



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2005

The Honorable Todd Baxter
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

OR2005-06693

Dear Representative Baxter:

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# 228831.

You received a request for communications and other information relating to (1) open records, the pursuit of public information from school districts, advocacy by parents regarding transparency and/or accountability for school districts, and related matters; (2) House Bill 2264; (3) current law and/or practice regarding charges for open records; and (4) proposed changes or plans for future legislation that will impact accountability and/or transparency of public information.¹ You inform us that you have released some of the requested information. You have submitted information that you claim is excepted from disclosure under sections 552.106 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted. We also have considered the comments that we received from the requestor. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

¹We understand that the requestor spoke with your office and clarified and narrowed this request for information. *See* Gov't Code § 552.222(b); Open Records Decision No. 663 at 2-5 (1999). We also understand that this is one of six requests that you received from this requestor. You indicate that you have withheld some of the requested information under section 306.004 of the Government Code. *See* Gov't Code § 306.004; Open Records Decision No. 648 at 3 (1996) (information encompassed by chapter 306 of the Government Code may be released only as that chapter provides and does not fall within the scope of chapter 552 of the Government Code).

Section 552.106 excepts from public disclosure “[a] draft or working paper involved in the preparation of proposed legislation[.]” Gov’t Code § 552.106(a). Section 552.106 resembles section 552.111 in that both of these exceptions protect advice, opinion, and recommendation on policy matters, in order to encourage frank discussion during the policymaking process. *See* Open Records Decision No. 460 at 3 (1987). However, section 552.106 applies specifically to the legislative process and thus is narrower than section 552.111. *Id.* 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 who have an official responsibility to provide such information to members of the legislative body. *Id.* at 1; *see also* Open Records Decision Nos. 429 at 5 (1985) (statutory predecessor to Gov’t Code § 552.106 not applicable to information relating to governmental entity’s efforts to persuade other governmental entities to enact particular ordinances), 367 at 2 (1983) (statutory predecessor applicable to recommendations of executive committee of State Board of Public Accountancy for possible amendments to Public Accountancy Act). Furthermore, section 552.106 does not protect purely factual information from public disclosure. *See* Open Records Decision No. 460 at 2; *see also* Open Records Decision No. 344 at 3-4 (1982) (for purposes of statutory predecessor, factual information prepared by State Property Tax Board did not reflect policy judgments, recommendations, or proposals concerning drafting of legislation). However, a comparison or analysis of factual information prepared to support proposed legislation is within the scope of section 552.106. *See* Open Records Decision No. 460 at 2.

You inform us that the information submitted as Exhibits B and C was prepared by your staff for your use. You state that Exhibit B reflects opinions, policy judgments, and analysis of information concerning proposed legislation. You state that Exhibit C is a comparison of factual information prepared to support proposed legislation. Based on your representations and our review of the information at issue, we find that Exhibits B and C fall within the scope of section 552.106 of the Government Code and may be withheld under that exception. As we are able to make this determination, we do not address section 552.111.

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).

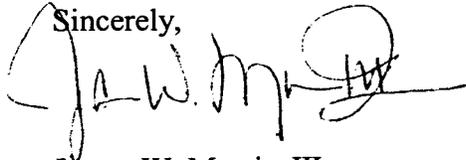
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read 'J.W. Morris III', with a large, stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 228831

Enc: Submitted documents

c: Ms. Dianna Pharr
2204 Westlake Drive
Austin, Texas 78746
(w/o enclosures)