

Alicia K. Kreh
pia@toase.com

December 12, 2024

Honorable Ken Paxton
Attorney General of Texas
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711-2548

*Re: Public Information Act Request of Recallnickstanley@gmail.com Received by the
City of Aledo on November 26, 2024*

Dear General Paxton:

I represent the City of Aledo in regard to the above-referenced matter. On November 26, 2024 the City received the public information request from Recallnickstanley@gmail.com attached hereto as Exhibit A. Please note that the City offices were closed Thursday November 28, 2024 and Friday November 29, 2024 in observance of the Thanksgiving holiday.

Pursuant to Section 552.301 of the Public Information Act (the “Act”), the City requests your determination regarding whether the responsive information falls within an exception to disclosure. The information the City believes may be withheld is attached hereto as Exhibit B. In particular, the City believes that the following exceptions apply:

I. Section 552.111: Agency Memoranda Reflecting Deliberative Process

Section 552.111 of the Act excepts from disclosure “[a]n interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Tex. Gov’t Code § 552.111. Your office has concluded that this exception incorporates the deliberative process privilege. *See* Tex. Att’y Gen. ORD-615 at 2 (1993). The purpose of the deliberative process privilege is to protect advice, opinion, and recommendation in the decision-making process and to encourage open and frank discussion in the deliberative process. *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App. - San Antonio 1982, no writ); Tex. Att’y Gen. ORD-538 at 1-2 (1990).

Section 552.111 excepts from disclosure only those internal communications of a governmental body that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* Tex. Att’y Gen. ORD-615 at 5. A governmental body’s policymaking functions do not encompass routine internal administrative or personnel matters, as disclosure of information about such matters will not inhibit

free discussion of policy issues among agency personnel. *Id.*; see also *City of Garland v. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that do 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 Tex. Att'y Gen. ORD-631 at 3 (1995). Moreover, Section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. See Tex. Att'y Gen. 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 Tex. Att'y Gen. ORD-313 at 3 (1982).

Your office has also concluded that 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 responsive document enclosed and marked as Exhibit B contains communications regarding the advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Therefore, the City seeks a ruling that it may withhold Exhibit B under Section 552.111 of the Act.

II. Previous Determination

Your office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an Attorney General decision. Additionally, your office has held that a governmental body may redact a living person's social security number without the necessity of requesting an Attorney General decision. Therefore, the City has not raised arguments regarding this information which may be contained in Exhibit B or other responsive material. To the extent this information is included in Exhibit B, this information will be withheld in the event of a ruling requiring the City to release any portion of the responsive documents.

Section 552.130(c) provides that subject to Chapter 730 of the Transportation Code, a governmental body may redact information, without the necessity of requesting an Attorney General decision, if it relates to a driver's license, a personal identification document, or a motor vehicle title or registration issued by an agency of this state or another state or country. If the City redacts such information, it will notify the requestor as required by Section 552.130(e). The City, therefore, has not raised arguments regarding these types of information.

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The requestor has been notified by copy of this letter that the City has chosen to seek an Attorney General decision on this matter. Please contact me at the above address with any questions regarding this matter.

Sincerely,

A handwritten signature in black ink that reads "Alicia K. Kreh". The signature is fluid and cursive, with the first name "Alicia" being larger and more prominent than the last name "Kreh".

Alicia K. Kreh

AKK:dlw
Enclosures

cc: recallnickstanley@gmail.com (w/o enclosures)

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