



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2003

The Honorable Ken Armbrister
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

OR2003-5781

Dear Senator Armbrister:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186109.

You advise that your office received an open records request for the following information:

- All documentation relating to legislative amendments or bills that focus on the Edwards Aquifer Authority. This request includes, but is not limited to, all e-mails, letters, memos, faxes or other correspondence with people outside your office who contacted you or your staff about this issue. This request pertains to amendments tacked on to House Bill 2877, House Bill 2130, Senate Bill 1914, and all other amendments pertaining to the aquifer authority. Please include all records dated from June 1, 2002 - June 1, 2003.
- Copies of calendars, in hardcopy or electronic format, kept by you and all staff members that handled issues pertaining to the Edwards Aquifer Authority, dating from June 1, 2002 - June 1, 2003.

You state that some of the responsive information will be provided or made available to the requestor. You have also informed this office by fax dated August 14, 2003, that you are no longer seeking a ruling regarding the public availability of the requested calendar information. As you indicate that there is no confidentiality issue with the contents of the submitted schedule, we assume you have released this information to the requestor. If not, the schedule at issue must be released to the requestor at this time. See Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances). With respect to the remaining submitted

information, you contend that a portion of the information is excepted from disclosure under sections 552.101 and 552.106 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. You indicate that a portion of the information at issue is subject to chapter 306 of the Government Code. Section 306.004 of the Government Code pertains to the public availability of records of communications between citizens and members of the legislature. *See* Open Records Decision No. 648 at 1-2 (1996). 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 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.

Gov't Code § 306.004. A “communication” includes “conversation, correspondence, and electronic communication.” Gov't Code § 306.001. A communication is not subject to public disclosure unless one of the three conditions stated in section 306.004(a) applies. We note that a member of the legislature has discretion to disclose all or part of the records subject to section 306.004(a). We note Appendix A and Appendix C contain citizen

communications, which we have marked. It does not appear that any of the conditions in section 306.004(a) apply to these communications. We therefore determine that you may withhold the marked communications pursuant to section 306.004 of the Government Code.

We next address your claim under section 552.106 of the Government Code with respect to the remainder of the information at issue. You state that the information at issue consists of legislative working papers that are excepted from disclosure under section 552.106. Section 552.106 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.* After reviewing the remaining information, we agree that the majority of the information consists of drafts and working papers created in the course of preparing proposed legislation. We therefore determine that the remaining records in Appendix A and Appendix C, the information submitted as Appendix B, and the handwritten notes of legislative staff on the materials submitted as Appendix E are excepted from disclosure under section 552.106 of the Government Code. We have marked a portion of Appendix D that consists of purely factual information and is not excepted under section 552.106. The remainder of Appendix D, however, reflects policy judgments and recommendations and may therefore be withheld pursuant to section 552.106 of the Government Code.

In summary, we have marked information that may be withheld pursuant to section 552.101 of the Government Code in conjunction with section 306.004 of the Government Code. The handwritten comments in Appendix E may be withheld pursuant to section 552.106 of the Government Code. With the exception of the purely factual information we have marked in Appendix D, the remainder of the information at issue may also be withheld pursuant to section 552.106 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 186109

Enc: Submitted documents

c: Mr. John Tedesco
San Antonio Express-News
P.O. Box 2171
San Antonio, Texas 78297-2171
(w/o enclosures)