



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

May 1, 1990

Mr. Charles F. McNabb  
First Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79999

OR90-163

Dear Mr. McNabb:

You ask whether tape recordings of meetings of the Central Accident Review Board of the City of El Paso must be made available to the public under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your letter has been designated ID# 7366.

You state that the Central Accident Review Board is not subject to the Texas Open Meetings Act, article 6252-17, V.T.C.S. Under that act, an entity is a "governmental body" and thus subject to the act if it is a "deliberative body having rule-making or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city." V.T.C.S. art. 6252-17, § 1(c). Because you state that the Central Accident Review Board is not subject to the Open Meetings Act, we assume that it has no rule-making or quasi-judicial power. See generally Attorney General Opinions JM-4 (1983) (board of trustees for city waterworks); MW-174 (1980) (boards of Firemen's Relief and Retirement Fund Trustees); H-1154 (1978) (Montgomery County Child Welfare Board); H-467 (1974) (advisory library board). Also, the tapes themselves indicate that the role of the board is to make recommendations to city department heads.

The definition of "governmental body" for purposes of the Open Records Act is broader and includes any agency or committee that is supported by public funds. We assume, therefore, that the Central Accident Review Board of the City of El Paso is subject to the Open Records Act. This office has held that the fact that a body is not required to

hold a meeting in public does not mean that a tape recording of that meeting may be withheld under the Open Records Act. Open Records Decision No. 491 (1988). Therefore, information on the tapes you have submitted may be withheld only if the information is within one of the Open Records Act exceptions to required disclosure.

You suggest that section 3(a)(11) of the act, which allows a governmental body to withhold intra- or inter-agency advice, opinion, or recommendation for use in the decision-making process, applies to the tapes in question. We gather from the tapes that during part of the meeting only board members were present. During other parts individuals involved in accidents made presentations to the board. Section 3(a)(11) allows a governmental body to withhold only intra- or inter-agency communications. Therefore, the presentations made to the board and the questions asked by the board may not be withheld under section 3(a)(11). Portions of the tapes may be withheld that consist of discussion among the board member's in which the board members state opinions or make recommendations. You may make the open portions available to the requestor either by recording the open portions onto another tape or by transcribing the open portions. Please feel free to call if you have questions about specific portions of the tapes, by referring to OR90-163.

Yours very truly,



Sarah Woelk  
Assistant Attorney General  
Opinion Committee

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Enclosures: Tapes Sent

Ref: ID# 7366