



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2010

Senator Eliot Shapleigh
District 29
P.O. Box 12068
Austin, Texas 78711

OR2010-11638

Dear Senator Shapleigh:

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# 390260.

Senator Shapleigh received a request for the names and mailing and/or e-mail addresses of individuals to whom Senator Shapleigh has sent correspondence regarding El Paso Independent School District. Senator Shapleigh asserts that the public availability of the submitted information is governed by sections 306.003 and 306.004 of the Government Code, rather than by the Act. Alternatively, Senator Shapleigh asserts portions of the submitted information are excepted from disclosure under section 552.137 of the Government Code. We have considered Senator Shapleigh's arguments and reviewed the submitted information.¹ We have also considered comments submitted by a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 306.003 of the Government Code provides as follows:

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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.* Although 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).

While section 306.003 applies to records consisting of memoranda of communications and records of a correspondent's personal information, section 306.004 refers to the communications themselves and 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.

Id. § 306.004. For purposes of section 306.004, a “communication” includes “conversation, correspondence, and electronic communication.” *Id.* § 306.001. The communication is not subject to public disclosure unless one of the three conditions stated in section 306.004(a) applies. *See id.* § 306.004(a)(1)-(3). As is also true of records that are subject to section 306.003(a), a legislator has the 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 applicability of sections 306.003 and 306.004 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.

ORD 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 sections 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. Senator Shapleigh claims that the submitted information falls under section 306.003(a) or section 306.004(c). Therefore, to the extent Senator Shapleigh determines that the information in question is subject to section 306.003(a) or section 306.004(a), it is within his discretion to either withhold this information or release it to the requestor.² To the extent Senator Shapleigh determines that the submitted information is not subject to section 306.003(a) or section 306.004(a), such information is subject to the Act and we will consider Senator Shapleigh's remaining argument.

You seek to withhold the e-mail addresses in the submitted information as confidential pursuant to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. We note that some of e-mail addresses you seek to withhold are maintained by governmental entities for their employees. As such, those e-mail addresses do not fall within the scope of section 552.137(a) and may not be withheld under this exception. However, Senator Shapleigh must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their release.³

In summary, to the extent Senator Shapleigh determines that the information in question is subject to section 306.003(a) or section 306.004(a) of the Government Code, it is within his discretion to either withhold this information or release it to the requestor. To the extent Senator Shapleigh determines that the submitted information is not subject to section 306.003(a) or section 306.004(a) of the Government Code, such information is subject to the Act and Senator Shapleigh must withhold the information we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release. In that instance, the remaining information must be released.

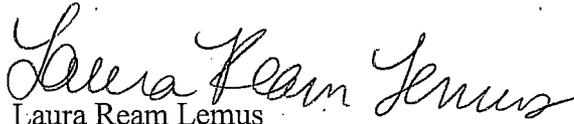
²We note that if the requestor disputes Senator Shapleigh's determination that the submitted information is subject to sections 306.003(a) or 306.004(a), the requestor may sue Senator Shapleigh and seek a determination that the information falls outside chapter 306 and is, instead, governed by the Act.

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 390260

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)