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ATTORNEY GENERAL OF TEXAS

December 2, 2015

Ms. Aimee Alcorn
Assistant City Attorney
Legal Department
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78649-9277

OR2015-25151

Dear Ms. Alcorn:

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# 589076 (City File Nos. 1008 and 1010).

The City of Corpus Christi (the "city") received two requests from the same requestor for e-mails sent by a named individual to another named individual which contain specified terms over a specified period of time. You claim some of the submitted information is not subject to the Act. You claim the remaining submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information.

You argue Exhibit C consists of judicial records not subject to the Act. The Act applies only to information "written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by a governmental body. Gov't Code § 552.002. However, the Act's definition of "governmental body" does not include the judiciary. *Id.* § 552.003(1)(B). Information "collected, assembled, or maintained by or for the judiciary" is not subject to the Act but instead is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov't Code § 552.003(1)(B) prior to enactment of Gov't Code § 552.0035). You state the submitted information is maintained by the staff of the city's municipal court

solely for and on behalf of the municipal court. Therefore, we conclude Exhibit C is not subject to the Act and need not be released under the Act.

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, 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 that are 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).

You state Exhibit B consists of communications between and among city staff and a member of the city council regarding issues at the city’s municipal court. However, we find Exhibit B reflects it consists of factual information and pertains to routine administrative and personnel issues. You have not explained how the information pertains to administrative or personnel matters of a broad scope that affect the city’s policy mission. Therefore, you have failed to demonstrate the deliberative process privilege applies to this information. Accordingly, the city may not withhold Exhibit B under section 552.111 of the Government Code.

In summary, Exhibit C, which consists of records of the judiciary, is not subject to the Act and need not be released in response to this request. The city 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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 589076

Enc. Submitted documents

c: Requestor
(w/o enclosures)