

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

____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION FOR MANDAMUS RELIEF AND
EXPEDITED HEARING ON THE MERITS**

Plaintiff Save Our Springs Alliance, Inc., (“SOS”) files this Original Petition against Defendant, Central Texas Regional Mobility Authority (“CTRMA”), and in support respectfully shows the following:

DISCOVERY

1. No discovery is needed in this case that presents a pure question of law based on a handful of undisputed documents. Should discovery nevertheless be required, it should proceed under Level 2 pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

SUMMARY OF THE CASE

2. This suit seeks the prompt release of public records. CTRMA is withholding from the public the public’s public comments submitted to CTRMA in Defendant’s own official public comment process. Defendant has (absurdly) argued to the Texas Attorney General’s Office that these public comments constitute an “intra-and/or inter-agency memorandum” of the governmental body receiving the comments and, thus, can be withheld as confidential until such time as the agency decides to release them. This position tears the Texas Public Information Act

into shreds and wholly lacks any basis of any kind. Every day of delay in releasing the requested public comments to Plaintiff/Requestor violates Plaintiff's rights under the law to have prompt access to requested public information.

3. Further, every day of delay hinders Requestor and the public's ability to rebut unsupported and false assertions by Defendant's staff and consultants to sway Defendant's Board members, other elected officials, and the public that Defendant's proposed 8.8-mile expansion of the MoPac South highway, from Enfield Road to Slaughter Lane with six to eight new lanes of pavement, four of them tolled, will have "no significant impacts" on the environment or on the public health and daily lives of millions of people who live, drive, visit, operate businesses, and/or recreate along the MoPac corridor; swim at Barton Springs or Deep Eddy Pool; attend school or work at Austin High School, visit Zilker Park or the Zilker Botanical Gardens or the Austin Nature and Science Center; enjoy Lady Bird Lake, its park, and its Butler Hike-and-Bike Trail and Roberta Crenshaw Pedestrian Bridge; hike, bike, birdwatch, or swim in the Barton Creek Greenbelt; or visit the Lady Bird Johnson Wildflower Center, or row or paddle on Lady Bird Lake. The massive harms and impacts that would be caused by the proposed project, both during its construction and post-construction phases, are myriad. Whether one favors or disfavors the project, it should be beyond dispute these impacts would be significant – thus requiring Defendant to prepare a full Environmental Impact Statement under the National Environmental Policy Act. Defendant's public comment process is required by both state and federal law and the Texas Public Information Act requires that these comments be treated as public information and should have already been provided to Plaintiff/Requestor and any other person or entity requesting the comments.

4. On March 25, 2026, Save Our Springs Alliance, through its Executive Director, Bill Bunch, submitted a Public Information Request (PIR No. 00833) to CTRMA for all comments submitted on the proposed MoPac South project, agreeing that email addresses could be redacted. *See* Tex. Gov't. Code § 552.137.

5. On April 8, 2026, Defendant, through its counsel, requested a letter ruling from the Texas Attorney General on the information requested by Plaintiff. On April 15, 2026, Defendant submitted a letter brief to the Attorney General asserting that the comments are excepted from disclosure under Tex. Gov't Code §§ 552.111 and 552.101. The public comment period closes May 3, 2026. The Attorney General has not yet issued a ruling on Defendant's request. The TPIA does not require that a requestor wait for an advisory letter ruling from the Attorney General before bringing a mandamus action to order release of requested public information. *Kallinen v. City of Houston*, 462 S.W.3d 25, 28 (Tex. 2015) (“[R]equestor is not required to defer a suit for mandamus.”).

6. Neither Tex. Gov't Code § 552.111 nor § 552.101 supports Defendant's position. The comments are not inter-or intra-agency communications, and nothing in federal law makes them confidential.

7. Plaintiff respectfully submits that Defendant is withholding documents required to be produced as public information under the Texas Public Information Act. Plaintiff brings this action for mandamus to compel production of all of the public information requested on March 25, 2026, and respectfully requests this court to set this matter for hearing on an expedited basis.

PARTIES

8. 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.

9. 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). Defendant may be served with citation at its office at 3300 N. Interstate 35 Frontage Rd., Austin, Texas 78705, through its Executive Director, James Bass.

JURISDICTION AND VENUE

10. This Court has jurisdiction to issue the mandamus relief requested under the Texas Public Information Act (“TPIA” or the “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).

ADDITIONAL FACTS

11. Defendant is preparing a Draft Environmental Assessment (“Draft EA”) for the proposed MoPac Expressway South project under the National Environmental Policy Act (“NEPA”). The project would add six to eight lanes, four of them toll along Mopac/Loop 1 from Enfield Road to Slaughter Lane, an approximately 8.8-mile corridor that runs close to the centerline of the Barton Springs, Edwards Aquifer recharge zone and across the watersheds of Lady Bird Lake, Barton Creek, Williamson Creek and several smaller tributaries.

12. Defendant released the Draft EA for public review on February 13, 2026. The public comment period opened on March 9, 2026, and will close May 3, 2026. The comment period remains open as of the filing of this Petition. The comments at issue have been submitted

by members of the public during that period.

13. On March 24, 2026, Defendant held an in-person public hearing on the Draft EA at Bowie High School, 4103 W. Slaughter Lane, Austin, Texas. The public was invited to submit comments at the hearing. These comments are public comments in a public process.

14. On March 25, 2026, SOS's Executive Director Bill Bunch submitted Public Information Request No. 00833 to Defendant, requesting:

"All comments submitted as part of the ongoing MoPac South public hearing, to date (from the opening of the comment period to the present date), whether received by email, online submission, letter, or in-person at the Bowie High School event held on March 24, 2026."

In the same request, Mr. Bunch agreed that email addresses could be redacted. **A copy of the request is attached as Exhibit A.**

15. On April 8, 2026, Defendant emailed Mr. Bunch, asking whether physical addresses of the commenters could also be redacted. The same day, Defendant's counsel sent Mr. Bunch a letter stating that Defendant had asked the Attorney General for a ruling authorizing it to withhold the requested comments. **A copy of the April 8, 2026 letter is attached as Exhibit B.**

16. On April 15, 2026, Defendant, through its counsel, sent a letter brief to the Texas Attorney General's Open Records Division, asking for an opinion that the public comments may be withheld in their entirety under Tex. Gov't Code § 552.111 and § 552.101. **A copy of the April 15, 2026 letter brief is attached as Exhibit C.**

17. In its letter brief, Defendant contends that every public comment, whether submitted by a neighbor, an environmental organization, an expert, an elected official, or any other member of the public, is an "inter- and/or intra-agency memorandum" and may be withheld as confidential agency information pursuant to Texas Government Code § 552.111 because Defendant and TxDOT consultants review the comments. Defendant further contends that the

comments are “preliminary drafts” because they are received before TxDOT issues its environmental decision, and that they are “deliberative” because staff consider their substance when refining the Draft EA. Defendant also argues that early disclosure would allow outside actors to “selectively highlight, publicize, or organize campaigns around particular comments to pressure the CTRMA and TxDOT.” Defendant additionally contends that the comments are excepted from disclosure under Tex. Gov’t. Code § 552.101 because NEPA, 42 U.S.C. §§ 4321–4370h, and the FHWA regulations at 23 C.F.R. part 771, together with 40 C.F.R. part 1503, establish a “deliberately structured decision making process,” and that “premature release” of the comments would “risk distorting the integrity of the NEPA process.”

18. All of this is poppycock. Defendant’s lawyer’s letter brief to the AG, while long and inventive, cites not one single case or AG opinion supporting its argument because no such authority exists.

19. The Texas Attorney General has not yet issued a ruling in response to the Defendant’s request, but Plaintiff is not required to defer a suit for mandamus until after the Texas Attorney General issues a decision. *Kallinen*, 462 S.W.3d at 28.

20. Defendant has indicated that all comments will eventually be released once the NEPA process reaches the appropriate stage for public compilation, but refused to produce any comments during the open comment period, when the public’s ability to review and respond to those comments could still shape the outcome of the NEPA process. The TPIA does not give the agency discretion to delay release of public information to some uncertain time when the agency deems it okay to release what it asserts is private, confidential agency “deliberative process” information. Roses are red, violets are blue and public comments are public information under the Texas Public Information Act.

21. Tex. Gov't Code Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Tex. Gov't Code § 552.111. The exception exists for the narrow purpose of encouraging "frank and open discussion within the agency in connection with its decision-making processes" on matters of policy. *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e); *see also, City of Garland v. Dall. Morning News*, 22 S.W.3d 351, 361 (Tex. 2000) (discussing Freedom of Information Act requests, the Court explained, "[B]ecause of the FOIA's strong policy favoring disclosure, Congress intended that the agency memorandum exception be construed as narrowly as consistent with efficient Government operation.") (internal quotation removed).

22. To withhold under Tex. Gov't. Code § 552.111, a governmental body must establish two elements: first, that the record is actually an "inter- or intra-agency communication"; and second, that it consists of "advice, opinion, or recommendation" on policymaking matters. *Dallas Morning News*, 22 S.W.3d at 361, 364; Open Records Decision No. 615 at 5 (1993). Both elements fail here. Public comments submitted by neighbors, environmental organizations, experts, elected officials, and other members of the public during the MoPac South comment period are not communications within CTRMA or TxDOT, nor between CTRMA or TxDOT and any other governmental body. They are communications from the public to the Defendant agency. And the comments are not CTRMA's or TxDOT's internal advice, opinion, or recommendation on either agency's policymaking process. They are the opinions of the public.

23. Defendant tries to bridge the gap by arguing that its staff and consultants "review the substance of each comment" to refine the Draft EA, but that argument is foreclosed by

Arlington Independent School District v. Texas Attorney General, which held that 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.” 37 S.W.3d 152, 159 (Tex. App.—Austin 2001, no pet.) (citing *Vaughn v. Rosen*, 523 F.2d 1136 (D.C. Cir. 1975)). 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 *11 (Tex. App.—Austin Dec. 14, 2018, no pet.) (reaffirming that raw input data is not itself part of the decisional process). The document’s content and its source, not the agency’s use of it, controls the analysis. The public comments are, at most, inputs that CTRMA and TxDOT may consider. That makes them raw data contributed to the record by the public, not the government’s advice to itself, and it makes them disclosable.

24. Defendant’s position, if accepted, would swallow the rule. It would mean that every comment submitted by every member of the public at Bowie High School, or through Defendant’s website became, on receipt, an “inter- and/or intra-agency memorandum” of CTRMA and TxDOT. The Texas Supreme Court rejected precisely this kind of expansion in *City of Garland*, confining Tex. Gov’t. Code § 552.111 to internal policymaking communications and refusing to allow the exception to overtake the Public Information Act’s general rule of disclosure. 22 S.W.3d at 364. Nothing in the text of Tex. Gov’t. Code § 552.111, the Attorney General’s decisions, or the controlling case law authorizes an agency to convert public input into internal deliberation.

25. Defendant's "pressure campaigns" rationale, which asks the Attorney General to withhold the comments so "outside actors" cannot "highlight, publicize, or organize campaigns around particular comments to pressure the CTRMA and TxDOT," is a blatant admission of the purpose of Defendant withholding the requested information; to squelch Requestor's, the media's and the public rights to both know about and effectively participate in the public decision making process with the same information that Defendant has. Well-informed, organized public advocacy on a public project is not a harm but rather essential to functional and effective democracy. That is the very foundation of the Texas Public Information Act. We don't just get to find out later what the truth was; the TPIA requires prompt access to requested public information. Every day of delay, Requestor suffers irreparable harm to its ability to inform and engage in the public decisionmaking process mandated by state and federal law.

26. In its letter brief to the Attorney General, Defendant further contends that the comments are excepted from disclosure under Tex. Gov't. Code § 552.101 because NEPA and its implementing regulations establish a "deliberately structured decision-making process," and that "premature release of the public comments . . . would also risk distorting the integrity of NEPA process," and that such disclosure "would disrupt the orderly administration of that process and would be inconsistent with the intended operation and spirit of NEPA's public comment procedures." This assertion is demonstrably wrong. Section 552.101 excepts only information that is "considered to be confidential by law." Tex. Gov't Code § 552.101. Neither NEPA, 42 U.S.C. §§ 4321–4370h, nor the FHWA regulations at 23 C.F.R. part 771, nor 40 C.F.R. part 1503, makes public comments confidential. The federal government's centralized public-comment portal, <https://www.regulations.gov>, posts public comments on NEPA environmental reviews, as they are submitted, "without change", for anyone to read. NEPA and

its federal disclosure framework do not make public comments confidential. They make them public. Section 552.101 therefore cannot be used to withhold the requested comments.

27. The 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 directs courts and government agencies to liberally construe its provisions in favor of disclosure, and it 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.

28. Defendant asks this Court to read Tex. Gov't. Code §§ 552.111 and 552.101 broadly enough to convert every public comment into a secret government document, and to keep those comments secret while the comment period is still open and participation can still shape the outcome. Neither exception permits that result.

CAUSE OF ACTION AND RELIEF REQUESTED

29. “A requestor or the attorney general may file suit for a writ of mandamus compelling a governmental body to make information available for public inspection if the governmental body . . . refuses to supply public information.” Tex. Gov't Code § 551.321. Plaintiff seeks an expedited hearing on the merits, and upon such hearing respectfully requests mandamus relief ordering Defendant to promptly release to Plaintiff all of the public comments requested (with personal email addresses redacted).

ATTORNEY FEES

30. Plaintiff asks the Court to order Defendant to pay reasonable attorney's fees, costs of court and reasonable expenses of litigation to Plaintiff, pursuant to Tex. Gov't Code § 552.323.

PRAYER

31. For these reasons, Plaintiff, Save Our Springs Alliance Inc., respectfully prays that this Court:

- a. Set this matter for the hearing on expedited basis;
- b. Issue a writ of mandamus under Tex. Gov't Code § 552.321 ordering Defendant to promptly produce to SOS all comments responsive to PIR No. 00833, with email addresses redacted as agreed;
- c. Award SOS its reasonable attorney's fees, costs of court, and reasonable expenses of litigation under Tex. Gov't Code § 552.323; and
- d. Grant all other relief, at law or in equity, to which SOS may be justly entitled.

Respectfully Submitted,

/s/ Bill 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

Exhibit – A

From: Josephina Ibarra jibarra@ctrma.org
Subject: FW: Public Information Request - 03/25/2026 - New Form Entry - 00833
Date: April 8, 2026 at 11:55 AM
To: pir@sosalliance.org



Good morning.

We are gathering the information you requested and understand email addresses can be redacted per your request. However, it is unclear if redactions to physical addresses should be applied. Would you please confirm if redactions can be applied to addresses?

Josephina Ibarra
Central Texas Regional Mobility Authority



From: wordpress=mobilityauthority.com@mg.mobilityauthority.com
<wordpress=mobilityauthority.com@mg.mobilityauthority.com> **On Behalf Of** NoReply
Sent: Wednesday, March 25, 2026 6:00 PM
To: Public Information Request <PIR@ctrma.org>
Subject: Public Information Request - 03/25/2026 - New Form Entry - 00833

First Name
Bill
Last Name
Bunch
Email
pir@sosalliance.org
Phone Number
(512) 784-3749
Street Address
3201 Menchaca Road
City
Austin
State / Province / Region
Texas
Zip Code

78704

Country

United States

Comment/Request

This is a Public Information Request made by Bill Bunch, Executive Director of Save Our Springs Alliance under the Texas Public Information Act, Chapter 552, Texas Government Code, which guarantees the public access to information in the custody of governmental agencies. To the extent CTRMA intends to charge any fees for the receipt of this information, I request a fee waiver or consideration of reduced costs, in line with Texas Gov't Code § 552.267 (providing for waiver of charges if releasing information benefits the general public). If you estimate that the charges will exceed \$40, please provide a written, itemized cost estimate before proceeding, as required by § 552.2615

Preferred delivery and Format: Please provide records electronically whenever possible and in their native electronic format with associated metadata, consistent with § 552.228.

Publicly Available Records: If any of the requested information is already available on the public website or online portal, you may satisfy the request by providing a direct URL and instructions to access those records.

Prompt Response & 10-Day Notice: Texas law requires that you respond to public information requests promptly. If you are unable to produce the requested records within 10 business days, please notify me in writing within that period and provide a reasonable estimate of when the records will be available, in accordance with § 552.221.

Rolling Release: If some records are readily available, please produce them on a rolling basis as they are located, without waiting for all records to be compiled.

“Unless a statute expressly authorizes you to redact without an Attorney General decision or a valid ‘previous determination’ applies, seek an AG ruling within 10 business days for any information you wish to withhold and release all reasonably segregable, non-exempt portions in the meantime. See Tex. Gov’t Code § 552.301 and §552.302. If you redact under a self-redaction statute or a previous determination, please (1) identify each statute or previous determination relied on, (2) use the Attorney General’s prescribed notice form where required.”

Requested Records:

Please provide electronic copies of the following records:

1. All comments submitted as part of the ongoing MoPac South public hearing, to date (from the opening of the comment period to the present date), whether received by email, online submission, letter, or in-person at the Bowie High School event held on March 24, 2026. Requestor agrees that email addresses of the commenters may be redacted.

If any part of this request is unclear or overly broad, please contact me so we can discuss and narrow the request as needed to facilitate a timely response.

Unique ID

00833

Exhibit – B

troutman.com

Brian O'Reilly

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

April 8, 2026

VIA EMAIL

pir@sosalliance.org

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

Dear Mr. Bunch,

The Central Texas Regional Mobility Authority (“CTRMA”) is in receipt of your request for information, submitted on March 25, 2026, seeking records related to public comments received by the CTRMA regarding the MoPac South Project.

The CTRMA believes that the records you have requested may be 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,



Brian O'Reilly

Enclosures:
Letter to Attorney General

Brian O'Reilly

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

April 8, 2026

VIA E-FILING

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

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

Dear Ms. Smith:

This firm represents the Central Texas Regional Mobility Authority (“CTRMA”). On March 25, 2026, the CTRMA received a request for public information from Bill Bunch (the “Request”). A copy of the request and the notification letter to Mr. Bunch are enclosed as Attachment “A”.

The CTRMA believes that the information responsive to the Request may be excepted from disclosure under the exceptions set forth in sections 552.101-552.162 of the Public Information Act (the “Act”), including, but not limited to, sections 552.101 and 552.111 of the Act. Accordingly, pursuant to section 552.301(a) of the Act, the CTRMA respectfully requests a decision from your office as to whether this information is excepted from required public disclosure. *See* TEX. GOV’T CODE § 552.301(a).

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).

Tamara Smith
April 8, 2026
Page 2

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

Sincerely,

A handwritten signature in blue ink that reads "Brian O'Reilly". The signature is written in a cursive style with a large, stylized 'B' and 'R'.

Brian O'Reilly

Enclosures:

Attachment "A" – Request for Information

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

Exhibit – C

Brian O'Reilly

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

April 15, 2026

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

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

Dear Ms. Smith:

This firm represents the Central Texas Regional Mobility Authority (the "CTRMA"). On March 25, 2026, the CTRMA received a request for public information from Bill Bunch (the "Request"). A copy of the Request is enclosed as Attachment "A".

The CTRMA believes the information responsive to the Request is excepted from disclosure under the Texas Public Information Act (the "Act"). Pursuant to section 552.301(a) of the Act, on April 8, 2026, the CTRMA requested a decision from your office regarding whether or not information responsive to the Request is excepted from public disclosure. As required by section 552.301(e) of the Act, this letter contains a written explanation stating why the asserted exceptions should apply and the reasons why the information should be withheld. TEX. GOV'T CODE § 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 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 development of the proposed MoPac Expressway South (the "Project"). As required by the National Environmental Policy Act of 1969 ("NEPA"), the CTRMA is preparing 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 project-related services.

On February 13, 2026, after TxDOT approved the initial draft the Draft EA was released for public review and comment. The public comment period is currently still open and runs from March 9, 2026 to May 3, 2026. During this public comment period, interested persons may submit comments online including through the Project website or by email, by mail and in-person at the CTRMA held public meeting where

the Draft EA was presented. The CTRMA will prepare a final EA following the public comment period, after all public comments have been received and considered, and any necessary revisions made. TxDOT will then issue an environmental finding on the Project, and only then will the EA be considered complete and final.

The Request seeks information related to the Draft EA, including “all comments submitted as part of the ongoing MoPac South public hearing, to date (from the opening of the comment period to the present date), whether received by voicemail, email, online submission, letter, or written in-person at the Bowie High School event held on March 24, 2026.” *See Attachment “A”*.

The CTRMA believes that the Responsive Records, enclosed as Attachment “B”, are excepted from disclosure under Sections 552.111 and 552.101 of the Act for the reasons set forth below.

II. Discussion

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

The CTRMA asserts that the Responsive Records, enclosed as Attachment “B”, constitute inter- and/or intra-agency memoranda consisting of advice, opinions, and recommendations on policymaking matters and are therefore excepted from public disclosure under section 552.111 of the Act for the reasons discussed below.

As discussed above, the Draft EA and the various draft reports, maps, studies, memoranda, and analyses that are incorporated into the Draft EA were 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 Project is a core policymaking function of the CTRMA, and the environmental review process is a required component of that Project. TxDOT and the CTRMA share a privity of interest and a common deliberative process with respect to that environmental review, as they share responsibility for development of the EA for the Project, and TxDOT’s approval is required before the EA process can be considered complete.¹ *See* Tex. Att’y Gen. ORD No. 561 at 6 (1990).

Following TxDOT’s initial approval, the Draft EA was released for public comment, and that comment period remains open. After the comment period closes, all comments will be reviewed and organized by the CTRMA staff and consultants who will also prepare responses to each comment submitted during the comment period. Once this review is complete and responses are prepared, the CTRMA will publish a document compiling all comments and the corresponding responses for public viewing.

¹ 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.

Section 552.111 exempts from disclosure inter- and/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 and communications 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.

Although the comments originate from third parties, they are being used by the CTRMA and TxDOT for a governmental purpose: to evaluate alternatives, assess impacts, and formulate the content of the final EA and TxDOT’s environmental finding. In this context, the Responsive Records are preliminary drafts because they are being gathered and reviewed before TxDOT makes its environmental decision and before the EA is finalized. The Responsive Records are also deliberative because the CTRMA staff, TxDOT staff, and the CTRMA’s consultants review the substance of each comment in deciding how to refine the Draft EA, whether to modify project alternatives, and what mitigation measures are appropriate. Moreover, the comments themselves are not yet final, as members of the public may submit additional comments, amending or supplementing their prior submissions during the open comment period.

These public comments form part of the working file that the CTRMA and TxDOT are using to develop and refine their policy decisions regarding the Project and, as such, set forth proposed CTRMA policy and reflect the advice, recommendations, and opinions of the drafters concerning the content of the Draft EA. *See* 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.”).

Further, the NEPA process is expressly designed to allow agencies to gather public input, evaluate that input internally, and refine and improve the environmental documentation and the proposed project before making a final decision. If all comments submitted during an open, ongoing comment period must be disclosed on a rolling basis upon request, the CTRMA and TxDOT would lose the ability to complete their internal evaluation of the full body of comments before those comments are publicly circulated and potentially used to pressure or mischaracterize the agencies’ deliberations. In addition, the agencies’ ability to refine potential responses and project modifications openly, free from external scrutiny while recommendations are being formed, would be impaired and consultants and staff might be less willing to engage in frank internal discussion about the strengths and weaknesses of particular comments and project alternatives, for fear that their use of those comments will immediately be exposed. Accordingly, the release of the comments could stifle frank and open discussion concerning the CTRMA’s decision-making process related to the development of 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).

Section 552.111 exists to prevent such premature disclosure and to preserve the integrity and candor of governmental decision-making. The Responsive Records, 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.

B. The National Environmental Policy Act; Information Confidential Under Other Law – Section 552.101

Section 552.101 of the Act excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” TEX. GOV’T CODE § 552.101. This section encompasses information protected by state or federal statutes. Section 552.101, therefore, encompasses NEPA, 42 U.S.C. §§ 4321–4370h, together with the Federal Highway Administration’s (“FHWA”) NEPA implementing regulations, 23 C.F.R. pt. 771.

Under NEPA and the FHWA regulations, the receipt, consideration, and disclosure of public comments are elements of a deliberately structured decision-making process. *See* generally 40 C.F.R. pt. 1503 (public involvement and comments). Until the comment period closes and the full body of comments has been reviewed, the submissions received by the CTRMA and TxDOT are in-process working materials within an ongoing federal NEPA review. Premature disclosure by the CTRMA or TxDOT would disrupt the orderly administration of that process and would be inconsistent with the intended operation and spirit of NEPA’s public comment procedures.

Further, premature release of the public comments that the CTRMA and TxDOT have received during the still-open comment period would also risk distorting the integrity of the NEPA process. If individual comment submissions are made public before the close of the comment period and before the CTRMA and TxDOT have had the opportunity to evaluate them in a neutral and systematic manner, outside actors may selectively highlight, publicize, or organize campaigns around particular comments to pressure the CTRMA and TxDOT to assign those comments disproportionate weight. This can create an appearance, or reality, of undue influence on the CTRMA’s decision-making, encouraging decision makers to respond to external pressure rather than the substance, relevance, and merit of the full range of comments received.

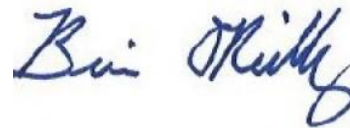
In addition, the NEPA framework contemplates that comments will be considered comprehensively and in context as part of a complete administrative record; early disclosure of individual comments during an ongoing comment period undermines that objective and interferes with the orderly, unbiased exercise of the CTRMA’s and TxDOT’s responsibilities in administering the EA process. *See* 40 C.F.R. § 1503.4 (response to comments). For these reasons as well, the in-process comments should be withheld until the

Tamara Smith
April 15, 2026
Page 5

NEPA process has reached the appropriate stage for public compilation and disclosure of the comment record.

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

Sincerely,

A handwritten signature in blue ink that reads "Brian O'Reilly". The signature is written in a cursive, flowing style.

Brian O'Reilly

Enclosure

cc: Bill Bunch (requestor) – *w/o enclosure*
Josephina Ibarra (CTRMA)