



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 9, 2016

Mr. Jon Heining
General Counsel
Texas Legislative Council
P.O. Box 12128, Capitol Station
Austin, Texas 78711-2128

OR2016-10456

Dear Mr. Heining:

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# 609405.

The Texas Legislative Council (the "council") received a request for information pertaining to specified statutes and "the sale by any entity of alcohol on-premises for off-premises consumption." You state the council has released some of the requested information. You claim the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under sections 552.101, 552.106, 552.107, and 552.111 of the Government Code.¹ We have considered your submitted arguments and reviewed the submitted representative sample of information.²

¹Although you do not raise section 552.107 of the Government Code in your brief, we understand you to raise this exception based on the substance of your arguments. Further, although you raise section 552.101 of the Government Code in conjunction with section 552.107, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

²We 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.

Initially, we address the council's assertion the submitted information is not subject to the Act because it is not "public information." The Act applies only to public information. *See* Gov't Code §§ 552.021, 552.221. Section 552.002 of the Act defines "public information" as the following:

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). Section 552.002(a-1) also provides the following:

Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

Id. § 552.002(a-1). Thus, virtually all information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You argue, pursuant to section 323.018 of the Government Code, the requested records are not subject to the Act because they are not public information for the purposes of section 552.002. Section 323.018 provides, "[r]ecords relating to requests of council staff for the drafting of proposed legislation or for assistance, information, advice, or opinion are not public information." Gov't Code § 323.018. After review of your arguments, we find you have failed to demonstrate section 323.018 removes the information covered by this section from the scope of the Act's provision defining public information. *See id.* § 552.002(a). You inform us the

information at issue relates to requests by members of the legislature to the council for the drafting of legislation. Based on this representation, we conclude the submitted records are collected, assembled, and maintained by the council in connection with the transaction of its official business. *See id.* Therefore, the submitted information constitutes public information subject to the Act and may only be withheld if an exception to disclosure under the Act applies. Accordingly, we will address your arguments to withhold the submitted information under the Act.

You assert the submitted information is excepted 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.” *Id.* § 552.101. This section encompasses section 323.018. You state the submitted information consists of legislative working files created specifically for the purpose of assisting the legislature in preparing proposed legislation. Based on this representation, we agree the submitted information is confidential under section 323.018 of the Government Code. Therefore, the council must withhold the submitted information under section 552.101 of the Government Code on that ground.³

Although the council requests a previous determination regarding sections 323.017 and 323.018 of the Government Code, we decline to issue one at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bw

³As our ruling is dispositive, we do not address the council’s other arguments to withhold this information.

Ref: ID# 609405

Enc. Submitted documents

c: Requestor
(w/o enclosures)