



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2004

Ms. Karen Lundquist
Executive Director
Texas Ethics Commission
P. O. Box 12070, Capitol Station
Austin, Texas 78711-2070

OR2004-6764

Dear Ms. Lundquist:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206989.

The Texas Ethics Commission (the "commission") received a request for the number of conflict of interest disclosure filings submitted to the commission since January 1, 2002 by six named individuals. You raise section 305.028(j) of the Government Code. We have considered your arguments and reviewed the submitted information.

The request for information concerns conflict of interest statements filed with the commission by lobby registrants, and you question the extent to which this information is subject to the Public Information Act (the "Act"). Section 305.028 of the Government Code provides in part:

....

(b) Except as permitted by Subsection (c), a registrant may not represent a client in communicating directly with a member of the legislative or executive branch to influence legislative subject matter or administrative action if the representation of that client:

(1) involves a substantially related matter in which that client's interests are materially and directly adverse to the interests of:

(A) another client of the registrant;

(B) an employer or concern employing the registrant; or

(C) another client of a person associated with the registrant;
or

(2) reasonably appears to be adversely limited by:

(A) the registrant's, the employer's or concern's, or the other associated person's responsibilities to another client; or

(B) the registrant's, employer's or concern's own interest, or other associated person's own business interests.

(c) A registrant may represent a client in the circumstances described in Subsection (b) if:

(1) the registrant reasonably believes the representation of each client will not be materially affected;

(2) not later than the second business day after the date the registrant becomes aware of a conflict described by Subsection (b), the registrant provides written notice, in the manner required by the commission, to each affected client; and

(3) not later than the 10th day after the date the registrant becomes aware of a conflict described by Subsection (b), the registrant files with the commission a statement that:

(A) indicates that there is a conflict;

(B) states that the registrant has notified each affected client as required by Subdivision (2); and

(C) states the name and address of each affected client.

....

(j) A statement filed under Subsection (c) *is not public information*.

Gov't Code § 305.028(b), (c), (j) (emphasis added). You acknowledge that, in this instance, the requestor specifically excludes any conflict of interest filings or documents from his request for information. Instead, the requestor seeks the "number" of such filings from certain individuals. You state that the commission "seeks clarification as to whether [it]

certain individuals. You state that the commission “seeks clarification as to whether [it] would be releasing confidential information in violation of Subsection (j) by providing the number of statements filed by a particular registrant.” We agree that this section exempts conflict of interest statements filed with the commission from the realm of public information that must be released under the Act. However, this exemption does not extend to other information associated with such filings. *See generally* Open Records Decision Nos. requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). Accordingly, we find that the release of the requested information would not violate section 305.028 of the Government Code.

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/krl

Ref: ID# 206989

Enc: Submitted documents

c: Mr. David Mann
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(w/o enclosures)