



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2014

Ms. Susan Guinn
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2014-15454

Dear Ms. Guinn:

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# 534922 (COSA No. W028710-061114).

The City of San Antonio (the "city") received a request for five categories of information pertaining to a specified non-conforming use permit, including information used by the city as part of an investigation pertaining to the non-conforming use permit, communications or notes of communications between city employees and third parties about the investigation, communications from four named individuals or their agents, and information pertaining to meetings where the permit was considered or discussed. You state you will release information reviewed by a city planner in the specified investigation and the city planner's final determination. You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have only submitted research notes. To the extent any other information responsive to the request for information existed on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, you argue the submitted information is not responsive to the instant request. You state the submitted information consists of research notes compiled by a city planner in the review of information related to the application for the non-conforming use permit. You assert the submitted information “is a draft of research notes and recommendations prepared *after* a review of the information available for making a determination of non-conforming rights.” We note a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). Upon review, we find the submitted information is responsive to the present request. Accordingly, we will address your argument under section 552.111 of the Government Code for 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. This exception 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).

In Open Records Decision No. 615, 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. 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, 364 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). 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). Further, section 552.111 does not protect facts and written observations of facts and events severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152, 157 (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, section 552.111 protects the factual information. *See* Open Records Decision No. 313 at 3 (1982).

The city asserts the submitted information contains the initial impressions and recommendations of a city planner reviewing non-conforming rights of land use. The city further asserts this information was used to formulate a final determination letter. Upon review, we agree the submitted information constitutes advice, opinion, or recommendations

on a policy making matter. Accordingly, we find the city may withhold the submitted information under section 552.111 of the Government Code.

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, appearing to read "Paige Thompson". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 534922

Enc. Submitted documents

c: Requestor
(w/o enclosures)