



June 14, 2001

Ms. Mary M. Strange
Executive Director
Board of Vocational Nurse Examiners
333 Guadalupe Street, Suite 3-400
Austin, Texas 78701

OR2001-2522

Dear Ms. Strange:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148397.

The Board of Vocational Nurse Examiners (the "board") received a request for information regarding the activities of Ms. Mary Strange, the board's Executive Director, including time sheets, itineraries, business and personal calendars, and reimbursement vouchers. You claim that Ms. Strange's personal calendar is not "public information" as defined by the Public Information Act (the "Act"). We have considered your arguments and reviewed the submitted information.

Section 552.021 of the Government Code provides for public access to "public information." Section 552.002 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 a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002. This office has additionally observed that certain factors are relevant, although not exhaustive, in deciding whether a document is essentially a governmental or personal document: 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. Open Records Decision Nos. 635 (1995), 626 (1994) (handwritten notes taken during oral

interview by Texas Department of Public Safety promotion board members are public information), 450 (1986) (notes of appraisers taken in the course of teacher appraisals were public information), 120 (1976) (faculty members' written evaluations of doctoral student's qualifying exam are subject to the Act). *But see* Open Records Decision No. 635 (1995) (calendar purchased and maintained by a commission employee who had sole access to it was not subject to the Act).

In discussing Open Records Decision No. 635 (1995), you state that "Ms. Strange is the only person who had custody and control of her personal calendar" and that "neither the Board nor any employee has the right of control, possession, or access to Ms. Strange's personal calendar." You also state that "there is no requirement by the Board that Ms. Strange have or prepare a personal calendar." Finally, you state that, although some of the entries in the calendar pertain to board business, "the existence of Ms. Strange's personal calendar is not necessary to the agency's business." Based on your representations and our review of the submitted information, we conclude that Ms. Strange's personal calendar and the information she has written in it are her personal property and record, not a record of the board. Thus, this calendar is not subject to the Act and need not 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 Department of Public 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 General Services 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. 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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 148397

Enc: Submitted documents

cc: Mr. Martin Thompson, Jr.
P.O. Box 16626
Austin, TX 78761
(w/o enclosures)