



April 16, 1999

Mr. Raymond Gregory
Bracewell & Patterson
911 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR99-1036

Dear Mr. Gregory:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 123399.

The Athens Independent School District (the "district"), which you represent, received a written request for a tape recording of a portion of a closed meeting conducted by the district's Board of Trustees on December 17, 1998. You explain that the requestor is an employee of the district who was present during the tape recorded portion of the executive session in order to present her employee grievance to the board. *See* Gov't Code § 551.074 (authorizing closed meetings to hear "personnel matters").

You have not raised any exception to required public disclosure with regard to the requested tape recording, but you suggest that the release of the recording might be a violation of the Texas Open Meetings Act, chapter 551 of the Government Code. Section 551.103 of the Government Code provides in pertinent part:

(a) A governmental body shall either keep a certified agenda or make a tape recording of the proceedings of each closed meeting, except for a private consultation permitted under Section 551.071.

....

(d) A tape recording made under Subsection (a) must include announcements by the presiding officer *at the beginning and the end of the meeting indicating the date and time.* [Emphasis added.]

Section 551.104 of the Government Code addresses the preservation and the conditions under which the certified agenda or tape recording of an executive session may be released to the public. Section 551.104 provides in pertinent part:

(a) A governmental body shall preserve the certified agenda or tape recording of a closed meeting for at least two years after the date of the meeting. . . .

(b) In litigation in a district court involving an alleged violation of this chapter, the court:

. . . .

(3) may grant legal or equitable relief it considers appropriate, including an order that the governmental body make available to the public the certified agenda or tape of any part of a meeting that was required to be open under this chapter.

(c) *The 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).* [Emphasis added.]

Finally, section 551.146 provides for both civil and criminal penalties for the unlawful release of the certified agenda or tape of a closed meeting.

You inform us that the board kept a certified agenda for the entire executive session. However, in addition to the certified agenda, the board tape recorded only the portion of the executive session pertaining to the requestor's employee grievance. We therefore assume that the tape recording does not comply with the procedural requirements of section 551.103(d).¹ You further inform us that the board in fact did not make the tape recording for purposes of section 551.103, but rather created the recording "because the discussion concerned an employee grievance and [the recording] might be needed in the future should [the requestor/ employee] choose to file litigation regarding her complaint." Given these facts, we conclude that the requested information is not a "tape recording of a closed meeting" for purposes of either section 551.103, 551.104, or 551.146 of the Government Code.² Consequently, the release of the tape recording at issue would not constitute a violation of the Open Meetings Act.

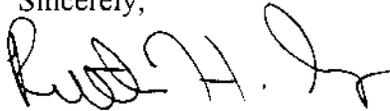
¹You did not submit a copy of the tape recording to this office, presumably in accordance with Open Records Decision No. 495 (1988), which concluded that the attorney general lacks authority to review certified agendas or tapes of executive sessions when making open records decisions. Consequently, we are unaware of the contents of the requested tape recording.

²Given our conclusion here, we need not address at this time whether a governmental body that creates both a certified agenda and a tape recording of a closed meeting under section 551.103 must maintain both records in accordance with section 551.104.

You also express concern that release of the tape recording would be in contravention of the purposes of the confidentiality provisions of the Open Meetings Act. This office has previously concluded, however, that the proceedings of a governmental body during a properly held executive session are not absolutely confidential. For example, in Attorney General Opinion JM-1071 (1989), this office concluded that the statutory predecessor to section 551.146 does not prohibit members of a governmental body or other persons in attendance at an executive session from making public statements about the subject matter of that session. Additionally, records held by a governmental body are not made confidential merely because they were discussed during an executive session. Open Records Decision Nos. 605 (1992), 485 at 9 - 10 (1987). This office has also concluded that the hand-written "personal notes" of a member of a governmental body and other records created in a closed meeting, other than a certified agenda or tape recording made pursuant to section 551.103, are not made confidential by the Open Meetings Act. *See, e.g.*, Open Records Letter Nos. 98-1876 (1998), 96-2414 (1996).

Based on the foregoing, and the fact that you have raised no exception to disclosure under the Public Information Act, we conclude that the district must release the requested tape recording to the requestor.³ We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/ch

Ref.: ID# 123399

³Because you did not submit to this office a copy of the requested tape recording, we are unaware of any information in the recording that would implicate the privacy interests of the requestor/employee. However, in this instance we need not consider such privacy issues because the requestor has a special right of access to any such information. *See* Gov't Code § 552.023.

cc: Ms. Amelia Hood
2113 Webster Way
Athens, Texas 75751