



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 24, 2017

Mr. Colin Brock
Legal Assistant
Legislative Budget Board
P.O. Box 12666
Austin, Texas 78711-2666

OR2017-24261

Dear Mr. Brock:

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# 681684.

The Legislative Budget Board (the "board") received a request for seven categories of information related to foster care funding. You claim the submitted information is excepted from disclosure under sections 552.106 and 552.146 of the Government Code. Additionally, you also state you notified the Texas Department of Family Protective Services ("DFPS") of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released.¹ *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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.*

¹As of the date of this letter we have not received comments from DFPS.

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.

§ 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.*

The board states Exhibit 6 consists of a working paper of board staff used to make calculations for forecasts and proposals related to advice for draft legislation. We understand the information at issue has not been made public and all parties to them have a privity of interest with regard to enactment of the legislation. Upon review, we find the board has established Exhibit 6 constitutes advice, opinion, analysis, and recommendation regarding proposed legislation. Therefore, the board may withhold the Exhibit 6 under section 552.106 of the Government Code.

Section 552.146 of the Government Code provides, in relevant part:

(a) All written or otherwise recorded communications, including conversations, correspondence, and electronic communications, between a member of the legislature or the lieutenant governor and an assistant or employee of the [board] are excepted from [required public disclosure].

...

(c) This section does not except from required disclosure a record or memoranda of a communication that occurs in public during an open meeting or public hearing conducted by the [board].

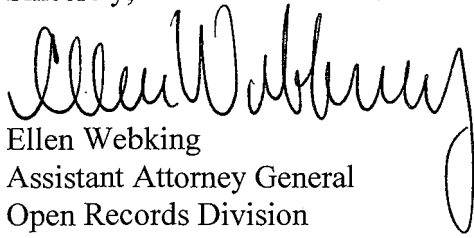
Gov't Code § 552.146(a), (c). The board states Exhibit 5 consists of communications between employees of the board and members of the legislature or their staffs. The board also states this information does not pertain to communications that occurred in open meetings or public hearings. Upon review, we conclude the board may withhold Exhibit 5 under section 552.146 of the Government Code.

In summary, the board may withhold the Exhibit 6 under section 552.106 of the Government Code. The board may withhold Exhibit 5 under section 552.146 of the Government Code.

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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/tdw

Ref: ID# 681684

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)