



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 30, 2013

Ms. Savannah Gonzalez  
Assistant District Attorney  
County of Hidalgo  
100 North Closner, Room 303  
Edinburg, Texas 78539

OR2013-08998

Dear Ms. Gonzalez:

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# 488627 (ID# 2013-0014).

The Hidalgo County Purchasing Department (the "county") received a request for any and all documents pertaining to RFP No. 2012-145A-01-16CGA for "Section 125 Voluntary [Insurance] Products . . . for Hidalgo County and Hidalgo County Drainage District #1[,]" including documentation pertaining to evaluation of the proposals. You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note you have only submitted evaluation materials for our review. Although you state the county submitted a representative sample of information, we find the submitted evaluation materials are not representative of all documents requested. Please be advised this

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<sup>1</sup>Although you also cite to section 552.107 of the Government Code, you provide no arguments in support of withholding the submitted information under this exception. Therefore, we do not address the applicability of section 552.107 to the submitted information. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

open records letter applies only to the type of information you have submitted for our review. Therefore, this letter ruling does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301 of the Government Code, information is presumed to be public). Thus, to the extent any additional information pertaining to the request for proposal specified in the request existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See id.* §§ 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).

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. 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 reexamined 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. ORD 615 at 5; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). 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). However, 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. ORD 615 at 5-6; *see also Dallas Morning News*, 22 S.W.3d at 364 (section 552.111 not applicable to personnel-related communications that did not involve policymaking).

Further, section 552.111 does not generally except from disclosure facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 157; 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 submitted evaluation forms relate to the county's evaluation of proposals and were created by a committee of the county created to offer advice, opinions, and recommendations to Hidalgo County Commissioners. You state the information at issue pertains to policymaking functions of the county and consists of advice, opinion, and recommendations of the committee concerning the proposals at issue. Based on your representations and our review of the information at issue, we find some of the submitted information constitutes advice, opinion, and recommendation made by the county. Therefore, the county may withhold the information we have marked under section 552.111 of the Government Code. However, the remaining information consists of purely factual information. Thus, we find you have not demonstrated how this information consists of advice, opinions, or recommendations pertaining to policymaking matters of the county. Therefore, the county may not withhold any of the remaining information under section 552.111 of the Government Code. Accordingly, as no further exceptions to disclosure were raised, the remaining information 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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

Ref: ID# 488627

Enc. Submitted documents

c: Requestor  
(w/o enclosures)