



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 20, 2007

Mr. R. Thomas Franklin  
Atascosa County Attorney  
#1 Courthouse Circle Drive #3-B  
Jourdanton, Texas 78026

OR2007-10698

Dear Mr. Franklin:

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# 287145.

The County of Atascosa (the "county") received a request for several categories of information regarding improvements made to the office of a named Justice of the Peace. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the requested information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you state that most of the responsive information consists of verbal communication that was not reduced to written form. The Act applies only to information in existence at the time it is requested, and does not require a governmental body to release information that did not exist when a request for information was received, or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*); *Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983)*. However, a governmental body must make a good faith effort to relate a request to information that is within the governmental body's possession or control. *See Open Records Decision No. 561 at 8-9 (1990)*. As you have identified and submitted information which is responsive to the request, we will determine whether you must release this information to the requestor.

We note that the submitted information includes records that are subject to section 552.022 of the Government Code, which provides in pertinent part as follows:

(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 not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information includes information that is subject to section 552.022 and may only be withheld if the information is confidential under other law. You seek to withhold the information under section 552.111 of the Government Code. However, section 552.111 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Because this section is not other law that makes information confidential for the purposes of section 552.022, the county may not withhold the information subject to section 552.022 under section 552.111 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as the Open Meetings Act ("OMA"), chapter 551 of the Government Code. The OMA establishes the general rule that every meeting of every governmental body shall be open to the public, but permits closed meetings for certain purposes. A governmental body that conducts a closed meeting must either keep a certified agenda or make a tape recording of the proceeding, except for private attorney consultations. Gov't Code § 551.103. The agenda or tape is kept as potential evidence in litigation involving an alleged violation of the OMA. *See* Attorney General Opinion JM-840 (1988). Section 551.104(e) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Section 551.146 of the Government Code penalizes the unlawful disclosure of a certified agenda or tape recording of a lawfully closed meeting as a Class B misdemeanor, and makes the person responsible for disclosure liable for damages to a person injured or damaged by the disclosure. Thus, such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). In addition, minutes of a closed meeting are confidential. *See* Open Records Decision No. 60 (1974) (closed meeting minutes are confidential under predecessor to section 551.104); *see also* Open Records Decision Nos. 563 (1990) (minutes of properly held executive session

are confidential under OMA); ORD 495 (information protected under predecessor to section 551.104 cannot be released to member of public in response to open records request). However, records discussed or created in a closed meeting, other than a certified agenda or tape recording, are not made confidential by chapter 551 of the Government Code. *See* Open Records Decision Nos. 605 at 2-3 (1992) (concluding that section 551.074 does not authorize a governmental body to withhold its records of the names of applicants for public employment who were discussed in an executive session), 485 at 9-10 (1987) (investigative report not excepted from disclosure under statutory predecessor to section 552.101 simply by virtue of its having been considered in executive session); *see also* Attorney General Opinion JM-1071 at 3 (1989) (statutory predecessor to section 551.146 did not prohibit members of governmental body or other individuals in attendance at executive session from making public statements about subject matter of executive session); *see also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public). Because the submitted information does not include a certified agenda or tape recording of a closed meeting, chapter 551 is inapplicable here; therefore, the submitted information may not be withheld under section 552.101 of the Government Code on that ground.

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. The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process, and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex.App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* Open Records Decision No. 615 at 5 (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. 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). 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. v. Tex. Attorney Gen.*, 37 S.W.3d 152

(Tex.App.—Austin 2001, no pet.); ORD 615 at 4-5. Upon review, we find you have failed to explain how the information at issue constitutes advice, recommendations, opinions, or material reflecting the policymaking processes of the county. Accordingly, the county may not withhold the information at issue under section 552.111.

We note, however, that the submitted information contains information that is protected under section 552.136 of the Government Code.<sup>1</sup> Section 552.136(b) states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). The requested information includes an account number. The county must withhold the account number we have marked under section 552.136 of the Government Code.

In summary, the county must withhold the account number we have marked. The remaining information must be released.

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,

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<sup>1</sup> Unlike other exceptions to disclosure, this office will raise section 552.136 on behalf of a governmental body, as it is a mandatory exception to disclosure and may not be waived. See Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001).

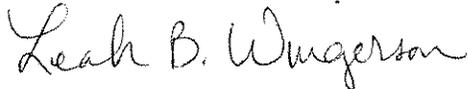
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/ma

Ref: ID# 287145

Enc. Submitted documents

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