



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 30, 2015

Mr. Matthew Cherry
Public Information Coordinator
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2015-20548

Dear Mr. Cherry:

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# 581425.

The Texas Alcoholic Beverage Commission (the "commission") received a request for information pertaining to a specified senate bill. You state the commission does not have information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under section 552.106 of the Government Code. We have received comments from a representative of the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.²

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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.

Section 552.106(a) of the Government Code protects a “draft or working paper involved in the preparation of proposed legislation[.]” *Id.* § 552.106. 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 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, and therefore, section 552.106 does not except from disclosure purely factual information. *See id.* at 2. However, a comparison or analysis of factual information prepared to support proposed legislation is within the ambit of section 552.106. *See id.* A proposed budget constitutes a recommendation by its very nature and may be withheld under section 552.106. *See id.*; *see also Hooten v. Enriquez*, 863 S.W. 2d 522 (Tex. App.—El Paso 1993, no writ) (commissioner’s court performs legislative function when it creates the budget for county’s offices and departments).

You state the submitted information consists of communications between commission employees and staff members of legislators pertaining to drafts of proposed and filed legislation. You explain in the communications commission employees analyzed drafts of legislation and proposed new language to legislation at the request of members of the legislature or analyzed factual information in preparation of proposed legislation. Upon review of your arguments and the submitted information, we find the commission has demonstrated the information consists of a draft or working paper involved in the preparation of proposed legislation. Accordingly, the commission may withhold the submitted information under section 552.106(a) of the Government Code.

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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 581425

Enc. Submitted documents

c: Requestor
(w/o enclosures)