



January 5, 2000

Mr. Phillip E. Russell, P.E.
Director
Texas Turnpike Authority Division
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR2000-0021

Dear Mr. Russell:

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# 132048.

The Texas Turnpike Authority Division (the "division") of the Department of Transportation received a request from State Representative Glen Maxey for a copy of the "completed Preliminary Draft Environmental Impact Statement, as recently presented to the Federal Highway Administration, on proposed State Highway 130," as well as related information the division gave to that federal entity. You advise that the Federal Highway Administration has asked that the requested preliminary draft not be released in its current form. Moreover, you say that the division is concerned that the draft "may not even be a record of [the division] that we have authority to release (given [the Federal Highway Administration's] request that we not do so)." You also claim the preliminary draft is protected from disclosure by section 552.111 of the Government Code.

Section 552.008 of the Government Code provides in part:

- (a) This chapter does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.

(b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with this chapter if the requesting member, agency or committee states that the public information is requested under this chapter for legislative purposes. A governmental body, by providing public information under this section that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future. The governmental body may require the requesting individual member of the legislature, the requesting legislative agency or committee, or the members or employees of the requesting entity who will view or handle information that is received under this section and that is confidential under law to sign a confidentiality agreement that covers the information and requires that:

- (1) the information not be disclosed outside the requesting entity, or within the requesting entity for purposes other than the purpose for which it was received;
- (2) the information be labeled as confidential;
- (3) the information be kept securely; or
- (4) the number of copies made of the information or the notes taken from the information that implicate the confidential nature of the information be controlled, with all copies or notes that are not destroyed or returned to the governmental body remaining confidential and subject to the confidentiality agreement.

You contend that the requested information may not be subject to disclosure under section 552.008 because Representative Maxey in his request does not state that the information is requested under chapter 552 for legislative purposes. Representative Maxey's letter, written on Texas House of Representatives letter head, states that "I will use this information in my official capacity as a Texas State Representative." In our opinion, Representative Maxey's letter is sufficient to invoke the provisions of section 552.008.

As to your concern that the Federal Highway Administration does not want the requested preliminary draft released, you have not, in our opinion, established that federal law prohibits release of the information at issue to members of the legislature pursuant to section 552.008 such as to preempt the latter provision. We would note, too, that even if the information

could be shown to be “confidential” for purposes of release to the general public, an issue we need not resolve here, the information would still be available to Representative Maxey pursuant to section 552.008, although the division could require him to execute the confidentiality agreement provided for in the section. Finally, as to your concern that the information at issue “may not even be a record of [the division] that we have authority to release,” we think it apparent that the information “was collected, assembled, or maintained under a law or ordinance in connection with the transaction of official business . . . by” the division, and is thus public information held by the division which is subject to the act. *See* Gov’t Code § 552.002(a) (defining what is “public information” subject to the act). Thus, you must release the requested information to Representative Maxey.¹

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

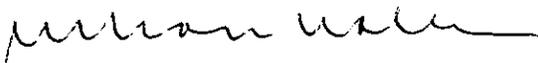
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

¹Given our disposition of this matter under section 552.008, we do not address your claim that the information is protected from public release by section 552.111, except to note that section 552.111 is not a confidentiality provision. *See e.g.* Open Records Decision No. 470 (1987) (predecessor provision to section 552.111 not a confidentiality provision).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 132048

cc: Honorable Glen Maxey
State Representative
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78701