



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 10, 2010

Ms. Evelyn Njuguna  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2010-02077

Dear Ms. Njuguna:

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# 369884 (City Request No. 16417).

The City of Houston (the "city") received a request for correspondence sent to or received from the Metropolitan Transit Authority ("METRO") pertaining to the southeast light rail line, and traffic engineering and environmental impact studies and results. You claim that the submitted 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 representative sample of the requested information.

Initially, we note that the submitted information pertains only to correspondence pertaining to the southeast rail line. You characterize this information as a "representative sample." *See* Gov't Code § 552.301(e)(1)(D) (governmental body must submit, in connection with request for attorney general decision, the requested information or representative samples thereof). However, in our opinion, this information is not representative of all of the types of information requested. Please be advised that this open records letter only applies to the type of information you have submitted for our review. Therefore, this opinion does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office. *See id.* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). To the extent information

responsive to the request for a traffic engineering study or an environmental impact study existed on the date the city received this request, we assume you have released it. If you have not released this information, you must do so at this time. *See id.* §§ 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).

Next, we note that you state portions of the submitted information are not responsive to the request for information. In this instance, the requestor seeks, in part, any information sent to or received from METRO pertaining to proposed light rail lines. We note that most of the information you have marked as not responsive to the request is attached to e-mails that have either been sent to or received from METRO pertaining to the proposed light rail lines. Thus, upon review, we find the information we have marked is responsive to the instant request and must be released unless an exception to disclosure applies. Because you assert section 552.111 of the Government Code for a portion of this information, we will address your argument against release of this information along with the remaining submitted information. You indicate the remaining information you have marked is not responsive to the request. Because the remaining information you have marked as not responsive does not pertain to the southwest light rail line, we agree that this information is not responsive to the request. The city need not release non-responsive information in response to this request, and this ruling will not address such information.

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, 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) (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 addition,

section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. ORD 615 at 4-5.

Section 552.111 can also encompass communications between a governmental body and a third-party, including a consultant or other party with a privity of interest. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). 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* ORD 561 at 9.

You state that the information at issue consists of communications between the city and employees and representatives acting on behalf of METRO concerning the placement of a rail line. Upon review, we have marked the advice, opinion, and recommendations that may be withheld under section 552.111 of the Government Code. However, we conclude that most of the remaining information is factual in nature. You do not explain how such information constitutes the advice, opinion, or recommendation of city employees on a policy matter. *See* ORD 615 at 4-5. Additionally, the documents reflect that they were reviewed by parties whom you have not identified. You do not demonstrate that the city shares a privity of interest or common deliberative process with these unidentified individuals. *See* ORD 561 at 9. Accordingly, you failed to demonstrate that section 552.111 is applicable to the remaining responsive information and it may not be withheld on that basis.

You also seek to withhold e-mail addresses contained in the remaining submitted information pursuant to section 552.137 of the Government Code. Section 552.137 states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure, or the e-mail address falls within the scope of section 552.137(c). Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an Internet website address, an institutional e-mail address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). You state that the owners of the addresses have not consented to their release. Therefore, the city must withhold the e-mail addresses you have marked, as well as the e-mail addresses we have marked, under section 552.137.

We note the remaining information contains city employees' cellular telephone numbers. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that the information be

kept confidential under section 552.024 of the Government Code.<sup>1</sup> Section 552.117 also encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cell-phone service. ~~See Open Records Decision No. 506 at 5-6 (1988) (Gov't Code § 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use).~~ Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, the city must withhold the information we have marked under section 552.117(a)(1) to the extent that the employees concerned paid for their mobile telephone service and timely elected under section 552.024 to keep their telephone number confidential.

Section 552.136 of the Government Code states "[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. The city must withhold the FedEx account number we have marked under section 552.136 of the Government Code.

In summary, the city may withhold the information we have marked under section 552.111 of the Government Code. The city must withhold the e-mail addresses you have marked, and the additional e-mail addresses we have marked, under section 552.137 of the Government Code.<sup>2</sup> The city must withhold the information we have marked under section 552.117 of the Government Code to the extent that the employees concerned paid for their mobile telephone service and timely elected under section 552.024 to keep their telephone numbers confidential. The city must withhold the information we have marked under section 552.136 of the Government Code. 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.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception, such as section 552.117, on behalf of a governmental body, but ordinarily will not raise other exceptions. ~~See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).~~

<sup>2</sup> We note this office recently issued Open Record Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses under section 552.137 of the Government Code and account numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Schulz', with a long, sweeping horizontal line extending to the right.

Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 369884

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)