



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 10, 1998

Mr. Cary Bovey  
Brown, McCarroll, Sheets & Crossfield  
300 E. Main Street  
Round Rock, Texas 78664-5246

OR98-3036

Dear Mr. Bovey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 120210.

The City of Round Rock (the city), which you represent, received two requests for all bills submitted to the city by Brown, McCarroll, Sheets & Crossfield, and all drafts or agreements concerning RSR, Inc. and the proposed baseball stadium. You indicate that you will release the fee bills submitted to the city except for information revealing client confidences or legal advice. You do not seek an opinion from this office concerning the requested fee bills. *See Gov't Code §§ 552.301, .302.* This ruling, therefore, does not address the propriety of the withholding of this information. You do assert, however, that the requested draft agreements, a Master Development Agreement and a Master Agreement and Lease Agreement, may be withheld under sections 552.104, 552.106, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

We first point out that you did not timely raise your claimed exception under section 552.104. The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to raise the exceptions that apply within ten business days after the governmental body's receipt of the request for information. You did not raise section 552.104 until October 9, 1998 more than ten business days after the city received the request for information on September 3, 1998. Because section 552.104 was developed to protect a governmental body's interests, that body may waive section 552.104. *See Open Records Decision No. 592 at 8 (1991).* Consequently, we conclude that you have waived your section 552.104 interests in this instance.

You did, nonetheless, raise sections 552.106, 552.107 and 552.111 within ten business days after receipt of the requests. Thus, we will consider these arguments. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 559 (1990), this office concluded that a preliminary draft of a document that is intended for public release in a final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document and as such could be withheld pursuant to the statutory predecessor to section 552.111. However, subsequent to issuance of Open Records Decision No. 559 (1990), this office determined that section 552.111 excepts only advice, opinion, or recommendation intended for use in a governmental entity's policy-making processes.

[T]o come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters . . . . [Emphasis in original.]

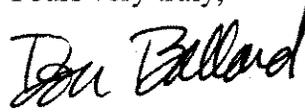
Open Records Decision No. 615 at 5 (1993). Consequently, after Open Records Decision No. 615 (1993), section 552.111 now excepts draft documents only to the extent that the draft documents pertain to the policymaking function of the governmental body. You argue that "[i]n this instance, the City Manager, Finance Director and City Attorney have exchanged drafts of the lease agreement among themselves in developing a document that is to be presented to the City Council for its consideration." You explain that the documents under consideration will be presented to and must be approved by the city council in a public meeting.

We recognize, however, that one of the requestors informs this office that the requested draft documents have been made available to persons outside the city. If such is the case, we do not believe that you may now withhold the documents from other members of the public based upon any of your claimed exceptions. Gov't Code §§ 552.007(b), 223; *See* Tex. R. Civ. Evid. 503(a)(5) (for purposes of section 552.107, a communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services); Open Records Decision Nos. 574 at 5 (1990), 561 (1990) (552.111 is not applicable where no privity of interest or common deliberative process exists); 460 (1987) (section 552.106 intended for frank discussions between advisors of legislative body and the body itself). After reviewing the submitted drafts and arguments, we conclude that you may withhold them under section 552.111 if they are intended for public release in a final form and have not been previously released to persons outside the city. To the extent the drafts have been shared with other parties, you must also release this information to the requestors.

Because we make a determination under section 552.111, we need not consider your additional arguments against disclosure. We are resolving this matter with an informal letter

ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB\nc

Ref: ID# 120210

Enclosures: Submitted documents

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