



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 12, 2017

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

OR2017-07698

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# 653297.

Ector County (the "county"), which you represent, received a request for the bid award result for a specified request for proposals for office and school supplies. You state the county released some information. You claim the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.111 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Buffalo Business Products, OfficeWise Furniture and Supply, Total Office Solution of West Texas, and Staples, Inc. Accordingly, you state, and provide documentation demonstrating, you notified these third parties of the request for information and of each company's right to submit arguments to this office as to why the submitted information should not be released.¹ *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 Act in certain circumstances).* We have considered the submitted arguments and reviewed the submitted information.

Section 552.111 of the Government Code, which excepts from disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in

¹As 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.

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, orig. proceeding); 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, orig. proceeding). 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. ORD 615 at 5; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). 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). However, 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. ORD 615 at 5-6; *see also Dallas Morning News*, 22 S.W.3d at 364 (section 552.111 not applicable to personnel-related communications that did not involve policymaking).

Further, section 552.111 does not generally except from disclosure facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 157; 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 request for proposals. You explain “this information was used by the [c]ounty 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.²

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

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,


Britni Ramirez
Assistant Attorney General
Open Records Division

BR/som

Ref: ID# 653297

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)