



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2007

Mr. Warren Chisum
State Representative
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

OR2007-15028

Dear Mr. Chisum:

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# 293570.

Representative Chisum (the "representative") received a request for the following categories of information: 1) any correspondence between a named individual and the representative, or the representative's staff between January 1, 2006 and the present, regarding the Religious Viewpoints Anti-discrimination Act, House Bill 3678; 2) any documents which relate to the drafting, content or policy associated with House Bill 3678; and 3) any documents which relate to a claim by a named individual that he is the author of the Texas Schoolchildren's Religious Liberties Act/Religious Viewpoints Anti-discrimination Act. You state that you have no information responsive to categories one and three of the request.¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

You assert that the submitted information is excepted from disclosure under section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. The legislative privilege, also known as legislative immunity, generally shields legislative actors from being required to testify about their legislative activities.² *In re Perry*, 60 S.W.3d 857, 860 (2001); *see, e.g., Gravel v. U.S.*, 408 U.S. 606, 615-16 (1972) (senator not required to answer questions about events that occurred in senate subcommittee meeting); *see also Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (legislators “should be protected not only from the consequences of litigation’s results but also from the burden of defending themselves”). As such, it is a privilege against testifying in discovery or trial. In Open Records Decision No. 575 at 1 (1990), this office determined that discovery privileges are not covered under the statutory predecessor of the Act. Thus, the representative may not withhold any of the submitted information under section 552.101 in conjunction with legislative immunity.

Section 552.111 of the Government Code excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” Gov’t Code § 552.111. In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Dep’t of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). An agency’s policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5.

You state that the submitted information is an internal communication between the representative’s office and the office of Representative Howard that consists of advice, opinions, and recommendations regarding proposed legislation. Based upon your representations and our review of the submitted information, we agree that some of the submitted information pertains to advice, opinion, and recommendations concerning policy matters. Accordingly, the representative may withhold the information we have marked

²The legislative privilege also refers to a legislator’s immunity from civil liability, immunity from arrest, and legislative continuances. *E.g.*, Tex. Const. art. III, § 14 (senators and representatives generally privileged from arrest while traveling to or attending legislative sessions); Civ. Prac. & Rem. Code § 30.003 (court must grant continuance if attorney is a legislative member and will be attending legislative session); *Perry*, 60 S.W.3d at 859 (immunity from civil liability).

pursuant to section 552.111 of the Government Code. However, the remaining information does not consist of advice, opinion or recommendation for section 552.111 purposes. Accordingly, none of the remaining information may be withheld on this basis. As you raise no further exceptions to disclosure, the remaining information must be released to the requestor.

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,

A handwritten signature in black ink, appearing to read "Amy Shipp". The signature is fluid and cursive, with the first name "Amy" and last name "Shipp" clearly distinguishable.

Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/mcf

Ref: ID# 293570

Enc. Submitted documents

c: Mr. Vince Leibowitz
1110 Dawn Drive
Mineola, Texas 75773
(w/o enclosures)