



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 30, 2017

Ms. Ana Vieira Ayala
Assistant General Counsel & Public Information Coordinator
The University of Texas System
201 West 7th Street, Suite 600
Austin, Texas 78701-2901

OR2017-11770

Dear Ms. Ayala:

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# 659660 (OGC# 174534).

The University of Texas Medical Branch at Galveston (the "university") received a request for bid tabulations pertaining to a specified request for proposal. You claim some of the submitted information is excepted from disclosure under section 552.111 of the Government Code. You notified Alegis Revenue Group, LLC ("Alegis"); Bolder Outreach Solutions ("Bolder"); EGS Financial Care, Inc., a wholly owned subsidiary of Alorica Customer Care, Inc. ("Alorica"); and Recourse Corporation of America & Recovery of Texas, LLC ("RCA") 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. *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 on behalf of Alegis, Alorica, and RCA. We have considered the submitted arguments and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from Bolder. Thus, we have no basis to conclude

Bolder has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the university may not withhold any of the submitted information on the basis of any proprietary interest Bolder may have in the information.

Next, we note Alorica and RCA object to disclosure of information the university has not submitted to this office for review. This ruling does not address information that was not submitted by the university and is limited to the information the university has submitted for our review. *See Gov't Code* § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

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[.]” *Id.* § 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 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).

The university seeks to withhold most of the submitted information under section 552.111 of the Government Code. You inform us the information at issue consists of advice and recommendations of university employees concerning the evaluations of submitted bids for a specified request for proposal. You state the information at issue consists of advice, opinions, and recommendations of university employees regarding policymaking matters. Upon review, we find you have demonstrated the information at issue consists of advice, opinions, or recommendations of policymaking matters. Thus, the university may withhold the information you marked under section 552.111 of the Government Code.¹

Alegis, Alorica, and RCA claim their information at issue is excepted under section 552.110 of the Government Code, which protects (1) trade secrets, and (2) commercial or financial information, the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” *Id.* § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6.

Alegis, Alorica, and RCA contend their information at issue is commercial or financial information, the release of which would cause substantial competitive harm to the companies. Upon review, we find Alegis, Alorica, and RCA have demonstrated their information at issue constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the university must withhold this information, which we have marked, under section 552.110(b) of the Government Code.²

In summary, the university may withhold the information you marked under section 552.111 of the Government Code. The university must withhold the information we marked under section 552.110(b) of the Government Code. The university must release the remaining information.

¹As our ruling is dispositive, we need not address the third parties arguments against disclosure of this information.

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this 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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 659660

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)