



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2007

Ms. Sarah Irwin Swanson
Deputy Director of General Law
Public Utility Commission of Texas
P.O. Box 13326
Austin, TX 78711

OR2007-08618

Dear Ms. Swanson:

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# 283131.

The Public Utility Commission of Texas (the "commission") received a request for a specified document regarding projected eligibility numbers and expenditures for the System Benefit Fund. You claim that the 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.

Initially, you state that the commission does not have the document the requestor seeks. You also state, however, that the information the requestor seeks is contained within a fiscal note prepared by the commission. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, a governmental body need not take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds information on behalf of the governmental body that received the request for it. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request to information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). As you have identified and submitted the fiscal note prepared by the commission that contains the information the requestor seeks, we will determine whether you must release this information to the requestor.

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 ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. *See* Open Records Decision No. 460 at 1 (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. *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 does not except purely factual information from disclosure. *Id.* at 2. However, a comparison or analysis of factual information prepared to support proposed legislation is within the scope of section 552.106. *See* ORD 460 at 2.

You state that the submitted information is a fiscal analysis that was prepared by the commission in response to the Legislative Budget Board’s request that state agencies provide assistance in making cost estimates related to a specific bill. *See* Gov’t Code § 301.028(b) (requiring the commission to assist any legislative committee that requests assistance). Based on these representations and our review, we conclude that the commission may withhold the information at issue under section 552.106. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Loan Hong-Turney
Assistant Attorney General
Open Records Division

LH/jb

Ref: ID# 283131

Enc. Submitted documents

c: Mr. Randall Chapman
Texas Legal Services Center
815 Brazos, Suite 1100
Austin, Texas 78701
(w/o enclosures)