



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 3, 2020

Ms. Cynthia Tynan  
Senior Attorney & Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
210 West 7th Street  
Austin, Texas 78701-2901

OR2020-27501

Dear Ms. Tynan:

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# 852041 (OGC# 198506).

The University of Texas M.D. Anderson Cancer Center (the "university") received a request for information pertaining to a specified request for proposals. You state the university does not maintain some of the requested information.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.111 of the Government Code. You also state you notified Absolute Color Mailplex ("Absolute"); Bayside Printing Company, Inc. ("Bayside"); CME Printing; Masterpiece Litho, Inc. ("Masterpiece"); Nicholas Earth Printing ("NCE"); RR Donnelly; Speedy Printing Services of Texas ("Speedy"); and The Document Group ("TDG") 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 Absolute, Bayside, Masterpiece, NCE, Speedy, and TDG. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Initially, we note Bayside, Masterpiece, Speedy, and TDG argue against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the university has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the university submitted as responsive to the request for 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 info 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 the remaining third parties. Thus, we have no basis to conclude any of the remaining third parties has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the university may not withhold any of the submitted information on the basis of any proprietary interest the remaining third parties may have in the 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 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 evaluation scorecard under section 552.111 of the Government Code. You state the information at issue consists of advice, opinions, and recommendations of university employees regarding policymaking matters. Upon review, we find the university may withhold the submitted evaluation scorecard under section 552.111 of the Government Code.

Section 552.110(c) of the Government Code excepts from disclosure “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[.]” Gov’t Code § 552.110(c). Bayside, Masterpiece, NCE, and TDG argue some of their information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Bayside, NCE, and TDG have demonstrated portions of their information constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the university must withhold the information we indicated under section 552.110(c) of the Government Code.<sup>2</sup> However, we find Bayside, Masterpiece, and TDG have failed to provide specific factual evidence demonstrating any portion of the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the university may not withhold any of the remaining information under section 552.110(c) of the Government Code.

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* Gov’t Code § 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). Absolute and Masterpiece argue portions of their information consist of trade secrets subject to section 552.110(b). Upon review, we find Absolute has demonstrated its information at issue constitutes trade secrets. Accordingly, the university must withhold the information we indicated under section 552.110(b) of the Government Code.<sup>3</sup> However, we find Masterpiece has failed to provide specific factual evidence demonstrating any portion of its information at issue is a trade secret. Therefore, the

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<sup>2</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>3</sup> As our ruling is dispositive, we need not address Absolute’s remaining argument against disclosure of this information.

university may not withhold any of the Masterpiece's information at issue 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.

Gov't Code § 552.1101(a). Masterpiece and Speedy raise section 552.1101 for their information at issue. Speedy asserts disclosure of its information at issue would reveal an individual approach to pricing information and give advantage to a competitor. Upon review, we find Speedy has demonstrated the applicability of section 552.1101(a) to its information at issue. Accordingly, the university must withhold the information we indicated under section 552.1101 of the Government Code. However, we find Masterpiece and Speedy have failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a), and university may not withhold it on that basis.

Masterpiece generally asserts its information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes. However, Masterpiece has not directed our attention to, and we are not aware of, any law under which any of the remaining information is considered to be confidential for

the purposes of section 552.101. *See* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, we conclude no portion of the remaining information may be withheld under section 552.101 of the Government Code.

Masterpiece generally raises section 552.113 of the Government Code, which protects certain geological, geophysical, and other information regarding the exploration or development of natural resources. *See* Gov't Code § 552.113. *See generally* Open Records Decision No. 627 (1994). Masterpiece has not demonstrated this exception is applicable to any of its information. Accordingly, the university may not withhold any of the information at issue under section 552.113 of the Government Code.

Masterpiece also asserts the information at issue is subject to section 552.131 of the Government Code. Section 552.131 relates to economic development information and provides, in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) 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.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131(a)-(b). We note the scope of section 552.131(a) is co-extensive with that of section 552.110 of the Government Code. *See id.* § 552.110(b)-(c). Because we have already disposed of Masterpiece's claim under section 552.110, the university may not withhold any of the information at issue under section 552.131(a) of the Government Code. We note section 552.131(b) is designed to protect the interests of governmental bodies, not third parties. As the university does not assert section 552.131(b) as an exception to disclosure, we conclude no portion of the information at issue is excepted under section 552.131(b) of the Government Code.

In summary, the university may withhold the submitted evaluation scorecard under section 552.111 of the Government Code. The university must withhold the information we indicated under section 552.110(c) of the Government Code. The university must withhold the information we indicated under section 552.110(b) of the Government Code. The

university must withhold the information we indicated under section 552.1101 of the Government Code. The university 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,

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/jm

Ref: ID# 852041

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

6 Third Parties  
(w/o enclosures)