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ATTORNEY GENERAL OF TEXAS

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Ms. Anne M. Constantine  
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P.O. Box 619428  
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OR2020-11276

Dear Ms. Constantine:

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# 822941.

The Dallas/Fort Worth International Airport Board (the "board") received a request for information pertaining to a specified request for proposals. The board claims some of the submitted information is excepted from disclosure under sections 552.101, 552.111, and 552.139 of the Government Code.<sup>1</sup> The board also states release of the submitted information may implicate the proprietary interests of Saab Sensis Corporation ("Saab"); SigNet Technologies, Inc. ("SigNet"); and Thales Avionics, Inc. ("Thales"). Accordingly, the board states, and provides documentation showing, it notified the third parties of the request for information and of their 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 Thales.<sup>2</sup> We have reviewed the submitted arguments and the submitted information. Initially, we note an interested third party is allowed ten business days after the date of its receipt of the

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<sup>1</sup> We note the board did not comply with section 552.301 of the Government Code in requesting this decision with regards to some of the submitted information. *See* Gov't Code § 552.301(e). Nonetheless, section 552.101 of the Government Code and the interests of third parties can provide compelling reasons to overcome the presumption of openness. *See id.* §§ 552.007, .302, .352. Therefore, we will consider whether this information must be withheld under the Act on those grounds.

<sup>2</sup> We note we also received comments from Saab, but it claims no exceptions and does not make arguments against disclosure of the submitted information.

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 SigNet explaining why the submitted information should not be released. Therefore, we have no basis to conclude SigNet has a protected proprietary interest in the submitted 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 board may not withhold the submitted information on the basis of any proprietary interest SigNet may have in the information.

Section 552.110(c) of the Government Code states:

(c) Except as provided by Section 552.0222, commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is [excepted from required disclosure].

Gov't Code § 552.110(c). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Thales argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Thales has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the board must withhold the information we indicated under section 552.110(c) of the Government Code; however, to the extent Thales's customer information is publicly available on the company's website, it may not be withheld under section 552.110(c).<sup>3</sup> Further, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(c).

Section 552.110(b) of the Government Code states "information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret." *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

*Id.* § 552.110(a). Thales argues the information at issue consists of trade secrets subject to section 552.110(b). We find Thales has failed to provide specific factual evidence

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<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

demonstrating the information at issue is a trade secret. Therefore, the board may not withhold any this information under section 552.110(b) of the Government Code.

Section 552.1101 of the Government Code provides, in relevant part:

(a) . . . [I]nformation submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

*Id.* § 552.1101(a). Thales asserts disclosure of the information at issue would reveal an individual approach to work, organizational structure, staffing, internal operations, and processes, and give advantage to a competitor. Upon review, we find Thales has failed to provide the specific factual evidence necessary to withhold the information at issue under section 552.1101(a), and the board may not withhold it on that basis.

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, orig. proceeding); 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, orig. proceeding). 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. 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, 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 some of the information at issue under section 552.111 of the Government Code. You state the information at issue consists of advice, opinion, and recommendations related to policymaking matters of the board. You further state the information at issue relates to communications between board personnel reflecting the deliberative and policymaking processes in ranking and evaluating the bid submissions at issue. Upon review, except for the information we marked for release, the board may withhold the information you marked under section 552.111 of the Government Code. However, we find the information we marked for release is administrative or purely factual in nature. Thus, we find the board failed to demonstrate the information we marked for release reveals advice, opinions, or recommendations that pertain to policymaking. Accordingly, the board may not withhold any portion of the information we marked for release under section 552.111 of the Government Code.

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.

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 board states the information at issue provides details about the Integrated Operations Center ("IOC") which will consolidate critical airport operating, security, and customer service functions. The board argues release of the information would allow an unauthorized user access into the IOC system, thereby making the system vulnerable to alteration, damage, or erasure, and causing interruption to airport operations and functions. 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 board's computer network. Accordingly, the board must withhold the information you marked under section 552.139 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 board must withhold the information we indicated under section 552.110(c); however, to the extent Thales's customer information is publicly available on its website, it may not be withheld under section 552.110(c) of the Government Code. Except for the information we marked for release, the board may withhold the information you marked under section 552.111 of the Government Code. The board must withhold the information you marked under section 552.139 of the Government Code. The board 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 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,

Katie Stallcup  
Attorney  
Open Records Division

AKS/eb

Ref: ID# 822941

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)