



August 15, 2002

Mr. Brad Norton  
Assistant City Attorney  
City of Austin  
P.O. Box 1546  
Austin, Texas 78767-1546

OR2002-4494

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167204.

The City of Austin (the “city”) received a request for “[t]he candidate list of projects being assembled by City Staff for funding from the 2002 Regional Mobility Funds allocated to the City of Austin by Capital Metropolitan Transit Authority.” You claim that the requested information is excepted from disclosure under sections 552.105 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin by addressing the timeliness of your request for a decision. Subsections 552.301(a) and (b) of the Government Code provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the Public Information Act exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general’s decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Thus, you were required to request a decision from this office within ten business days after the date you received the request for information. Although the request is dated May 13, 2002, you indicate that the city does not have any record of receiving the request before

May 30, 2002. On May 30, the requestor contacted the city to inquire about his request. When the city indicated that it had not received the request, the requestor faxed a copy of the request to the city. You state that, to the best of the city's knowledge and belief, May 30 was the first time the city received the request. Based on this representation, we find that the deadline for requesting a decision from this office was June 13, 2002. Your request for a decision was received by this office on June 12, 2002, and, therefore, was timely.

Next, we address your contention that the submitted information is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 provides that "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency is excepted from [required public disclosure]." The deliberative process privilege, as incorporated into the Public Information Act by section 552.111, protects from disclosure interagency and intra-agency communications consisting of advice, opinion, or recommendations on policymaking matters of a governmental body. See *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 615 at 5 (1993). An agency's policymaking functions 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. ORD 615 at 5-6. Additionally, the deliberative process privilege does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.); ORD 615 at 4-5.

You indicate that the submitted information consists of a list of candidate projects assembled by city staff that represents the staff's advice, opinion, and recommendations on how to apply the Regional Mobility Funds allocated to the city by the Capital Metropolitan Transit Authority. You further indicate that this is not a finalized list of chosen projects, but a proposal that will be considered in the allocation of resources amongst competing programs. Based on your representations, we agree that the submitted information consists of internal advice, opinion, or recommendations on policymaking matters. Therefore, the city may withhold the submitted information under section 552.111 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

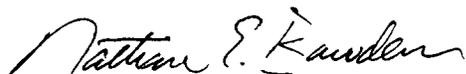
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 167204

Enc: Submitted documents

c: Mr. Colin Clark  
Save Our Springs Alliance  
P.O. Box 684881  
Austin, Texas 78768  
(w/o enclosures)