ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 12, 2004

Mr. Leonard Reese
Assistant Director and General Counsel
Texas Legislative Council
P.O. Box 1218
Austin, Texas 78711-2128

OR2004-5690

Dear Mr. Reese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204906.

The Texas Legislative Council (the "council") received a request for information concerning the e-mail system provided and maintained by the council for members of the Legislature, legislative committees, and other legislative agencies. The requestor also seeks certain e-mails sent by, sent to, or referencing certain persons. The requestor has written the council, in correspondence also copied to this office, to confirm that this portion of the request encompasses "all e-mails that have been archived, as well as all e-mails that have been backed up, and/or e-mails that may have been previously deleted yet preserved in any possible medium." You indicate that the council has provided the council's written policies for backing up e-mails of legislators and their staff, for backing up the council's LAN server and mainframe data, and the council's records retention schedule to the requestor. You contend, however, that the portion of the request seeking e-mails sent by or to legislators, committees, or other legislative agencies is not properly addressed to the council because the council does not serve as officer for public information with regard to this information. Rather, you assert that the requestor must direct this public information request to the individual legislator, committee, or legislative agency that he believes may have sent or received the e-mail communications at issue. We have considered the comments you have submitted.

The services provided by the council to the legislative community include the maintenance of computer mainframe and network resources. In this capacity, the council provides and maintains an electronic mail system for use by the council, members of the Legislature, legislative committees, and other legislative agencies. For purposes of the Public Information Act (the "Act"), you contend that the council is the owner and custodian of only

those e-mail communications sent or received by employees of the council, and is not the owner or custodian of e-mail communications sent or received by other entities to which the council provides support. Thus, you contend that the council is not responsible for responding to an open records request for this type of information.

As you acknowledge, in Open Records Decision No. 617 (1993), this office determined that an open records request for state agency records warehoused for the agency by the Records Management Division of the Texas State Library and Archives Commission ("TSLAC") was properly addressed to the agency and not to TSLAC. In that ruling, this office found that the state agency still had legal custody of the records at issue, and that TSLAC was not in a position to respond to public information requests for the information it warehoused. *See* Open Records Decision No. 617 at 2-3 (1993). This office has also found, in Open Records Decision No. 576 (1990), that an entity performing document maintenance services for a governmental body can become that governmental body's agent for purposes of receiving public information requests in certain circumstances. That case, however, involved an agreement by which the Comptroller of Public Accounts (the "comptroller") agreed to serve as the agent of a state commission for purposes of receiving requests for records of the commission that the comptroller maintained on the commission's behalf. *See* Open Records Decision No. 576 at 1-4 (1990). Under the agreement, the commission maintained responsibility for responding to public information requests for commission records. *Id.*

We find that while the council maintains the computer system by which e-mails of legislators, committees, and other legislative agencies are transmitted and archived, the e-mail records at issue remain in the legal custody of the entities sending or receiving the e-mails. Thus, we agree that the council is not in a position to review the e-mail records for the purpose of responding to a public information request for such records under the Act. *See* Open Records Decision No 617 (1993); *see also* Attorney General Opinion JM-446 (1986) (records of telecommunications services provided by former General Services Commission are records of entities served). We therefore determine that the council is not the proper entity to receive and respond to the present request for information. Consequently, we find that this request should be directed to the legislator, committee, or legislative agency that sent or received the e-mail communications at issue, and we conclude that the council need not further respond to this request.

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); *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 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,

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 204906

c: Mr. Cristen D. Feldman
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