



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2011

Mr. Andrew Martin
Central Texas Regional Mobility Authority
301 Congress Avenue, Suite 650
Austin, Texas 78701

OR2011-11976A

Dear Mr. Martin:

Our office issued Open Records Letter No. 2011-11976 (2011) on August 18, 2011. Since that date, you have provided new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on August 18, 2011. *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 ("Act")). This ruling was assigned ID# 434612.

The Central Texas Regional Mobility Authority (the "authority") received a request for six categories of information pertaining to the construction or environmental review of State Highway 45 Southwest. You state the authority has released some of the requested information. You claim the submitted information 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 of the Government Code 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." *Id.* § 552.111. Section 552.111 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 section 552.111 excepts from disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. See ORD 615 at 5.

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).

We note section 552.111 can encompass communications between a governmental body and a third-party, including a consultant or other party with which the governmental body shares a common deliberative process or privity of interest. 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). In order 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. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. See ORD 561 at 9.

You inform us the submitted information consists of advice, opinions, and recommendations of the authority's legal counsel and staff concerning policy decisions related to the procurement of consulting services and the environmental review process for the State Highway 45 Southwest project. You state the authority shared this information with the Texas Department of Transportation (the "department") because the department is primarily responsible for the preparation of the Environmental Impact Statement ("EIS") for this highway project. You also state the project planning and environmental review process for the highway project are important policymaking functions of both the authority and the department. Further, you inform us that although the department is primarily responsible for the preparation of the EIS, the highway project will be developed by the authority, subject to the findings of the EIS, when funding is available. Thus, we agree the authority and the department share a privity of interest and common deliberative process with respect to the project planning and environmental review process for the highway project. Accordingly, based on your representations and our review, we have marked the portions of the submitted information that consist of advice, opinion, or recommendations. Therefore, the authority may withhold this information under section 552.111 of the Government Code. However, we find the remaining information does not constitute advice, opinion, or recommendations; thus, this information may not be withheld under section 552.111. As you raise no other exceptions to disclosure for this information, it must be released.

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, 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/sdk

Ref: ID# 434612

Enc. Submitted documents

c: Requestor
(w/o enclosures)