



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 31, 1998

The Honorable Michael J. Guarino
Criminal District Attorney
Galveston County Courthouse
722 Moody, Suite 300
Galveston, Texas 77550

Letter Opinion No. 98-033

Re: Whether a member of a governmental body who participated in an executive session may copy a tape recording of that executive session (RQ-1037)

Dear Mr. Guarino:

You have requested our opinion as to whether a member of a governmental body may copy for his own use a tape recording of an executive session of a meeting in which he participated. You indicate that the board of directors of the Galveston County Municipal Utility District No. 12 held an executive session to discuss personnel matters, in accordance with section 551.074 of the Open Meetings Act, Government Code, chapter 551. The executive session was tape recorded in accordance with subsection 551.103(a) thereof, which provides: "A governmental body shall either keep a certified agenda or make a tape recording of the proceedings of each closed meeting, except for a private consultation permitted under Section 551.071." Subsequently, a board member who was present during the executive session "made a copy of the tape recording for unspecified purposes."

Section 551.104 of the Government Code provides, in relevant part:

(a) A governmental body shall preserve the certified agenda or tape recording of a closed meeting for at least two years after the date of the meeting. If an action involving the meeting is brought within that period, the governmental body shall preserve the certified agenda or tape while the action is pending.

(b) In litigation in a district court involving an alleged violation of this chapter, the court:

(1) is entitled to make an in camera inspection of the certified agenda or tape;

(2) may admit all or part of the certified agenda or tape as evidence, on entry of a final judgment; and

(3) may grant legal or equitable relief it considers appropriate, including an order that the governmental body make available to the public the certified agenda or tape of any part of a meeting that was required to be open under this chapter.

(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).

Your question is apparently prompted by a concern about the effect of Attorney General Opinion DM-227, in which we said that neither the Open Meetings Act nor the Open Records Act “precludes a member of a governmental body from reviewing the certified agenda or tape recording of a closed meeting in which the member had participated.” Attorney General Opinion DM-227 (1993) at 2. The opinion noted that such a limited review did not constitute a release to the *public*, and that, therefore, it would not contravene the provisions of section 551.104. It held, however, that:

Given the purpose of the certified agenda or tape recording, and given the governmental body’s statutory duty to preserve the certified agenda or tape recording as evidence in the event of litigation, we believe that each governmental body is authorized to decide for itself whether to permit a member who has participated in a closed meeting to review the certified agenda or tape recording of that meeting as well as the procedure for allowing such a review.

Id. at 2.

In our opinion, the conclusion of Attorney General Opinion DM-227 is sound. As this office observed in Attorney General Opinion JM-119, a member of a governmental body cannot discharge his official duties unless he has complete access to the records maintained by the governmental body. Attorney General Opinion JM-119 (1983) at 3. But a right of *access* does not foreordain a right of unlimited copying, and in our opinion, the Open Meetings Act precludes it.

Few items under the control of a governmental body are hedged about with such statutory deference as the certified agenda/tape recording of an executive session.¹ It is specifically required to be “preserved” for at least two years, and it may be made available to the public only under court order. Section 551.104 itself seems to contemplate but a single copy: “A governmental body shall preserve *the* certified agenda or tape recording of a closed meeting.” (Emphasis added). Furthermore, were a governmental body to permit one board member to copy the recording, it could hardly deny any member the right to do so, and the risk of unauthorized release may be expected to increase

¹Section 551.146 of the Government Code makes it a class B misdemeanor to knowingly disclose to the public the contents of a certified agenda or tape recording of an executive session and fixes civil liability on the discloser to any person injured by the disclosure.

exponentially with each duplication. In our opinion, the legislature was simply too careful in drafting section 551.104 to permit us, or any governmental body, to imperil its directive by authorizing such a casual and ill-considered release. If the legislature had intended to allow members of a governmental body to copy a tape recording of an executive session, we believe it would have expressly authorized them to do so, subject to precise restrictions on use and dissemination of the copies.

We conclude that a member of a governmental body may not copy for his own use a tape recording of an executive session of a meeting in which he participated, nor may the governmental body permit him to do so.

S U M M A R Y

A member of a governmental body may not copy for his own use a tape recording of an executive session of a meeting in which he participated, nor may the governmental body permit him to do so.

Yours very truly,



Rick Gilpin
Deputy Chair
Opinion Committee