



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 6, 2016

Ms. Lisa Biediger
Assistant City Attorney
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78283-3966

OR2016-12776

Dear Ms. Biediger:

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# 613504 (COSA File Nos. W116999-031816, W117000-031816, W117008-031816, W117012-031816, W117021-031816, W117575-031816, W117584-031816, W117587-031816, W117592-031816, W117604-031816, W117689-031816, W117011-031816, W117013-031816, W117551-031816, W117684-031816).

The City of San Antonio (the "city") received fifteen requests from the same requestor for specified categories of information, including information that pertains to the city's Department for Culture and Creative Development (the "department"). The city states it will make some of the requested information available to the requestor, but claims the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, the city informs us the requestor has withdrawn her requests for some of the information at issue. Thus, such information is not responsive to the remaining requests. This ruling does not address the public availability of any information that is not responsive to the remaining requests, and the city is not required to release this information in response to them.

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 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. *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.

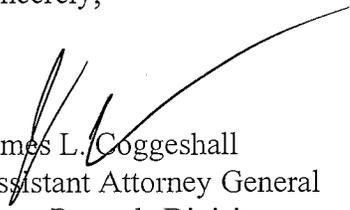
The city informs us the submitted information consists of drafts of funding policies and department action plans. The city asserts this information is related to the department’s policy development, and it includes notes on pending projects and staff recommendations

that have not been resolved. The department also represents these drafts will be released to the public in their final form. Upon review, we find some of the submitted information pertains to personnel matters. Accordingly, the city may not withhold this information, which we have marked for release, under section 552.111 and the deliberative process privilege but, instead, must provide it to the requestor. However, we agree the city may withhold the remaining responsive information under section 552.111 of the Government Code.¹

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 613504

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we do not address the other argument of the city to withhold this information.