



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 19, 2011

Mr. Gerard A. Calderon  
Assistant Criminal District Attorney  
Civil Section  
Bexar County Criminal District Attorney's Office  
300 Dolorosa, Fifth Floor  
San Antonio, Texas 78205-3030

OR2011-15273

Dear Mr. Calderon:

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# 433557.

Bexar County (the "county") received a request for the county's study of a law enforcement proposal by the Bexar County Precinct 3 Constable (the "constable"). You claim a portion of the submitted information is not subject to the Act. You claim the remaining information is excepted from disclosure under section 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor is the constable, who states he seeks the information as an elected county official. Accordingly, the county has the discretion to release the requested information to this requestor pursuant to an intergovernmental transfer. This office has concluded information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. However, the transfer of confidential information from one governmental body to another is prohibited where a relevant confidentiality statute authorizes release of the

confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities. *See* Attorney General Opinions DM-353 at 4 n. 6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); *see also* Open Records Decision Nos. 655 (1997), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). Section 552.111 of the Government Code does not have specific release provisions governing public release of information. Thus, pursuant to the intergovernmental transfer doctrine, the county has the discretion to release to the requestor the submitted information that is subject to section 552.111. However, should the county decline to exercise that discretion, it must nonetheless adhere to this decision regarding the applicability of the claimed exception to the requested information.

Next, we address your contention the information submitted as Exhibit B is not subject to the Act. The Act is applicable to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Act provides "public information" consists of "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Thus, virtually all information in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Moreover, section 552.001 of the Act provides it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See* Gov't Code § 552.001(a).

You assert Exhibit B "is a draft [report] which has not been used in connection with transacting official business and therefore [is] not public." You state the Bexar County Commissioners Court agreed to have the county's budget office evaluate the constable's proposal to provide law enforcement services to a portion of the county. We note Exhibit B consists of the evaluation of the constable's proposal, which the county conducted. We further note the requestor provides an e-mail in which the county states it completed its review of the constable's proposal and sent the review to the county manager. Accordingly, we find the information at issue was collected or assembled or is maintained in connection with the transaction of official county business. Therefore, Exhibit B is subject to the Act and must be released, unless an exception to disclosure is shown to be applicable.

Next, we note Exhibit B is subject to section 552.022 of the Government Code. Section 552.022 states in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are

public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Exhibit B constitutes a completed report for purposes of section 552.022(a)(1). Pursuant to section 552.022(a)(1) of the Government Code, a completed report is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Although we understand you to raise section 552.111 of the Government Code, this exception is discretionary in nature and thus may be waived. Accordingly, section 552.111 does not constitute other law for purposes of section 552.022. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (governmental body may waive section 552.111). Therefore, the county may not withhold Exhibit B under section 552.111.

You claim Exhibit C 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). 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. 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 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).

You state Exhibit C consists of “predecisional” documents needed to draft the evaluation of the constable’s proposal. Upon review, we find the information in Exhibit C consists of purely factual information. Accordingly, Exhibit C is not excepted from disclosure under section 552.111 of the Government Code, and the county may not withhold it on that basis.

In summary, the county must release Exhibit B pursuant to section 552.022(a)(1) of the Government Code. The county must release Exhibit C.

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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 433557

Enc. Submitted documents

c: Requestor  
(w/o enclosures)