



August 10, 2001

Ms. Lisa Aguilar  
Assistant City Attorney  
Legal Department  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2001-3512

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150568.

The City of Corpus Christi (the "city") received a request for several categories of information regarding waste disposal.<sup>1</sup> You have submitted information for our review, some of which you inform us is representative of the types of information the city seeks to withhold.<sup>2</sup> You state that the city is asserting exceptions to the required public disclosure of some of the requested information. We therefore assume that the city has released the information responsive to the request, other than that contained or represented by the submitted information. If not, the city must do so at this time. *See Gov't Code §§ 552.301, .302.* You claim that the submitted information, as well as the information represented by the submitted samples, is excepted from disclosure under sections 552.101, 552.104, 552.106, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>The requestor seeks 1) all internal written communications, including but not limited to, e-mails and memorandums regarding J.C. Elliott landfill and the city's efforts to recoup losses caused by privately-owned El Centro, 2) any correspondence with commercial haulers in the area regarding tipping fees at El Centro and J.C. Elliott, 3) any correspondence internally and with El Centro officials about tipping fees, 4) any correspondence with other cities about tipping fees, 5) any correspondence about a proposed franchise or collection assessment fee, and 6) any correspondence, including internal communications, involving a proposal that the city would forgo such a franchise or collection fee if El Centro would raise its prices and pay a royalty to the city.

<sup>2</sup>We assume that the "representative samples" of records submitted to this office are truly representative of the information the city seeks to withhold. *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 that those records contain substantially different types of information than that submitted to this office.

We first address a procedural matter. Although you asserted sections 552.101 and 552.104 of the Government Code, you submitted no comments in support of either exception, nor was any of the submitted information marked as claimed to be excepted under either section. *See* Gov't Code § 552.301(e)(1)(A), (2). We thus have no basis for concluding that any of the information is subject to section 552.101 or 552.104 of the Government Code, and we therefore conclude that none of the information may be withheld under either exception.

A portion of the city's Exhibit A and all of Exhibit B comprises drafts of a municipal ordinance prepared by the city attorney's office. Section 552.106 excepts from disclosure "[a] draft or working paper involved in the preparation of proposed legislation." Gov't Code § 552.106(a). Section 552.106 ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. Open Records Decision No. 460 (1987). The purpose of section 552.106 is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body, and therefore, it does not except from disclosure purely factual information. *Id.* at 2. This office has concluded that the drafts of municipal ordinances and resolutions which reflect policy judgments, recommendations, and proposals are excepted by section 552.106. Open Records Decision No. 248 (1980). We find that the information at issue, as draft copies, reflects internal policy judgments, recommendations, and proposals. Therefore, we agree that the submitted drafts of the municipal ordinance in Exhibits A and B are excepted from disclosure in their entirety based on this exception.

Exhibit A contains a legal memorandum prepared for the city by outside counsel. Section 552.107(1) excepts from required public disclosure information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). Section 552.107(1) does not except purely factual information from disclosure. *Id.* Section 552.107(1) does not except from disclosure factual recounting of events or the documentation of calls made, meetings attended, and memos sent. *Id.* at 5. You state that the submitted documents contain confidential client communications and the advice and opinions of counsel for the district. You assert that the memorandum is a communication of legal advice from outside counsel regarding changes to the city's solid waste landfill operations. Based on your representations and our review of the submitted documents, we conclude that the memorandum contained in Exhibit A, which we have marked, is excepted from disclosure under section 552.107(1) of the Government Code.

Section 552.111 excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” You assert only the deliberative process privilege aspect of this exception.<sup>3</sup> In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency’s policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. This exception applies not only to internal memoranda, but also to memoranda prepared by consultants of a governmental body. Open Records Decision Nos. 462 at 14 (1987), 298 at 2 (1981). After a review of the arguments and the information at issue, we conclude that you have demonstrated that portions of information in Exhibits A and C are excepted from public disclosure under section 552.111. We have marked the documents in Exhibits A and C to reflect that information the city may withhold under section 552.111, with the exception noted below.

We note that section 552.022 of the Government Code applies to some of the information contained in Exhibit C. This provision states in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under other law.

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov’t Code § 552.022(a)(5). Exhibit C contains calculations of figures for disposal expenditures, revenue, and tonnage. This information, which we have marked, appears to be information used to estimate the need for or expenditure of public funds. As we assume the estimate for the tipping fees is completed, the information is subject to section 552.022(a)(5). You assert only the deliberative process privilege under section

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<sup>3</sup>Section 552.111 also incorporates the attorney work product privilege, *see* Open Records Decision No. 647 (1996), but you do not argue that this privilege applies to any of the information.

552.111 for Exhibit C. Section 552.111 is a discretionary exception under the Public Information Act and, as such, does not constitute "other law" that makes information "expressly confidential."<sup>4</sup> Thus, the city may not withhold information subject to section 552.022(a)(5) under section 552.111. Accordingly, the information we have marked in Exhibit C as subject to section 552.022(a)(5) must be released to the requestor.

We note that in addition to the claimed exceptions we have addressed, you assert section 552.106 for Exhibit C, and you also assert section 552.107(1) for all of Exhibit A. As noted above, section 552.106 generally protects only internal policy judgments, recommendations, and proposals. It thus provides no greater protection than section 552.111. As to the section 552.107(1) assertion, this provision also generally protects only advice, opinion, and recommendations, and thus any protection under section 552.107(1) will usually be no greater or less than the protection offered under section 552.111. *See* Open Records Decision No. 574 at 2 (1990). Thus, the information in Exhibits A and C that is not protected under sections 552.107(1) or 552.111 is also not protected under section 552.106.

Additionally, we note that Exhibit A-11(1), which we conclude is not excepted from disclosure, contains a cellular telephone number. We are not advised whether this number is the individual's personal cellular number, or whether it is a city telephone number from a city account intended for use by the individual at work. If it is the individual's personal number, then the city may be required to withhold this information under section 552.117(1) of the Government Code. This provision excepts, among other information, information that relates to the home telephone number of a current or former public employee or official, provided the individual elected under section 552.024 of the Government Code to keep such information confidential. *See* Gov't Code §§552.024, .117(1). This office has determined that a personal cellular telephone number of a public employee or official is information that relates to an employee or official's home telephone number, so as to be protected under section 552.117(1). *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 does not apply to cellular phone number accounts paid for by governmental body and intended for use at work for government business). Thus, assuming the cellular telephone number is the individual's personal number, the city must redact the number if the individual elected under section 552.024, prior to the city's receipt of the present information request, to keep confidential his home telephone number. Otherwise, the cell phone number is not excepted from disclosure and must be released.

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<sup>4</sup>Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, 470 (1987) (statutory predecessor to section 552.111 is a discretionary exception) 522 at 4 (1989) (discretionary exceptions in general).

In summary, the city may withhold the municipal ordinance drafts in Exhibits A and B in their entirety under section 552.106 of the Government Code. The city may withhold under section 552.111 the information we have marked in Exhibits A and C. The marked report in Exhibit A may be withheld under section 552.107(1). The cellular telephone number in Exhibit A-11(1) must be withheld under section 552.117(1) only if it is a personal number and the individual timely elected under section 552.024 to keep his home telephone number confidential. The remaining information is not excepted from disclosure and must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

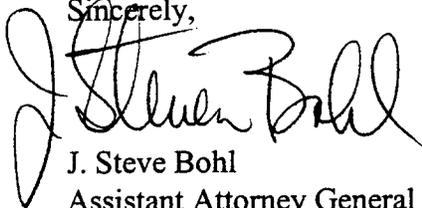
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Steve Bohl". The signature is written in a cursive style with a large initial "J" and "S".

J. Steve Bohl  
Assistant Attorney General  
Open Records Division

JSB/sdk

Ref: ID# 150568

Enc: Submitted documents

c: Ms. Laura Elder  
Business Reporter  
*Corpus Christi Caller Times*  
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(w/o enclosures)