



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 21, 2015

Mr. Michael VanderBurg
General Counsel
Legislative Budget Board
P.O. Box 12666
Austin, Texas 78711-2666

OR2015-19662

Dear Mr. VanderBurg:

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# 578320.

The Legislative Budget Board (the "board") received a request for information related to the Texas Racing Commission during a specified time period. You state the board will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.106, 552.107, and 552.146 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note the board did not fully comply with section 552.301 of the Government Code. Section 552.301(b) requires a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply

¹Although you also raise section 552.101 of the Government Code, you have not provided any arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

²We assume 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 those records contain substantially different types of information than that submitted to this office.

within a reasonable time but not later than the tenth business day after the date of receiving the written request.” Gov’t Code § 552.301(b). While the board raised section 552.146 of the Government Code within the ten-business-day time period as required by section 552.301(b), the board did not raise section 552.106 or section 552.107 until after the ten-business-day deadline had passed. Accordingly, we conclude the board failed to comply with the procedural requirements mandated by section 552.301 of the Government Code with respect to its claims under sections 552.106 and 552.107.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. Sections 552.106 and 552.107 of the Government Code are discretionary in nature. They serve to protect a governmental body’s interests and may be waived; as such, they do not constitute compelling reasons to withhold information. *See* Gov’t Code § 552.007; Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov’t Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, no portion of the submitted information may be withheld under section 552.106 or section 552.107 of the Government Code. However, we will consider the board’s timely-raised exception under section 552.146 for the submitted information.

Section 552.146 of the Government Code provides in relevant part:

(a) All written or otherwise recorded communications, including conversations, correspondence, and electronic communications, between a member of the legislature or the lieutenant governor and an assistant or employee of the [board] are excepted from [required public disclosure].

...

(c) This section does not except from required disclosure a record or memoranda of a communication that occurs in public during an open meeting or public hearing conducted by the [board].

Gov’t Code § 552.146. You state the information submitted as Exhibit 8 consists of communications between employees of the board and members of the Texas legislature or their employees. We understand the information at issue is held in confidence and does not

pertain to communications that occurred in open meetings or public hearings. Upon review, we conclude the board may withhold Exhibit 8 under section 552.146 of the Government Code. The board must release the remaining information.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 578320

Enc. Submitted documents

c: Requestor
(w/o enclosures)