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ATTORNEY GENERAL OF TEXAS

October 2, 2017

Ms. Anne M. Constantine
Legal Counsel
Dallas/Fort Worth International Airport Board
P.O. Box 619428
DFW Airport, Texas 75261-9428

OR2017-22390

Dear Ms. Constantine:

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# 678595.

The Dallas/Fort Worth International Airport Board (the "board") received a request for information pertaining to two requests for proposal. You claim 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 represent the information you indicated pertains to a competitive bidding situation. In addition, you state that release of the information would "give advantage to a competitor or bidder" and would "compromise the board's ability to obtain the most responsive, responsible offer in the event the solicitation must be rebid." After review of the information at issue and consideration of the arguments, we find the board has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the board may withhold the information you indicated 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 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, 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 board. *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, 364 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body’s policymaking functions include administrative and personnel matters of broad scope that affect the board’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, 157 (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, section 552.111 protects the factual information. *See* Open Records Decision No. 313 at 3 (1982).

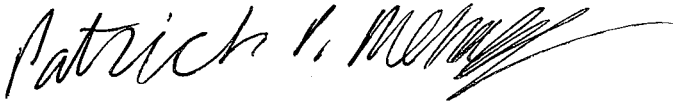
You state the information you indicated consists of communications regarding the scoring and evaluation materials created for the purpose of evaluating the prospective contractors’ proposals. Additionally, you state this information contains the board’s recommendations and opinions regarding its policy making matters. Based on these representations and our review of the information at issue, we find you demonstrated the information at issue consists of advice, opinions, or recommendations on the policymaking matters of the board. Thus, the board may withhold the information you indicated under section 552.111 of the Government Code.

In summary, the board may withhold the information you indicated under section 552.104 of the Government Code. The board may withhold the information you indicated under section 552.111 of the Government Code.

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 "Patrick P. Mehaffy", with a stylized flourish at the end.

Patrick P. Mehaffy
Attorney
Open Records Division

PPM/eb

Ref: ID# 678595

Enc. Submitted documents

c: Requestor
(w/o enclosures)