



Open Meetings Act Closed Meeting Records

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1. Who may attend a closed session of a board meeting?

Generally, a school board may choose whom to allow in a closed session, including district employees whose participation is necessary to the matter under consideration in closed session. Tex. Att’y Gen. Op. Nos. JC-0375 (2001), JM-0238 (1984), JM-0006 (1983). However, members of the public are not allowed in a closed meeting unless a provision in the Texas Open Meetings Act (OMA) or another law allows them to participate. Additionally, a board may exclude from a closed session any person whose attendance is contrary to the legal basis for the closed meeting. In very rare circumstances, a board may need to exclude a trustee who has taken a legal position adverse to the district on a closed meeting subject because disclosure of the deliberation to the adversarial trustee would compromise the district’s position as to that matter. Tex. Att’y Gen. Nos. JM-0238 (1984), GA-0511 (2007).

The certified agenda of a school board meeting must reflect each board member’s attendance or absence. Tex. Educ. Code § 11.0621. Although the OMA does not require a closed meeting certified agenda to record the attendance of non-board members, it is common for most districts to include an accurate record of which individuals were in attendance for each agenda item.

2. How do we record the closed session of our meeting?

The board must either keep a certified agenda or make a recording of the proceedings of each closed meeting, except for a governmental body’s private consultation with its attorney. Tex. Gov’t Code § 551.103(a). The requirements for a certified agenda are limited. If a board keeps a certified agenda rather than a recording, the certified agenda must include the following:

- A statement of the subject matter of each deliberation as actually discussed in closed session, not just each item scheduled for discussion. Tex. Gov’t Code § 551.103(c)(1); Tex. Att’y Gen. Op. No. JM-0840 (1988).
- A record of any further action taken in open session on the closed session items. Tex. Gov’t Code § 551.103(c)(2).
- An announcement by the presiding officer at the beginning and ending of the closed meeting indicating the date and time. Tex. Gov’t Code § 551.103(c)(3).

- Certification by the presiding officer that the certified agenda is a true and correct record of the closed session proceedings. Tex. Gov't Code § 551.103(b).
- As applicable, a record of the board's acceptance or rejection of the superintendent's recommendation for selecting district personnel. Tex. Educ. Code § 11.1513(b).

If a board chooses to make a recording rather than keep a certified agenda, the recording must include announcements by the presiding officer at the beginning and ending of the closed meeting indicating the date and time. Tex. Gov't Code § 551.103(d).

3. How detailed must the certified agenda be?

Whether a certified agenda satisfies the requirements of the OMA is a question of fact that can only be addressed by the courts. The attorney general has opined that the term "agenda" does not require a verbatim transcript of a meeting, but requires at least a brief summary of each deliberation. The attorney general suggested that governmental bodies may consider recording executive sessions to avoid the uncertainty concerning the detail required in a certified agenda. Office of the Attorney General, [2020 Open Meetings Act Handbook](#) 68 (2020); *see also* Tex. Att'y Gen. Op. No. JM-0840 (1988) (noting that the certified agenda's primary purpose is to document the fact that the governmental body did not discuss unauthorized topics in closed session).

4. May closed meeting records be released to the public?

No. A certified agenda or recording of a closed meeting is available for public inspection and copying only under a court order. Tex. Gov't Code § 551.104(c); Tex. Att'y Gen. Op. No. JM-0995 (1988); Tex. Att'y Gen. ORD-330 (1982). An individual, corporation, or partnership that knowingly discloses to a member of the public a certified agenda or recording of a closed meeting may be guilty of a Class B misdemeanor and may be liable for damages to a person injured or damaged. Tex. Gov't Code § 551.146.

5. May current board members review closed meeting records?

Yes. Current trustees who attended a closed meeting are permitted to review the certified agenda or recording of that meeting. Tex. Att'y Gen. Op. No. DM-0227 (1993). Current board members may also review the recording or certified agenda of a closed meeting they did *not* attend. Tex. Att'y Gen. Op. No. JC-0120 (1999). 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. Tex. Att'y Gen. Op. No. JC-0120 (1999). While a board member may review the record, he or she is not

authorized to obtain a copy of the recording or certified agenda. Tex. Att’y Gen. Op. No. JC-0120 (1999). A trustee, when acting in the trustee’s official capacity, is not required to submit a public information request under Chapter 552, Government Code, to access information, documents and records maintained by the district. Tex. Educ. Code § 11.1512(c).

6. May former board members review closed meeting records?

No. Former board members may not review any closed meeting recordings or certified agendas after they have left office. Tex. Att’y Gen. Op. No. JC-0120 (1999).

7. May parents of students review closed meeting records?

Maybe. A recording of a closed meeting discussion about a student may be an education record to which the parent must be granted access under the federal Family Educational Rights and Privacy Act (FERPA). Even though the recording constitutes a confidential record under the OMA, FERPA is a federal statute that preempts inconsistent provisions of a state law such as the OMA. *Letter from Ellen Campbell*, Family Policy Compliance Office, U.S. Department of Education, to Robert Patterson, Open Records Division, Office of the Texas Attorney General (Apr. 9, 2001); *see, e.g.,* Tex. Att’y Gen. OR2001-2727 (2001) (concluding that a tape recording of the district’s executive session during which the parent’s child was discussed as part of the parent’s complaint constituted an education record under FERPA and granting the parent access to the recording).

Caution: The attorney general’s informal opinion is provided as an example only, cannot be used as binding precedent, and is limited to specific facts and parties. Upon receiving a parent’s request, a 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.

8. May grievants review closed meeting records?

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 the OMA or whether a recording was made in addition to a certified agenda. E.g., Tex. Att’y Gen. OR1999-3130 (1999), OR1999-3539 (1999), OR2000-1080 (2000), OR2000-1424 (2000), OR2000-1706 (2000), OR2001-2461 (2001). The amendment to Texas Education Code section 7.057(c), discussed below, that allows release to the commissioner of education does not also authorize release to the employee who is the subject of the grievance on appeal.

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9. May an attendee make his own recording of a board meeting?

Yes, in an open meeting. The OMA permits any person in attendance to record all or any part of an open meeting of the school 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 OMA does not permit a person who is authorized to attend a closed meeting to make a recording in a closed meeting if a majority of the board objects to an attendee making a recording. Beyond the official recording requirements, neither board members nor other individuals may record a closed meeting if a 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.).

10. Does a district violate the OMA by submitting to TEA the record from a closed meeting grievance hearing?

No. The commissioner of education requires boards to produce a transcript or recording of all grievances presented to the board that are appealed to the commissioner. Forwarding the record of a closed meeting grievance hearing to the commissioner on appeal is not a violation of the OMA. Tex. Educ. Code § 7.057(c). To protect the confidentiality of other items discussed in the closed session, a board should make a separate recording of a closed meeting grievance hearing, in addition to the official record of the entire closed session, for the purpose of providing the recording or transcript to the commissioner.

11. How long must we retain certified agendas or certified recordings of closed meetings?

A minimum of two years, unless there is a lawsuit that concerns the meeting. If there is a lawsuit that concerns the meeting, then the agenda or recording of that meeting must be preserved while the lawsuit is pending. Tex. Gov’t Code § 551.104; Texas State Library and Archives Commission, [Local Schedule GR - Retention Schedule for Records Common to All Local Governments](#) (Revised 5th ed., eff. Apr. 17, 2016); 13 Tex. Admin. Code § 7.125(a)(1).

12. What TASB policies apply?

Check out TASB Policy BEC(LEGAL).

13. Where can I get more information about the Open Meetings Act?

The [office of the attorney general](#) is the primary source of information related to the Open Meetings Act. Supplemental resources from TASB related to school board meetings are available on the [TASB Store](#) or [TASB School Law eSource](#). School district trustees and administrators may contact TASB Legal Services at 800.580.5345.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/documents/oma-closed-mtg-records.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

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