



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 2, 2015

Ms. Melanie Barton
Assistant District Attorney
Dallas County District Attorney's Office
411 Elm Street, Fifth Floor
Dallas, Texas 75202-3317

OR2015-13433

Dear Ms. Barton:

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# 567739.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for all memoranda to and from either of two named individuals since a specific date and all reports prepared for either of the two named individuals since a specific date. The district attorney's office states it will release some information. The district attorney's office claims the submitted information is excepted from disclosure under sections 552.103, 552.108, 552.111, and 552.116 of the Government Code.¹ We have considered the exceptions the district attorney's office claims and reviewed the submitted information.

Initially, we note some of the submitted information was the subject of a previous request for information in response to which this office issued Open Records Letter No. 2015-13386 (2015). As we have no indication the law, facts, and circumstances on which the prior ruling was based has changed, the district attorney's office must continue to rely on Open Records Letter No. 2015-13386 as a previous determination and withhold or release the identical

¹Although the district attorney's office claims section 552.107 for Exhibits F and G in its brief, it did not submit this information to our office. Thus, we do not address section 552.107, and assume the district attorney's office has withdrawn its claim under this exception. See Gov't Code §§ 552.301, .302.

information, which we have marked, in accordance with that ruling.² 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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). For the information that is not subject to Open Records Letter No. 2015-13386, we will consider the district attorney's office's arguments against disclosure.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The district attorney's office states Exhibits C, D, and E relate to pending criminal prosecutions. Based upon this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Accordingly, the district attorney's office may withhold Exhibits C, D, and E under section 552.108(a)(1) of the Government Code.³

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 (1993), this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v.*

²As our ruling is dispositive, we need not address the district attorney's office's arguments against disclosure of this information.

³As our ruling is dispositive, we need not address the district attorney's office's remaining argument against disclosure of this information.

Gilbreath, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that 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). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); ORD 615 at 4-5. 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).

The district attorney's office states Exhibits H and K consist of discussions regarding policies, performance measures, and budget requests. The district attorney's office further states these communications involved opinions and recommendations regarding policies and procedures. Based on these representations and our review, we find the district attorney's office may withhold the information we have marked in Exhibit H under section 552.111 of the Government Code. However, upon review, we find the remaining information pertains solely to administrative and personnel matters and the district attorney's office has failed to demonstrate how this information constitutes advice, opinions, or recommendations reflecting the policymaking processes of the district attorney's office. Accordingly, the district attorney's office may not withhold any of the remaining information under section 552.111 of the Government Code.

Section 552.116 of the Government Code provides:

- (a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) 'Audit' means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116(a), (b)(1)-(2). The district attorney's office states Exhibit L consists of information prepared or maintained in the course of an audit of certain forfeiture funds administered by the district attorney's office. The district attorney's office further states the audit was authorized under state and federal law. We note, however, section 552.116 is intended to protect the auditor's interests. The information at issue is maintained by the district attorney's office, who we understand is the auditee with respect to the information in Exhibit L. As the auditee, the district attorney's office cannot assert section 552.116 in order to protect its own interest in withholding the information. Thus, section 552.116 is not applicable, and the district attorney's office may not withhold any of the information in Exhibit L under section 552.116 of the Government Code.

In summary, the district attorney's office must continue to rely on Open Records Letter No. 2015-13386 as a previous determination and withhold or release the identical information, which we have marked, in accordance with that ruling. The district attorney's office may withhold Exhibits C, D, and E under section 552.108(a)(1) of the Government Code. The district attorney's office may withhold the information we have marked in Exhibit H under section 552.111 of the Government Code. The district attorney's office must release the remaining 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 567739

Enc. Submitted documents

c: Requestor
(w/o enclosures)