



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2012

Ms. Elaine Nicholson
Assistant City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767-8828

OR2012-13008

Dear Ms. Nicholson:

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# 462377.

The City of Austin (the "city") received a request for the presentation to the city manager regarding the boundaries of the venue district for the Town Lake Park Community Events Center Venue Project. You claim portions of the submitted information are excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.111 of the Government Code excepts from disclosure "[a]n 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. 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).

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).

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 inform us the information at issue consists of an internal communication containing advice, opinion, and recommendations of city staff reflecting the deliberative and policymaking functions of the city. You indicate the information you have marked constitutes "drafts of policymaking documentation the subject matter of which is intended for release in final form[.]" However, you do not state whether the submitted draft documents will be released to the public in their final form. Thus, to the extent the marked draft documents will be released to the public in their final form, the city may withhold the marked draft documents in their entireties under section 552.111 of the Government Code. If the submitted draft documents will not be released to the public in their final form, then the city may not withhold them in their entireties under section 552.111 of the Government Code. In the event the submitted draft documents will not be released to the public in their final form, we find portions of the documents at issue consist of advice, opinions, and recommendations related to policymaking. Accordingly, the city may withhold the information we have marked in these documents under section 552.111 of the Government

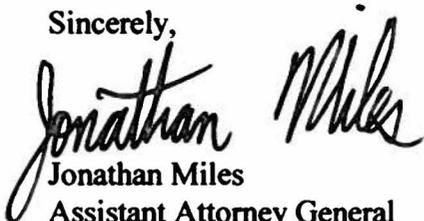
Code. However, we find the remaining information at issue consists of either administrative and personnel matters or information that is purely factual in nature. Therefore, you have failed to demonstrate how the deliberative process privilege applies to the remaining information at issue. Consequently, the city may not withhold any of the remaining information at issue under section 552.111 of the Government Code.

In summary, to the extent the draft documents you have marked will be released to the public in their final form, the city may withhold the marked draft documents in their entireties under section 552.111 of the Government Code. If the submitted draft documents will not be released to the public in their final form, then the city may not withhold them in their entireties under section 552.111 of the Government Code. However, in the event the draft documents are not withheld in their entireties under section 552.111 of the Government Code, the city may withhold the information we have marked in the draft documents under section 552.111 of the Government Code. 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, 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 462377

Enc. Submitted documents

c: Requestor
(w/o enclosures)