



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

April 17, 2003

Mr. J. Erik Nichols
Henslee, Fowler, Hepworth & Schwartz
3200 Southwest Freeway, Suite 2300
Houston, Texas 77027-7528

OR2003-2592

Dear Mr. Nichols:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179691.

The Alief Independent School District (the "district"), which you represent, received a request for certain background information on district school board members. The district received a second request from the same requestor for twelve categories of information related to the district, including the same background information on school board members that was previously requested. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code,¹ and that, in any case, the district "does not keep, maintain, control or have access to" this information. Your request for a decision does not address the remaining requested information. We assume that the district has released this information to the extent that it exists. If it has not, it must do so at this time. *See* Gov't Code §§ 552.021, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances). We have considered your arguments.

We note that section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for

¹ While you claim that information may be protected by section 552.024, we note that section 552.117 makes certain information confidential if a government employee or official makes a timely election under section 552.024. *See* Gov't Code §§ 552.024, 552.117. We therefore understand you to argue that certain information is also excepted from disclosure under section 552.117.

a governmental body and the governmental body owns the information or has a right of access to it.” We understand you to claim that the district does not possess or have access to information responsive to the requested background information on school board members. You have indicated that this information is in the personal possession of the school board members. This office has found that such information is not beyond the scope of the Act simply because the information is in the possession of a particular official or employee of a governmental body, rather than the governmental body as a whole. *See* Open Records Decision No. 635 at 3 (1995). On the contrary, information that clearly relates to a governmental body’s official business is subject to the Act, regardless of whether the information is held by a particular official or employee, the governmental body’s administrative offices, or the custodian of records. *Id*; *see also* Open Records Decision No. 425 at 1-2 (1985) (overruled on other grounds by Open Records Decision No. 439 (1986)) (information relating to selection of new school superintendent and sent by consulting firm to board members at their home addresses subject to Act). This office has stated that certain factors are relevant, although not exhaustive, in deciding whether a document is essentially governmental or personal information: who prepared the document; the nature of its contents; its purpose or use; who possessed it; who had access to it; whether the governmental body required its preparation; and whether its existence was necessary to or in furtherance of official business. *See* Open Records Decision No. 635 (1995). Therefore, if the district collected, assembled, or maintains the information at issue in connection with the transaction of official business, or if the information was collected, assembled, or maintained *for* the district in connection with the transaction of official business and the district owns or has a right of access to it, it is public information subject to disclosure under the Public Information Act (the “Act”).

In the event that the information at issue is subject to the Act, we must address the district’s obligations under section 552.301 of the Act. Section 552.301(e) provides that a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You have not submitted information responsive to the request that you believe to be excepted from disclosure. Under section 552.302 of the Act, a governmental body’s failure to timely submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Such information must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption of openness. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov’t Code § 552.302); Open Records Decision No. 319 (1982). Because you have not submitted the information at issue, we have

no basis for finding it confidential. Thus, if the information is subject to the Act pursuant to section 552.002, we have no choice but to order the information released per section 552.302. If the information is subject to the Act and you believe it is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

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).

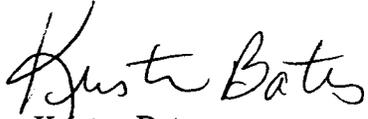
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 179691

c: Mr. Lester Houston
Executive Director, Parent Leadership Union
310 Gray, Suite 3211
Houston, Texas 77002
(w/o enclosures)