ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2004

Ms. Michelle Wittenberg
General Counsel
Tom Craddick, Speaker
Texas House of Representatives
Austin, Texas 78768-2910

OR2004-5164

Dear Ms. Wittenberg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204005.

The Office of the Speaker of the House (the "speaker") received a request for 12 categories of information referencing, or pertaining to, a named individual. You inform us that the speaker has disclosed certain responsive information to the requestor. However, you have submitted to this office certain responsive information for our review. You initially contend that chapter 306 of the Government Code, rather than the Public Information Act (the "Act"), governs the confidentiality and release of the submitted information, and that chapter 306 preempts the Act both substantively and procedurally. Alternatively, you contend that parts of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and have reviewed the submitted information.

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

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:
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> > (1) the citizen expressly or by clear implication authorizes the disclosure;
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> > (2) the communication is of a type that is expressly authorized by statute to be disclosed; or
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> > (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), a legislator has discretion to disclose all or part of records that are subject to section 306.004(a).

In Open Records Decision No. 648 (1996), this office addressed the application of sections 306.003 and 306.004 of the Government Code to information held by a state representative. In construing these provisions, we stated:

> 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 [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 [Act]). Thus, we need not consider whether information covered by chapter 306 is excepted from public disclosure pursuant to an [Act] exception.... 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 [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.

Id. at 3, 7. We further found that the statute's legislative history affirmed this construction of chapter 306. In a footnote, we explained that the House Study Group report of the legislation that enacted the predecessor statute of chapter 306 demonstrated "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 [Act]." *Id.* at 3-4, fn. 3. Therefore, release of information subject to section 306.003(a) or 306.004(a) is governed by chapter 306 of the Government Code, not the Act, and it is within the discretion of a legislator to either withhold or release such information.

In this case, you have submitted to this office a document responsive to the request and have marked information within this document that you believe is subject to section 306.003(a) or 306.004(a) of the Government Code. To the extent you find that the information you have highlighted in the submitted document is subject to section 306.003(a) or 306.004(a), it is within the discretion of the speaker to either withhold or release the highlighted information

to the requestor.[1] To the extent you find that the responsive information is not subject to section 306.003(a) or 306.004(a), such information is subject to the Act. Furthermore, because you have not raised any other exceptions to disclosure of such information, you must release it to 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

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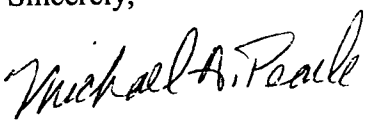
[1]We note that if the requestor disputes the speaker's determination that the requested information is subject to sections 306.003(a) or 306.004(a), the requestor may sue the speaker and seek a determination that the information falls outside chapter 306 and is, instead, governed by the Act.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 204005
Enc: Submitted documents

c: Ms. Cris Feldman
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(w/o enclosures)