



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 24, 2017

Ms. Valentina Dassey
Assistant General Counsel
Lone Star College System
5000 Research Forest Drive
The Woodlands, Texas 77381-4356

OR2017-06122

Dear Ms. Dassey:

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# 650263 (LSC File No. LMC0002167).

Lone Star College (the "college") received a request for the bid amounts for each vendor, the evaluation scores, and the proposal of the awarded vendor for a specified request for proposals. You state you have released some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You state the information at issue pertains to the pricing information of non-winning bidders. You state release of this information "would provide an advantage to competitors or bidders competing for the award of future contracts for services." After review of the submitted information and consideration of the arguments, we find the college has established release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the college may withhold the information you marked under section 552.104(a).

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 this privilege is to protect advice, opinion, and recommendation in the decisional process and 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, no writ); 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, and opinions 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. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (Gov’t Code § 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). Moreover, 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).

You state some of the remaining information consists of the college’s evaluation scores pertaining to the responses received for the specified request for proposals. You inform us the evaluation materials “represent the [c]ollege’s internal deliberations and possible decisions on which firm should be awarded the contract.” Further, you contend release of this information would “stifle open and frank discussion in future evaluations.” Based on your representations and our review, we conclude the college may withhold the information you marked under section 552.111 of the Government Code.

In summary, the college may withhold the information you marked under section 552.104(a) of the Government Code. The college may withhold the information you marked under section 552.111 of the Government Code. The college must release the remaining information.

Finally, you ask this office to issue a previous determination permitting the college to withhold information under section 552.104 of the Government Code without the necessity of requesting a decision under section 552.301 of the Government Code. *See* Gov’t Code § 552.301(a) (allowing a governmental body to withhold information subject to previous

determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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,

A handwritten signature in black ink, appearing to read 'SMP', written over a horizontal line.

Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/sdk

Ref: ID# 650263

Enc. Submitted documents

c: Requestor
(w/o enclosures)