ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2004

Mr. Andrew A. Chance
Ashcraft Law Firm
325 North St. Paul Street, Suite 3900
Dallas, Texas 75201

OR2004-10620

Dear Mr. Chance:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 215121.

The North Central Texas College (the "college"), which you represent, received a request for "a copy of all Attorney Statements/Fees/Bills paid and/or received by [the college] from 9/1/02 through today, 9/22/04." You claim that some of the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code, and Texas Rule of Evidence 503. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that in addition to making a request under the Public Information Act, the requestor is seeking the same information that is the subject to his Public Information Act request in his capacity as a member of the college's Board of Regents. In Attorney General Opinion JM-119 (1983), this office addressed a similar situation where a member of the board of trustees of the Alamo Community College District (the "district") requested access to certain records held by the district. This office concluded that:

> ...when a trustee of a community college district, acting in his official capacity, requests information maintained by the district, he is not a member of the 'public' for purposes of the Open Records Act. On the contrary, he is a member of the board which at least constructively maintains all records in the district's possession . . . .

> Because such a trustee is not merely a member of the public, his request for records in the district's possession cannot, in our opinion, be treated as a request for information under the Open Records Act.

Attorney General Opinion JM-119 at 2 (1983) (emphasis in original), *reaffirmed in* Attorney General Opinion JC-0120 (1999). Attorney General Opinion JM-119 further concludes that although the Public Information Act governs the release of information to members of the general public,

> ...[i]t cannot, in our view, control the right of access of a member of a governmental body to information in that governmental body's possession. Since the governmental body – in this instance the board of trustees of the district – at least constructively maintains records in the district's possession, we believe it logically follows that a member of that board has an inherent right of access to such records, *at least when he requests them in his official capacity.*

Id. at 3 (emphasis added).

Consequently, whether the requestor in this instance has a right of access to the requested information depends on whether he is seeking the information in his official capacity. From the clear and precise wording of his request for the information at issue "as a board member," we conclude that he is seeking the information in his official capacity. Consequently, we conclude that the requestor, as a member of the Board of Regents requesting this information in his official capacity, has an inherent right of access to the information and it must be provided to him. The release of this information in this specific instance does not constitute a release to the general public and, as such, the college waives none of the possible exceptions to the disclosure of this information. *See* Open Records Decision No. 666 at 4 (2000) (municipality's disclosure to a municipally-appointed citizen advisory board does not constitute a release to the public as contemplated under section 552.007 of the Government Code). Because the release of this information to a member of the Board of Regents is not a release to the public, the requestor must be cautious in maintaining the documents in the same manner as they were maintained by the college.

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 Dep't of Pub. 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,

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/sdk

Ref: ID# 215121

Enc. Submitted documents

c: Mr. Steve Gaylord
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(w/o enclosures)