



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 2, 2004

Mr. Brad Norton
Assistant City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767-8845

OR2004-2673

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198634.

The City of Austin (the "city") received two requests for information related to municipal judges. One requestor seeks the most current evaluations of the city's municipal court judges. The other requestor seeks (1) municipal judge surveys of the Texas Bar Association, (2) police and prosecutor surveys, (3) evaluations from the presiding judge used to evaluate municipal judges, and (4) judge attendance records. You state that the information responsive to items (3) and (4) of the request are not in the possession of the city but rather are judicial records in the custody of the presiding judge of the municipal court. The Public Information Act (the "Act") generally requires the disclosure of information maintained by a "governmental body." See Gov't Code § 552.021. While the Act's definition of a governmental body is broad, it specifically excludes "the judiciary." See Gov't Code § 552.003(1)(A), (B). Thus, the judicial records at issue are not maintained by a governmental body for purposes of the Act.¹ We therefore conclude that the judicial records at issue are not subject to release under the Act.² You claim that the submitted

¹We note, however, that records of the judiciary may be public pursuant to other sources of law. Attorney General Opinions DM-166 at 2-3 (1992) (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974); see *Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released).

²The release of the judicial records at issue is within the discretion of the municipal court. See Open Records Decision No. 646 at 4 n. 3 (1996) (citing Open Records Decision No. 236 at 2-3 (1980)).

information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by an attorney for one of the requestors. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

We begin by noting that some of the submitted information is subject to required public disclosure under section 552.022 of the Government Code. Section 552.022 provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information contains completed reports and evaluations made for the city by consultants for the city and city staff. Therefore, as prescribed by section 552.022, the city must release this information unless it is excepted under section 552.108 or confidential under other law. You do not contend that section 552.108 of the Government Code applies to the submitted information. Section 552.111 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests, and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See Open Records Decision No. 473 (1987)* (governmental body may waive statutory predecessor to section 552.111); *see also Open Records Decision No. 665 at 2 n.5 (2000)* (discretionary exceptions generally). Thus, the city may not withhold the completed reports and evaluations pursuant to section 552.111 of the Government Code.

We now address your argument under section 552.111 of the Government Code for the information not subject to section 552.022. 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." 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 deliberative or policymaking processes of the governmental body. *Open Records Decision No. 615 at 5-6 (1993)*.

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. The 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. *See Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152, 160 (Tex. App.—Austin 2001, no writ); *Open Records Decision No. 615 at 4-5*. If, however, the 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 may also be withheld under section 552.111. *See Open Records Decision No. 313 at 3 (1982)*.

After reviewing your arguments and the submitted information, we conclude that the information not subject to section 552.022 does not constitute interagency or intraagency communications consisting of advice, recommendations, or opinions reflecting the policymaking processes of the city. Therefore, because the city claims no other exception to disclosure, we find the city must release the submitted information.

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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 198634

Enc. Submitted documents

c: Mr. Jonathan Osborne
305 South Congress Avenue
Austin, Texas 78704
(w/o enclosures)