



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2014

Mr. William Schultz
Assistant District Attorney
Denton County District Attorney's Office
1450 East McKinney, Suite 3100
Denton, Texas 76209

OR2014-22167

Dear Mr. Schultz:

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# 545915.

The Denton County Sheriff's Office (the "sheriff's office") received a request for all information pertaining to a specified internal investigation involving the requestor's client as well as the requestor's client's personnel file. You state you have released some information to this requestor. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

You assert portions of the remaining information are excepted under section 552.108 of the Government Code, which provides, in relevant part, the following:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

¹Although you also raise sections 552.101, 552.1175, 552.130, and 552.147 of the Government Code, you have not submitted arguments explaining how these exceptions apply to the submitted information. Therefore, we presume the sheriff's office no longer asserts these exceptions. *See* Gov't Code §§552.301, .302.

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(b) An 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 is excepted from the requirements of Section 552.021 if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(1), (a)(2), (b)(2), (b)(3). A governmental body raising section 552.108 must reasonably explain the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

You raise section 552.108(a)(1) of the Government Code for Exhibit C-3. We note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the criminal investigation or prosecution of alleged misconduct. *See, e.g., Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, no pet.) (section 552.108 generally not applicable to law enforcement agency's personnel records); Open Records Decision No. 350 at 3-4 (1982). You generally assert a portion of the information submitted in Exhibit C-3 "could fall under pending unresolved criminal cases."

However, you do not inform us the information at issue pertains to any specific ongoing criminal investigation or prosecution, nor have you explained how its release would interfere with the detection, investigation, or prosecution of crime. As such, we find you have failed to demonstrate the applicability of section 552.108(a)(1) to Exhibit C-3. Consequently, the sheriff's office may not withhold Exhibit C-3 under section 552.108(a)(1) of the Government Code.

You raise section 552.108(b)(1) for information in Exhibits C-1 and C-3. 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." *See City of Fort Worth v. Cornyn*, 86 S.W.3d at 327. To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). You state Exhibit C-1 contains information from the sheriff's office pertaining to sheriff's office employees and the status of their certifications. You further generally assert Exhibit C-3 contains internal records and notations of law enforcement cases and sheriff's office deputies. Upon review, we find you have failed to demonstrate release of Exhibit C-1 or Exhibit C-3 would interfere with law enforcement and crime prevention, and the sheriff's office may not withhold this information under section 552.108(b)(1) of the Government Code.

Additionally, you assert Exhibit C-1 is excepted under sections 552.108(a)(2) and 552.108(b)(3) of the Government Code. You state Exhibit C-1 contains information maintained for internal use related to law enforcement or prosecution. We note section 552.108(a)(2) is applicable only if the information at issue is related to a concluded criminal case "that did not result in conviction or deferred adjudication." *Id.* § 552.108(a)(2). Thus, having considered your representations, we find you have failed to demonstrate the applicability of section 552.108(a)(2) to the Exhibit C-1. Although you also raise section 552.108(b)(3) for Exhibit C-1, you have not submitted any arguments explaining the applicability of this section to the information at issue. Therefore, we find the sheriff's office has not demonstrated the applicability of section 552.108(b)(3) to Exhibit C-1. Accordingly, the sheriff's office may not withhold Exhibit C-1 under section 552.108(a)(2) or section 552.108(b)(3).

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 a 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 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 Open Records Decision No. 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 may also be withheld under section 552.111. See Open Records Decision No. 313 at 3 (1982).

You state Exhibit C-2 consists of internal memorandums and e-mails which are part of the deliberative process of the sheriff's office. However, we find Exhibit C-2 pertains to a specific personnel matter, and thus, does not consist of internal advice, opinion, or recommendations regarding policymaking issues. Therefore, we find section 552.111 is not applicable to Exhibit C-2, and the sheriff's office may not withhold this information on that basis.

We note the remaining information contains information subject to section 552.139 of the Government Code.² Section 552.139 of the Government Code provides, in part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

Gov't Code § 552.139(a). Section 2059.055 of the Government Code provides in pertinent part:

²The 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).

(b) Network security information is confidential under this section if the information is:

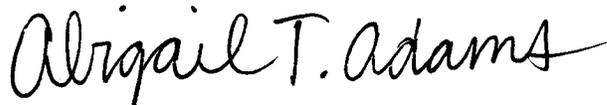
(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency[.]

Id. § 2059.055(b)(1). We understand the user names we have marked in the submitted information can be used to access the Texas Department of Public Safety's database for law enforcement personnel. Upon review, we find these user names relate to computer network security. Accordingly, the sheriff's office must withhold the user names, a representative sample of which we have marked, under section 552.139 of the Government Code. As you raise no further exceptions to disclosure, the remaining submitted 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.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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/ac

Ref: ID# 545915

Enc. Submitted documents

c: Requestor
(w/o enclosures)