



**THE ATTORNEY GENERAL  
OF TEXAS**

April 12, 1989

**JIM MATTOX  
ATTORNEY GENERAL**

Ms. Roxie W. Cluck  
Legal Counsel  
The City of Canton, Texas  
P. O. Box 336  
Canton, Texas 75103

Dear Ms. Cluck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5932; this decision is OR89-113.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The City of Canton received a request for "copies of the tape recording of open sessions, of all workshops and council meetings, including emergency meetings, [through] the present time." You indicate that the city maintains written minutes as the formal record of its open sessions and that these "minutes are approved by the governing body at each subsequent regular meeting." Although the city tape records its meetings, the recordings are made "for the sole purpose of aiding the secretary in accurately recording the minutes." You also note that the tapes include deliberations made in executive sessions.

It is well-established that notes and tape recordings of open meetings are open records. See Open Records Decision Nos. 225 (1979); 32 (1974). Open Records Decision No. 225, relying on Hall v. Board of Adjustment of City of McAllen, 239 S.W.2d 647 (Tex. Civ. App. - San Antonio 1951, no writ), held that minutes are public records when entered, regardless of whether they have been read and approved by the board and signed by the chairperson. Relying on the

Ms. Roxie W. Cluck  
April 12, 1989  
Page 2

definitions of "public records" in section 2(2) and "public information" in section 3(a) of the Open Records Act, Open Records Decision No. 32 held that the act applied to a tape recording of an open meeting of the Texas Board of Private Investigators and Private Security Agencies. The tape was produced "as an aid in the preparation of accurate minutes."

Additionally, the 70th Legislature added section 3B to the Open Meetings Act. Section 3B provides:

A governmental body shall prepare and retain minutes or make a tape recording of each of its open meetings. The minutes shall state the subject matter of each deliberation and shall indicate each vote, order, decision, or other action taken by the governmental body. The minutes or tapes prepared under this section are public records and shall be made available for public inspection and copying on request to the chief administrative officer of the governmental body or to any other official designated by the chief administrative officer. (Emphasis added.)

Acts 1987, 70th Leg., ch. 549, § 5, at 4417.

Consequently, minutes or tapes of an open meeting must be released except when they are in "immediate active use." See Open Records Decision Nos. 225 (1979); 121 (1976). With regard to the portion of the tapes that reflect executive sessions, the copies of the tapes to be released should be edited to omit the recordings of executive sessions. See Open Records Decision No. 495 (1988).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-113.

Yours very truly,

Open Government Section  
of the Opinion Committee 

Open Government Section  
of the Opinion Committee  
Prepared by Jennifer S. Riggs  
Chief, Open Government Section

JSR/bc

Ref.: ID# 5932