



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 25, 2019

Ms. Lori J. Robinson
Counsel to Austin Community College
Bickerstaff Heath Delgado Acosta, LLP
3711 South MoPac Expressway, Building One, Suite 300
Austin, Texas 78746

OR2019-10984

Dear Ms. Robinson:

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# 768045 (ACC ORR# 1935).

Austin Community College (the "college"), which you represent, received a request for information pertaining to RFP 926-18-0061. You the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. We have considered the claimed exceptions 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). We understand the information in Exhibit B pertains to a competitive bidding situation. You state release of the information at issue would "give advantage to competitors or bidders and place [the college] at a competitive disadvantage in obtaining the best prices and services in response to the RFP." After review of the information at issue and consideration of the arguments, we find the college has established the release of Exhibit B would give advantage to a competitor or bidder. Thus, we conclude the college may withhold Exhibit B under section 552.104(a) of the Government Code.

The college claims Exhibit C is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 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, 364 (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. *See 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).

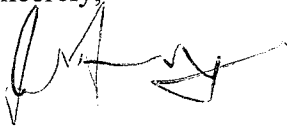
The college states Exhibit C consists of bidder evaluations pertaining to the specified request for qualifications. The college explains this information consists of advice, opinions, and recommendations of employees of the college regarding policymaking matters of the college. Based upon the college’s representations and our review of the information at issue, we find Exhibit C consists of advice, opinions, or recommendations on the policymaking matters of the college. Accordingly, the college may withhold Exhibit C under section 552.111 of the Government Code.

In summary, the college may withhold the Exhibit B under section 552.104(a) of the Government Code. The college may withhold Exhibit C 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 'Jesse Harvey', written over a horizontal line.

Jesse Harvey
Assistant Attorney General
Open Records Division

JH/mo

Ref: ID# 768045

Enc. Submitted documents

c: Requestor
(w/o enclosures)