



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 26, 2013

Mr. C. Cory Rush  
Rogers, Morris & Grover, L.L.P.  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2013-20623

Dear Mr. Rush:

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# 506966.

The Spring Independent School District (the "district"), which you represent, received two requests from the same requestor for (1) district policies and procedures for documenting or reporting suspected gang-related activity, (2) certain records pertaining to gang-related activity within the district during a specified time period, and (3) records pertaining to gang-related incidents and internal statistics documenting gang-related activity.<sup>1</sup> You state the district is providing "most" of the responsive information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>We note the requestor excluded all student-identifying information from the request.

<sup>2</sup>We 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.

Initially, we note some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-20489 (2013). In Open Records Letter No. 2013-20489, we concluded, in part, the district must withhold incident report number SISDPD 1322389 HC 13122477 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. We understand the law, facts, and circumstances on which the prior ruling was based have not changed. Accordingly, the district must continue to rely on Open Records Letter No. 2013-20489 as a previous determination and withhold the incident report in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). As we make this determination, we do not address your claimed exceptions for this 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 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 seek to withhold the submitted policies and procedures, which you assert consists of a draft of a policymaking document, under section 552.111 of the Government Code. However, you state the information at issue consists of information contained in the district police department (the "department") handbook. You further state these records are "internal records of the [department] that are maintained for internal use in matters relating to law enforcement and release of said documents would interfere with law enforcement." Thus, we understand the district to state the draft document will not be released to the public in its final form. Accordingly, the district may not withhold the department policies and procedures under section 552.111 of the Government Code.

You also assert the submitted policies and procedures are protected under section 552.108(b)(1) of the Government Code, which excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 508 (1988) (holding that release of dates of prison transfer could

impair security), 413 (1984) (holding that section 552.108 excepts sketch showing security measures for execution).

You assert the information at issue reveals “specific guidance to assist [the district’s] Police Department [the “department”] officers and employees in using appropriate law enforcement methods, techniques, and strategies with relation to suppressing gang activity.” You claim the release of this information would give “potential criminals and law-breakers an advantage in confrontations and dealings with [department] police officers and personnel,” and generally undermine police efforts to effectuate the laws. Based on your representations and our review, we find the district may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, we find you have failed to demonstrate how release of any of the remaining information would interfere with law enforcement or prosecution. Accordingly, the district may not withhold any of the remaining information in Exhibit B under section 552.108(b)(1).

In summary, the district must continue to rely on Open Records Letter No. 2013-20489 as a previous determination and withhold the submitted incident report in accordance with that ruling. The district may withhold the information we have marked in Exhibit B under section 552.108(b)(1) of the Government Code. The district 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 506966

Enc. Submitted documents

c: Requestor  
(w/o enclosures)