



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 6, 2008

Mr. Gary Henrichson  
Assistant City Attorney  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78505-0220

OR2008-10685

Dear Mr. Henrichson:

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# 318312.

The McAllen Fire Department (the "department") received a request for a copy of the department's preliminary budget, as submitted to the city manager on May 5, 2008. You claim that the requested information is excepted from disclosure under section 552.106 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

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 ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. *See* Open Records Decision No. 460 (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 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 also may be withheld under section 552.106. *Id.* This office also has concluded that section 552.106 is applicable to drafts of municipal ordinances and resolutions that reflect policy judgments, recommendations, and proposals. *See* Open Records Decision No. 248 (1980).

You state that the information at issue is a preliminary budget for the department that was submitted to the city manager's office. You explain that the information "is still a draft proposal and may be significantly revised before presentation to the McAllen City Commission." Based on your representations and our review of the information at issue, we conclude that the department may withhold the submitted information under section 552.106 of the Government Code.

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). If the governmental body does not file suit over 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).

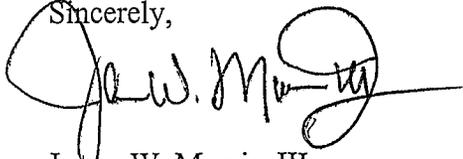
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/jh

Ref: ID# 318312

Enc: Submitted documents

c: McAllen Firefighters Association Local 2602  
P.O. Box 5716  
McAllen, Texas 78505  
(w/o enclosures)