



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2005

The Honorable Robert E. Talton
Texas House of Representatives, District 144
P.O. Box 2910
Austin, Texas 78768

OR2005-06308

Dear Representative Talton:

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# 228282.

The Office of State Representative Robert E. Talton received four requests for a copy of a specified letter sent to Senator Jane Nelson. You claim that the requested information is excepted from disclosure pursuant to sections 552.101, 552.106, 552.109 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received comments from an attorney who represents one of the requestors. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.106(a) of the Government Code protects a draft or working paper involved in the preparation of proposed legislation. Section 552.106(a) ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. See Open Records Decision No. 460 at 1 (1987). The purpose of this exception is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body; therefore, section 552.106 encompasses only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation and does not except purely factual information from public disclosure. *Id.* at 2. Having reviewed the submitted information, we agree that it constitutes a working paper used in the preparation of proposed legislation and reflects advice, opinion, and

recommendation relating to the policymaking process. Thus, the submitted information may be withheld from disclosure under section 552.106(a).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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

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); *Tex. Dep't of Pub. 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.

¹We note that section 552.106 is a discretionary exception to disclosure under the Act. See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general). Thus, a member of the legislative body has the discretion to release all or part of the submitted information. Gov't Code § 552.007.

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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 228282

Enc. Submitted documents

c: Mr. Robert T. Garrett
The Dallas Morning News
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