



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 2, 2010

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2010-16613

Dear Ms. Byles:

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# 398736 (Fort Worth Request No. W003026).

The City of Fort Worth (the "city") received a request for the criteria and scale used to rate employees who will be considered for a specified position and the ratings for each employee considered for the position. You claim 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.

You assert the submitted information is excepted from disclosure under the deliberative process privilege encompassed by section 552.111 of the Government Code. *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 excepts from disclosure only those internal communications consisting 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 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).

This office has 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 state the submitted information consists of a draft proposal for how the city will implement a reorganization caused by budget shortfalls. Although you seek to withhold the information in its entirety as a draft, you do not state whether this information will be released to the public in its final form. Thus, the submitted information may not be withheld in its entirety under section 552.111. However, upon review, we have marked the portions of this information that pertain to the proposed elimination of a division of the city's government. We find this information consists of advice, opinions, and recommendations of the city regarding policy matters concerning administrative and personnel matters of broad scope, and the information we marked may be withheld under section 552.111 of the Government Code. You state the remaining information reveals the city staff's "initial recommendations of criteria by which to select between [employees considered for]" a new position, and includes documentation reflecting how employees were scored. This information consists of administrative or factual information about a specific personnel matter. You do not provide arguments explaining how this information consists of advice, recommendations, or opinions that pertain to the policymaking processes of the city. Accordingly, the city may not withhold any of the remaining information under section 552.111 of the Government Code. As you raise no other exceptions to disclosure, 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](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 "Bob Davis", with a stylized flourish at the end.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tp

Ref: ID# 398736

Enc. Submitted documents

c: Requestor  
(w/o enclosures)