



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 8, 2011

Mr. Hyattye O. Simmons  
General Counsel  
Dallas Area Rapid Transit  
P.O. Box 660163  
Dallas, Texas 75266-0163

OR2011-09680

Dear Mr. Simmons:

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# 426053 (ORR #8242).

Dallas Area Rapid Transit ("DART") received a request for four categories of information related to the Orange Line Expansion project.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. You also state you notified the interested third parties of their right to submit arguments to this office as to why the submitted information pertaining to each company should not be released.<sup>2</sup> *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (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).

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<sup>1</sup>You state DART sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

<sup>2</sup>The third parties notified pursuant to section 552.305 are Transit Solutions Team ("TST") and Kiewit, Stacy and Witbeck, Reyes, Parsons ("KSWRP").

We have received comments from an attorney on behalf of KSWRP. We have considered the submitted arguments and reviewed the submitted information.

You state that a portion of the requested information, which you have submitted as Exhibit B, was the subject of a previous ruling by this office. In Open Records Letter No. 2010-18799 (2010), this office ruled that portions of the information at issue must be withheld under sections 552.101, 552.110, and 552.136 of the Government Code, and the remaining information must be released in accordance with copyright law. As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, DART must continue to rely on the prior ruling as a previous determination and withhold or release Exhibit B in accordance with Open Records Letter No. 2010-18799. *See* Open Records Decision No. 673 (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).

We next address your arguments for the remaining requested information, which you have submitted in Exhibit B-1. Section 552.111 of the Government Code 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.” Gov’t Code § 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, 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 that 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 (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). Further, 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 the documents in Exhibit B-1 relate to DART's evaluation of prospective contractors' proposals. You indicate this information reflects the deliberative and policymaking processes of the evaluators in ranking the bid proposals for the project at issue. Upon review, we agree the information at issue represents the advice, opinion, and recommendations of DART concerning matters of policy. Accordingly, DART may withhold the information in Exhibit B-1 under section 552.111 of the Government Code.

In summary, DART must continue to rely on Open Records Letter No. 2010-18799 as a previous determination and withhold or release Exhibit B in accordance with the prior ruling. DART may withhold the information in Exhibit B-1 under section 552.111 of the Government Code. As our ruling is dispositive, we do not address the remaining claims.

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](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 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 426053

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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