



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2007

Mr. John Danner
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2007-07972

Dear Mr. Danner:

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# 281653.

The City of San Antonio (the "city") received a request for all documents and records related to a Preliminary Overall Area Development Plan for a specified subdivision, and a specified Development Rights Plan. You claim that the requested information is excepted from disclosure under sections 552.105, 552.106, 552.111, and 552.131 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.105 of the Government Code excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or

¹Although you raise sections 552.101, 552.102, 552.103, 552.104, 552.107, 552.108, 552.109, 552.110, 552.116, 552.117, 552.128, 552.136, 552.137, and 552.139 of the Government Code, you have not provided any arguments in support of these claims. Thus, the city has waived its claims under sections 552.103, 552.104, 552.107, 552.108, and 552.116. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general). Further, the city has not demonstrated that any of the requested information is confidential for purposes of sections 552.109, 552.110, 552.117, 552.128, 552.136, 552.137, or 552.139. *See* Gov't Code §§ 552.301, .302.

(2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov't Code § 552.105. This exception is designed to protect a governmental body's planning and negotiating position in transactions involving the purchase of real or personal property for a public purpose until the transaction has been completed. Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982).

You generally state that the "city believes that the documents contain information regarding the location of real property for a public purpose prior to the announcement of the project." However, the city has not identified the information you claim falls within this exception. Gov't Code § 552.301(e)(2) (stating that governmental body must properly label submitted information to indicate which exceptions apply). Furthermore, after reviewing the information and your statement, we find that the city has failed to explain how the release of any portion of the submitted information would harm the city's negotiating position for purposes of section 552.105. Therefore, the submitted information may not be withheld under section 552.105 of the Government Code.

Section 552.106 of the Government Code excepts from required public disclosure "[a] draft or working paper involved in the preparation of proposed legislation[.]" Gov't Code § 552.106(a). Section 552.106(a) ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. See Open Records Decision No. 460 at 1 (1987). The purpose of this exception is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body; therefore, section 552.106 encompasses only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation and does not except purely factual information from public disclosure. *Id.* at 2.

After reviewing the submitted information, we find that you have not established that it consists of drafts or working papers involved in the preparation of proposed legislation for purposes of section 552.106. Therefore, we conclude that none of the submitted information is excepted from disclosure under section 552.106.

Section 552.111 of the Government Code 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." Gov't Code § 552.111. Section 552.111 encompasses the deliberative process privilege. See Open Records Decision No. 615 at 2 (1993). In Open Records Decision No. 615, 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, and opinions reflecting the policymaking processes of the governmental body. See *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); see also *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin, 2001, no pet.). The purpose of section 552.111

is “to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes.” *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e.).

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. *See* ORD 615 at 5-6. 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). Further, a preliminary draft of a policymaking document that has been released or is intended for release in final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. *See* Open Records Decision No. 559 at 2 (1990). Section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* ORD 615 at 5. But, if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

The requested documents consist of factual information regarding land use plans. You have not shown how this information consists of advice, recommendations, or opinions reflecting the policymaking processes of the city. Furthermore, you have not explained how the information is a draft of a policymaking document intended for public release in its final form. Therefore, the city may not withhold any of the submitted information under section 552.111.

Section 552.131 excepts from public disclosure a business prospect’s trade secret or commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the governmental body’s territory. Gov’t Code § 552.131(a). Section 552.131(a) is inapplicable to information about a financial or other incentive offered the business prospect after a governmental body reaches an agreement with the business prospect. *Id.* § 552.131(b),(c).

After reviewing your arguments, we find that the city has not established that any of the requested information consists of a business prospect’s trade secret or commercial or financial information that would be excepted under section 552.131(a). Further, no third party has made any claims of either protected trade secret or commercial or financial information for the information responsive to this request. Thus, section 552.131(a) is inapplicable to the submitted information. Additionally, the city has not established, and we are unable to determine, what portions, if any, detail financial incentives being offered to a

business prospect by the city. Therefore, section 552.131(b) is also inapplicable to the submitted information. Accordingly, the city may not withhold the submitted information under section 552.131. As you raise no other exceptions to disclosure, the submitted information 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, 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,



Loan Hong-Turney
Assistant Attorney General
Open Records Division

LH/sdk

Ref: ID# 281653

Enc. Submitted documents

c: Ms. Connie Basel
112 East Pecan, Suite 1490
San Antonio, Texas 78205
(w/o enclosures)