KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 18, 2015

Ms. Patsy Spaw
Secretary of the Senate
The Senate of the State of Texas
P.O. Box 12068
Austin, Texas 78711

OR2015-12153

Dear Ms. Spaw:

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# 569916.

The Texas Senate (the "senate") received a request for e-mails between a named senator or his staff and a named individual during a specified time period; a list of visitors to the named senator's office during a specified time period; the named senator's schedule for a specified time period; and e-mails between the named senator or his staff and a named representative and his staff during a specified time period. You state the senate will release some of the requested information upon payment of costs. You claim the submitted 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 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 resembles section 552.111 in that both exceptions protect advice, opinion, and recommendation on policy matters, in order to encourage frank discussion during the policymaking process. *See* Open Records Decision No. 460 at 3 (1987). However, section 552.106 applies specifically to the legislative process and thus is narrower than section 552.111. *Id.* 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. *Id.* at 2. 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; *see also* Open Records Decision Nos. 429 at 5 (1985) (statutory predecessor to Gov't Code § 552.106 not applicable to information relating to governmental entity's efforts to persuade other governmental entities to enact particular ordinances), 367 at 2 (1983) (statutory predecessor applicable to recommendations of executive committee of State Board of Public Accountancy for possible amendments to Public Accountancy Act). Like section 552.111, section 552.106 does not protect purely factual information from public disclosure. *See* ORD 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 falls within the scope of section 552.106. *See* ORD 460 at 2.

You explain the submitted information consists of "bill analyses, working papers, and communications prepared directly and entirely for the legislative purpose of enacting legislation." Additionally, you state that, at the time of these communications, the legislation to which they relate "was being drafted or was already filed and within the legislative process and so was subject to amendment or revision before being finally passed." You explain the information at issue was never made public or distributed to any person beyond the legislators and their staffs. Upon review, we find the submitted information constitutes advice, opinion, analysis, and recommendation regarding proposed legislation. The parties involved in these communications share a privity of interest because they are representatives of state entities communicating for the purpose of reviewing legislation and making recommendations. Therefore, the senate may withhold the submitted information under section 552.106 of the Government Code.[1]

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

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

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 569916

Enc. Submitted documents

c: Requestor
(w/o enclosures)