



January 22, 2015

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

OR2015-01234

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# 549056.

The City of Dallas (the "city") received four requests from the same requestor for e-mails to or from four named individuals containing twenty nine keywords for two specified periods of time. You state you will provide some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 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>

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), 2015-01171 (2015), and 2015-01224 (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 information at issue is identical to the information previously requested and ruled upon by this office in Open Records Letter Nos. 2014-23179, 2014-23242, 2015-00030, 2015-01171, and 2015-01224,

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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.

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 the requested information pertains to investigations of outbreaks of Ebola within the city. Upon review, we agree section 81.046(b) governs the release of portions of the information at issue, which we have marked. We have no indication any of the release provisions of section 81.046 are applicable to the marked information. 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 specifically relates to cases or suspected cases of diseases or health conditions for purposes of section 81.046. Accordingly, the city may not withhold any of the 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*

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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.

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.

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party, with which the governmental body establishes it has a privity of interest or common deliberative process. See Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). 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.

You state the information you have marked in Exhibit C consists of advice, opinions, and recommendations of city employees regarding policymaking matters. Further, we note some of the communications at issue involve third parties, with which the city shares a privity of interest. You explain portions of the information at issue consist of draft documents that have been released in their final form 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 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 requested 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.<sup>3</sup> *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 contains the cellular telephone numbers of city employees. To the extent these employees have timely requested confidentiality under section 552.024 of the Government Code, and the city does not pay for the cellular telephone service, the city must withhold the cellular telephone numbers within the submitted information under section 552.117(a)(1) of the Government Code. Conversely, to the extent the employees did not timely request confidentiality under section 552.024, or the city pays for the cellular telephone service, the city may not withhold the cellular telephone numbers under section 552.117(a)(1).

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 is also applicable to personal

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

cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Upon review, we find the remaining information contains addresses, cellular telephone numbers, and family member information of individuals who may be among the types of individuals listed in section 552.1175(a) and whose information is being held by the city in a non-employment capacity. Thus, if this information relates to individuals to whom section 552.1175 applies and the individuals elect to restrict access to the information in accordance with section 552.1175(b), then the city must withhold their addresses, cellular telephone numbers, and family member information under section 552.1175, provided the cellular service is not paid for by a governmental body. If the individuals at issue are not individuals to whom section 552.1175 applies or if no election is made, the city may not withhold the addresses, cellular telephone numbers, and family member information under section 552.1175 of the Government Code.

Section 552.136 states “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Accordingly, we find the city must withhold the conference call telephone numbers and access codes, a representative sample of which we have marked, under section 552.136 of the Government Code.

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). *See id.* § 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). Upon review, we find the city must withhold the personal e-mail addresses that are not subject to section 552.137(c) in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure.

In summary, to the extent the submitted 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, 2015-01171, and 2015-01224, the city must rely on such prior rulings as previous determinations and withhold or release the identical information in accordance with those rulings. 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. The city may withhold the information we have marked under section 552.111 of the Government Code. The city must withhold the city employees’ telephone numbers under section 552.117(a)(1) of the Government Code, if they timely requested confidentiality under section 552.024 of the Government Code, and the city does not pay for the cellular telephone service. To the extent the remaining

information relates to individuals to whom section 552.1175 applies and the individuals elect to restrict access to the information in accordance with section 552.1175(b), then the city must withhold their addresses, cellular telephone numbers, and family member information under section 552.1175. The city must withhold the conference call telephone numbers and access codes, a representative sample of which we have marked, under section 552.136 of the Government Code. The city must withhold the personal e-mail address that are not subject to section 552.137(c) in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure. 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rustam Abedinzadeh  
Assistant Attorney General  
Open Records Division

RAY/cbz

Ref: ID# 549056

Enc. Submitted documents

c: Requestor  
(w/o enclosures)