



February 10, 1999

Ms. Marianne Landers Banks
City Attorney
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR99-0404

Dear Ms. Banks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122096.

The City of Georgetown (the "city") received a request for the results of the management audit conducted on the Georgetown Police Department. You claim that the responsive document, a report prepared by a private consultant, is excepted from required public disclosure by sections 552.103 and 552.111 of the Government Code.

You claim that the requested information is excepted from disclosure because it consists of a draft report that is not in final form. You state that the report was commissioned by the city to assess the effectiveness of the Georgetown Community Policing policy. The report outlines the organization, management, and strategies used in the city police department. The report lists background facts and impression is gleaned from interviews with police department personnel and department policy materials. Several findings and recommendations are also included. In Open Records Decision 559 (1990), this office concluded that a preliminary draft of a document that is intended for public release in a final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document and as such could be withheld pursuant to the statutory predecessor to section 552.111. However, subsequent to issuance of Open Records Decision No. 559 (1990), this office determined that section 552.111 excepts only advice, opinion, or recommendation intended for use in a governmental entity's policy-making processes.

[T]o 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.]

Open Records Decision No. 615 at 5 (1993). Section 552.111 now excepts draft documents only to the extent that the draft documents pertain to the policymaking function of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). We do not believe that, in this instance, the requested document pertains to the policy mission of the city: the document relates solely to the function of and management by the chief of police. *See Garland v. Dallas Morning News*, 969 S.W.2d 548, 557 (Tex. App.--Dallas 1998, pet. requested) (citing *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455, 457 (Tex. App.--Houston [14th Dist.] 1996), writ denied *per curiam*, 41 Tex. Sup. Ct. J. 575 (1998) (documents relating to problems with specific employee do not relate to the making of new policy but merely implement existing policy)). Although, we have found that a consultant's report that includes advice, recommendations, and opinions regarding administrative and personnel matters of a broad scope that affect the governmental body's policy mission could be withheld under section 552.111, it does not appear that such a broad scope is contemplated by this report. Open Records Decision No. 631 (1995). The draft document at issue exclusively involves the chief of police's administration and basic personnel issues. Furthermore, the report itself states that "[t]he evaluation contained in this report was not intended to be a comprehensive assessment of the management of the GPD, but was rather narrowly focused on the ability of the chief of police to maintain the confidence, respect and support of the men and women of the police department." We conclude that you may not withhold the requested information under section 552.111

You next claim that the report may be withheld under section 552.103(a), the "litigation exception." Section 552.103(a) excepts from disclosure information relating to litigation to which the state is or may be a party. A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You claim that litigation is reasonably anticipated because the requestor is an attorney who was hired by a police department employee who is also the former president of the Georgetown Police Association. The mere fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983). We do not believe that you have shown that litigation is reasonably anticipated. You may not withhold the requested report under section 552.103. Consequently, the requested information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB\nc

Ref: ID# 122096

Enclosures: Submitted documents

cc: Ms. Nelita A. Neves
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(w/o enclosures)