



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2012

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-12252

Dear Ms. Evans:

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# 461044 (GC No. 19714).

The Houston Airport System (the "system") received a request for any e-mails sent to or from four named individuals during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.111 and 552.131(b) of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.111 of the Government Code excepts from disclosure "an interagency or intra-agency 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).

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 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. 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. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); 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 inform us that the submitted information consists of the advice, opinions, and recommendations of system employees regarding the economic development negotiations between a business prospect and the system. Based on your representations and our review, we find that you have established that the deliberative process privilege is applicable to some of this information. Therefore, the system may withhold the information we have marked under section 552.111 of the Government Code.² However, the remaining information is purely factual in nature or does not consist of advice, opinions, or recommendations related to the system's policy making functions. Thus, we conclude you failed to demonstrate the applicability of the deliberative process privilege to this information, and the system may not withhold it under section 552.111.

Section 552.131(b) of the Government Code provides as follows:

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

²As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

Gov't Code § 552.131(b). Section 552.131(b) protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. *See id.* You assert the remaining information relates to economic development negotiations between the system and the business prospect pertaining to financial or other incentives potentially being offered to the business prospect. You state the business prospect has not yet received any funding and there is no final contract in place for the economic development project at issue. Upon review, however, you have not demonstrated how the information at issue consists of information about a financial or other incentive being offered to the business prospect. Accordingly, the system may not withhold any of the remaining information under section 552.131(b) of the Government Code.

We note the remaining information contains a cellular telephone number that may be subject to section 552.117(a)(1) of the Government Code.³ This section excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). Section 552.117(a)(1) encompasses an official's or employee's personal cellular telephone number if the official or employee pays for the cellular telephone service with his or her personal funds. *See Open Records Decision No. 506 at 5-6 (1988)* (statutory predecessor to section 552.117 not applicable to numbers for cellular mobile phones installed in county officials' and employees' private vehicles and intended for official business). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Accordingly, to the extent the cellular telephone number we have marked under section 552.117(a)(1) pertains to a current or former system official or employee who timely requested confidentiality for the information under section 552.024 and the cellular telephone service is not paid for by the system, the system must withhold it under section 552.117(a)(1) of the Government Code. Otherwise, the marked cellular telephone number may not be withheld under this section.

In summary, the system may withhold the information we have marked under section 552.111 of the Government Code. To the extent the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code pertains to a current or former system official or employee who timely requested confidentiality for the information under section 552.024 of the Government Code and the cellular telephone service is not paid for by the system, it must be withheld under section 552.117(a)(1) of the Government Code.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

Otherwise, the marked cellular telephone number may not be withheld under this section. The system must release the remaining information.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 461044

Enc. Submitted documents

c: Requestor
(w/o enclosures)