



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 6, 2003

Ms. Sue M. Lee
Henslee, Fowler, Hepworth & Schwartz
800 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701

OR2003-0801

Dear Ms. Lee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176115.

The Weatherford Independent School District (the "district"), which you represent, received a request for a copy of a note passed between two members of the district's Board of Trustees (the "board") during a specified meeting of the board. You claim that the requested information is not public information for purposes of the Public Information Act (the "Act"). We have considered your arguments and have reviewed the submitted information.

Section 552.021 of the Government Code provides for public access to "public information." See Gov't Code § 552.021. Section 552.002(a) 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(a). Thus, under this provision, information is generally "public information" within the Act when it relates to the official business of a governmental body or is maintained by a public official or employee in the performance of official duties, even though it may be in the possession of one person. In addition, section 552.001 of the

Government Code states 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 argue that the submitted note was created by a specified member of the board, was shown only to another specified member of the board, and was not intended to be given to the district to maintain. However, the affidavit of the board member who wrote the note, which you submitted to us for review, indicates that the note pertains to the board's consideration of a particular district policy. In addition, the note reveals on its face that it pertains solely to a matter of public business and, therefore, meets the legal standard of being created in connection with the transaction of official district business. Accordingly, after carefully reviewing your arguments and the note at issue, we find that the note constitutes information that is maintained by the district in connection with the transaction of official district business. *See Gov't Code § 552.002(a).* Consequently, we conclude that the note is subject to disclosure under the Act. *See Open Records Decision Nos. 626 (1994) (handwritten notes taken during oral interview by Texas Department of Public Safety promotion board members public 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 Act).* Because the district failed to raise any exception to disclosure regarding this note, we conclude that the district must release it 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

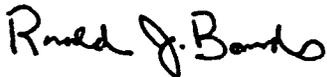
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to 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 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 176115

Enc. Submitted document

c: Mr. K. Marvin Adams
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(w/o enclosures)