



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2010

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County District Attorney's Office
401 West Belknap, 9th Floor
Fort Worth, Texas 76196-0201

OR2010-16038

Dear Ms. Fourt:

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# 398450.

The Tarrant County Administrator's Office (the "county") received a request for information related to an alleged misappropriation of funds and the employment status of a named individual. You state some of the requested information has been released. You claim the information submitted as Exhibit C is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information was created after the request for information was received. Therefore, this information, which we have marked, is not responsive to the present request for information. Our ruling does not address this non-responsive information, and the county need not release such information in response to this request.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information requested

relates to an on-going criminal investigation and release of the information would interfere with the detection, investigation, and prosecution of the alleged crime. We note however, the request for information was received by the county on August 10, 2010. You have submitted an affidavit from the Tarrant County Sheriff's Department stating, "[o]n August 11, 2010, the Sheriff's Department was requested to investigate the allegation of misappropriation of computer equipment purchased by grant funds." Because the county received the request for information prior to the commencement of the investigation, we conclude you have failed to demonstrate that there was a pending criminal investigation at the time the county received the request. Accordingly, the county may not withhold any of the responsive information under section 552.108(a)(1) of the Government Code.

Section 552.111 of the Government Code exempts 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 section 552.111 exempts 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, as 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). 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).

This office also has concluded a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendations 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,

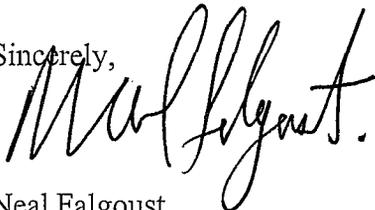
deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

The submitted information includes copies of a draft report. You state this draft report was never presented to the Tarrant County Commissioner's Court for acceptance or approval and contains advice, recommendations, and opinions regarding the audit of a specified program. However, upon review, we find you have not explained how the draft report at issue constitutes a draft of a policymaking document that will be released to the public in final form; therefore, you have failed to demonstrate the applicability of section 552.111. Accordingly, the county may not withhold this report under section 552.111. As you raise no further exceptions to disclosure, the submitted responsive 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/eb

Ref: ID# 398450

Enc. Submitted documents

c: Requestor
(w/o enclosures)