ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 15, 2005

Mr. Steve Hartgraves
Hansford County Hospital District
707 South Roland
Spearman, Texas 79081

OR2005-02207

Dear Mr. Hartgraves:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 220714.

The Hansford County Hospital District (the "district") received a request for a tape recording of a meeting at which the requestor addressed the board of directors. You assert that the requested information is confidential under section 551.104 of the Government Code. We have considered your arguments.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."[1] Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 551.104(c) of the Open Meetings Act, chapter 551 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)." *Id.* § 551.104(c). Thus, such information cannot be released to a member of the public in response to an open records request. Section 551.146 of the Open Meetings Act makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. *See id.* § 551.146(a)-(b); *see also* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of

[1]Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

executive sessions to determine whether governmental body may withhold such information from disclosure under statutory predecessor to Gov't Code § 552.101).

You inform us that the requested information concerns a closed meeting held in accordance with section 551.074 of the Open Meetings Act to deliberate a personnel matter. Based on your representations, we agree that the district must withhold the requested information under section 552.101 of the Government Code as information made confidential by law.

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).

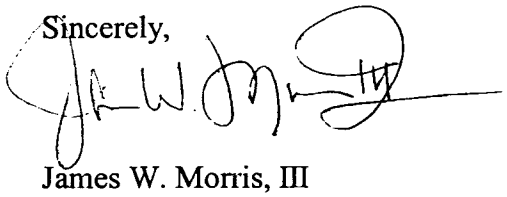
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 220714

Enc: Submitted information

c: Ms. Charla Hargis
c/o Mr. Steve Hartgraves
Hansford County Hospital District
707 South Roland
Spearman, Texas 79081
(w/o enclosures)