



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 5, 2019

Mr. Andrew Devine
Senior Associate Attorney
Dallas County Hospital District d/b/a Parkland Health & Hospital System
5200 Harry Hines Boulevard
Dallas, Texas 75235

OR2019-24799

Dear Mr. Devine:

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# 784368 (Ref. No. 19-37).

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "system") received a request for certain information pertaining to the hiring process for a specified employment position.¹ You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. Additionally, you state that release of the information at issue may implicate the interests of sixteen named applicants. Accordingly, you state, and submit documentation demonstrating, the system notified the applicants of the request and of their opportunity to submit comments to this office as to why their information should not be released to the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from one of the applicants.² We have considered the submitted arguments and reviewed the submitted information.

¹You state, and provide documentation demonstrating, the system sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²As of the date of this ruling, we have not received comments from the remaining named applicants.

Initially, you state, and provide documentation demonstrating, the requestor has agreed to the redaction of several types of information from the requested information, including social security numbers, driver's license information, home addresses, personal telephone numbers, dates of birth, personal health information, and e-mail addresses. Thus, this information is not responsive to the present request. This ruling does not address the public availability of non-responsive information, and the system is not required to release such information in response to the present request.

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[.]” *Id.* § 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).

You assert the submitted responsive information is excepted from disclosure under section 552.111 of the Government Code. Upon review, however, we find the information at issue pertains to routine internal administrative and personnel matters that do not rise to the level of policymaking. Thus, we find you have failed to demonstrate any portion of the information at issue constitutes internal communications containing advice, recommendations, or opinions reflecting the policymaking processes of the system.

Therefore, the system may not withhold any of the submitted responsive information under section 552.111 of the Government Code.

The applicant asserts her information is confidential because it was provided to the system “with the understanding that such information would remain confidential[.]” Information is not confidential under the Act simply because the party that submits the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

The applicant generally asserts section 552.102 of the Government Code for her information at issue. Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” Gov’t Code § 552.102(a). We note section 552.102(a) applies to information in the personnel file of a governmental employee. *See id.* Section 552.102(b) of the Government Code excepts from disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee.” *Id.* § 552.102(b). We note the information at issue contains neither information in the personnel file of a governmental employee nor a transcript from an institution of higher education that is maintained in the personnel file of a professional public school employee. Thus, we find the applicant has failed to demonstrate the applicability of section 552.102 to the information at issue. Therefore, the system may not withhold any portion of the information at issue under section 552.102 of the Government Code.

The applicant also generally asserts section 552.104 of the Government Code for her information at issue. Section 552.104(a) excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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, 841 (Tex. 2015). Upon review, we find the applicant has failed to demonstrate the applicability of section 552.104. Therefore, the system may not withhold any of the information at issue under section 552.104 of the Government Code. The system must release the submitted responsive 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 <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,



Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jxd

Ref: ID# 784368

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 16 Third Parties
(w/o enclosures)