



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 28, 2005

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

OR2005-06792

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# 229190.

The Dallas-Fort Worth International Airport Board (the "board") received a request for information pertaining to a soft drink concession including 1) the proposal submitted by Pepsi, 2) the signed contract, and 3) scoresheets, worksheets, and notes used or completed by the committee evaluating the bids. You claim that some of the requested information is exempted from disclosure under section 552.111 of the Government Code. You also indicate that release of some of the requested information may implicate the proprietary interests of Pepsi. Accordingly you state that you notified Pepsi of the request and of its right to submit arguments to this office as to why the information pertaining to it should not be released. *See* § 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 Act in certain circumstances). You also assert that some of the submitted information is not responsive to the request. We have considered your arguments and reviewed the submitted information.¹

¹To the extent any additional responsive information existed on the date the board received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We begin with your argument that the information you have marked is not responsive to the request. The Act requires a governmental body to release only information that it believes to be responsive to a request. However, in determining whether information is responsive, a governmental body has a duty to make a good faith effort to relate the request to information that it holds. Open Records Decision No. 590 at 1 n. 1 (1991). The requestor seeks all scoresheets, worksheets, and notes used or completed by the committee evaluating the bids the board received. We note that the information you claim is nonresponsive consists of committee notes that evaluate Coke's bid. Accordingly, we conclude that this information is responsive to the request. We therefore address the board's claimed exception with respect to this information.

You argue that some of the submitted information is excepted from disclosure under section 552.111 of the Government Code. 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." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. Open Records Decision No. 615 at 5-6 (1993). An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. See *Arlington Indep. Sch. Dist. v. Texas Atty. Gen.*, 37 S.W.3d 152, 160 (Tex. App.—Austin 2001, no writ); Open Records Decision No. 615 at 4-5.

You state that the information you seek to withhold under section 552.111 relates to the board's evaluation of soft drink concession proposals. Based on your representations and our review of the information at issue, we find that the information we have marked represents the advice, opinion, and recommendations of board staff concerning matters of policy. We therefore find that the board may withhold this information under section 552.111.

Next, 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 that party should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Pepsi has not submitted any comments to this office explaining how release of the information at issue would affect its proprietary interests. Therefore, we have no basis to conclude that Pepsi has protected proprietary interests in the submitted information. See Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that

substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Furthermore, you have made no argument on behalf of the board for withholding Pepsi's information under section 552.110. Accordingly, this information may not be withheld on the basis of section 552.110 of the Government Code.

We note, however, that the remaining submitted information contains account numbers that are subject to section 552.136 of the Government Code.² Section 552.136 is other law for purposes of section 552.022 and provides in relevant part:

(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.

The board must withhold the account number information that we have marked in the submitted information pursuant to section 552.136 of the Government Code.

In summary, the board may withhold the information we have marked under section 552.111. The board must withhold the information we have marked under section 552.136. The remaining submitted 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

²The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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).

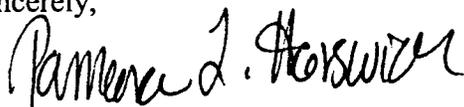
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *Tex. 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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 229190

Enc. Submitted documents

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