



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2012

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

OR2012-04017

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# 449220.

The Texas Senate (the “senate”) received a request for thirty-six categories of information pertaining to certain changes in, or certain issues with, specified legislation, amendments, or proposed amendments. You state you have released some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.106 and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

You assert that the information at issue is excepted from disclosure under section 552.106 of the Government Code, which 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 protects advice, opinion, and recommendation on policy matters in order to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body. *See* Open Records Decision No. 460 at 3 (1987). Therefore, section 552.106 is applicable only to the policy judgments, recommendations, and proposals of persons who are involved in the preparation

¹Although you raise sections 552.101 and 552.103 of the Government Code, you make no arguments to support these exceptions. Accordingly, we understand the senate no longer asserts these exceptions. *See* Gov’t Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested).

of proposed legislation and who have an official responsibility to provide such information to members of the legislative body. *Id.* at 1. Section 552.106 does not protect purely factual information from public disclosure. *See id.* at 2; *see also* Open Records Decision No. 344 at 3-4 (1982). 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 for the purpose of developing and communicating policy judgments and analysis regarding the legislation.” You also 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 explain the information at issue was never made public or distributed to any person beyond the Office of the Governor, staff of the office of the Texas Comptroller of Public Accounts, staff of legislative members and legislative committees, and staff of the senate and Texas Legislative Council. Upon review, we find the information at issue constitutes advice, opinion, analysis, and recommendation regarding proposed legislation. 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. Therefore, the senate may withhold the information we have marked under section 552.106 of the Government Code.²

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 449220

Enc. Submitted documents

c: Requestor
(w/o enclosures)