



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 20, 2019

Ms. Sarah S. Flournoy
Counsel for the Eagle Mountain-Saginaw Independent School District
Bracket & Ellis, P.C.
100 Main Street
Fort Worth, Texas 76102-3090

OR2019-32760

Dear Ms. Flournoy:

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# 796653.

The Eagle Mountain-Saginaw Independent School District (the "district"), which you represent, received a request for the evaluation documentation and bid responses pertaining to request for proposals number 1819-022-2024, Automated Absence and Substitute Calling System. You claim some of the submitted information is excepted from disclosure under section 552.111 of the Government Code. Although you take no position regarding whether the remaining submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of Frontline Technologies Group, LLC ("Frontline") and ReadySub Information ("ReadySub"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request and their rights to submit arguments to this office. *See* Gov't Code §§ 552.304, .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 received comments from Frontline. We have considered the submitted arguments and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from ReadySub. Thus, we have no basis to conclude ReadySub has a protected proprietary interest in the submitted information. *See*

id. § 552.110(a)-(b); 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 district may not withhold any of the submitted information on the basis of any proprietary interest ReadySub may have in the 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). 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. Frontline states it has competitors. In addition, Frontline states release of its information would allow competitors to “undercut its future bids, harming Frontline’s ability to negotiate competitive contracts, and compromise its procurement process.” After review of the information at issue and consideration of the arguments, we find Frontline has established the release of its information would give advantage to a competitor or bidder. Thus, we conclude the district may withhold Frontline’s information under section 552.104(a) of the Government Code.¹

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

¹ As our ruling is dispositive, we need not address Frontline’s remaining arguments against disclosure of this information.

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).

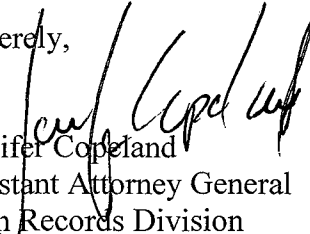
You state Exhibit D consists of internal communications and deliberations pertaining to the evaluation and scoring of the responsive bid proposals. You explain this information is reflective of the deliberative process by which the district ranks the responsive bid proposals. Thus, you state the information at issue consists of advice, opinions, and recommendations pertaining to the policymaking functions of the district. Based on these representations and our review of the information at issue, we find the district has demonstrated the information at issue consists of advice, opinions, or recommendations on the policymaking matters of the district. Thus, the district may withhold Exhibit D under section 552.111 of the Government Code.

In summary, the district may withhold Frontline's information under section 552.104(a) of the Government Code. The district may withhold Exhibit D under section 552.111 of the Government Code. The district 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 <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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/mo

Ref: ID# 796653

Enc. Submitted documents

c: 3 Requestor
(w/o enclosures)