



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 17, 2020

Ms. Jennifer Burnett
Senior Attorney & Public Information Coordinator
Office of the General Counsel
The University of Texas System
210 West Seventh Street
Austin, Texas 78701-2903

OR2020-31600

Dear Ms. Burnett:

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# 858679 (UT OGC# 198939).

The University of Texas Southwestern Medical Center (the "university") received a request for the bid tabulation and evaluation information for a specified solicitation. You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted 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. Section 552.111 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. 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 state the information at issue consists of the advice and recommendations of university employees evaluating bid proposals for the specified solicitation for bids. You assert release of the information at issue “would hinder the decision-making process of the [u]niversity.” Based upon your representations and our review, we find the information at issue consists of advice, opinions, or recommendations on the policymaking matters of the university. Accordingly, the university may withhold the information at issue under section 552.111.

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,

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/jm

Ms. Jennifer Burnett - Page 3

Ref: ID# 858679

Enc. Submitted documents

c: Requestor
(w/o enclosures)