



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

November 6, 2019

Mr. David F. Irwin  
Counsel for the Cameron County Regional Mobility Authority  
Rentfro, Irwin, & Irwin, P.L.L.C.  
1650 Paredes Line Road, Suite 102  
Brownsville, Texas 78521

OR2019-24504A

Dear Mr. Irwin:

This office issued Open Records Letter No. 2019-24504 (2019) on September 3, 2019. We have examined this ruling and determined we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on September 3, 2019. Your request was assigned ID# 801952.

The Cameron County Regional Mobility Authority (the "authority"), which you represent, received three requests from the same requestor for information related to three specified procurements. The authority claims some of the submitted information is excepted from disclosure under section 552.111 of the Government Code. Additionally, the authority states release of the submitted information may implicate the proprietary interests of A-to-Be USA, L.L.C. ("A-to-Be"); Complus Data Innovations, Inc. ("Complus"); Duncan Solutions ("Duncan"); Gila, L.L.C. ("Gila"); Kapsch TrafficCom USA, Inc. ("Kapsch"); Linebarger, Goggan Blair & Sampson, L.L.P. ("Linebarger"); Perdue Brandon Fielder Collins & Mott, L.L.P. ("Perdue Brandon"); Southwest Credit Systems ("SWC"); Teccidel Toll Systems & ITS ("Teccidel"); and TollPlus, L.L.C. ("TollPlus"). Accordingly, the authority 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 received comments from A-to-Be,

Duncan, Gila, Kapsch, Perdue Brandon, SWC, Tecsidel, and TollPlus. We have reviewed the submitted arguments and the submitted information.

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 authority states some of the submitted information consists of comments on the proposals, scores, and qualifications (collectively, the “comments”). The authority explains the comments are reflective of the deliberative process by which the authority evaluated the submitted proposals to assist in accomplishing its policy missions. Thus, the authority states the information at issue consists of advice, opinions, and recommendations of the authority pertaining to its policymaking functions. Based on these representations and our review of the information at issue, we find the authority has demonstrated the information at issue consists of advice, opinions, or recommendations on the policymaking matters of the authority. Thus, the authority may withhold the comments under section 552.111 of the Government Code.

Next, 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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Complus or Linebarger explaining why the remaining information should not be released. Therefore, we have no basis to conclude Complus or Linebarger has 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 authority may not withhold the remaining information on the basis of any proprietary interest Complus or Linebarger may have in the information.

Next, we note SWC and TollPlus argue against the release of information that was not submitted by the authority. This ruling does not address information that was not submitted by the authority and is limited to the information the authority has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Section 552.104(a) of the Government Code exempts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). 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." *Id.* at 841. A-to-Be, Duncan, Gila, Kapsch, Perdue Brandon, SWC, Tecsidel, and TollPlus state they have competitors. In addition, A-to-Be, Duncan, Gila, Kapsch, Perdue Brandon, SWC, Tecsidel, and TollPlus state release of their information at issue would cause harm to their competitive interests and would give an advantage to their competitors. After review of the information at issue and consideration of the arguments, we find A-to-Be, Duncan, Kapsch, Perdue Brandon, SWC, Tecsidel, and TollPlus have established the release of their information at issue would give advantage to a competitor or bidder. Thus, we conclude the authority may withhold Duncan's and Kapsch's information we noted; may withhold Perdue Brandon's and SWC's information we marked; and may withhold A-to-Be's, Tecsidel's, and TollPlus's submitted information under section 552.104(a) of the Government Code.<sup>1</sup> However, Gila has not demonstrated what portions, if any, of its information it seeks to withhold. Thus, Gila has failed to demonstrate the applicability of section 552.104 of the Government Code to any of its information, and the authority may not withhold any of Gila's information on that basis.

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<sup>1</sup>As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

Tecseidel also asserts the remaining information is excepted under section 552.111 of the Government Code. However, we note this exception is designed to protect the interests of governmental bodies and not the interests of third parties. *See* Gov't Code § 552.111 (Section 552.111 excepts from disclosure interagency or intraagency memorandum or letter). Thus, we do not address Tecseidel's argument under section 552.111 of the Government Code against release of the remaining information.

Some of the remaining information is subject to section 552.136 of the Government Code.<sup>1</sup> Section 552.136 provides, "Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the authority must withhold the bank account and routing numbers and insurance policy numbers within the remaining information under section 552.136 of the Government Code.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the authority may withhold the comments under section 552.111 of the Government Code. The authority may withhold Duncan's and Kapsch's information we noted; may withhold Perdue Brandon's and SWC's information we marked; and may withhold A-to-Be's, Tecseidel's, and TollPlus's submitted information under section 552.104(a) of the Government Code. The authority must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code. The authority must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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.

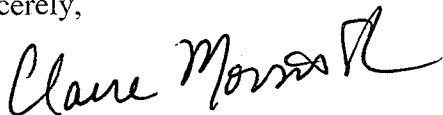
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/eb

Ref: ID# 801952

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

10 Third Parties  
(w/o enclosures)