



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2004

Mr. Spencer Reid
General Counsel
Office of the Lieutenant Governor
State Capitol Building
Austin, Texas 78711-2068

OR2004-2710

Dear Mr. Reid:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198714.

The Office of the Lieutenant Governor (the "lieutenant governor's office") received a request for the lieutenant governor's appointment and scheduling calendars from January 21, 2003 to the date of the request. You inform us that some of the requested information was encompassed by a previous request for information made by this same requestor on June 3, 2003. You note that information encompassed by the previous request is the subject of Open Records Letter No. 2003-5922 (2003). You state that the lieutenant governor's office released some of the information encompassed by the previous request on June 17, 2003, and that additional information was released on August 29, 2003, in accordance with Open Records Letter No. 2003-5922 (2003). You have submitted a written certification of your compliance with the prior ruling. *See* Gov't Code § 552.232. You further inform us that you have released most of the remaining information that is encompassed by the present request. You contend that the information that the lieutenant governor's office has withheld from the requestor is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that is protected by other statutes. You contend that the information that you have withheld is confidential under sections 306.003 and 306.004 of the Government Code. In Open Records Decision No. 648 (1996), this office addressed the application of these confidentiality provisions. Sections 306.003 and 306.004

work together to provide a measure of confidentiality for records of communications between citizens and the lieutenant governor. *See* Open Records Decision No. 648 at 1-2. Both sections grant the lieutenant governor the discretion to release information covered by sections 306.003 and 306.004. *Id.* at 2.

Section 306.003 of the Government Code 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.

Gov't Code § 306.003. The confidentiality provision in section 306.003(a) applies to the records of a member of the legislature or of the lieutenant governor that consist 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. *Id.* § 306.003(a). Thus, "personal information" about a person communicating with a legislator or the lieutenant governor is within section 306.003(a), even if the information is not recorded in a memorandum prepared by the legislator or lieutenant governor. *Id.* While section 306.003(a) deems confidential the records that it encompasses, this provision gives the lieutenant governor the discretion to disclose all or part of such a record. *Id.*

While section 306.003 applies to records consisting of memoranda of communications and records of a correspondent's personal information, section 306.004 of the Government Code 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 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. For the purposes of section 306.004, a "communication" includes "conversation, correspondence, and electronic communication." Gov't Code § 306.001. The communication is not subject to public disclosure unless one of the three conditions stated in section 306.004(a) applies. As is also true of records that are subject to section 306.003(a), the lieutenant governor has discretion to disclose all or part of records that are subject to section 306.004(a).

You have submitted copies of the lieutenant governor's appointment calendars, marked to indicate the information that you have withheld from the requestor. You inform us that the calendar entries that you have withheld consist of notations of meetings with natural persons who are Texas residents. You represent to this office that you have not withheld calendar entries that consist of notations of communications with other public officials or persons who are not Texas residents or that relate to instances in which your office has concluded that disclosure of the information would not result in an unwarranted invasion of the personal privacy of the communicator or another person. Based on your representations and our review of the information at issue, we conclude that the information that you have withheld comes within the scope of section 306.003 of the Government Code. We therefore agree that the lieutenant governor's office may withhold that information from the requestor.

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).

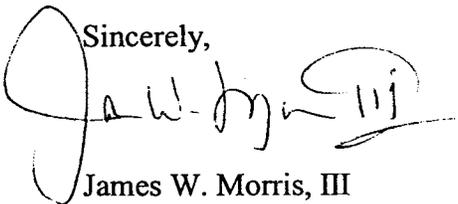
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 198714

Enc: Submitted documents

c: Mr. Craig McDonald
Citizens for Public Justice
609 West 18th Street, Suite E
Austin, Texas 78701
(w/o enclosures)