



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2014

Ms. Amy L. Sims
Assistant City Attorney
Office of the City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2014-11744

Dear Ms. Sims:

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# 528899 (City Request No. 952).

The City of Lubbock (the "city") received a request for all e-mails sent from the city's police chief to any members of the city's police department (the "department") for a specified time period containing any of three specified terms. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.106 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, including all of Exhibit C, is not responsive to the present request for information because it either does not consist of e-mails sent from the city's police chief to members of the department or it does not contain any of the three terms specified in the request. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release such information in response to this request. Accordingly, we need not address your argument under section 552.101 of the Government Code.

Next, we note some of the responsive information is subject to section 552.022 of the Government Code. Section 552.022(a)(5) provides for the required public disclosure of "all working papers, research material, and information used to estimate the need for or

expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]" unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(5). The submitted budget detail justification spreadsheet is subject to section 552.022(a)(5) and must be released unless it is confidential under the Act or other law. Although you assert this information is excepted from disclosure under section 552.106 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold this information, which we have marked, under section 552.106. We will address your argument under section 552.106 for the remaining responsive information that is not subject to section 552.022.

Section 552.106 of the Government Code excepts from disclosure "[a] draft or working paper involved in the preparation of proposed legislation" and "[a]n internal bill analysis or working paper prepared by the governor's office for the purpose of evaluating proposed legislation[.]" Gov't Code § 552.106(a), (b). 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. However, a comparison or analysis of factual information prepared to support proposed legislation is within the ambit of section 552.106. *Id.* A proposed budget constitutes a recommendation by its very nature and may be withheld under section 552.106. *Id.* Section 552.106 protects only policy judgments, advice, opinions, and recommendations involved in the preparation or evaluation of proposed legislation; it does not except purely factual information from public disclosure. *See id.*

You explain the information at issue in Exhibit B consists of the working documents and internal discussions regarding the proposed budget for the department. You state the proposed budget must be approved by the city council as part of the entire city budget and the mechanism for approving the proposed budget is the passage of an ordinance. You further state the proposed budget is currently under review by the city manager and has not been presented to the city council. Based upon your representations and our review, we agree the information we have marked constitutes advice, opinion, analysis, and recommendations regarding the proposed budget. Therefore, the city may withhold the information we have marked under section 552.106 of the Government Code. However, we find you have failed to demonstrate how the remaining responsive information in Exhibit B consists of advice, opinion, analysis, or recommendations for the purposes of section 552.106. Accordingly, we conclude the city may not withhold the remaining responsive information on that basis. As you raise no further exceptions to disclosure, the city must release the remaining responsive information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 528899

Enc. Submitted documents

c: Requestor
(w/o enclosures)