



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

April 8, 2003

Ms. Dorcas A. Green  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
P.O. Box 2156  
Austin, Texas 78768

OR2003-2361

Dear Ms. Green:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179029.

The Hays Consolidated Independent School District (the "District"), which you represent, received a request for information concerning a Board of Trustees meeting held on January 27, 2003. Specifically, the requestor seeks a "copy of the taped records of the entire Open Session . . . , the entire Closed Session of the Grievance Hearing proceedings of [a named individual], and the printed Minutes of the meeting entire." You indicate the District will provide the requestor with the open session recording and meeting minutes. However, you assert the certified agenda and the closed session audio recording are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Section 552.101 of the Government Code excepts from disclosure information deemed confidential by law. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying *only under a court order issued under Subsection (b)(3).*" (Emphasis added.) Thus, such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988) (construing predecessor statute). After reviewing the submitted information, we find no indication that the requestor has presented the District with a court order requiring disclosure of the certified agenda or the audiotape of the closed meeting. Therefore, the District must withhold the certified agenda and the

audiotape from public disclosure under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.<sup>1</sup>

Next, this office received a letter from the requestor in which he expresses concern that the District did not submit the information at issue for our review. In Open Records Decision No. 495, this office concluded the Open Meetings Act removes certified agendas and tapes of executive sessions from review by the attorney general under the Open Records Act (predecessor statute to the Public Information Act). *Id.* Also, the requestor alleges possible improprieties may have occurred during the process of convening the closed session. This office cannot resolve this question because the Office of the Attorney General does not have the authority to investigate or enforce violations of the Open Meetings Act. Thus, if the District properly convened and conducted the January 27, 2003 closed session meeting in accordance with the Open Meetings Act, then the District must withhold the certified agenda and closed session audio recording as they are confidential under section 551.104. However, if the District did not properly convene and conduct the January 27, 2003 closed session meeting as required by the Open Meetings Act, then the District must release the certified agenda and closed session audio recording because the District has not asserted any other exceptions to public disclosure. *See* Gov't Code §§ 552.301, .302.

Lastly, the requestor, who represents the employee at issue in the requested information, contends he has a right of access to the information pursuant to sections 552.023 and 552.102 of the Government Code. Section 552.023 gives a person or a person's authorized representative a "special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023. Section 552.102, which excepts personnel file information that would implicate common-law privacy, provides an employee of a governmental body, or her representative, access to information contained in the employee's personnel file.<sup>2</sup> *See* Gov't Code § 552.102. In this instance, section 551.104(c) specifically prohibits the District from releasing the information without a court order. Because section 551.104(c) protects the government's interest and expressly provides when the information may be released, we conclude neither section 552.023 nor section 552.102 provides the requestor with a special right of access to the requested certified agenda or audio recording of the closed session

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<sup>1</sup> This directive assumes the District properly complied with the Open Meetings Act when it convened and conducted the closed session meeting. Subsequently in this ruling, we address the requestor's allegation that the District did not procedurally comply with the Open Meetings Act.

<sup>2</sup> In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Public Information Act (the "Act"). *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

meeting. *See* Open Records Decision No. 556 (1990) (noting when a requestor seeks information concerning himself, a governmental body cannot claim exception designed to protect requestor's privacy interest as a basis for nondisclosure).

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).

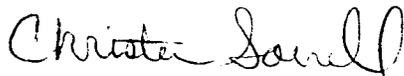
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in cursive script that reads "Christen Sorrell".

Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 179029

c: Mr. J. Stephen Spencer  
P.O. Box 1034  
Dripping Springs, Texas 78620-1034