



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2009

Ms. Deborah F. Harrison
Assistant District Attorney
Special Crimes Division - Civil Section
210 South McDonald, Suite 324
McKinney, Texas 75069

OR2009-17386

Dear Ms. Harrison:

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# 363957.

The Collin County District Attorney's Office (the "district attorney") received a request for any communications sent by an employee of the district attorney to or referencing a named judge from December 2007 until the date of the request, any policies and memorandum issued by an employee of the district attorney regarding practice and procedure in the named judge's court, and any correspondence received by an employee of the district attorney regarding the named judge's judicial campaign from January 2008 until the date of the request.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that some of the submitted documents in section IIC(1), which we have marked, are not responsive to the instant request for information because they were created after the date that the district attorney received the request. This ruling does not address such non-responsive information and the district attorney need not release it in response to this request.

You raise section 552.108 of the Government Code for the records in IIA, IIC(1), and IIC(2). Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement

¹We note that the district attorney asked for and received clarification regarding this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); see also Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification). We further note that, regarding the first category of the request, the requestor agreed to exclude communications between an employee of the district attorney to or referencing the named judge that only discuss routine court business.

agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have submitted an affidavit stating that the information at issue relates to an ongoing grand jury investigation and possible criminal prosecution. Based on this representation, and our review of the information at issue, we conclude that section 552.108(a)(1) is applicable to the information in IIA, IIC(1), and IIC(2). *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the district attorney may withhold the information in IIA, IIC(1), and IIC(2) under section 552.108(a)(1) of the Government Code.²

You assert that the information in IIB is a policy e-mail that is excepted from disclosure under section 552.111 of the Government Code. 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.” Gov’t Code § 552.111. This section 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*. However, 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.

²As our ruling on this issue is dispositive, we need not address your remaining arguments against disclosure of the information in IIA, IIC(1), and IIC(2).

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).

You state that the information in IIB consists of the advice, opinions, and recommendations of the district attorney. You assert this information involves policymaking matters related to the subject of the request and for an unrelated court and case. Based on your arguments and our review, we agree that some of the information consists of the advice, opinions, or recommendations of the district attorney regarding policymaking matters, and the district attorney may withhold the information we have marked in IIB under section 552.111 of the Government Code. However, you have not demonstrated how the remaining information at issue consists of advice, opinions, or recommendations about a policymaking decision. Therefore, the district attorney may not withhold any portion of the remaining information under section 552.111 of the Government Code.

In summary, the district attorney may withhold the information in IIA, IIC(1), and IIC(2) under section 552.108(a)(1). The district attorney may withhold the information we have marked in IIB under section 552.111 of the Government Code. The remaining information in IIB 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, toll free at (888) 672-6787.

Sincerely,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 363957

Enc. Submitted documents

c: Requestor
(w/o enclosures)