



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 10, 1996

Ms. Sara Hardner Leon
Bickerstaff, Heath, Smiley, Pollan,
Kever & McDaniel
1700 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701-2443

OR96-1115

Dear Ms. Leon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40071.

The Austin Community College District (the "college"), which you represent, received a request for information relating to the possible purchase of land and construction of a new college campus, and other related issues. You have submitted a representative sample of the requested information to this office for review.¹ You assert that this information is excepted from disclosure under sections 552.104, 552.105, 552.110, and 552.111 of the Government Code.

Section 552.111 excepts from disclosure "only those internal agency communications consisting of advice, recommendations, opinions and other material reflecting the deliberative or policymaking processes of the governmental body at issue." Open Records Decision No. 615 (1993) at 5. This exception is intended to protect advice and opinions given on policy matters and to encourage frank and open discussions within an agency in connection with the agency's decision-making processes. *Texas Dep't of*

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Pub. Safety v. Gilbreath, 842 S.W.2d 408, 412 (Tex. App.--Austin 1992, no writ) (citing *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.)). This section does not protect facts or written observations of facts. Open Records Decision No. 615 (1993) at 5.

We find that some of the information that you submitted consists of advice, recommendations, or opinions relating to the policymaking functions of the college. *See, e.g.*, Open Records Decision No. 631 (1995). We have marked this information, and the college may withhold this information from disclosure under section 552.111. Other information, however, either is factual in nature or does not relate to the policy mission of the college.² Thus, you may not withhold this information under section 552.111.

You also claim that section 552.104 of the Government Code excepts from disclosure certain documents that you submitted. Section 552.104 protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Section 552.104 is generally invoked to except information relating to competitive bidding situations involving specific commercial or contractual matters. Open Records Decision No. 463 (1987). Governmental bodies may withhold bid information while governmental officials are in the process of evaluating the proposals and asking competitors to clarify their bids. Open Records Decision No. 170 (1977). Section 552.104 does not, however, except bids or proposals from disclosure once the bidding is over and the contract is in effect. Open Records Decision Nos. 306 (1982); 184 (1978).

The college has submitted information relating to the potential sale of a building owned by the college. You state that negotiations relating to this potential sale are ongoing, and no formal contract has been entered at this time. Additionally, the documents you submitted indicate that the college is considering at least two competing proposals. Under these circumstances, the college may withhold the proposals for purchase of the building and the documents which contain information from these proposals pursuant to section 552.104. We have marked the information that the college may withhold under this exception.

²Although it was apparent from the face of some of the submitted documents that the documents consist of advice, opinion, or recommendation relating to the policy mission of the college, it is not apparent from the face of other documents, nor did the college provide sufficient information to establish that the information is excepted under section 552.111. If a governmental body does not establish how and why an exception applies to requested information, there is no basis on which to pronounce it protected. Open Records Decision No. 363 (1983). Chapter 552 of the Government Code places the burden on a governmental body to establish why and how an exception applies to requested information. Open Records Decision No. 542 (1990).

Finally, the college asserts that certain information may be withheld under section 552.105 of the Government Code. Section 552.105 excepts from disclosure information relating to:

(1) the location of real or personal property for a public purpose prior to public announcement of the project; or

(2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Section 552.105 is designed to protect a governmental body's planning and negotiating position in transactions involving the purchase of real or personal property by a governmental body for a public purpose. Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). This exception protects information relating to the location, appraisals, and purchase price of property as long as the transaction is not complete. Open Records Decision Nos. 357 (1982), 310 (1982).

Certain documents submitted by the college concern the possible purchase of land by the college and are the types of documents that are protected under section 552.105(2). You state that negotiations relating to this transaction are ongoing, and that no formal contract has been negotiated or entered. Under these circumstances, we conclude that the college may withhold several requested documents from disclosure under section 552.105(2). We have marked the documents accordingly.

We note that in the request for information, the requestor refers to certain land locations that the college is purported to be considering and also refers to a newspaper article which purported to discuss the land that the college is considering purchasing. If the college has previously disclosed the locations of the land it is considering purchasing, there is no justification for now withholding that information under section 552.105(1). *See* Gov't Code § 552.007; Open Records Decision No. 490 (1988) at 2 (selective disclosure of information is prohibited). The college may withhold from disclosure under section 552.105(1) only those locations that it has not previously disclosed to the public.

Although you generally assert that some of the requested information is excepted from disclosure pursuant to section 552.110, you have not provided us with written comments explaining the reasons why you believe that portions of the requested information are protected by section 552.110. A conclusory statement that some of the requested information is "commercially sensitive" and, therefore, protected by section 552.110 is not sufficient to demonstrate that the information falls within the scope of section 552.110. *See* Open Records Decision Nos. 639 (1996), 552 (1990).

Consequently, the information that you claim is protected by section 552.110 is not excepted from required public disclosure, unless of course we have concluded that it is excepted from disclosure under one of the other exceptions you have claimed.

In conclusion, the college may withhold from disclosure the information that this office has marked as excepted under sections 552.104, 552.105, and 552.111 of the Government Code. The college must release all other requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/rho

Ref: ID# 40071

Enclosures: Marked documents

cc: Mr. William G. Bunch
Save Our Springs Legal Defense Fund
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(w/o enclosures)