



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 20, 2012

Mr. B. Chase Griffith  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2012-05678

Dear Mr. Griffith:

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# 451171.

The City of Runaway Bay (the "city"), which you represent, received a request for (1) any written grievance or complaint filed with the city secretary, city administrator, mayor, or individual council members against the requestor regarding the performance of his duties; (2) all individual notes, evaluations, and documentation the city council members furnished to the mayor in regards to the evaluation of the requestor during a specified time period; (3) any and all written complaints made against police officers employed by the city; and (4) conflict of interest disclosures filed with the city by three named individuals. You indicate the city has released some information to the requestor. 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. *See 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). Additionally, section 552.111 does not generally except from disclosure purely factual information severable from the opinion portions of internal memoranda. *See Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); ORD 615 at 4-5.

This office has also 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 contend the submitted non-finalized performance evaluation is excepted under section 552.111. You state the submitted information consists of the advice, opinions, and recommendations of the mayor and city council members regarding city policies pertaining to the performance of the city's police chief and police department. Based on your representations and our review, we agree the information we have marked is excepted from disclosure under section 552.111. However, the remaining information pertains to administrative and personnel matters. As previously stated, the deliberative process privilege excepts communications pertaining to administrative and personnel matters of broad scope that affect a governmental body's policy mission. *See* ORD 631 at 3. In this instance, however, the remaining information reflects it pertains to administrative and personnel issues involving a specific city employee, and you have not explained how the remaining information pertains to administrative or personnel matters of broad scope that affect the city's policy mission. Therefore, you have failed to demonstrate how the deliberative process privilege applies to the remaining information. Consequently, the city may not withhold the

remaining information under section 552.111 of the Government Code. As you raise no other exception to disclosure, the remaining information must be released to the requestor.

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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/akg

Ref: ID# 451171

Enc. Submitted documents

c: Requestor  
(w/o enclosures)