



October 1, 2002

Ms. Leslie R. Sweet
Legal Advisor
Dallas County Sheriff
133 North Industrial Boulevard, LB 31
Dallas, Texas 75207-4313

OR2002-5521

Dear Ms. Sweet:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170051.

The Dallas County Sheriff's Department (the "department") received a request for: 1) the Dallas County Sheriff's calendar; 2) all proposals received by the department to provide jail commissary services; and 3) any analysis of the proposals by employees of the department. You state that the department will provide the responsive calendars to the requestor. You also state that the department will release the proposals in accordance with Open Records Letter No. 2002-5001.¹ Finally, you claim that analysis of the proposals is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered the comments submitted to this office by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.). An

¹In Open Records Letter No. 2002-5001 (2002), we concluded that, except for the e-mail address we marked pursuant to section 552.137 of the Government Code, the submitted proposals must be released in compliance with copyright law.

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, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5.

You state that the memorandum, Attachment B, "is [an] internal communication[] consisting of advice, recommendation, and opinions reflecting the policymaking process of the Sheriff's Office." Upon review of the submitted information, we agree that the memorandum contains advice, recommendation, and opinion. However, we find that this information pertains to an internal administrative function of the department, and that you have failed to demonstrate how the process of awarding a contract to provide jail commissary services relates to the policy mission of the department. *See* Gov't Code § 552.111; *City of Garland v. Dallas Morning News*, 969 S.W.2d 548, 557 (Tex. App.—Dallas 1998, pet. granted); Open Records Decision No. 631 at 3 (1995) (policy making function of government body includes advice, recommendation, and opinion regarding administrative and personnel matters of broad scope that affect government body's policy mission; report addressing university's affirmative action policies involves university's educational mission). Therefore, the department may not withhold Attachment B under section 552.111 of the Government Code, and it must be released to the requestor.

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); *Texas Department of Public 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 170051

Enc: Submitted documents

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