



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 13, 1996

Dr. Ann Dixon
Superintendent
Somerset Independent School District
P.O. Box 278
Somerset, Texas 78069

OR96-0182

Dear Dr. Dixon:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 32061.

A member of the board of trustees of the Somerset Independent School District (the "district") submitted a request to you for "papers, documents or any other form of record keeping" that you maintain concerning trustees.¹ You assert that the records at issue are not subject to chapter 552 of the Government Code. You explain that, acting upon the advice of your personal legal counsel, you keep notes about school-related activities in case you may need to defend yourself against allegations of wrongdoing. You indicate that you have not used the notes in your official capacity. You characterize the records at issue as "personal annotations of the conduct of certain school [b]oard [m]embers which could have ramifications regarding my character or contract." You indicate that the notes are made on your own time and kept at your private residence.

Information is generally public if it is collected, assembled, or maintained under a law, ordinance, or in connection with the transaction of official business (1) by a

¹We note that the requestor's letter asked for the information pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. section 552 and the Privacy Act of 1974 ("Privacy Act"), 5 U.S.C. section 552a. These statutes govern access to certain information held by federal agencies. See 5 U.S.C. §§ 551(1) (defining "agency" for purposes of FOIA); 552a(a) (Privacy Act refers to FOIA for definition of "agency"); 552(f) (explaining what section 552(1) definition of "agency" includes for purposes of FOIA); Attorney General Opinion MW-95 (1979) at 2 (FOIA and Privacy Act are not generally applicable to state governmental bodies, which are subject to chapter 552). We assume that the requestor is seeking the records under chapter 552 of the Government Code.

governmental body or (2) for a governmental body and the governmental body owns the information or has a right of access to it.² See Gov't Code § 552.021(a). It does not appear that the notes at issue are kept pursuant to a law or ordinance. However, if the notes were "created" in connection with the transaction of official business they would be subject to the provisions of chapter 552.

In Open Records Decision No. 626 (1994), members of a departmental promotion board took handwritten notes while interviewing candidates for promotion, as an aid in evaluating candidates. In determining that the notes at issue were subject to chapter 552, this office stated:

It is immaterial under the act whether an official who holds records regarding official business has discretion to generate or maintain these records. . . . Clearly, the board members' notes, to the extent they exist, were created "in connection with the transaction of official business" *i.e.*, in the course of the promotion board's evaluation of applicants for public employment.

Id. at 2 (citations omitted).

Handwritten notes were also at issue in Open Records Decision No. 327 (1982). The notes were created by a principal and an athletic director concerning the school-related activities of another employee. We stated that the facts provided this office indicated that "the notes of the principal and the athletic director were made in their capacities as supervisors of the employee" and that the notes were being kept in school files. Open Records Decision No. 327 (1982) at 2. Since the notes at issue had been created and were maintained in connection with the transaction of official business, they were subject to the provisions of chapter 552. See also Open Records Decision No. 450 (1986).

We have reviewed the notes at issue. They chronologically detail various school-related events that the you apparently believed might be significant if allegations of wrongdoing were made against you. The notes document your own perceptions of the events described. However, in order to determine whether the notes are public information, we must review the circumstances under which the notes were created and have been maintained. You state:

I did not keep these records for School District purposes. Instead, the documentation was prepared and maintained in the event that I might need to defend myself against allegations of wrong[doing] or contract violations as had previously been charged by these same [t]rustees and which I well believe could be repeated in the future. I have always been careful to prepare the

² The definition of "public information" was amended by the Seventy-fourth Legislature, effective September 1, 1995. See Gov't Code § 552.002. However, this amendment does not change our analysis of whether the notes at issue are public information as defined under chapter 552.

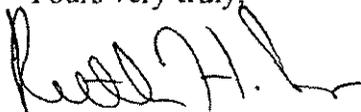
documentation on my own time and the records were kept at my private residence.

In Open Records Decision No. 635 (1995), this office stated that a state official's calendar that is maintained with public resources and accessible to other public employees is subject to chapter 552. In that situation, a public employee maintained the calendar for the state official. In this situation, there is no indication that the notes have been shared with other district officials,³ that they are kept in district files, or that district resources were used to create the notes.

We cannot say that the notes at issue were created or are maintained in connection with the transaction of official business, because the circumstances under which they were created, used, and maintained make them appear similar to a personal diary or journal. Facts specific to this particular situation leads to this conclusion. One is that the notes were not created as part of your official duties, but rather appear to have been created on the advice of your personal attorney for the purpose of defending yourself against possible allegations of wrongdoing. It appears that you have not kept or used the notes for your work or other official school business. The notes are kept at your home and not at your work site. They have not been distributed to others in the school district. Further, it does not appear that school resources have been used to create or maintain the notes. Given these facts, the notes at issue are not public information subject to chapter 552 of the Government Code.⁴

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly



Ruth H. Soucy
Assistant Attorney General
Open Records Division

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³The individual requesting the notes indicates that you told at least one school official that you were keeping the notes. However, there is no indication the notes were shared with other school officials.

⁴Our conclusion that these notes are not public information could change in the future given new circumstances. For example, if you share the notes with others in your official capacity, we might conclude differently. We might also conclude differently if you began using school resources to maintain the notes.

Ref.: ID# 32061

cc: Leo Salas
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(w/o enclosures)