



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2010

Ms. Peggy D. Rudd
Director and Librarian
Texas State Library and Archives Commission
P.O. Box 12927
Austin, Texas 78711-2927

OR2010-17429

Dear Ms. Rudd:

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# 400208.

The Texas State Library and Archives Commission (the "commission") received a request for certain records contained in the archives of former Texas Senator Todd Staples (the "former senator") concerning certain subjects considered by the former senator's office for legislation or funding. You state that some of the information has been released.¹ You assert the public availability of the remaining information is governed by sections 306.003 and 306.004 of the Government Code. We have considered your arguments and reviewed the submitted information.

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.

¹We note the requestor agreed to the redaction of account information pursuant to section 552.136 of the Government Code and certain e-mail addresses pursuant to section 552.137 of the Government Code.

- (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. 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 a member of the legislature the discretion to disclose all or part of such record. *Id.*

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.

Id. § 306.004. For the purposes of section 306.004, a “communication” includes “conversation, correspondence, and electronic communication.” *Id.* § 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), a member of the legislature has discretion to disclose all or part of the records subject to section 306.004(a).

In Open Records Decision No. 648 (1996), this office addressed the application of sections 306.003 and 306.004 of the Government Code 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.

Open Records Decision No. 648 at 3, 7. We further found that the statute’s legislative history affirmed this construction of chapter 306. In a footnote, we explained that the House Study Group report of the legislation that enacted the predecessor statute of 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, release of information subject to section 306.003(a) or 306.004(a) is governed by chapter 306 of the Government Code, not the Act, and it is within the discretion of a legislator to either withhold or release such information.

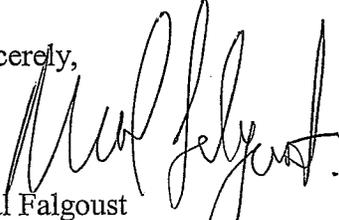
You state the former senator has indicated he wishes to keep his communications with constituents confidential. To the extent the submitted information consists of all or part of a written or otherwise recorded communication from a citizen of this state to the former senator in his official capacity, its release is governed by chapter 306 of the Government Code, not the Act, and it is within the discretion of the former senator to either withhold or release such information. To the extent the submitted information does not consist of all or part of a written or otherwise recorded communication from a citizen of this state to the

former senator in his official capacity, such information is subject to the Act, and as you assert no exceptions to disclosure under the Act 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.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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 400208

Enc. Submitted documents

c: Requestor
(w/o enclosures)