



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 11, 2015

Mr. Tuan Nguyen
Staff Attorney
City of Houston Police Department
1200 Travis Street
Houston, Texas 77002

OR2015-26044

Dear Mr. Nguyen:

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# 590404 (OR# 15-6257).

The Houston Police Department (the "department") received a request for a specified request for guidance from the department's Chief of Police to the Harris County District Attorney's Office (the "district attorney's office") and any reply from the district attorney's office. You claim some of the submitted information is excepted from disclosure under section 552.111 of the Government Code. You state you notified the district attorney's office of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released.¹ 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 also received comments from the requestor. *Id.* We have considered the submitted arguments and reviewed 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*

¹As of the date of this letter, we have not received comments from the district attorney's office explaining why the submitted information should not be released.

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).

This office has also concluded a preliminary draft of a document 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.

The department claims some of the submitted information is protected under section 552.111 of the Government Code. You state the information at issue consists of an interagency memorandum with the district attorney's office pertaining to policy considerations involving a new piece of legislation. We understand the department shares a privity of interest with the district attorney's office with regard to the new legislation. Upon review, we find portions of the information at issue, which we have marked, constitute policymaking advice, opinion, and recommendations. As such, the department may withhold the information we have marked under section 552.111 on the basis of the deliberative process privilege.

However, we find the remaining information at issue consists of either general administrative information that does not relate to policymaking or information that is purely factual in nature. Thus, we find you have failed to demonstrate how this information is excepted under section 552.111. Accordingly, the remaining information at issue may not be withheld under section 552.111 of the Government Code. As no other exceptions to disclosure have been raised, the department 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,



Joseph Keeney
Assistant Attorney General
Open Records Division

JDK/dls

Ref: ID# 590404

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Devon Anderson
Harris County District Attorney
1201 Franklin Street, Suite 600
Houston, Texas 77002-1923
(w/o enclosures)