



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 16, 2013

Ms. Shirley Thomas
Senior Assistant General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2013-00913

Dear Ms. Thomas:

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# 476261 (DART ORR# 9401).

Dallas Area Rapid Transit ("DART") received a request for the proposals, pricing forms, evaluations, notes, board recommendations, and the signed agreements pertaining to request for proposals number P-1019730 regarding DART paratransit services. You state you have released some of the responsive information to the requestor. You claim that some of the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. Although you take no position with respect to the remaining submitted information, you state it may implicate the proprietary interests of third parties. Accordingly, you inform us, and provide documentation showing, you notified American Logistics Company, LLC; First Transit; and MV Transportation, Inc. of the request and of the right of each company to submit comments 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) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances).* We have received comments from First Transit. We have considered the submitted arguments and reviewed the submitted information.

You inform us Attachment B was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2012-17876 (2012), 2012-14112 (2012), 2012-13012 (2012), 2012-08490 (2012), and 2012-07738 (2012). In those rulings, we determined DART must withhold certain information under sections 552.110 and 552.136 of the Government Code and release the remaining information in accordance with copyright law. As we have no indication that there has been any change in the law, facts, or circumstances on which the previous rulings were based, we conclude DART must rely on Open Records Letter Nos. 2012-17876, 2012-14112, 2012-13012, 2012-08490, and 2012-07738 as previous determinations and withhold or release Attachment B in accordance with those rulings.¹ *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Further, we note Attachment B-1 may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-20489 (2012). In that ruling, we determined DART may withhold the information at issue under section 552.111 of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, to the extent Attachment B-1 is identical to the information previously requested and ruled upon by this office, we conclude DART must rely on Open Records Letter No. 2012-20489 as a previous determination and withhold or release the identical information in accordance with that ruling. *See id.* To the extent Attachment B-1 is not encompassed by the previous ruling, we will consider your arguments against its disclosure.

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. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of this privilege is to protect advice, opinion, and recommendation in the decisional process and 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 section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, and opinions reflecting the policymaking processes of the governmental body. *See* ORD 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

¹As our ruling is dispositive for this information, we need not address First Transit’s arguments.

personnel. *Id.*; see also *City of Garland v. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (Gov't Code § 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). Moreover, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. See 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 Attachment B-1 consists of DART's evaluations of the responses to the specified solicitation. You explain evaluation of the responses is an internal function of DART's procurement department. You state the evaluation materials provide opinions and recommendations concerning each response and contain information regarding the respondents' strengths and weaknesses. You contend the release of this information would reveal discussions of DART's internal policies, procedures, and procurement process and prevent open discussion of such matters by DART evaluators. Based on your representations and our review, we conclude DART may withhold Attachment B-1 in its entirety under section 552.111 of the Government Code.²

In summary, DART must rely on Open Records Letter Nos. 2012-17876, 2012-14112, 2012-13012, 2012-08490, and 2012-07738 as previous determinations and withhold or release Attachment B in accordance with those rulings. To the extent Attachment B-1 is identical to the information previously requested and ruled upon by this office, we conclude DART must rely on Open Records Letter No. 2012-20489 as a previous determination and withhold or release the identical information in accordance with that ruling. Otherwise, DART may withhold Attachment B-1 in its entirety under section 552.111 of the Government Code.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 476261

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Christa P. McAndrew
Senior Attorney
First Transit, Inc.
600 Vine Street, Suite 1400
Cincinnati, Ohio 45202
(w/o enclosures)

Mr. Gary Coles
Senior Vice President
MV Transportation
4620 Westamerica Drive
Fairfield, California 94534
(w/o enclosures)

Mr. Craig Puckett
President
American Logistics Company, L.L.C.
520 West Dyer Road
Santa Ana, California 94534
(w/o enclosures)