



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 27, 2012

Ms. Patsy Spaw
Secretary of the Senate
The Senate of the State of Texas
P.O. Box 12068
Austin, Texas 78711

OR2012-19043

Dear Ms. Spaw:

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# 470710.

The Texas Senate (the "senate") received a request for 48 categories of information related to Senator Wendy Davis.¹ You indicate the senate will release some of the requested information to the requestor upon his response to a cost estimate letter. You inform us some of the submitted information is confidential constituent correspondence subject to chapter 306 of the Government Code.² You also claim the submitted information is excepted from disclosure under section 552.137 of the Government Code.³ We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-12931(2012). In that decision, we ruled the senate may withhold the information

¹As you did not submit the requestor's written request for information, we take our description from the letters you submitted to this office.

²Release of constituent communication under section 306.003(a) or 306.004(a) of the Government Code is governed by chapter 306, not the Act, and it is within the discretion of a legislator to either withhold or release such information.

³In correspondence to this office dated November 20, 2012, you withdraw your claims that sections 552.106 and 552.111 of the Government Code except the submitted information from disclosure.

at issue under section 552.106 of the Government Code. Accordingly, as we are unaware of any change in the relevant law, facts, and circumstances on which the previous ruling was based, to the extent the submitted information is identical to the information at issue in Open Records Decision No. 2012-12931, we conclude the senate may rely on that ruling as a previous determination and withhold such information in accordance with it. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the prior ruling, we will consider your argument against disclosure.

Next, we must address the senate's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. Gov't Code § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen-business-days of receiving the request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You state the senate received the present request for information on August 22, 2012. Accordingly the senate's ten- and fifteen-business-day deadlines were September 7, 2012, and September 14, 2012, respectively. However, you did not raise section 552.137 of the Government Code until September 13, 2012. Consequently, we conclude the senate failed to comply with the procedural requirements of section 552.301(b) of the Government Code with respect to its argument under section 552.137. Furthermore, you acknowledge the senate has not submitted a copy of the written request for information. Accordingly, we also conclude the senate failed to comply with the requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Section 552.137 of the Government Code can provide a compelling reason to withhold information. Thus, we will address your claim

under this section. In addition, we note portions of the submitted information may be subject to section 552.117(a)(1) of the Government Code.⁴ Because this section can also provide a compelling reason to withhold information from disclosure, we will consider its applicability to the submitted information.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, if the senate employee whose cellular telephone number we have marked timely requested confidentiality under section 552.024 and pays for the cellular telephone service with his own funds, the senate must withhold this information under section 552.117(a)(1) of the Government Code. If the senate employee whose cellular telephone number we have marked did not make a timely election under section 552.024 or does not pay for the cellular telephone service with his own funds, the senate may not withhold this information under section 552.117(a)(1).

Section 552.137 of the Government Code 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). Gov't Code § 552.137(a)-(c). You have marked the e-mail addresses you seek to withhold under section 552.137. You inform us the owners of these e-mail addresses have not affirmatively consented to their release. We note the e-mail addresses at issue do not fall within the scope of section 552.137(c). *See id.* § 552.137(c). Thus, the senate must withhold the e-mail addresses you have marked, and the additional e-mail address we have marked, under section 552.137 of the Government Code.⁵

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470.

⁵Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an email address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, to the extent the submitted information is identical to the information at issue in Open Records Letter No. 2012-12931, we conclude the senate may rely on that ruling as a previous determination and withhold such information in accordance with it. If the senate employee whose cellular telephone number we have marked timely requested confidentiality under section 552.024 of the Government Code and pays for the cellular telephone service with his own funds, the senate must withhold this information under section 552.117(a)(1) of the Government Code. If the senate employee whose cellular telephone number we have marked did not make a timely election under section 552.024 of the Government Code or does not pay for the cellular telephone service with his own funds, the senate may not withhold this information under section 552.117(a)(1) of the Government Code. The senate must withhold the e-mail addresses you have marked, and the additional e-mail address we have marked, under section 552.137 of the Government Code. The senate must release the remaining information.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 470710

Enc. Submitted documents

c: Requestor
(w/o enclosures)