



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 18, 2016

Mr. Victor Mendoza
Policy Advisor and Counsel
Office of Speaker Joe Straus
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

OR2016-11464

Dear Mr. Mendoza:

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# 611329.

The Office of the Speaker (the "speaker's office") received a request for (1) e-mails sent or received by a named individual for a specified time period and (2) the named individual's daily schedule for a specified time period. You state you have released some information to the requestor. You claim the public availability of some of the submitted information is governed by sections 306.003 and 306.004 of the Government Code. Although we understand you to take no position regarding the release of the remaining information, you indicate release of this information may implicate the interests of the State Auditor's Office (the "SAO"). Accordingly, you notified the SAO of the request for information and of its right to submit arguments stating why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit written comments stating why information should or should not be released). We have received comments from the SAO. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records

Initially, you claim the information you have marked in Exhibit C is not subject to the Act, but is instead governed by sections 306.003 and 306.004 of the Government Code. Section 306.003 of the Government Code provides, in part:

(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.

Id. § 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) memoranda of communications with Texas residents and (2) personal information about the person communicating with the legislator or lieutenant governor. *Id.* § 306.003(a).

While section 306.003 applies to records that are composed of memoranda of communications and records of personal information of a legislator or the lieutenant governor, section 306.004 refers to the communications themselves and provides:

(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

to the extent that those records contain substantially different types of information than that submitted to this office.

(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(a)-(c). For the purposes of section 306.004, a “communication” includes “conversation, correspondence, and electronic communication.” *Id.* § 306.001. We note a legislator or the lieutenant governor has the discretion to disclose all or part of records that are subject to section 306.004(a). *Id.* § 306.004(c). However, section 306.004 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. *Id.* § 306.004(b).

You state the information in Exhibit C is governed by section 306.003 or section 306.004 of the Government Code. Therefore, as the speaker’s office has determined the information in Exhibit C is subject to section 306.003 or section 306.004, release of the information in Exhibit C is governed by chapter 306 of the Government Code, not the Act, and it is within the discretion of the speaker’s office to either withhold or release such information.

Section 552.116 of the Government Code provides:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) “Audit” means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the

bylaws adopted by or other action of the governing board of a hospital district, resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Id. § 552.116. The SAO asserts some of the remaining information is subject to section 552.116 of the Government Code. We note the SAO is the independent auditor for Texas state government. The SAO has authority under section 321.013 of the Government Code to conduct investigations and audits of all state departments as specified in the audit plan. *See id.* § 321.013(a). The SAO states the information it has marked consists of an interagency communication sent as part of an investigation being conducted by the SAO, and the SAO asserts the information constitutes audit working papers of the SAO. After reviewing the information at issue, we conclude the information at issue consists of audit working papers of the SAO for purposes of section 552.116 of the Government Code. Therefore, the speaker's office may withhold the information we have marked under section 552.116 of the Government Code on behalf of the SAO.

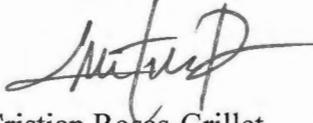
In summary, release of the information in Exhibit C is governed by chapter 306 of the Government Code, not the Act, and it is within the discretion of the speaker's office to either withhold or release such information. The speaker's office may withhold the information we have marked under section 552.116 of the Government Code on behalf of the SAO. The speaker's office must release the remaining information.

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, 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,

A handwritten signature in black ink, appearing to read 'Cristian Rosas-Grillet', written in a cursive style.

Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

Ref: ID# 611329

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)