



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 23, 2018

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

OR2018-01437

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# 694938.

The Ector County Purchasing Agent (the "county"), which you represent, received two requests from different requestors for information pertaining to a specified project. The county claims the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code.<sup>1</sup> Additionally, the county states release of the submitted information may implicate the proprietary interests of Butler-Cohen, L.L.C.; Cooper Construction Co., Inc.; MW Builders, Inc.; Harrington Construction, L.L.C.; and Webber Commercial Construction, L.L.C. Accordingly, the county states, and provides documentation showing, it notified the third parties of the request for information and of the right 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 reviewed the submitted arguments and the submitted information.

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<sup>1</sup>Although the county also raises 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 the county's argument under section 552.101.

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).

The county states the submitted information consists of a detailed spreadsheet comparing the bids submitted in response to a request for proposals. The county states the information was created to aid the county in its selection of bidders. The county indicates this information is reflective of the deliberative process by which it arrives at the final rankings. Upon review, we find the county has demonstrated the 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.<sup>2</sup>

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining argument 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 694938

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

5 Third Parties  
(w/o enclosures)