



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2012

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

OR2012-12931

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# 460989.

The Texas Senate (the "senate") received a request for communications between Senator Wendy Davis (the "senator's office") and three specified public agencies. You claim the submitted information is exempted 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.

Section 552.106(a) of the Government Code exempts 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 resembles section 552.111 in that both exceptions protect advice, opinion, and recommendation on policy matters, in order to encourage frank discussion during the policymaking process. *See* Open Records Decision No. 460 at 3 (1987). However, section 552.106 applies specifically to the legislative process and thus is narrower than section 552.111. *Id.* 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. *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 of proposed legislation and who have an official responsibility to provide such information to members of the legislative

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).

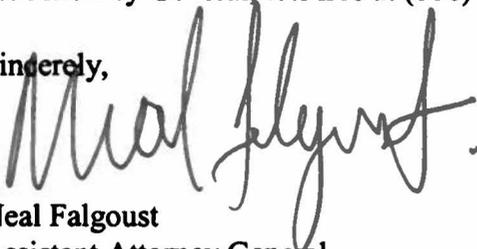
body. *Id.* at 1. Section 552.106 does not protect purely factual information from public disclosure. *See id.* at 2; *see also* Open Records Decision No. 344 at 3–4 (1982) (for purposes of statutory predecessor, factual information prepared by State Property Tax Board did not reflect policy judgments, recommendations, or proposals concerning drafting of legislation). However, a comparison or analysis of factual information prepared to support proposed legislation is within the scope of section 552.106. ORD 460 at 2.

You explain the submitted e-mails consist of communications between the senator's office and the Texas Department of Transportation (the "department") regarding the development of proposed legislation related to the department. You explain the proposed legislation at issue was being drafted by the senator's office at the time of the communications and the purpose of the communications was to provide the senator's office with advice and recommendations. You state the communications were never made public or distributed to any person beyond the senator's office and the department. Upon review, we find the submitted information constitutes advice, opinion, analysis, and recommendation regarding proposed legislation. The parties involved in these communications share a privity of interest because they are representatives of state entity and a member of a legislative body communicating for the purpose of reviewing legislation and making recommendations. Therefore, the senate may withhold the submitted information 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

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²As our ruling is dispositive, we do not address your remaining claimed exception.

Ref: ID# 460989

Enc. Submitted documents

**c: Requestor
(w/o enclosures)**