



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 15, 2016

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

OR2016-18384

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# 623582.

The Office of Senator Van Taylor (the "senator's office") received a request for (1) all records containing specified terms over a specified period of time, (2) all communications received from named parties, (3) all documents delivered to the senator's office by a named individual or on behalf of a specified third party, and (4) all other records of communications between the senator's office, a named individual, and a specified third party. You assert some of the requested information is not subject to the Act. Further, you claim the submitted information is exempted from disclosure under sections 552.101, 552.106, and 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.0038(c) of the Government Code provides that a governmental entity that maintains records of a participant in a retirement system's retirement program in cooperation with or on behalf of a retirement system is not required to accept or comply with a request for such information or to seek an opinion from the attorney general because the records are exempt from the provisions of the Act. *See* Gov't Code § 552.0038(c). Therefore, to the extent the requested information consists of records of a participant in a retirement system's retirement program maintained in cooperation with or on behalf of a retirement system, the information is not subject to the Act, and the senator's office is not required to release it in

response to the request. However, to the extent the requested information does not consist of records of a participant in a retirement system's retirement program maintained in cooperation with or on behalf of a retirement system, we will consider your arguments against disclosure.¹

Section 552.106(a) of the Government Code excepts from required public disclosure “[a] draft or working paper involved in the preparation of proposed legislation[.]” *Id.* § 552.106(a). Section 552.106(a) ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. *See* Open Records Decision No. 460 at 1 (1987). The purpose of this exception is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body. Therefore, section 552.106 encompasses only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation and does not except purely factual information from public disclosure. *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.*

You explain the submitted information consists of working papers involved in the preparation of proposed legislation by the senator's office. You explain the working papers contain analysis and descriptions of proposed legislation, including policy advice, judgments, and recommendations. You explain at the time the information at issue was created and used, the legislation to which the information relates was being drafted or was already filed in the legislative process. You state the information at issue was never made public or distributed to any person beyond the senator's office. Upon review, we agree the submitted information constitutes advice, opinion, analysis, and recommendation regarding proposed legislation. Therefore, the senator's office 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.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

¹As our ruling is dispositive, we need not address the senator's office's remaining arguments against disclosure of this information.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

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, appearing to read "Ian Lancaster". The signature is fluid and cursive, with the first name "Ian" being more prominent than the last name "Lancaster".

Ian Lancaster
Assistant Attorney General
Open Records Division

IML/akg

Ref: ID# 623582

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)