



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 19, 2008

Mr. John Danner  
Assistant City Attorney  
Office of the City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2008-12946

Dear Mr. Danner:

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# 322461.

The City of San Antonio (the "city") received a request for information pertaining to the city's compliance with the Americans with Disabilities Act in relation to curb ramps and side walks, including: the city's transition plan; sidewalk information collected by HVJ Associates, Inc.; studies or analysis of the city sidewalk system as it pertains to compliance with the ADA; and a list of all streets that have been altered or modified, and the modifications made, over a particular period of time. 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, we note that you have submitted only a draft document. To the extent any additional responsive information existed at the time the city received this request for information, we assume that the city has released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).*

Section 552.106 of the Government Code excepts from disclosure “[a] draft or working paper involved in the preparation of proposed legislation” and “[a]n internal bill analysis or working paper prepared by the governor’s office for the purpose of evaluating proposed legislation.” Gov’t Code § 552.106. Section 552.106 ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. Open Records Decision No. 460 (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, and therefore, it does not except from disclosure purely factual information. *Id.* at 2. However, a comparison or analysis of factual information prepared to support proposed legislation is within the ambit of section 552.106. *Id.* A proposed budget constitutes a recommendation by its very nature and may be withheld under section 552.106. *Id.* This office has also concluded that the drafts of municipal ordinances and resolutions which reflect policy judgments, recommendations, and proposals are excepted by section 552.106. Open Records Decision No. 248 (1980).

You inform us that the submitted information consists of a draft of a resolution to be acted upon by city council. You also state that the submitted draft “represents the ‘deliberative process’ in the wording and content of an ordinance or resolution.” Based on your representations and our review of the submitted information, we agree that the city 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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,

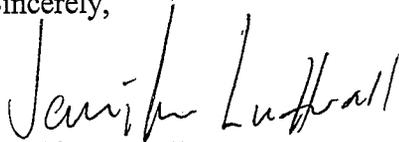
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

Ref: ID# 322461

Enc. Submitted documents

c: Mr. Edward I. Zwilling  
Schwartz Zweben & Slingbaum, LLP  
600 Vestavia Parkway, Suite 251  
Birmingham, Alabama 35216  
(w/o enclosures)