



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2005

Ms. Annette Graves
Senate Finance Committee
79th Legislature
Capitol Extension, Room E1.038
Austin, Texas 78711

OR2005-10450

Dear Ms. Graves:

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# 236577.

The Senate Finance Committee (the "committee") received a request for "[a]ll records of any nature involving the issue of alcohol taxes as part of the school finance subject considered in the 79th Regular Session and subsequent special sessions[.]" to include two specific categories of information. You state that you have provided the requestor with a portion of the requested information. You also inform us that the committee has withheld from the requestor certain confidential constituent correspondence pursuant to sections 306.003 and 306.004 of the Government Code.¹ You claim that the remaining requested information is excepted from disclosure under sections 552.106 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

¹Release of information subject to section 306.003(a) or 306.004(a) of the Government Code is governed by chapter 306, not the Act, and it is within the discretion of a legislator to either withhold or release such information.

²We note that you have submitted what you characterize as representative examples of five categories of information you have labeled Exhibits A, B, C, D, and E. See Gov't Code 552.301(e)(1)(D) (providing that a governmental body is required to submit to this office within fifteen business days of receiving an open

Section 552.106 of the Government Code 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 section 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 have submitted as responsive to the request Exhibits A, B, C, D and E, which you state contain, respectively, legislative drafting instructions, spreadsheets with commentary relating to proposed school finance legislative amendments, legislative working papers used in formulating legislative proposals, intra-agency memoranda regarding a specific school finance proposal, and a draft revenue proposal with fiscal analysis. You state that these documents consist of policy judgments, proposals, and fiscal recommendations concerning school finance legislation. You further state that any factual information contained in the submitted documents is necessary to support and illustrate such policy judgments, proposals and recommendations. Based on your representations and our review of the information at issue, we find that the submitted information falls within the scope of section 552.106 of the

records request a copy of the specific information requested or representative samples if the requested information is voluminous, labeled to indicate which exceptions apply to which parts of the documents). We also note, however, that you have submitted all of the documents for each exhibit for which you state you have submitted a representative example. Therefore, as you have submitted all of the responsive information, we will consider your raised exceptions for all of the submitted information.

Government Code and may be withheld under that exception. As we are able to make this determination, we do not address your arguments under 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); *Texas 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 Office of the Attorney General 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 236577

Enc. Submitted documents

c: Mr. Jim Haire
5801 Regents Road
Tyler, Texas 75703
(w/o enclosures)