



January 22, 2015

Ms. Heather Silver  
Assistant City Attorney  
City of Dallas  
1500 Marilla Street, Room 7DN  
Dallas, Texas 75201

OR2015-01224

Dear Ms. Silver:

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# 549055.

The City of Dallas (the "city") received a request for e-mails sent to and from city officials and employees involving matters related to Ebola during a specified time period. You state you will provide some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.111, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which is a representative sample.<sup>1</sup>

Initially, we note some of the submitted e-mails are not responsive to the instant request because they were not sent during the specified time period. This ruling does not address the public availability of non-responsive information, and the city need not release non-responsive information in response to the present request.

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Next, we note some of the responsive information may have been the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2014-23179 (2014), 2014-23242 (2014), 2015-00030 (2015), and 2015-01171 (2015). We understand there has been no change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the submitted information is identical to the information previously submitted and ruled on by this office in Open Records Letter Nos. 2014-23179, 2014-23242, 2015-00030, and 2015-01171, the city must rely on such prior rulings as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent any of the responsive information was not at issue in any of the prior rulings, we will address the city's arguments against disclosure of that information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. The city raises section 552.101 in conjunction with section 81.046 of the Health and Safety Code. This section is part of the Communicable Disease Prevention and Control Act, chapter 81 of the Health and Safety Code. *See* Health & Safety Code § 81.001. Section 81.046 provides, in part, the following:

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under [the Act], and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (d), and (f).

Health & Safety Code § 81.046(b). You represent that most of the responsive information pertains to investigations of outbreaks of Ebola within the city. Upon review, we find section 81.046(b) governs the release of the information we have marked. We have no indication any of the release provisions of section 81.046 are applicable to the information at issue. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.<sup>2</sup> However, we find none of the remaining information consists of reports, records, and information that relate to specific cases or suspected cases of diseases or health conditions for purposes of section 81.046. Accordingly, the city may not withhold any of the

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<sup>2</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

remaining information under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.

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, 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. *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 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).

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

You state the information you have marked in Exhibit C consists of draft documents that have been released in their final forms to the public. Upon review, we find the city may withhold the information we have marked under section 552.111 of the Government Code. However, we find the remaining requested information consists of either general administrative information that does not relate to policymaking or information that is purely factual in nature. Thus, we find the city has failed to demonstrate how the remaining requested information is excepted under section 552.111. Accordingly, the city may not withhold the remaining responsive information under section 552.111 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request confidentiality under section 552.024. The remaining information includes home and cellular telephone numbers of city employees. Therefore, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the cellular and home telephone numbers of city employees within the remaining responsive information under section 552.117(a)(1) of the Government Code; however, the city may only withhold the cellular telephone numbers if a governmental body does not pay for the cellular telephone service. Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024, the city may not withhold the information at issue under section 552.117(a)(1).

Section 552.137 of the Government Code 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).<sup>3</sup> See 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 entity 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). To the extent the e-mail addresses at issue are not of a type specifically excluded by section 552.137(c), the city must withhold the e-mail addresses in the remaining responsive information under section 552.137, unless the owners affirmatively consent to release of their e-mail addresses. However, to the extent the e-mail addresses at issue are excluded by section 552.137(c), or the owners affirmatively consent to release of their e-mail addresses, the city may not withhold these e-mail addresses under section 552.137 of the Government Code.

In summary, to the extent the responsive information is identical to the information previously requested and ruled upon by this office in Open Records Letter Nos. 2014-23179, 2014-23242, 2015-00030, and 2015-01171, the city must rely on such prior rulings as previous determinations and withhold or release the identical information in accordance with those rulings. To the extent the responsive information was not at issue in the prior rulings, the city (1) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code; (2) may withhold the information we have marked under section 552.111 of the Government Code; (3) must withhold the city employees' home and cellular telephone numbers within the remaining responsive information under section 552.117(a)(1) of the Government Code to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, but may only withhold the cellular telephone numbers if a governmental body does not pay for the cellular telephone service; and (4) must withhold e-mail addresses under section 552.137, to the extent the e-mail addresses at issue are not excluded by section 552.137(c) and the owners do not affirmatively consent to release of their e-mail addresses. The city must release any remaining responsive information.

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.

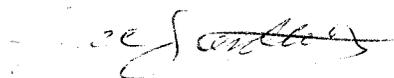
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470.

[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,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/cbz

Ref: ID# 549055

Enc. Submitted documents

c: Requestor  
(w/o enclosures)