



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2014

Mr. Robert J. Davis
Counsel for Collin County Community Supervision and Corrections Department
Matthews, Stein, Shiels, Pearce, Knott, Eden, & Davis, L.L.P.
8131 LBJ Freeway, Suite 700
Dallas, Texas 75251

OR2014-05800

Dear Mr. Davis:

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# 519007 (File No. 1600-62049).

The Collin County Community Supervision and Corrections Department (the "department"), which you represent, received two requests from the same requestor for a copy of the department's policy and procedure manual and the requestor's probation file. You claim the submitted information is not subject to the Act. In the alternative, you claim some of the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information.

The Act is applicable to information "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). However, the Act's definition of "governmental body" "does not include the judiciary." *Id.* § 552.003(1)(B). In Open Records Decision No. 646 (1996), this office determined a community supervision and corrections department is a governmental body for purposes of the Act, and its administrative records, such as personnel files and other records reflecting the day-to-day management of the department, are subject to the Act. ORD 646 at 5; *see also Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ) (in determining whether governmental entity falls within judiciary exception, this office looks to whether governmental entity maintains relevant records as

agent of judiciary with regard to judicial, as opposed to administrative, functions). In contrast, specific records held by a community supervision and corrections department concerning individuals who are on probation and subject to the direct supervision of a court are not subject to the Act, as such records are held on behalf of the judiciary. ORD 646 at 5.

You inform us Exhibit 4 consists of records of a probationer under the supervision of the department. Based on your representation and our review, we conclude Exhibit 4 is maintained by the department as an agent of the judiciary, consists of records of the judiciary, and is not subject to release under the Act. As such, Exhibit 4 need not be released in response to this request.¹ However, Exhibit 5 consists of the department's Administrative Manual, which we find is an administrative record of the department. Thus, this information is subject to the Act and must be released unless it is otherwise excepted from required disclosure. Gov't Code § 552.021. Accordingly, we will address your arguments under sections 552.108 and 552.111 of the Government Code for Exhibit 5.

Next, we note some of the information in Exhibit 5 is subject to section 552.022 of the Government Code. Section 552.022(a)(3) provides for the required public disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body" unless it is "made confidential under [the Act] or other law[.]" *Id.* § 552.022(a)(3). The submitted signed grant agreements, which we have marked, are subject to section 552.022(a)(3) and must be released unless they are confidential under the Act or other law. Although you assert this information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code, these sections are discretionary and do not make information confidential under the Act. *See* Open Records Decision Nos. 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the department may not withhold the information subject to section 552.022 under section 552.108 or section 552.111. We will, however, address your arguments under sections 552.108 and 552.111 for the remaining information in Exhibit 5.

Section 552.108(b)(1) of the Government Code excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex.

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of the information that is not subject to the Act.

App.—Austin 2002, no pet.). To prevail on its claim that subsection 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

The information at issue consists of the department's Administrative Manual, which you state details the department's operations, investigative techniques, and procedures for supervising probationers. You contend disclosure of the remaining information in Exhibit 5 "would permit . . . probationers to anticipate weaknesses in [the department], avoid detection of violations of the terms and conditions of probation, possibly jeopardize probation officer safety, and generally undermine [the department]'s efforts to effectuate the terms and conditions of probation[.]" Based on your arguments and our review, we find the release of the information we have marked would interfere with law enforcement. Accordingly, the department may withhold the information we have marked under section 552.108(b)(1).² However, we find you have failed to demonstrate how the remaining information would interfere with law enforcement. Consequently, the department may not withhold the remaining information that is subject to the Act under section 552.108(b)(1).

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 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, writ ref'd n.r.e.); Open Records Decision No. 538 at 1-2 (1990).

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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. ORD 615 at 5; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). A governmental body's policymaking functions 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). However, 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. ORD 615 at 5-6; *see also Dallas Morning News*, 22 S.W.3d at 364 (section 552.111 not applicable to personnel-related communications that did not involve policymaking).

Further, section 552.111 does not generally except from disclosure facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 157; 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 contend the remaining information within the Administrative Manual consists of the department's internal policies and procedures regarding administrative and personnel matters of a broad scope that affect the department's policy mission. However, we find the remaining information does not consist of advice, opinion, or recommendation, but rather consists of general administrative and purely factual information. Consequently, we conclude you have failed to demonstrate how the remaining information is excepted under the deliberative process privilege, and the department may not withhold it under section 552.111.

In summary, Exhibit 4 is not subject to disclosure under the Act and need not be released. The department may withhold the information we have marked in Exhibit 5 under section 552.108(b)(1) of the Government Code. The department must release the remaining information in Exhibit 5.

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

Sincerely,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 519007

Enc. Submitted documents

c: Requestor
(w/o enclosures)