



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 15, 2009

Ms. Susan Camp-Lee
Attorney for City of Round Rock
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2009-04967

Dear Ms. Camp-Lee:

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# 339969.

The City of Round Rock (the "city"), which you represent, received a request for information related to the Brushy Creek Regional Utility Authority (the "BCRUA"). You state some of the responsive information will be released. You claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.111 and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you claim the username and password in Exhibit C are not public information under the Act. We note the Act is applicable only to "public information." *See Gov't Code* § 552.021. Section 552.002 of the Act 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.

Id. § 552.002. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property, is not the kind of information that is made public under section 552.021 of the Act. *See* Open Records Decision No. 581 at 6 (1990) (construing predecessor statute). Based on the reasoning in that decision and our review of the information at issue, we find the username and password you marked in Exhibit C are used solely as tools to maintain, manipulate, or protect public property and have no other significance. *Id.* As such, the marked username and password are not public information, as defined by section 552.002, and, thus, are not subject to the Act. Therefore, the city need not release the marked username and password in Exhibit C under the Act.¹

Section 552.111 of the Government Code excepts from public disclosure “an interagency or intra-agency 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 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 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). Furthermore, 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).

¹As our ruling is dispositive, we need not address your argument against disclosure of this information.

This office also has concluded that a preliminary draft of a document that is 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.

Section 552.111 can also encompass communications between a governmental body and a third-party consultant. *See* Open Records Decision Nos. 631 at 2 (section 552.111 encompasses information created for governmental body by outside consultant acting at governmental body's request and performing task that is within governmental body's authority), 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process), 462 at 14 (1987) (section 552.111 applies to memoranda prepared by governmental body's consultants). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* ORD 561 at 9.

You state the information submitted as Exhibit B consists of the advice, opinions, and recommendations of an outside consultant retained by the city through the BCRUA, pertaining to "policy matters regarding release of information on the [proposed water supply] project, dealing with citizen concerns, negotiating with other governmental bodies and presenting a positive public image." You further state that the submitted drafts are intended for release in their final form. Based on your representations and our review of the information at issue, we agree that portions of the information, which we have marked, consist of advice, opinions, and recommendations reflecting the policymaking processes of the city. Therefore, the city may withhold the marked information under section 552.111 of the Government Code. However, we find the remaining information consists of purely factual information not excepted under section 552.111, and thus no part of it may be withheld pursuant to this exception.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).² Gov't Code § 552.137(a)-(c). We note that

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. We have marked e-mail addresses not of types specifically excluded by section 552.137(c). Therefore, the city must withhold the e-mail addresses we have marked pursuant to section 552.137 of the Government Code, unless the city has received consent for their release.

In summary, the username and password in Exhibit C do not constitute public information under section 552.002 of the Government Code and need not be released. The city may withhold the information marked under section 552.111 of the Government Code, and must withhold the e-mail addresses marked under section 552.137 of the Government Code, unless the city has received consent for their release. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 339969

Enc. Submitted documents

c: Requestor
(w/o enclosures)