



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 18, 2006

Ms. Anne M. Constantine  
Legal Counsel  
Dallas/Fort Worth International Airport  
P. O. Box 619428  
DFW Airport, Texas 75261-9428

OR2006-14855

Dear Ms. Constantine:

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# 267115.

The Dallas-Fort Worth International Airport Board (the "board") received a request for the proposals, evaluations, and staff recommendations regarding a specific bid. You claim that the requested information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The board claims that the bidders' proposals are excepted from disclosure under section 552.104 of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of this section is to protect a governmental body's interests in competitive bidding situations. *See Open Records Decision No. 592 (1991)*. Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder or competitor will gain an unfair advantage will not suffice. *Open Records Decision No. 541 at 4 (1990)*. Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. *Open Records Decision Nos. 306 (1982), 184 (1978)*.

You inform us that "[w]hile the Board has selected a successful bid, to date there is no executed contract for this solicitation." You further inform us that release of the bidder's proposals could "negatively impact the Board as this remains an open procurement matter."

After considering your representations and reviewing the information at issue, we conclude that the board may withhold the bidder's proposals under section 552.104. We note that the proposals may no longer be withheld on this basis once a contract has been executed and is in effect.

You also claim that the board's evaluation materials are excepted under section 552.111 of the Government Code, which excepts from public disclosure "an 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, no writ); 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 that 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* Open Records Decision No. 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. The 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. *See* Open Records Decision No. 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 contend that the submitted evaluation materials and score sheets of the evaluating committee should be withheld pursuant to section 552.111. You argue that the score sheets were created by board personnel in a deliberative process aimed at providing advice, opinion and recommendations. You further argue that, if released, these communications would inhibit the free discussion of future policy issues by board personnel. Upon review of the submitted information, we agree that the evaluation materials and score sheets of the evaluating committee represent the advice, opinion, and recommendations of board personnel concerning matters of policy. Accordingly, we find that this information may be

withheld under section 552.111 of the Government Code. However, you have not explained how the submitted conflict of interest statements consist of the advice, opinion, and recommendations of board personnel, and these disclosure statements may not be withheld under section 552.111.

In summary, the board may withhold the bidders' proposals under section 552.104. We have marked the information that the board may withhold under section 552.111. The remaining information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



José Vela III  
Assistant Attorney General  
Open Records Division

JV/krl

Ref: ID# 267115

Enc. Submitted documents

c: Ms. Cheryl Moore  
Laidlaw Transit Services, Inc.  
5360 College Blvd., Suite 200  
Overland Park, Kansas 66211  
(w/o enclosures)