



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2012

**Ms. Jordan Hale
Assistant Attorney General
Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548**

OR2012-12723

Dear Ms. Hale:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 461958 (PIR No. 12-33452).

The Office of the Attorney General (the "OAG") received a request for the e-mails the State of Texas produced in discovery in the redistricting litigation. The OAG released most of the information, including Exhibit D because the Office of the Comptroller of Public Accounts does not object to release of Exhibit D. The OAG asserts the remaining information is excepted from public disclosure under sections 552.101, 552.106, and 552.107(2) of the Government Code. We have considered the OAG's assertions and reviewed the submitted sample of information.¹

Section 552.107(2) provides information is excepted from disclosure if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). The OAG argues a court has prohibited disclosure of the information at issue. The OAG submitted the court

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

order, which provides “Texas will produce under seal all documents as to which it claims a legislative privilege.” While requiring certain documents to be produced to the court under seal, the order does not prohibit release of the documents in any other context. Thus, we conclude the OAG may not withhold the information pursuant to section 552.107(2).

Next, the OAG asserts section 552.106 excepts some of the documents from public disclosure. Section 552.106 excepts from disclosure “[a] draft or working paper involved in the preparation of proposed legislation.” *Id.* § 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. Rather, section 552.106 only protects advice, opinions, and recommendations involved in the preparation of proposed legislation. *Id.* Upon review of the documents in Exhibit B for which the OAG asserts is excepted from disclosure under section 552.106, we conclude they contain mostly factual information. Thus, the OAG may withhold only the opinion and recommendation we marked under section 552.106. The OAG must release the remaining information in these documents.

Lastly, we consider the OAG’s section 552.101 assertion for the remaining document in Exhibit B. Section 552.101 of the Government Code 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 that other statutes make confidential. Section 323.017 of the Government Code provides:

Communications, including conversations, correspondence, and electronic communications, between a member of the legislature or the lieutenant governor and an assistant or employee of the [Texas Legislative Council (the “council”)] that relate to a request by the official for information, advice, or opinions from an assistant or employee of the council are confidential. Information, advice, and opinions given privately by an assistant or employee of the council to a member of the legislature, or the lieutenant governor, acting in the person’s official capacity, are confidential. However, the member or lieutenant governor may choose to disclose all or a part of the communications, information, advice, or opinions to which this section applies, and such a disclosure does not violate the law of this state.

Id. § 323.017. The document at issue consists of communications between a legislator’s staff member and a council employee relating to the staff member’s request for information, advice, or opinion from the council employee regarding redistricting. Thus, the document is confidential under section 323.017 of the Government Code, and the OAG must withhold it under section 552.101.

In summary, the OAG must withhold the document it marked as confidential under section 323.017 of the Government Code pursuant to section 552.101. The OAG may withhold the information we marked under section 552.106 but must release the remaining information in Exhibit B.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 461958

Enc: Marked documents

c: Requestor
(w/o enclosures)