



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2010

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

OR2010-15940

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#397468.

The City of Richardson (the "city"), which you represent, received two requests from the same requestor for e-mails, notes, or other written or electronic communications to or from five named individuals regarding a specified location from August 1, 2009 to August 2, 2010. You provided the requestor with a cost estimate and state you will make some of the requested information available for review. 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 received comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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 section 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 reexamined the predecessor to the section 552.111 exception 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 section 552.111 excepts from disclosure only those internal communications consisting of advice, recommendations, and opinions reflecting the policymaking processes of the governmental body. See ORD 615 at 5. A governmental body's policymaking functions do not encompass internal administrative or personnel matters, and disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *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). However, 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).

Further, 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).

This office has also concluded a preliminary draft of a policymaking document that is intended for release in final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. See Open Records Decision No. 559 at 2 (1990). 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 that portions of the information at issue consist of e-mail communications between city employees and city attorneys consisting of advice, opinions, or recommendations on policymaking matters regarding a municipal golf course, as well as two draft documents used to assist the city in its policy making functions. Although the requestor asserts this information is not policymaking in nature, we find portions of this information, which we have marked, relate to the city's policy making processes. Accordingly, the city may withhold this information under section 552.111 of the Government Code. However, you have failed to explain how the remaining information in these documents consists of advice, recommendations, and opinions that reflect the policymaking processes of the city. Accordingly, the city may not withhold any of this information under section 552.111.

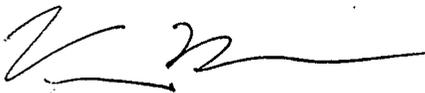
Next, you state the submitted Golf Professional Agreement is a preliminary draft, "which represents the drafter's advice, opinions, and recommendations with regard to the form and content of the final document." We understand the final version of the Golf Professional Agreement has been released to the public. Based on the your representations and our review, we agree section 552.111 is applicable to the submitted draft agreement. Moreover, the requestor asserts section 552.111 is not applicable to the submitted draft agreement because it pertains to an agreement between the city and an entity which does not exist. Without deciding whether the document at issue in fact is legally enforceable, we note the legal enforceability of the final document is not an element that must be established to withhold a draft policymaking document under section 552.111. *See Gov't Code § 552.111; see generally* ORD 559. Thus, the agreement may be withheld in its entirety under section 552.111 of the Government Code.

Finally, the requestor asserts the submitted draft agreement must be released because it was collected, assembled, and maintained for a governmental body and is thus subject to section 552.021 of the Government Code. *See Gov't Code § 552.021.* However, we note that information subject to section 552.111 is excepted from the requirements of section 552.021 of the Government Code. *See Gov't Code § 552.111.* Thus, the information we have marked may be withheld under section 552.111 of the Government Code. As no further exceptions to disclosure have been raised, 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

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Enc. Submitted documents

c: Requestor
(w/o enclosures)