School Bd. member requesting records

Number: INFORMAL

Date: December 13, 2006

Subject:
School Bd. member requesting records

Mr. Keith B. Martin
Lee County School Board Attorney
2055 Central Avenue
Fort Myers, Florida 33901

Dear Mr. Martin:

You ask whether the school board may adopt a policy requiring that a request for information by an individual board member that will require more than sixty minutes of staff time to prepare must be presented to the school board for approval.

Initially, this office would note that a school board member is entitled to request public records pursuant to Chapter 119, Florida Statutes, as a member of the public. Section 119.07(1), Florida Statutes, clearly states that any person is authorized to inspect and receive copies of public records. This office has recognized that a public officer or employee is a "person" within the meaning of Chapter 119, Florida Statutes.[1] Moreover, there is no requirement that a person requesting a public record show a special or legitimate interest before being allowed to inspect or copy such record.[2]

Thus, a school board policy which seeks to limit such access would appear to be prohibited. A school board therefore may not inquire as to the purpose for the request to view or copy a public record, nor may it condition the release of such a record to a school board member upon the approval of the school board. In such cases, however, the school board member would be subject to any charges allowed by the Public Records Law.[3]

The Public Records Law addresses access to existing records. It provides a right of access to inspect and copy an agency's existing public records; it does not mandate that an agency create new records in order to accommodate a request for information from the agency nor does it require that information be given out from the records.[4]

Accordingly, if the policy seeks to limit the ability of a school board member to utilize staff to research and provide information or to create new records, rather than the provision of existing records, the Public Records Law is not implicated. I am not aware of any statutory provision which would prohibit the school board from adopting such a policy.[5] Rather such a matter would appear to fall within the sound discretion of the school board. As discussed in this office's statement concerning Attorney General Opinions, a copy of which is enclosed, this office generally will not comment on questions of executive, legislative or administrative policy. You may, however, wish to contact the Department of Education to determine if that department has

addressed this issue.

I trust that the above informal comment may be of some assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tfl
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[1] *See* Op. Att'y Gen. Fla. 75-175 (1975).

[2] *See Curry v. State*, 811 So. 2d 736, 742 (Fla. 4th DCA 2002) (the motivation of the person seeking the records does not impact the person's right to see them under the Public Records Act); *Staton v. McMillan*, 597 So. 2d 940, 941 (Fla. 1st DCA 1992), *review dismissed sub nom., Staton v. Austin*, 605 So. 2d 1266 (Fla. 1992) (reasons for seeking access to public records "are immaterial"); *Lorei v. Smith*, 464 So. 2d 1330, 1332 (Fla. 2nd DCA 1985), *review denied*, 475 So. 2d 695 (Fla. 1995).

[3] *See, e.g.*, s. 119.07(4), Fla. Stat.

[4] *See, e.g.*, Ops. Att'y Gen. Fla. 80-57 (1980) (custodian not required under Ch. 119 to give out information from the records of his or her office) and 92-38 (1992); *Wootton v. Cook*, 590 So. 2d 1039 (Fla. 1st DCA 1991) (clerk of court not required to provide inmate with list of documents from a case file that may be responsive to some forthcoming request).

[5] *Cf.* Op. Att'y Gen. Fla. 97-61 (1997) (attorney for a school board represents the board as a collegial body and acts at the request of the board as a collegial body and not at the request of an individual member).