OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

May 29, 2002

Mr. Steven D. Monté
Assistant City Attorney
City of Dallas
2014 Main Street, Room 501
Dallas, Texas 75201

OR2002-2883

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163597.

The Dallas Police Department (the "department") received a request for copies of any legislative proposals submitted by the department. 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 have reviewed the submitted information.

Section 552.106(a) of the Government Code protects a "draft or working paper involved in the preparation of proposed legislation." Section 552.106 ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. 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, it does not except from disclosure purely factual information. *Id.* at 2. Rather, section 552.106 excepts only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation. *Id.* However, a comparison or analysis of factual information prepared to support proposed legislation is within the ambit of section 552.106. *Id.* at 2.

You have submitted information that "contains policy judgments, recommendations, and proposals involved in the preparation of proposed legislation . . . related to the Vice section" of the department. We note that the department is neither a subordinate nor advisor of a legislative body nor a person with a responsibility to prepare information and proposals for

a legislative body. However, the department has prepared documents suggesting amendments to the Texas Civil Statutes, Texas Penal Code, and Texas Alcoholic Beverage Code that it would like the legislature to consider. The department's proposed legislation in this instance impacts its primary function as a law enforcement agency. *See* Open Records Decision Nos. 460 (1987) (because city charter directs city manager to present budget proposals to city council, which is a legislative body, statutory predecessor to section 552.106 applies), 367 (1983) (statutory predecessor of section 552.106 applies to except Texas State Board of Public Accountancy's recommendations for amendments to Public Accountancy Act), 344 (1982) (information held by State Property Tax Board concerning ad valorem taxation by school districts that was prepared to support proposed legislation arguably may be within exception). We thus conclude that in this instance, with the exception of some factual information that we have marked, you may withhold the requested information under section 552.106.

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).

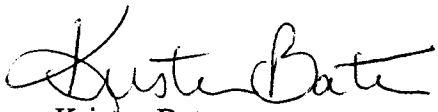
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 163597

Enc. Submitted documents

c: Ms. Linda Neel
President
Bachman/Northwest Highway Community Association
P.O. Box 542167
Dallas, Texas 75354
(w/o enclosures)