OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 30, 2003

Mr. Stephen R. Alcorn
Assistant City Attorney
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053

OR2003-2905

Dear Mr. Alcorn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180243.

The City of Grand Prairie (the "city") received a request for information pertaining to a background investigation of an applicant for employment as a police officer with the city's police department. We understand you to assert that that the requested information is excepted from disclosure under section 552.111 of the Government Code.[1] We have considered the exception you claim and reviewed the submitted information.

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 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

[1] You have also asserted that the information is excepted from disclosure by section 552.021 of the Government Code. Section 552.021 requires that information be made available to the public during the normal business hours of a governmental body and as such is not an exception to disclosure. Gov't Code § 552.021.

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.

The submitted memorandum pertains to a specific decision not to hire an applicant for employment with the city's police department. Upon reviewing the arguments and information you submitted, we conclude that you have not demonstrated that the memorandum in question reveals the advice, recommendations, opinions, or other material reflecting the city's policymaking processes. Therefore, you may not withhold the memorandum under section 552.111.

We note that you contend that because the requestor previously signed a "waiver" of his right to review the submitted information, the city is now authorized to withhold that information from the requestor. However, it is well established that a governmental body cannot, through a contract or agreement, overrule or repeal provisions of the Public Information Act (the "Act"). Attorney General Opinion JM-672 (1987); *see also Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). Consequently, information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. We further note that the Act requires that a governmental body treat all requests for public information uniformly. *See* Gov't Code § 552.223. Accordingly, the city may not treat the current request any differently than a request for the same information from any other member of the public. *See also* Gov't Code § 552.007 (prohibiting selective disclosure). Consequently, because you have not demonstrated that the submitted information falls within an exception to disclosure, the city must release the submitted information to the requestor in its entirety, notwithstanding any "waiver" executed by the requestor specifying otherwise.

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

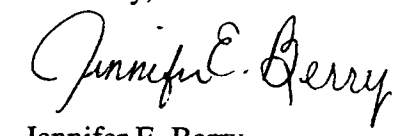
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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 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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 180243

Enc: Submitted documents

c: Mr. Lee Snodgrass
1014 Hilltop Drive, Apt. G2
Grapevine, Texas 76051
(w/o enclosures)