



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 19, 2019

Ms. Michelle Mellon-Werch  
Assistant General Counsel  
Texas Municipal Retirement System  
P.O. Box 149153  
Austin, Texas 78714-9153

OR2019-19824

Dear Ms. Mellon-Werch:

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# 773697 [ORR# 11-2019].

The Texas Municipal Retirement System (the "system") received two requests for information pertaining to a specified request for proposals.<sup>1</sup> You state you have released some information. You claim portions of the submitted information are excepted from disclosure under sections 552.104, 552.110, 552.111, and 552.139 of the Government Code. Additionally, you state the release of the submitted information may implicate the proprietary interests of Accenture LLP ("Accenture"); Linea Solutions ("Linea"); LWRL, Inc. ("LWRL"); and Provaliant Retirement, LLC ("Provaliant"). Accordingly, the system states, and provides documentation showing, it notified these third parties of the requests 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 considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>The system informs us it sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See Gov't Code* § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). The system informs us it received the required deposit on April 15, 2019. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

Section 552.111 of the Government Code exempts 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. Section 552.111 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 exempts 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, opinions, or recommendations 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 seek to withhold portions of the submitted information under section 552.111. You contend the information at issue contains advice, opinions, and recommendations relating to the system’s policy matters. Upon review, we find the information you marked consists of advice, opinions, and recommendations pertaining to the policymaking functions of the system. Thus, the system may withhold the information you marked under section 552.111 of the Government Code.<sup>2</sup>

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<sup>2</sup>As our ruling is dispositive, we do not address your other arguments against disclosure of this 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). The system states release of documents 1, 2, 3, and 4, and the remaining information you marked in documents 7, 8, and 9 would cause competitive harm to the system when requesting bids for similar services in the future. After review of the information at issue and consideration of the arguments, we find the system has established the release of the information at issue would give an advantage to a competitor or bidder. Thus, we conclude the system may withhold documents 1, 2, 3, and 4, and the remaining information you marked in documents 7, 8, and 9 under section 552.104(a) of the Government Code.<sup>3</sup>

Section 552.139 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report;

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body’s or contractor’s electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use; [and]

...

(4) information directly arising from a governmental body’s routine efforts to prevent, detect, investigate, or mitigate a computer security incident, including information contained in or derived from an information security log.

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<sup>3</sup>As our ruling is dispositive, we do not address your other arguments against disclosure of this information.

Gov't Code § 552.139(a), (b)(1)-(2), (4). Section 2059.055 of the Government Code provides, in pertinent part:

(b) Network security information is confidential under this section if the information is:

- (1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a governmental entity;
- (2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
- (3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

*Id.* § 2059.055(b). The system states a portion of the remaining information contains technical specifications of the system's Pension Administration System software and hardware operating systems and application server information and contains the security and defense systems for the network. Based on these arguments and our review of the information, we find the information at issue relates to computer network security, and the design, operation, or defense of the system's computer network. Accordingly, the system must withhold the information under section 552.139 of the Government Code.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the third parties explaining why the remaining information should not be released. Therefore, we have no basis to conclude the third parties have a protected proprietary interest in the remaining information. *See id.* § 552.110; 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 system may not withhold the remaining information on the basis of any proprietary interest the third parties may have in the information.

In summary, the system may withhold the information you marked under section 552.111 of the Government Code. The system may withhold documents 1, 2, 3, and 4 and the remaining information you marked in documents 7, 8, and 9 under section 552.104(a) of the Government Code. The system must withhold the information you marked under section 552.139 of the Government Code. The system must release the remaining 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,

A handwritten signature in black ink, appearing to read "Pearlie Gault", with a long horizontal line extending to the right.

Pearlie Gault  
Attorney  
Open Records Division

PG/gw

Ref: ID# 773697

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 4 Third Parties  
(w/o enclosures)