ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2011

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

OR2011-09608

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# 423048.

The City of Richardson (the "city"), which you represent, received a request for four categories of information related to city correspondence and the Sherrill Park Golf Course.[1] You state you have released most of the requested information. You claim the remaining requested information is excepted from disclosure pursuant to section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We also have considered comments submitted by the requestor. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Section 552.111 of the Government Code excepts from public disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." *Id.* § 552.111. Section 552.111 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).

[1]You state the city sought and received clarification of the instant request from the requestor. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

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, 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. 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). 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 that a preliminary draft of a document that is 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 e-mails and attachments relating to opinions and recommendations involving the city's municipal golf course and future budget projections. You state the submitted information is "in a draft format." Upon review, we agree the submitted attachments consist of draft documents related to policymaking. However, you do not state whether these documents will be released to the public in their final form. Thus, to the extent the submitted draft documents, which we have marked, will be released to the public in their final form, the city may withhold them under section 552.111 of the Government Code.[2] To the extent the draft documents will not be released in their final form, they may not be withheld in their entirety under section 552.111.

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[2]The requestor argues the estimates at issue are public pursuant to section 8.03 of the city charter, which provides that departmental estimates are open to public inspection. We note, however, the estimates at issue are draft documents and pertain to the golf fund budget, not the budget department's budget.

We note the remaining information consists of e-mails. You have not demonstrated the submitted e-mails are preliminary drafts of policymaking documents. Although the requestor asserts this information is not policymaking in nature, we find portions of the e-mails, which we have marked, contain advice, opinions, and recommendations related to policymaking. The city may withhold this information under section 552.111 of the Government Code. However, we find the remaining information consists of either general administrative information that does not relate to policymaking or information that is purely factual in nature. You have failed to demonstrate how this information is excepted under section 552.111. Accordingly, we find none of the remaining information may be withheld under section 552.111 of the Government Code.

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,

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 423048

Enc. Submitted documents

c: Requestor
(w/o enclosures)