



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 26, 1994

Ms. Barbara E. Elliott
City Attorney
City of Bedford
P.O. Box 157
Bedford, Texas 76095-0157

OR94-033

Dear Ms. Elliott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (formerly V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 22897.

The City of Bedford (the "city") received an open records request for a proposed employment contract for the position of city manager that a city council member submitted to the city council during its October 19, 1993, meeting. Although you inform us that the city has released to the requestor a finalized version of the contract, this office nevertheless must determine whether the initial draft of the contract is subject to required public disclosure. You contend that the draft document comes under the protection of sections 552.106 and 552.111 of the Government Code.

You also contend that the city must withhold the proposed contract pursuant to section 552.101² in conjunction with the Texas Open Meetings Act, now found at chapter 551 of the Government Code. You specifically contend that the city must withhold the proposed contract under sections 551.074 and 551.104(c) of the Government Code. Section 551.074 allows the city to consider an employee's terms of employment during an executive session unless the employee specifies otherwise, while section 551.104(c) makes the certified agendas of executive sessions confidential. Although certified agendas and tape recordings of executive sessions are confidential under section

¹The Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

551.104(c), that section applies only to the certified agendas and tape recordings; it does not apply to information that a city official³ prepares independently of the executive session and that a city council member takes into the executive session for consideration. See Open Records Decision No. 485 (1987) at 4-5. Consequently, the proposed contract is not confidential under the Open Meetings Act merely because the city council reviewed and discussed it during an executive session. We therefore must address whether the other exceptions you raise apply to this information.

Section 552.111 protects interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation that a governmental body intends to use in its policymaking process. Open Records Decision No. 538 (1990) at 1-2. The purpose of this exception is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 (1993) at 5 this office held that:

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters [Emphasis in original.]

You contend that section 552.111 protects the proposed contract because

[n]egotiating a contract for the employment of a city manager is clearly a policy making function of the City Council and not a routine internal administrative or personnel matter. The deliberative process used by the Council in negotiating such a contract will result in a document which will govern the relationship of how policies of the Council will be implemented by the City Manager, and how the Council will ultimately be able to achieve its policy making goals and objectives through its governance of the City Manager.

Our review of the proposed contract revealed none of these concerns. The various sections of the contract pertain solely to routine personnel matters such as salary, hours of work, sick leave, benefits, and other general terms of employment. The only section of the contract that even touches upon the actual duties of the city manager merely reflects that he shall "perform the functions and duties specified in [the] City Charter and by provisions of [the] City Code, and to perform other legally permissible and proper duties and functions as the Council shall from time to time assign." Contrary to your claims, this record in no way reflects "how policies of the Council will be implemented by the

³This office understands that the proposed contract was prepared by the city's current city manager.

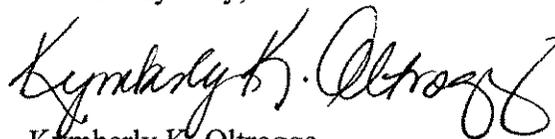
City Manager [or] how the Council will ultimately be able to achieve its policy making goals and objectives through its governance of the City Manager." Section 552.111 does not apply to this type of information.⁴

Section 552.106 protects from public disclosure drafts and working papers involved in the preparation of proposed legislation. The purpose of the exception is similar to that of section 552.111: to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the legislative body and thereby protect the internal "deliberative" or policy-making process of a governmental body. Open Records Decision No. 460 (1987) at 2. Section 552.106 does not except purely factual material; rather, it excepts only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation. See Open Records Decision No. 429 (1985) at 5 and authorities cited therein. Section 552.106 applies only to drafts and working papers prepared by persons with some official responsibility to prepare them for the legislative body. *Id.*

Although you describe the proposed contract as "a draft or working paper involved in the preparation of proposed legislation," it is clear to this office that the proposed employment contract at best relates only tangentially to the city's legislative process. The contract in no way constitutes proposed legislation, nor have you demonstrated how the contract constitutes a working paper involved in the preparation of proposed legislation. The city may not withhold the proposed contract pursuant to section 552.106.

The proposed contract comes under none of the exceptions to disclosure that you have raised. Accordingly, the city must release the proposed contract without delay. Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kymberly K. Oltrogge
Assistant Attorney General
Open Government Section

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⁴In Open Records Decision No. 559 (1990) at 2 this office held that "where a document is genuinely a preliminary draft of a document that has been released or is intended for release in a final form, the draft necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document." However, in light of Open Records Decision No. 615, this earlier decision does not apply to drafts of documents that do not reflect policy deliberations. As noted above, your contention that the proposed contract pertains to a matter of policy is without merit.

Ref: ID# 22897
ID# 22987
ID# 23048
ID# 23271

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