



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 20, 2017

Mr. Eric K. Miller  
Assistant General Counsel  
Office of the General Counsel, TDCJ  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2017-16311

Dear Mr. Miller:

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# 666905 (TDCJ#AL0012).

The Texas Department of Criminal Justice (the "department") received a request for all e-mails sent from a named individual's e-mail account during a specified time period. You provide documentation showing you notified the State Auditor's Office (the "SAO") of the request for information and of its right to submit arguments to this office as to why a portion of the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). You also claim the submitted information is excepted from disclosure under sections 552.106, 552.116, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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). 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. 615 at 2 (1993). 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. *See id.* at 1; *see also* Open Records Decision No. 429 at 5 (1985) (statutory predecessor to section 552.106 not applicable to information relating to governmental entity's efforts to persuade other governmental entities to enact particular ordinances).

You state the information you marked consists of drafts and working papers concerning proposed legislation at the Texas Legislature. You further state the information at issue consists of communications regarding legislation department employees prepared in response to legislative inquiries that are protected under section 552.106(a) of the Government Code. Upon review, we find the department has established that the information at issue constitutes advice, opinion, analysis, and recommendations regarding proposed legislation. Therefore, the department may withhold the information you marked under section 552.106 of the Government Code.

Section 552.116 of the Government Code provides the following:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. The department seeks to withhold the information it has marked under section 552.116 of the Government Code. However, the purpose of section 552.116 is to protect the interests of the auditor, not the auditee. Here, the SAO is the auditor, and the information at issue is maintained by the department, the auditee. As the auditee, the department may not assert section 552.116 to protect its own interests in withholding information from disclosure. We note this office has received no arguments from the SAO seeking to withhold the information at issue under section 552.116 of the Government Code. Accordingly, none of the information the department marked may be withheld under section 552.116 of the Government Code.

Section 552.134(a) of the Government Code relates to inmates of the department and provides, in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). You state the information you marked constitutes information about inmates confined in a facility operated by the department. Although one of the inmates to whom some of the information pertains is deceased, section 552.134 is applicable to information that relates to the decedent as an inmate. You state section 552.029 of the Government Code does not apply to the information at issue. Upon review, we find the information you marked is subject to section 552.134 of the Government Code. Accordingly, the department must withhold the information you marked under section 552.134 of the Government Code.

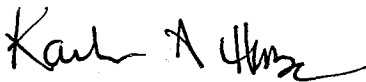
In summary, the department may withhold the information you marked under section 552.106 of the Government Code. The department must withhold the information you marked under section 552.134 of the Government Code. The department must release the remaining information.

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](#), 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,



Kaelan A. Henze  
Attorney  
Open Records Division

KAH/eb

Ref: ID# 666905

Enc. Submitted documents

c: Requestor  
(w/o enclosures)