



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2003

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

OR2003-5922

Dear Mr. Reid:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186159.

The Office of the Lieutenant Governor (the "lieutenant governor's office") received a request for "copies of the lieutenant governor's appointment and scheduling calendars covering the period January 1, 2003 to the present." You indicate that you have released some of the requested information. However, you contend that some of the requested information is not "public information" subject to disclosure under the Public Information Act. You also claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

We begin by addressing your argument that some of the requested information is not "public information" for the purpose of the Public Information Act (the "Act"). The Act requires public disclosure only of "public information." See Gov't Code § 552.021; *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). "Public information" is defined under section 552.002 of the Act 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 § 552.002(a). You state that the portion of the Lieutenant Governor's calendar covering January 4, 2003, through January 20, 2003, is not public information. You indicate that during this time period, the Lieutenant Governor had already vacated the General Land Office and had yet to take the oath as lieutenant governor. Thus, we understand you to assert that the portion of the calendar covering this time period was not created by or for a governmental body. Furthermore, you state that this portion of the calendar is currently maintained by the Lieutenant Governor on his personal computer and is not being used in the transaction of the official business of the lieutenant governor's office. We are unaware of any law requiring the Lieutenant Governor to collect, assemble, or maintain the portion of his calendar at issue in his role as lieutenant governor. Based on your representations and our review of the information, we conclude that the portion of the Lieutenant Governor's calendar covering January 4, 2003, through January 20, 2003, was not collected, assembled, or maintained by or for a governmental body pursuant to law or in connection with the transaction of the official business of the lieutenant governor's office. Therefore, we conclude that this portion of the Lieutenant Governor's calendar is not public information for the purpose of the Act and is not required to be released to the requestor. *See id.*

Next, we address your contention that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 306.003 and 306.004 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, such as sections 306.003 and 306.004 of the Government Code. In Open Records Decision No. 648 (1996), we addressed the application of these confidentiality provisions. Sections 306.003 and 306.004 of the Government Code work together to provide a measure of confidentiality for records of communications between citizens and the lieutenant governor. *Id.* at 1-2. Both statutes grant the lieutenant governor the discretion to release information covered by the statutes. *Id.* at 2.

Section 306.003 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.

The confidentiality provision in section 306.003(a) applies to the records of a member of the legislature or of the lieutenant governor consisting 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 member. *Id.* While section 306.003(a) deems confidential the records subject to the provision, it gives the lieutenant governor 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 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:

- (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.

Gov’t Code § 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) apply. As with the records within section 306.003(a), the lieutenant governor has discretion to disclose all or part of the records subject to section 306.004(a).

Although you contend that portions of the submitted information are confidential under section 306.004(a), we find that none of the calendar entries at issue consist of communications from a citizen of this state. Therefore, none of the submitted information is confidential under section 306.004(a). Nevertheless, you also contend that the same information is confidential under section 306.003(a). As stated earlier, section 306.003(a) is designed to protect communications the lieutenant governor has with residents of this state as well the personal information of persons communicating with the lieutenant governor. You have marked the identities of individuals as well as corporations and other organizations as confidential personal information of Texas residents with whom the Lieutenant Governor communicated.

In enacting section 306.003(a), the legislature did not define the terms “residents of this state” and “person.” Consequently, it is unclear from the language of the statute whether the legislature intended to protect the identities of individuals, corporations, other organizations, or all of these entities in enacting section 306.003.¹ Therefore, we look to the legislative history behind section 306.003 to determine whether the terms “resident” and “person” encompass individuals, corporations, and other organizations with whom the lieutenant governor communicates. Gov’t Code § 311.023 (in construing statute, court may consider, among other things, object sought to be attained, circumstances under which statute was enacted, and legislative history); *Union Bankers Ins. Co. v. Shelton*, 889 S.W.2d 278, 280 (Tex. 1994) (“When determining legislative intent, the courts may look to the language of the statute, legislative history, the nature and object to be obtained, and the consequences that would follow from alternate constructions.”).

During hearings in both the House and Senate Committees on State Affairs, committee members indicated that section 306.003 was designed, in part, to protect the identities of constituents corresponding with the legislature or the lieutenant governor’s office concerning personal and employment matters. Hearing on Tex. H.B. 1485 before the House Comm. on State Affairs, 69th Leg., R.S. (April 1, 1985) (tape available from House Video/Audio Services Office); Hearing on Tex. H.B. 1485 before the Senate Comm. on State Affairs, 69th Leg., R.S. (May 20, 1985) (tape available from Senate Staff Services Office). Legislators further indicated that they intended to protect constituents’ privacy interests by enacting section 306.003. Hearing on Tex. H.B. 1485 before the Senate Comm. on State Affairs, 69th Leg., R.S. (May 20, 1985) (tape available from Senate Staff Services Office); Debate on Tex. H.B. 1485 on the Floor of the Senate, 69th Leg. R.S. (May 25, 1985) (tape available from Senate Staff Services Office). We note that corporations and other business entities are not entitled to a right of privacy. *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950)

¹In other contexts, the terms “resident” and “person” include corporations and other organizations. See, e.g., Ins. Code art. 21.07, § 1A(8) (definition of “person” includes individual, partnership, corporation, and depository institution); Crim. Proc. Code art. 17A.01(b)(4) (definition of “person” includes corporation and association); Bus. & Com. Code § 17.45(3) (definition of “person” includes “individual, partnership, corporation, association, or other group”).

(cited in *Rosen v. Matthews Constr. Co., Inc.*, 777 S.W.2d 434, 436 (Tex. App.--Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)); Open Records Decision No. 620 at 4 (1993) ("Corporations do not have a right to privacy."); *see* Open Records Decision No. 192 (1978) (stating that right of privacy protects feelings and sensibilities of human beings, and does not protect evaluation report on private college). Furthermore, we are unable to discern from the legislative history any intent on the part of the legislature to include corporations or other organizations within the terms "resident" and "person."

You contend that the case of *Inwood West Civic Assoc. v. Touchy*, 754 S.W.2d 276 (Tex. App.—Houston [14th Dist.] 1988), supports an interpretation of section 306.003(a) that would protect the identities of corporations and other organizations with whom a legislator or the lieutenant governor communicates. In that case, fifteen homeowners' associations sought to discover information regarding the lobbying efforts of Houston Cable TV, Inc. 754 S.W.2d at 277. Houston Cable claimed that the information sought was privileged under section 306.004 of the Government Code and was not relevant to the subject matter of the lawsuit. *Id.* at 277-78. Subsequently, the trial court denied discovery of the information. *Id.* at 278. The homeowners' associations appealed the trial court's decision on the ground that Houston Cable waived any assertion of privilege by failing to present evidence in support of its claim that the information was privileged and by filing its objections to the discovery requests late. *Id.* at 278-79. The fourteenth court of appeals determined that Houston Cable was not required to present evidence in support of its claim of privilege because the information was statutorily privileged under section 306.004 of the Government Code. *Id.* at 278. The court of appeals further held that the information sought was neither relevant to the lawsuit nor reasonably calculated to lead to the discovery of material evidence. *Id.* at 278-79. Finally, the court noted that the homeowners' associations had given Houston Cable extra time to complete its answers to the discovery requests and that the trial court had wide latitude in making decisions concerning discovery. *Id.* at 279. Consequently, the fourteenth court of appeals held that the trial court did not abuse its discretion in denying the homeowners' associations' discovery request. *Id.* However, upon review of the court's ruling, we find that the court of appeals did not address the applicability of section 306.003 of the Government Code, much less the issue of whether corporations and other organizations are considered "residents" or "persons" for the purpose of section 306.003 of the Government Code. Furthermore, while the court determined that Houston Cable's discovery information was protected under section 306.004, it did not specifically explain whether the documents consisted of communications from individuals or the corporation in general. Therefore, we do not find *Inwood* supports an interpretation of section 306.003(a) that would protect the identities of corporations and other organizations with whom the lieutenant governor communicates.

Rather, based on the legislative history behind section 306.003, we find that section 306.003(a) was intended to protect the personal information of individual residents of this state, not corporations and other organizations, communicating with the legislature

and the lieutenant governor. As a result, while the lieutenant governor's office may withhold the personal information of individuals, which we have marked, under section 306.003(a) of the Government Code, the lieutenant governor's office may not withhold any of the names of corporations or other organizations with whom the Lieutenant Governor communicated.

Next, we address your contention that some of the calendar entries in the submitted information are confidential under common law and constitutional privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

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)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

You contend that calendar entries pertaining to medical appointments "raise serious privacy concerns" because the entries reveal the identities of specific medical providers. You argue that releasing the names of medical providers would effectively reveal their specialties, a fact which you contend is highly intimate or embarrassing. However, you do not specifically indicate, nor are we aware, of any specialty practiced by the named providers or whether such

a specialty would reveal highly intimate or embarrassing information either about the Lieutenant Governor or the provider. Furthermore, we find that the identities of the providers alone are not highly intimate or embarrassing information. Consequently, the identities of medical providers contained in the submitted calendar are not confidential under either common law or constitutional privacy. Likewise, we find that none of the remaining information you have marked under common law and constitutional privacy, including hair cut appointments, social functions, weddings, and funerals, is so highly intimate or embarrassing as to be confidential under either common law or constitutional privacy.

In summary, the portion of the Lieutenant Governor's calendar covering January 4, 2003, through January 20, 2003, is not public information for the purpose of the Act and is not required to be released to the requestor. The identities of individual residents of this state with whom the Lieutenant Governor communicated, which we have marked, may be withheld under section 306.003 of the Government Code in conjunction with section 552.101 of the Government Code. The remainder of the submitted information must be released 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).

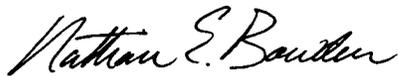
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Tex. 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 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/lmt

Ref: ID# 186159

Enc: Submitted documents

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