



JOHN CREUZOT
DALLAS COUNTY
CRIMINAL DISTRICT ATTORNEY
CIVIL DIVISION

May 20, 2021

Via E-Filing

Honorable Ken Paxton
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, TX 78711-2548

Re: **Texas Public Information Act request – Rachel Premack**
Reference# [001061]

Dear Sir:

On April 29, 2021, Dallas County received a Texas Public Information Act request from Rachel Premack (Ex. A) seeking:

[A]ll records concerning any contracts, agreements, memoranda of understanding, or other written instruments between Dallas County and Amazon or any other subsidiaries regarding the following Amazon fulfillment centers, including but not limited to any agreements concerning taxation or the provision of any municipal resources:

1301 Chalk Hill Road, Dallas, Texas, USA, 75211
1400 Southport Parkway, Building #1, Wilmer, Texas, USA, 75172
1625 Hutton Drive, Carrollton, Texas, USA, 75006
2101 Daniieldale Road, Lancaster, Texas, USA, 75134
2601 S. Airfield Drive Irving, Texas, USA, 75038
2601 W. Bethel Road, Coppell, Texas, USA, 75261- 4034
2701 W. Bethel Road, Coppell, Texas, USA, 75261-4015
3351 Balmorhea Dr, Dallas, Texas, USA, 75241
9155 Southlink Drive Dallas, Texas, USA, 75241-7510
940 W. Bethel Road , Coppell, Texas, USA, 75019-4424
944 W. Sandy Lake Road, Coppell, Texas, USA, 75019
E. Airfield Drive & Valley View Lane Irving, Dallas, Texas, USA, 75261

In accordance with §552.301(e), enclosed please find a complete set of documents that the Dallas County seeks to except from disclosure in the above-referenced matter. This letter also serves to supplement and clarify arguments based on our original letter dated May 13, 2021, which was sent within 10 days of receipt of the request, as required by Texas Government Code Section 552.301(b).

Certain responsive information not subject to an exception under the PIA will be provided to the requestor soon. Some of the remaining information that may be responsive to the requestor's request contains county records that are protected from disclosure by:

1) Texas Government Code §552.111 – Deliberative Process (Third Party).

Based on the arguments set forth below, Dallas County seeks a decision from your Office as to whether the requested information is excepted from required public disclosure under the PIA.

ARGUMENT

I. Information sought is protected from disclosure under Texas Government Code §552.111 – Deliberative Process

Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intra agency 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, writ ref’d n.r.e.); Open Records Decision No. 538 at 1-2 (1990). 408 (Tex. App.—Austin 1992, no writ). Section 552.111 excepts from disclosure 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 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, 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).

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.

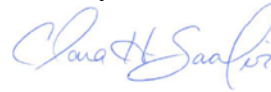
Exhibit B includes email and other written communications between Dallas County Planning and Development Department Director Rick Loessberg, and representatives from Amazon that concern advice, opinions, and recommendations in the decisional process as it pertains to the application and utility of tax abatements. The communications inform a number of policy related decisions that have been made by the Planning and Development Director, including but not limited to applying available resources to the County’s overall mission for growth. The Dallas County Planning and Development Department maintains duties and responsibilities as it relates to the County’s economic and community development and it is also bound by the Confidentiality Agreement attached hereto as Exhibit C.

The discussions contained in the communications with this third-party entity involve terms specific to Amazon and its agreement with Dallas County. Due to the nature of the communications, the interest in the business and privacy concerns of Amazon, and ongoing nature of the existing agreement, Dallas County and Amazon have privity of interest as contemplated in Open Records Decision 561 and Section 552.111. These communications are not merely facts and written observations of facts and events that are severable from the ultimate policy related decisions that have been made by Dallas County pertaining to the negotiation of the conditions associated with tax abatements. Dallas County respectfully requests a decision from your office that Dallas County may withhold the responsive information pursuant to Section 552.111.

Requested Action

In sum, Dallas County respectfully requests your office's determination as to whether it may withhold the requested information pursuant to Public Information Act. If you have any questions or need additional information, please do not hesitate to contact me at (214) 653-7358. Thank you for your consideration of this matter.

Sincerely,



Clara H. Saafir
Assistant District Attorney
Dallas County District Attorney's Office
Civil Division

Enclosure

cc (without enclosure):

Via email: 108762-53801692@requests.muckrock.com