



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 6, 2015

Mr. Jonathan Miles  
Open Government Attorney  
Texas Department of Family and Protective Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2015-20884

Dear Mr. Miles:

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# 582031 (DFPS ORR No. 07152015LWC).

The Texas Department of Family and Protective Services (the "department") received a request for all e-mails involving five named individuals discussing a specified topic.<sup>1</sup> You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.106 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you state, and we agree, that some of the requested information was the subject of previous requests for rulings, as a result of which this office issued Open Records Letter Nos. 2015-20323 (2015) and 2015-19472 (2015). In Open Records Letter No. 2015-20323, we determined the department: (1) may continue to rely on Open Records Letter No. 2015-19472 as a previous determination and withhold or release the information we previously ruled on in accordance with that ruling, (2) may withhold certain information

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<sup>1</sup>We note the requestor clarified her request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request). *See also* *City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

under section 552.107(1) of the Government Code, (3) may withhold certain information under section 552.111 of the Government Code, and (4) must release the remaining information. In Open Records Letter No. 2015-19472, we determined the department: (1) may withhold certain information under section 552.106 of the Government Code, (2) may withhold certain information under section 552.107(1) of the Government Code, (3) may withhold certain information under section 552.111 of the Government Code, and (4) must release the remaining responsive information. Thus, the department may continue to rely on Open Records Letter Nos. 2015-20323 and 2015-19472 as previous determinations, and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Next, we address the submitted information not encompassed by the previous rulings.

Section 552.106 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 at 1 (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. *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 does not except purely factual information from disclosure. *Id.* at 2. However, a comparison or analysis of factual information prepared to support proposed legislation is within the scope of section 552.106. *See* ORD 460 at 2.

You state the submitted information consists of discussions related to pending legislation involving department employees, employees of the Texas Department of Public Safety, and a representative of a senate committee. You also state this information concerns the promulgation of proposed legislation. Based on your representations and our review, we conclude the submitted information constitutes advice, opinion, recommendation, and analysis regarding proposed legislation. Therefore, the department may withhold the submitted information under section 552.106 of the Government Code.

In summary, the department may continue to rely on Open Records Letter Nos. 2015-20323 and 2015-19472 as previous determinations, and withhold or release the identical information in accordance with those rulings. The department may withhold the submitted information under section 552.106 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](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 'Tim Neal', written in a cursive style.

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/som

Ref: ID# 582031

Enc. Submitted documents

c: Requestor  
(w/o enclosures)