



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 15, 2008

Mr. Jesús Toscano, Jr.  
Administrative Assistant City Attorney  
City of Dallas  
1500 Marilla Street  
Dallas, Texas 75201

OR2008-14144

Dear Mr. Toscano:

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# 324618.

The City of Dallas (the "city") received a request for all correspondence between specified city employees and elected officials regarding the relocation of AT&T headquarters. You state you will provide some of the requested information to the requestor. You claim the submitted e-mails, slide presentation, and letters are excepted from disclosure under sections 552.111 and 552.131 of the Government Code. Furthermore, you state the submitted information may contain proprietary information subject to exception under the Act. Accordingly, you state, and have provided documentation showing, you notified AT&T of the city's receipt of the request for information and of the company's right to submit arguments to this office as to why information relating to it should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered your arguments and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments submitted by AT&T.

You assert the information submitted in Exhibits B and D is excepted from disclosure under the deliberative process privilege encompassed by section 552.111 of the Government Code.

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

See Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 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, 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 section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. See ORD 615 at 5. Section 552.111, however, 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.

This office has also concluded a preliminary draft of a document intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. See Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. See *id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. See *id.* at 2.

You assert the draft letters in Exhibit B and e-mails in Exhibit D consist of communications between and among city staff regarding the possible relocation at issue. Furthermore, you represent the final version of the draft letters in Exhibit B will be released to the public in its final form. Based on your representations and our review, we find you have established the deliberative process privilege is applicable to the draft letters in Exhibit B and the information we have marked in the e-mails in Exhibit D. However, you have failed to demonstrate how the factual information contained in the remaining portions of the e-mails constitutes advice, recommendations, opinions, or material reflecting the policymaking processes of the city. Accordingly, you may withhold the draft letters in Exhibit B and the marked portions of the e-mails in Exhibit D under section 552.111 of the Government Code.

The city and AT&T both assert the remaining information is excepted from disclosure under section 552.131(b) of the Government Code, which provides that “[u]nless and until an agreement is made with [a] business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].” Gov’t Code § 552.131(b). We note section 552.131(b) is designed to protect the interests of governmental bodies, not third

parties. Because the city has submitted arguments under section 552.131(b), we will consider the applicability of this section to the remaining information.

The city informs us the slide presentation and remaining e-mails pertain to pending economic development negotiations, in which an agreement has not been reached, involving the city and AT&T. The city also states the information at issue concerns possible financial or other incentives being offered to AT&T by the city. Upon review of the city's arguments and the remaining information, we conclude the city may withhold the information we have marked in the slide presentation and remaining e-mails under section 552.131(b) of the Government Code. We note the applicability of section 552.131 ends once the city finalizes an agreement with AT&T. *See id.* § 552.131(c). The remaining information consists of factual information about the city and general discussions among city personnel, but does not disclose incentives offered by the city to AT&T. Thus, the city has failed to demonstrate how the remaining information consists of financial or other incentives for purposes of section 552.131(b). Therefore, the remaining information may not be withheld under section 552.131(b). As no other arguments against disclosure have been provided for the remaining information, this information must be released.

In summary, the city may withhold the draft letters in Exhibit B and the information we have marked in Exhibit D under section 552.111 of the Government Code. The city may withhold the information we have marked in the slide presentation and remaining e-mails under section 552.131(b) of the Government Code. The remaining information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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

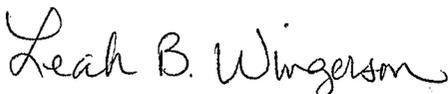
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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 challenge 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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/ma

Ref: ID# 324618

Enc. Submitted documents

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