



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2008

Ms. Lisa Calem-Lindström
Public Information Coordinator
Texas Facilities Commission
1711 San Jacinto Boulevard
Austin, Texas 78701

OR2008-07219

Dear Ms. Calem-Lindström:

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# 311271.

The Texas Facilities Commission (the "commission") received a request for several categories of information pertaining to the Texas Rangers Museum Project (the "project"). You state that most of the responsive information will be released to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.111, 552.136, and 552.147 of the Government Code.¹ You also assert section 552.110 of the Government Code on behalf of a third party, Imperial Construction, Ltd ("Imperial"), but make no arguments and take no position as to whether the information is so excepted. You state, and provide documentation showing, that you notified Imperial of the commission's receipt of the request for information and of its right to submit arguments to this office as to why the requested information should not be released to the requestor. *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 considered the exceptions you claim and reviewed the submitted information.

¹We note that in your letter dated April 1, 2008, you have withdrawn your assertion under section 552.107 of the Government Code.

Initially, we note that 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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any arguments from Imperial. We thus have no basis for concluding that any portion of the submitted information constitutes proprietary information of Imperial, and the commission may not withhold any portion of the submitted information on that basis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

Section 552.111 excepts from 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. 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, 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* ORD No. 615 at 5.

This office has concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

You inform us that the submitted information contains draft architectural and engineering contracts, draft interlocal agreements between the City of Waco, the Department of Public Safety, and the commission, as well as a draft letter to the City of Waco. You state that these drafts, as well as the correspondence accompanying the drafts, all pertain to the project.

You explain that the drafts and their accompanying correspondence represent the advice, recommendations, and opinions of commission staff “with regard to the form and content of the final document versions.” You inform this office that all of these documents will be released to the public in final form. Based on your representations and our review of the information at issue, we find that the commission may withhold the information you have marked under section 552.111 of the Government Code.

Section 552.136 provides the following:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov’t Code § 552.136. We agree that the insurance policy, bank account, and bank routing numbers you have marked constitute “access devices” for purposes of section 552.136. *See id.* § 552.136(a)(1). You explain that the bond identification numbers you have marked are similar to insurance policy numbers in that they allow access to monetary funds held by a third party in case of a claim made against the bonded individual. Based on this representation, we agree that the marked bond identification numbers are also subject to section 552.136. However, we note that you have marked check numbers that are not subject to section 552.136. Accordingly, except for the check numbers we have marked for release, the commission must withhold the information you marked under section 552.136.

You assert that the social security numbers you have marked are excepted under section 552.147 of the Government Code, which provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147. Therefore, the commission may withhold the social security numbers you have highlighted pursuant to section 552.147 of the Government Code.²

²Section 552.147(b) of the Government Code authorizes a government body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

In summary, the commission may withhold the information it has marked under sections 552.111 and 552.147 of the Government Code. Except for the information we have marked for release, the commission must withhold the access device numbers it marked under section 552.136 of the Government Code. The remaining information must be released to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 311271

Enc. Submitted documents

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