



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 24, 2019

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

OR2019-13881

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# 767366.

The Office of Senator Larry Taylor (the "senator's office") received a request for communications to or from the senator's office involving a specified entity during a specified time period and information pertaining to meetings between the senator's office and the specified entity. You indicate the senator's office is withholding e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.106 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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

Section 552.106(a) of the Government Code protects a “draft or working paper involved in the preparation of proposed legislation[.]” Gov’t Code § 552.106. Section 552.106 ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. Open Records Decision No. 460 (1987). 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, and therefore, it does not except from disclosure purely factual information. *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.* We note sections 552.111 and 552.106 are similar in that they both protect advice, opinion, and recommendation on policy matters in order to encourage frank discussion during the policymaking process. *Id.* at 3 (1987). However, section 552.106 is narrower than section 552.111 in that it applies specifically to the legislative process. *Id.*

You assert the submitted information consists of communications between, and working papers created by, legislators, legislative staff, and third parties who share a privity of interest with the senator’s office. You state the information at issue is related to pending legislation during the 86th Legislature and contains confidential analysis and description of such legislation. You explain the communications contain policy judgments, internal discussion of the legislative process, and confidential analysis and descriptions of such legislation. Upon review, we find the senator’s office has demonstrated some of the submitted information constitutes policy judgments, recommendations, and proposals regarding proposed and filed legislation. Accordingly, the senator’s office may withhold the information we marked under section 552.106 of the Government Code.³ However, you have not demonstrated the remaining information at issue constitutes a draft or working paper involved in the preparation of proposed legislation. Therefore, we conclude the senator’s office may not withhold any of the remaining information under section 552.106 of the Government Code.

Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e.); Open Records Decision No. 538 at 1-2 (1990).

extent those records contain substantially different types of information than that submitted to this office.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also* *City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *see* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

You assert the remaining information consists of advice, opinions, and recommendations of representatives of the senator's office, members of the legislature, legislative staff, and certain third parties relating to the development and enactment of legislation and other legislative activities. However, we find the remaining information is general administrative and purely factual information or does not pertain to policymaking. Thus, we find you have failed to demonstrate the remaining information is excepted under section 552.111. Accordingly, the remaining information may not be withheld under section 552.111 of the Government Code.

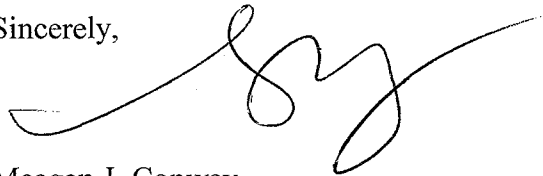
In summary, the senator's office may withhold the information we marked under section 552.106 of the Government Code. The senator's office must release the remaining information.

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,

A handwritten signature in black ink, appearing to read 'Meagan J. Conway', written over a horizontal line.

Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/mo

Ref: ID# 767366

Enc. Submitted documents

c: Requestor
(w/o enclosures)