January 22, 2015

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

OR2015-01235

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# 549058.

The City of Dallas (the "city") received a request for e-mails to or from a named city employee containing any of 34 specified terms. You state you will release some information. 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 representative sample of information.[1]

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it does not consist of e-mails to or from the named city employee. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

[1]We assume 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 portions of the requested information may have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2014-23179 (2014), 2014-23242 (2014), 2015-00030 (2015), 2015-01171 (2015), 2015-01224 (2015), and 2015-01234 (2015). There is no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the city must continue to rely on Open Records Letter Nos. 2014-23179, 2014-23242, 2015-00030, 2015-01171, 2015-01224, and 2015-01234 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 information is or is not excepted from disclosure). Next, we address your arguments against the disclosure of the submitted information that is not subject to these prior rulings.

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 submitted responsive information pertains to investigations of outbreaks of Ebola within the city. Upon review, we agree section 81.046(b) governs the release of some of this information. 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 marked under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.[2] However, we find none of the remaining responsive information consists of reports, records, or information that relate 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

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

responsive 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, 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).

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.

The city asserts the remaining responsive information consists of advice, opinions, and recommendations relating to the city's policymaking. Upon review, we find the remaining information at issue consists of routine administrative information or purely factual information. Further, we note some of the communications at issue involve third parties, with which the city has not demonstrated it shares a privity of interest. Accordingly, we find

the city has failed to demonstrate how the remaining responsive 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.

In summary, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the city must continue to rely on Open Records Letter Nos. 2014-23179, 2014-23242, 2015-00030, 2015-01171, 2015-01224, and 2015-01234 as previous determinations and withhold or release the identical information in accordance with those rulings. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code. The city must release the 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/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,

Paige Thompson
Assistant Attorney General
Open Records Division

PT/cbz

Ref: ID# 549058

Enc. Submitted documents

c: Requestor
(w/o enclosures)