



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 1, 2010

Mr. James G. Nolan  
Assistant General Counsel  
Open Records Section  
Texas Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2010-07920

Dear Mr. Nolan:

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# 381371 (CPA ORTS# 6240959161).

The Comptroller of Public Accounts (the "comptroller") received four requests from the same requestor for any communications mentioning or pertaining to the Department of Public Safety's Driver Responsibility program and any record assessing in whole or in part the financial implications of instituting an incentive, amnesty, and indigency program for the Driver Responsibility program. You state you have provided some information to the requestor. You claim that the submitted 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.

Section 552.106(a) excepts from required public disclosure "[a] draft or working paper involved in the preparation of proposed legislation[.]" Gov't Code § 552.106(a). Section 552.106(a) 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 this exception is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body; therefore, section 552.106 encompasses only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation and does not except purely factual information from public disclosure. *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.*

You state that the documents you have marked consist of communications between the comptroller's Chief Estimator, the legislative budget board, the sunset commission, and senate staff and contain preliminary recommendations and opinions relating to the fiscal implications of floor amendments to CSHB 2370, in the 81<sup>st</sup> Legislative Session. You assert that the parties involved in these communications share a privity of interest because they are state entities communicating for the purpose of reviewing legislation and making recommendations. Upon review, we find the information we have marked consists of draft and working papers prepared for legislative review. Based on these representations and our review, we conclude that the comptroller may withhold the information we have marked under section 552.106 of the Government Code. You have not demonstrated, however, how the remaining information you seek to withhold under section 552.106 constitutes drafts or working papers involved in the preparation of proposed legislation; therefore, the remaining information may not be withheld on this basis. As you raise no further exceptions to the disclosure of this information, it must be released.

You assert the remaining information is excepted from disclosure under the deliberative process privilege encompassed by section 552.111 of the Government Code. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5.

This office has also concluded a preliminary draft of a document intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

You state the remaining information consists of a draft document that was prepared by Revenue Estimating staff and contains numerical data subject to verification and change

upon review by the Chief Estimator. You state the information was used in preparation of a fiscal note for floor amendments to House Bill 2370, which was released to the public in its final form. Based on your representations and our review, we conclude the comptroller may withhold the remaining information under section 552.111 of the Government Code.

In summary, the comptroller may withhold the information we have marked under section 552.106 of the Government Code. The comptroller may withhold the draft document under section 552.111 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/dls

Ref: ID# 381371

Enc. Submitted documents

c: Requestor  
(w/o enclosures)