



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2008

Mr. Randall C. Stump
Stump & Stump
803 Main Street
Georgetown, Texas 78626

OR2008-14566

Dear Mr. Stump:

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# 326405.

The Florence Police Department (the "department"), which you represent, received a request for six categories of information pertaining to a named individual, a former department employee. You state that some of the requested information has been released. You claim that portions of the submitted information are excepted from disclosure under sections 552.111, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you assert that some of the requested information does not exist in the city's records.¹ You also state that portions of the submitted information are nonresponsive to the request. We note that a governmental body is required to make a good-faith effort to relate a request to information that it holds. *See* Open Records Decision No. 561 at 8 (1990) (construing statutory predecessor). We agree that Exhibit F is nonresponsive to the request, as it does not relate to any complaints, evaluations, reprimands, or investigations of the named individual. This ruling does not address the public availability of nonresponsive

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ.App.--San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

information, and the department is not required to release nonresponsive information in response to this request.

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.” This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). 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. 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).

In this instance, you argue that the submitted memo, labeled Exhibit E, is subject to section 552.111 because it consists of “advice, opinion, and recommendations.” However, upon review, we find that Exhibit E does not contain advice, opinions, or recommendations concerning any particular department policy matter. Rather, this memo pertains to a routine administrative and personnel matter. Accordingly, Exhibit E may not be withheld under section 552.111 of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the current and former home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.² In this instance, you assert that the individual whose information is at issue is a licensed peace officer as defined by article 2.12; therefore, we agree that the

²“Peace officer” is defined by Article 2.12 of the Texas Code of Criminal Procedure.

department must withhold the information which we have marked pursuant to section 552.117(a)(2).

You indicate that the submitted documents also contain information concerning officers of another law enforcement agency, which may be excepted under section 552.1175 of the Government Code. Section 552.1175 provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). The department must withhold the information we have marked under section 552.1175 if the peace officers involved have elected to restrict access to the information in accordance with section 552.1175(b). Open Records Decision No.670 at 6 (2001) (section 552.117(a)(2) applicable to peace officer's cell phone number only if cell phone service is paid for by officer with own funds). If the peace officers at issue did not elect to keep this information confidential, it may not be withheld on this basis.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).³ Gov't Code § 552.137(a)-(c). We note that section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. The e-mail address we have marked is not of a type specifically excluded by section 552.137(c) of the Government Code. Therefore, the department must withhold the marked e-mail address in accordance with section 552.137 unless the department receives consent for its release.

In summary, we agree that Exhibit F is nonresponsive to the present request, and need not be released. The department must withhold the information we have marked pursuant to

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.117(a)(2) of the Government Code, and must withhold the information we have marked under section 552.1175 of the Government Code if the peace officers whose information is at issue elected to restrict access to the information in accordance with section 552.1175(b). The department must also withhold the e-mail address we have marked pursuant to section 552.137 of the Government Code. The department must release the remaining 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,

A handwritten signature in black ink, appearing to read "Matt Entsminger". The signature is stylized and written in a cursive-like font.

Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/jb

Ref: ID# 326405

Enc. Submitted documents

c: Ms. Lana Hill
P.O. Box 95
Bartlett, Texas 76511
(w/o enclosures)