

Coggins, Stephanie

From: Coggins, Stephanie
Sent: Monday, May 20, 2024 5:08 PM
To: edward.williams@bakertilly.com
Cc: Glick, Jonni
Subject: Notice Statements re: Texas Public Information Act Record Request (P12685)
Attachments: 1. Letter to the AG dated May 20 2024 re Gov QA 11685.pdf; 4. Notice Statement to Baker Tilly re Gov QA 11685.pdf; 2. P011685 Copy of Request dated 05-06-2024.pdf

Hi Edward,

We sent a letter to the Attorney General's office to request their opinion on if we can withhold public information that was requested. I'm sending you notice, including the letter, third-party notice letter, and a copy of the request.

Thank you,

Stephanie Coggins, TRMC
City Secretary
City of Amarillo
P O Box 1971
Amarillo, TX 79105
stephanie.coggins@amarillo.gov
O: (806) 378-3014
C: (806) 282-1584

City Secretary

"No other office in municipal service has so many contacts, It serves the mayor, the city council, the city manager, and all administrative departments without exception. All of them call upon it, almost daily, for some service or information. Its work is not spectacular, but it demands versatility, alertness, accuracy, and no end of patience. The public does not realize how many loose ends of city administration this office pulls together"
(Professor William Bennett Munro, Political Scientist - 1934)

ATTENTION ELECTED OFFICIALS: *A "Reply to All" of this email could lead to violations of the Texas Open Meetings Act. Please reply only to the sender.*

CONFIDENTIALITY: *The information in this email is for the intended recipient only. If you have received this email in error, please Reply only to the sender and then delete this email. The information in this email and any attachment may be confidential or privileged. Any unauthorized use, disclosure, distribution, forwarding, or copying is strictly prohibited.*



May 20, 2024

Via Electronic Submission
The Honorable Ken Paxton
Open Records Division
ATTN: Opinion Committee
P.O. Box 12548
Austin TX 78711-2548

*Re: Request for Opinion under Chapter 552 of the Texas Government Code
(Gov QA 11685)*

Dear Attorney General Paxton:

The City of Amarillo (the "City") requests your opinion under Section 552.301 of the Texas Government Code as to whether certain public information is excepted from disclosure.

I. FACTS

On May 6, 2024, the City received a public information request for any information to or from city staff or council on public or private email correspondence regarding the city manager search, specifically the total number of candidates being considered, their demographic breakdown, and the number of internal candidates being considered; how many of those are still under consideration. Copies of the request and responsive information at issue are provided, as further described in Section III below. The responsive information may be excepted from required disclosure under sections 552.101, 552.111, 552.104, and 552.110 of the Government Code.

II. CITY'S POSITION

The City is uncertain as to the status of controlling precedent regarding this request. Accordingly, the City requests the Attorney General's opinion so that the City may correctly comply with the Act and thereby neither withhold public information nor release confidential information. With any material uncertainty, it behooves the City not to speculate but to seek the safe harbor of an opinion, in order to correctly follow the Act and its progeny of interpretative rulings. This request for opinion seeks the proper balancing between (1) the significant public interest in encouraging qualified persons to bring their talents into government employment (without fear of losing current employment by premature release of their identity either before

becoming a finalist or after asking to withdraw), and (2) the significant public interest in knowing who was considered for a city management position.

III. AUTHORITY

1. Section 552.101 – Common-law privacy

Section 552.101 excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

There are persons that likely applied without the knowledge of their current employer and, if that employer learns this person is dissatisfied and applying in other places, then the person may be terminated. Such is a heavy price on a family for the release of information on an applicant who was not a front runner or who asked to withdraw. In that circumstance it is difficult to see a legitimate public need or concern for the release of such names. Indeed, from the beginning, the A.G. has recognized that Section 552.101 embraces several types of confidentiality and privacy rights, a tacit acknowledgement that not every document held by a city should be publicly disclosed when the privacy of individuals is involved.

Finally, the release of names of persons in the circumstances described above may create a chilling effect on qualified persons applying for high profile positions and thereby reduce the pool of applicants. The Act itself recognizes that the past or present release of information can have an undesirable chilling effect on a person’s future decision to get involved. *See, e.g., Sections 552.101 (informer’s privilege) and 552.135 (school informer).*

2. Section 552.111 - Agency Memoranda

Section 552.111 of the Government Code excepts from disclosure “[a]n 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, writ ref’d n.r.e.); *Open Records Decision No. 538 at 1-2 (1990)*.

Open Records Decision No. 615 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). Your office 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; see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep.*

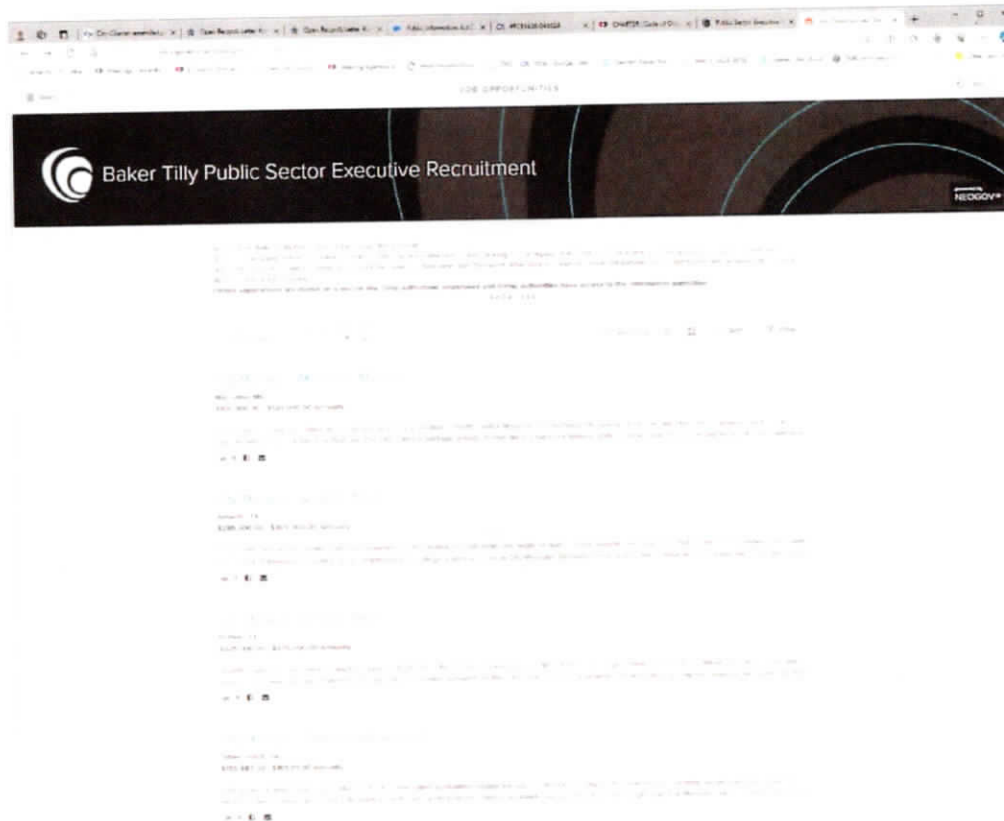
Sch. Dist. v. Texas Attorney Gen., 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. See Open Records Decision No. 631 at 3 (1995). However, a 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).

The requested information consists of applications and evaluations of candidates for the city manager position. The office of city manager is established by city charter (Amarillo Municipal Charter Art. V, § 20) and comes with significant responsibilities (Art. V, § 21), including appointing all officers or employees of the City and removing all officers and employees appointed by the city manager, exercise control and supervision over all departments and offices that may be created by the Council, and all officers and employees appointed by the city manager, attend all meetings of the Council with a right to take part in the discussion (but having no vote), recommending, in writing, to the council such measures as the city manager may deem necessary or expedient, and keeping the council fully advised as to the financial condition and needs of the city. The submitted information discusses City policy initiatives and evaluates candidates' potential success in this policymaking position. Therefore, the enclosed information should be excepted from disclosure under section 552.111.

3. Section 552.104 - Competitive Bidding Situation

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's] information would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). See also [Section 252.049 of the Local Government Code](#) that "Trade secrets and confidential information in competitive sealed bids are not open for public inspection".

The enclosed information relates to an ongoing competitive situation—specifically, for the hiring of a city manager. The City competes in the marketplace for city manager candidates with other cities around the state and country. As of the date of this letter, Baker Tilly (the City's outside recruiter) lists 20 city manager or town administrator positions:



The city manager position is a very competitive position to fill. The release of the requested information would harm the City's ability to find the best candidate for the position and give advantage to other cities competing for similar candidates.

Your office has previously stated that section 552.104 applies only to "competitive bidding and procurement situations". *See, e.g., Tex. Atty. Gen. Op. 2019-25419.* We argue today, however, that the City is procuring city manager services based upon submitted qualifications. The City's bargaining position could be compromised if applicants or potential applicants receive the requested information before a deal has been reached.

Therefore, the information should be excepted from required disclosure under section 552.104.

4. Section 552.110 – Commercial Information

Section 552.110(b) of the Government Code excepts from disclosure "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained". TEX. GOV'T CODE § 552.110(b). This exception to disclosure requires the business enterprise whose information is at issue to make a specific factual or evidentiary showing, not

conclusory or generalized allegations, that substantial competitive injury would likely result from the release of the requested information. *See id.*, *see also Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

The City is in no position to determine whether substantial competitive injury would likely result from the release of the requested information ("Baker Tilly Reports" attachments located in pages 1 to 289 of the "Responsive Information re Gov QA 11685" attachment), and the City asserts no formal position on the public or confidential nature of the material or the arguments of the business enterprises. Rather, the City earnestly seeks the opinion of your agency so that the City does not inadvertently withhold what is public information or release what is confidential information.

IV. CONFIDENTIAL ENCLOSURE

Provided with this letter are copies of the request and the responsive information at issue. This information is provided solely for *in camera* review by the Attorney General's office, as required by the Act, and further distribution is not authorized.

V. NOTICE TO REQUESTOR

Pursuant to 552.301(d) of the Texas Public Information Act, by copy of this letter, you are informed that we are withholding the information you requested and have asked for the Attorney General to determine whether you are able to acquire that information by this means at this time. There is no enclosure with your copy of this letter.

VI. THIRD-PARTY RIGHTS

Enclosed also is a copy of the Notice Statements to Persons Whose Proprietary Information is Requested (prescribed by the Attorney General), which the City has sent to the affected third party (Strategic Government Resources) and copied to the requestor. Each of those parties has also been copied on this correspondence.

VII. NOTICE OF HOLIDAYS

The City of Amarillo offices are closed in observance of the following holidays: Memorial Day, Juneteenth, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, the Day After Thanksgiving, Christmas Eve, Christmas Day, New Year's Day, Martin Luther King Jr. Day and Presidents' Day, and Good Friday. Any holiday falling on a Saturday may be observed on the preceding Friday, and any holiday falling on a Sunday may be observed on the following Monday. Additionally, the United States Postal Service does not operate in observance of the following additional holidays: Columbus Day.

Please let me know if we may be of assistance to you in this or other matters.

Sincerely,



Stephanie Coggins
City Secretary

Encl.

cc: **Requestor (w/o confidential encl.)**

Via email only

Jackie Kingston

jackie@amarillotribune.org

Third Party (w/o encl.)

Via email and CMRRR 91 7199 9991 7039 0310 4690

Baker Tilly US, LLP

Attn: Edward G Williams, Director

17 Cowboys Way, Suite 800

Frisco, Texas 75034

edward.williams@bakertilly.com



May 20, 2024

Via CMRR 91 7199 9991 7039 0310 4553
Baker Tilly US, LLP
Attn: Edward G Williams, Director
17 Cowboys Way, Suite 800
Frisco, Texas 75034

*Re: Request for Opinion under Chapter 552 of the Texas Government. Code
(GovQA 11685)*

IMPORTANT LEGAL CORRESPONDENCE

**Notice Statement to Persons
Whose Proprietary Information is Requested**

Dear Third Party:

The City of Amarillo has received a formal request to produce some of our files. A copy of the request for information is enclosed.

The requested files include records we received from you or from your company. The Office of the Attorney General is reviewing this matter and will issue a decision on whether Texas law requires us to release your records. Generally, the Public Information Act (the "Act") requires the release of requested information, but there are exceptions. As described below, you have the right to object to the release of your records by submitting written arguments to the Attorney General that one or more exceptions apply to your records. You are not required to submit arguments to the Attorney General, but if you decide not to submit arguments, the Office of the Attorney General will presume that you have no interest in withholding your records from disclosure. In other words, if you fail to take timely action, the Attorney General will more than likely rule that your records

must be released to the public. If you decide to submit arguments, **you must do so not later than the tenth business day after the date you receive this notice.**

If you submit arguments to the Attorney General, you must:

- a) identify the legal exceptions that apply,
- b) identify the specific parts of each document that are covered by each exception, and
- c) explain why each exception applies.

Tex. Gov't Code § 552.305(d). A claim that an exception applies without further explanation will not suffice. Att'y Gen. Op. H-436 (1974). You may contact this office to review the information at issue in order to make your arguments. We will provide the Attorney General with a copy of the request for information and a copy of the requested information, along with other material required by the Act. The Attorney General is generally required to issue a decision within 45 business days.

Please send your written comments to the Office of the Attorney General at the following address:

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

If you wish to submit your written comments electronically, you may only do so via the Office of the Attorney General's eFiling System. An administrative convenience charge will be assessed for use of the eFiling System. No other method of electronic submission is available. Please visit the Attorney General's website at <http://www.texasattorneygeneral.gov> for more information.

In addition, you are required to provide the requestor with a copy of your communication to the Office of the Attorney General. Tex. Gov't Code § 552.305(e). You may redact the requestor's copy of your communication to the extent it contains the substance of the requested information. Tex. Gov't Code § 552.305(e). You may provide a copy of your communication to the governmental body who received the request and sent the notice.

Commonly Raised Exceptions

In order for a governmental body to withhold requested information, specific tests, or factors for the applicability of a claimed exception must be met. Failure to meet these tests may result in the release of requested information. We have listed the most commonly claimed exceptions in the Government Code concerning proprietary information and the leading cases or decisions discussing them. This listing is not intended to limit any exceptions or statutes you may raise.

Section 552.101: Information Made Confidential by Law

Open Records Decision No. 652 (1997).

Section 552.110: Confidentiality of Trade Secrets and Commercial or Financial Information

Trade Secrets

Commercial or Financial Information

Birnbaum v. Alliance of Am. Insurers, 994 S.W.2d 766 (Tex. App.--Austin 1999, pet. filed) (construing previous version of section 552.110); *abrogated by In re Bass*, 113 S.W.3d 735 (Tex. 2003).

Open Records Decision No. 661 (1999).

Open Records Decision No. 639 (1996).

Section 552.1101: Confidentiality of Proprietary Information

Section 552.113: Confidentiality of Geological or Geophysical Information

Open Records Decision No. 627 (1994).

Section 552.131: Confidentiality of Certain Economic Development Negotiation Information

If you have questions about this notice or release of information under the Act, please refer to the *Public Information Handbook* published by the Office of the Attorney General, or contact the Attorney General's Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN TEX). To access the *Public Information Handbook* or Attorney General Opinions, including those listed above, please visit the Attorney General's website at <http://www.texasattorneygeneral.gov>.

Sincerely,



Stephanie Coggins
City Secretary

Encl.: Copy of request for information

cc: **Requestor (w/o encl.)**
Via Email Only
Jackie Kingston

jackie@amarillotribune.org

Attorney General (w/o encl.)

Via Online Submission

The Office of the Attorney General

Open Records Division

ATTN: Opinion Committee

P.O. Box 12548

Austin TX 78711-2548

#P011685-050624 (Public Information Request)

Public Information Request Details

Type of Records: Emails or Other Correspondence

Pursuant to Texas Government Code, Ch. 552, I am requesting certain information, specifically: Hi Stephanie,
Can we please have any information to or from city staff or council on public or private email correspondence regarding the city manager search, thus far?
I am interested in the total number of candidates being considered, their demographic breakdown, and the number of internal candidates being considered. I am also interested in how many of those are still under consideration, now, as we move through the vetting process.
If any of these require input from the city attorney or attorney general please supply what is not under dispute.
I appreciate your hard work, as always.
Jackie

Address or Location(s): 509 SE 7th Avenue Amarillo Texas, 79101
Please include any information pertaining to the location of the records you are requesting.

Date Range From: 3/1/2024 *If applicable*

Date Range To: 5/6/2024 *If applicable*

Preferred Method to Receive Records: Electronic via Records Center

Staff Instructions (Internal Only)

Cost Estimate and Fee Calculation: When applying fees to a request, please review the [FORM cost estimate calculation.pdf](#) for additional information on how to calculate a cost estimate.

Acknowledgements/Disclaimers

Clarifications

*Used in Clarification
Provide description of what needs clarification.*

Clarification Reason(s):

Statutory Exemptions

Exemptions:

Attorney Review

If needed, provide additional information regarding this request for the Attorney to review.

Additional Information for Attorney Review:

Attorney Review:

This memo box is for the Attorney to provide comments based on his/her review of the Request.

Attorney Review Comments:

AG ID Number:

Time Logged Info

Total PIA Time Spent:

0.00 (total hours this customer has already accrued at the time of the submission of this request)

Message History

Date

On 5/6/2024 3:50:29 PM, System Generated Message:

Subject: Public Information Request :: P011685-050624

Body:



Dear Jackie Kingston:

Thank you for your interest in public information of the City of Amarillo. Your request has been received and is being processed in accordance with Chapter 552 of Texas Government Code, the Public Information Act. Your request was received in this office on **5/6/2024** and given the reference number **P011685-050624** for tracking purposes.

Records Requested: *Hi Stephanie, Can we please have any information to or from city staff or council on public or private email correspondence regarding the city manager search, thus far? I am interested in the total number of candidates being considered, their demographic breakdown, and the number of internal candidates being considered. I am also interested in how many of those are still under consideration, now, as we move through the vetting process. If any of these require input from the city attorney or attorney general please supply what is not under dispute. I appreciate your hard work, as always. Jackie*

Your request will be forwarded to the relevant City departments for processing. You will be contacted about the availability of the records in question.

PLEASE NOTE: The Texas Public Information Act does not require a governmental body to create new information, to do legal research, or to answer questions.

You can monitor the progress of your request at the link below, and you'll receive an email when your request has been completed.

Thank you,

City of Amarillo

Track the issue status and respond at: <https://amarillo.mycusthelp.com/WEBAPP//rs/RequestEdit.aspx?rid=11685>

On 5/6/2024 3:50:28 PM, Jackie Kingston wrote:
Request Created on Public Portal

Request Details

Reference No:	P011685-050624
Create Date:	5/6/2024 3:50 PM
Update Date:	5/6/2024 3:50 PM
Completed/Closed:	No

Required Completion Date: 5/20/2024

Status: In Progress

Priority: Medium

Assigned Dept: City Secretary

Assigned Staff: Stephanie Coggins

Customer Name: Jackie Kingston

Email Address: jackie@amarillotribune.org

Phone: 8063165047

Source: Web

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Coggins, Stephanie

From: Coggins, Stephanie
Sent: Monday, May 20, 2024 5:09 PM
To: edward.williams@bakertilly.com
Cc: Glick, Jonni
Subject: Notice Statements re: Texas Public Information Act Record Request (P11686 and P11940)
Attachments: 4. Notice Statement to Baker Tilly re Gov QA 11686 and 11940.pdf; 1. Letter to the AG dated May 20 2024 re Gov QA 11686 and 11940.pdf; 2a. GovQA 11686 - GovQA - AMARILLO - Stephanie Coggins.pdf; 2b. GovQA 11940 - GovQA - AMARILLO - Stephanie Coggins.pdf

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Customer Name: Jackie Kingston
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Phone: 8063165047

Source: Web

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May 20, 2024

Via CMRR 91 7199 9991 7039 0310 4553
Baker Tilly US, LLP
Attn: Edward G Williams, Director
17 Cowboys Way, Suite 800
Frisco, Texas 75034

*Re: Request for Opinion under Chapter 552 of the Texas Government. Code
(GovQA 11686 and GovQA 11940)*

IMPORTANT LEGAL CORRESPONDENCE

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Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

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Commonly Raised Exceptions

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Open Records Decision No. 652 (1997).

Section 552.110: Confidentiality of Trade Secrets and Commercial or Financial Information

Trade Secrets

Commercial or Financial Information

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Open Records Decision No. 639 (1996).

Section 552.1101: Confidentiality of Proprietary Information

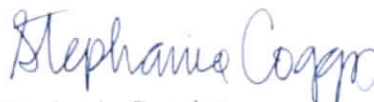
Section 552.113: Confidentiality of Geological or Geophysical Information

Open Records Decision No. 627 (1994).

Section 552.131: Confidentiality of Certain Economic Development Negotiation Information

If you have questions about this notice or release of information under the Act, please refer to the *Public Information Handbook* published by the Office of the Attorney General, or contact the Attorney General's Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN TEX). To access the *Public Information Handbook* or Attorney General Opinions, including those listed above, please visit the Attorney General's website at <http://www.texasattorneygeneral.gov>.

Sincerely,



Stephanie Coggins
City Secretary

Encl.: Copy of request for information

cc: **Requestor (w/o encl.)**

Via email only

Michael J. Stevens

michel.thero@alphamediausa.com

Attorney General (w/o encl.)

Via Online Submission

The Office of the Attorney General

Open Records Division

ATTN: Opinion Committee

P.O. Box 12548

Austin TX 78711-2548



May 20, 2024

Via Electronic Submission
The Honorable Ken Paxton
Open Records Division
ATTN: Opinion Committee
P.O. Box 12548
Austin TX 78711-2548

*Re: Request for Opinion under Chapter 552 of the Texas Government Code
(Gov QA 11686 and Gov QA 11940)*

Dear Attorney General Paxton:

The City of Amarillo (the "City") requests your opinion under Section 552.301 of the Texas Government Code as to whether certain public information is excepted from disclosure.

I. FACTS

On May 6, 2024 (GovQA 11686) and May 13, 2024 (GovQA 11940), the City received public information requests for any information regarding a list of candidates for the city manager search, including semi-finalists, and who are receiving interview opportunities. Copies of the request and responsive information at issue are provided, as further described in Section III below. The responsive information may be excepted from required disclosure under sections 552.101, 552.111, 552.104, and 552.110 of the Government Code.

II. CITY'S POSITION

The City is uncertain as to the status of controlling precedent regarding this request. Accordingly, the City requests the Attorney General's opinion so that the City may correctly comply with the Act and thereby neither withhold public information nor release confidential information. With any material uncertainty, it behooves the City not to speculate but to seek the safe harbor of an opinion, in order to correctly follow the Act and its progeny of interpretative rulings.

This request for opinion seeks the proper balancing between (1) the significant public interest in encouraging qualified persons to bring their talents into government employment (without fear of losing current employment by premature release of their identity either before

becoming a finalist or after asking to withdraw), and (2) the significant public interest in knowing who was considered for a city management position.

III. AUTHORITY

1. Section 552.101 – Common-law privacy

Section 552.101 excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

There are persons that likely applied without the knowledge of their current employer and, if that employer learns this person is dissatisfied and applying in other places, then the person may be terminated. Such is a heavy price on a family for the release of information on an applicant who was not a front runner or who asked to withdraw. In that circumstance it is difficult to see a legitimate public need or concern for the release of such names. Indeed, from the beginning, the A.G. has recognized that Section 552.101 embraces several types of confidentiality and privacy rights, a tacit acknowledgement that not every document held by a city should be publicly disclosed when the privacy of individuals is involved.

Finally, the release of names of persons in the circumstances described above may create a chilling effect on qualified persons applying for high profile positions and thereby reduce the pool of applicants. The Act itself recognizes that the past or present release of information can have an undesirable chilling effect on a person’s future decision to get involved. *See, e.g., Sections 552.101 (informer’s privilege) and 552.135 (school informer).*

2. Section 552.111 – Agency Memoranda

Section 552.111 of the Government Code excepts from disclosure “[a]n 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, writ ref’d n.r.e.); *Open Records Decision No. 538 at 1-2 (1990)*.

Open Records Decision No. 615 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). Your office 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; see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep.*

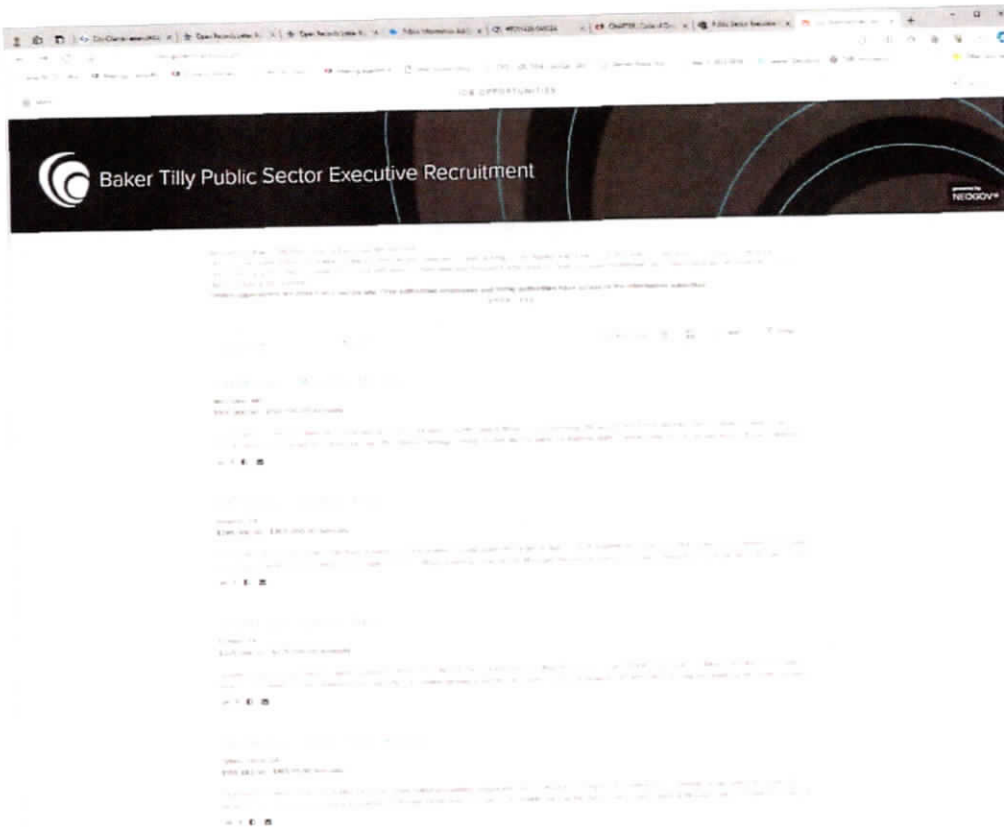
Sch. Dist. v. Texas Attorney Gen., 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. See Open Records Decision No. 631 at 3 (1995). However, a 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).

The requested information consists of applications and evaluations of candidates for the city manager position. The office of city manager is established by city charter (Amarillo Municipal Charter Art. V, § 20) and comes with significant responsibilities (Art. V, § 21), including appointing all officers or employees of the City and removing all officers and employees appointed by the city manager, exercise control and supervision over all departments and offices that may be created by the Council, and all officers and employees appointed by the city manager, attend all meetings of the Council with a right to take part in the discussion (but having no vote), recommending, in writing, to the council such measures as the city manager may deem necessary or expedient, and keeping the council fully advised as to the financial condition and needs of the city. The submitted information discusses City policy initiatives and evaluates candidates' potential success in this policymaking position. Therefore, the enclosed information should be excepted from disclosure under section 552.111.

3. Section 552.104 - Competitive Bidding Situation

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's] information would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). See also [Section 252.049 of the Local Government Code](#) that "Trade secrets and confidential information in competitive sealed bids are not open for public inspection".

The enclosed information relates to an ongoing competitive situation—specifically, for the hiring of a city manager. The City competes in the marketplace for city manager candidates with other cities around the state and country. As of the date of this letter, Baker Tilly (the City's outside recruiter) lists 20 city manager or town administrator positions:



The city manager position is a very competitive position to fill. The release of the requested information would harm the City's ability to find the best candidate for the position and give advantage to other cities competing for similar candidates.

Your office has previously stated that section 552.104 applies only to "competitive bidding and procurement situations". See, e.g., Tex. Atty. Gen. Op. 2019-25419. We argue today, however, that the City is procuring city manager services based upon submitted qualifications. The City's bargaining position could be compromised if applicants or potential applicants receive the requested information before a deal has been reached.

Therefore, the information should be excepted from required disclosure under section 552.104.

4. Section 552.110 – Commercial Information

Section 552.110(b) of the Government Code excepts from disclosure "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained". TEX. GOV'T CODE § 552.110(b). This exception to disclosure requires the business enterprise whose information is at issue to make a specific factual or evidentiary showing, not

conclusory or generalized allegations, that substantial competitive injury would likely result from the release of the requested information. *See id.*, *see also Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

The City is in no position to determine whether substantial competitive injury would likely result from the release of the requested information ("Baker Tilly Reports" attachments located in pages 1 to 289 of the "Responsive Information re Gov QA 11686 and 11940" attachment), and the City asserts no formal position on the public or confidential nature of the material or the arguments of the business enterprises. Rather, the City earnestly seeks the opinion of your agency so that the City does not inadvertently withhold what is public information or release what is confidential information.

IV. CONFIDENTIAL ENCLOSURE

Provided with this letter are copies of the request and the responsive information at issue. This information is provided solely for *in camera* review by the Attorney General's office, as required by the Act, and further distribution is not authorized.

V. NOTICE TO REQUESTOR

Pursuant to 552.301(d) of the Texas Public Information Act, by copy of this letter, you are informed that we are withholding the information you requested and have asked for the Attorney General to determine whether you are able to acquire that information by this means at this time. There is no enclosure with your copy of this letter.

VI. THIRD-PARTY RIGHTS


Enclosed also is a copy of the Notice Statements to Persons Whose Proprietary Information is Requested (prescribed by the Attorney General), which the City has sent to the affected third party (Strategic Government Resources) and copied to the requestor. Each of those parties has also been copied on this correspondence.

VII. NOTICE OF HOLIDAYS

The City of Amarillo offices are closed in observance of the following holidays: Memorial Day, Juneteenth, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, the Day After Thanksgiving, Christmas Eve, Christmas Day, New Year's Day, Martin Luther King Jr. Day and Presidents' Day, and Good Friday. Any holiday falling on a Saturday may be observed on the preceding Friday, and any holiday falling on a Sunday may be observed on the following Monday. Additionally, the United States Postal Service does not operate in observance of the following additional holidays: Columbus Day.

Please let me know if we may be of assistance to you in this or other matters.

Sincerely,



Stephanie Coggins
City Secretary

Encl.

cc: **Requestor (w/o confidential encl.)**

Via email only

Michael J. Stevens

michel.thero@alphamediausa.com

Third Party (w/o encl.)

Via email and CMRRR 91 7199 9991 7039 0310 4690

Baker Tilly US, LLP

Attn: Edward G Williams, Director

17 Cowboys Way, Suite 800

Frisco, Texas 75034

edward.williams@bakertilly.com

#P011686-050624 (Public Information Request)

Public Information Request Details

Type of Records: Other/Unsure

Pursuant to Texas Government Code, Ch. 552, I am requesting certain information, specifically:

I just saw that Baker Tilly will be facilitating the work session Thursday morning. Have we hired them to consult in the efforts to amend the current City Charter?

If so, can I access or receive that agreement? Specifically, the reason they were hired and the cost/scope of the service?

Also, according to its own timeline, Baker Tilly should be working on, or have a list of candidates. I would like to see who the top 12 or so, including semi-finalists, and who are receiving interview opportunities.

Address or Location(s):

Please include any information pertaining to the location of the records you are requesting.

Date Range From: *If applicable*

Date Range To: *If applicable*

Preferred Method to Receive Records: Email Records

Staff Instructions (Internal Only)

Cost Estimate and Fee Calculation: When applying fees to a request, please review the [FORM cost estimate calculation.pdf](#) for additional information on how to calculate a cost estimate.

Acknowledgements/Disclaimers

Clarifications

*Used in Clarification
Provide description of what needs clarification.*

Clarification Reason(s):

Statutory Exemptions

Exemptions:

Attorney Review

If needed, provide additional information regarding this request for the Attorney to review.

Additional Information for Attorney Review:

Attorney Review:

This memo box is for the Attorney to provide comments based on his/her review of the Request.

Attorney Review Comments:

AG ID Number:

Time Logged Info

Total PIA Time Spent:

0.00 (total hours this customer has already accrued at the time of the submission of this request)

Message History

Date

On 5/10/2024 6:15:01 PM, michel.thero@alphamediausa.com wrote:

TO: "City of Amarillo"[amarillo@mycusthelp.net]

Stephanie,

I received the BT consulting information. Looking forward to the rest.

Look, you are in an unenviable position, my friend. First, dealing with goofs like me, not to mention the ancillary tasks I know you are dealing with, including the petition.

You are a ROCK STAR, Stephanie. Thank you for everything you do, not just for me.

Have a great weekend and, if it applies, Happy Mother's Day.

MJ

On Fri, May 10, 2024 at 5:09 PM City of Amarillo wrote:

Attachments:

Baker_Tilly_Engagement_Letter_05_02_2024.pdf

On 5/10/2024 5:09:04 PM, Stephanie Coggins wrote:

Subject: [Records Center] Public Information Request :: P011686-050624

Body: RE: Public Information Act Request of May 06, 2024, Reference # P011686-050624

Dear Michael Stevens,

The City of Amarillo has received your public information request dated 5/6/2024 for the following:

I just saw that Baker Tilly will be facilitating the work session Thursday morning. Have we hired them to consult in the efforts to amend the current City Charter?

If so, can I access or receive that agreement? Specifically, the reason they were hired and the cost/scope of the service?

Also, according to its own timeline, Baker Tilly should be working on, or have a list of candidates. I would like to see who the top 12 or so, including semi-finalists, and who are receiving interview opportunities.

The Texas Public Information Act requires us to respond promptly to requests for information. While I am not yet able to provide all documents responsive to your request, I am releasing what we have at this time. We will continue to work on producing any other responsive information and send a follow-up email soon. Thank you for your patience in awaiting this information.

Sincerely,

Stephanie Coggins
City Secretary
806-378-3014

Date

On 5/6/2024 5:27:12 PM, System Generated Message:
Subject: Public Information Request :: P011686-050624
Body:



Dear Michael Stevens:

Thank you for your interest in public information of the City of Amarillo. Your request has been received and is being processed in accordance with Chapter 552 of Texas Government Code, the Public Information Act. Your request was received in this office on **5/6/2024** and given the reference number **P011686-050624** for tracking purposes.

Records Requested: ***I just saw that Baker Tilly will be facilitating the work session Thursday morning. Have we hired them to consult in the efforts to amend the current City Charter? If so, can I access or receive that agreement? Specifically, the reason they were hired and the cost/scope of the service? Also, according to its own timeline, Baker Tilly should be working on, or have a list of candidates. I would like to see who the top 12 or so, including semi-finalists, and who are receiving interview opportunities.***

Your request will be forwarded to the relevant City departments for processing. You will be contacted about the availability of the records in question.

PLEASE NOTE: The Texas Public Information Act does not require a governmental body to create new information, to do legal research, or to answer questions.

You can monitor the progress of your request at the link below, and you'll receive an email when your request has been completed.

Thank you,

City of Amarillo

Track the issue status and respond at: <https://amarillo.mycusthelp.com/WEBAPP//rs/RequestEdit.aspx?rid=11686>

On 5/6/2024 5:27:11 PM, Stephanie Coggins wrote:
Request was created by staff

▼ Request Details

Reference No:	P011686-050624
Created By:	Stephanie Coggins
Create Date:	5/6/2024 5:27 PM
Update Date:	5/10/2024 6:15 PM
Completed/Closed:	No
Required Completion Date:	5/21/2024

Status: In Progress
Priority: Medium
Assigned Dept: City Secretary
Assigned Staff: Stephanie Coggins

Customer Name: Michael Stevens
Email Address: michael.stevens@alphamediausa.com
Phone: 8063518541

Source: Walk-In