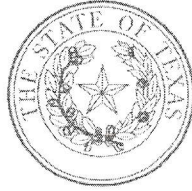


ANDREW MURR
CHAIR



ANN JOHNSON
VICE CHAIR

COMMITTEE ON GENERAL INVESTIGATING
HOUSE OF REPRESENTATIVES

June 22, 2023

Atty. Gen.

JUL 06 2023

Mr. Christopher D. Hilton
Mr. Judd E. Stone II
Stone Hilton PLLC

CLERK OF THE COURT

Via Email: judd.e.stone@proton.me; chistopher.d.hilton@proton.me

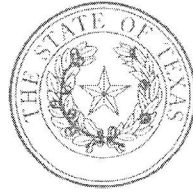
Dear Mr. Hilton and Mr. Stone:

The committee received your request made under the Public Information Act dated June 8, 2023. Your ten-page request seeks fifty-one separate sets of information, all of which are related to Attorney General Ken Paxton, impeachment proceedings in the House, and investigations conducted by the House Committee on General Investigating.

Responsive documents, if any, are being withheld under Section 301.020(e), Government Code, and House Rule 3, Section 13(b-8). Under Section 301.020(e), Government Code, “[i]nformation held by a general investigating committee is confidential and not subject to public disclosure except as provided by the rules of the house establishing the committee.” Under House Rule 3, Section 13(b-8), information held by the committee “is confidential and not subject to disclosure” if it is “information . . . that if held by a law enforcement agency or prosecutor would be excepted from [disclosure] under Section 552.108,” Government Code.

The Open Records Division of the Office of the Attorney General has concluded that information confidential under Section 301.020(e) “must be withheld” in response to a public information request. *E.g.*, Tex. Atty. Gen. ORD-30923 (2019). The only other House rule related to committee information--Section 9.03, Housekeeping Resolution--governs confidentiality of information related to complaints of inappropriate workplace conduct and is not applicable here.

In addition to the protections afforded under Chapter 301 of the Government Code, some of the information covered by your request would also be confidential under the provisions in Chapter 306. Sections 306.003 and 306.004, Government Code, establish that information regarding private citizens of Texas who have communicated with this office is confidential and not subject to public information laws. The protections provided by these provisions of Chapter 306, Government Code, encourage Texas residents to communicate their thoughts and ideas freely with members of the legislature without fear of intimidation or the unintended public release of personal information. Section 306.008, Government Code, makes confidential legislatively privileged communications and exists, in part, to preserve the legislative branch’s independence under the fundamental principal of separation of powers, as guaranteed by Article II and Section



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21, Article III of the Texas Constitution. Chapter 306 contains provisions for the disclosure of the information it covers and sets the parameters for public access to that information. The Attorney General has previously determined that Chapter 306, rather than Chapter 552, the "Texas Public Information Act," governs the release of information covered by its sections. Tex. Atty. Gen. ORD-648 (1996).

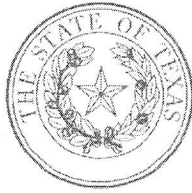
You assert that, upon a determination to withhold information on the basis of that record containing confidential or private information, a duty exists to seek a decision from the Office of Attorney General.

As you know, the duty of a governmental body to seek a decision as to whether information may be withheld only exists when a governmental body seeks to withhold public information according to an exception under Subchapter C, Chapter 552, Government Code. Tex. Govt. Code § 552.301(a); *see also Conely v. Peck*, 929 S.W.2d 630, 632 (Tex. App.—Austin 1996, no writ).

Thus, a request as to whether this information may be withheld is unnecessary, as the Public Information Act plainly provides that this information is confidential and not subject to disclosure without reliance on Subchapter C. Statutes governing specific subsets of information, for example, Chapter 301 and 306 of the Government Code, prevail over the general applicability of the Texas Public Information Act. *See* Tex. Atty. Gen. ORD-598 (1991) (interpreting Chapter 552's predecessor, the Open Records Act). The Act prohibits the disclosure of confidential information in Subchapters A and B, and Section 552.352 provides criminal penalties for governmental bodies that disclose information considered confidential under the terms of Chapter 552. The section applies to information made confidential by law, underscoring the intent of the Legislature that confidential information remain as such. Tex. Atty. Gen. ORD-490 (1988).

Where certain information may be released by governmental entities on a voluntary basis, that disclosure is expressly prohibited for information confidential under law. Tex. Gov't Code §552.007(a). Previous open records decisions by the Office of the Attorney General have made clear the point that confidentiality provisions in state statute prohibit the public disclosure of information designated as such. *See* Tex. Atty. Gen. ORD-490 at 4 (1988). Governmental compliance with confidentiality laws is mandatory, and their protections may not be waived by governmental entities or released on a discretionary basis. *See In re City of Georgetown*, 53 S.W.3d 328, 340 (Tex. 2001) (Abbott, J. dissenting); Govt. Code, § 552.007(a). To require this committee to seek an Attorney General opinion as to whether the information expressly made confidential by state statute is subject to withholding under Subchapter C, Chapter 552, Government Code would constitute such a waiver.

ANDREW MURR
CHAIR



ANN JOHNSON
VICE CHAIR

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The committee also declines to request a decision from the Open Records Division of the Office of the Attorney General under Section 552.301, Government Code, because such a request would violate the Texas separation of powers requirement by impermissibly allowing an executive branch officer to enjoy undue interference in the legislative branch's constitutional authority to impeach and to investigate.

Undue interference in the open records context occurs when a request for information by a member of one branch "unduly interferes with the . . . effective exercise of [a] constitutionally delegated power" by another. *Tex. Atty. Gen. ORD-2184 at 3 (2008)*; see *Tex. Commn. on Envtl. Quality v. Abbott*, 311 S.W.3d 663, 672-673 (Tex. App.—Austin 2010, pet. denied). The Texas Constitution specially vests the power of impeachment in the House of Representatives. *Tex. Const. art. XV, § 1*. The House Rules of Procedure specifically vest the authority to recommend articles of impeachment in the Committee. *H. Rule 3, § 13(c)*. Moreover, your request relates to the House's exercise of its constitutional authority to conduct investigations. "Authority to pursue investigations and inquiries has long been regarded as an incident of full legislative power." *Tex. Commn. on Envtl. Quality v. Abbott*, 311 S.W.3d 663, 671 (Tex. App.—Austin 2010, pet. denied) (citing *Terrell v. King*, 118 Tex. 237, 14 S.W.2d 786, 790 (1929)). That is, Article III's vesting of the legislative power includes the power to investigate and inquire. *Terrell*, 14 S.W.2d at 789-790. The requested information, therefore, relates to the House's exercise of core functions textually committed to it by the Texas Constitution.

Under the facts and circumstances surrounding your request, a legislative committee is exercising constitutional powers committed solely to the legislative branch. Permitting a state statute or an executive branch officer to decide a right of access on its face interferes with the exercise of the "constitutionally delegated powers" to impeach and investigate. Accordingly, the committee cannot make the requested information available for inspection or as copies, nor would a request for an attorney general decision be appropriate or warranted under the law.

In furnishing this response, the committee has satisfied its duty to respond set forth in Section 552.221, Government Code. If you have questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Andrew Murr".

Andrew Murr, Chairman
House Committee on General Investigating

cc: Tony Buzbee, Dan Cogdell