



Public Safety Commission Meeting

July 21, 2011, 10:00 a.m.

Criminal Law Enforcement Auditorium

6100 Guadalupe, Bldg E

Austin, TX 78752

Summary

(This report represents a summary of events of the meeting, and is not necessarily complete nor an exact transcript of testimony.)

The Public Safety Commission convened as posted to consider and take formal action, if necessary, on

10:03 am - Chairman Polunsky called the meeting to order. In attendance: Chairman Allan Polunsky, Commissioners Carin Barth, Ada Brown, John Steen, and Cynthia Leon. Also present were Director Steve McCraw, Dep. Director Lamar Beckworth, Deputy Director Cheryl McBride, Chief of Staff Duke Bodisch, and General Counsel Phil Adkins.



II. APPROVAL OF MINUTES

Motion made by Commissioner Steen, and seconded by Commissioner Barth, to approve the Minutes. Approved unanimously.

III. PUBLIC COMMENT (members of the public wishing to address the Commission are subject to a time limit of 5 minutes and must complete a Public Comment Registration Card located at the entry)

Scott Henson – I write a blog regarding public safety called Grits for Breakfast. I'm concerned with the surcharges and the amnesty program. Bill 588 was passed, and there is a great deal of bi-partisan support for

doing away with the surcharge program. I also recommend that if the Amnesty program is done again, that it get better press coverage to let more Texans know about it. Since many of those that had already paid some of their surcharges actually did not owe anything under the amnesty program, perhaps the Department could administratively clear all of those who qualify the next time the amnesty program is implemented again.

IV. DIRECTORS REPORT

Director Steve McCraw – Following to the awards presentations, and after many of the family and guests chose to leave the room, Director McCraw addressed the progress being made in the recruitment process. He explained that the department has been receiving between 1,139 recruit applications and 1,949 recruit applications per year since 2006. Through July 15, 2011, we have received 1,418 written applications. In the one month since we have had an online application process available, we have already received 1,731 online applications. This is a very encouraging number that we hope will ultimately provide us with a larger pool of qualified applicants.

The legislature has authorized 3,880 Commissioned FTEs for the Department, but we have an operational funding shortage of 308 FTE salaries. This has all been discussed with the Legislative Budget Board and with the Legislature. Much of this funding shortage is the result of escalating gasoline prices. If we had the additional commissioned personnel, we could not afford to put them in a vehicle. Our 2012/2013 recruit goal is 347 commissioned FTEs. Our next class, which begins on August 17, 2011, we are hoping to have 80 recruits start the class, with the goal of graduating 60.

Director McCraw was asked about the state of the Retire/Rehire program, and he stated that it will be used on a limited bases to help fill positions in hardship areas only. He stated that in 2002, when the original Retire/Rehire program was used, 476 commissioned officers took advantage of the program. The 2009 Legislature, responding to reports from the ERS that the program was causing hardship to the ERS fund due to the fact that the Retire/Rehire employees were drawing from the ERS but not paying into the fund. The Legislature at that time imposed a 6.95% surcharge on the salaries of Retire/Rehire personnel, which effectively ended the program for the Department. Deputy Director Cheryl McBride stated that that surcharge was scheduled to be reduced by ½ percent on September 1, 2011.

Hardship duty stations will include areas such as Laredo, and many areas in Region 4, including Marfa, Van Horn, etc. Recommendations will come from the field supervisors, and the final decision as to “hardship need” will be made by the Division heads, such as Chief Baker for Highway Patrol and Tom Ruocco for CID.

The Department also is spending \$250,000 in advertising for recruits, including billboards and media.

Director McCraw also stated that he is encouraged by our “Expanded Enforcement” program that was authorized and funded by the Legislature this year, that will add the equivalent of 411 FTEs through the additional 5 hours of overtime worked per week by those who do not opt out of the program. (More on the 45 hr. work week later in this report.)

Director McCraw went on to discuss “Focused Recruitment” such as focusing on returning military personnel. El Paso Region has had a great deal of success at Ft. Bliss, and has initiated a pre-admission information program that better prepared potential recruits about the process of recruitment and training.

Mentored persons out of El Paso had 100% success in completing the academy. This success has prompted us to expanding the Regional Recruit Prep Schools and setting protocols and standards. The Commission agreed that this is a good idea, and suggested expediting the implementation process.

Chairman Polunsky asked if the Department has considering having dedicated personnel to do the labor intensive job of performing background investigations of recruits, rather than utilizing troopers from the field. Director McCraw responded that he felt that since a great deal of the background work needs to be done in the area from which the recruit has lived and worked, and using dedicated personnel would require a great deal of travel expense, with limited improved efficiency. Lt. Col. Beckworth, when asked, agreed with Col. McCraw regarding the use of field troopers in performing the background checks.

I would like to thank Commissioner Leon for her help in working with the recruiting leadership.

DAD Woodall stated that raising the cap for the school above 80, would significantly increase the time required for the school. The last recruit class had a 38% attrition rate; it started with 52 and graduated 32. We hope to graduate 60 from the 80 who begin the academy with the class that starts on August 17.

Chairman Polunsky asked for DAD Woodall what his thoughts were regarding the 38% attrition. DAD Woodall responded that he and his staff are not happy with it, but are optimistic that a mentoring program shows promise of preparing recruits and lowering the attrition percentage. Regional Recruit Prep Schools are being developed and have already been tested in two of our regions.

Commissioner Leon – Thanked the co-chair of the Recruitment Committee, Ada Brown, and all of the DPS personnel that have worked so hard. I agree we should revisit this in six months, and meet the goal of 3 recruit schools per year. We are encouraged by our new online application that drew 1,700 online applicants in one month compared to 1,600 over a full year previously.

Chairman Polunsky thanked both of the Commissioners who worked on this and stated that it is one of his highest priorities, and suggested that it is one of Director McCraw's as well. He also said that he would keep the Committee in place and asked the Commission to re-evaluate in six months.

Chairman Polunsky noted some expenses that have been added to the Department including: increase capitol security; adding a marine component; additional aircraft; increase security requirements for the Executive Protective Detail, etc.

A. Awards Presentation

(The following report was provided by Tela Mange in PIO)

Awards were presented to several deserving and heroic DPS officers and civilians. Director Steven C. McCraw thanked all of the award winners and said, "Your exceptional service and sacrifice is in keeping with the proud tradition of the Texas Department of Public Safety and the State of Texas." Public Safety Chairman, Allan Polunsky, gave special thanks to the non-Department employees who received awards. "It is rare to witness such acts of bravery from non-law enforcement officers. These civilians who risked their lives to help people in need should truly be commended," Polunsky said.

Director's Awards



Kyle Evans, Canton – Mr. Evans received the Director's Award for his bravery and heroism when he entered a vehicle that crashed and was engulfed in flames in order to pull out the driver. Mr. Evans' actions saved the life of the driver of the vehicle.



Baron Northington, El Campo – Mr. Northington received the Director's Award for his bravery in running towards a vehicle that had caught on fire after a crash and extinguishing the fire, saving the lives of the two occupants of the vehicle.

Tom Porter, Cleveland – Mr. Porter received the Director's Award for his bravery when he rescued a one year old child that was trapped inside a burning vehicle. Due to Mr. Porter's quick actions, he was able to extricate the child, who sustained no injuries.



Michele Rutherford, RN, Smithville - Mrs. Rutherford received the Director's Award for her lifesaving response to a car accident. Mrs. Rutherford is a registered nurse who happened upon a car accident, crawled inside the vehicle to assist the two injured persons who were still inside, and triaged one of the victims who was suffering from arterial bleeding. The quick response from Mrs. Rutherford created time for EMS personnel to respond, and for the victim to be transported to the hospital and make a full recovery.



Director's Citation



Sergeant Kenneth Authier, Corsicana – Sergeant Authier received the Director's Citation for his perseverance in locating a missing person. The victim was found in a vehicle that had crashed off a bridge and was seriously injured. Sergeant Authier's dedication to searching many miles of roadway saved the victim's life. **Trooper James Thompson** also assisted and was recognized for his service to this incident.



Trooper Vernon Gaines, Comanche – Trooper Gaines received the Director's Citation when he was called to assist with a family violence call. The suspect had barricaded himself inside his residence and refused to speak to anyone except Trooper Gaines. Though Trooper Gaines was off duty at the time, he went to the residence and talked to the suspect until he finally surrendered without incident.



Trooper James Thompson, Austin/Corsicana – Trooper Thompson received a Director's Citation for his perseverance in locating a missing person. The victim was found in a vehicle that had crashed off a bridge and was seriously injured. Trooper Thompson's dedication to searching many miles of roadway saved the victim's life. Sergeant Kenneth Authier also assisted and was recognized for his service to this incident.

Medal of Merit



Trooper Patrick Hodgkiss, Lampasas – Trooper Hodgkiss received the "Medal of Merit" for creating an excel spreadsheet tool that assists in completing crash reports. The tool integrates nearly 700 business rules and provides immediate feedback when an error has occurred.

Life Saving Awards

Sergeant Scotty Shiver, Lubbock – Sergeant Shiver received the Life Saving Award when he assisted a child whose airway was blocked to the point that he was unable to breathe. Sergeant Shiver was able to revive the child, using Emergency Medical Training that he had recently received on his own time and his own expense.



Trooper Todd Adkins, Sweetwater – Trooper Adkins received the Life Saving Award for using battlefield first aid training to stop the bleeding of a gunshot wound on a victim who had been shot by a 12 gauge shotgun at close range.

Purple Heart

Trooper Larry Michael Vaughn, Quitman – Trooper Vaughn received the Purple Heart for injuries sustained when he served a warrant on a dangerous fugitive. The suspect discharged a shotgun through a closed window, striking Trooper Vaughn and causing serious bodily injury. Trooper Vaughn was temporarily disabled, but has now made a full recovery and has been able to return to work.



B. Unit Citation Awards to be presented to Swat Team Members and Aviation Personnel

Unit Citation Award

DPS Aircraft and SWAT – The DPS Aircraft Unit and the DPS SWAT team were each awarded Unit Citation Awards for their tireless and heroic actions when a standoff in Odessa turned violent over the course of 22 hours. When DPS assumed command of the incident, it took only a few hours for DPS SWAT to conduct an operation that would end the standoff. Though the subject fired numerous times, sometimes striking accurately, DPS SWAT and DPS Aircraft were able to suppress the subject, ultimately leading to his surrender and without any loss of life.



Members of the **SWAT** unit that participated are: Lt. Cody Klaehn, Sgt. Chris Barclay, Sgt. Jeff Vajdos (Ranger), Sgt. Gregg Castillo, Sgt. Kevin Allison, Sgt. Jorge Ortega, Sgt. David Armstrong, Sgt. Dennis Miller, Sgt. Andrew Martinez, Sgt. Travis Ballew, Lt. Justin Holdridge, Sgt. Philip Gonzales, Sgt. Donald Jackson, Sgt. Donnie Bolton, Sgt. Benjamin Tristan, and Sgt. William Lemmon.

Members of **DPS Aircraft** that participated are: Lt. Matt Ruff, Sgt.

Pryor Templeton, Sgt. Zane Greenwood, Lt. Tony Ashley, TFO Derome West, Lt. Nathan Lashaway, Sgt. Lee Tarter, Sgt. Shon Parker, TFO Jimmy Morris, Sgt. Clay Shelton, Sgt. Gordon Wade and Sgt. Sean Davis.

V. NEW BUSINESS

A. Discharge Appeal Hearing and possible action regarding DPS employee Reginald Norman

Chairman Polunsky – Called the hearing to order following a brief break. Janet Reese, attorney for the Department. Richard Aman, attorney for Mr. Norman. The rule will be evoked (witnesses asked to leave the room until called). Trooper Norman has had repeated disciplinary actions dating back to 2004, some relating to alcohol, some relating to confrontations with citizens, and finally for discharging his weapon while on a pursuit in a densely populated residential area.

Two witnesses were called by the Department and one additional witness was called by the defense (the defendant). Following two hours that included opening statements by counsel, testimony by witnesses, a video of the chase, and closing arguments by counsel, Chairman Polunsky closed the hearing. A motion was made by Commissioner Brown, and seconded by Commissioner Barth. The Commission voted unanimously to uphold the Directors decision.



B. Update report, discussion and possible action on Municipal Services Bureau collection status

Assistant Director Rebecca Davio, Drivers License division - the Drivers Responsibility Program (DRP) was initiated by the Texas Legislature and implemented in 2003. In 2004, Municipal Services Bureau was contracted to collect the imposed surcharges related to the legislative mandate. Their contract was for four years and renewed until August 2013. I was asked by the Commission to review and report on MSB's performance in fulfilling their commitments outlined in the contract.

Remittance of funds collected – All funds must be delivered to the Comptroller's Office on the first of the month. They have hit this performance level 100% of the time.

Processing of payments received – Missed once and fined \$1500.

Customer Service Staffing and Call response – hit performance measures 100% of the time.

Initial notice mailing – hit performance measures most of the time, only 1 exception, \$1500 penalty assessed.

Other performance standard measures were met 100% of the time.

MSB surcharge collection rate for Texas is 40%. As a point of reference, New Jersey collection rate (which Texas is modeled after) is in the mid-30% range. The industry standard is closer to 25%.

Half of the collected funds go to the level 1 trauma hospitals, and half goes into the General Revenue fund. MSB collects 7% of funds collected, and assume all of the costs for the collection. Since 2007, MSB has made \$60 million on \$800 million collected. They are averaging \$10 million per year.

When asked by the Commission if she felt that their performance was acceptable, AD Davio replied that she felt that relative to benchmarks she was pleased with their performance. Chairman Polunsky suggested that there is an opt out clause in the contract and General Counsel Adkins confirmed that there is a 90 day notice option to cancel the contract.

Relative to the Drivers Responsibility Program, Amnesty was offered to 713,000 people, and only 12% (86,000) took advantage of it.

3,427 drivers applied for the Indigency Program which began in May of this year, and 3,159 have been improved. To qualify, you must be at or below 125% of the poverty level.

C. Report, discussion and possible action on the commercial vehicle weigh station process
Assistant Director David Baker, Highway Patrol – CVE – ensure safe operation of commercial motor vehicles. Drive violation, vehicle violation, driver in-service, and vehicle in-service. Random and focused vehicle inspections are carried out. There are 47 non-ports of entry stations and 13 ports of entry stations. Chief Baker made a presentation showing some of the dangerous violations that CVE finds on trucks, including bad brakes, broken springs, cracks in suspensions and frames, worn and splitting tires, etc.

D. Report, discussion and possible action regarding HB 2131 the development of rules for eligibility, application, approval, issuance, and renewal for a Capitol Access Card.
Commander Jose Ortiz – Capitol – the Capitol Access Card allows similar access that a Concealed Handgun License would allow. Similar applications and background checks will be required, but without the handgun competency requirements. The Department is beginning to formulate the rules now. Once the rules are developed, we will bring them before the Commission for approval.

E. Report, discussion and possible action on the proposed external quality assessment team identified to review the Chief Auditor's Office
Steve Goodson – We have developed a Quality Assurance protocol, and Commissioner Barth has reviewed the QAR Team. Motion made to approve, and seconded. Approved Unanimously.

F. Report, discussion, and possible action on proposed amendments to Texas Highway Patrol Rule for publication: Rule 3.22, 37 TAC Sec. 3.22 concerning Written Warnings
Chief David Baker – Highway Patrol – We have previously had a zero tolerance policy, but currently write warnings. We now have a 94% compliance rate for seatbelt violations. This rule change will allow for a written warning under appropriate circumstances. Motion to approve by Comm. Barth, Seconded by Comm. Leon. Approved unanimously.

VI. ADJOURN INTO EXECUTIVE SESSION (if required) to consult with legal counsel regarding pending or contemplated litigation or settlement offers or to receive legal advice on items posted on this agenda; deliberation regarding real estate matters; consideration of any other items authorized by law, including personnel matters, the Director's action of discharging employees as identified in this agenda; ongoing criminal investigations

*Chairman Polunsky adjourned to executive Session at 2:02 pm.
Reconvened at 3:31 pm.*

VII. ONGOING BUSINESS

Reports, discussion and possible action regarding the following:

A. Committee report and discussion on 28-day work cycle, and possible reconfiguration thereof to the Overtime and Compensatory Time policy as presently set out
Commissioner Ada Brown and Deputy Director Lamar Beckworth – our Committee has been working on this project for several months. The complaints that I heard most commonly were a dislike of the 28 day work cycle, and did not like comp time, because too often it ended up being forfeited.

Lt. Col. Beckworth stated that the principal element of this plan is to provide expanded enforcement. When committing the funds for the program, that was a critical concern for the legislature. Chairman Allan Polunsky

said, "During a time period where resources are sparse, some law enforcement agencies were not as fortunate as DPS. State and local law enforcement agencies are suffering from layoffs of commissioned officers. The Legislature's willingness to fund DPS for a 45 hour workweek, rather than responding to budget cuts with layoffs, furloughs and reductions in pay for our employees, truly highlights the amazing work that the men and women of DPS do for the State of Texas."

More details will follow shortly regarding the 45 hour workweek and overtime compensation, but below are some of the key elements:

- Expands enforcement coverage without adding personnel
- Is a voluntary program allowing the commissioned officers to "opt out" by September 1, and on an annual basis.
- Will be effective on September 1, 2011
- Eliminates the 28 day work cycle; replacing it with a 40 hour work week.
- Has the potential to provide an additional 30 hours of compensation per month for an additional 20 hours worked.
- Those who choose to opt out of the program will be lower on the priority list for overtime hours, and will be compensated with time and a half compensatory time for the first 3 hours over 40 hours, and any hours beyond that at time and a half compensation.

Chairman Polunsky said that in his opinion, this is an unprecedented package from the Texas Legislature. There is no other agency in Texas that received additional funding for compensation.

Motion was made by Commissioner Barth and seconded by Commissioner Steen to approve. Approved unanimously.

- B.** Report, discussion and possible action regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a member of the Department or Commission management team
- C.** Report, discussion, and possible action by the Commission regarding modification and transformation of the DPS organizational structure approval of personnel placements and salaries pursuant to Government Code chapter 411, Secs. 411.005, 411.006 and 411.0071

Director McCraw – B & C above: Director McCraw proposed combining the Government Affairs Office with the Public Information Office into a single Public Affairs and Policy Office, and recommended that Amanda Ariaga, the Government Affairs Director as the Chief of the newly formed department.

Director McCraw also spoke of Assistant Director Mike Simpsons being named to Chief of Radio Interoperability for the State Homeland Security Division. He stated that AD Simpson is the victim of his own success. With the vacancy that this creates, Dir. McCraw recommended Region 4 Commander, Skylor Hearn, for his replacement as Assistant Director of Law Enforcement Services.

Motions were made and seconded for all of the above recommended changes as proposed by Director McCraw. The Commission approved all recommendations unanimously.

Commissioner Brown said that she has been very impressed with AD Mike Simpson's knowledge and effectiveness in his position, and wished him well in his new job.

- D.** Update report, discussion and possible action regarding the status of building safety and security at the DPS campus on North Lamar

Discussed in Executive Session.

E. Report, discussion and possible action on the Fiscal Year 2011 Operating Budget

Assistant Director Hudson, Chief Financial Officer – we had \$2.6 billion requested in our LAR at the beginning of the Legislative Session, and ended the Session \$105 million short of our request. We recovered some of those losses, however we still are \$31 million short for the biennium, or approximately \$15.6 million for 2012. We are evaluating how many positions that figure equates to and will have that report for the next PSC meeting.

Chairman Polunsky suggested that AD Hudson should look and other ways to cut in addition to positions. AD Hudson assured the Chairman that all options would be considered and evaluated.

F. Report, discussion and possible action regarding purchases using seized funds

Not discussed in the public meeting.

G. Update Report, discussion and possible action regarding recruitment

Previously discussed in the Director's report.

H. Report, discussion and possible action regarding Continuity Plan at the Department of Public Safety

Not discussed in the public meeting.

I. Follow-up report, discussion and possible action regarding creation of a foundation to benefit the Texas Department of Public Safety

Not discussed in the public meeting.

J. Follow-up report, discussion and possible action on the Department of Public Safety ethics policy and reporting requirements

Director McCraw – We have been working on this for some time now at Comm. Steen's request. Commissioner Steen asked that due to the late hour of this meeting, if the report could hold until next month's PSC Meeting. Director McCraw agreed.

K. Status report, discussion and possible action on TxDOT median dividers and effectiveness in deterring vehicles crossing over and law enforcement turn around areas

Chief Baker reported that no new barriers had been installed since the last PSC meeting report, but that TXDot continues to work with the Department on making "cut throughs", including several that have been installed near Amarillo.

L. Follow up report, discussion and possible action on Chief Auditors Office Open Issues – aging and corrective action (Chairman Polunsky requested

Not discussed in the public meeting.

M. Report, discussion and possible action on North Texas Toll Authority contract including ensuring the Department is receiving full compensation for service provided

Deferred until August PSC Meeting.

N. Status report, discussion and possible action on Department generators – specifically conversation updates with electrical companies around the state

Assistant Director Nim Kidd – We have worked with the Director to identify needs for the HQ campus, and have a commitment from the Austin electric utility to put us on their Tier 1 list. This will not necessarily guarantee no outages, but puts us up on the priority list.

O. Report, discussion, and possible action regarding the adoption of proposed amendments to Commercial Driver License Rules: Rule 16.13, 37 TAC Sec. 16.13 concerning Farm-Related Service Industry Waiver and Rule 16.105, 37 TAC Sec.

AD Rebecca Davio – we had no comments on either rule. We are asking for approval of these rules. Motion by Comm. Steen and seconded by Comm. Barth to approve both rules.. Approved unanimously.

P. 16.105 concerning Special Penalties Pertaining to Violation of Out-of-Service Orders and Railroad Grade Crossing Violations for Drivers and Employers

Not discussed in the public meeting.

VIII. REPORTS

A. Commission member reports and discussion

None.

B. Finance Report

Previously reported.

C. Chief Auditors Office Report

Previously reported.

D. Division status reports on activities and action

- *Administration – Nothing further to add to my report*
- *CID – Nothing further to add to my report*
- *Drivers License – Nothing further to add to my report*
- *Emergency Management – Nothing further to add to my report*
- *Government Relations – Nothing further to add to my report*
- *Highway Patrol – Nothing further to add to my report*
- *Information Technology – Nothing further to add to my report*
- *Intelligence and Counterterrorism – Nothing further to add to my report*
- *Law Enforcement Support – Nothing further to add to my report*
- *Office of the Inspector General – Nothing further to add to my report*
- *Regulatory Services – Nothing further to add to my report*
- *Texas Rangers – Nothing further to add to my report*

IX. CONSENT ITEMS

- A.** Discussion and possible action on appointments of Special Rangers and Special Texas Rangers pursuant to Government Code chapter 411, Secs. 411.023 & 411.024: Special Ranger: Johnny R. Barboza, Richard H. Barnes, Arturo Cardona, Bradford L. Crook, Enrique Espinoza, David L. Martin, Phillip A. Martin, Stephen G. Martin, Charlie J. Morgan, Donald L. Smith, Steven B. Talkington, Gordon L. Wade; Special Texas Ranger: James R. Huggins

Motion to approve by Comm. Steen and seconded by Comm. Barth. Passed unanimously.

X. ITEMS FOR FUTURE AGENDA

Operating budget for 2012

XI. DATE FOR FUTURE MEETINGS

August 25th is tentatively scheduled for the next PSC Meeting.

XII. ADJOURN

The Commission may take items out of the order in which they are posted on this agenda. Also, an item that has been adopted, passed upon, delayed or tabled for a later meeting may be considered or reconsidered at the same meeting.

Chairman Polunsky adjourned the meeting at 5:36 PM.

The Public Safety Commission may meet and discuss in Executive Session and have action taken in an Open Meeting where required on the following items

Government Code Sec. 551.071 Consultation and deliberation with legal counsel about pending or contemplated litigation or a settlement offer, or on a matter where the Commissioners seek the advice of their attorney as privileged communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, and to discuss the Open Meetings Act and the Administrative Procedures Act with their attorney

Government Code Sec. 551.074 Appointment, employment, evaluation, reassignment, duties, discipline or dismissal of director, assistant director, and persons appointed to management team positions pursuant to Govt. Code Sec. 411.0071

Government Code Sec. 551.076 Deliberations about security audits, security devices, including deployment and implementation of security personnel and devices Government Code Chapter 411, Sec. 411.0041 Ongoing criminal investigations

Government Code Sec. 551.072 Deliberation of the purchase, exchange, lease, or value of real property, if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person

Government Code Sec. 551.073 Deliberation of a negotiated contract for a prospective gift or donation to the state or the governmental body if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.