



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 8, 2013

Ms. Jelain Chubb  
State Archivist and Director  
Archives and Information Services Division  
Texas State Library and Archives Commission  
P.O. Box 12927  
Austin, Texas 78711-2927

OR2013-07662

Dear Ms. Chubb:

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# 485068.

The Texas State Library and Archives Commission (the "commission") received a request for "the latest update on the Travis Bible[.]" The commission claims the requested information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note some of the information you have submitted to us for review is not responsive to the request for information because it does not pertain to the Travis Bible. This ruling does not address the public availability of any information that is not responsive to the request, and the commission is not required to release this information, which we have marked, in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

You assert some of the submitted responsive information is excepted from disclosure under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). This exception protects a governmental body's interests in connection with

competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the “competitive advantage” aspect of this exception if it can satisfy two criteria. First, the governmental body must demonstrate that it has specific marketplace interests. *Id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *Id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body’s legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body’s demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *Id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

You state the documents you have marked under section 552.104 are excepted from release because they pertain to negotiations over the commercial value of the Travis Bible. You also argue “[t]hese documents relate to bidding and should be protected from public disclosure until the negotiations are concluded and agreed price obtained.” Based on your representations, we understand you to assert the commission has specific marketplace interests with respect to acquiring the Travis Bible. We find the commission has demonstrated specific marketplace interests relating to the acquisition of the Travis Bible and may be considered to be a “competitor” in the marketplace for the purposes of section 552.104. *See* ORD 593. We also find the commission has demonstrated a specific threat of actual or potential harm to the commission’s interests in a particular competitive situation with respect to the information you have marked under section 552.104 of the Government Code. Therefore, the commission may withhold the information you have marked under section 552.104 of the Government Code.

You assert some of the remaining responsive information is excepted from disclosure under section 552.111 of the Government Code, which 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 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 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. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *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).

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party with a 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). 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 id.*

You inform us the information you have marked under section 552.111 consists of internal commission communications and communications between the commission and the Office of the Governor that relate to the commission's policy-making processes, including the commission's responsibilities under section 441.006(a)(8) of the Government Code. *See* Gov't Code § 441.006(a)(8) (commission shall take custody of, preserve, and make available for public use state records and other historical resources that document the history and culture of Texas as a province, colony, republic, or state). We understand the commission and the Office of the Governor share a privity of interest regarding the information at issue. Based on your representations and our review of the information at issue, we find the commission has demonstrated portions of the information at issue, which we have marked, consist of advice, opinions, or recommendations on the policymaking matters of the commission. Thus, the commission may withhold the information we marked under section 552.111 of the Government Code. Upon review, however, we find the remaining information at issue is general administrative and purely factual information. Thus, we find you have failed to show how the remaining information at issue consists of advice, opinions, or recommendations on the policymaking matters of the commission. Accordingly, the

commission may not withhold any of the remaining information at issue under section 552.111 of the Government Code.

To conclude, the commission may withhold the information you have marked under section 552.104 of the Government Code. The commission may also withhold the information we have marked under section 552.111 of the Government Code. The commission must release the remaining responsive information.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 485068

Enc. Submitted documents

c: Requestor  
(w/o enclosures)