



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 4, 2007

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

OR2007-11446

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# 288177.

The Public Utility Commission of Texas (the "commission") received a request for all communications received from elected public officials and their staff for a specified time period. You state that you have released the majority of the requested information. You claim, however, that the submitted 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 of the Government Code excepts from disclosure "[a] draft or working paper involved in the preparation of proposed legislation[.]" Gov't Code § 552.106(a). 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. Open Records Decision No. 460 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* ORD 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* ORD 460 at 2.

You inform us that the information at issue consists of policy judgments, recommendations, analyses, and proposals by the commission regarding proposed legislation. You state that the information reflects the seeking or giving of advice by the commission made in response to requests of legislative staff, the Office of the Lieutenant Governor, and the Office of the Governor. *See* Gov't Code § 301.028(b) (requiring the commission to assist any legislative committee that requests assistance). Based on your representations and our review of the submitted information, we find that the commission may withhold the information at issue under section 552.106 of the Government Code.

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,



Chanita Chantaplin-McLelland  
Assistant Attorney General  
Open Records Division

CC/jb

Ref: ID# 288177

Enc. Submitted documents

c: Mr. Randall Chapman  
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(w/o enclosures)