



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 23, 2017

Ms. Carah-Beth Bass
Counsel for the County of Ector
Allison, Bass & Magee, L.L.P.
402 West 12th Street
Austin, Texas 78701

OR2017-04023

Dear Ms. Bass:

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# 646775.

The Ector County Purchasing Agent (the "county"), which you represent, received a request for information pertaining to a specified request for proposals. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.111 of the Government Code.¹ Additionally, you state release of the submitted information may implicate the proprietary interests of Buffalo Business Products; Staples, Inc.; Total Office Solutions of West Texas; and OfficeWise Furniture & Supply. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released.² *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory*

¹ Although you also raise section 552.101 of the Government Code in conjunction with section 552.104 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990)*. Accordingly, we do not address your argument under section 552.101.

² As of the date of this letter, this office has not received comments from any third party explaining why any of the submitted information should not be released.

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 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 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).


You state the submitted information consists of “a detailed spreadsheet comparing the bids submitted in response to [the county’s] [r]equest for [p]roposals.” You explain “this information was used by the county to provide information to the decision makers to allow an informed decision as to the award of a contract.” Based on your representations and our review of the information at issue, we find the county has demonstrated the submitted information consists of advice, opinions, or recommendations on the policymaking matters

of the county. Thus, the county may withhold the submitted information under section 552.111 of the Government Code.³

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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/som

Ref: ID# 646775

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.