



## Open Meetings Act—Closed Meeting Records FAQs<sup>1</sup>

**Q: *May the college district board release a copy of closed meeting records to a member of the public?***

A: No. A college district board that conducts a closed meeting must keep either a certified agenda or make a recording of the proceeding, except for private attorney consultations. Only a court in a Texas Open Meetings Act (OMA) case may make the agenda or recording available to the public. Tex. Gov't Code §§ 551.103-.104; Tex. Att'y Gen. Op. No. JM-995 (1988); Tex. Att'y Gen. ORD-330 (1982).

The person responsible for unlawful disclosure of a certified agenda or recording of a lawfully closed meeting commits a Class B misdemeanor and may be liable for damages to a person injured or damaged. Tex. Gov't Code § 551.146.

**Q: *May current college district board members review closed meeting records?***

A: Yes. Current trustees who attended a closed meeting may review the certified agenda or recording of that meeting. Current board members may also review the recording or certified agenda of a closed meeting they did *not* attend. Although a board may adopt reasonable procedures for review of closed meeting records, the board may not absolutely prohibit a board member from reviewing the recording or certified agenda. While a board member may review the record, the member is not authorized to obtain a copy of the recording or certified agenda. Tex. Att'y Gen. Op. Nos. JC-120 (1999), DM-227 (1993).

**Q: *May former board members review closed meeting records?***

A: No. Former board members may not review the recording or certified agenda after they have left office. Tex. Att'y Gen. Op. No. JC-120 (1999).

**Q: *May students and their parents review closed meeting records?***

A: Maybe. The recording of a closed meeting discussion of a student may be an education record to which an eligible student and a qualifying parent must be granted access under the federal Family Educational Rights and Privacy Act (FERPA). Though the recording constitutes a confidential record under the OMA, FERPA is a federal

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<sup>1</sup> An electronic version of this document is available on TASB College eLaw at [tasb.org/Services/Community-College-Services/Resources/TASB-College-eLaw/documents/oma\\_closed\\_meeting\\_records\\_faq.pdf](http://tasb.org/Services/Community-College-Services/Resources/TASB-College-eLaw/documents/oma_closed_meeting_records_faq.pdf).

statute that preempts inconsistent provisions of a state law such as the OMA. 34 C.F.R. §§ 99.5(a), .31(a); Tex. Att’y Gen. ORD-431(1985); Tex. Att’y Gen. OR2001-2727 (2001); Letter from Ellen Campbell, Family Compliance Office, U.S. Department of Education, to Robert Patterson, Open Records Division, Office of the Texas Attorney General (Apr. 9, 2001). Because of the complex legal issues raised by such a request, the college district should contact its attorney for assistance in determining the steps to take to respond.

**Q: *May grievants review closed meeting records?***

A: No. The attorney general has issued several informal letter rulings that generally conclude that a certified agenda or recording may not be released to an employee who presented a grievance, regardless of whether the agenda or recording satisfies the formal requirements of OMA or whether a recording was made in addition to a certified agenda. Tex. Att’y Gen. OR2001-2461 (2001), OR2000-1706 (2000), OR2000-1424 (2000), OR2000-1080 (2000), OR99-3539 (1999), OR99-3130 (1999).

Caution: The attorney general’s informal opinions cannot be used as binding precedent and are limited to specific facts and parties. Upon receiving an employee’s request, a college district should immediately contact its attorney and consider a timely request for an opinion from the attorney general on the facts of the specific request.

**Q: *May an attendee make his own record or recording of a college district board meeting?***

A: Yes, in an open meeting. OMA permits any person in attendance to record all or any part of an open meeting of the board by tape recorder, video camera, or other means of aural or visual reproduction. The board may adopt reasonable rules to maintain order during any such recording, such as the location of the recording equipment and the manner in which the recording is conducted. Tex. Gov’t Code § 551.023.

The attendee may not record a closed meeting if a majority of the board objects to the attendee making a recording. Beyond the official recording requirements, neither board members nor other individuals may record a closed meeting if the majority of the board objects. *Zamora v. Edgewood Indep. Sch. Dist.*, 592 S.W.2d 649 (Tex. Civ. App.—Beaumont 1980, writ ref’d. n.r.e.). Note that a recording of a closed meeting by an attendee could be considered the equivalent of an official record and therefore considered confidential by law. If so, disclosing the recording would be a criminal offense. Tex. Gov’t Code § 551.146. If the board permits the recording, the recording should be stored the official certified agenda or audio recording.

**Q: *What TASB policies apply to closed meeting records?***

A: For more information regarding closed meeting records, see TASB Policy BDA(LEGAL).

**Q: *Where can I get more information regarding the OMA?***

A: College district trustees and administrators may contact TASB Community College Services at 800.580.1488 or visit [colleges.tasb.org](http://colleges.tasb.org).

For more information on community college law topics,  
visit TASB Community College eLaw online at [colleges.tasb.org/elaw](http://colleges.tasb.org/elaw).

*This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is neither an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. It is important for the recipient to consult with the college's own attorney in order to apply these legal principles to specific fact situations.*