



**THE ATTORNEY GENERAL
OF TEXAS**

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**JIM MATTOX
ATTORNEY GENERAL**

Mr. Sam Sparks
Grambling & Mounce
Attorneys at Law
P. O. Drawer 1977
El Paso, Texas 79950

Open Records Decision No. 461

Re: Whether the Open Records Act, article 6252-17a, V.T.C.S., requires disclosure of tape recording of meeting of El Paso Consultation Association, the body for employee consultations for the El Paso Independent School District

Dear Mr. Sparks:

You have informed us that the El Paso Independent School District has received a request, under the Open Records Act, article 6252-17a, V.T.C.S., for a "[t]ape recording of the December meeting of the El Paso Consultation Association." On behalf of the district, you have asked if the act authorizes the denial of this request. In your request letter, you stated:

The El Paso Consultation Association is recognized by the Board of Trustees of the El Paso Independent School District as the body for employee consultations. I enclose copies of Board Policy 4130 and its administration regulation for your review. Section 13.901 of the Texas Education Code provides that a board of trustees of any independent school district and its administrative personnel may consult with respect to matters of educational policies and conditions of employment and may adopt rules and agreements to provide for such consultations. Section 2(m) of the Open Meetings Act provides that nothing in the act shall be construed to require school boards operating under consultation agreements to deliberate in open meetings regarding the guidelines the boards will follow in consultation with representatives of employee groups. However, section 2(m) does not address whether the act applies to the consultation association meetings themselves.

The request for the tape recording of the December meeting of the El Paso Consultation

Association is made pursuant to article 6252-17a. An incidental question would be whether a tape recording is a "public record" as defined in the statute. It would appear to me that the threshold question is whether a consultation association is a "governmental body" as defined in article 6252-17a.

The circumstances of this particular request are that Mrs. Snider, the president of the El Paso Federation of Teachers and a member of the Consultation Association, requested permission to tape the meetings of the consultation. The Consultation Association voted not to permit this procedure but permitted a recording to be available to the assistant chairperson and the secretary so that accurate minutes could be prepared. The president of the El Paso Federation of Teachers has now requested a copy of the tape recording of the minutes, and the El Paso Consultation Association has voted not to furnish the tape recording to any member. The obvious reason for the El Paso Consultation's vote was that such a procedure could dampen discussions, could allow a breach of confidentiality among the members themselves and could generally limit the purpose and ultimate recommendations the El Paso Consultation desired to make to the administration and Board of Trustees of the El Paso Independent School District.

The Consultation Association consists of representatives of teachers; administrators; classified, paraprofessional, maintenance, and food service employees; and the superintendent's staff. Board Policy 4130, at 2.

We first consider whether the Open Records Act applies to the tape recording. Section 2(2) of the act defines "public records" as

[t]he portion of all documents, writings, letters, memoranda, or other written, printed, typed, copied, or developed materials which contains public information.

Section 3(a) defines "public information" as

[a]ll information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business. . . .

Open Records Decision No. 352 (1982) held that a computer tape containing information concerning the Texas Assessment of Basic Skills test was a "developed material" within section 2(2) and contained information relating to official business of a governmental body within section 3(a). In so doing, the decision observed that the form in which a governmental body stores information does not affect its availability under the act. Open Records Decision No. 32 (1974) held that a tape recording of an open meeting of a particular governmental entity was within the act. In view of these authorities, we conclude that the recording at issue here is subject to the act. It is a "developed material" which contains information relating to official school district business.

You next suggest that we should decide whether the Consultation Association is a "governmental body" within section 2(1) of the Open Records Act. It is unnecessary to do so, because the members of the association are school district employees, and we have often held that information assembled and maintained by employees of a governmental body is subject to the Open Records Act, see, e.g., Open Records Decision Nos. 437 (1986) (information assembled by attorney and "outside operator" of utility districts); 432 (1985) (photographs taken by city police officers). Instead, we shall consider whether the association is a "governmental body" within the Open Meetings Act, article 6252-17, V.T.C.S. As we shall show, this directly affects whether the district must release this tape recording.

Section 1(c) of the Open Meetings Act defines "governmental body" as

any board, commission, department, committee, or agency within the executive or legislative department of the state, which is under the direction of one or more elected or appointed members; and every Commissioners Court and city council in the state, and every deliberative body having rule-making or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city; and the board of trustees of every school district, and every county board of school trustees and county board of education; and the governing board of every special district heretofore or hereafter created by law.

In Attorney General Opinion JM-340 (1985), we held that a grievance committee of the Alamo Community College District was not within this definition, and that its meetings therefore need not be open to the public. We said:

For a local level entity to be a 'governmental body' within the act, it must be expressly included in the list of governmental bodies which

comprises the second branch of the definition. V.T.C.S. art. 6252-17a, §1(c). That list names several specific governmental bodies. It also establishes criteria for identifying deliberative bodies 'classified as a department, agency, or political subdivision of a county or city.' See, e.g., Attorney General Opinions JM-4 (1983); H-467 (1974). The definition of governmental body does not, however, include committees subordinate to the governing body of a school district or junior college district such as the grievance committee. Since the Alamo Community College grievance committee is not a governmental body within the statutory definition, it is not subject to the Open Meetings Act.

Like the grievance committee at issue in Attorney General Opinion JM-340, the Consultation Association is a committee "subordinate to the governing body of a school district." See Educ. Code §13.901 (authorizing independent school districts to adopt rules and agreements for consultations); Board Policy 4130, at 1, 2. Its meetings, therefore, are not required by the Open Meetings Act to be open to the public.

In Open Records Decision No. 60 (1974), this office considered whether a school district had to disclose "minutes [of a board meeting] containing information concerning employment, salaries, discipline, and dismissal of personnel." The decision stated:

In answering this question, we note that the Open Meetings Act, article 6252-17, V.T.C.S., permits a governmental body to exclude the public from discussions 'involving the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal' of employees, unless the affected employee requests an open hearing (sec. 2(g)), and so long as final actions, decisions and votes are taken in public session (sec. 2(g)). To the extent that the minutes of the Board reflect discussion properly held in closed session we believe the public policy embodied in these provisions of the Open Meetings Law permits the non-dissemination of those portions of the minutes. It is our view that this information falls within the umbrella of sections 3(a)(1) and 3(a)(2) of the Open Records Act.

It is apparent that this decision was based on the following rationale: (1) the Open Records and Open Meetings Acts are to be construed in pari materia, as both are governmental sunshine laws, see Calvert v. Fort Worth National Bank, 356 S.W.2d 918, 921 (Tex. 1962)

(statutes dealing with same general subject are to be read together); and (2) the Open Records Act could not be interpreted as requiring the disclosure of the board minutes insofar as this would reveal discussion held in the closed board meeting. This interpretation would subvert the intent of the exception in the Open Meetings Act which authorized that meeting.

Open Records Decision No. 60 construed the Open Records Act in a situation involving an entity which was a "governmental body" within the Open Meetings Act, but which was authorized by an exception in that latter act to conduct a particular closed session. In the present instance, by contrast, we are dealing with an entity which is not a "governmental body" within the Open Meetings Act, and which is therefore not required by that act to open any of its meetings to the public. In our opinion, however, the same rationale that was employed in Open Records Decision No. 60 also applies here. If information may be withheld under the Open Records Act when its disclosure would reveal what took place during a meeting which was legally closed under an exception in the Open Meetings Act, on the ground that disclosure would destroy that exception, we believe that it may also be withheld if its release would reveal what occurred during a meeting to which the Open Meetings Act does not apply. To conclude otherwise would also subvert the intent of the Open Meetings Act, in that it would allow public access to proceedings which, under that act, need not be open to the public. While some have argued that the public interest would be served by expanding the scope of the Open Meetings Act, it is for the legislature, not this office, to perform that task.

Although, as we have noted, the Open Meetings Act does not require the association to hold open meetings, Board Policy 4130 provides that it "may" do so. You have not informed us whether, pursuant to this policy, the December meeting of the Consultation Association was open to the public. If it was, no basis would now exist for withholding this tape recording, as the information contained therein will have been publicly aired. If this meeting was closed, however, the Open Records Act does not require the release of this tape recording.

Very truly yours



J I M M A T T O X
Attorney General of Texas

JACK HIGHTOWER
First Assistant Attorney General

MARY KELLER
Executive Assistant Attorney General

RICK GILPIN
Chairman, Opinion Committee

Prepared by Jon Bible
Assistant Attorney General