



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 21, 2016

Ms. Cynthia Tynan
Attorney & Public Information Coordinator
Office of the General Counsel
The University of Texas System
201 West 7th Street, Suite 600
Austin, Texas 78701-2901

OR2016-21352

Dear Ms. Tynan:

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# 625646 (OGC# 170282).

The University of Texas Medical Branch at Galveston (the "university") received a request for information pertaining to request for bids number 15-034. You state a portion of the submitted information is excepted from disclosure under section 552.111 of the Government Code. Further, you state release of the submitted information may implicate the proprietary interests of FMA Alliance, Ltd. ("FMA Alliance"). Accordingly, you state, and provide documentation demonstrating, you notified FMA Alliance of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990)* (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from FMA Alliance. We have reviewed the submitted information and considered the submitted arguments.

We note the submitted information includes a contract for the purchase of services from a private vendor that the university informs us is subject to the posting requirements in section

2261.253 of the Government Code. Section 2261.253(a) provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

Gov't Code § 2261.253(a)(1). The submitted contract is between the university, which is a state agency, and a private vendor for the purchase of services, and the contract is not expired or completed. *See id.* §§ 2261.002(2) (“state agency” has meaning assigned by Gov't Code § 2151.002), 2151.002(3) (“state agency” includes university system or institution of higher education as defined by Educ. Code § 61.003). Accordingly, the submitted contract is required to be posted on the university's internet website. Although FMA Alliance seeks to withhold portions of the submitted information under sections 552.104 and 552.110 of the Government Code, the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public.¹ *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Further, although FMA Alliance generally raises section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” FMA Alliance has not pointed to any confidentiality provision, and we are not aware of any that would make this information confidential for purposes of section 552.101. *See* Gov't Code § 552.101; Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the university may not withhold any of the submitted contract under section 552.101 of the Government Code.

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).

¹Although FMA Alliance raises sections 552.113 and 552.131 of the Government Code, it has not submitted arguments explaining how these exceptions apply to the submitted information. Therefore, we assume FMA Alliance has withdrawn its claims under these sections. *See* Gov't Code §§ 552.301, .302.

In Open Records Decision No. 615 (1993), 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 that 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). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); ORD 615 at 4-5. 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 seek to withhold the information you have marked in the submitted score sheets under section 552.111 of the Government Code. You state the information at issue consists of advice, opinion, and recommendations related to policymaking matters of the university. You further state the information at issue relates to communications between university employees reflecting the deliberative and policymaking processes in ranking responsive bid proposals. Based on your representations and our review, we find the university has demonstrated the information you have marked consists of advice, opinions, or recommendations on policymaking matters of the university. Thus, the university may withhold the marked information under section 552.111 of the Government Code.

In summary, the university may withhold the information you have marked under section 552.111 of the Government Code. The remaining information must be released.

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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/bhf

Ref: ID# 625646

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)