



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 25, 2009

Ms. Cary Grace  
Assistant City Attorney  
City of Austin, Law Department  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2009-02486

Dear Ms. Grace:

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# 337754.

The City of Austin (the "city") received two requests from separate requestors for memos or written documents from individual city departments to the budget office or city manager's office regarding proposed budget cuts. You claim that the submitted 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 one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

One of the requestors argues that the requested information is public under section 552.022 of the Government Code, which provides in relevant part:

[T]he 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[.]

*Id.* § 552.022(a)(5). In support of its argument, the requestor cites Open Records Letter No. 2003-2594 (2003), in which this office ruled that a budget reduction proposal prepared by the Texas Department of Health and submitted to the Health and Human Services Commission (the “commission”) was public under section 552.022(a)(5) and not subject to exception under section 552.111. *See* Open Records Letter No. 2003-2594 (2003). However, the determinative factor in that instance was that the requested documents were used in the preparation of the commission’s Unified Budget Reduction Plan, which, significantly, had been completed and submitted before the request at issue was made. *See id.* In the present instance, the request is for proposals that are to be used in the preparation of a budget reduction plan that has not yet been completed. The city informs us that these proposals are currently subject to modification and updates and that the city budget office has not yet completed its recommendations on budget savings. As such, we find that the present request is not analogous to the request from Open Records Letter No. 2003-2594. Thus, as we understand the city to represent that the requested information currently at issue consists of working papers used in an estimate that is not yet completed, we find that this information is not made public by section 552.022(a)(5) of the Government Code. Accordingly, we address the city’s argument for exception under section 552.111 of the Government Code.

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.” Gov’t Code § 552.111. 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 (1993), 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, and opinions that reflect the policymaking processes of the governmental body. *See* ORD 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. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (Gov’t Code § 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). Moreover, section 552.111 does not protect facts and written observations of facts and events

that are severable from advice, opinions, and recommendations. *See* ORD 615 at 5. But if 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 also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

We also have 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.

You state, and our review confirms, that the information at issue consists of draft documents containing advice, recommendations, and opinions that reflect the policymaking processes of the city. You also inform us that these drafts will be released in final form as an overall city plan for budget reductions. Based on your representations and our review of the information at issue, we agree that the city may withhold the submitted information under section 552.111 of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell  
Assistant Attorney General  
Open Records Division

RTM/eb

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Ref: ID# 337754

Enc. Submitted documents

cc: Requestors  
(w/o enclosures)