



Office of the Attorney General  
State of Texas

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ATTORNEY GENERAL

May 3, 1993

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OR93-228

Dear Mr. Agnew:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19246.

The City of New Deal (the "city"), which you represent, has received a request for information relating to a certain city council executive session. Specifically, the requestor seeks "minutes recording action taken during an executive session in the New Deal City Council meeting on Dec. 21, 1992," including "the names of the committee named to investigate the New Deal Police Department" and "dates of meetings of said committee, people attending meetings and minutes recorded at those meetings."<sup>1</sup> We understand that the information at issue here includes the agendas and minutes for city council meetings held on November 23, 1992, December 21, 1992, and February 22, 1993, and other documents relating to these city council meetings.<sup>2</sup> You claim that this information is excepted from required public disclosure by section 3(a)(1) of the Open Records Act in conjunction with the Texas Open Meetings Act, article 6252-17, V.T.C.S., and by section 3(a)(8) of the Open Records Act. You also claim that tape recordings produced by the New Deal police chief during the committee's meetings are not subject to the Open Records Act.

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<sup>1</sup>You advise us that the names of the persons on the committee and the names of the persons who were in attendance at the executive session during which the committee was appointed will be released to the public. You also advise us that the committee did not generate any documents in the course of its business. The Open Records Act does not require disclosure of information that does not exist. Open Records Decision No. 362 (1983).

<sup>2</sup>We assume for purposes of our ruling that this information is responsive to the request.

As a threshold issue, we must consider whether the tape recordings at issue here are subject to the Open Records Act. Section 3(a) of the Open Records Act provides, in pertinent part:

[a]ll information collected, assembled, or maintained by or for governmental bodies, except in those situations where the governmental body does not have either a right of access to or ownership of the information, pursuant to law or ordinance or in connection with the transaction of official business is public information and available to the public . . . .

In *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court addressed the concern that a broad reading of the definition of "public information" would result in the disclosure of information concerning the affairs of private citizens. In addressing this concern, the court said:

The public's right to be informed about the affairs of government may thus conflict with the right of the individual to control access to information concerning his own affairs. The balance between these two competing interests has not yet been struck with clarity, and the nature and extent of each interest is yet to be satisfactorily determined. We believe, however, that, except in unusual circumstances, the task of balancing these interests must be left to the Legislature.

*Industrial Found.*, 540 S.W.2d 668 at 676 (footnote omitted). Thus, virtually all information, even "personal notes" in the physical possession of a governmental body, is "public information" subject to the Open Records Act. Open Records Decision No. 549 (1990) at 4. Only if the "public information" comes within one of the exceptions provided by the legislature may it be withheld from required public disclosure. *Id.*

You advise us that the tape recordings were produced by a city employee with the permission of a committee established by the city council for the exclusive purpose of evaluating that employee's job performance. Thus, the information contained on the tape recordings necessarily involves issues concerning the police department. Moreover, the tape recordings were produced by a city employee in the course and scope of his employment and are in his physical possession. You characterize the committee's investigation as "essentially a police department internal investigation" in which the police chief was a participant. We conclude, therefore, that the tape recordings relate to the transaction of official city business and are thus "governmental records" subject to the Open Records Act.

We next address your claim that the information submitted to us for review falls within an exception to disclosure under section 3(a) of the Open Records Act. You

contend that the information is excepted from required public disclosure by section 3(a)(1) in conjunction with the Open Meetings Act. Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 2A of the Open Meetings Act requires governmental bodies meeting in closed session to "keep a certified agenda of the proceedings." V.T.C.S. art. 6252-17, § 2A(a). The certified agenda

shall include an announcement made by the presiding officer at the beginning and end of the meeting indicating the date and time. The certified agenda shall state the subject matter of each deliberation and shall include a record of any further action taken. The certified agenda of closed or executive sessions shall be made available for public inspection and copying only upon court order in an action brought under this Act.

*Id.* subsec. (c); *see also id.* subsec. (e), (h); Open Records Decision Nos. 563 at 6 (1990) (minutes of a properly held executive session are confidential by virtue of section 2A(c) of the Open Meetings Act); 495 (1988) (Open Meetings Act specifically makes confidential certified agendas or tapes of executive sessions). Assuming that the December 21, 1992 executive session was properly convened, we conclude that the minutes of this session must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act in conjunction with section 2A of the Open Meetings Act. The remaining information, however, including the minutes of the committee meetings, constitutes neither a certified agenda nor minutes of an executive session. Accordingly, we conclude that this information may not be withheld under section 3(a)(1) in conjunction with section 2A of the Open Meetings Act.

Finally, we consider whether the requested information is excepted from required public disclosure by section 3(a)(8) of the Open Records Act, which excepts:

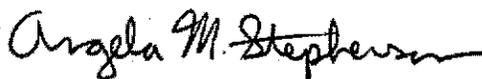
records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

"When the 'law enforcement' exception is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release of it would unduly interfere with law enforcement." Open Records Decision No. 287 (1981) at 2. You do not explain how release of the requested information would unduly interfere with law enforcement, and the documents do not supply such an explanation on their face. We conclude, therefore, that the requested information may not be withheld from required public disclosure under section 3(a)(8). Accordingly, with the exception of the executive session

minutes of December 21, 1992, the requested information in its entirety is subject to required public disclosure under the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Angela M. Stepherson  
Assistant Attorney General  
Opinion Committee

AMS/GCK/le

Ref.: ID# 19246

cc: Mr. Scott Luce  
Publisher  
Abernathy Weekly Review  
P.O. Drawer 160  
Abernathy, Texas 79311