



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 2, 2014

Representative Four Price  
State Representative, District 87  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

OR2014-17548

Dear Representative Price:

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# 538210.

The Office of State Representative Four Price (the "representative's office") received a request for copies of all letters of recommendation for admission by the representative's office made to any Texas state college or university during 2013. You claim portions of the submitted information are either governed by section 306.003 of the Government Code or excepted from disclosure under sections 552.101 and 552.117 of the Government Code. You state you notified certain third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue should not be released. *See Gov't Code § 552.304* (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have received and considered comments from an interested third party. We have considered the submitted arguments and 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 (a)-(b). 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's office 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 or the lieutenant governor 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 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 the statute's legislative history affirmed this construction of chapter 306 of the Government Code. In a footnote, we explained 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 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 a legislator or the lieutenant governor to either withhold or release such information.

You state Exhibits C through H contain information governed by section 306.003(a). You explain Exhibits C through G are letters of recommendations personally written by representative Four Price and Exhibit H is a letter of recommendation written by the chief of staff for a former employee of the representative’s office. The representative’s office also explains Exhibits C through G contain personal information provided to the representative’s office by the individuals at issue. Therefore, we find release of the information at issue, which you marked, in Exhibits C through G is governed by chapter 306 of the Government Code, not the Act, and it is within the discretion of the representative’s office to either withhold or release such information.<sup>1</sup> As noted above, you acknowledge Exhibit H consists of a letter of recommendation written about a former employee and pertains to the former employee’s work performance. Therefore, we conclude Exhibit H does not consist of personal information of an individual communicating with the representative’s office and section 306.003 is not applicable to Exhibit H. *See* Gov’t Code § 306.003(a). Accordingly, we will address your remaining arguments for this information.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual’s autonomy within “zones of privacy” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find some of the information at issue falls within the zones of privacy. Accordingly, the representative’s office must withhold the information you have marked in Exhibit H under section 552.101 of the Government Code in conjunction with constitutional privacy.

---

<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

You claim section 552.117 of the Government Code for portions of the remaining information. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former employees or officials of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code § 552.117(a)(1)*. We note 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)* (section 552.117 not applicable to cellular telephone numbers 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 be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the representative's office must withhold the information you have marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual at issue did not timely request confidentiality under section 552.024, the representative's office may not withhold the information you marked under section 552.117(a)(1).

#

In summary, the release of the information at issue, which you marked, in Exhibits C through G is governed by chapter 306 of the Government Code, not the Act, and it is within the discretion of the representative's office to either withhold or release such information. The representative's office must withhold the information you have marked in Exhibit H under section 552.101 of the Government Code in conjunction with constitutional privacy. To the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the representative's office must withhold the information you have marked under section 552.117(a)(1) of the Government Code. The remaining information must be released.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lauren Dahlstein  
Assistant Attorney General  
Open Records Division

LMD/som

Ref: ID# 538210

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Wiley Abbott  
1025 Holly Lane  
Canyon, Texas 79015  
(w/o enclosures)