



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

May 30, 2003

Mr. Therold I. Farmer  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
P.O. Box 2156  
Austin, Texas 78768

OR2003-3667

Dear Mr. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181925.

The Hearne Independent School District (the "district") received a request for four categories of information pertaining to a named employee. You state that information responsive to item three of the request will be released to the requestor. You claim that the closed session audio tape recording is excepted from disclosure under section 552.101 of the Government Code. *But see* Open Records Decision No. 495 (1988) (stating that the attorney general lacks the authority to review certified agendas or tapes of executive sessions to determine whether they may be withheld under the Public Information Act (the "Act")). You claim that the remaining requested information is not subject to the Act, and, alternatively, that the information is excepted under section 552.101. We have considered your claims and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. 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). Therefore, the district must withhold

the responsive tape of a closed meeting pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.<sup>1</sup>

We next address your contention that the submitted information is not subject to the Act. The Act is applicable to “public information.” See Gov’t Code § 552.021. “Public information” is defined 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 a governmental body and the governmental body owns the information or has a right of access to it.

Gov’t Code § 552.002(a). Thus, virtually all information in the physical possession of a governmental body is public information that is encompassed by the Act. *Id.* § 552.022(a)(1); see also Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Likewise, the Act is applicable to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for a governmental body, and the governmental body owns the information or has a right of access to it. Gov’t Code § 552.002(a)(2); see also Open Records Decision No. 462 at 4 (1987) (Act applies to information collected or maintained by consultant if information relates to governmental body’s official duties or business, consultant acts as agent of governmental body in collecting information, and governmental body has or is entitled to access to information). However, the Act does not require a governmental body to release information if the governmental body that receives the request has neither possession of the information nor a right of access to it. See Open Records Decision Nos. 534 at 2-3 (1989), 518 at 2-3 (1989).

You assert that the submitted information is not subject to the Act. You inform us that the information in question consists of the personal notes of individual district employees and is not maintained by the district. You state “that the employees’ notes were prepared for their individual use and that the [d]istrict neither required nor controlled the statements.” You

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<sup>1</sup>As our ruling is dispositive, we do not address your other claim that this information is exempted from disclosure under a previous determination by this office.

also state that these records are not available to the district nor may this information be obtained by the district “*other than for the limited purpose of this . . . submission.*” Having considered your arguments and reviewed the submitted information, we conclude that the Act is applicable to this information. *See* Open Records Decision No. 635 (1995); *see also* Open Records Decision Nos. 626 (1994) (handwritten notes taken during oral interview by Texas Department of Public Safety promotion board members subject to Act), 450 (1986) (notes of appraisers taken in course of teacher appraisals subject to Act), 120 (1976) (faculty members’ written evaluations of doctoral student’s qualifying exam subject to Act); *but see* Open Records Decision Nos. 635 (1995) (calendar purchased and maintained by governmental employee who had sole access to it not subject to Act), 77 (1975) (personal notes made by individual faculty members for personal use as memory aids not subject to Act). The employees’ notes are clearly related to the official business of the district. 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 sent by consulting firm to board members’ home addresses subject to Act). Accordingly, we conclude that the submitted information constitutes “public information” under section 552.002 of the Act. Therefore, the district must release that information unless it comes within an exception to public disclosure.

You assert that the notes “are verbatim ‘transcripts’ of portions of the closed-session tape recording,” and therefore are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code. We note, however, that section 551.104(c) makes confidential only “[t]he certified agenda or tape of a closed meeting.” Gov’t Code § 551.104(c). The information at issue is not the certified agenda or tape of a closed meeting. Thus, this information is not made confidential by section 551.104(c) of the Government Code and may not be withheld under section 552.101.

In summary, the district must withhold the responsive tape of a closed meeting pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the

Government Code. The personal notes of the employees are “public information” as defined by section 552.002 and must be released to the requestor.

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).

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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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 181925

Enc. Submitted documents

c: Mr. Robert J. West  
Texas Classroom Teachers Association  
P.O. Box 1489  
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(w/o enclosures)