



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 16, 2020

Ms. Stacey Cormican
Attorney
City Public Service Board of San Antonio
145 Navarro Street
San Antonio, Texas 78205

OR2020-31480

Dear Ms. Cormican:

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# 857393.

The City Public Service Board of San Antonio d/b/a CPS Energy ("CPS Energy") received a request for CPS Energy's bid evaluation matrix pertaining to a specified request for proposals ("RFP"). CPS Energy claims the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. Additionally, CPS Energy states release of the submitted information may implicate the proprietary interests of Aeparmia Engineering, L.L.C. ("Aeparmia"); ASEC Engineers, Inc.; Black & Veatch; Binkey & Barfield; C&D Utility; Davey; EN Engineering, L.L.C. ("ENE"); HMI Technical; Intec Services; Leidos; Osmose; Phaselink; Quanta Utility Engineering Services; Schneider; TRC Companies, Inc. ("TRC"); Texas Utility Engineering, L.L.C.; and WestWood. Accordingly, CPS Energy 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 Aeparmia, ENE, and TRC. We have reviewed the submitted information and considered the submitted arguments.

Initially, we note Aeparmia, ENE, and TRC object to disclosure of information CPS Energy has not submitted to this office for review. This ruling does not address information that was not submitted by CPS Energy and is limited to the information CPS

Energy 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 552.111 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 (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).

CPS Energy states the submitted information consists of information pertaining to the evaluation and scoring of bid proposals submitted in response to the specified RFP. CPS Energy explains the information at issue is reflective of the deliberative and policymaking processes by which CPS Energy ranks the bid proposals. Thus, CPS Energy states the submitted information consists of advice, opinions, and recommendations of CPS Energy employees regarding policymaking matters of CPS Energy. Based on these representations and our review of the information at issue, we find CPS Energy has demonstrated the information at issue consists of advice, opinions, or recommendations on the policymaking matters of CPS Energy. Thus, CPS Energy may withhold the submitted information under section 552.111 of the Government Code.¹

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this 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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/jxd

Ref: ID# 857393

Enc. Submitted documents

c: Requestor
(w/o enclosures)

17 Third Parties
(w/o enclosures)