



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 4, 2006

Ms. Meredith Ladd
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2006-04581

Dear Ms. Ladd:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 248129.

The City of Flower Mound (the "city"), which you represent, received a request for the performance expectations of the requestor given at a certain meeting. You claim that a portion of the requested information is not subject to the Act. In the alternative, you claim that the requested information is excepted from disclosure in its entirety under section 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we address your contention that a portion of the requested information is not public information subject to disclosure under the Act. The Act only applies to public information. *See* Gov't Code § 552.021. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002. Thus, under this provision, information is generally "public information" within the scope of the Act when it relates to the official business of a governmental body or is maintained by a public official or employee in the performance of official duties, even though it may be in the possession of one person. *See* Open Records Decision No. 635 at 4 (1995). You state that the submitted documents contain handwritten personal notes that were to serve only as mental reminders to the drafter and are

therefore not subject to the Act. In support of your position, you cite to Open Records Decision No. 77 (1975) where we concluded that personal notes made by individual faculty members for their own use as memory aids were not subject to the Act. However, this office has issued numerous rulings since the issuance of Open Records Decision No. 77 concluding that information collected, assembled, or maintained in connection with the transaction of official business, including "personal" notes, is subject to the Act. *See, e.g.*, Open Records Decision Nos. 635 (1995) (public official's or employee's appointment calendar, including personal entries, may be subject to act), 626 (1994) (handwritten notes taken during oral interview by Texas Department of Public Safety promotion board members are public information), 327 (1982) (notes made by school principal and athletic director relating to teacher "were made in their capacities as supervisors of the employees" and constitute public information), 120 (1976) (faculty members' written evaluations of doctoral student's qualifying exam subject to predecessor of Act). Upon review, we find that the notes at issue relate to personnel issues involving city employees and the performance of their duties. Thus, the information was created as part of the city's official transaction of business. *See* Gov't Code § 552.002. Therefore, we conclude that these notes are subject to the Act and may only be withheld if an exception under the Act applies.

You claim that the submitted information is excepted from disclosure in its entirety under section 552.111 of the Government Code. Section 552.111 excepts from public disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. Section 552.111 encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of this exception is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615 (1993), this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, and opinions that reflect the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995).

In this instance, the submitted information relates to routine personnel matters. You have not adequately explained, nor do the documents reflect, that any of the information at issue relates to a policy mission of the city. We therefore conclude that the city may not withhold the submitted information under section 552.111 of the Government Code. As you raise no other exceptions to disclosure, the city must release the submitted information 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 248129

Enc. Submitted documents

c: Ms. Patricia Cantu
321 Randy Road
Roanoke, Texas 76262
(w/o enclosures)