X. Records of Meetings

A. Minutes or Recordings of Open Session

Section 551.021 of the Government Code provides as follows:

> (a) A governmental body shall prepare and keep minutes or make a recording of each open meeting of the body.
>
> (b) The minutes must:
>
> (1) state the subject of each deliberation; and
>
> (2) indicate each vote, order, decision, or other action taken.[364]

Section 551.022 of the Government Code provides:

> The minutes and recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee.[365]

If minutes are kept instead of a recording, the minutes should record every action taken by the governmental body.[366] If open sessions of a commissioners court meeting are recorded, the recordings are available to the public under the Public Information Act.[367]

B. Certified Agenda or Recording of Closed Session

A governmental body must make and keep either a certified agenda or a recording of each executive session, except for an executive session held by the governmental body to consult with its attorney in accordance with section 551.071 of the Government Code.[368] If a certified agenda

---

364 TEX. GOV'T CODE ANN. § 551.021; *see also* Tex. Att'y Gen. Op. No. GA-0727 (2009) at 2 (opining that Texas State Library and Archives Commission rule requiring written minutes of every open meeting of a state agency is likely invalid as inconsistent with section 551.021(a), which authorizes a governmental body to make a recording of an open meeting).

365 *Id.* § 551.022; *see York v. Tex. Guaranteed Student Loan Corp.*, 408 S.W.3d 677, 688 (Tex. App.—Austin 2013, no pet. h.) (concluding that exceptions in the Public Information Act do not operate to prevent public disclosure of minutes requested under section 551.022).

366 *See York*, 408 S.W.3d at 687 (defining "minutes" to refer "to the record or notes of a meeting or proceeding, whatever they may contain").

367 Tex. Att'y Gen. Op. No. JM-1143 (1990) at 2–3 (concluding that tape recording of open session of commissioners court meeting is subject to Open Records Act); *see* Tex. Att'y Gen. ORD-225 (1979) at 3 (concluding that handwritten notes of open meetings made by secretary of governmental body are subject to disclosure under Open Records Act); ORD-32 (1974) at 2 (concluding that audio tape recording of open meeting of state licensing agency used as aid in preparation of accurate minutes is subject to disclosure under Open Records Act).

368 TEX. GOV'T CODE ANN. § 551.103(a); *see* Tex. Att'y Gen. Op. No. JM-840 (1988) at 3 (discussing meaning of "certified agenda"). *But see* TEX. GOV'T CODE ANN. §§ 551.0725(b) (providing that notwithstanding section 551.103(a), the commissioners court must make a recording of the proceedings of a closed meeting under this

is kept, the presiding officer must certify that the agenda is a true and correct record of the executive session.[369] The certified agenda must include "(1) a statement of the subject matter of each deliberation, (2) a record of any further action taken, and (3) an announcement by the presiding officer at the beginning and the end of the closed meeting indicating the date and time."[370] While the agenda does not have to be a verbatim transcript of the meeting, it must at least provide a brief summary of each deliberation.[371] Whether a particular agenda satisfies the Act is a question of fact that must be addressed by the courts. Attorney General Opinion JM-840 (1988) cautioned governmental bodies to consider providing greater detail in the agenda with regard to topics not authorized for consideration in executive session or to avoid the uncertainty concerning the requisite detail required in an agenda by recording executive sessions.[372] Any member of a governmental body participating in a closed session knowing that an agenda or recording is not being made commits a Class C misdemeanor.[373]

The certified agenda or recording of an executive session must be kept a minimum of two years after the date of the session.[374] If during that time a lawsuit that concerns the meeting is brought, the agenda or recording of that meeting must be kept pending resolution of the lawsuit.[375] The commissioners court, not the county clerk, is the proper custodian for the certified agenda or recording of a closed meeting, but it may delegate that duty to the county clerk.[376]

A certified agenda or recording of an executive session is confidential. A person who knowingly and without lawful authority makes these records public commits a Class B misdemeanor and may be held liable for actual damages, court costs, reasonable attorney fees and exemplary or punitive damages.[377] Section 551.104 provides for court-ordered access to the certified agenda or recording under specific circumstances:

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

---

section), 551.0726(b) ("[N]otwithstanding Section 551.103(a), the [Texas Facilities] Commission must make a recording of the proceedings of a closed meeting held under this section.").

369 TEX. GOV'T CODE ANN. § 551.103(b).

370 *Id.* § 551.103(c).

371 Tex. Att'y Gen. Op. No. JM-840 (1988) at 4–7.

372 *Id.* at 5–6 (referring to legislative history of section indicating that its primary purpose is to document fact that governmental body did not discuss unauthorized topics in closed session).

373 TEX. GOV'T CODE ANN. § 551.145.

374 *Id.* § 551.104(a).

375 *Id.*

376 Tex. Att'y Gen. Op. No. GA-0277 (2004) at 3–4.

377 TEX. GOV'T CODE ANN. § 551.146.

(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 recording of any part of a meeting that was required to be open under this chapter.

(c) the certified agenda or recording of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3).[378]

Section 551.104 authorizes a district court to admit all or part of the certified agenda or recording of a closed session as evidence in an action alleging a violation of the Act, thus providing the only means under state law whereby a certified agenda or recording of a closed session may be released to the public.[379] The Office of the Attorney General has recognized that it lacks authority under the Public Information Act[380] to review certified agendas or recordings of closed sessions for compliance with the Open Meetings Act.[381] However, the confidentiality provision may be preempted by federal law.[382] When the Equal Employment Opportunity Commission served a Texas city with an administrative subpoena for tapes of closed city council meetings, the Open Meetings Act did not excuse compliance.[383]

A member of the governmental body has a right to inspect the certified agenda or recording of a closed meeting, even if he or she did not participate in the meeting.[384] This is not a release to the public in violation of the confidentiality provisions of the Act, because a board member is not a member of the public within that prohibition. The governmental body may adopt a procedure permitting review of the certified agenda or recording, but may not entirely prohibit a board member from reviewing the record. The board member may not copy the recording or certified agenda of a closed meeting, nor may a former member of a governmental body inspect these records once he or she leaves office.[385]

---

378 *Id.* § 551.104.
379 Tex. Att'y Gen. Op. No. JM-995 (1988) at 5.
380 TEX. GOV'T CODE ANN. ch. 552.
381 *See* Tex. Att'y Gen. ORD-495 (1988) at 2, 4.
382 *Equal Emp't Opportunity Comm'n v. City of Orange, Tex.*, 905 F. Supp. 381, 382 (E.D. Tex. 1995).
383 *Id.*
384 Tex. Att'y Gen. Op. No. JC-0120 (1999) at 4, 5, 7 (overruling Tex. Att'y Gen. Op. No. DM-227 (1993), in part).
385 Tex. Att'y Gen. LO-98-033, at 2–3.