



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 3, 2013

Mr. Randall Miller  
Assistant District Attorney  
Dallas County  
411 Elm Street, Fifth Floor  
Dallas, Texas 75202

OR2013-15291

Dear Mr. Miller:

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# 498072.

Dallas County (the "county") received a request for information concerning specified activities and the use of county facilities for a special event.<sup>1</sup> You state the county will release some of the information. You claim the submitted information is excepted from disclosure under sections 552.111 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.111 of the Government Code excepts from disclosure "[a]n 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

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<sup>1</sup>The county sought and received clarification of the 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* *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, the ten-business-day period to request attorney general ruling is measured from date request is clarified or narrowed).

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, orig. proceeding); 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, orig. proceeding). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, opinions, recommendations, and other material reflecting 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. 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). Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *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).

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party with a privity of interest. *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 e-mail communications submitted as Exhibit D and the handwritten notes submitted as Exhibit E pertain to policymaking for the events related to the fiftieth anniversary of the John F. Kennedy assassination. Based on your representation and our review, we find the information we have marked consists of advice, opinion, or

recommendations concerning the county's policymaking function. Accordingly, the county may withhold the information we marked under section 552.111 of the Government Code. The remaining information does not consist of advice, opinion, or recommendations on a policymaking matter, or it involves third parties who you have not demonstrated share a privity of interest or common deliberative process with the county. Accordingly, the county may not withhold the remaining information under section 552.111 of the Government Code.

Section 552.137 of the Government Code provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov't Code § 552.137(a)–(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental body for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Thus, to the extent the remaining information contains e-mail addresses that belong to members of the public who have not affirmatively consented to their release, the county must withhold those e-mail addresses under section 552.137 of the Government Code.<sup>2</sup> However, the county may not withhold under section 552.137 any e-mail addresses that are of the type listed in section 552.137(c) of the Government Code.

In summary, the county may withhold the information we marked under section 552.111 of the Government Code. To the extent the remaining information contains e-mail addresses that belong to a member of the public who have not affirmatively consented to their release, the county must withhold those e-mail addresses under section 552.137 of the Government Code. 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.

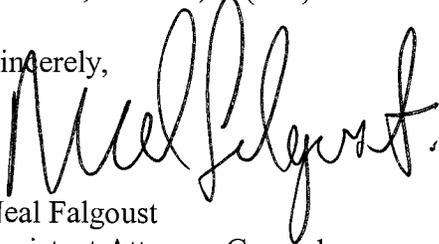
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

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<sup>2</sup>Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies permitting them to withhold the e-mail address of a member of the public under section 552.137 of the Government Code without requesting a decision from this office.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a large, prominent initial "N".

Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/ag

Ref: ID# 498072

Enc. Submitted documents

c: Requestor  
(w/o enclosures)