



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2008

The Honorable Trey Martinez Fischer
State Representative, District 116
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768

OR2008-00163

Dear Rep. Martinez Fischer:

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# 301245.

Representative Trey Martinez Fischer (the "Representative") received a request for the following categories of information: 1) any documents that refer to House Bill 3367, or any development in Windcrest, Texas; 2) any documents that refer to a named company within the last three years; 3) any documents between the Representative's office and the City of San Antonio pertaining to economic development in Windcrest, Texas within the last three years; and 4) any documents between the Representative's office and the City of Windcrest pertaining to economic development in Windcrest, Texas within the last three years. You state that you have provided some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.106, and 552.111, of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You seek to withhold the submitted information under section 552.106 of the Government Code. Section 552.106 of the Government Code excepts from disclosure "[a] draft or working paper involved in the preparation of proposed legislation[.]" Gov't Code § 552.106(a). Section 552.106 protects advice, opinion, and recommendation on policy matters in order to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body. *See* Open Records

Decision No. 460 at 3 (1987). Therefore, section 552.106 is applicable only to the policy judgments, recommendations, and proposals of persons who are involved in the preparation of proposed legislation and who have an official responsibility to provide such information to members of the legislative body. *Id.* at 1. Section 552.106 does not protect purely factual information from public disclosure. *See id.* 460 at 2; *see also* Open Records Decision No. 344 at 3-4 (1982) (for purposes of statutory predecessor, factual information prepared by State Property Tax Board did not reflect policy judgments, recommendations, or proposals concerning drafting of legislation). However, a comparison or analysis of factual information prepared to support proposed legislation is within the scope of section 552.106. ORD 460 at 2.

You inform us that the submitted information “was prepared directly and entirely for the legislative purpose of enacting legislation.” You contend that the submitted information consists of internal bill analysis, working papers, and communications relating to House Bill 3367. We understand you to assert that the submitted information reveals advice, opinions, and recommendations that reflect deliberative or policymaking processes. Having considered your arguments and reviewed the information at issue, we conclude that the Representative may withhold the submitted information under section 552.106 of the Government Code.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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas 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 Office of the Attorney General 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. 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,



Loan Hong-Turney
Assistant Attorney General
Open Records Division

LH/eeg

Ref: ID# 301245

Enc. Submitted documents

c: Mr. Scott M. Tschirhart
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(w/o enclosures)