



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2022

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

OR2022-11183

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# 942799 (OGC#s 204236 and 204273).

The University of Texas Medical Branch at Galveston (the "university") received two requests from different requestors for information pertaining to a specified request for proposals. You state you have released some information to one of the requestors. You also state you have no information responsive to a portion of the requests.¹ You inform us you will redact insurance policy numbers pursuant to section 552.136(c) of the Government Code and make information subject to copyright available for inspection in accordance with copyright laws.² You claim some of the submitted information is excepted from disclosure under section 552.111 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of the following third parties: Account Services USA; Arstrat/GetixHealth; ASCI; CBE Companies ("CBE"); CMI Group; Convergent; DataSearch, Inc.; FirstPoint Resources; FMA Alliance; Frost-Arnett; IC System; JP Recovery; Meduit; NRA Group LLC; nthrive; OptumInsight; PFC USA; Revecore; RTR Financial Services ("RTR"); State Collection Service, Inc. ("State"); Transworld Systems, Inc.; United Collection Bureau, Inc.; USCB America; and Wakefield & Associates. Accordingly, you state, and provide documentation showing, you notified

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

² Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

these interested third parties of the request for information and of their right to submit arguments to this office. *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 CBE, RTR, and State.³ We have considered the submitted arguments and reviewed the submitted information.

Initially, we note State argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the university has submitted to us 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.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the remaining third parties explaining why the information at issue should not be released. Thus, we have no basis to conclude the remaining third parties have a protected proprietary interest in the information at issue. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the university may not withhold any portion of the submitted information on the basis of any proprietary interest any of the remaining third parties may have in it.

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; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Tex. 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

³ In RTR's submitted comments, RTR states it does not object to the release of its information at issue.

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 protect facts and written observations of facts and events severable from advice, opinions, and recommendations. *See 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).

The university states the information at issue details communications between university employees evaluating bid proposals. The university asserts release of the information at issue “would hinder the decision-making process of the [u]niversity.” Based upon these representations and our review, we find the information the university indicated consists of advice, opinions, or recommendations on the policymaking matters of the university. Accordingly, the university may withhold the information it indicated under section 552.111 of the Government Code.⁴ The university must release the remaining information at issue.

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,

Joseph Hoggatt
Assistant Attorney General
Open Records Division

JWH/mo

Ref: ID# 942799

c: Requestor

⁴ As our ruling is dispositive, we need not address CBE’s or State’s arguments against disclosure of this information.