OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

March 22, 2002

Ms. Marquette Maresh
Walsh, Anderson, Brown, Schulze & Aldridge
P.O. Box 2156
Austin, Texas 78768

OR2002-1425

Dear Ms. Maresh:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162052.

The Stafford Municipal School District (the "district"), which you represent, received a request for tape recordings and related materials pertaining to certain meetings of the district board of trustees. You indicate that the district will provide tape recordings of open sessions of the board of trustees and related materials to the requestor. You claim that the requested tape recordings pertaining to closed sessions of the board of trustees held on November 13th, 2001, December 18th, 2001, and January 22nd, 2001 are confidential under the Texas Open Meetings Act, chapter 551 of the Government Code, and thus must be withheld from public disclosure pursuant to section 552.101 of the Government Code.[1]

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).

You inform us that the board of trustees kept both a certified agenda and a tape recording of each executive session pursuant to sections 551.103 and 551.104 of the Government Code. Neither section 551.103 nor section 551.104 limit confidentiality to one choice between a certified agenda or a tape recording. Therefore, under the Open Meetings Act both a

[1]We note that the district did not submit a copy of the tape recordings at issue to this office for review. *See* Open Records Decision No. 495 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions when making open records decisions).

certified agenda and a tape recording of a lawfully closed meeting can be confidential pursuant to section 551.103, 551.104, or 551.146 of the Government Code. We conclude that the district must not release copies of the tape recordings at issue to the requestor. Since our ruling under section 551.104(c) in conjunction with section 552.101 is dispositive of your claim, we do not reach your claim under section 551.107 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).

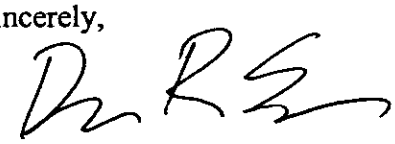
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/sdk

Ref: ID# 162052

c: Ms. Evelyn R. Brown
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