



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 11, 2006

Ms. Anne Constantine  
Legal Counsel  
Dallas/Fort Worth International Airport  
P. O. Box 619428  
DFW Airport, Texas 75261-9428

OR2006-04884

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# 248756.

The Dallas-Fort Worth International Airport Board (the "board") received a request for the score sheets used to evaluate a specific June 2004 bid response, the Terminal D Selection Criteria Overview score sheets and score gathered from them, and a complete copy of page 41 from Scoop's LLC Proposal. You state that the responsive information to items one and three of the request will be withheld pursuant to previous determinations issued by this office as the circumstances have not changed since the issuance of the prior rulings. *See* Open Records Letter Nos. 2005-06509 (2005) (concluding that the score sheets used to evaluate a specific June 2004 bid response may be withheld under section 552.111 of the Government Code); 2005-02838 (2005) (concluding that the board must withhold the marked information pursuant to sections 552.101 and 552.110(b)); *see also* Open Records Decision No. 673 at 7-8 (2001) (listing elements of first type of previous determination under section 552.301(a)). You claim, however, that the responsive information to item two of the request is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.111 excepts from public 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. Section 552.111 encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of this exception 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 (1993), 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, and opinions that reflect the policymaking processes of the governmental body. *See* Open Records Decision No. 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. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 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). Furthermore, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* Open Records Decision No. 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). Further, when determining if an interagency memorandum is excepted from disclosure under section 552.111, we must also consider whether the agencies between which the memorandum is passed share a privity of interest or common deliberative process with regard to the policy matter at issue. *See* Open Records Decision No. 561 at 9 (1990).

You state that the submitted information consists of the "Proposal Evaluation Score Sheet Summary." You argue that this information was created by board personnel in a deliberative process aimed at providing advice, opinion and recommendations. You further argue that, if released, these communications would inhibit the free discussion of future policy issues by board personnel. Upon review, we conclude that the board has established the applicability of the section 552.111 to some of the submitted information. However, you have failed to explain how the remaining portions of the information reflect the internal deliberations of the board. Accordingly, the board may only withhold the information we have marked under section 552.111 of the Government Code. The remaining information may not be withheld under section 552.111 of the Government Code and must be released.

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 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).

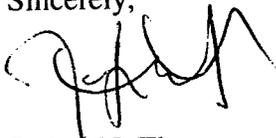
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 248756

Enc. Submitted documents

c: Ms. Cindy Osen Bourland  
Merica & Bourland, P.C.  
400 West 15<sup>th</sup> Street, Suite 600  
Austin, Texas 78701  
(w/o enclosures)