



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2011

Ms. Patsy Spaw
Secretary of the Senate
Texas Senate
P.O. Box 12068
Austin, Texas 78711

OR2011-07559

Dear Ms. Spaw:

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# 419057.

The Texas Senate (the "senate") received a request for all staff-prepared, internal bill analyses of the 82nd Legislature submitted by senate members to a committee in anticipation of a public hearing.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.106, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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

¹We note that the senate sought and received clarification regarding the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

from being required to testify about their legislative activities.² *Perry*, 60 S.W.3d 857, 860; *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 senate may not withhold any of the submitted information under section 552.101 in conjunction with legislative immunity.

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 the information at issue was prepared directly and entirely for the purpose of enacting legislation, including communicating a senator’s policy judgments and analysis regarding his or her legislation to the chair of the senate committee to which the legislation is referred. You state that at the time these documents were created and used, the bills to which they relate were still “proposed legislation” within the legislative process, and subject to amendment or revision before consideration by the committee. You state the information at issue was never made public or distributed to any person beyond the authoring senator and the respective chair of committee and appropriate members of their staffs. Upon review, we find the information we have marked constitutes advice, opinion, analysis, and recommendation regarding proposed legislation. Therefore, the senate may withhold this information under section 552.106 of the Government Code. However, we find you have failed to demonstrate how the remaining information at issue constitutes advice, opinion, analysis, or recommendations regarding proposed legislation. Accordingly, the senate may not withhold any of the remaining information under section 552.106 of the Government Code.

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); *In re Perry*, 60 S.W.3d at 859 (2001) (immunity from civil liability).

You also 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.

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 that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982). When determining if an interagency memorandum is excepted from disclosure under section 552.111, we must consider whether the agencies between which the memorandum is passed share a privity of interest or common deliberative process with regard to the policy matter at issue. *See* Open Records Decision No. 561 at 9 (1990).

We note, the remaining information consists of general administrative information that does not relate to policymaking or information that is purely factual in nature. Upon review, we find you have failed to demonstrate that the remaining information consists of advice, recommendations, or opinions that pertain to policymaking. Accordingly, the remaining information is not excepted from disclosure under section 552.111 and it may not be withheld on that basis.

In summary, the senate may withhold the information we have marked under section 552.106 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, 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/em

Ref: ID# 419057

Enc. Submitted documents

c: Requestor
(w/o enclosures)