

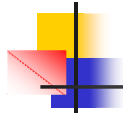
Open Government:

Texas Public Information Act and Open Meetings Act



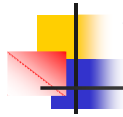
Texas Public Information Act

- PREAMBLE: [I]t is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees.
- The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.



Texas Public Information Act

- Adopted in 1973; codified in the Texas Government Code at Chapter 552.
- The Act requires that it be liberally construed in favor of open government.
- Provides public with right of access to “public information,” except for certain categories of information.



“Public Information” Defined

- Information in existence that is owned, collected, assembled, maintained or controlled by a governmental body.
- Applicable to all information in any medium, including: paper; film; a magnetic, optical or solid state device that can store an electronic signal; tape; mylar; linen; silk; photograph; vellum; microfiche; microfilm; photostat; sound recording; or a voice, data, or video representation held in computer memory.



“Public Information” Defined

- Includes the personal cellular, personal office, and home telephone records, as well as the e-mail correspondence from personal e-mail accounts, of government employees to the extent that the information relates to the transaction of official government business.



“Public Information” Defined

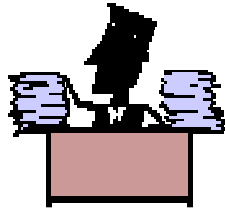
- Does NOT include:
 - commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes and periodicals.





“Public Information” Defined

- Does NOT include:
 - the creation of NEW information in response to a request.
 - preparing answers to questions or doing legal research.



Requests for Public Information



- In writing – to any person within agency.
- Electronic mail or facsimile transmission – then must be to person designated by agency as public information officer.

Response to Request for Public Information

- All requests must be addressed in a timely manner by:
 1. Certifying that material doesn't exist,
 2. "Promptly" producing material,
 3. Clarifying the request, or
 4. Seeking an Attorney General Opinion to withhold the information.

Request for Public Information



- Governmental body may:
 - seek to clarify a request for information if the request is unclear.
 - discuss how the scope of the request might be narrowed if a large amount of information has been requested.
- Governmental body may NOT inquire into the purpose for which information will be used.

Response to Request for Public Information

- Governmental body shall promptly produce public information for inspection and/or duplication.
- “Promptly” means as soon as possible under the circumstances, that is, within a reasonable time, without delay.
- “Reasonable amount of time” depends on the facts in each case.
- Volume of information requested is highly relevant to what constitutes a reasonable period of time.

Response to Request for Public Information

- In certain circumstances, a governmental body may charge the requestor for access to or copies of the requested information.





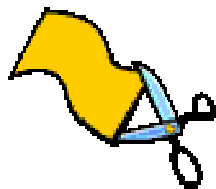
Response to Request for Public Information

- No duty to supplement responses on a periodic basis as information responsive to the request is created in the future.
- Repetitious or redundant requests: may respond to the request by certifying to the requestor that it has already made the information available to the person.



Response to Request for Public Information

- A governmental body may NOT destroy records even pursuant to statutory authority or record retention schedules while they are subject to a pending request for public information.





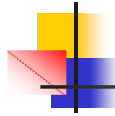
Exceptions to Production

1. Information Confidential by Law (i.e. statutes or judicial decisions) (Sec. 552.101)
2. Certain Personnel Information (Sec. 552.102)
 - a) Unwarranted Invasion of Privacy
 - b) Transcripts of Professional Public School Employees
 - c) Evaluations of Public School Teachers and Administrators
3. Information Relating to Litigation (Sec. 552.103)
4. Information Relating to Competition or Bidding (Sec. 552.104)



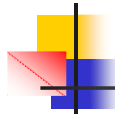
Exceptions to Production (Cont.)

5. Information Relating to Location or Price of Property (Sec. 552.105)
6. Certain Legislative Documents (Sec. 552.106)
7. Certain Legal Matters (i.e. Attorney-Client Privilege and Court Orders) (Sec. 552.107)
8. Certain Law Enforcement Records (Sec. 552.108)
9. Certain Private Communications of an Elected Office-Holder (Sec. 552.109)



Exceptions to Production (Cont.)

10. Certain Commercial Information (i.e. Trade secrets and Commercial or Financial Information that is privileged or confidential by law) (Sec. 552.110)
11. Agency Memoranda (Sec. 552.111)
 - a) Deliberative Process Privilege
 - b) Work Product Privilege
12. Certain Information Relating to Regulation of Financial Institutions or Securities (Sec. 552.112)
13. Geological or Geophysical Information (Sec. 552.113)



Exceptions to Production (Cont.)

14. Student Records (Secs. 552.026 & 552.114)
 - a) Family Educational Rights and Privacy Act of 1974 (FERPA)
 - b) State Law
15. Birth and Death Records (Sec. 552.115)
16. Audit Working Papers (Sec. 552.116)
17. Certain Addresses, Telephone Numbers, Social Security Numbers and Personal Family Information (Sec. 552.117)
 - a) Subsection (a)(1) Public Officials and Employees



Exceptions to Production (Cont.)

18. Confidentiality of Addresses, Telephone Numbers, Social Security Numbers and Personal Family Information of Peace Officers, County Jailers, Security Officers and Employees of Tex. Dept. of Criminal Justice (Sec. 552.1175)
19. Triplicate Prescription Form (Sec. 552.118)
20. Photographs of Peace Officers or Certain Security Guards (Sec. 552.119)
21. Rare Books and Original Manuscripts (Sec. 552.120)
22. Certain Documents Held for Historical Research (Sec. 552.121)



Exceptions to Production (Cont.)

23. Test Items (Sec. 552.122)
24. Names of Applicants for Chief Executive Officer of Institutions of Higher Education (Sec. 552.123)
25. Identity of Private Donor to Institution of Higher Education (Sec. 552.1235)
26. Records of Library or Library System (Sec. 552.124)
27. Certain Audits (Sec. 552.125)
28. Name of Applicant for Superintendent of Public School District (Sec. 552.126)



Exceptions to Production (Cont.)

29. Personal Information Relating to Participants in Neighborhood Crime Watch Organization (Sec. 552.127)
30. Certain Information Submitted by Potential Vendor or Contractor (Sec. 552.128)
31. Motor Vehicle Inspection Information (Sec. 552.129)
32. Motor Vehicle Records (Sec. 552.130)
33. Information Relating to Economic Development Negotiations (Sec. 552.131)



Exceptions to Production (Cont.)

34. Crime Victim Compensation Information (Sec. 552.132)
35. Crime Victim Impact Statement (Sec. 552.1325)
36. Public Power Utility Information Related to Competitive Matters (Sec. 552.133)
37. Certain Information Relating to Inmate of Department of Criminal Justice (Sec. 552.134)
38. School District Informers (Sec. 552.135)
39. Confidentiality of Credit Card, Debit Card, Charge Card and Access Device Numbers (Sec. 552.136)



Exceptions to Production (Cont.)

40. Confidentiality of Certain E-mail Addresses (Sec. 552.137)
41. Family Violence Shelter Center and Sexual Assault Program Information (Sec. 552.138)
42. Government Information Related to Security Issues for Computers (Sec. 552.139)
43. Military Discharge Records (Sec. 552.140)
44. Information in Application for Marriage License (Sec. 552.141)
45. Working Papers of Administrative Law Judges at State Office of Administrative Hearings (Sec. 552.141)



Exceptions to Production (Cont.)

46. Texas No-Call List (Sec. 552.141)
47. Records of Certain Deferred Adjudications (Sec. 552.1425)
48. Civil Penalty for Records of Certain Deferred Adjudications (Sec. 552.142)





Attorney General Opinion

- AG determines if information falls within exception.
 - EXCEPT for student records – School may withhold without seeking AG opinion.
- Govt. agency must ask for opinion within 10 business days of request.
- AG renders opinion not later than the 45th working day after the date the request for an opinion is received.

Enforcement



Criminal

- The Act establishes criminal penalties for:
 - releasing information that must not be disclosed
 - withholding of information that must be released
- The willful destruction, alteration or concealment of public records is a misdemeanor punishable by confinement in a county jail for 3 days to 3 months, a fine of \$25 to \$4,000, or both.

Enforcement



Civil

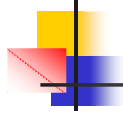
- Writ of mandamus to compel the release of requested information or to ask for an AG opinion.
- Suit for declaratory judgment or injunctive relief.
- Costs of litigation and reasonable attorney's fees incurred by a plaintiff who substantially prevails may be awarded.

Relevant Exceptions



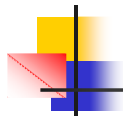
Transcripts of Professional Public School Employees (Sec. 552.102)

- Protects from required public disclosure most information on a transcript from an institution of higher education maintained in the personnel files of professional public school employees.
- Does not except from disclosure information detailing the degree obtained and the curriculum pursued.



Evaluations of Public School Teachers and Administrators

- Evaluations are confidential by statute.
- Section 21.355 of the Education Code makes confidential a "document evaluating the performance of a teacher or administrator."



Agency Memoranda (Sec. 552.111)

- Protects from disclosure intra-agency and interagency communications consisting of advice, opinion or recommendations on policymaking matters of the governmental body at issue.
- Purpose is "to encourage frank and open discussion within agency in connection with its decision-making processes" pertaining to policy matters.
- Purely factual information that is severable from the opinion portions of the memorandum must be disclosed.



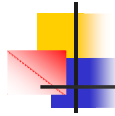
Agency Memoranda (Cont.)

- Information relating to issues with a specific employee do not relate to the making of new policy; merely implementing exist policy.
- However, exception applies to administrative and personnel matters of broad scope that affect the governmental body's policy mission.
- Communications between agencies and other third parties are not protected.



Student Records (Secs. 552.026/552.114)

- *The Family Educational Rights and Privacy Act* (FERPA) of 1974 (or the Buckley Amendment) applies to educational institutions receiving *federal funds*.
- Affords students with certain rights concerning their educational records.
 - Prohibits the disclosure of a student's educational records unless parent consents in writing or an exception exists.



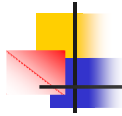
Student Records (Cont.)

- **Student** – An individual who is or has been in attendance at an educational institution.
- **Education Records** – Records directly related to a student that are maintained by the educational institution.

*Exceptions to this definition include school police, student medical and counseling records, employment records unrelated to student status and alumni records. Must rely on other exceptions under TPIA to withhold this information.

- **Directory Information** - May be released to the public w/o consent if the educational institution or agency complies with certain procedures.

Includes, but is not limited to: the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (e.g., undergraduate or graduate; full-time or part-time), participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, the most recent educational agency or institution attended and expected date of graduation.



Student Records (Cont.)

- Sec. 552.114 of the Government Code, the other exception for student records, also excepts from required public disclosure "information in a student record at an educational institution funded wholly or partly by *state revenue*."
- "Student record" (Sec. 552.114) generally equivalent of "education records" in FERPA.



Student Records (Cont.)

- FERPA and section 552.114 are similar, but not exact.
 - Under section 552.114, a student's spouse has a right of access to the student's records; not under FERPA
- Open-enrollment charter schools are subject to the Act's requirements.

Test Items (Sec. 552.122)

- Applicable to test items developed by an educational institution that is funded wholly or in part by state revenue.

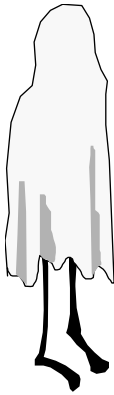


- "Test item" - any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated.

Test Items (Sec. 552.122)

- Evaluations of the applicant for promotion and the answers to questions asked of the applicant by the promotion board in evaluating the applicant MAY or MAY NOT be "test items." AG makes a case-by-case determination.

Applicant for Superintendent of Public School District (Sec. 552.126)



- All identifying information about superintendent applicants need not be released.
- BUT names of the finalists must be posted at least 21 days before the board of trustees makes a decision.

School District Informers (Sec. 552.135)



- Informer's name or other identifying information is exempt from disclosure.
 - "Informer" – A current or former student or employee of a school district who has furnished a report of another person's possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

School District

Informers (Sec. 552.135)

- Exception NOT available if the informer planned, initiated, or participated in the possible violation.
- Exception NOT waived if provide informer's identity to police or prosecutor.
- Also applies in situations in which noncriminal activity is reported.

Open Meetings Act

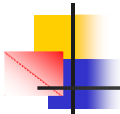
Chapter 551 of the Government Code





Overview

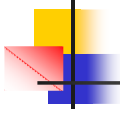
- Act was adopted in 1967.
- Provides that meetings of governmental bodies must be open to the public, except for expressly authorized executive sessions, and that the public must be given notice of the time, place and subject matter of meetings.



Applicability

1. **Quorum** - A majority of the governing body.
2. **Governmental body** includes:
 - a school district board of trustees
 - a county board of school trustees
 - a county board of education





Applicability (cont.)

3. **Meeting** –

- a verbal, written or other communication exchange
 - within the quorum, or
 - between the quorum and another person
- concerning public business or public policy over which the governmental body has supervision or control.



Applicability (cont.)

Does not apply to:

- A gathering of a quorum at a social function unrelated to the public business that is conducted by the body.
- Attendance by a quorum at a regional, state, or national convention or workshop formal action is not taken and any discussion of public business is incidental to the social function, convention, or workshop.



Applicability (cont.)

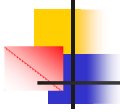
Does not apply to:

- A purely advisory body or subcommittee, which has no authority over public business or policy.
 - UNLESS, the governmental board routinely adopts, or "rubber-stamps" the recommendations of the advisory board. Then advisory board probably will be considered subject to the Act.

Notice of Meetings



- Written notice of the date, hour, place, and subject of each meeting held by the governmental body.
- Description of subject must be sufficient to give public reasonable notice of topic to be addressed.
- Must be posted to the general public at least 72 hours before the meeting time.



Place of Posting

- **School District** (Sec. 551.051)
 - On a bulletin board at a place convenient to the public in the central administrative office of the district.
- **Special Notice to News Media** (Sec. 551.052)
 - A school district shall provide special notice of each meeting to any news media that has requested special notice; and agreed to reimburse the district for the cost of providing the special notice.
 - The notice shall be by telephone or telegraph.



Emergency meetings



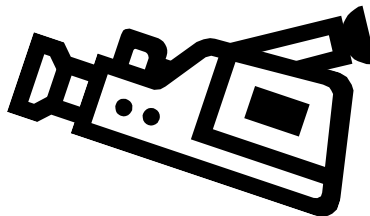
- Special rules exist for providing notice for emergency meetings and for providing supplemental notice of subjects added to a meeting after the initial posting.
- An emergency or an urgent public necessity exists only if immediate action is required of a governmental body because of:
 - an imminent threat to public health and safety;
or
 - a reasonably unforeseeable situation.

Telephone, Videoconference and Internet Meetings



- May not conduct meetings by telephone or videoconference unless specifically authorized by Act.
- Act identifies limited circumstances and requires to procedures that may include special requirements for notice, record-keeping and two-way communication between meeting locations.

- Act permits members of the public to record open meetings with a tape recorder or a video camera.





Closed Meetings (Executive Sessions)

- **Not open to the public, including:**
- Consultations with Attorney (Sec. 551.071)
- Deliberations about Real Property (Sec. 551.072)
- Deliberations about Gifts and Donations (Sec. 551.073)
- Personnel Matters (Sec. 551.074)
- Deliberations about Security Devices (Sec. 551.076)




Closed Meetings (Executive Sessions)

- Deliberations Involving Individuals' Medical or Psychiatric Records (Secs. 551.078 and 551.0785)
- Exceptions Applicable to Specific Entities (Secs. 551.079 thru 551.0812)
- Certain School Board Deliberations (Sec. 551.082, 551.0821, 551.083)
- Deliberations Regarding Test Item (Sec. 551.088)



Certain School Board Deliberations May Be Closed

- Discussions involving discipline of a public school child;**
- Discussions of a complaint or charge brought against an employee of the school district by another employee and the complaint or charge directly results in a need for a hearing; or



Certain School Board Deliberations May Be Closed (cont.)

- Discussions regarding a public school student if personally identifiable information about the student will necessarily be revealed by the deliberation.**

** UNLESS student or employee requests that the hearing be open to the public.



Certain School Board Deliberations May Be Closed (cont.)

- Discussions regarding the standards, guidelines, terms, or conditions the board will follow, or instruct its representatives to follow, in a consultation with a representative of an employee group authorized under Sec. 13.901, Education Code, relating to educational policy and conditions of employment.
 - Thus, a school board in a closed meeting could discuss salary schedules for a class of employees to the extent that the discussion related to terms it would follow in the consultations.



Closed Meetings (Executive Sessions)

- Officers and employees of the governmental body may attend closed meeting if their participation is necessary to the matter under consideration.
 - Thus, a school board could require its superintendent of schools to attend all of its executive sessions.
- Final decisions or actions **MUST** be conducted in OPEN meeting.

Records of Meetings

OPEN MEETING

- Tape recording, or
- Minutes
 - state the subject of each deliberation; and
 - indicate each vote, order, decision, or other action taken.
- Records are public information.



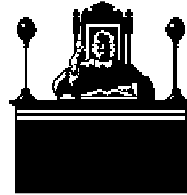
Records of Meetings (Cont.)

CLOSED MEETING

- Tape recording, or
- Certified agenda.
- Records are NOT public information.



Penalties and Remedies



- **Civil remedies** to stop, prevent, or reverse a violation or threatened violation of Act.
 - Writ of mandamus
 - Injunction action
- May recover costs of litigation and reasonable attorney fees.
- Unauthorized release or recording of closed meeting may be liable for actual damages (including damages for personal injury or damage, lost wages, defamation, or mental or other emotional distress) and exemplary damages.



Penalties and Remedies (cont.)

- Action taken by governmental body in violation of Act is voidable.
- May ratify the invalid act in an open meeting held in compliance with the Act, but will be effective only from the date of the compliant meeting.

Penalties and Remedies (cont.)

Criminal Penalties

- Certain violations concerning certified agendas or tape recordings of executive sessions are punishable as Class C or Class B misdemeanors.



- A member of a governmental body commits an offense if he/she knowingly conspires to circumvent the Act by meeting in numbers less than a quorum for the purpose of secret deliberations:

- a fine of \$100 to \$500;
- confinement in the county jail for one to six months; or both.



- Member of a governmental body commits an offense if a closed meeting is not permitted under this chapter and the member knowingly:
 - calls or aids in calling or organizing the closed meeting;
 - closes or aids in closing the meeting to the public; or
 - participates in the closed meeting.
- a fine of \$100 to \$500;
- confinement in the county jail for one to six months; or both.