



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2004

Ms. Julie Joe
Assistant County Attorney
Travis County
P. O. Box 1748
Austin, Texas 78767

OR2004-8594

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 210885.

The Travis County Community Supervision and Corrections Department ("CSCD") received a request for the following: (1) the current CSCD state and county budgets with supporting documentation, and (2) the proposed future CSCD state and county budgets with supporting documentation. You state that you have or will release the fiscal year (the "FY") 2004 county budget with supporting documentation, the preliminary FY 2005 county budget, and the FY 2004-2005 state budget. You claim that the remaining information is excepted from disclosure under sections 552.106 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you acknowledge that the FY 2004-2005 state budget is currently in effect. Therefore, the supporting documentation for this budget is subject to section 552.022 of the Government Code. Section 552.022(a) provides in pertinent part:

¹ We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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:

...

(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). Because the supporting documentation for the FY 2004-2005 state budget is subject to section 552.022(a)(5), it must be released to the requestor unless it is confidential under other law. Although CSCD claims that this information is excepted from disclosure pursuant to sections 552.106 and 552.111 of the Government Code, we note that these exceptions to disclosure are discretionary under the Public Information Act and do not constitute "other law" for purposes of section 552.022.² Accordingly, we conclude that CSCD may not withhold any portion of the supporting documentation for the FY 2004-2005 state budget under either sections 552.106 or 552.111 of the Government Code. Consequently, CSCD must release this information to the requestor in its entirety.

Next, we turn to your section 552.111 claim as it applies to the remaining information. 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 policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). 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. ORD 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. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5.

² 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., Open Records Decision Nos. 522 at 4 (1989) (discretionary exceptions generally), 473 (1987) (governmental body may waive section 552.111).

You state that the remaining information consists of the advice, opinions, and recommendations of CSCD to the Travis County Planning and Budget Office regarding CSCD's budgetary needs for the FY 2005 county budget. You also explain that as of the date CSCD received the request for information, the county's budget-making process for FY 2005 had not been completed. Having considered your arguments and reviewed the submitted information, we find that you have demonstrated that section 552.111 is applicable to the remaining information. Therefore, we conclude that the remaining information is excepted from disclosure in its entirety under section 552.111 of the Government Code. As our decision under section 552.111 is dispositive, we need not address your section 552.106 arguments against disclosure.

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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/krl

Ref: ID# 210885

Enc. Submitted documents

c: Ms. Ann del Llano
ACLU of Texas
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(w/o enclosures)