



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 26, 2016

Mr. E. Barry Gaines  
Senior Legal Counsel - Division of Legal Services  
Harris County Appraisal District  
P.O. Box 920975  
Houston, Texas 77292-0975

OR2016-01860

Dear Mr. Gaines:

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# 595223 (HCAD Internal Ref. Nos. 15-4107 & 15-4304).

The Harris County Appraisal District (the "district") received two requests from the same requestor for any tax year 2015 values for certain categories of information pertaining to specified accounts.<sup>1</sup> You state the district has released some of the requested information. You contend the submitted information is not responsive to the requests. In the alternative, you contend the submitted information is in "active use" and therefore not subject to disclosure at this time. Further, you claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code.<sup>2</sup> We have

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<sup>1</sup>You state the district received clarification of the information requested in the first request. *See* Gov't Code § 552.222(b) (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>Although you do not raise section 552.101 of the Government Code in your brief, we understand you to raise this exception based on the substance of your arguments.

considered your arguments and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, you contend the submitted information is not responsive to the present request for information because it does not consist of completed appraised values. However, we note a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). The requestor seeks any tax year 2015 values including “preliminary, estimated, or other types of values” for the requested categories of information. Further, the district has submitted information as responsive to the request and made arguments against disclosure of the information. Accordingly, we find the submitted information is responsive to the request, and we will consider your arguments against disclosure.

Next, you assert some of the submitted information is not subject to disclosure because it is in “active use.” Section 552.221 of the Government Code provides in relevant part the following:

(a) An officer for public information of a governmental body shall promptly produce public information for inspection, duplication, or both on application by any person to the officer. In this subsection, “promptly” means as soon as possible under the circumstances, that is, within a reasonable time, without delay.

...

(c) If the requested information is unavailable at the time of the request to examine because it is in active use or in storage, the officer for public information shall certify this fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

Gov’t Code § 552.221(a), (c). This office has interpreted section 552.221 to require prompt disclosure of information unless it is in “immediate active use.” *See* Open Records Decision No. 225 at 3 (1979) (under former section 552.221, shorthand notes are in active use while typist is in the process of typing them out, but are not in active use “if there is no prospect that they will be immediately typed or further processed”), 57 at 4 (1974) (student directory information not in active use under former section 552.221 if copies of same information are provided to various college departments). Section 552.221 is a narrow exception to the rule of prompt production of information under the Act – it permits an agency to avoid only unreasonable disruption of its immediate business. Open Records Decision No. 121 at 3

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<sup>3</sup>We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(1976). Section 552.221, however, cannot be used to deny a requestor access to records. JM-757 at 4 (1987).

You assert some of the submitted information is in active use as it is being used by the district to complete the appraisal process. However, we disagree with the district's position that the information at issue is in active use for purposes of section 552.221(c). *See, e.g.*, Open Records Decision Nos. 148 at 1 (1976) (recommendations and employment evaluations not in active use under former section 552.221 during entire time when faculty member's promotion is under consideration), 121 at 3 (university's financial records in custody of district attorney during criminal investigation not in active use under former section 552.221). The district also has not adequately explained release of the submitted information would disrupt the district's immediate business. Therefore, we find you have not established the information at issue is in active use for purposes of section 552.221 of the Government Code, and the district may not withhold it on that basis.

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).

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.

You inform us the information at issue consists of preliminary values for properties that have yet to be appraised that reflect the district's deliberative or policymaking process. You also inform us the information at issue will be released to the public in its final form. You explain the preliminary values will become final once the properties at issue are noticed pursuant to section 25.19 of the Tax Code. Based on your representations and our review of the information at issue, we find the district has demonstrated the preliminary values constitute draft documents that pertain to the policymaking functions of the district. Thus, the district may withhold the submitted information under section 552.111 of the Government Code.<sup>4</sup>

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,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/bw

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<sup>4</sup>As our ruling is dispositive, we need not consider your remaining arguments against disclosure.

Ref: ID# 595223

Enc. Submitted documents

c: Requestor  
(w/o enclosures)