OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

February 1, 2002

Mr. Stephen Dubner
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 168046
Irving, Texas 75016-8046

OR2002-0486

Dear Mr. Dubner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160303.

The Tom Bean Independent School District (the "district"), which you represent, received a request for audiotapes of three closed session meetings involving grievance(s). Requestor also sought copies of the minutes for all three meetings, a copy of the agenda of the third meeting, and copies of any correspondence generated by three named individuals regarding these grievance(s). You assert that the requested audiotapes are from "closed meetings" held pursuant to section 551.074 of the Government Code and that they are excepted from disclosure under section 551.104 of the Government Code. You have provided the requestor with the open meeting agendas and audiotapes and the official minutes of the meetings. Because you do not object to the release of the correspondence, we assume that these items were among the information you have released to the requestor.

Section 552.101 of the Government Code excepts from disclosure information deemed confidential by law. 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) (construing predecessor to section 551.104). You state that the proceedings at issue were closed meetings pursuant to section 551.074. Therefore, the district must withhold the requested audiotapes from public

disclosure under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

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).

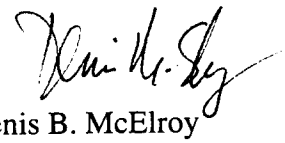
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,



Denis B. McElroy
Assistant Attorney General
Open Records Division

DBM/seg

Ref: ID# 160303

cc: Mr. Robert J. West
Texas Classroom Teachers Association
P.O. Box 1489
Austin, Texas 78767