



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 16, 2019

Ms. Tangerla Williams
Temporary Senior Assistant General Counsel
Dallas Area Rapid Transit
P. O. Box 660163
Dallas, Texas 75266-0163

OR2019-22779

Dear Ms. Williams:

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# 781027 (DART ORR# W003960-050319).

Dallas Area Rapid Transit ("DART") received a request for information related to a specified request for proposals, including the submitted proposals, the evaluation materials, the staff recommendation, the notice of award, and the final executed contract. You state DART will release some information. You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you state some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-14734 (2019). We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, DART may rely on Open Records Letter No. 2019-14734 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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).

You seek to withhold the submitted information under section 552.111 of the Government Code. You state the information at issue consists of DART’s evaluations with written staff recommendations for proposals received for a specified solicitation. You explain evaluation of the proposals is an function of DART’s procurement department. You contend release of this information would reveal DART’s process for procuring, scoring, and selecting bids and will “prevent an open discussion by DART’s [p]rocurement [d]epartment.” Based on your representations and our review, we find the submitted information consists of advice, opinions, and recommendations pertaining to policymaking, and DART may withhold the submitted information under section 552.111 of the Government Code.

In summary, DART may rely on Open Records Letter No. 2019-14734 as a previous determination and withhold or release the identical information in accordance with that

ruling. DART may withhold the submitted information 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Deborah Southerland
Attorney
Open Records Division

DS/jxd

Ref: ID# 781027

Enc. Submitted documents

c: Requestor
(w/o enclosures)