



October 24, 2001

Mr. Michael D. Martin
City Attorney
City of Gilmer
P.O. Box 657
Gilmer, Texas 75644-0657

OR2001-4857

Dear Mr. Martin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153858.

The City of Gilmer (the "city") received a request for "a copy of the entire city of Gilmer 2001-02 budget proposal." You claim that the requested 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.

Section 552.106(a) protects a "draft or working paper involved in the preparation of proposed legislation." The purpose of the exception is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the legislative body and to thereby protect the internal "deliberative" or policy-making processes of a governmental body. Open Records Decision No. 460 (1987). Section 552.106 does not except purely factual material; rather, it excepts only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation. Section 552.106 applies only to drafts and working papers prepared by persons with some official responsibility to prepare them for the legislative body. *Id.*

You provide a copy of the city's charter provisions which place on the city manager the duty of preparing a city budget annually. You explain that the city manager has delivered to each city councilman a draft of his proposed annual budget during several recent budget workshops. You state that these drafts are a work in progress, and have changed a number

of times during the workshops. You also state that the draft does not constitute the "entire City of Gilmer 2001-02 budget proposal."

Having reviewed your arguments and the information at issue, we conclude that, as you indicate that the budget estimate is at this time not complete, you may withhold the information from the requestor under section 552.106(a). See Open Records Decision No. 460 (1987) (city's proposed budget protected by predecessor provisions to section 552.106(a)). However, to the extent a proposed budget item has been revealed to the public during the city council meetings, the city has waived the protection of section 552.106. Cf. Open Records Decision No. 435 at 4 (1986) (denying section 552.111 to the extent information has been publicly disclosed). Furthermore, on completion of the budget proposal, the information is public. See Gov't Code § 552.022(a)(5) (making exceptions to disclosure inapplicable to all information used to estimate the need for or expenditure of public funds or taxes, on completion of estimate).

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).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 153858

Enc. Submitted documents

c: Ms. Carmen M. Henderson
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(w/o enclosures)