



**THE ATTORNEY GENERAL  
OF TEXAS**

April 6, 1988

**JIM MATTOX  
ATTORNEY GENERAL**

Mr. Gary W. Smith  
City Attorney  
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P. O. Box 1967  
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Open Records Decision No. 491

Re: Whether minutes of meetings of Law Enforcement Advisory Committee are subject to disclosure under the Open Records Act, article 6252-17a, V.T.C.S. (RQ-1219)

Dear Mr. Smith:

You ask whether minutes of meetings of a local committee called the Law Enforcement Advisory Committee [hereinafter "LEAC"], are subject to required disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request letter describes this committee as follows:

LEAC is a very unique committee as it is composed of the Chief of Police, Texarkana, Texas; Chief of Police, Texarkana, Arkansas; Sheriff, Bowie County, Texas; and Sheriff, Miller County, Arkansas. Each of these law enforcement agencies are housed in a building that straddles the border between the States of Texas and Arkansas. The building was a joint venture of the cities, counties and states requiring special legislation by both states. The purpose of the LEAC is to oversee the operation and maintenance of the building and to oversee the operation of the joint records.

The building has been beset with a variety of problems which have gained notoriety in the Community. LEAC conducts investigations and studies concerning the building and makes recommendations for modifications to correct problems and deficiencies encountered. The recommendations must

be acted on by the various entities, primarily, Texarkana, Arkansas, as that City has taken the role of operating the facility.

LEAC also conducts investigations and makes recommendations concerning personnel employed in the inter-agency areas of records and dispatch. The personnel employed in these areas are employees of the various agencies. Improper conduct of duties is discussed by the LEAC and recommendations are made to the employing agency for reassignment of personnel. However, the recommendations are not binding.

The statutory basis for this facility is found in chapter 361, subchapter B of the Local Government Code. You submitted a copy of a document entitled "Bi-State Criminal Justice Center Agreement," which explains the nature and duties of the LEAC. See p. 8 et. seq.

You ask, initially, whether the LEAC is subject to the Open Records Act. Section 2(1)(F) of the act provides that any committee "supported . . . by public funds" is subject to the act. The LEAC arguably is supported by public funds to the extent that its members receive public compensation for the portion of their working day spent dealing with LEAC matters. Because this matter can be resolved on other grounds, however, we need not address this issue.

The city of Texarkana, to which this Open Records Act request was submitted, is subject to the act. V.T.C.S. art. 6252-17a, §2(1). The Chief of Police of Texarkana is the city's representative to the LEAC. Any LEAC minutes held by the Chief of Police in his capacity as LEAC representative are held on behalf of the city of Texarkana and are therefore within the scope of section 3(a) of the act. This section provides:

All information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information . . . with the following exceptions only[.]

Open Records Decision No. 142 (1976) dealt with a similar situation. The University of Texas received a request for the minutes of certain meetings of the Southwest Athletic Conference. The university's faculty representative to the Conference held the minutes. The decision said:

It is the University's contention that minutes held by the University's representative to the Conference are his personal notes, and are not 'information collected, assembled, or maintained' by the University 'in connection with its official business' within the meaning of section [3(a) of the act]. We are unable to agree with this contention. If the information requested was obtained by the University's representative to the Conference in his official capacity as representative, we believe that he holds it on behalf of the University and that it is information within the scope of section 3(a) of the Act. See Attorney General Opinion H-258 (1974); Open Records Decision Nos. 109 (1975), 95 (1975) and 50 (1974). Compare Open Records Decision No. 77 (1975), which involved the handwritten personal notes of a governmental employee made solely for his own use. We need not and do not deal with the issue of whether the Southwest Athletic Conference may be a governmental body within the meaning of section 2(1)(F) of the Open Records Act. The fact that the records were generated by another entity is irrelevant to the determination of whether they are public records when they are in the possession of the University of Texas or its official representative. (Emphasis added.)

The Chief of Police of Texarkana occupies the same position with respect to the LEAC as the faculty representative in Open Records Decision No. 142 occupied with respect to the Conference. Regardless of whether the LEAC is itself subject to the Open Records Act, therefore, minutes of its meetings held by the chief in his capacity as LEAC representative are in effect held by the city of Texarkana and are therefore within section 3(a) of the act.

It is suggested that even if this is so, the city may withhold these minutes under the rationale of Open Records Decision No. 461 (1987). This decision determined that the El Paso Independent School District need not release a tape recording of a meeting of the El Paso Consultation Association, a district committee. Although the tape was a "public record" under section 2(2) of the Open Records Act, the meeting it recorded was not required by the Open Meetings Act, article 6252-17, V.T.C.S., to be held in public, and had not been so held. To require the release of this tape, we said, would effectively force the district to grant public access to a meeting that the Open Meetings Act did not require be held in public. It is argued that the same situation exists in this instance: LEAC meetings need not be held in public; to require the release of these minutes, therefore, would, in effect, allow public access to meetings which had permissibly been closed to the public.

On reconsideration, we believe Open Records Decision No. 461 employed faulty reasoning. First, it said that because the Open Records Act and the Open Meetings Act are "governmental sunshine laws," they must be construed in pari materia. Reading the acts together, it then held that a governmental body which maintains a record of a meeting not required by the Open Meetings Act to be open to the public may withhold that record under the Open Records Act, even though it is not within an exception in section 3(a) of that act. To compel the release of this record, the decision said, would subvert the intent of the Open Meetings Act that the meeting be kept closed.

Although both acts are "sunshine" laws, they are separate, distinct acts: one applies to meetings, while the other applies to records. Because the acts are distinct, the only way to give proper effect to both is to apply each according to its own terms. The acts define "governmental body" differently and therefore are not co-extensive in their application. The Open Records Act applies to governmental bodies not covered by the Open Meetings Act. Whether or not a meeting of an entity must be open, a record of that meeting which the entity assembles or maintains is subject to required disclosure if the entity is a "governmental body" within the Open Records Act and the record is not within one of the act's specific exceptions.

Section 3(a)(1) of the Open Records Act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision"

(emphasis added). Prior decisions of this office indicate that the executive session provisions of the Open Meetings Act constitute statutory authority to withhold information under section 3(a)(1). In Open Records Decision No. 60 (1974), this office stated that to the extent that minutes of a governmental body reflect discussion properly held in a closed session expressly authorized under subsection 2(g) of the Open Meetings Act, the minutes may be withheld under sections 3(a)(1) and 3(a)(2) of the Open Records Act. Open Records Decision No. 330 (1982) relies on the same rationale. Open Records Decision No. 461 extended this rationale further by relying on the fact that the Open Meetings Act did not affirmatively require meetings of a particular entity to be held in public as the basis for confidentiality under section 3(a)(1).<sup>1</sup>

The situation you present and the situation presented in Open Records Decision No. 461 differ from the situation presented in Open Records Decision Nos. 330 and 60. Open Records Decision No. 461 correctly concluded that the Open Meetings Act does not apply to a school district's subordinate consultation association, consisting of various administrators and teacher and employee representatives. The decision noted that, for this reason, meetings of this association need not be held in public. The decision relied on faulty reasoning when it relied on the fact that meetings need not be held in public as the basis for statutory confidentiality under section 3(a)(1) of the Open Records Act. If the Open Meetings Act does not apply, it cannot provide the kind of statutory confidentiality relied upon in Open Records Decision Nos. 330 and 60. To rely on the rationale of Open Records Decision Nos. 330 and 60 requires an initial determination that the provisions of the Open Meetings Act apply to the entity in question.

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1. The 70th legislature amended the Open Meetings Act to require that a "certified agenda" or tape be kept of the closed or executive sessions authorized under the act. Acts 1987, 70th Leg., ch. 549, §3; Attorney General Opinion JM-840 (1988). The amendment provides express statutory confidentiality by making the certified agenda or tape available to the public only upon court order. The records at issue, however, were prepared prior to the effective date of this amendment.

Section 361.022 of the Texas Local Government Code provides for the creation, by contract, of justice centers located on state lines. Within the guidelines of the Local Government Code, the contract controls the administration of the centers. The contract at issue here provides for a Project Coordinating Committee to have primary authority over the project with the authority to take binding actions to be retained by the governmental bodies signing the contract. See Bi-State Criminal Justice Center Contract, III, A, § 3. The contract provides "All Project Coordinating Committee Meetings shall be conducted in accord with the open meetings laws of the state within which the meeting is to be held." See Contract, III, A, § 5. This does not mean that the LEAC, a subordinate advisory council, is subject to the Open Meetings Act. Moreover, although any entity may voluntarily provide for public meetings, we do not believe that a governmental body may avail itself of the protection of section 3(a)(1) of the Open Records Act through a contract. Attorney General Opinion JM-672 (1987); See also Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 677 (Tex. 1976), cert. denied 430 U.S. 931 (1977) (agency rule cannot close documents); Open Records Decision No. 263 (1981) (city ordinance cannot close documents). The Open Meetings Act does not, by its terms, apply to the LEAC.<sup>2</sup> See Attorney General Opinion JM-340 (1985) (grievance committee serving under entity that is covered by the act is not itself covered by the act when it has no rulemaking or quasi-judicial powers); Attorney General Opinion JM-183 (1984) ("hybrid advisory" entity with members selected from a variety of political subdivisions is not subject to the Open Meetings Act); Attorney General Opinion H-467 (1974) (city library board with no rulemaking or quasi-judicial power not covered by act); cf. Attorney General Opinion H-1281 (1981) (grievance committee created pursuant to statute with substantive powers is covered by act).

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2. We recognize that the Austin Court of Appeals issued a broad ruling on the meaning of "governmental body" under the Open Meetings Act, article 6252-17, V.T.C.S. See Sierra Club v. Austin Transportation Study Policy Advisory Committee, Docket No. 3-87-126-CV, Tex. App. - Austin, Feb. 3, 1988 (unreported). The committee at issue in the Sierra Club case, however, differs significantly from the LEAC.

The Open Meetings Act, moreover, cannot make the record "confidential" by negative implication under section 3(a)(1) of the Open Records Act. The Open Meetings Act does not express an "intent" that meetings not expressly made public within its terms shall be closed to the public. The act expresses no intent with respect to such meetings and cannot provide implied statutory confidentiality under section 3(a)(1) of the Open Records Act. For these reasons, we overrule Open Records Decision No. 461 to the extent it conflicts with this decision.

The city of Texarkana may withhold these minutes only if they are within an exception in section 3(a) of the Open Records Act. As indicated, section 3(a)(1) does not protect this information. You also claim the protection of section 3(a)(11). Because this office does not ordinarily raise exceptions other than 3(a)(1) on behalf of governmental bodies, see Open Records Decision No. 481 (1987), this decision addresses only these sections.

Section 3(a)(11) applies to advice, opinion, and recommendation in inter-agency or intra-agency memoranda if it plays a role in the deliberative processes of the agency. Austin v. City of San Antonio, 630 S.W.2d 391, 394 (Tex. App. - San Antonio 1982, writ ref'd n.r.e.); Open Records Decision No. 464 (1987). Thus, the applicability of section 3(a)(11) depends on the role the LEAC plays in the justice center administration. For the most part, the samples of the minutes which you submitted contain motions made in LEAC meetings and the action taken on them.

You indicate that the authority of the LEAC, composed of the Chiefs of Police and County Sheriffs of the governmental bodies subject to the contract, is the same as that of the Chief of Police. The LEAC, called the Operations Coordinating Committee in the contract, holds some power to take action. See Contract, IV, D. For example, the LEAC has the authority to prepare, adopt, implement, evaluate, and monitor the administrative policies and procedures applicable to the Justice Center. See Contract, IV, D, §1. The LEAC has authority over certain employment questions and problem resolution. See Contract, IV, D, §§ 2, 5, 7. For these reasons the LEAC is not a purely advisory body. This fact has some impact on whether information falls within section 3(a)(11).

Statements reflecting final decisions of the LEAC on motions put before it on items on which the LEAC may take final action cannot be characterized as advice, opinion,

or recommendation under section 3(a)(11). The motions themselves technically may qualify as "recommendation"; this office, however, has said that information otherwise within section 3(a)(11) loses that protection when it becomes a part of materials that explain to the public the basis of an agency decision. Open Records Decision Nos. 196 (1978), 137 (1976). Because the substance of any motion necessarily will be either explicitly or implicitly incorporated in the statement reflecting the decision on that motion, and because section 3(a)(11) does not apply to that latter statement, we conclude that this exception also does not apply to the motion itself.

On the other hand, certain statements in these motions are referred to as "suggestions." Some were put before the LEAC in the form of motions; insofar as they were, section 3(a)(11) does not apply to them for the reasons stated above. Others apparently did not become motions, and section 3(a)(11) would embrace them if they played a role in the deliberative processes of the LEAC. See Open Records Decision No. 464 (1987). Examples of "suggestions" that may be withheld under this exception are the two sentences which we have marked on the second page of the minutes of July 1, 1987. Section 3(a)(11) would also apply to other advice, opinion, or recommendation that played a role in the committee's deliberative processes. The marked sentence on the first page of the minutes of May 20, 1987, is an example of such "opinion."

In addition, many of the functions of the LEAC are advisory in nature. The LEAC serves under and advises the Intergovernmental Advisory Committee. See Contract, IV, D. Additionally, the contract provides that the governmental bodies that are parties to the contract retain authority to take binding actions. See Contract, III, A, §3; IV, A, §3. Thus, the LEAC also serves as an advisory body to the governmental bodies covered by the contract. See Contract, IV, D, §3. To the extent that the LEAC does not have authority to take action, its recommendations may fall within section 3(a)(11).

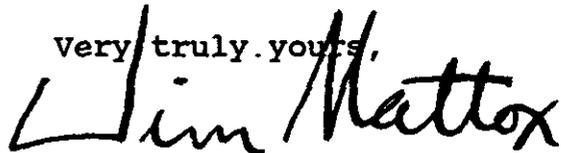
Because you relied on decisions that we have overruled, you have 10 days from receipt of this decision in which to raise other exceptions from disclosure under the Open Records Act.

S U M M A R Y

Minutes of meetings of the Law Enforcement Advisory Committee (LEAC) which are held by the Chief of Police of the city of Texarkana, Texas, in his official capacity as LEAC representative, are subject to the Open Records Act, and may not be withheld under section 3(a)(1) of the Open Records Act in conjunction with the Open Meetings Act. Open Records Decision No. 461 (1987) is overruled to the extent that it indicates that records may be withheld under section 3(a)(1) on the basis that the Open Meetings Act by negative implication makes records confidential.

The exception raised by the city, section 3(a)(11), does not apply to these minutes to the extent that they reveal motions made in LEAC meetings on items of business on which the LEAC may act and the dispositions of those motions. This exception does embrace advice, opinion, or recommendation in these minutes to the extent that it played a role in the deliberative processes of the LEAC and to the extent that it constitutes advice to the Intergovernmental Advisory Committee and the governmental bodies covered by the contract. Examples of information within section 3(a)(11) have been marked on documents to be returned to the city.

Very truly yours,



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