



November 4, 1999

Mr. Joe B. Hairston  
Walsh, Anderson, Brown, Schulze & Aldredge, P.C.  
6300 La Calma, Suite 200  
Austin, Texas 78768

OR99-3130

Dear Mr. Hairston:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 127852.

The San Marcos Consolidated Independent School District (the "school district"), which you represent, received a request for "a copy of the minutes of the Board Meeting and a copy of the tape of the executive session which took place on June 21, 1999." The school district has provided the requestor with a copy of the minutes. You contend that the tape is excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 551.104 and 551.146 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure information deemed confidential by statute. You contend that the release of the tape to the requestor would violate confidentiality provisions of the Texas Open Meetings Act. 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.]

This confidentiality provision is supported by section 551.146 of the Government Code, which penalizes the unlawful disclosure of a certified agenda or tape recording of a lawfully closed meeting as a Class B misdemeanor and makes the person responsible for disclosure liable for damages to a person injured or damaged by the disclosure. *See* Gov't Code §§ 551.146(a), (b).

You inform us that the school district's Board of Trustees (the "board") "has chosen the option of a certified agenda in order to comply with §551.103." However, in this instance, the board, in accordance with local policy, chose to also make a tape recording of the executive session. You state that "the tape recording in question was made pursuant to local policy and not to satisfy Tex. Gov't Code §551.103." In an abundance of caution, you seek an opinion from this office because despite the fact that the recording was "not to satisfy" section 551.103 as you represent, it is the school "District's position that the information in question may not be subject to disclosure."

We advise the school district that “[f]ew items under the control of a governmental body are hedged about with such statutory deference as the certified agenda/tape recording of an executive session.” Attorney General Letter Opinion No. 98-033 (1998). Although you represent that the tape recording in question was not made pursuant to 551.103, we do not believe that a failure to satisfy the requirements of section 551.103(d) is dispositive of the inapplicability of sections 551.104 and 551.146. Furthermore, we also advise the school district that neither section 551.103 nor section 551.104 limit confidentiality to one choice between a certified agenda or a tape recording. Therefore, under the Open Meetings Act both a certified agenda and a tape recording of a lawfully closed meeting can be confidential pursuant to sections 551.103, 551.104, or 551.146 of the Government Code.

Since the school district did not submit a copy of the tape recording to this office, we infer that the school district considers the tape recording subject to section 551.103. *See* Open Records Decision No. 495 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions when making open records decisions). Consequently, because of the statutory deference to the legislative intent behind section 551.104, we advise the school district that if the tape recording at issue was made during a lawfully closed meeting under the Open Meetings Act, then the school district must withhold the tape recording from disclosure under section 552.101 as information deemed confidential by section 551.104. *See* Attorney General Opinion No. JC-120 (1999).

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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref.: ID# 127852

cc: Ms. Rosa Perez  
2430 Offerman Hill Road  
San Marcos, Texas 78666  
(w/o enclosures)