



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 18, 2014

Ms. Leslie McCollom  
Counsel for Progreso Independent School District  
O'Hanlon, McCollum & Demerath  
808 West Avenue  
Austin, Texas 78701

OR2014-10553

Dear Ms. McCollom:

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# 526476.

The Progreso Independent School District (the "district"), which you represent, received a request for any notes two named district trustees made in specified district board meeting packets. You claim the requested information is not subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

*Id.* § 552.002. Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *See id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns, has a right of access, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. *See* Gov't Code § 552.002; Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988). Moreover, section 552.001 of the Act provides that it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See* Gov't Code § 552.001(a).

You state the submitted information consists of personal notes of district trustees. In support of your position that the notes may be withheld, you cite to Open Records Decision No. 116 (1975) where we concluded that a governor's aide's notes made solely for his own informational purposes were not subject to the Act. We note that since issuing Open Records Decision No. 116, this office has issued numerous rulings concluding that information written, produced, collected, assembled, or maintained in connection with the transaction of official business, including "personal" notes, is subject to the Act. *See e.g.*, Open Records Decision Nos. 635 (1995) (public official's or employee's appointment calendar, including personal entries, may be subject to Act), 626 (1994) (handwritten notes taken during oral interview by Texas Department of Public Safety promotion board members are public information), 327 (1982) (notes made by school principal and athletic director relating to teacher "were made in their capacities as supervisors of the employee" and constitute public information), 120 (1976) (faculty members' written evaluations of doctoral student's qualifying exam subject to predecessor of Act).

We note the handwritten notes at issue relate to district matters. Thus, this information was created as part of the district's official business. *See* Gov't Code § 552.002. Accordingly, we find the submitted information is subject to the Act and may only be withheld from disclosure if an exception under the Act applies.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 551.071 of the Government Code permits a governmental body to consult with its attorney in a closed meeting. *Id.* § 551.071. You assert the submitted information is confidential under section 551.071 of the Government Code. However, this provision does not make information confidential for purposes of section 552.101 of the Government Code. *See* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Thus, the district may not withhold any of the submitted information under section 552.101 in conjunction with section 551.071 of the Government Code.

You also raise section 552.101 of the Government Code in conjunction with section 551.072 of the Government Code. Section 551.072 provides:

A governmental body may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.

Gov’t Code § 551.072. Section 551.072 authorizes governmental bodies to hold closed meetings related to property transactions. However, this provision does not make information confidential for purposes of section 552.101 of the Government Code. *See* ORD 478. Furthermore, the fact that a subject is discussed in an executive meeting does not make information related to that discussion confidential. Open Records Decision Nos. 605 (1992), 485 (1987). Thus, the district may not withhold any of the requested information under section 552.101 in conjunction with section 551.072 of the Government Code.

You also raise section 552.101 of the Government Code in conjunction with section 552.074 of the Government Code. Section 551.074 allows a governmental body to conduct certain deliberations about employees in an executive session. *See* Gov’t Code § 551.074. However, this provision does not make information confidential for purposes of section 552.101 of the Government Code. *See* ORD 478. Thus, the district may not withhold any of the requested information under section 552.101 in conjunction with section 551.074 of the Government Code.

You also raise section 552.101 of the Government Code in conjunction with section 551.076 of the Government Code. Section 551.076 provides that a governmental body is not required to conduct an open meeting to deliberate the deployment or implementation of security personnel or devices. Gov’t Code § 551.076. Section 551.076, however, does not contain language that makes any of the information at issue expressly confidential, nor does it state that the information shall not be released to the public. Thus, the district may not withhold the requested information under section 552.101 in conjunction with section 551.076 of the Government Code.

You also raise section 552.101 of the Government Code in conjunction with section 551.082 of the Government Code. Section 551.082 allows a governmental body to conduct certain deliberations about a public school child or employees in a closed meeting. *See id.* § 551.082. However, this provision does not make information confidential for purposes of section 552.101 of the Government Code. *See* ORD 478. Thus, the district may not withhold any of the requested information under section 552.101 in conjunction with section 551.082 of the Government Code. As you raise no other exceptions to disclosure, the district must release the requested 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](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,



Megan G. Holloway  
Assistant Attorney General  
Open Records Division

MGH/akg

Ref: ID# 526476

Enc. Submitted documents

c: Requestor  
(w/o enclosures)