



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 5, 2015

Ms. Maria Gonzalez  
City Secretary  
City of Missouri City  
1522 Texas Parkway  
Missouri City, Texas 77489

OR2015-20783

Dear Ms. Gonzalez:

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# 581578.

The City of Missouri City (the “city”) received a request for e-mails regarding the issue of discolored or green water sent by members of the city’s public works department, the city manager’s office, and a city media relations office during a specified time period. You state the city released some responsive information to the requestor. You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the present request because it does not pertain to the specifically requested issue of discolored or green water. This ruling does not address the public availability of the non-responsive information, which we have marked, and the city need not release it in response to this request.

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).

This office has also concluded a preliminary draft of a document that is 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. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest). 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 assert the submitted information consists of advice, opinions, and recommendations relating to the city's policymaking. You inform us the communications at issue involve city officials and employees, and representatives of the Quail Valley Utility District, eHT, SiEnvironmental, and the Muller Law Group, outside parties with which you explain the city shares a privity of interest. We note you failed to identify any of the parties to the communications at issue. However, we are able to discern from the face of the documents that certain individuals are in privity with the city. We note some of the information at issue consists of draft press releases. You state the press releases have been released to the public in final form.

Upon review, we find the information we have marked consists of advice, opinions, and recommendations pertaining to policymaking matters of the city. Accordingly, the city may withhold the information we have marked under section 552.111 of the Government Code. However, we find you have failed to demonstrate, and we are unable to discern, the city shares a privity of interest with some of the individuals in the remaining communications. Additionally, we note some of the remaining communications consist of general administrative and purely factual information. Thus, we find you have not demonstrated the remaining communications consist of advice, opinions, or recommendations pertaining to policymaking matters of the city. Accordingly, we conclude the city may not withhold any of the remaining information under section 552.111 of the Government Code.

We note some of the remaining information is subject to section 552.117(a)(1) of the Government Code, which 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>1</sup> *See* Gov't Code § 552.117(a)(1). Section 552.117 is also applicable to personal cellular telephone numbers and home facsimile numbers, provided the cellular telephone and facsimile services are 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 under section 552.024 the information be kept confidential.

Therefore, if the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we have indicated under section 552.117(a)(1) of the Government Code, provided a governmental body does not pay for the cellular telephone or facsimile service. However, if the individuals whose information is at issue did not timely request confidentiality under section 552.024 or a governmental body pays for the cellular telephone or facsimile service, the city may not withhold the information we have indicated 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

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, an e-mail address that a governmental entity maintains for one of its officials or employees, or an e-mail address provided to a governmental body by a person who has or seeks a contractual relationship with the governmental body or by the contractor's agent. *See id.* § 552.137(c). To the extent the e-mail addresses at issue are not excluded by subsection 552.137(c) of the Government Code, the city must withhold such e-mail addresses under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. *See id.* § 552.137(b). However, to the extent the e-mail addresses at issue are excluded by subsection 552.137(c), the e-mail addresses may not be withheld under section 552.137 of the Government Code.

In summary, the city may withhold the information we have marked under section 552.111 of the Government Code. If the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we have indicated under section 552.117(a)(1) of the Government Code, provided a governmental body does not pay for the cellular telephone or facsimile service. To the extent the e-mail addresses at issue are not excluded by subsection 552.137(c) of the Government Code, the city must withhold such e-mail addresses under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. 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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 581578

Enc. Submitted documents

c: Requestor  
(w/o enclosures)