



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 7, 2008

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

OR2008-06259

Dear Mr. Reid:

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# 313611.

Lieutenant Governor David Dewhurst (the "lieutenant governor") received a request for his daily schedule for March 2008. The requestor subsequently amended his request to include the lieutenant governor's schedule "for January through March 2008." You indicate that some responsive information has been released to the requestor. You assert that the public availability of some of the remaining requested information is governed by section 306.003 of the Government Code, rather than by the Act. You also claim that portions of the remaining information are not public information subject to the Act; alternatively, you claim that this information is excepted from disclosure under section 552.109 of the Government Code. We have considered your claims and reviewed the submitted information. We have also considered comments submitted on behalf of the requestor. *See Gov't Code* § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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 lieutenant governor. *Id.* 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 legislator or lieutenant governor. *Id.* While section 306.003(a) deems confidential the records that are subject to the provision, it gives a member of the legislature the discretion to disclose all or part of such record. *See id.* § 306.003(a).

In Open Records Decision No. 648 (1996), this office addressed the applicability of section 306.003 to information held by a state representative. In construing this provision, 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). . . . *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 [section 306.003(a)] of the Government Code, but is not required to do so.

Open Records Decision No. 648 at 3, 7. We further found that the statute's legislative history affirmed this construction of chapter 306 of the Government Code. In a footnote, we explained that the House Study Group report of the legislation that enacted the statutory predecessor to 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 n.3. Therefore, the release of information that is subject to section 306.003(a) is governed by chapter 306 of the Government Code, not the Act, and it is within the discretion of the lieutenant governor to either withhold or release such information.

You argue that the entries you have marked in the submitted calendars are not public information subject to the Act. *See* Gov't Code § 552.021 (Act is only applicable to "public information"). Section 552.002 defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.022. The lieutenant governor contends that the marked entries were not collected, assembled, or maintained in connection with the transaction of any official business, nor were they collected, assembled, or maintained pursuant to any law or ordinance. Based on your arguments and our review of the information at issue, we agree that the entries you have marked in the submitted calendars do not constitute "public information" that is subject to the Act. Consequently, the lieutenant governor is not required to disclose these entries under the Act. *Cf.* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). As we are able to make this determination, we do not address your section 552.109 claim.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge 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 Office of the Attorney General 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. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 313611

Enc. Submitted documents

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