OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 30, 2002

Mr. Acie C. McAda
Kenedy City Attorney
P.O. Box 311734
New Braunfels, Texas 78131

OR2002-7475

Dear Mr. McAda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174261.

The City of Kenedy (the "city"), which you represent, received a request for the two audio tapes played by a police sergeant at a city council meeting held on September 30, 2002, and the complete audio recording made of the meeting by the police sergeant. You state that the two audio tapes played at the meeting will be released to the requestor. You claim, however, that the audio recording made of the meeting is not "public information" subject to the Public Information Act (the "Act"). We have considered your arguments.

Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." You explain that one of the agenda items addressed at the September 30, 2002 city council meeting was an employee complaint made against a police sergeant. You state that, at the sergeant's request, the meeting was held in open session. You further state that "it is believed" that the sergeant made an audio recording of the public meeting, but that the audio recording is not in the city's possession. You argue that the sergeant made this recording "for his own personal reasons" and that it was made using his "own personal recorder and tape." You further argue that "[i]t is not part of [the sergeant's] job responsibilities to record city council meetings" and that the recording was not made "at the direction of his supervisor." Based on your representations, in this instance we must find that the audio recording made by the sergeant is not "public information" under the Act and need not be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

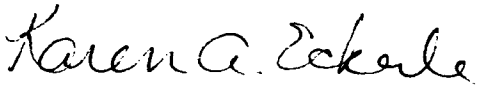
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 174261

Enc: Submitted documents

c: Ms. Sharon C. Huffman
c/o City of Kenedy
303 West Main Street
Kenedy, Texas 78119
(w/o enclosures)