



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 25, 1996

Mr. Sam A. Lindsay
City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR96-2217

Dear Mr. Lindsay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 34285.

The City of Dallas (the "city") received a request for copies of tapes made during meetings of the city council's Ad Hoc Committee-Downtown Sports Development Project. You assert that the requested tapes are excepted from required public disclosure under sections 552.101 and 552.107 of the Government Code.

You state, initially, that the requested tapes relate to a lawsuit filed in federal district court styled *Richard E. Finlan and Don Venable v. City of Dallas, et al.*, Case No. 3:95-CV-0386-X. In that case, the court issued a memorandum opinion and order regarding a temporary injunction on June 6, 1995. By its order, the court ruled that "the tape recordings [of these meetings] will not be released to the Plaintiffs or other members of the public. They will be retained as evidence under seal." We note that the requestor made his request for the tapes to the city on June 7, 1995, after the court signed the order on the temporary injunction.

Section 552.107(2) excepts information from required public disclosure if "a court by order has prohibited disclosure of the information." Assuming that this order is still in effect, we agree that section 552.107(2) excepts these tapes from required public disclosure.

You also assert that these tapes were made in executive session and, consequently, are excepted from required public disclosure under section 552.101. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 551.104 of the Government Code, a provision of the Open

Meetings Act, makes the tape of a properly closed meeting confidential.¹ *See* Gov't Code §§ 551.104(c) ("The 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)"); *see also* 551.146 (public disclosure of certified agenda of meeting that was lawfully closed to public is prohibited); Open Records Decision No. 495 (1988) (Open Meetings Act specifically makes confidential certified agendas or tapes of executive sessions). Accordingly, you must withhold the requested information under section 552.101 as information deemed confidential by law.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref: ID# 34285

cc: Mr. Todd J. Gillman
The Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265

¹We acknowledge the requestor's assertion that the judge in the above-referenced case ruled that these closed meetings were held in violation of the Open Meetings Act and, therefore, may not be confidential under the Open Meetings Act. However, this office lacks the authority to make the determination of whether the meetings were properly held or, if not, whether the tapes of the meeting are confidential under the Open Meetings Act. First, the Open Meetings Act provides the exclusive authority and procedure for challenging the confidentiality of certified agendas and tapes of executive sessions. Additionally, the attorney general lacks authority to "enforce" the Open Meetings Act. *See* Open Records Decision No. 495 (1988) at 2. Accordingly, we do not address this issue in this ruling.

²As we resolve this matter under sections 552.101 and 552.107, we need not, at this time, address the other exceptions raised by the city, specifically sections 552.104, 552.105, 552.110, and 552.111.