



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 4, 2010

Mr. Ken Levine
Interim Director
Texas Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711-3066

OR2010-01763

Dear Mr. Levine:

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# 369373.

The Sunset Advisory Commission (the "commission") received a request for all records pertaining to the Parrie Haynes Ranch issue addressed during the commission's most recent review of Texas Parks and Wildlife Department ("TPWD"). You state you have released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.106, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses statutes such as section 325.0195 of the Government Code. Section 325.0195 provides in relevant part:

- (a) A working paper, including all documentary or other information, prepared or maintained by the commission staff in performing its duties under this chapter or other law to conduct an evaluation and prepare a report is excepted from the public disclosure requirements of Section 552.021.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Gov't Code § 325.0195(a). You inform us that Exhibits 1 through 8 consist of the commission's working papers that were collected and maintained by the commission during its evaluation of the TPWD. You further state that this evaluation was authorized under chapter 325 of the Government Code. *See id.* § 325.008(a)(3) ("Before January 1 of the year in which a state agency subject to this chapter and its advisory committees are abolished, the commission shall . . . conduct a review of the agency based on the criteria provided in Section 325.011 and prepare a written report[.]"). Accordingly, we find the information in Exhibits 1 through 8 is confidential under section 325.0195 of the Government Code and must be withheld under section 552.101 of the Government Code.

You seek to withhold the information in Exhibit 9 under section 552.106 of the Government Code, which 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 state the information in Exhibit 9 contains legislative documents prepared by commission staff during the drafting of TPWD commission legislation. Upon review, we conclude that portions of the information in Exhibit 9 constitute advice, opinion, analysis, and recommendation regarding proposed legislation. Therefore, the commission may withhold this information, which we have marked, under section 552.106 of the Government Code. You have not demonstrated, however, how the remaining information in Exhibit 9, which consists of purely factual or administrative information, reveals advice, opinion, analysis, or recommendation regarding proposed legislation. Therefore, the remaining information in Exhibit 9 may not be withheld pursuant to section 552.106 of the Government Code.

You assert portions of Exhibit 10 are excepted from disclosure under section 552.137 of the Government Code. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code

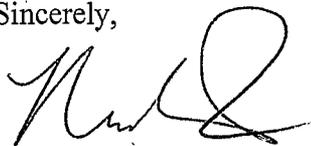
§ 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. Upon review, we agree that an e-mail address, which we have marked, is subject to section 552.137(a). However, the remaining e-mail address you have marked is a government employee's work e-mail address and, thus, may not be withheld under section 552.137(a). Accordingly, the commission must withhold only the e-mail address we have marked under section 552.137(a) of the Government Code.²

In summary, the commission must withhold Exhibits 1 through 8 under section 552.101 of the Government Code in conjunction with section 325.0195 of the Government Code. The commission may withhold the information we have marked under section 552.106 of the Government Code. The commission must withhold the e-mail address we have marked under section 552.137 of the Government Code. The remaining information must be released to the requestor.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 369373

Enc. Submitted documents

cc: Requestor
(w/o enclosures)