

D-1-GN-25-002169

CAUSE NO. \_\_\_\_\_

**SAVE OUR SPRINGS  
ALLIANCE, INC.,**  
*Plaintiff,*

v.

**CENTRAL TEXAS REGIONAL  
MOBILITY AUTHORITY,**  
*Defendant.*

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**IN THE DISTRICT COURT OF  
TRAVIS COUNTY, TEXAS  
53RD, DISTRICT COURT  
\_\_\_\_\_ JUDICIAL DISTRICT**

**PLAINTIFF'S ORIGINAL PETITION**

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COMES NOW, Plaintiff, Save Our Springs Alliance, Inc., who files this Original Petition, and in support thereof would respectfully show as follows:

**DISCOVERY**

1. Subject to an agreed order, a motion by either party to this suit or the Court's own initiative, discovery in this case should be conducted under Level 3 pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

**SUMMARY OF CASE**

2. On June 26, 2024, Save Our Springs Alliance, Inc. (SOS), through its Senior Staff Attorney, Robert "Bobby" Levinski, submitted a request for records to Central Texas Regional Mobility Authority (CTRMA) regarding CTRMA's proposed Mopac South Express Lanes Project.

3. On July 11, 2024, the Defendant, by and through their attorney, requested a letter ruling from the Texas Attorney General on the information requested by SOS.

4. On September 16, 2024, the Texas Attorney General determined that Defendant could withhold the requested information.

5. On December 23, 2024, SOS, by and through its Executive Director, William “Bill” Bunch, submitted another request to CTRMA that sought information relating to and serving the basis for CTRMA’s decisions to reject alternative proposals for the Mopac South Lanes project and to adopt the recommended “2C” option.

6. On December 31, 2024, SOS, by and through its Executive Director, Bill Bunch, submitted a request to CTRMA for the release of memoranda or reports on the Mopac South project summarizing or analyzing modeling results that predict travel times and travel-time changes under different alternatives, including both tolled and free lanes.

7. On January 15, 2025, in a letter to the Attorney General, Defendant stated that it had provided SOS with certain information requested on December 23, 2024, and would withhold the remaining information. Defendant also mischaracterizes Mr. Bunch’s December 31st request as a “clarification” to the December 23rd request. Defendant then requests a ruling from the Texas Attorney General regarding the withheld material. However, as of the present date, while Defendant released some limited responsive information, the vast majority of the requested information continues to be withheld.

8. SOS respectfully submits that Defendant is withholding and, on information and belief, has failed to produce documents required to be produced as public information under the Texas Public Information Act. Since time is of the essence in the public knowing about CTRMA’s efforts regarding the Mopac South Express Lanes Project, Plaintiff brings this action for mandamus to produce all of the public information requested on June 26, 2024, December 23, 2024, and December 31, 2024.

## **PARTIES**

9. Plaintiff is Save Our Springs Alliance, Inc. (SOS), a Texas not-for-profit organization, dedicated to the preservation of the Edwards Aquifer ecosystem and the natural and cultural heritage of the Texas Hill Country region. SOS also provides its members a legal voice in protecting their rights to a participatory democracy and fair, open government. It can be served in this case through its attorneys of record at the address listed below.

10. The Defendant is the Central Texas Regional Mobility Authority (CTRMA), a political subdivision of the State of Texas. CTRMA is a “governmental body” pursuant to the Texas Public Information Act, TEX. GOV'T. CODE § 552.003(1)(A)(i). The Defendant may be served with citation at its executive offices at 3300 N Interstate 35 Frontage Rd, Austin, TX 78705 through its Executive Director, James Bass.

## **JURISDICTION AND VENUE**

11. This Court has jurisdiction to issue the mandamus relief requested under the Texas Public Information Act (TPIA or Act). TEX. GOV'T. CODE § 552.321. Venue is proper and mandatory in the District Court of Travis County, Texas. TEX. GOV'T CODE § 552.321(b).

## **FACTS**

12. Throughout May and June, Bobby Levinski, the Senior Staff Attorney for SOS, participated in Central Texas Regional Mobility Authority (CTRMA)'s technical working group process for its proposed Mopac South Express Lanes Project. Following the conclusion of the technical working group process, on June 26, 2024, Mr. Levinski submitted a records request to the CTRMA for underlying data and information on topics discussed during those meetings. The request sought GIS or similar files mapping the footprint of the existing Mopac South roadway. Additionally, the requested records include a

copy of the 2020 field survey referenced during the June 5 meetings, any completed Geological Assessment, copies of all correspondence between any representative involved regarding these assessments, and a copy of records detailing the total impervious cover of the proposed project roadway.

**The instructions make clear that the request for correspondence includes:**

Please provide electronic copies of the following information, including files in their native format so that they may be analyzed (e.g. GIS files, Auto-cad, excel, etc). For purposes of this public information request "correspondence" means any exchange of information by email, email attachment(s), regular mail, meeting notes or minutes, dropbox or other file sharing, and notes or records of phone calls or meetings.

***A copy of the request is Attached as Exhibit A.***

13. The Defendant, by and through an attorney, subsequently requested a letter ruling from the Texas Attorney General seeking to withhold the requested information.

14. On September 16, 2024, the Texas Attorney General determined that Defendant could withhold the requested information. ***A copy of the Attorney General's letter opinion is attached as Exhibit B.***

15. Following the initiation of Open House #6, the CTRMA briefed members of the City of Austin Mobility Committee, on November 15, 2025. On the day following, Mr. Levinski wrote to Ms. Charlotte Gilpin, the project lead for the CTRMA, asking:

“At the Mobility Committee meeting yesterday, you indicated that you are sharing the data relevant to the Environmental Assessment to the stakeholders. Does that mean the CTRMA will now comply with our Public Information Request for the underlying data (including the environmental surveys) and the shape files for the highway? Or, is this information still being protected as ‘draft’ documents?”

Ms. Gilpin responded that they would not release the material under the Draft Environmental Assessment is published. *A copy of this exchange is attached as Exhibit C.*

16. On December 23, 2024, SOS, by and through its Executive Director, Bill Bunch, submitted another request to CTRMA seeking the model inputs, model outputs, and any adjustments made to the base CAMPO 2045 model for all modeling runs completed on or before the date of Virtual Open House #6 public statements. Materials were requested that were used to: (a) predict time savings, lack of time savings, or slowdowns during peak northbound and southbound periods for each year; and/or (b) support, in whole or in part, the selection of the 2C preferred alternative, or the rejection of other potential alternatives.

17. On December 31, 2024, SOS, by and through its Executive Director, Bill Bunch, submitted an updated request to CTRMA, that referred back to and included part 1 of the December 23, 2024, that added additional requests for memoranda or reports summarizing or analyzing modeling results that predict travel times and travel-time changes under different alternatives, including both tolled and free lanes. *A copy of the request is attached as Exhibit D.*

18. On January 15, 2025, in a letter to the Attorney General, Defendant stated that it had provided SOS with certain information requested on December 23, 2024, and would withhold the remaining information. The Defendant also requested a ruling from the Texas Attorney General regarding the withheld material. While Defendant did provide reports summarizing Defendant's traffic modelling procedures and results, it withheld and continues to withhold the actual traffic modelling runs and inputs. By withholding this basic information, it is impossible for Plaintiff and the public to check the Defendant's modelling process and results and use the model to evaluate other alternatives or other assumptions entered into the model that may produce significantly different results. However, as of the present date, Defendant has not released any of the

requested information. *A copy of the letter requesting the AG opinion is attached as Exhibit E.*

19. On January 23, 2025, the Defendant, through its attorney, submitted a letter brief to the Attorney General regarding the request for records submitted by SOS on December 23 and 31, 2024. The letter vaguely asserts that they released information relating to item 2 of the December 23, 2024, request, on January 10, 2025, and it mischaracterizes Mr. Bunch’s December 31st request as a “clarification” to his prior December 23rd request. The letter then asserts that the additional information requested by SOS—but withheld by the Defendant—is exempt from disclosure under Section 552.111 of the Act, on the grounds that they constitute agency memoranda protected by the deliberative process privilege. *A copy of the Defendant’s letter brief to the Attorney General is attached as Exhibit F.*

20. The Defendant states it is currently preparing a draft Environmental Assessment (Draft EA) for the project in cooperation with the Texas Department of Transportation (TxDOT). The Defendant also claims that any withheld information includes data and analyses gathered specifically for preparing the Draft EA. It asserts that the environmental review process constitutes an important policy-making function for the Defendant and that until the Draft EA is made available for public review, it—along with preliminary analyses and input data—remains a preliminary document reflecting the opinions and recommendations of the Defendant and TxDOT regarding the final Draft EA.

21. Section 552.111 exempts from disclosure inter- or intra-agency communications consisting of advice, opinions, or recommendations on policymaking matters of the governmental body at issue. See TEX. GOV’T CODE § 552.111. The purpose of this section is “to encourage frank and open discussion within the agency in connection with its decision-making processes” pertaining to policy matters. *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e).

22. However, the courts have repeatedly made clear that the deliberative process privilege doctrine was only provided to protect the communications consisting of advice, opinion, or recommendations on policymaking matters and not the factual information or observations that provide the basis for evaluating and debating different policy options.

23. Further, interpreting the deliberative process privilege to exempt any information if it is somehow relevant to a future decision to be made as “pre-decisional” and protected by the “draft document” or “deliberative process privilege” would exempt all agency information until it is too late to be of any use to the interested public. Defendant has relied on and incorporated the requested information to make public assertions and claims about the existing “facts on the ground” and about the expected beneficial effects and likely “insignificant” harmful effects of the proposed project. This is all public information under the Texas Public Information Act. Only the CTRMA’s explicit policy deliberations about what choices to make based on the information are protected from public disclosure. Plaintiff has not requested such information. Defendant CTRMA’s position, and that of the AG letters, allows the exception to swallow the rule and is not supported by the case law. See, e.g. *City of Garland v. Dallas Morning News*, 22 S.W.3d 364 (Tex. 2000).

24. It is “insufficient for an agency to assert the protection of the agency memoranda exception solely because a decisionmaker uses a document when determining policy.” *Arlington Indep. Sch. Dist. v. Tex. AG*, 37 S.W.3d 152, 159 (Tex. App.—Austin 2001, no pet.) (citing *Vaughn v. Rosen*, 523 F.2d 1136 (D.C. Cir. 1975)). For example, although factual reports, summaries, and evaluations “may initiate or be used in a deliberative process,” they generally “provide the raw data upon which decisions can be made; they are not themselves a part of the decisional process.” *Id.* at 160 (citing Tex. Att’y Gen. ORD-160 at 3 (1977), and quoting Tex. Att’y Gen. ORD-213 at 2 (1978)); *Leander Indep. Sch. Dist. v. Office*

*of the AG for Tex.*, No. 03-18-00243-CV, 2018 Tex. App. LEXIS 10322, at \*1 (Tex. App.—Austin Dec. 14, 2018, no pet.).

25. This notion of full disclosure is premised on the basic principle “that government is the servant and not the master of the people,” and to retain control over the government that they created, the people must remain informed. *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 323 (Tex. App. 2002, no pet.). The TPIA was intended to provide the public with broad access to government documents. The Act includes specific language directing courts and government agencies to liberally construe its provisions in favor of disclosure. It also provides that the government may not withhold information unless an express provision of law authorizes it to do so. Texas courts have consistently adhered to these requirements by narrowly construing the type of information that may be withheld under the statute's exceptions. *Id.* at 329.

26. Courts have consistently held that, for the deliberative process exception to apply, an agency document must directly contribute to the deliberative process—a principle that courts have narrowly construed.

27. In summary, the documents requested by SOS consist of factual information and observations of technical experts working for the Defendant or in the possession of the Defendant. Defendant has relied on this information to make public assertions about the project in the Defendant’s public participation and public comment process. Keeping this information secret at this time renders the Defendant’s legally required public engagement process a farce. It’s actions and legal position can be summed up as follows: “We want your input, but only your uninformed input. Only we get to see and evaluate the technical information that taxpayers and toll-payers paid for and that we are relying on to tell you how great the project really is. Trust us until we tell you our final decision.” This position violates the Texas Public Information Act and all of the relevant case law applying the TPIA to similar facts.



## **CAUSES OF ACTION**

### *Mandamus to Provide Public Records*

28. Defendant violated SOS's right under the TPIA by failing to provide disclosure of the information requested in SOS's record requests dated June 26, 2024, December 23, 2024, and December 31, 2024. Under the TPIA, the requested records are "public information" and subject to public disclosure.

29. SOS asks the Court to issue a writ of mandamus requiring the Defendant to "promptly" provide all copies of those records to SOS pursuant to the terms of the TPIA.

30. In the event that Defendant continues to assert that the requested documents should be withheld, SOS further requests pursuant to the TPIA, TEX. GOV'T CODE Sec. 552.322 and 552.3221, that those documents be made available to Plaintiff under restrictive order pursuant to expedited discovery and also made available for in-camera review so the Court can make an informed determination on which documents and portions of documents contain public information properly requested by Plaintiff in its June 26, 2024, December 23, 2024, and December 31, 2024, requests.

## **CLAIM ONE**

31. The Defendant violated SOS's rights under the TPIA by not releasing the records requested by Plaintiff and which provide the technical and factual basis for the public assertions and representations made by the CTRMA in Mopac South Express Lanes public engagement process. Plaintiff's requests are specific and limited to the factual and technical observations category and exclude policy deliberations that are protected from required public disclosure (but, nevertheless may be disclosed).

## **CLAIM TWO**

32. Defendant violated SOS's right under the TPIA by failing to produce requested documents that were maintained, delivered, or received, on or from Defendant's private email and text accounts or privately owned devices. On information and belief, Defendant also failed to produce correspondence concerning maps related to Mopac South Express Lanes Project and basis for CTRMA decisions to reject alternatives to the proposed project. Such documents are public information and warrant disclosure when the context of the communication relates to the official business of a governmental body.

## **ATTORNEY FEES**

33. Plaintiff asks the Court to order Defendant to pay reasonable and necessary attorney fees and costs to Plaintiff, pursuant to TEX. GOV'T CODE § 552.323.

## **PRAYER**

For these reasons, Plaintiff, Save Our Springs Alliance, requests that Defendant be cited to appear and answer, that that this matter is heard on an expedited basis, and that the Court:

- a. order that requested and withheld documents are promptly provided to the Court for in camera inspection and to Plaintiff under protective order so that Plaintiff may effectively argue further for their release as documents which do not fall within the deliberative process privilege; and
- b. order a writ of mandamus requiring the Defendant to promptly provide to Plaintiff, Save Our Springs Alliance, copies of the records requested on June 26, 2024, December 23, 2024, and December 31, 2024, at a reasonable cost, save and except those documents demonstrated to the court, following discovery and a hearing, to be properly withheld under the Texas Public Information Act; and order

the Defendant to pay reasonable and necessary attorney fees and costs to Save Our Springs Alliance and grant such other and further relief, at law and in equity, to which Plaintiff may show itself to be justly entitled.

Respectfully Submitted,

SAVE OUR SPRINGS ALLIANCE, INC.

//S// William G Bunch

William G. Bunch  
State Bar No. 03342450  
bill@sosalliance.org

Victoria Ann Rose  
State Bar No. 24131088  
victoria@sosalliance.org

Robert J. Levinski  
State Bar No. 24097993  
bobby@sosalliance.org

Save Our Springs Alliance  
3201 Menchaca Road  
Austin, Texas 78704  
Tel.: 512-477-2320  
Fax: 512-477-6410

*Attorneys for Save Our Springs Alliance*



Bobby Levinski <bobby@sosalliance.org>

**RE: Mobility Authority-Public Information Request Form [#705]**

**O'Reilly, Brian** <BOReilly@lockelord.com>  
To: "bobby@sosalliance.org" <bobby@sosalliance.org>  
Cc: "PIR@ctrma.org" <PIR@ctrma.org>

Thu, Jul 11, 2024 at 4:46 PM

Mr. Levinski,

Please see the attached correspondence.

Thanks,

Brian L. O'Reilly

Locke Lord LLP

300 Colorado St., Suite 2100

Austin, TX 78701

512-305-4853 Direct

512-422-4265 Mobile

**From:** Mobility Authority - Public Information Request Form <no-reply@wufoo.com>  
**Sent:** Wednesday, June 26, 2024 2:28 PM  
**To:** Public Information Request <PIR@ctrma.org>  
**Subject:** Mobility Authority-Public Information Request Form [#705]

**Name \*** Bobby Levinski

**Email \*** bobby@sosalliance.org

**Phone Number** (512) 636-7649

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**Address**

4701 Westgate Blvd. D-401  
Austin, TX 78745  
United States

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**Comment/Request**

This request is made on behalf of Bill Bunch, Executive Director of the Save Our Springs Alliance, a Texas nonprofit organization. This information—once received—will not be used for commercial purposes. To the extent CTRMA intends to charge any fees for the receipt of this information, we request a fee waiver or consideration of reduced costs, in line with authority under the Texas Public Information Act statute.

Request: Please provide electronic copies of the following information, including files in their native format so that they may be analyzed (e.g. GIS files, Auto-cad, excel, etc). For purposes of this public information request "correspondence" means any exchange of information by email, email attachment(s), regular mail, meeting notes or minutes, dropbox or other file sharing, and notes or records of phone calls or meetings.

1. The GIS or other files that map the footprint of the existing Mopac South roadway, as shown during the Technical Working Group process. Please include the files that map the right-of-way and any appurtenant flood control, water quality control, and/or hazardous material traps.
  2. The GIS or other files that map the footprint of the existing Mopac South roadway and provide what CTRMA considers to be the most accurate mapping of the existing roadway footprint, and including the existing right of way.
  3. Referencing the above map files in the #2 request, a copy of any excel or other calculation of the existing roadway impervious cover which CTRMA now considers to be the most accurate calculation of existing impervious cover.
  4. A copy of the GIS or other files that provide the footprint and other characteristics of the "proposed" water quality facilities, as shown in the slides presented at the June 5 TWG meetings.
  5. Referencing the above map files in the #4 request, a copy of any excel or other calculation of the proposed project roadway (post construction) total impervious cover which CTRMA now considers to be the most accurate calculation of impervious cover post-construction of the proposed project (existing impervious cover that is retained plus the proposed new impervious cover).
  6. A copy of the 2020 field survey referenced in the June 5 meetings and any completed Geological Assessment (or geological survey or report) of all or any part of the right-of-way of Mopac South, where such geological survey, assessment, or report was completed on or after January 2010.
  7. A copy of the "other 3" reports referenced at the June 5 meeting, one on "cave critters," one on salamanders, and one on "groundwater under the project."
  8. A copy of any geologic report or document assessing the voids encountered when TxDOT built the bicycle bridge over Barton Creek and Gaines Creek.
  9. A copy of all correspondence between any representative of CTRMA (staff, contractor, board member, etc) and any other person referencing the proposed "45SW Gap" project or study, where such correspondence was sent or received on or after July 1, 2022. and the correspondence was not "internal" among CTRMA representatives.
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 **CTRMA Letter to Requestor (Levinski ORR)(compiled).pdf**  
51K



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 16, 2024

Mr. Brian O'Reilly  
Counsel for Central Texas Regional Mobility Authority  
Locke Lord LLP  
300 Colorado Street, Suite 2100  
Austin, Texas 78701

OR2024-032342

Dear Mr. O'Reilly:

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# 24-028288 (Ref. No. CTRMA-705).

The Central Texas Regional Mobility Authority (the "authority"), which you represent, received a request for nine points of information regarding specified projects. You state you will provide some information to the requestor. 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 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).

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 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). 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).

This office has also concluded a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. See Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. See *id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. See *id.* at 2.

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 ORD 561.

You seek to withhold the submitted information under section 552.111 of the Government Code. You state the information at issue consists of advice, opinions, and recommendations of authority employees, officials, and authority consultants regarding policymaking matters. You also state the information at issue includes draft documents that will be released to the public in their final forms. Based on your representations and our review of the information at issue, we find the authority has demonstrated the submitted information consists of advice, opinions, or recommendations on the policymaking matters of the authority. Thus, the authority may withhold the submitted information under section 552.111 of the Government Code.



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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Jason Stevens  
Assistant Attorney General  
Open Records Division

JS/pt

Ref: ID# 24-028288

c: Requestor

EXHIBIT C



Victoria Rose <victoria@sosalliance.org>

Mopac South: Underlying Data for Environmental Assessments and Shape Files

5 messages

Bobby Levinski <bobby@sosalliance.org> Fri, Nov 15, 2024 at 11:32 AM
To: "Gilpin, Charlotte" <cgilpin@hwlochner.com>
Cc: "Lacy, Hillary" <hillary.lacy@atkinsrealis.com>, Bill Bunch <bill@sosalliance.org>, Victoria Rose <victoria@sosalliance.org>

Charlotte,

At the Mobility Committee meeting yesterday, you indicated that you are sharing the data relevant to the Environmental Assessment to the stakeholders. Does that mean the CTRMA will now comply with our Public Information Request for the underlying data (including the environmental surveys) and the shape files for the highway? Or, is this information still being protected as "draft" documents?

Thank you in advance for clarifying those comments.

--

Bobby Levinski
Attorney, Save Our Springs Alliance

4701 Westgate Blvd, Ste. D-401

Austin, Texas 78745

512-477-2320 (Ext. 105)

www.sosalliance.org

\*Please consider making a donation to support the education, advocacy, and action necessary to save our springs, creeks, and open spaces. SOS is 501(c)(3) nonprofit organization.\*

Gilpin, Charlotte <CGilpin@kfriese.com> Tue, Nov 19, 2024 at 7:10 AM
To: Bobby Levinski <bobby@sosalliance.org>
Cc: "Lacy, Hillary" <hillary.lacy@atkinsrealis.com>, Bill Bunch <bill@sosalliance.org>, Victoria Rose <victoria@sosalliance.org>, Jori Liu <jhayter@ctrma.org>, "msexton@ctrma.org" <msexton@ctrma.org>, MopacSouthproject <MopacSouthproject@ctrma.org>

Bobby,

We always appreciate hearing from SOS, thank you for the follow up. As I stated in the meeting data will be available for the public review when it is complete. As typical the drafts will be completed and incorporated into the Draft EA and presented for public review at that time.

Have a good day -

Charlotte A. Gilpin, P.E., CFM
Vice President

P 512.338.1704 D 512.518.5478 C 512.680.7309

1120 S. Capital of Texas Highway, CityView 2, Suite 100, Austin, Texas 78746

AUSTIN | DALLAS | HOUSTON | ROUND ROCK | SAN ANTONIO



**EXHIBIT D**



Victoria Rose <victoria@sosalliance.org>

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**Fwd: Public Information Request - 12/31/2024 - New Form Entry - 00739**

1 message

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**Bill Bunch** <bill@sosalliance.org>  
To: namrata@sosalliance.org  
Cc: Victoria Rose <victoria@sosalliance.org>, Bobby SOS <bobby@sosalliance.org>

Tue, Mar 4, 2025 at 2:08 PM

----- Forwarded message -----

From: **O'Reilly, Brian** <Brian.OReilly@troutman.com>  
Date: Thu, Jan 23, 2025 at 8:12 PM  
Subject: RE: Public Information Request - 12/31/2024 - New Form Entry - 00739  
To: bill@sosalliance.org <bill@sosalliance.org>  
Cc: Public Information Request <PIR@ctrma.org>

Mr. Bunch,

Please see the attached correspondence to the Office of the Attorney General regarding your public information request.

Thanks,

**Brian O'Reilly**  
Partner  
**troutman pepper locke**  
Direct: 512.305.4853  
[brian.oreilly@troutman.com](mailto:brian.oreilly@troutman.com)

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**From:** wordpress=mobilityauthority.com@mg.mobilityauthority.com <wordpress=mobilityauthority.com@mg.mobilityauthority.com> **On Behalf Of** NoReply  
**Sent:** Tuesday, December 31, 2024 12:46 PM  
**To:** Public Information Request <PIR@ctrma.org>  
**Subject:** Public Information Request - 12/31/2024 - New Form Entry - 00739

**First Name**

William

**Last Name**

Bunch

**Email**

[bill@sosalliance.org](mailto:bill@sosalliance.org)

**Phone Number**

(512) 784-3749

**Street Address**

1307 Oxford Ave

**City**

Austin

**State / Province / Region**

Texas

**Zip Code**

78704

**Country**

United States

**Comment/Request**

Please provide the following public information documents in electronic format.

In reference to my previous December 23, 2024 public information request No. 1, reproduced below, please provide all memoranda or reports that summarize and/or analyze the modelling results that predict travel times and travel time changes under the different alternatives, and in both the tolled lanes and free lanes. Please redact or exclude from this request any parts of such memoranda or reports summarizing or analyzing the modelling results that make policy recommendations or propose policy choices. policy changes, or policy alternatives based on the results of the modelling.

The referenced request No. 1 reads:

Please provide electronic copies of the following completed models (analyses) and supporting documents as described below. The requested information is in reference to, and provides the basis for CTRMA decisions to reject alternatives to the proposed Mopac South Express Lanes project and to embrace the proposed "2c" recommended option.

1. Please provide the model inputs, model outputs, and any adjustments to the base CAMPO 2045 model, where such modelling runs were completed on or before date the virtual open house #6 public statements and materials were released that were used to (a) predict time savings or lack of time savings or slow downs in the peak north bound and south bound times, for each year for which such predictions were made, and/or (b) support in whole or part choosing the 2C preferred alternative and/or reject potential alternatives, including HOV lanes, alternatives 1a, 1b, 2a, 2b and the "city proposal."

**Unique ID**

00739

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Bill Bunch, Executive Director

[Save Our Springs Alliance](#)

3201 Menchaca

Austin, Texas 78704

512-784-3749

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**CTRMA AG Brief - Bunch ORR (1.23.24)(requestor copy).pdf**

70K

Troutman Pepper Locke LLP  
300 Colorado St., Suite 2100  
Austin, TX 78701

EXHIBIT E



troutman.com

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**Brian O'Reilly**

D 512-305-4853  
F 512-391-4896  
[brian.oreilly@troutman.com](mailto:brian.oreilly@troutman.com)

January 15, 2025

***VIA EMAIL***

[bill@sosalliance.org](mailto:bill@sosalliance.org)

Re: Request for Public Information to the Central Texas Regional Mobility Authority,  
from William Bunch

Dear Mr. Bunch:

The Central Texas Regional Mobility Authority (“CTRMA”) is in receipt of your request for information, submitted on December 23, 2024, and subsequently clarified on December 31, 2024, seeking information related to the CTRMA’s proposed Mopac South Express Lanes project. The responsive records consist of information that the CTRMA believes is excepted from public disclosure under the Texas Public Information Act (the “Act”).

The CTRMA has asked for a decision from the Office of the Attorney General (the “OAG”) regarding whether or not this information falls within an exception to public disclosure. *See* TEX. GOV’T CODE § 552.301(d)(1). Enclosed is a copy of the CTRMA’s written communication to the OAG asking for this decision. *See* TEX. GOV’T CODE § 552.301(d)(2).

If you have any additional questions related to this matter, please contact me at 512/305-4853.

Sincerely,

A handwritten signature in blue ink that reads "Brian O'Reilly".

Brian O'Reilly

Enclosures:  
Letter to Attorney General

**Brian O'Reilly**

D 512-305-4853  
F 512-391-4896  
brian.oreilly@troutman.com

January 15, 2025

***VIA E-FILING***

Tamara Smith, Chief  
Office of the Attorney General  
Open Records Division  
209 W. 14<sup>th</sup> Street  
Austin, Texas 78701

Re: Request for Public Information to the Central Texas Regional Mobility Authority from William Bunch

Dear Ms. Smith:

This firm represents the Central Texas Regional Mobility Authority (“CTRMA”). On December 23, 2024, the CTRMA received a request for public information from William Bunch (the “Request”).<sup>1</sup> On December 31, 2024, Mr. Bunch submitted a clarification of Item 1 in the Request pursuant to section 552.222 of the Public Information Act (the “Act”). On January 10, 2025, a representative of the CTRMA released the information responsive to Item 2 of the Request. A copy of the Request, the written clarification from Mr. Bunch, and the notification letter to Mr. Bunch are enclosed as Attachment “A”.

The CTRMA believes that the remaining information responsive to the Request may be excepted from disclosure under the exceptions set forth in sections 552.101-552.162 of the Act, including, but not limited to, sections 552.101 and 552.111 of the Act. The CTRMA requests a decision from your office regarding whether or not this information falls within an exception to public disclosure. See TEX. GOV'T CODE § 552.301(a).

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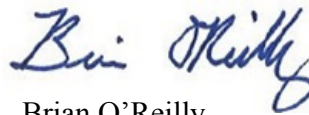
<sup>1</sup> Please note for purposes of calculating deadlines in connection with this Request that December 24th, 2024, December 25th, 2024, December 26th, 2024, and January 1<sup>st</sup>, 2025, are not business days. See TEX. GOV'T CODE § 552.0031(a) (excluding a national holiday under section 662.003(a) and a state holiday under section 662.003(b) from the definition of “business day” under the Act); See TEX. GOV'T CODE § 662.003 (defining the 25<sup>th</sup> of December and the 1<sup>st</sup> of January as a national holidays, and the 24th of December and the 26th of December as state holidays).

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Pursuant to section 552.301(e) of the Act, the CTRMA will submit to your office written comments explaining the reasons why the exceptions stated above apply and allow the information to be withheld and a labeled copy or representative sample of the specific information requested not later than the fifteenth (15th) business day after the date of receiving the Request. TEX. GOV'T CODE § 552.301(e).

Thank you for your consideration of this matter. Should you have any questions, please call me at the number above.

Sincerely,



Brian O'Reilly

Enclosures:

Attachment "A" – Request for Information

cc: William Bunch (requestor)  
Josephina Ibarra (CTRMA)



**Brian O'Reilly**

D 512-305-4853  
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January 23, 2025

Tamara Smith, Chief  
Office of the Attorney General  
Open Records Division  
209 W. 14<sup>th</sup> Street  
Austin, Texas 78701

Re: Request for Public Information to the Central Texas Regional Mobility Authority  
from William Bunch

Dear Ms. Smith:

This firm represents the Central Texas Regional Mobility Authority (“CTRMA”). On December 23, 2024, the CTRMA received a request for public information from William Bunch (the “Request”).<sup>1</sup> On December 31, 2024, Mr. Bunch submitted a clarification of Item 1 in the Request pursuant to section 552.222 of the Public Information Act (the “Act”). On January 10, 2025, a representative of the CTRMA released the information responsive to Item 2 of the Request. A copy of the Request and the written clarification from Mr. Bunch are enclosed as Attachment “A”.

The CTRMA submits these comments pursuant to Section 552.305 of the Public Information Act (the “Act”) for the purpose of asserting that certain information responsive to the Request constitutes agency memoranda protected by the deliberative process privilege and/or work product privilege pursuant to section 552.111 of the Act. As required by section 552.301(e) of the Act, this letter contains a written explanation stating why these exceptions should apply and the reasons that the information should be withheld from disclosure. *See id.* § 552.301(e).

**I. Factual Background**

The CTRMA is a political subdivision of the State of Texas governed by Chapter 370 of the Texas Transportation Code and empowered to acquire, construct, maintain, repair and operate transportation

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<sup>1</sup> Please note for purposes of calculating deadlines in connection with this Request that December 24th, 2024, December 25th, 2024, December 26th, 2024, January 1<sup>st</sup>, 2025, and January 20<sup>th</sup> are not business days. *See* TEX. GOV'T CODE § 552.0031(a) (excluding a national holiday under section 662.003(a) and a state holiday under section 662.003(b) from the definition of “business day” under the Act); *See* TEX. GOV'T CODE § 662.003 (defining the 25<sup>th</sup> of December, the 1<sup>st</sup> of January, and the third Monday in January as a national holidays, and the 24th of December and the 26th of December as state holidays).

projects in Central Texas. *See* TEX. TRANSP. CODE § 370.033. The CTRMA operates the 183A Toll, 290 Toll, 71 Toll, 45SW Toll, 183 South Toll, and MoPac Express Lane.

The CTRMA is pursuing the development of the proposed Mopac Expressway South to provide a critical link to downtown Austin and other major highways such as US 290 and Loop 360 (the “Project”). As required by the National Environmental Policy Act of 1969 (“NEPA”), the CTRMA is working to prepare a Draft Environmental Assessment (the “Draft EA”) for the Project in cooperation with the Texas Department of Transportation (“TxDOT”) and with the assistance of consultants engaged by the CTRMA to provide various services relating to the Project. The Draft EA prepared by the CTRMA will undergo review and comment by TxDOT, may then be revised based on TxDOT’s input, and will then be re-submitted to TxDOT for its further review and consideration. Only after TxDOT has approved the form and content of the document will the Draft EA be released and made available for public review. The public will then have the opportunity to comment at a public hearing on the Draft EA for the Project. Following consideration of the comments received at the public hearing, any necessary or desirable revisions to the Draft EA will be made. TxDOT will then issue a decision on the Project, and the EA will be considered complete and final. In connection with its work to prepare the Draft EA, the CTRMA and its consultants have prepared various draft reports, maps, studies, memoranda, and analyses that will be incorporated into the document released to the public as the Draft EA after TxDOT approves that Draft EA.

The Request as clarified seeks “the model inputs, model outputs, and any adjustments to the base CAMPO 2045 model, where such modelling runs were completed on or before date the virtual open house #6 public statements and materials were released that were used to (a) predict time savings or lack of time savings or slowdowns in the peak north bound and south bound times, for each year for which such predictions were made, and/or (b) support in whole or part choosing the 2C preferred alternative and/or reject potential alternatives, including HOV lanes, alternatives 1a, 1b, 2a, 2b and the city proposal,” including “all memoranda or reports that summarize and/or analyze the modelling resulting that predict travel times and travel changes under the different alternatives, and in both the toll lanes and free lanes.”<sup>2</sup>

Certain information responsive to the Request has been provided to the requestor. However, the remaining information responsive to the Request includes input data and analyses that were collected for the purpose of preparing the Draft EA, and the information in the data and analyses will be incorporated into the Draft EA that will be made available for public review following TxDOT review and approval, (the “Responsive Records”). The CTRMA believes that these records responsive to the Request are exempted from disclosure under section 552.111 of the Act for the reasons set forth below.

## **II. Discussion**

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<sup>2</sup> The Request as clarified directed the CTRMA to “redact or exclude from this request any parts of such memoranda or reports summarizing or analyzing the modelling results that make policy recommendations or propose policy choices, policy changes, or policy alternatives based on the results of the modelling.” CTRMA will therefore refrain from releasing any such records as they are nonresponsive to the Request. Furthermore, all of the records comprising the Responsive Records are inherently analytical and deliberative in nature as they are all part of the deliberative process set forth in NEPA and will be incorporated into the Draft EA that will be released to the public. Moreover, while section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations, 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).

The CTRMA asserts that the Responsive Records enclosed as Attachment “B” are excepted from public disclosure pursuant to section 552.111 of the Act for the reasons discussed below.

**A. Section 552.111 – Agency Memoranda Protected by the Deliberative Process Privilege and/or Work Product Privilege**

Pursuant to section 552.111 of the Act, the CTRMA wishes to withhold the Responsive Records in Attachment “B” from disclosure as they constitute privileged inter- and/or intra-agency memoranda. *See* TEX. GOV’T CODE § 552.111.

As discussed above, the Draft EA is being prepared by the CTRMA with the assistance of its consultants, and in cooperation with TxDOT. *See* Tex. Att’y Gen. ORD No. 462 (1987) (noting that the statutory predecessor to Section 552.111 “applies to memoranda prepared by consultants of a governmental body”). The environmental review process is an important policymaking function of the CTRMA. TxDOT and the CTRMA share a privity of interest and common deliberative process with respect to the environmental review process for the Project, as the CTRMA and TxDOT share responsibility for development of the EA for the Project, and TxDOT is required to review and approve the Draft EA.<sup>3</sup> *See* Tex. Att’y Gen. ORD No. 561 at 6 (1990). Following completion of the Draft EA, it will be submitted to TxDOT for review and comment, subsequently revised as necessary, and then, following TxDOT approval, made available for public review. Until that time, however, the Draft EA and any preliminary analyses and input data prepared and collected in connection with the Draft EA are preliminary documents reflecting the opinions and recommendations of the CTRMA and TxDOT as to the content of the final Draft EA. In fact, federal regulations *require* that the Draft EA receive official approval before it is made available to the public. *See* 23 CFR § 771.119(c).

Section 552.111 exempts from disclosure inter- or intra-agency communications consisting of advice, opinions, or recommendations on policymaking matters of the governmental body at issue. *See* TEX. GOV’T CODE § 552.111. The purpose of this section is “to encourage frank and open discussion within the agency in connection with its decision-making processes” pertaining to policy matters. *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e). Section 552.111 has been read to incorporate the deliberative process privilege and therefore protects from disclosure “advice, recommendations, and opinions on matters involving the agency’s policy mission”. *See* Open Records Decision No. 631 at 1 (1995). That protection may extend to materials prepared for the agency by outside consultants. *See id.* at 3. Accordingly, drafts of documents outlining CTRMA policy are exempt from disclosure as they necessarily represent advice, opinions, and recommendations of the drafter as to the form and content of the final policy. *See* Tex. Att’y Gen. ORD No. 559 at 3-4 (1990); *see also* Tex. Att’y Gen. Open Records Letter Ruling Nos. OR2004-3302 and OR2004-2871.

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<sup>3</sup> The joint responsibility for the preparation of the EA and, therefore, the privity of interest and common deliberative process shared by the Federal Highway Administration (“FHWA”), TxDOT, and the CTRMA with respect to the Project is set forth in 23 CFR § 771.119. The FHWA and TxDOT entered into a Memorandum of Understanding under which the environmental review, consultation, and other actions required by applicable Federal environmental laws for the Project would be performed by TxDOT under 23 U.S.C. 327 and the Memorandum of Understanding executed by FHWA and TxDOT (available at <https://ftp.txdot.gov/pub/txdot-info/env/nepa-assignment/2019-nepa-assignment-mou.pdf>). Thus, the deliberative process privilege incorporated into section 552.111 of the Act extends to FHWA, TxDOT, and the CTRMA as the agencies responsible for preparation of the EA.

The Responsive Records include various preliminary analyses and underlying data that were prepared and collected by the CTRMA and/or its consultants for the purpose of planning CTRMA's response to traffic throughout the construction process on the Project. While CTRMA is currently reviewing the input data, models, and analyses, and incorporating this information into their Draft EA, these analyses are in their draft form and are subject to change with the addition of other input data files that are required for completion of the analyses. Specially, the model analysis on "build" and "no build" project scenarios, is incomplete and is subject to change. The information in the Responsive Records underlines proposed CTRMA policy and reflect the advice, recommendations, and opinions of the drafters with respect to the content of the final Draft EA. *See* Tex. Att'y Gen. Open Records Letter Ruling No. OR2009-16002 (ruling that a draft traffic impact analysis intended for public release was protected from disclosure under section 552.111); Tex. Att'y Gen. Open Records Letter Ruling No. OR2002-7049 (ruling that draft maps and surveys related to a corporation's Water Facilities consisted of advice, opinions, or recommendations in a deliberative process under section 552.111); *see also* Tex. Att'y Gen. Open Records Letter Ruling No. OR2024-15408 ("This office has also concluded a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111"). The release of these documents could stifle frank and open discussion concerning the CTRMA's decision-making process related its responsibility to develop the Project.

Recognizing the nature of the environmental review process, your office has consistently allowed governmental bodies to withhold draft environmental documents prior to final approval and public circulation. *See, e.g.*, Tex. Att'y Gen. Open Records Letter Ruling No. OR2010-16185 (draft environmental documents excepted under section 552.111 because the documents were in draft form, subject to review by TxDOT and FHWA, and would be released in final form); Tex. Att'y Gen. Open Records Letter Ruling No. OR2009-13433 (draft environmental impact statement excepted under section 552.111 because it must be approved by FHWA before being circulated for public comment and because it will be released in its final form); Tex. Att'y Gen. Open Records Letter Ruling No. OR2005-08276 (holding that "a preliminary environmental draft report that consists of internal pre-decisional deliberations" was excepted from disclosure under section 552.111). In fact, your office previously determined that various draft reports and studies prepared by the CTRMA and its consultants in connection with other CTRMA projects were excepted from disclosure under section 552.111 because they were preliminary documents that would be incorporated into environmental documents, which would eventually be released to the public. *See* Tex. Att'y Gen. Open Records Letter Ruling No. OR2014-15003; Tex. Att'y Gen. Open Records Letter Ruling No. OR2024-032342.

The Responsive Records in Attachment "B", therefore, fall within the scope of the deliberative process privilege as it is incorporated into section 552.111 and should be excepted from disclosure under the Act. *See* TEX. GOV'T CODE § 552.111.

Tamara Smith  
January 23, 2025  
Page 5

If you have any questions regarding this matter, or require any additional information, please do not hesitate to contact me.

Sincerely,

  
Brian O'Reilly

Enclosure

cc: William Bunch (requestor) – *w/o enclosures*  
Josephina Ibarra (CTRMA)