



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 6, 2017

Mr. David D. Duncan  
General Counsel  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, Texas 78731

OR2017-07272

Dear Mr. Duncan:

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# 652053 (ID: 17-01-072).

The Texas Department of Motor Vehicles (the "department") received a request for all specified draft legislation prepared by the department and specified documents prepared for a specified individual. You state you have released some information to the requestor. 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 representative sample of information.<sup>1</sup>

Section 552.106 of the Government Code excepts from disclosure "[a] draft or working paper involved in the preparation of proposed legislation[.]" Gov't Code § 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

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<sup>1</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

body. *Id.* at 2. 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 body. *Id.* 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. *See* ORD 460 at 2.

You inform us the submitted information consists of drafts of legislation prepared in response to inquiries from legislators pertaining to legislation affecting industries regulated by the department and discussions between the department, the Texas Department of Transportation, and other legislative staff related to the drafts of legislation. Upon review, we find the information we marked constitutes advice, opinion, analysis, and recommendations regarding proposed legislation related to the department. Therefore, the department may withhold the information we marked under section 552.106 of the Government Code.<sup>2</sup> However, we find the department has failed to demonstrate the applicability of section 552.106 to the remaining information. Therefore, we conclude the department may not withhold any of the remaining information under section 552.106 of the Government Code.

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. Section 552.101 encompasses section 323.018 of the Government Code, which relates to interactions between the Texas Legislative Council (the “council”) and certain government officials. 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.” *Id.* § 323.018. You assert the remaining information is confidential under section 323.018 of the Government Code. However, we find the department has failed to demonstrate the remaining information relates to requests of council staff for the drafting of proposed legislation or for assistance, information, advice, or opinion. Accordingly, the department may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 323.018 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

address is of a type specifically excluded by subsection (c).<sup>3</sup> *See id.* § 552.137(a)-(c). Accordingly, the department must withhold the personal e-mail addresses, which we marked, under section 552.137, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. *See id.* § 552.137(b).

In summary, the department may withhold the information we marked under section 552.106 of the Government Code. The department must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. The department must release the remaining 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](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,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/bw

Ref: ID# 652053

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).