



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2010

Mr. Joe Gorfida, Jr.
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2010-01142

Dear Mr. Gorfida:

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# 367941.

The City of Richardson (the "city"), which you represent, received a request for information related to commercial trash projects and correspondence during a specified time period concerning the Lookout Transfer Station rebuild project. You claim that the requested information is excepted from disclosure under sections 552.111 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert section 552.111 of the Government Code for the documents you have marked. 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, opinions, and other material reflecting 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. 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.

This office has also concluded a preliminary draft of a document 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 claim that the documents you have marked are draft documents created for the purpose of assisting the city in its policy making functions. Upon review, we find the city has established that the deliberative process privilege is applicable to the draft documents you have marked. Therefore, to the extent the draft documents you have marked will be released to the public in their final form, it may be withheld under section 552.111 of the Government Code.

Section 552.137 of the Government Code 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). See Gov't Code § 552.137(a)-(c). Subsection 552.137(c)(1) states that subsection 552.137(a) does not apply to an e-mail address "provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent" and subsection 552.137(c)(2) states that subsection 552.137(a) does not apply to an e-mail address "provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent[.]" *Id.* § 552.137(c)(1), (2). You do not indicate that any of the involved parties have consented to release of their information. Therefore, the city must withhold the e-mail addresses we have marked under section 552.137, except

the city must release any such e-mail addresses that belong to employees of vendors who either have or are seeking a contractual relationship with the city.¹

In summary, to the extent the draft documents you have marked will be released to the public in their final form, they may be withheld under section 552.111 of the Government Code. The city must withhold the e-mail addresses we have marked under section 552.137, except the city must release any such e-mail addresses that belong to employees of vendors who either have or are seeking a contractual relationship with the city. The remaining information must be released.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 367941

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.