



Office of the Attorney General
State of Texas

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October 14, 1996

Committee on House Administration
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Honorable Jack Harris
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Open Records Decision No. 648

Re: Whether section 552.101 of the Government Code, in conjunction with chapter 306 of the Government Code makes confidential letters received by a legislator and the originating number and other information concerning telephone calls made to a legislator (RQ-674)

Dear Gentlemen:

You have each received a request for records under the Open Records Act, chapter 552 of the Government Code. Representative Harris has received a request for letters written to him by a citizen of Texas. The House Business Office has received a request for certain telephone records of a state representative. Representative Layton Black, the former chair of the Committee on House Administration, which has responsibility for the House Business Office and its records has referred this request to our office. Both of you believe that the requested information is excepted from disclosure by Government Code section 552.101¹ in conjunction with provisions of chapter 306 of the Government Code.

Chapter 306 of the Government Code was adopted to provide confidentiality for communications between legislators and state residents, unless the legislator or resident authorized the release of a communication. *See* HOUSE COMM. ON STATE AFFAIRS, BILL ANALYSIS, H.B. 1485, 69th Leg. (1985) (analyzing statutory predecessor to Gov't Code ch. 306).² The chapter applies to records and communications collected and maintained by members of the legislature and the lieutenant governor. Gov't Code § 306.002.

¹Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

²Chapter 306 of the Government Code was initially codified as V.T.C.S. art. 5429b-3. In 1987, this provision was codified without substantive change as chapter 306 of the Government Code. Act of May 1, 1987, 70th Leg., R.S., ch. 167, art. 1, § 1.01(1) (codifying without substantive change), art. 2,

Sections 306.003 and 306.004 of the Government Code work together to provide a measure of confidentiality for records of communications between citizens and members of the legislature or the lieutenant governor. Both statutes grant members of the legislature and the lieutenant governor the discretion to release information covered by the statutes, but before that discretion may be exercised, the threshold question of whether the information is covered by one of the statutes must be answered.

Section 306.003 provides as follows:

(a) Records of a member of the legislature or the lieutenant governor that are composed exclusively of memoranda of communications with residents of this state and of personal information concerning the person communicating with the member or lieutenant governor are confidential. However, the member or the lieutenant governor may disclose all or a part of a record to which this subsection applies, and that disclosure does not violate the law of this state.

(b) The method used to store or maintain a record covered by Subsection (a) does not affect the confidentiality of the record.

The confidentiality provision in section 306.003(a) applies to the records of a member or of the lieutenant governor consisting of two kinds of information: 1) records of memoranda of communications with Texas residents; and 2) records of personal information about the person communicating with the legislator or lieutenant governor. Thus, "personal information" about a person communicating with a legislator or the lieutenant governor is within section 306.003(a) even if it is not recorded in a memorandum prepared by the member or the lieutenant governor. While section 306.003(a) deems confidential the communications subject to the provision, it gives a legislator or the lieutenant governor the discretion to disclose all or part of such record. Gov't Code § 306.003(a).

While section 306.003 applies to legislative records of memoranda of communications and records of a correspondent's personal information, section 306.004 refers to the communications themselves. Section 306.004 provides as follows:

(a) To ensure the right of the citizens of this state to petition state government, as guaranteed by Article I, Section 27, of the Texas Constitution, by protecting the confidentiality of *communications of citizens* with a member of the legislature or the lieutenant governor, the public disclosure of all or part of a written or otherwise recorded

(Footnote continued)

§ 2.05(a) (enacting Gov't Code ch. 306), (b) (repealing V.T.C.S. art. 5429b3), 1987 Tex. Gen. Laws 1338, 1339.

communication from a citizen of this state received by a member or the lieutenant governor in his official capacity is prohibited unless:

- (1) the citizen expressly or by clear implication authorizes the disclosure;
- (2) the communication is of a type that is expressly authorized by statute to be disclosed; or
- (3) the official determines that the disclosure does not constitute an unwarranted invasion of personal privacy of the communicator or another person.

(b) This section does not apply to a communication to a member of the legislature or the lieutenant governor from a public official or public employee acting in an official capacity.

(c) A member or the lieutenant governor may elect to disclose all or part of a communication to which this section applies, and that disclosure does not violate the law of this state. [Emphasis added.]

Section 306.004(a) applies to “a written or otherwise recorded communication from a citizen of this state” received by a member of the legislature or the lieutenant governor in his official capacity. In the quoted phrase, “communication” refers to the information or the message received by the legislator from a citizen. Section 306.004(a) applies to the citizen’s message to the legislator or lieutenant governor, as shown by its express language and its reference to the citizen’s right of petition guaranteed by article I, section 27, of the Texas Constitution. The citizen’s message may be written or may be recorded in some other way, for example, by a telephone answering machine. The message is not subject to public disclosure absent one of the three conditions stated in section 306.004(a). As with the records within section 306.003(a), a legislator or the lieutenant governor has discretion to disclose all or part of the records subject to section 306.004(a).

As we have seen, chapter 306 contains provisions for the disclosure of the information it covers. Thus, the chapter is not merely a confidentiality statute, but a statute that sets the parameters for public access to the information to which it applies. Accordingly, we believe chapter 306, rather than the Open Records Act, governs the release of information within section 306.003(a) or section 306.004. *See* Open Records Decision No. 598 (1991) (statutes governing specific subset of information prevail over general applicability of Open Records Act). Thus, we need not consider whether information covered by chapter 306 is excepted from public disclosure pursuant to an Open Records Act exception.³

³Though not controlling here, our review of the House Study Group report of the legislation that enacted the predecessor statute of chapter 306 affirms this construction of chapter 306. That report indicates that one of the legislature’s goals in enacting V.T.C.S. art. 5429-3 (1925), the predecessor

We turn now to the records at issue. The records submitted by Representative Harris are letters that he received in his official capacity from a citizen of the state. They are written communications within section 306.004(a) of the Government Code. *See* Open Records Decision No. 570 (1990) (addressing request for letters written by citizen to legislator). Access to the letters is therefore governed by the provisions of section 306.004.

Representative Black states that in response to an open records request for the telephone records of a legislator, the House Business Office provided copies of all records in its possession. He further states that he subsequently found that additional "detail information" existed on computer tape in the possession of the Texas Legislative Council, an agency of the legislative branch of government that provides various services to assist legislators in carrying out their duties, including data-processing services. *See* Gov't Code §§ 323.001, .006(a)(8). He is releasing most of the detail information to the requestor, but he believes that part of the information is covered by statute, specifically sections 306.003 and 306.004 of the Government Code. This information includes the date, connect time, duration, and originating number of telephone calls made to a toll-free number in the legislator's office.

The toll-free number is provided to allow Texas citizens to communicate with this member of the House of Representatives, who chairs a standing committee. The legislature's telephone system is integrated into TEX-AN, a telephone system operated by the General Services Commission. *See* V.T.C.S. art. 601b, § 10.07 (General Services Commission may contract with each house of legislature for utilization of state telecommunications system). Ordinarily, the date, connect time, duration, and originating number of a telephone call are automatically recorded on computer tape when a resident calls the legislator. *See* 1 T.A.C. § 121.2 (defining as "[a]utomatic number identification" equipment that obtains and stores for record purposes data on toll calls by originating station number, date, time, length of call, and called number). The General Services Commission periodically sends the computer tapes to the House Business Office of the

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provision of Government Code chapter 306, included exempting communications between state residents and a state legislator or lieutenant governor from the scope of the Open Records Act. HOUSE STUDY GROUP, Daily Floor Report, H.B. 1485, 69th Leg., May 1, 1985, pp. 32-33. For instance, the report states that the statute was needed to protect communications between legislators and state residents so as to encourage the frankness of the exchanges and to prevent the premature identification of "whistle-blowers." *Id.* The report also explained that the effect of the statute is to give legislators the discretion to release their communications with state residents and to exempt the legislature in this regard from the ordinary disclosural requirements set forth in the Open Records Act. *Id.*

Committee on House Administration.⁴ Subsequently, the House Business Office sends the computer tapes to the Texas Legislative Council, which downloads the information contained on the computer tapes into a mainframe computer application. The House Business Office directly accesses this information through the mainframe computer to perform various applications, one of which is to generate billing reports for individual legislators. Hard copies of these billing reports are sent to individual members on a periodic basis for purposes of office accounting.

Section 306.003(a) only applies to records of a member of the legislature or the lieutenant governor. We first consider whether the requested information from the detail tapes comprises "records of a member of the legislature" within section 306.003(a). We conclude that the information does constitute such records. The information is a record of calls made to the legislator's toll-free number. The computer tape is held by the legislative entity that provides data-processing services to assist members of the legislature in carrying out their responsibilities. Accordingly, we conclude that the information consisting of the date, connect time, duration, and originating number of a telephone call made to the toll-free number in a legislator's office are records of the legislator within section 306.003(a) of the Government Code.

We next consider whether these records also constitute "memoranda of communications with residents of this state" within section 306.003(a). Chapter 306 does not define "communications with residents of this state." Section 306.001 states that "'communication' includes conversation, correspondence, and electronic communication," but it does not define "communication." "Communication" is defined as "a process by which information is exchanged between individuals through a common system of symbols, signs, or behavior." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 266 (1989). "Communication" is also defined as "information communicated" and as a "verbal or written message."⁵ *Id.*

We do not believe that the date, connect time, duration, and originating number of telephone calls maintained on computer tapes is information that one person exchanged with another. Rather, it is information a machine recorded concerning the connection of two telephone lines. It is therefore not a "communication with a resident of this state" within section 306.003(a) of the Government Code, and the computer tape records of this information are not "memoranda of communications with residents of this state."

⁴This office has held that billing information collected or maintained by the General Services Commission in providing telecommunications services for state agencies should be considered records of the agency served. Attorney General Opinion JM-446 (1986).

⁵*See generally* Gov't Code § 311.011 (stating rule of statutory construction that words and phrases shall be construed according to rules of grammar and common usage); *Ellison v. Patton*, 303 S.W.2d 855 (Tex. Civ. App.--Amarillo 1957, writ ref'd) (consulting dictionary to ascertain meaning of word).

However, section 306.003(a) of the Government Code also covers “personal information concerning the person communicating with the member or lieutenant governor.” We believe this language in the statute makes section 306.003(a) applicable to the record of the originating telephone number made by the Legislative Council computer.

Section 306.004 protects from public disclosure “a written or otherwise recorded communication from a citizen of this state” received by a legislator or the lieutenant governor. As with section 306.003(a), section 306.004 is concerned with the communication of ideas and information between human beings. The date, connect time, duration, and originating number of telephone calls maintained on computer tapes is not information that one person exchanged with another. This information will be recorded without the citizen caller’s knowledge or conscious participation in the process. Thus, section 306.004 does not cover this information.

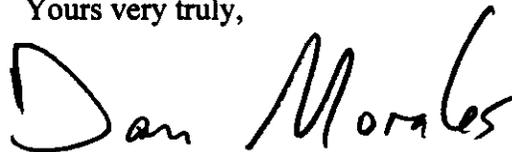
For the foregoing reasons, we conclude that information on the Texas Legislative Council detail tapes of telephonic transmissions (exclusive of the originating telephone number) consisting of the date, connect time, and duration of a telephone call are not “memoranda of communications with residents of this state” under section 306.003(a) or a “recorded communication from a citizen of this state” received by a legislator or the lieutenant governor. Furthermore, we conclude that the originating number is “a record of personal information concerning the person communicating with the member or lieutenant governor” under section 306.003(a). Access to the originating numbers is governed by section 306.003 of the Government Code rather than the Open Records Act. Therefore, disclosure of that information is within the discretion of the legislator. Access to the date, connect time and duration of telephone calls is governed by the Open Records Act. As we find that none of the Open Records Act exceptions to required public disclosure applies to the date, connect time and duration of telephone calls, the House Business Office must release this information to the requestor.

S U M M A R Y

Letters from a citizen of this state received by a legislator in his official capacity are “written communications of citizens” within section 306.004(a) of the Government Code. Records of the date, connect time, and duration, and originating number of citizen calls to a toll-free number in a legislator’s office that are maintained on the Legislative Council computer are not “memoranda of communications with residents of the state” under section 306.003(a) or “recorded communication[s] from a citizen of this state” received by a legislator or the lieutenant governor under section 306.004. The originating number is “personal information concerning the person communicating with the member or lieutenant governor” under section 306.003(a).

Information falling within the scope of chapter 306 of the Government Code may be released only as that chapter provides and does not fall within the scope of the Texas Open Records Act, chapter 552 of the Government Code. A member of the legislature or the lieutenant governor may elect to disclose all or part of the information within sections 306.003(a) and 306.004 of the Government Code, but is not required to do so.

Yours very truly,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, flowing style.

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