



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2009

Mr. Robert Ash
Administrator
El Paso City Employees' Pension Fund
2 Civic Center Plaza
El Paso, Texas 79901

OR2009-18347

Dear Mr. Ash:

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# 366308.

The El Paso City Employees' Pension Fund (the "fund") received a request for the "recording of the agenda meeting" on August 19, 2009. You state that because the recording equipment did not operate on the specified date, the fund does not have a recording of the open portion of the meeting.¹ You have provided the requestor with a summary of motions from the meeting. You claim that the submitted audio recording of the executive session held on the specified date is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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." Gov't Code § 552.101. Section 552.101 encompasses section 551.104 of the Government Code, which 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

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

response to an open records request. *See* Open Records Decision No. 495 at 4 (1988). You state that the submitted audio recording is of a discussion held in executive session of the Pension Board. Accordingly, the fund must withhold the submitted tape of a closed meeting under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.² As this ruling is dispositive, we need not address your arguments against disclosure.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 366308

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note that a governmental body is not required to submit a certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101 of the Government Code). We further note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including a certified agenda and tape of a closed meeting under section 552.101 in conjunction with section 551.104 of the Government Code, without the necessity of requesting an attorney general decision.