



March 27, 2002

Mr. John Steiner
Division Chief
City of Austin - Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2002-1507

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160379.

The City of Austin (the "city") received a request for "[r]eports by [city] departments on ways to reduce their budgets by 5 percent and by 12.5 percent." You claim that the requested information is excepted from disclosure under sections 552.106 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.106(a) of the Government Code protects a "draft or working paper involved in the preparation of proposed legislation." Section 552.106 ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. Open Records Decision No. 460 (1987). The purpose of section 552.106 is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body, and therefore, it does not except from disclosure purely factual information. *Id.* at 2. However, a comparison or analysis of factual information prepared to support proposed legislation is within the ambit of section 552.106. *Id.* A proposed budget constitutes a recommendation by its very nature and may be withheld under section 552.106. *Id.*

You state that, under Article V, § 2, of Austin's Charter, the city manager is charged with the duty of preparing the city budget, submitting it to the city council, and administering it after adoption. You explain that the submitted draft budget reduction proposals were prepared by city departments at the request of the city manager to help plan possible mid-year budget reductions and future city budget proposals. You further explain that the submitted draft budget reduction plans have not been approved, and that the proposed budget plans will either be identified by the city manager as mid-year reductions or presented by

the city manager to the city council in connection with the city council's adoption of the municipal budget for fiscal year 2003. You state that the budget reduction proposals have been shared only with other members of city management.

Having reviewed your arguments and the information at issue, we conclude that, as you indicate that the budget estimate is not complete at this time, you may withhold the information from the requestor under section 552.106(a). *See* Open Records Decision No. 460 (1987) (city's proposed budget protected by predecessor provisions to section 552.106(a)). However, to the extent a proposed budget item has been revealed to the public during a city council meeting, the city has waived the protection of section 552.106. *Cf.* Open Records Decision No. 435 at 4 (1986) (denying section 552.111 to the extent information has been publicly disclosed). Furthermore, on completion of the budget proposal, the submitted information is public. *See* Gov't Code § 552.022(a)(5) (making discretionary exceptions to disclosure inapplicable to all information used to estimate the need for or expenditure of public funds or taxes, on completion of estimate).¹

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

¹As we are able to make this determination, we need not address your remaining claimed exception.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 160379

Enc: Submitted documents

c: Mr. Stephen Scheibal
Metro Reporter
Austin American-Statesman
P.O. Box 670
Austin, Texas 78767
(w/o enclosures)