



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 28, 1994

Mr. Kevin Raymond
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR94-822

Dear Mr. Raymond:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 27470.

The Texas Department of Public Safety ("DPS") has received a request for information relating to DPS's contract to purchase a digital imaging driver license system. Specifically, the requestor seeks:

- [1.] Any documents, including memos, reports or analyses that say why Polaroid's selection is in the state's best interest.
- [2.] A copy of the contract award, the final negotiated price per license and total price for the term of the contract.
- [3.] Any documents that compare vendors to one another and evaluate the quality of their proposals, including their compliance with standards promoted by such organizations as the American Association of Motor Vehicle Administrators.
- [4.] A list of Polaroid's prices and those of other vendors who sought the contract, including Datacard Corp., National Identification Systems, LAU Technologies, UNISYS Corp., NBS and NCR.
- [5.] Copies of rejection letters sent to losing vendors.

- [6.] Copies of appeals filed by losing vendors.
- [7.] Documents that describe the selection process and time-frame for putting the new system in place.
- [8.] Copies of each vendor's initial response pursuant to DPS's requirements as set forth in its original request for proposals and subsequent bidders' conference.
- [9.] Travel vouchers and expense reports of DPS personnel related to the Polaroid demonstration held in Boston.

In Open Records Letter No. 94-399 (1994), this office addressed the availability of some of the requested information under the Open Records Act. In that ruling, this office determined that DPS must withhold from public disclosure under section 552.110 of the Government Code the following portions of the proposal that Polaroid Corporation submitted to DPS for a digital imaging driver license system: section 5.3.0 (pages 2-6 to 2-9); section 6.4.1.7 (pages 2-53 to 2-56); sections 6.4.1.17 and 6.4.1.18 (pages 2-62 to 2-64); sections 6.9.1.5 and 6.9.2.1 (pages 2-92 to 2-96), and the drawings included in these pages, including Figure 2-1 on page 2-6. This office also determined that the remainder of the information at issue was subject to required public disclosure under the Open Records Act.

None of the interested third parties have raised any grounds for withholding the information at issue here that were not raised and addressed in Open Records Letter No. 94-399. Thus, with respect to information that implicates third-party interests, Open Records Letter No. 94-399 controls this request, and DPS must withhold under section 552.110 of the Government Code the information contained in Polaroid Corporation's proposal as listed above. You claim, however, that section 552.111 of the Government Code exempts from required public disclosure information responsive to item 7, above.¹

Section 552.111 exempts from required public disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency" This section protects from disclosure advice, opinions, and recommendations; it does not protect facts or written observations of facts. Open Records Decision No. 615 (1993) at 5. Furthermore, this section applies only to interagency and intraagency memoranda. The purpose of section 552.111 is to prevent disclosure of information that, if released, will inhibit free discussion among agency personnel as to policy issues. *See id.* at 5-6. Where a record is genuinely a preliminary draft of a document that has been released or is intended for release in a final form, the draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 (1990).

¹We assume that this information was not at issue in Open Records Letter No. 94-399.

Purely factual information in a preliminary draft, however, where severable from information that constitutes "advice, opinion, or recommendation," may not be withheld under section 552.111. *Id.* at 2; *see also* Open Records Decision No. 450 (1986).

You have submitted to us for review a representative sample of information relating to DPS's schedule for implementation of the digital imaging driver license system.² You contend that this information falls within the section 552.111 exception because it is "highly tentative and [has] not been approved by management personnel." You thus suggest that this information is preliminary and is intended for release in a final form. Such information is appropriately characterized as in draft form. *See* WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 380 (1991) (definition of "draft" as "a preliminary sketch, outline, or version"). Having examined the submitted information, we conclude that it represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Accordingly, we conclude that DPS may withhold the submitted information under section 552.111 of the Government Code. The remainder of the requested information, except to the extent that Open Records Letter No. 94-399 controls, must be released in its entirety.

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 may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Open Government Section

SLG/GCK/rho

Ref.: ID# 27470

²In reaching our conclusion here, we 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, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

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