



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 4, 2006

Mr. Richard Contreras
City Attorney
City of Socorro
2150 Trawood, Suite A-230
El Paso, Texas 79935

OR2006-04586

Dear Mr. Contreras:

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# 248020.

The City of Socorro (the "city"), which you represent, received a request for the following documents: (1) the requestor's personnel file; (2) city council minutes from November 2, 2004 to the present; and (3) "all documents relating to [the] internal audit not within the official report." You claim that the requested information is excepted from disclosure under sections 552.111 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your claim that the request is burdensome. A governmental body must make a good-faith effort to relate a request to information within its possession or control. Open Records Decision No. 561 at 8 (1990); Open Records Decision No. 561. If the information requested is not clear, or if a large amount of information is requested, a governmental body may communicate with the requestor for the purpose of clarifying or narrowing the request. See Gov't Code § 552.222(b); Open Records Decision No. 663 at 2-5 (1999). But a governmental body may not refuse to comply with a request on the ground of administrative inconvenience. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668,687 (Tex. 1976) ("It is our opinion that the [predecessor to the] Act does not allow either the custodian of records or a court to consider the cost or method of supplying requested information in determining whether such information should be disclosed."); Open

Records Decision No. 49 (1988). We therefore find that the city may not refuse to comply with this request on the basis that doing so would be burdensome.

Next, we note that you have only submitted information responsive to category three of the request for our review. To the extent any information responsive to categories one and two existed on the date the city received this request, we assume you have released it to the requestor. If you have not released any such information, you must release it at this time. See Gov't Code §§552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.111 of the Government Code 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." Gov't Code § 552.111. 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. Tex. 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.

This office has also concluded that a preliminary draft of a document that is 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.

Further, section 552.111 can encompass communications between a governmental body and a third party consultant. See Open Records Decision Nos. 631 at 2 (1995) (section 552.111 encompasses information created for governmental body by outside consultant acting at governmental body's request and performing task that is within governmental body's authority), 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process), 462 at 14 (1987) (section 552.111 applies to memoranda prepared by governmental body's

consultants). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* Open Records Decision No. 561 at 9 (1990).

The submitted information consists of a draft "independent accountant's report on applying agreed-upon procedures." We understand the city hired the independent accountant to investigate "each of the departments and personnel of the city" and submit the findings and recommendations to the city. You indicate that the final version of this document has been released to the public. Based upon your arguments, and our review of the submitted information, we agree that the submitted information may be withheld pursuant to section 552.111 of the Government Code. As our ruling is dispositive, we need not address your remaining argument 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



Anne Prentice
Assistant Attorney General
Open Records Division

AP/eb

Ref: ID# 248020

Enc. Submitted documents

c: Mr. Reyes M. Fierro
209 Fresno Drive
El Paso, Texas 79915
(w/o enclosures)