

ROI #W019366 - Projected Spending FY 2017

Requested by: Killeen Daily Herald

To: Linda Pemberton,
Office of the City Attorney
City of Killeen

– Request for Information #W019366. Request all budget worksheets to date with projections on spending in FY 2017.

Linda Pemberton responded at 12:30 p.m. June 15, 2016.



CITY OF KILLEEN
OFFICE OF THE CITY ATTORNEY

June 15, 2016

Rose Fitzpatrick, Managing Editor
Killeen Daily Herald
1809 Florence Road
Killeen, Texas 76541

RE: Request for Information – #W019366


Dear Ms. Fitzpatrick:

I am in receipt of your written request submitted to the City of Killeen asking for “all budget worksheets to date with projections on spending in FY 2017”. You also advised that “if this is incomplete, we request what you have available”. The city believes that the requested information is protected by an exception of the Texas Public Information Act, found in Government Code section 552.106, as the worksheets are incomplete working papers; as such, we are not releasing any portion of the requested budget worksheets or projections.

I have asked the Texas Attorney General for a ruling on whether the documents must be disclosed. You also have an opportunity to submit comments to the Attorney General as to why you believe the information should be released. See section 552.304 of the Government Code or contact the Attorney General’s office for more information. Enclosed, you will find a copy of our request to the Attorney General, excluding the attachments at issue.

If you have any further questions regarding your open records request, you may contact me at 254/501-6342.

Sincerely,


Linda Pemberton
Paralegal

Attachment



CITY OF KILLEEN
OFFICE OF THE CITY ATTORNEY

June 15, 2016

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, TX 78711-2548

RE: RELEASE OF CERTAIN RECORDS

Dear Sir or Madame:

Pursuant to Texas Government Code Section 552.301, this letter requests an Attorney General's opinion for a determination of whether the content of certain records is public information.

FACTS

On June 01, 2016, requestor submitted a written request to the City of Killeen asking for "all budget worksheets to date with projections on spending in FY 2017". Requestor also advised the city that "if this is incomplete, we request what you have available". A copy of the request is enclosed as Attachment A. We have not released any portion of the requested budget worksheets or projections.

We have assigned this request ID #W019366. Please provide this request number with your response.

CITY'S POSITION

552.106 Certain Legislative Documents

The City of Killeen takes the position that the requested budget worksheets are not subject to public disclosure pursuant to the Public Information Act exclusion contained in Texas Government Code section 552.106(a), an exception that protects documents concerning the deliberative processes of a governmental body relevant to the enactment of legislation.

Section 552.106(a) provides in part:

- (a) A draft or working paper involved in the preparation of proposed legislation is excepted from [required public disclosure].

The requested documents reflect recommendations and proposals prepared by city staff to formulate the upcoming budget.

Additionally, Open Records Decision No. 460 (1987) interpreted that “a city manager’s proposed budget prior to its presentation to the city council” is excepted from required public disclosure.

Finally, Article V of the city’s Charter details the city’s budget and provides the following:

Section 49: “The fiscal year of the City of Killeen shall begin the 1st day of October and shall end on the last day of September of each calendar year. Such fiscal year shall also constitute the budget and accounting year.”

Section 50: “Not less than forty-five (45) days prior to the beginning of each fiscal year, the city manager shall submit to the council a proposed budget, which budget shall provide a complete financial plan for the fiscal year. . .”

Section 53: “The budget and all supporting schedules shall be filed with the City Clerk when submitted to the Council and shall be a public record for inspection by anyone. The City Manager shall cause copies to be made for inspection by all interested persons.”

The requested documents are being compiled in order to create a proposed budget for the City Manager to present to the City Council on or about July 05, 2016. Based on the foregoing arguments, the city maintains that the requested budget worksheets and related projections are working papers/drafts which will change over time, until presented to and adopted by the City Council. As such, the city believes the requested documents should be excepted from disclosure.

CONCLUSION

The City of Killeen believes the worksheets should not be released based on an exception provided in section 552.106, Certain Legislative Documents, as the worksheets are working drafts of the 2017 fiscal year budget which has not yet been provided to the City Council for approval of the 2017 budget.

DOCUMENTS

Attachment A – Copy of the request received on June 01, 2016.
Attachment B – Copy of the letter sent to requestor, informing of the City’s request to the AG.
Attachment C – A CD which contains the requested worksheets to which this request for opinion applies.

We appreciate your assistance in reconciling the competing concepts at issue in this case. If you should require any further information, please feel free to contact me at 254/501-6342 or by fax at 254/634-8399.

Respectfully,



Linda Pemberton
Paralegal

Attachments

c.c. without attachments: Rose Fitzpatrick, Managing Editor
Killeen Daily Herald
1809 Florence Road
Killeen, Texas 76541



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 22, 2016

Ms. Linda Pemberton
Paralegal
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2016-18935

Dear Ms. Pemberton:

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# 623606 (Killeen ID No. W019366).

The City of Killeen (the "city") received a request for specified budget worksheets and projections. You claim the submitted information is excepted from disclosure under section 552.106 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 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.* A proposed budget constitutes a recommendation by its very nature and may be withheld under section 552.106. *Id.*

You explain the submitted information consists of a working paper that reflects policy judgments, recommendations, and proposals prepared by city staff to formulate the upcoming budget. You state the proposed budget must be presented to and adopted by the city council. Also, the submitted documentation indicates the mechanism for approving the proposed budget includes the passage of an appropriation ordinance and a tax levying ordinance. You further state the proposed budget is being created by the city manager and has not been presented to the city council. Based upon your representations and our review, we agree the submitted information constitutes advice, opinion, analysis, and recommendations regarding the proposed budget. Therefore, the city may withhold the submitted information under section 552.106 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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/dls

Ref: ID# 623606

Enc. Submitted documents

c: Requestor
(w/o enclosures)