111. Furthermore, based on your representations and our review of the information at issue, we find you have demonstrated the information submitted as Exhibit D consists of advice, opinions, or recommendations on the policymaking matters of the system. Accordingly, the system may withhold Exhibit D under section 552.111 of the Government Code.

In summary, the system must withhold Exhibit B under section 552.143 of the Government Code. To the extent the draft document at issue will be released to the public in its final form, the system may withhold Exhibit C in its entirety under section 552.111 of the Government Code. To the extent the draft document will not be released to the public in its final form, the system may withhold the information we have marked under section 552.111 of the Government Code, but must release the remainder of Exhibit C. The system may withhold Exhibit D 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jxd

Ref: ID# 972502

Enc. Submitted documents

c: Requestor
(w/o enclosures)