



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 10, 2015

Ms. Cynthia Tynan
Attorney & Public Information Coordinator
Office of General Counsel
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2015-00783A

Dear Ms. Tynan:

This office issued Open Records Letter No. 2015-00783 (2015) on January 14, 2015. We have examined this ruling and determined that we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on January 14, 2015. Your request was assigned ID# 560460 (OGC# 158642).

The University of Texas System (the "system") received a request for the following information: 1) records, with the exception of e-mails, of requests for proposals, proposals, reports, and contracts related to the creation of the University of Texas Rio Grande Valley (the "UTRGV") containing specified terms during a specified time period, including all records containing another specified term; 2) executed contracts and outstanding requests for proposals instituted under the authorization for expenditures for a Shared Services Initiative

at the UTRGV and records, excluding e-mails, of how this money has been spent and will be spent in the future; 3) records, including e-mails, during a specified time period regarding the institutional design and operational efficiencies study by Deloitte Consulting, L.L.P. (“Deloitte”); and 4) the anticipated, planned, or already hired total number of FTEs that will be needed to staff UTRGV, their job titles, and their departments.¹ You state the system is releasing some information to the requestor. You state the system does not have some of the requested information.² You further state the system will redact information pursuant to sections 552.024, 552.136, and 552.147 of the Government Code and Open Records Letter No. 684 (2009).³ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.107, 552.111, and 552.139 of the Government Code. Additionally, you state release of some of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their right to submit arguments to this office as to why the requested information should not be released.⁴

¹You state the requestor modified the request for information in response to a cost estimate. *See* Gov’t Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See* *Economic 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

³Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. Gov’t Code § 552.117(a). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c). Section 552.136 authorizes a governmental body to redact the information described in section 552.136(b) without the necessity of seeking an attorney general decision. *See id.* § 552.136(b). If a governmental body redact such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold certain categories of information, including e-mail addresses subject to section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

⁴The notified third parties are as follows: AustinHR.com; Berkeley Research Group, L.L.C.; CBT University Consulting; Ciber, Inc.; Deloitte; Highstreet IT Solutions (“Highstreet”); Huron Consulting Services, L.L.C. and Huron Consulting Group, Inc. (collectively, “Huron”); Kathryn C. Church d/b/a Strategic Focus Associates; Oracle America, Inc.; Sierra-Cedar, Inc., formerly CedarCrestone, Inc. (“SCI”); Sonya Ware Executive Consulting, L.L.C. d/b/a Blue Beagle Consulting (“BBG”); SunGard Availability Services, L.P.; and VCE.

See Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 BBG, Deloitte, Highstreet, Huron, and SCI. We have considered the submitted arguments and reviewed the submitted information, portions of which consist of a representative sample.⁵

Initially, we note you have marked some of the submitted information as not responsive to the request for information. This ruling does not address the public availability of non-responsive information, and the system need not release non-responsive information to the requestor.

Next, you inform us some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2014-20565 (2014). In that ruling, we held the system must withhold the information we marked under sections 552.110 and 552.139 of the Government Code and must release the remaining information only in accordance with copyright law. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the system must continue to rely on Open Records Letter No. 2014-20565 as a previous determination and withhold or release the identical information in accordance with that ruling.⁶ *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 information is or is not excepted from disclosure). We will address the submitted arguments against release of the responsive information that is not encompassed by Open Records Letter No. 2014-20565.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

⁵We 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.

⁶As we are able to make this determination, we need not address the submitted arguments against release of this information.

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information includes completed reports made for the system that are subject to section 552.022(a)(1). The system must release the completed reports pursuant to section 552.022(a)(1), unless they are excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although the system raises section 552.111 of the Government Code and the deliberative process privilege for this information, that exception is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver). Therefore, the system may not withhold any of the information subject to section 552.022, which we have marked, under section 552.111. As no further exceptions to disclosure of this information have been raised, the system must release the information subject to section 552.022(a)(1) of the Government Code.

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 only received comments from BBG, Deloitte, Highstreet, Huron, and SCI explaining why their information should not be released. Therefore, we have no basis to conclude any of the remaining third parties has a protected proprietary interest in the submitted information. *See id.* § 552.110; 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. Accordingly, the system may not withhold any of the information at issue on the basis of any proprietary interest any of the remaining third parties may have in it.

Deloitte and the system contend some of the submitted information is subject to the doctrine of common-law privacy. Section 552.101 of the Government Code excepts from release "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered

intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORD 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Upon review, we find the information the system has marked under common-law privacy satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the system must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.⁷

Huron raises 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. We note section 552.104 protects the interests of governmental bodies, not third parties. *See* Open Records Decision No. 592 at 8 (1991) (purpose of section 552.104 is to protect governmental body’s interest in competitive bidding situation). As the system does not argue section 552.104 is applicable to Huron’s information, we will not consider Huron’s claim under this section. *See id.* (section 552.104 may be waived by governmental body). Therefore, the system may not withhold any of Huron’s information under section 552.104 of the Government Code. However, as the system raises section 552.104 for other information, we will address the system’s claim for that information.

The purpose of section 552.104 is to protect a governmental body’s interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

⁷As our ruling is dispositive for this information, we need not address the remaining arguments against its release.

The system states some of the submitted information relates to an expenditure authorized by the Board of Regents for a Shared Services Initiative. The system explains that, although several contracts have been executed under the authorized expenditure, the remainder of the authorized amount has not been spent. The system further explains that new projects related to this expenditure are rolled out continuously, and as requests for proposals are issued and third parties bid to provide the sought-after services, the system will continue to draw upon the remainder of the expenditure. The system contends release of the information at issue would allow third parties bidding on future contracts under the expenditure to determine the amount of remaining allocated funds and could potentially influence prices on these transactions and harm the system's ability to negotiate the best possible terms for these contracts. Based on these representations and our review, we conclude the system has demonstrated release of the information at issue, which we have marked, could harm its interests with respect to the expenditures for the Shared Services Initiative. Thus, the system may withhold the information we have marked under section 552.104 of the Government Code.

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. *See* Gov't Code § 552.107(1). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. *See* TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *See In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. *See* TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Finally, the attorney-client privilege applies only to a confidential communication, meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding).

Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

The system states some of the submitted information consists of communications involving system attorneys, system representatives, and other system employees and officials. The system states the communications were made for the purpose of facilitating the rendition of professional legal services to the system and these communications have remained confidential. Upon review, we find the system has demonstrated the applicability of the attorney-client privilege to the information at issue. Thus, the system may withhold the information we have marked under section 552.107(1) of the Government Code.⁸

BBG, Deloitte, Highstreet, and SCI claim some of their information is excepted from disclosure under section 552.110 of the Government Code. Further, we understand Huron to claim some of its information is excepted under section 552.110. Section 552.110 protects (1) trade secrets and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See Gov't Code* § 552.110(a)-(b). Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts, which holds a trade secret to be:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 776 (Tex. 1958). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the

⁸As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

Restatement's list of six trade secret factors.⁹ RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983). We further note pricing information pertaining to a particular contract is generally not a trade secret because it is "simply information as to single or ephemeral events in the conduct of the business," rather than "a process or device for continuous use in the operation of the business." RESTATEMENT OF TORTS § 757 cmt. b; *see also Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5.

BBG, Deloitte, Highstreet, Huron, and SCI each claim section 552.110(a) for some of their information. Upon review, we find Deloitte, Highstreet, Huron, and SCI have established a *prima facie* case their customer information constitutes trade secret information for purposes of section 552.110(a). Nevertheless, to the extent any of these companies have published any of the customer information at issue on their respective websites, this information is not confidential under section 552.110. Additionally, we note some of SCI's information pertains to customers who appear in testimonials, and we find this information is not confidential under section 552.110. *See* ORD 319 at 3 (statutory predecessor to section 552.110 generally not applicable to professional references). Accordingly, the system must withhold Deloitte's, Highstreet's, and Huron's customer information in the submitted documents, as well as SCI's customer information we have marked, under

⁹The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

section 552.110(a), provided these companies have not published the information on their respective websites. However, we find none of the third parties at issue have shown any of the remaining information meets the definition of a trade secret or demonstrated the necessary factors to establish a trade secret claim. *See id.* § 552.110(a). Accordingly, the system may not withhold any of the remaining information under section 552.110(a).

BBG, Deloitte, Highstreet, Huron, and SCI also claim section 552.110(b) for some of their information. Upon review, we find BBG, Highstreet, and SCI have demonstrated portions of their information constitute commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the system must withhold BBG's pricing information, Highstreet's pricing information, SCI's pricing information for request for proposal EIS20131121, and SCI's financial statements, which we have marked, under section 552.110(b) of the Government Code. However, we note the pricing information of a winning bidder is generally not excepted from release under section 552.110(b), and this office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Dep't of Justice Guide to the Freedom of Information Act 344-45 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Further, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). We note SCI was the winning bidder with respect to request for proposals number EIS20131014 and Deloitte and Huron were winning bidders with respect to certain other requests for proposals at issue. Further, we find BBG, Deloitte, Highstreet, Huron, and SCI have not demonstrated release of the remaining information at issue would cause those companies substantial competitive injury. *See* Gov't Code § 552.110(b). Accordingly, the system may not withhold any of the remaining information at issue under section 552.110(b),

The system and SCI both raise section 552.139 of the Government Code. Section 552.139 provides, in part, as follows:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; [and]

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Id. § 552.139(a)-(b). Section 2059.055(b) of the Government Code provides the following, in pertinent part:

Network security information is confidential under this section if the information is:

- (1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;
- (2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
- (3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Id. § 2059.055(b). The system states SCI was the winning bidder in response to a request for proposals regarding information technology services, and in particular, the ability to host and manage services for the system's Oracle PeopleSoft software applications. The system asserts the information at issue contains detailed information regarding SCI's data centers, operation of the software, guidelines on how to use the software, information regarding disaster recovery, maintenance and backup schedules, an audit report regarding security, and security systems in place to ensure protection of system data in the hands of SCI. Additionally, the system indicates some of the submitted information details the standards to work with the system's Oracle PeopleSoft software, including technical security details. Therefore, the system argues release of the information at issue would make the system's data vulnerable to unauthorized access or harm. Based on these representations and our review, we find the information we have marked relates to computer network security, and the design, operation, or defense of the system's computer network. Accordingly, the system must withhold the information we have marked under section 552.139 of the Government

Code.¹⁰ However, we find the system and SCI have failed to demonstrate how any of the remaining information relates to computer network security, or to the design, operation, or defense of the computer network as contemplated in section 552.139(a). Further, we find the system and SCI have failed to explain how any of the remaining information consists of a computer network vulnerability report or assessment as contemplated by section 552.139(b). Consequently, the system may not withhold any of the remaining information under section 552.139 of the Government Code.

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, 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. 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. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body’s policymaking functions 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 severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152, 157 (Tex. App.—Austin 2001, no pet.); *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, section 552.111 protects the factual information. *See* Open Records Decision No. 313 at 3 (1982).

This office has also concluded section 552.111 exempts from disclosure a preliminary draft of a document intended for public release in its final form because the draft necessarily represents the drafter’s advice, opinion, and recommendation with regard to the form and content of the final document. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will

¹⁰As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents of a preliminary draft of a policymaking document, including comments, underlining, deletions, and proofreading marks, that will be released to the public in its final form. *See id.* at 2.

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party, with which the governmental body establishes it has a privity of interest or common deliberative process. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. We note a governmental body does not share a privity of interest with a third party when the governmental body and the third party are involved in contract negotiations, as the parties interests are adverse.

The system states some of the remaining information consists of advice, opinions, and recommendations relating to the system's policymaking. The system also states the information at issue contains draft documents that will be released to the public in final form. Further, the system informs us some of the communications at issue involve Deloitte, with which the system states it shares a privity of interest. Upon review, we find the system may withhold some of the information at issue, which we have marked, under section 552.111. However, we find the system has failed to demonstrate how it shares a privity of interest or common deliberative process with Deloitte with respect to some of the remaining communications. Further, some of the remaining information at issue consists of either general administrative information that does not relate to policymaking or information that is purely factual in nature. Thus, we find the system has failed to demonstrate how the remaining information at issue is excepted under section 552.111. Accordingly, the system may not withhold the remaining information at issue under section 552.111 of the Government Code.

We note some of the submitted information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the system must continue to rely on Open Records Letter No. 2014-20565 and withhold or release the identical information at issue in accordance with that ruling. The system must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The system may withhold the

information we have marked under section 552.107(1) of the Government Code. The system must withhold Deloitte's, Highstreet's, and Huron's customer information within the submitted information, as well as SCI's customer information we have marked, under section 552.110(a) of the Government Code to the extent these companies have not published this information on their respective websites. The system must also withhold the information we have marked under section 552.110(b) of the Government Code. The system must withhold the information we have marked under section 552.139 of the Government Code. The system may withhold the information we have marked under section 552.111 of the Government Code. The system must release the remaining responsive information; however, the system may release any information protected by copyright only in accordance with copyright law.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLK/cz

Ref: ID# 560460

Enc. Submitted documents

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