



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 24, 2015

Mr. Jeffrey Giles
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2015-20062

Dear Mr. Giles:

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# 580588 (Houston GC Nos. 22524 and 22568).

The City of Houston (the "city") received two requests for information pertaining to specified after action reports during a specified time period. You state you have released a portion of the information. You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, the requestor argues the city failed to comply with section 552.301 of the Government Code. Pursuant to subsection 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). In addition, pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative

samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). Section 552.301(e-1) requires a governmental body that submits written comments requesting a ruling to the attorney general under subsection 552.301(e)(1)(A), to send a copy of those comments to the person who requested the information from the governmental body not later than the fifteenth business day after the date of receiving the request. *Id.* § 552.301(e-1).

The city received the request for information on July 9, 2015. Thus, the city's ten-business-day deadline and fifteen-business-day deadline were, respectively, July 23, 2015, and July 30, 2015. The city's initial request for a decision to this office was timely submitted and shows it was copied to the requestor. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). The requestor acknowledges receiving this initial notification on July 16, 2015, but asserts it only included a "blanket reference" to all of the exceptions under the Act. We note that pursuant to section 552.301(b), a governmental body need only ask for a decision from this office and *state* the exceptions that apply within ten business days. *Id.* § 552.301(b) (emphasis added). Thus, we find the city complied with the procedural requirements mandated by section 552.301(d) of the Government Code. We also note the city's follow-up brief to this office, in which it provides arguments in support of its claimed exception to disclosure, was timely submitted to our office. The requestor also acknowledges receiving a copy of these comments on July 29, 2015. Thus, we conclude the city complied with the requirements of section 552.301(e-1) of the Government Code. Accordingly, we will address the city's arguments against disclosure of 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

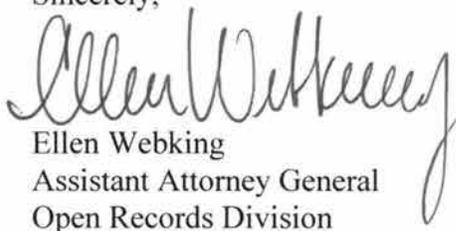
and written observations of facts and events severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152, 157 (Tex. App.—Austin 2001, no pet.); see ORD 615 at 5. But if factual information is so inextricably intertwined with material involving 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 states the submitted information consists of draft policy changes between various city departments and the City's Office of Emergency Operations regarding the city's after action report/improvement plan. You assert the submitted information reflects the policymaking process of the city regarding matters of a broad scope that affect government policy. 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,


Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 580588

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)