KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 10, 2019

Mr. Jon Lawson
Assistant General Counsel
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, Texas 78731

OR2019-15496

Dear Mr. Lawson:

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# 769782 (Ref. No. 19-0994).

The Texas Department of Motor Vehicles (the "department") received a request for all documents and communications pertaining to two specified legislative bills. You state the department has released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.106, 552.107, and 552.111 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted representative sample of information.[2]

Initially, you indicate some of the submitted information is not responsive to the present request for information because it does not pertain to the two bills specified in the request. This ruling does not address the public availability of the non-responsive information, which you marked and we marked, and the city need not release it in response to this request.

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[1]Although you mark some of the submitted information as subject to section 552.103 of the Government Code, you make no arguments to support this exception to disclosure. Therefore, we assume you have withdrawn your claim that section 552.103 applies to the information at issue.

[2]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 those records contain substantially different types of information than that submitted to this office.

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[.]" 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 body. Therefore, section 552.106 encompasses only 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. *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 ambit of section 552.106. *See* ORD 460 at 2.

You state the information you marked consists of drafts of legislation and policy discussions between the department and legislative staff pertaining to the legislation. You further state the legislation that is the subject of the information at issue is directly related to the department's operations. You explain the department has a statutory obligation to recommend legislative improvements pertaining to the department's operations. *See* Transp. Code § 1001.025(a) (providing the department shall consider ways in which its operations may be improved and may report to the legislature regarding such improvements). Upon review, we find you have established the information at issue constitutes advice, opinion, analysis, and recommendation regarding proposed legislation related to the department. Accordingly, the department may withhold the information you marked under section 552.106 of the Government Code.[3]

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).

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

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

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 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. *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).

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party, with which the governmental body establishes it has a privity of interest or common deliberative process. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body.

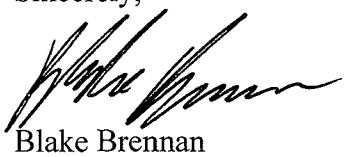
You assert the information you marked consists of advice, opinions, and recommendations of employees of the department and legislative staff with whom the department shares a privity of interest. You state the information at issue reflects internal discussions pertaining to pending legislation that relates to the department's policymaking. Based upon your representations and our review, we find the information you marked consists of advice, opinions, or recommendations on the policymaking matters of the department. Accordingly, the department may withhold the information you marked under section 552.111 of the Government Code.

In summary, the department may withhold the information you marked under section 552.106 of the Government Code. The department may withhold the information you marked under section 552.111 of the Government Code. The department must release the remaining responsive 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,



Blake Brennan
Attorney
Open Records Division

BB/gw

Ref: ID# 769782

Enc. Submitted documents

c: Requestor
(w/o enclosures)