

OPEN GOVERNMENT GUIDE

Access to Public Records
and Meetings in

TEXAS

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Sixth Edition
2011

OPEN GOVERNMENT GUIDE

OPEN RECORDS AND MEETINGS LAWS IN

TEXAS

Prepared by:

Charles L. Babcock
Carl C. Butzer
Courtney T. Carlson
Jackson Walker L.L.P.
1401 McKinney Street
Suite 1900
Houston, Texas 77010
(713) 752-4200

901 Main Street
Suite 6000
Dallas, TX 75202
(214) 953-6000

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Previously Titled
Tapping Officials' Secrets

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Lucy A. Dalglish, Executive Director

EDITORS

Gregg Leslie, Legal Defense Director
Mark Caramanica, Freedom of Information Director

ASSISTANT EDITORS

Christine Beckett, Jack Nelson Legal Fellow
Aaron Mackey
Emily Peterson

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Contents

Introductory Note	iv	V. PROCEDURE FOR OBTAINING RECORDS	24
User’s Guide	v	A. How to start.....	24
FOREWORD	1	B. How long to wait.....	25
Open Records.....	2	C. Administrative appeal.....	27
I. STATUTE -- BASIC APPLICATION.....	2	D. Court action.....	27
A. Who can request records?	2	E. Appealing initial court decisions.....	28
B. Whose records are and are not subject to the act?	3	F. Addressing government suits against disclosure.....	29
C. What records are and are not subject to the act?	6	Open Meetings.....	29
D. Fee provisions or practices.....	7	I. STATUTE -- BASIC APPLICATION.....	29
E. Who enforces the act?	9	A. Who may attend?	29
F. Are there sanctions for noncompliance?	9	B. What governments are subject to the law?	29
II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS	9	C. What bodies are covered by the law?	30
A. Exemptions in the open records statute.....	9	D. What constitutes a meeting subject to the law.....	32
B. Other statutory exclusions.....	14	E. Categories of meetings subject to the law.....	33
C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.....	14	F. Recording/broadcast of meetings.....	38
D. Are segregable portions of records containing exempt material available?	14	G. Are there sanctions for noncompliance?	38
E. Homeland Security Measures.....	14	II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS	38
III. STATE LAW ON ELECTRONIC RECORDS.....	15	A. Exemptions in the open meetings statute.....	38
A. Can the requester choose a format for receiving records?	15	B. Any other statutory requirements for closed or open meetings.....	39
B. Can the requester obtain a customized search of computer databases to fit particular needs?	15	C. Court mandated opening, closing.....	39
C. Does the existence of information in electronic format affect its openness?	15	III. MEETING CATEGORIES -- OPEN OR CLOSED.....	39
D. How is e-mail treated?	15	A. Adjudications by administrative bodies.....	39
E. How are text messages and instant messages treated?	16	B. Budget sessions.....	39
F. How are social media postings and messages treated?	16	C. Business and industry relations.....	39
G. How are online discussion board posts treated?	17	D. Federal programs.....	39
H. Computer software.....	17	E. Financial data of public bodies.....	39
I. How are fees for electronic records assessed?	17	F. Financial data, trade secrets or proprietary data of private corporations and individuals.....	39
J. Money-making schemes.....	17	G. Gifts, trusts and honorary degrees.....	40
K. On-line dissemination.....	17	H. Grand jury testimony by public employees.....	40
IV. RECORD CATEGORIES -- OPEN OR CLOSED.....	17	I. Licensing examinations.....	40
A. Autopsy reports.....	17	J. Litigation; pending litigation or other attorney-client privileges.....	40
B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)	17	K. Negotiations and collective bargaining of public employees.....	40
C. Bank records.....	17	L. Parole board meetings, or meetings involving parole board decisions.....	40
D. Budgets.....	18	M. Patients; discussions on individual patients.....	40
E. Business records, financial data, trade secrets.....	18	N. Personnel matters.....	40
F. Contracts, proposals and bids.....	18	O. Real estate negotiations.....	41
G. Collective bargaining records.....	18	P. Security, national and/or state, of buildings, personnel or other.....	41
H. Coroners reports.....	18	Q. Students; discussions on individual students.....	41
I. Economic development records.....	18	IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS	41
J. Election records.....	18	A. When to challenge.....	41
K. Gun permits.....	18	B. How to start.....	41
L. Hospital reports.....	18	C. Court review of administrative decision.....	42
M. Personnel records.....	19	D. Appealing initial court decisions.....	43
N. Police records.....	20	V. ASSERTING A RIGHT TO COMMENT.....	43
O. Prison, parole and probation reports.....	22	A. Is there a right to participate in public meetings?	43
P. Public utility records.....	22	B. Must a commenter give notice of intentions to comment?	43
Q. Real estate appraisals, negotiations.....	23	C. Can a public body limit comment?	44
R. School and university records.....	23	D. How can a participant assert rights to comment?	44
S. Vital statistics.....	24	E. Are there sanctions for unapproved comment?	44
		Statute.....	44

Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

Following the outline. Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, www.rcfp.org/ogg. The Internet version of the outlines allows you to search the database and compare the law in different states.

Updates: The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at www.rcfp.org/ogg. This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.

Prepared by:

Charles L. Babcock
 Carl C. Butzer
 Courtney T. Carlson
 Jackson Walker L.L.P.
 1401 McKinney Street
 Suite 1900
 Houston, Texas 77010
 (713) 752-4200

901 Main Street
 Suite 6000
 Dallas, TX 75202
 (214) 953-6000

FOREWORD

Texas has a rich political heritage, one which has historically demonstrated a strong commitment to the free flow of information and open government. When Texas announced its independence from Mexico, its declaration stated: “[It] is an axiom in political science, that unless the people are educated and enlightened, it is idle to expect the continuance of civil liberty, or the capacity for self-government.” The Declaration of Independence of Texas para. 11 (1836). This concept of government is borrowed, of course, from Thomas Jefferson, James Madison, and the rationale of the United States Constitution. It was Madison who wrote that, “a popular government without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both. Knowledge will forever govern ignorance: and a people who mean to be their own governors must arm themselves with the power which knowledge gives.” James Madison, letter to W.T. Berry (Aug. 4, 1822), reprinted in G.P. Hunt, *The Writings of James Madison* 103 (1910).

This concept of enlightened self-government was carried over to the Texas Constitutional Convention of 1845, when Texas joined the United States. In his opening remarks, Thomas J. Rusk, president of the convention, stated that: “The history of the world may be searched in vain for a parallel to the present instances of two governments amalgamating themselves into one, from a pure devotion to that great principle—that man, by sentiments with which his God has impressed, is capable of self-government.” Texas Constitutional Convention of 1845, debates of the Texas Convention (William Weeks, reporter, 1846).

In the years that followed, Texas courts recognized a broad common law right of access to government information. The first reported case dealing with the common law right of access was *Jenkins v. State*, 75 S.W. 312, 312 (Tex. Crim. App. 1903), which dealt with access to pretrial material in a criminal case. In 1915, the San Antonio Court of Civil Appeals wrote a landmark opinion on the common law right of access, in *Palacios v. Corbett*, 172 S.W. 777 (Tex. Civ. App.-San Antonio 1915, writ *ref’d*). The *Palacios* case dealt with the right of a citizen taxpayer to inspect county auditing papers. *Id.* at 778.

The presumptive common law right of access to government information in Texas appears to be extremely strong absent a specific statute restricting public access. As the court said in *Gill v. Snow*, 644 S.W.2d 222, 224 (Tex. App.-Fort Worth 1982, no writ), “This State’s policy has been found to be that all information kept by the government is of legitimate public concern unless the legislature rules that the need for confidentiality is outweighed by the public’s right to know.”

Nevertheless, it took a substantial government scandal to provide the impetus for passage of an open records statute and strengthening of the Texas Open Meetings Act. In 1972, the so-called Sharpstovener scandal broke and resulted in the indictment and successful prosecution of a number of government officials. Other high government officials were put under a cloud of suspicion, although not indicted. In 1973, a reform-minded legislature strengthened the Texas Open

Meetings Act, and passed the Texas Open Records Act, which the Texas legislature changed in 1995 to the Public Information Act. These acts are among the strongest in the nation. The first section of the Public Information Act underscores this point:

[E]ach 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. The provisions of this chapter shall be liberally construed to implement this policy.

Tex. Gov’t Code Ann. § 552.001(a) (Vernon 2004). *See also City of Garland v. Public Utility Comm’n of Texas*, 165 S.W.3d 814, 820 (Tex. App.—Austin 2005, pet. denied) (“As a general rule, Texas public policy favors open records.”).

Both the Public Information Act and Open Meetings Act have been amended in recent years. One substantial threat to the Open Meetings Act occurred in the intermediate appellate decision of *City of Abilene v. Shackelford*, 572 S.W.2d 742 (Tex. Civ. App.-Amarillo 1978, writ granted), *rev’d on other grounds*, 585 S.W.2d 665 (Tex. 1979). In that case, an appellate court held that the press did not have standing to invoke the protections of the Open Meetings Act. *Id.* at 747. The act subsequently was amended to overrule the case; Section 551.142 of the Texas Government Code (the “Code”) now states that “[a]n interested person, including a member of the news media, may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of this chapter by members of a governmental body.” Another amendment to the Open Meetings Act overruled an Attorney General’s opinion that cameras were not authorized in public meetings. Section 551.023(a) of the Code now states, in part, that a “person in attendance may record all or any part of an open meeting of a governmental body by means of a tape recorder, video camera, or other means of aural or visual reproduction.”

As early as 1995, the legislature amended the Public Information Act to bring it into the computer age and to more strictly regulate what governmental bodies may charge for copies of public information. The amendments also replaced all references in the statute to “public records,” with “public information,” to clarify that the statute applies to data held in computer memory banks or in audio or video form, as well as on paper. In addition, as a result of recent amendments, the statute now requires the Attorney General to render a decision within forty-five days of receiving a request, with a possible ten-day extension. § 552.008(b-2); Texas Administrative Code §§ 70.11(d) (6)(D). Previously, the Attorney General’s office took an average of three to six months to issue an opinion on an open records case.

In 2005, the legislature passed a bill requiring most elected and appointed public officials to take a training course on the Texas Public Information Act and the Texas Open Meetings Act. *See* § 551.005, 552.012.

The Public Information Act provides that a court shall assess costs and attorney fees incurred by a plaintiff who substantially prevails in a suit for access to public information. *See* § 552.323. Costs and fees may not be assessed against a governmental body, however, if the governmental body acted in reasonable reliance on an applicable judgment or court order, a published appellate court decision, or a written decision of the Attorney General. § 552.323(a). Under the Open Meetings Act a party who substantially prevails may be entitled to an award of attorney fees. § 551.142.

In a state as large as Texas, it is difficult to generalize about the attitude of state officials toward citizens’ access to government information. In 1971, a law student author at the University of Texas wrote that, despite passage of the Open Meetings Act, “public access

is frustrated at every level of the decision making process.” Note, *Texas Open Meetings Act Has Potentially Broad Coverage But Suffers From Inadequate Enforcement Provisions*, 49 Tex. L. Rev. 764, 765 (1971). It is safe to say, however, that there is a wide range of opinion on the issue. Many, if not most, state officials have a cooperative attitude and believe in the concept of open government. All in all, Texas’ Public Information Act and Open Meetings Act are among the most liberal in the United States and a great deal of information is released pursuant to the terms of these statutes.

Open Records

I. STATUTE -- BASIC APPLICATION

A. Who can request records?

1. Status of requestor.

Anyone, citizens and non-citizens alike, can request Texas public information, for any reason or use. The Texas Public Information Act (the “Act”), Tex. Gov’t Code Ann. § 552.001 et seq. (formerly Tex. Rev. Civ. Stat. Ann. art. 6252-17a), places no limits on who can request public records. See *City of Garland*, 165 S.W.3d at 820 (“Public information’ must be made available to the public upon request by any person.”) The Act does not require that the requestor be a Texas resident. Section 552.221(a) of the Act specifically directs the officer for public information to produce public information on “application” by “any person.” This is consistent with the Act’s policy, which is specifically set forth in section 552.001(a):

Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it 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.

Tex. Gov’t Code Ann. § 552.001(a) (Vernon 2004).

2. Purpose of request.

A person’s motive for requesting the information cannot be a consideration in determining whether the information must be disclosed. *Indus. Found. of the South v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 674 (Tex. 1976), cert. denied, 430 U.S. 931 (1977); see also *A & T Consultants Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995) (reasoning that the legislature enacted the Act “to conform loosely to the federal Freedom of Information Act,” which also bars the government from examining the motives or interests of the requestor); *Texas Comptroller of Public Accounts v. Attorney General of Texas*, No. 08-0172, 2010 WL 4910163, at *5 & n.10 (Tex. 2010). Instead, section 552.222 specifically prohibits the officer for public information from making any inquiry of a requestor other than to establish the requestor’s proper identification, to clarify a request if the governmental body is unclear as to what information is requested, and to discuss with the requestor how the scope of a request might be narrowed if a large amount of information has been requested. Also, section 552.223 provides that all requests shall be treated “uniformly without regard to the position or occupation of the requestor, the person on whose behalf the request is made, or the status of the individual as a member of the media.”

3. Use of records.

Nothing in the Act restricts subsequent use of the information, and once information has been released to one member of the general public, it must be made available to anyone. See § 552.007; Tex. Att’y Gen. ORD-192 (1978); Tex. Att’y Gen. ORD-163 (1977); Tex. Att’y Gen. ORD-490 (1988) (“the act prohibits ‘selective disclosure.’”); *U.S. Dep’t of Air Force, Scott Air Force Base v. Fed. Labor Relations Auth.*, 838 F.2d 229, 232-34 (7th Cir. 1988) (noting that requestor’s use was irrelevant, as “[t]he special needs of one, or the lesser needs of another, do not matter,” because “[t]he first person to get the information may give it away; so if one person gets it, ‘any person’ may.”).

[NOTE: The boundaries of the Act largely have been defined by the Texas Attorney General either in standard Attorney General opinions or in more than 680 “Open Records Decisions,” or ORDs. Open records decisions address the factual and legal issues involved in deciding whether specific requested information, supplied to the Attorney General for in camera review, is exempt. Standard “Attorney General opinions” only address questions of law, not fact. While Attorney General’s interpretation of the Act may be persuasive, it is not controlling. *City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010)]

B. Whose records are and are not subject to the act?

Virtually all local and state government bodies and many quasi-governmental bodies are subject to the Act. Section 552.002 makes public “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.”

The Act’s definition of “governmental body” is quite broad. Section 552.003(l)(A) provides that the term means:

- “(i) a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;
- (ii) a county commissioners court in the state;
- (iii) a municipal governing body in the state;
- (iv) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;
- (v) a school district board of trustees;
- (vi) a county board of school trustees;
- (vii) a county board of education;
- (viii) the governing board of a special district;
- (ix) the governing body of a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under section 11.30, Tax Code;
- (x) a local workforce development board created under Section 2308.253;
- (xi) a nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state; and
- (xii) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.”

Section 552.003(l)(B) explicitly excludes the judiciary from the definition of “governmental body.” However, a deliberative body that has rulemaking or quasi-judicial power is a “governmental body” and is subject to the Act. Tex. Gov’t Code § 552.003(l)(A)(iv). Quasi-judicial power has been defined as: (1) the power to exercise judgment and discretion; (2) the power to hear and determine or to ascertain facts and decide; (3) the power to make binding orders and judgments; (4) the power to affect the personal or property rights of private persons; (5) the power to examine witnesses, to compel the attendance of witnesses, and to hear the litigation of issues on a hearing; and (6) the power to enforce decisions or impose penalties. *Blankenship v. Brazos Higher Educ. Auth.*, 975 S.W.2d 353, 360 (Tex. App.-Waco 1998, pet. denied) (citing *City of Austin v. Evans*, 794 S.W.2d 78, 83-84 (Tex. App.-Austin 1990, no writ)). An entity possessing none of these characteristics is not a quasi-judicial entity for purposes of establishing that it is a governmental body. *Id.*; *San Antonio Building & Const. Trades Council v. City of San Antonio*, 224 S.W.3d 738, 749 (Tex.App.-San Antonio 2007, pet. denied) (revenue bonds to be sold to private investors were not “public funds” where no funds of the State of Texas or the City would be used to secure and pay the bonds).

1. Executive branch.

The executive branch and any governmental body created by the executive branch are specifically subject to the Public Information Act.

a. Records of the executives themselves.

Section 552.109 exempts from disclosure private correspondence or communications of an elected office holder in relation to matters the disclosure of which would constitute an invasion of privacy. Section 552.109 may protect content of the information, but not the fact that the communication occurred. Tex. Att’y Gen. ORD-40 (1974).

In determining whether information is exempt from disclosure, the Attorney General relies on the same common-law privacy test. *See* Tex. Att’y Gen. GA-3538 (2005). Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See id.* (citing *Indus. Found. of the South v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976)). The type of information that might be considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Indus. Found.*, 540 S.W.2d at 683.

Exemption under section 552.109 applies only to correspondence sent out by the elected official, not to correspondence that is received by the official. In addition, this exemption only protects the privacy interests of the public official. *See* Tex. Att’y Gen. ORD-473 (1987). It does not protect the privacy interests of the person discussed in the communication or the privacy of the recipient of the communication. *See* Tex. Att’y Gen. ORD-332 (1982). Exempt correspondence includes handwritten notes on a personal calendar, even if made by the elected official’s assistant. *See* Tex. Att’y Gen. ORD-145 (1976). However, when a travel itinerary is prepared, it is available for public inspection.

Non-exempt information includes correspondence of the governor regarding potential nominees for public office. This material is not protected by a constitutional right of privacy or a common-law right of privacy when it does not contain highly embarrassing or intimate facts and there is a legitimate public interest in the appointment process. *See* Tex. Att’y Gen. ORD-241 (1980).

b. Records of certain but not all functions.

Section 552.106 exempts from disclosure internal bill analyses or working papers prepared by the governor’s office for the purpose of evaluating proposed legislation. *See* Tex. Att’y Gen. ORD-138 (2005) (Office of the Lieutenant Governor could withhold information constituting a comparison or analysis of factual information prepared to support proposed legislation); *but see* Tex. Att’y Gen. ORD-6367 (2011) (Section 552.106 did not apply where the Dallas County Commissioner’s Court failed to demonstrate that the information constituted an internal bill analysis or working paper prepared by the governor’s office for the purpose of evaluating proposed legislation).

2. Legislative bodies.

The legislative branch of state government and any governmental body created by it is subject to the Act, which exempts certain categories of information pertinent to the legislature. Drafts or working papers involved in the preparation of proposed legislation are excluded from the Act. Tex. Gov’t Code § 552.106. *See* Tex. Att’y Gen. ORD-380 (2003) (certain information related to proposed adult entertainment business licensing ordinance excepted from disclosure because it reflected internal policy judgments, recommendations, and proposals).

Private correspondence or communications by an elected office holder, the disclosure of which would constitute an invasion of privacy, are excepted from the Act. Tex. Gov’t Code § 552.109. This exception applies only to correspondence sent out by the official, not to correspondence that is received by the official. In addition, this exemption only protects the privacy interests of the public official. *See* Tex. Att’y Gen. ORD-473 (1987). It does not protect the privacy interests of the person discussed in the communication or the privacy of the recipient.

ent of the communication although it may be appropriate to redact the parties' names such as those of students and parents under related statutes. *See* Tex. Att'y Gen. ORD-332 (1982).

Certain records of communications between citizens and members of the legislature or the lieutenant governor may be confidential by statute. § 552.146. Exempt correspondence includes handwritten notes on a personal calendar. *See* Tex. Att'y Gen. ORD-145 (1976).

An itemized list of long distance calls made by legislators and charged to their contingent expense accounts is not excepted because such a list is not a "communication." *See* Tex. Att'y Gen. ORD-40 (1974). *See also* Tex. Att'y Gen. ORD-636 (1995) (cellular billing records are generally considered public information).

Section 552.111 exempts from disclosure interagency or intraagency memoranda or letters that would not be available by law to a party in litigation with the agency.

3. Courts.

Only the judiciary is specifically excluded from the Act's definition of "governmental body." *See* Tex Gov't Code § 552.003(1)(B). The Act provides that "[a]ccess to information collected, assembled, or maintained by or for the judiciary is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules," and that the Act "does not address whether information is considered to be information collected, assembled, or maintained by or for the judiciary." § 552.0035.

To fall under the judiciary exclusion, requested records must contain information that pertains to judicial proceedings and be subject to direct supervision of a court. *See* Tex. Att'y Gen. ORD-17331 (2009); Tex. Att'y Gen. ORD-646 (1996) (finding that function that governmental entity performs determines whether entity falls within judiciary exception to the Act); *see also* Tex. Att'y Gen. ORD-1083 (2004) (information created by a municipal court judge constituted a record of the judiciary because it was made "at the request of the presiding judge regarding the policies of the Court and policy changes that should be made"); *but see* Tex. Att'y Gen. ORD-204 (1978) (information held by county judge that does not pertain to proceedings before county court subject to Public Information Act). The Act itself does not define "judiciary," but the Texas Attorney General's office has advised that the records of the State Board of Law Examiners and information within the constructive possession of a grand jury are all considered records of the "judiciary." *See* Tex. Att'y Gen. ORD-136 (1976); Tex. Att'y Gen. ORD-513 (1988). Likewise, the Attorney General concluded that the Bexar County Personal Bond Program was functioning as an arm of the court when it conducted certain investigations, and therefore the resulting reports were records of the "judiciary" and not subject to the Act. Tex. Att'y Gen. ORD-572 (1990). However, the district attorney's office is not considered a branch of the judiciary. *See Holmes v. Morales*, 924 S.W.2d 920, 922-23 (Tex. 1996). If a district attorney has a list of grand jurors actually empaneled during a particular term of court, the list should be made public if requested. Tex. Att'y Gen. ORD-433 (1986). In comparison, a list of *prospective* grand jurors' names is not subject to required disclosure. *Id.*; *see also State v. Newton*, 179 S.W.3d 104, 111 (Tex. App.—San Antonio 2005, no pet.) (grand jury is an extension of the judiciary and grand jury information is, therefore, not subject to the Act). The Court Reporters Certification Board also does not come within the Act's definition of "judiciary." Tex. Att'y Gen. ORD-527 (1989). As such, it was a proper request under the Act for the names and addresses of all shorthand reporters who have received a notice of informal hearing regarding disciplinary matters and copies of all notices of formal hearings sent to the shorthand reporters. *Id.*

Finally, it should be kept in mind that "case-related documents are generally presumed to be open to the public," as "Rule 76a of the Texas Rules of Civil Procedure establishes a presumption that court records generally 'are . . . open to the general public.'" Op. Tex. Att'y Gen. No. GA-0203 (2004) (citing *Nixon v. Warner Communications*

Inc., 435 U.S. 589, 597 (1978), *Taylor v. Tex.*, 938 S.W.2d 754, 757 (Tex. App.—Waco 1997, no writ), and *In re Thoma*, 873 S.W.2d 477, 496 (Tex. Rev. Trib. 1994, no appeal) (affirming "our judicial system's abiding commitment to providing public access to civil and criminal proceedings and records").

4. Nongovernmental bodies.

Section 552.001(a) of the Act, which sets out the Act's purpose, specifically mandates that it "shall be liberally construed to implement [the Act's] policy." The Act "shall be liberally construed in favor of granting a request for information." § 552.001(b). In that spirit, courts and the Texas Attorney General have interpreted the term "governmental body" broadly.

a. Bodies receiving public funds or benefits.

The following bodies were found to be "governmental body" subject to the Act:

1. a community supervision and corrections department (limited to personnel files and other records reflecting the day-to-day management of such department) (Tex. Att'y Gen. ORD-646 (1996)).
2. the State Employee Charitable Campaign Policy Committee, the State Employee Charitable Campaign Advisory Committee, and the Local State Employee Charitable Campaign Committees (Op. Tex. Att'y Gen. No. LO-94-064 (1994)).
3. a municipal economic development foundation and a municipal chamber of commerce (to the extent it receives support from the foundation) (Tex. Att'y Gen. ORD-621(1994)).
4. the sections of a museum that are supported by the city or the state (Tex. Att'y Gen. ORD-602 (1992)).
5. a public nonprofit housing finance corporation created by local government, where the corporation's funds by law are public funds and belong to the corporation's sponsoring local government (Tex. Att'y Gen. ORD-601 (1992)).
6. a nonprofit corporation established to administer federal job training partnership funds granted to the state (Tex. Att'y Gen. ORD-509 (1988)).
7. a nonprofit volunteer fire department (Op. Tex. Att'y Gen. No. JM-821 (1987)).
8. a county child support department (Tex. Att'y Gen. ORD-417 (1984)).
9. the Texas Municipal League Workers' Compensation Joint Insurance Fund (Tex. Att'y Gen. ORD-406 (1984)).
10. a nonprofit industrial development corporation (Op. Tex. Att'y Gen. No. JM-120 (1983)).
11. the Texas Guaranteed Student Loan Corporation (Op. Tex. Att'y Gen. No. MW-295 (1981); Tex. Att'y Gen. ORD-563 (1990)).
12. a private, nonprofit corporation created to promote a metropolitan area's interests (Tex. Att'y Gen. ORD-228 (1979));
13. a city-county economic development corporation (Tex. Att'y Gen. ORD-201 (1978)).
14. a nonprofit community action organization supported in part by county funds (Tex. Att'y Gen. ORD-195 (1978)).
15. a hospital authority created by a city ordinance (Op. Tex. Att'y Gen. No. H-554 (1975)).
16. the Texas Water Advisory Council (Op. Tex. Att'y Gen. No. GA-0065 (2003)).
17. a pet shelter to which a county contractually delegated the administration of a pet registration program, including collection and retention of registration fees that would otherwise be payable to the county. Tex. Att'y Gen. ORD-4135 (2011).

The determination of whether an entity is a governmental body for purposes of the Act requires an analysis of the facts surrounding the entity. See *Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353, 360-362 (Tex. App.-Waco 1998, pet. denied). The primary issue in determining whether certain private entities are governmental bodies under the Act is whether they spend or are “supported in whole or in part by public funds” under section 552.003(1)(A)(xii). See Op. Tex. Att’y Gen. No. JM-821 (1987).

In 1992, the Attorney General analyzed the similarly constructed predecessor provision of section 552.003(1)(A)(xii). Tex. Att’y Gen. ORD-602 (1992). There, the Attorney General considered whether the definition of “governmental body” included the Dallas Museum of Art, a private nonprofit corporation that receives approximately 85 percent of its funding from membership fees and private donations. The museum also receives money from state agencies and the City of Dallas, which holds title to the land and buildings the museum occupies. A contract between the city and the museum requires that the city maintain and insure the buildings, pay the utility bills, and fund half the salaries and benefits paid to curators, conservators, security, and other specific personnel. The city holds title to art acquired before Sept. 12, 1984 and the museum holds title to all art acquired after that date. Considering the breadth of the “public funds” subsection of the “governmental body” definition, the decision emphasized that the Attorney General “has distinguished between private entities receiving public funds in return for specific, measurable services and entities receiving public funds as general support.” *Id.* Although the Attorney General recognized that the city is “receiving valuable services in exchange for its obligations,” the Attorney General advised that “the very nature of the services the [museum] provides to the city cannot be known, specific, or measurable.” *Id.* Therefore, the Attorney General concluded that the city is providing the museum support and thus the museum is a governmental body “[t]o the extent that the DMA receives the city’s support.” *Id.* The Attorney General advised that museum “records related to those parts of the DMA’s operation directly supported by the city, such as records regarding maintenance and ownership of the building and grounds, the city’s art collection, utility bills, salaries of those employees for whom the city pays a portion, and insurance policies on which the city has paid part of the premium, are subject to the [open records] act.” *Id.* However, the Attorney General advised that records related to areas of the museum not directly supported by the city are not subject to the Act, including documents related to an artwork collection donated in 1985. *Id.*; see also Tex. Att’y Gen. LA-6044 (2003) (payroll records of a subcontractor failed to satisfy the definition of public information where the records were not prepared as the agent of the governmental body, but instead done so in the performance of its own statutory duties under on a public works project, maintained pursuant to 2258.024 of the Texas Government Code. The Waco Court of Appeals found that the Brazos Higher Education Authority Inc., a nonprofit corporation that issues revenue bonds to purchase student loans, is not a governmental body under the Act because, in part, (1) it is not a deliberative body with rulemaking or quasi-judicial power; (2) was not created by a city; and (3) no funds of the State of Texas or the City of Waco are used to secure and pay off the revenue bonds. *Blankenship v. Brazos Higher Educ. Auth.*, 975 S.W.2d 353, 359-60 (Tex. App.-Waco 1998, pet. denied); see also *Keever v. Finlan*, 988 S.W.2d 300, 305 (Tex.App.-Dallas 1999, pet. dismissed) (individual members of a school district board of trustees are not a governmental body; while governmental body includes school district board of trustees, trustee is not governmental body subject to Act); *Kneeland v. National Collegiate Athletic Ass’n*, 850 F.2d 224, 225-31 (5th Cir. 1988), cert. denied, 488 U.S. 1042 (1989) (National Collegiate Athletic Association is not a “governmental body” because the funds received were not for general support, but rather were received in exchange for known, specific, and measurable services.); Tex. Att’y Gen. ORD-8197 (2010) (Planned Parenthood Association of Hidalgo County not a “governmental body” because the public funds it receives are in exchange for specific and measurable services, and not for its general support).

b. Bodies whose members include governmental officials.

For information to be subject to the Act, it must be “collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by or for a governmental body. § 552.021. At issue in Tex. Att’y Gen. ORD-565 (2010) were communications between a University of Texas employee and the U.S. Department of Homeland Security’s Homeland Security Science and Technology Advisory Committee. The Attorney General determined the communications were not subject to the Act because they were created by and for the committee and were not collected, assembled, or maintained by or for the university. *Id.*, citing Tex. Att’y Gen. ORD-635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources).

5. Multi-state or regional bodies.

Not specifically addressed.

6. Advisory boards and commissions, quasi-governmental entities.

The following were found to be governmental bodies under the Act:

1. a search advisory committee established by the Board of Regents of the Texas A & M System to recommend candidates for the position of President of Texas A & M University, and whose members were reimbursed for the expense of travel, meals and lodging. Tex. Att’y Gen. ORD-273 (1981).
2. the North Texas Commission constituted a “governmental body” because its contract with the City of Fort Worth failed to impose on the commission a specific and definite obligation to provide a measurable amount of service in exchange for a certain amount of money, as one would expect to find in a typical arm-length contract for services between a vendor and a purchaser. Tex. Att’y Gen. ORD-228 (1979).

The following did not qualify as governmental bodies under the Act:

1. the advisory board of the Children’s Advocacy Center of Texas (“CACCT”). Tex. Att’y Gen. ORD-5293 (2004). Although the CACCT was a governmental body subject to the Act, its advisory board was not because it served voluntarily, on an as-needed basis, in a nonvoting capacity, and received no public funds.
2. the Fiesta San Antonio Commission, which was designated by city ordinance as fiesta planning agency but received no public funds. Tex. Att’y Gen. ORD-569 (1990).
3. a mayor’s task force that examined city governmental structure but did not spend and was not supported by public funds. Tex. Att’y Gen. ORD-317 (1982).

7. Others.

The Act applies to property owners’ associations in the same manner as a governmental body if:

1. membership in the property owners’ association is mandatory for owners or a defined class of owners of private real property in a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more;
2. the property owners’ association has the power to make mandatory special assessments for capital improvements or mandatory regular assessments; and
3. the amount of the mandatory special or regular assessments is or has ever been based in whole or in part on the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation under Section 20, Article VIII, Texas Constitution. § 552.0036.

C. What records are and are not subject to the act?

The Act covers virtually all information possessed by governmental bodies. Section 552.002 makes public “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by a governmental body or for a governmental body, and the governmental body owns the information or has a right of access to it. The Texas Supreme Court has held that a document labeled “draft” is public information if, under a law or ordinance or in connection with the transaction of official business, it is collected, assembled, or maintained by or for a governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 358-59 (Tex. 2000).

Although the Act does not require governmental bodies to prepare new information (Tex. Att’y Gen. ORD-483 (1987); Tex. Att’y Gen. ORD-452 (1986); Tex. Att’y Gen. ORD-342 (1982); *A & T Consultants Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995)), some compilation may be required. See Op. Tex. Att’y Gen. No. JM-672 (1987) (suggesting that some compilation by way of a minimal computer search using an existing computer program may be required); § 552.231. A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public. § 552.027.

The Act applies to any information in a governmental body’s possession, even if originally created by an outside consultant or some other entity. Tex. Att’y Gen. ORD-335 (1982); see Tex. Att’y Gen. ORD-317 (1982); Tex. Att’y Gen. ORD-192 (1978). Even information located in the office of an outside consultant may be subject to the Act if (1) the information relates to a governmental body’s official duties, (2) the consultant acts as the governmental body’s agent in gathering the information, and (3) the governmental body is entitled to access to the information. See Tex. Att’y Gen. ORD-585 (1991); Tex. Att’y Gen. ORD-462 (1987) (records of law firm considered “public information” because they were prepared at direction of and under substantial control by University of Houston, for which law firm was acting as agent). But see Tex. Att’y Gen. ORD-631 (1995) (noting that such information may be exempted from disclosure under section 552.111 where it includes advice, recommendations, and opinions regarding administrative and personnel matters of broad scope that affect the governmental body’s policy mission). A governmental body cannot authorize its agents to keep information confidential (even from the body) if the governmental body itself has no authority to keep such information confidential. Tex. Att’y Gen. ORD-585 (1991).

1. What kind of records are covered?

As stated above, the Act covers virtually all information possessed by governmental bodies. Section 552.002 makes public “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by a governmental body or for a governmental body, and the governmental body owns the information or has a right of access to it.

For example, government investments are subject to the Act. Section 552.0225 provides that “it is the policy of this state that investments of government are investments of and for the people and the people are entitled to information regarding those investments.” That section lists categories of information held by a governmental body relating to its investments that constitute public information and are not excepted from disclosure under the Act. § 552.0225(b). This includes:

- (1) the name of any fund or investment entity the governmental body is or has invested in;
- (2) the date that the fund or investment entity was established;
- (3) each date the governmental body invested in the fund or investment entity;

(4) the amount of money, expressed in dollars, the governmental body has committed to a fund or investment entity;

(5) the amount of money, expressed in dollars, the governmental body is investing or has invested in any fund or investment entity;

(6) the total amount of money, expressed in dollars, the governmental body received from any fund or investment entity in connection with an investment;

(7) the internal rate of return or other standard used by a governmental body in connection with each fund or investment entity it is or has invested in and the date on which the return or other standard was calculated;

(8) the remaining value of any fund or investment entity the governmental body is or has invested in;

(9) the total amount of fees, including expenses, charges, and other compensation, assessed against the governmental body by, or paid by the governmental body to, any fund or investment entity or principal of any fund or investment entity in which the governmental body is or has invested;

(10) the names of the principals responsible for managing any fund or investment entity in which the governmental body is or has invested;

(11) each recusal filed by a member of the governing board in connection with a deliberation or action of the governmental body relating to an investment;

(12) a description of all of the types of businesses a governmental body is or has invested in through a fund or investment entity;

(13) the minutes and audio or video recordings of each open portion of a meeting of the governmental body at which an item described by this subsection was discussed;

(14) the governmental body’s percentage ownership interest in a fund or investment entity the governmental body is or has invested in;

(15) any annual ethics disclosure report submitted to the governmental body by a fund or investment entity the governmental body is or has invested in; and

(16) the cash-on-cash return realized by the governmental body for a fund or investment entity the governmental body is or has invested in.

Section 552.029 further provides that certain information about an inmate who is confined in a facility operated under a contract with the Texas Department of Criminal Justice is subject to disclosure. This includes the following:

(1) the inmate’s name, identification number, age, birthplace, department photograph, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;

(2) the inmate’s assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;

(3) the offense for which the inmate was convicted or the judgment and sentence for that offense;

(4) the county and court in which the inmate was convicted;

(5) the inmate’s earliest or latest possible release dates;

(6) the inmate’s parole date or earliest possible parole date;

(7) any prior confinement of the inmate by the Texas Department of Criminal Justice or its predecessor; or

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Section 552.0221 provides that certain information about an employee or trustee of a public employee pension system is subject to disclosure. This includes information concerning the income, salary, benefits, and bonuses received from the pension system by the employee in the person's capacity as an employee of the system. Information concerning the service of a trustee of a public employee pension system is also subject to the Act, including information concerning the income, salary, benefits, and bonuses received from the pension system by the trustee in the person's capacity as a trustee of the system. *Id.*

Section 552.025 provides for access to tax rulings and opinions. A governmental body with taxing authority that issues a written determination letter, technical advice memorandum, or ruling that concerns a tax matter shall index the letter, memorandum, or ruling by subject matter. On request, the governmental body shall make the index prepared and the document itself available to the public, subject to certain requirements and limitations. A governmental body cannot withhold from the public or limit the availability to the public of a written determination letter, technical advice memorandum, or ruling that concerns a tax matter and that is issued by a governmental body with taxing authority. *Id.*

Section 552.024 provides each employee or official of a governmental body and each former employee or official of a governmental body shall choose whether to allow public access to their address, telephone number, or social security number, or to information that reveals whether the person has family members. *Id.*

Section 552.023 provides for a special right of access to confidential information. If necessary, a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests. The governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests. *Id.*

2. What physical form of records are covered?

"[T]he form in which a governmental body stores information does not affect its availability." Tex. Att'y Gen. ORD-461 (1987). Meeting tapes are public records (Tex. Att'y Gen. ORD-491 (1988), as are computer tapes. Tex. Att'y Gen. ORD-352 (1982); *see also* § 552.002(c). Section 552.002(b) provides that the media on which public information is recorded include: (1) paper; (2) film; (3) a magnetic, optical, or solid state device that can store an electronic signal; (4) tape; (5) Mylar; (6) linen; (7) silk; and (8) vellum.

Section 552.002(c) adds that the "general forms in which the media containing public information exist include a book, paper, letter, document, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory."

3. Are certain records available for inspection but not copying?

Generally, an officer for public information of a governmental body shall promptly produce public information for inspection, duplication, or both on application by any person to the officer. An officer for public information complies with the request by providing the information for inspection or duplication in the offices of the governmental body. § 552.221.

Further, if the party requesting the information specifies that she wants copies of the records and pays the postage and other charges, then the records will be copied by the officer for public information. § 552.221(b). If the requested information is unavailable at the time of the request to examine because it is in active use or in storage, the

officer for public information shall certify this fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication. § 552.221(c). If an officer for public information cannot produce public information for inspection or duplication within 10 business days after the date the information is requested, the officer shall certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication. § 552.221(d).

Pursuant to § 552.027(c), a governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

D. Fee provisions or practices.

Sections 552.261 through 552.275 address fees for copies of and access to public information. 1 Texas Administrative Code §§ 70.1–.12 sets out the Text Of Cost Regulations Promulgated By The Office Of The Attorney General.

1. Levels or limitations on fees.

Section 552.261 provides that "[t]he charge for providing a copy of public information shall be an amount that reasonably includes all costs related to reproducing the public information, including costs of materials, labor, and overhead." Such a charge even can include the cost of deleting confidential information. Tex. Att'y Gen. ORD-488 (1988). *But see* Tex. Att'y Gen. ORD-633 (1995) (noting that a requestor cannot be charged for costs incurred in redacting or sorting out information excepted under the Act's nonmandatory exceptions, such as in the case of sections 552.003, 552.007, and 552.008, because they are not "costs related to reproducing the record" and are not a factor in determining whether the record is "readily available"). However, if "a request is for 50 or fewer pages of paper records, the charge for providing the copy of the public information may not include costs of materials, labor, or overhead, but shall be limited to the charge for each page of the paper record that is photocopied, unless the pages to be copied are located in: (1) two or more separate buildings that are not physically connected with each other; or (2) a remote storage facility." § 552.261(a)(1), (2).

Section 552.262 sets forth guidelines and rules of the Attorney General, which adopts rules for use by each governmental body in determining charges under the Act. The charges for public information may not be excessive and may not exceed the actual cost of producing the information. The rules of the Attorney General do not apply to a state governmental body that is not a "state agency." § 552.262(e).

The custodian cannot consider the cost or method of supplying requested information in deciding whether the information is public and subject to inspection. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976). In *Industrial Foundation*, a nonprofit corporation sought access to workers' compensation claims information, much of which was stored on a computer. The governmental agency argued that retrieval would overwork and disrupt agency employees. The Texas Supreme Court held that the agency could not consider the cost or method of supplying the requested information. It further held that the officer for public records and the State Board of Control [now the State Purchasing and General Services Commission] should determine "[t]he least expensive method of supplying the information," although the Act "makes clear that all costs incurred in providing access to public records must be borne by the requesting party." *Id.*

A custodian must provide the requestor with a written, itemized statement if a request for a copy of public information or inspection of a paper record will result in the imposition of a charge that exceeds \$40. § 552.2615. The itemized statement must detail all estimated charges that will be imposed, including any allowable charges for labor or personnel costs. *Id.* If a less costly alternative method of viewing the records is available, the statement must include a notice that the requestor may contact the governmental body regarding the

alternative method. *Id.* In 2005, the Texas legislature added a provision requiring the requestor to timely respond within ten business days to the written statement or have the request for information withdrawn. § 552.2615(b).

2. Particular fee specifications or provisions.

As stated above, § 552.261(a) provides that “[t]he charge for providing a copy of public information shall be an amount that reasonably includes all costs related to reproducing the public information, including costs of materials, labor, and overhead.”

a. Search.

Where a request is for more than 50 pages of paper records, section 552.261 allows a governmental body to assess charges for labor, overhead, and materials. Such assessment is limited to the charge for each page of the paper record that is copied, except in certain circumstances specified in 552.261(a)(1) & (a)(2). The requestor may require a written statement as to the amount of time that was required to produce and provide the copy.

b. Duplication.

Section 552.263 permits governmental bodies to require a deposit or bond for payment of anticipated costs for the preparation of a copy of public information.

Section 552.264 provides that one copy of public information that is requested from a state agency by a member, agency, or committee for information to be used for legislature purposes shall be provided without charge.

Section 552.265 provides that the charge for providing a paper copy made by a district or county clerk’s office shall be the charge provided by Chapter 51 of the Government Code, Chapter 118, Local Government Code, or other applicable law.

Section 552.266 provides that the charge for providing a copy made by a municipal court clerk shall be the charge provided by municipal ordinance.

c. Other.

If the requestor does not request a copy of public information, a charge may not be imposed for making available for inspection any public information that exists in a paper record, except as follows. § 552.271(a). If a requested page contains confidential information that must be edited from the record before the information can be made available for inspection, the governmental body may charge for the cost of making a photocopy of the page from which confidential information must be edited. No charge other than the cost of the photocopy may be imposed under this subsection. § 552.271(b). An officer for public information or the officer’s agent may require a requestor to pay, or to make a deposit or post a bond for the payment of, anticipated personnel costs for making available for inspection public information that exists in paper records only if: (1) the public information specifically requested by the requestor: (A) is older than five years; or (B) completely fills, or when assembled will completely fill, six or more archival boxes; and (2) the officer for public information or the officer’s agent estimates that more than five hours will be required to make the public information available for inspection. § 552.271(c). If the governmental body has fewer than 16 full-time employees, the payment, the deposit, or the bond may be required only if: (1) the public information specifically requested by the requestor: (A) is older than three years; or (B) completely fills, or when assembled will completely fill, three or more archival boxes; and (2) the officer for public information or the officer’s agent estimates that more than two hours will be required to make the public information available for inspection. § 552.271(d).

In response to a request to inspect information that exists in an electronic medium and that is not available directly on-line to the requestor, a charge may not be imposed for access to the information, unless

complying with the request will require programming or manipulation of data. If programming or manipulation of data is required, the governmental body shall notify the requestor before assembling the information and provide the requestor with an estimate of charges that will be imposed to make the information available. § 552.2729(a). If public information exists in an electronic form on a computer owned or leased by a governmental body and if the public has direct access to that computer through a computer network or other means, the electronic form of the information may be electronically copied from that computer without charge if accessing the information does not require processing, programming, or manipulation on the government-owned or government-leased computer before the information is copied. § 552.2729(b). If public information exists in an electronic form on a computer owned or leased by a governmental body and if the public has direct access to that computer through a computer network or other means and the information requires processing, programming, or manipulation before it can be electronically copied, a governmental body may impose charges. § 552.2729(c). If information is created or kept in an electronic form, a governmental body is encouraged to explore options to separate out confidential information and to make public information available to the public through electronic access through a computer network or by other means. § 552.2729(d). The provisions that prohibit a governmental entity from imposing a charge for access to information that exists in an electronic medium do not apply to the collection of a fee set by the supreme court after consultation with the Judicial Committee on Information Technology as authorized by Section 77.031 for the use of a computerized electronic judicial information system. § 552.2729(e).

3. Provisions for fee waivers.

Section 552.267 provides that public information shall be furnished for free or at a reduced charge “if the governmental body determines that waiver or reduction of the charge is in the public interest because providing the copy of the information primarily benefits the general public.” That section also provides that copying costs may be waived if the cost to a governmental body of processing the collection of a charge for a copy of public information will exceed the amount of the charge. § 552.267(b). Finally, section 552.264 provides that a member of the legislature is entitled to one free copy of public information that is requested from a state agency.

4. Requirements or prohibitions regarding advance payment.

Section 552.263(a) permits governmental bodies to require a deposit or bond for payment of anticipated costs for the preparation of a copy of public information if the officer for public information or the officer’s agent has provided the requestor with the required written itemized statement detailing the estimated charge for providing the copy and if the charge for providing the copy of the public information specifically requested by the requestor is estimated by the governmental body to exceed: (1) \$100, if the governmental body has more than 15 full-time employees; or (2) \$50, if the governmental body has fewer than 16 full-time employees.

Prior to this language, which was added by the 1995 amendments and revised substantially in 1999, the Texas Supreme Court had already held that the requestor may be required to post a bond before the governmental body’s preparation of the records. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687-88 (Tex.1976). “These anticipated costs should of course include the expenses which may be incurred incident to the redaction of the records for the protection of individual claimants’ privacy interests.” *Id.* at 688; *see also A & T Consultants Inc. v. Sharp*, 904 S.W.2d 668, 676-77 (Tex. 1995).

5. Have agencies imposed prohibitive fees to discourage requesters?

Section 552.268 specifically instructs governmental bodies to “make reasonably efficient use of supplies and other resources to avoid excessive reproduction costs.” Any agency attempting to use prohibitive fees

to discourage requests violates the language of sections 552.269 and 552.261. A person who believes he has been overcharged for a copy of public information may complain to the Attorney General in writing, and must set forth the reasons why the person believes the charges are excessive. If, after review, the Attorney General determines that an overcharge occurred, the governmental body must promptly adjust its charges in accordance with the determination. § 552.269(a). Under section 552.269(b), “[a] person who overpays for a copy of public information because a governmental body refuses or fails to follow the rules for charges adopted by the attorney general is entitled to recover three times the amount of the overcharge if the governmental body did not act in good faith in computing the costs.” Also, under section 552.353, an officer for public information “commits an offense if, with criminal negligence,” the officer “fails or refuses to give access to, or to permit or provide copying of, public information.”

E. Who enforces the act?

A requestor or the Attorney General may file suit for a writ of mandamus compelling a governmental body to make information available for public inspection if the governmental body refuses to request an Attorney General’s decision or refuses to supply public information that the Attorney General has determined is public information and not excepted under the Act. § 552.321. “[A] trial court has the authority to grant mandamus relief when an agency refuses to timely request an attorney general opinion, when the agency refuses to supply public information in accordance with the [Act], and also when the agency fails to timely notify the requestor of its decision to seek an attorney general opinion.” *Simmons v. Kuzmich*, 166 S.W.3d 342, 348 (Tex. App.-Fort Worth 2005, no pet.).

Section 552.3215(e) provides that a complainant may file a declaratory or injunctive action with the district or county attorney against a governmental body that violates the Act. The district or county attorney then must determine whether the governmental body violated the Act and whether to pursue the matter. § 552.3215(g).

1. Attorney General’s role.

The Attorney General may file suit for a writ of mandamus compelling a governmental body to make information available for public inspection if the governmental body refuses to request an Attorney General’s decision or refuses to supply public information that the Attorney General has determined is public information and not excepted under the Act. § 552.321. If the Attorney General enters into a proposed settlement that all or part of the information that is the subject of the suit should be withheld, the Attorney General shall notify the requestor of that decision and, if the requestor has not intervened in the suit, notify the requestor of the requestor’s right to intervene to contest the withholding.

§ 552.325(c). The Attorney General shall notify the requestor: (1) in the manner required by the Texas Rules of Civil Procedure, if the requestor has intervened in the suit; or (2) by certified mail or by another written method of notice that requires the return of a receipt, if the requestor has not intervened in the suit. *Id.*

2. Availability of an ombudsman.

Not specifically addressed.

3. Commission or agency enforcement.

Section 552.009 establishes an open records steering committee that shall study and determine the types of public info that should be made available by the Internet or other electronic means. State governmental bodies shall report to the attorney general information regarding the number and nature of requests for information they process, the cost of processing such requests and of making information available to the public by means of the Internet or another electronic format. § 552.010.

A requestor who believes he or she has been overcharged may lodge a complaint with the Office of the Attorney General. § 552.269.

F. Are there sanctions for noncompliance?

In an action brought under section 552.321 or 552.3215, the court “shall assess costs of litigation and reasonable attorney fees incurred by a plaintiff who substantially prevails.” § 552.323(a). However, a court may not assess costs and fees against a governmental body if the court finds that the governmental body acted in reasonable reliance on a judgment or court order, an appellate court decision, or a written decision of the Attorney General. § 552.323. In determining awardable costs and attorney fees under § 552.324 (in a suit brought by a governmental body seeking to withhold information), the court must consider whether the conduct of the governmental body had a reasonable basis in law and whether the litigation was brought in good faith. § 552.323(b).

Section 552.351 provides that a person commits a criminal offense if the person willfully destroys, mutilates, removes without permission, or alters public information. Such an offense is a misdemeanor punishable by a fine of not less than \$25 or more than \$4,000, or confinement in jail for not less than three days or more than three months, or both. § 552.351(b).

An officer of public information or the officer’s agent commits a crime if, with criminal negligence, that person fails or refuses to give access to, or to permit or provide copying of, public information to a requestor. § 552.353(a). Such a violation is a misdemeanor punishable by a fine of not more than \$1,000, or confinement in jail for not more than six months, or both. § 552.353(e).

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open records statute.

The Act “does not authorize the withholding of public information or limit the availability of public information to the public, except as expressly provided” by the Act. Tex. Gov’t Code § 552.006. The Act lists more than forty categories of exceptions. Tex. Gov’t Code §§ 552.101-151.

However, these exceptions do not apply to the categories of information deemed public in section 552.022(a), and such information must be disclosed unless it is “expressly confidential under other law.” § 552.022(a); *In re City of Georgetown*, 53 S.W.3d 328, 331 (Tex. 2001) (holding that the Texas Rules of Evidence and Rules of Civil Procedure are “other law” that may render information described in section 552.022(a) confidential and not subject to mandatory disclosure). The categories of information set forth in section 552.022(a) are public information not excepted from disclosure unless they are expressly confidential under other law are as follows:

1. a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;
2. the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body;
3. information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;
4. the name of each official and the final record of voting on all proceedings in a governmental body;
5. all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate;
6. the name, place of business, and the name of the municipality to which local sales and use taxes are credited, if any, for the named person, of a person reporting or paying sales and use taxes under Chapter 151, Tax Code;
7. a description of an agency’s central and field organizations, including:

(A) the established places at which the public may obtain information, submit information or requests, or obtain decisions;

(B) the employees from whom the public may obtain information, submit information or requests, or obtain decisions;

(C) in the case of a uniformed service, the members from whom the public may obtain information, submit information or requests, or obtain decisions; and

(D) the methods by which the public may obtain information, submit information or requests, or obtain decisions;

8. a statement of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures;

9. a rule of procedure, a description of forms available or the places at which forms may be obtained, and instructions relating to the scope and content of all papers, reports, or examinations;

10. a substantive rule of general applicability adopted or issued by an agency as authorized by law, and a statement of general policy or interpretation of general applicability formulated and adopted by an agency;

11. each amendment, revision, or repeal of information described by Subdivisions (7)-(10);

12. final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases;

13. a policy statement or interpretation that has been adopted or issued by an agency;

14. administrative staff manuals and instructions to staff that affect a member of the public;

15. information regarded as open to the public under an agency's policies;

16. information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege;

17. information that is also contained in a public court record; and

18. a settlement agreement to which a governmental body is a party.

1. Character of exemptions.

a. General or specific?

A governmental body that believes requested records are exempt must specifically identify in a letter to the Attorney General which of the categories of exceptions it believes exempts the requested information and why. *See infra* Section V.C. Ordinarily the Attorney General will not raise an exception the governmental body has failed to claim unless the information involves confidential information about third parties that might be exempt under section 552.101. *See* Tex. Att'y Gen. ORD-455 (1987); Tex. Att'y Gen. ORD-325 (1982). In the event the governmental body's refusal to disclose information results in a lawsuit, the governmental body can only raise in that suit exceptions that were raised before the Attorney General. Tex. Gov't Code § 552.326. However, this does not prohibit the governmental body from raising an exception based on a requirement of federal law or involving the property or privacy interests of another person.

b. Mandatory or discretionary?

The Act does not require a governmental body to withhold all information that falls within these exempt categories. A governmental body can release exempt information, unless such information is considered "confidential" under the terms of the Act or by some other law or judicial decision. *See* Tex. Gov't Code §§ 552.101, 552.352, 552.007. However, once the governmental body has released information, that information must be made available to any person. *Id.* at § 552.007(b). The waiver of the exception resulting from a governmental body's disclosure of documents extends only to the documents released, and not with respect to related documents. *Cornyn v. City of Garland*, 994 S.W.2d 258, 265-66 (Tex. App.-Austin 1999, no pet.).

c. Patterned after federal Freedom of Information Act?

The legislature modeled the Act after the federal Freedom of Information Act. *Texas Comptroller of Public Accounts v. Attorney General of Texas*, No. 08-0172, 2010 WL 4910163, at *8 (Tex. 2010); *A & T Consultants Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995). Courts may look to the federal courts' construction of the Freedom of Information Act for guidance in interpreting the Texas Public Information Act. *Texas Comptroller of Public Accounts*, 2010 WL 4910163, at *5 ("[b]ecause the PIA is modeled on the FOIA, federal precedent is persuasive, particularly where the statutory provisions mirror one another"); *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000).

2. Discussion of each exemption.

A governmental body raising any of the exceptions has the burden of establishing that the records at issue fall within the exception. Tex. Att'y Gen. ORD-62 (1974). The Act supports a liberal construction of its provisions in favor of disclosure and narrow interpretation of its exceptions to disclosure. *Simmons v. Kuzmich*, 166 S.W.3d 342, 346 (Tex. 2005). Determining whether an exception applies under the Act to support withholding public information is a question of law. *Abbott v. Texas Bd. of Nursing*, No. 03-09-00154-CV, 2010 WL 392335, at *1 (Tex. App.—Austin 2010, no pet.) (mem. op.). Briefly, these exempt categories, paraphrased and listed by section number, are:

a. (§ 552.101): Information deemed confidential by constitutional law, statute, or judicial decision. This includes common-law privacy opinions, such as the frequently cited case *Indus. Found. of the South v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683 (Tex. 1976), which provides that information is confidential only if "the information contain[s] highly intimate or embarrassing facts about a person's private affairs, such that its publication would be highly objectionable to a person of ordinary sensibilities." *see also* Tex. Att'y Gen. ORD-405 (1983) (stating that "information may be withheld only if it is highly intimate or embarrassing, its release would be highly offensive to a reasonable person, and the public interest in its disclosure is minimal.") and Tex. Att'y Gen. ORD-600 (1992). At least one Attorney General opinion suggests that records are more likely to be exempt from public disclosure on constitutional privacy rather than on common-law privacy theories. Tex. Att'y Gen. ORD-455 (1987). However, the Attorney General has used a common-law privacy test to exempt from public disclosure information concerning whether a specific public employee is participating in a deferred compensation plan, as well as communications made by participants in victim-offender mediation conducted by the Texas Department of Criminal Justice. Tex. Att'y Gen. ORD-545 (1990); Tex. Att'y Gen. ORD-659 (1999). The Austin Court of Appeals has held that business facsimile numbers of nurses collected and maintained by the Texas Board of Nursing are not confidential and are subject to disclosure. *Abbott v. Texas Bd. of Nursing*, 2010 WL 392335, at *6 (Tex. App.-Austin 2010, no pet.) (mem. op.). The United States District Court for the Southern District of Texas has held that information contained in applications for a permit to work in sexually oriented businesses is confidential and is not subject to disclosure under the Act. *N.W. Enter. v. City of Houston*, 27 F.Supp.2d 754, 842-43 (S.D. Tex. 1998), *aff'd in part and rev'd in part*, 352 F.3d 162, 195 (5th Cir. 2004) (holding that permit applicants must disclose their phone numbers and home addresses on permit applications because there is no threat that "stalkers, overly-aggressive suitors, or people zealously opposed to [sexually oriented business]" will take action because the information on permit applications is confidential under the [Texas Public Information Act]."). Final mediated settlement agreements to which a governmental body is a party are not confidential unless expressly made confidential by other law. *See Ford v. City of Huntsville*, 242 F.3d 235, 241 (5th Cir. 2001); Tex. Att'y Gen. ORD-658 (1998); *Abbott v. GameTech Intern., Inc.*, No. 03-06-00257-CV, 2009 WL 1708815, at *6-7 (Tex. App.—Austin 2009, pet. denied) (mem. op.) ("settlement letters" between the gaming commission and bingo equipment manufacturer were not exempt from disclosure be-

cause although the entities were engaged in settlement discussions, they were not engaged in statutorily defined alternative dispute resolution procedures subject to confidentiality but rather exchanged offers and counter-offers of settlement).

b. (§ 552.102) information in (1) the personnel file of a state employee the disclosure of which would constitute a clearly unwarranted invasion of personal privacy or (2) the college or graduate school transcript of a professional public school employee. The college transcript exception does not exempt information as to what degree the public school employee received or in which curriculum. Personnel files may become public record upon the death of the individual since the right of privacy dies with the individual. *Op. Tex. Att’y Gen. No. H-917 (1976)*. [This exception, for the most part, has been narrowly construed. *See Industrial Foundation v. Texas Indus. Acc. Bd.*, 540 S.W.2d 668, 680-85 (Tex. 1976) (applying the principle of a right of privacy as found in the United States Constitution to this exception to the Open Records Act regarding the disclosure of worker’s compensation information such as the name of the claimant, the nature of his injuries, his employer and his attorney.); *Tex. Att’y Gen. ORD-405 (1983)* (auditor’s report on alleged conflict of interest concerning university employee not excepted and must be disclosed because it relates to the manner in which an employee performs his job and is not highly intimate or embarrassing—its release would not be highly offensive to a reasonable person and the public interest in its disclosure is not minimal). The Texas Supreme Court recently denied the requestor’s request for the disclosure of the birth dates of employees of the State Comptroller of Public Accounts holding that state employees have a privacy interest in their birth dates despite the newspaper’s claims that birth dates could be used to determine whether governmental entities like school districts and hospitals have hired convicted felons or sex offenders. *Texas Comptroller of Public Accounts v. Attorney General of Texas*, No. 08-0172, 2010 WL 4910163, at *6, 9 (Tex. 2010). In civil cases against a police or fire department, material placed in the department’s discretionary personnel file is generally privileged from disclosure. *In re Jobe*, 42 S.W.3d 174, 180 (Tex. App.-Amarillo 2001, no pet.); *Tex. Loc. Gov’t Code Ann. § 143.089(a)-(g)*. Material deemed to be “reasonably related to a police officer’s or fire fighter’s employment relationship” is also privileged. *City of San Antonio v. San Antonio Express News*, 47 S.W.3d 556, 563 (Tex. App.-San Antonio 2000, pet. denied). However, documents leading to disciplinary action against a fire fighter or police officer must be included in a discoverable file if the document is from the employing department. *In re Jobe*, 42 S.W.3d at 180; *Tex. Loc. Gov’t Code Ann. § 143.089(a)(2)*.];

c. (§ 552.103) certain information concerning criminal or civil litigation (including settlement negotiations) in which the governmental body is or may be a party, or to which an officer or employee of the state or a political subdivision, as a consequence of such employment, is or may be a party. [This exception applies when the information relates to litigation that is pending or is reasonably anticipated. *Univ. of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481-82 (Tex. App.-Austin 1997, no writ) (applying exception where requestor-attorney, who had already participated in previous lawsuits against the law school, plainly stated his intent to use the requested information to solicit plaintiffs to organize a class-action lawsuit). To claim that information falls within this exception, the governmental body must also show that the requested information related to the litigation is such that release of the information would injure the governmental body’s legal strategy and interests. *Tex. Att’y Gen. ORD-478 (1987)*. It is sometimes difficult to demonstrate that litigation is “reasonably anticipated.” A mere threat of a lawsuit is not enough. *Tex. Att’y Gen. ORD-331 (1982)*. Once litigation has concluded, however, this section does not provide an exception and information must be provided unless it constitutes attorney work product which consists of information created for trial or in anticipation of civil litigation or that would tend to reveal an attorney’s mental processes, conclusions and legal theories. *Tex. Att’y Gen. ORD-647 (1996)*.];

d. (§ 552.104) information that would give advantage to competitors or bidders. [A governmental body asserting this exception must

demonstrate specific actual or potential harm to the body’s legitimate marketplace interests. *Tex. Att’y Gen. ORD-593 (1991)*. This exception is designed to protect the interests of governmental bodies and not the interests of private parties. *Tex. Att’y Gen. ORD-592 (1991)*.];

e. (§ 552.105) information concerning the location of real or personal property for public purposes before public announcement of the project as well as information concerning appraisals or purchase prices of real or personal property before formal award of a contract for the property. *Tex. Att’y Gen. ORD-222 (1979)*; *Tex. Att’y Gen. ORD-234 (1980)* (stating that “[s]o long as negotiations regarding the purchase of a site. . . have not been completed . . . the city may withhold all proposed plans, locations and cost estimates” but when “the transaction has been completed, all factual information relating to the project will become available to the public.”); *Tex. Att’y Gen. ORD-348 (1982)*. [Exception can apply to the names and addresses of landowners as release of such information could affect the purchase negotiations. *See Heidenheimer v. Tex. Dept. of Transp.*, No. 03-02-00187-CV, 2003 WL 124248, at *2 (Tex. App.-Austin 2003, pet. denied) (mem. op.)].;

f. (§ 552.106) drafts or working papers involved in the preparation of proposed legislation as are internal bill analyses and working papers evaluating proposed legislation prepared by the governor’s office. [A city manager’s proposed budget prior to its presentation to the city council may be excepted. *Tex. Att’y Gen. ORD-460 (1987)*. However, a state agency’s factual findings on the value of school districts’ taxable property is not excepted because it is a factual inquiry rather than one that reflects “policy judgments, recommendations, or proposals” concerning the drafting of legislation. *Tex. Att’y Gen. ORD-344 (1982)*.];

g. (§ 552.107) information protected from disclosure by court order or which the Attorney General or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence, the Texas Disciplinary Rules of Professional Conduct, or by a court order. [This exception basically addresses information protected by attorney-client privilege. *Tex. Att’y Gen. ORD-323 (1982)*; *Tex. Att’y Gen. ORD-462 (1987)*; *see Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328, 333 (Tex. App.-Austin 2000, no pet.) (holding that the attorney-client privilege prohibited disclosure of an attorney’s entire report-including the purely factual portion-made to her client, a school district). The exception also applies when there is a court order prohibiting disclosure. *Tex. Att’y Gen. ORD-309 (1982)*; *Tex. Att’y Gen. ORD-415 (1984)*.];

h. (§ 552.108) records of law enforcement agencies and prosecutors dealing with detection, investigation, or prosecution of crime. Information is excepted from disclosure if (1) its release would interfere with the detection, investigation, or prosecution of a crime; (2) it deals with the detection, investigation, or prosecution of a crime only in relation to an investigation that did not result in conviction or deferred adjudication; (3) it relates to a threat against a peace officer or corrections officer; or (4) it was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflects the mental impressions or legal reasoning of an attorney representing the state. [The press and public, however, have a right to see the following kinds of police records: (1) police blotter; (2) showup sheet; (3) arrest sheets. *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App. - Houston [14th Dist.] 1975, writ ref’d n.r.e.); *see also City of Houston v. Houston Chronicle Publ’g Co.*, 673 S.W.2d 316, 321-22 (Tex. App.-Houston [1st Dist.] 1984, no writ) (holding that police department’s policy of restricting access to blotter cards to a 24-hour period from booking was against state law). While some portions of offense reports-like a personal history and arrest record-are excepted, the public is entitled to information concerning: (1) offense committed; (2) location of crime; (3) identification and description of person filing complaint; (4) premises involved; (5) time of crime; (6) property involved; (7) vehicles involved; (8) description of weather; (9) detailed description of offense in question; and (10) names of investigating officers. *Houston Chronicle Publishing Co.*, 531 S.W.2d at 186-87; *see also Tex. Att’y Gen. ORD-127 (1976)*.]

Article 57.02 of the Texas Code of Criminal Procedure allows victims of sex crimes to use pseudonyms in all public records concerning the offense, including in policy reports, press releases, and during testimony in court. Under this law, law enforcement officials cannot disclose the victim's name, address or telephone number unless ordered to do so by a court.

The law enforcement exception excludes from public disclosure the personal histories and “rap sheets” of individuals accused of crimes, the synopsis of any confession, opinions of officers as to the credibility of witnesses, and the results of lab and ballistics tests. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 187-88 (Tex. Civ. App.-Houston [14th Dist.] 1975, writ ref'd n.r.e.). In order to secure the protection of this exception, the governmental body must demonstrate that release of the requested information will unduly interfere with law enforcement and crime prevention. *City of San Antonio v. San Antonio Express News*, 47 S.W.3d 556, 563 (Tex. App.-San Antonio 2000, pet. denied).;

i. (§ 552.109) private correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy. [Letters from students' parents concerning a teacher's performance sent to school board trustees were not shielded from disclosure since nothing in the contents violated the privacy rights of the trustees as long as information which identifies students or parents is redacted. Tex. Att'y Gen. ORD-332 (1983).];

j. (§ 552.110) trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. Also excepted is commercial or financial information for which it is demonstrated through specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. [Tex. Att'y Gen. ORD-592 (1991) discusses in detail the meaning of “trade secrets.” *But see* Tex. Att'y Gen. ORD-639(1996) (overruling Open Records Decision 592 (1991) to the extent it limited “judicial decision” to the statutory or common law of Texas and not other jurisdictions for the purposes of defining “commercial or financial information.”).];

k. (§ 552.111) interagency or intraagency memoranda or letters that would not be available by law to a party in litigation with the agency. [This exception exempts from public disclosure information that is not discoverable in a lawsuit. *See* Op. Tex. Att'y Gen. No. H-436 (1974); Tex. Att'y Gen. ORD-251 (1980). It is patterned after section 552(b)(5) of the federal Freedom of Information Act, 5 U.S.C.A. § 552(b)(5), and exempts advice, opinion, and recommendation used in the deliberative and decision-making processes within an agency or between agencies, to encourage open and frank discussion. *Id.*; *but see Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455, 457 (Tex. App.-Houston [14th Dist.] 1996, writ denied) (holding that documents relating to a student's conduct grade were not exempt from disclosure as they concerned implementation of current policy and not the deliberative process of policy formation). This is the proper exception under which to claim the attorney work product privilege once litigation for which the information was created has concluded. Tex. Att'y Gen. ORD-647 (1996). The Texas Supreme Court has limited this exception to protect only those agency communications or parts of agency communications that relate to the agency's policymaking. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000) (holding that a city manager's memorandum on reasons why to fire a city finance director was not exempt from disclosure since it did not relate to policymaking); *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152, 160-61 (Tex. App.-Austin 2001, no pet.) (holding that factual compilations from survey responses are not protected under this exception as they are not pre-decision memoranda related to policymaking). The exception may apply to information created for a governmental body by an outside consultant when the consultant is acting at the request of the governmental body and performing a task within the authority of that body. Tex. Att'y Gen. ORD-631 (1995).];

l. (§ 552.112) information in or related to examining, operating, or

condition reports by or for agencies responsible for the regulation or supervision of financial institutions or securities, or both. [Records describing the general condition of a particular type of financial institutions are not excepted. Tex. Att'y Gen. ORD-483 (1987).];

m. (§ 552.113) certain geological or geophysical information or data, including maps concerning wells (except information filed in connection with an application or proceeding before an agency), confidential “electric logs” (as defined in the Natural Resources Code), and “confidential material” filed in the General Land Office. Information filed in connection with an application or proceeding before an agency is not excepted. [The purpose of this exception is to only protect commercially valuable geological and geophysical information about the exploration and development of natural resources. Tex. Att'y Gen. ORD-627 (1994).];

n. (§ 552.114) student records at educational institutions funded wholly or in part by state revenue. Records that contain information related to an identifiable student are excepted from disclosure except when requested by the student, spouse, parents, legal guardian, certain school personnel, or a person conducting a child abuse investigation as defined in the Family Code. [This exception is intended to conform with the federal Family Educational Rights and Privacy Act of 1974. This federal act permits schools to release certain types of “directory information” concerning a student (such as his name, address, telephone number, date and place of birth, and major field of study) if the school has notified the student what the school has designated as “directory” and given the student reasonable time to request that such information not be released without his consent. Tex. Att'y Gen. ORD-634 (1996).];

o. (§ 552.115) birth and death records maintained by the bureau of vital statistics of the Texas Department of Health. However, birth records become public 75 years after they are filed and death records become public 25 years after they are filed. General birth and death indices established and maintained by the Bureau of Vital Statistics are not excepted from disclosure to the extent they do not reveal adoption or paternity determinations;

p. (§ 552.116) audit working papers of the state auditor, the auditor of a state agency, an institution of higher education as defined in the Education Code, a county, a municipality, or a joint board operating under the Transportation Code;

q. (§ 552.117) information relating to the home addresses, home telephone numbers, or Social Security numbers of current or former governmental officials and employees, current or former employees of the Texas Department of Criminal Justice, as well as certain peace officers and security officers, or information that reveals whether such persons have family members, except as otherwise provided in § 552.024. [Government employees and officials can choose, in writing, whether to allow public access to such information. *See* Tex. Gov't Code § 552.024; § 552.1175. The 1995 amendments added exemptions for Social Security numbers and information that reveals whether a person has family members.];

r. (§ 552.1175) information relating to the home address, home telephone number, Social Security number, or information revealing whether the individual has family members may not be revealed and applies to peace officers, county jailers, current or former employees of the Texas Department of Criminal Justice, security officers as defined in the Occupations Code, employees of a district or county attorney, any county or municipal attorney whose jurisdiction includes criminal law or child protective services, officers and employees of a community supervision and corrections department established under the Code, criminal investigators of the United States, and police officers and inspectors of the United States Federal Protective Service.

s. (§ 552.1176) information relating to the home address, home telephone number, electronic mail address, social security number, or date of birth of a person licensed to practice law in Texas may not be disclosed if the person to whom the information relates chooses to

restrict public access to the information and notifies the State Bar of Texas of the person's choice, in writing or electronically, on a form provided by the state bar.

t. (§ 552.118) information on or derived from a triplicate prescription form filed with the Department of Public Safety;

u. (§ 552.119) photographs that depict certain peace officers or security officers where release would endanger their lives or physical safety unless the officer is under indictment or charged with an offense by information, is a party in a civil service hearing or a case in arbitration, or the photograph is introduced as evidence in a judicial proceeding. Such photographs may be made public only if written consent is provided by the peace officer. [The 1993 amendments broadened this exemption to include the phrase "physical safety." The exemption ceases to apply after the death of the officer. *Tex. Att'y Gen. ORD-536 (1989).*];

v. (§ 552.120) rare books or original manuscripts not created or maintained in the conduct of official business and held for historical research;

w. (§ 552.121) oral histories, personal papers, unpublished letters, or organizational records of certain nongovernmental entities that was not created or maintained in the conduct of official business of a governmental body and that are held for historical purposes to the extent that the archival and repository and the donor agree to limit disclosure;

x. (§ 552.122) test items of educational institutions funded wholly or in part by state revenues and test items developed by licensing agencies or governmental bodies. [The term "test item" includes any standard means through which an individual or group's knowledge or ability is evaluated but does not encompass an employee's job performance or suitability. *Tex. Att'y Gen. ORD-626 (1994)*. Determinations are made on a case by case basis. *See id.* The 1995 amendments deleted curriculum objectives from exempt status.];

y. (§ 552.123) the names of applicants for chief executive officer of institutions of higher education, except that the governing bodies of these institutions must give the public notice of the names of finalists at least 21 days before the meeting at which final action or vote is to be taken on the employment of the person;

z. (§ 552.1235) the name or other information disclosing the identity of a person who makes a donation or gift to an institution of higher learning. This section does not exempt other information relating to the amount or value of a gift or donation;

aa. (§ 552.124) records of libraries or library systems, supported in whole or in part by public funds, that identify a person who requested, obtained, or used a library material or service, unless the record is disclosed: (1) because the library or library system determines that disclosure is reasonably necessary for library operation and the record is not confidential under other state or federal law, or (2) pursuant to a special right of access of confidential information under § 552.023, or (3) to a law enforcement agency or prosecutor pursuant to a court order or subpoena after a showing to a district court that disclosure of the record is necessary to protect the public safety or the record is evidence of an offense or constitutes evidence that a particular person committed an offense.

bb. (§ 552.125) any documents or information privileged under the Texas Environmental, Health and Safety Audit Privilege Act;

cc. (§ 552.126) the names of applicants for superintendent of a public school district, except that the board of trustees must give the public notice of the names of finalists at least 21 days before meeting at which final action or vote is to be taken on the employment of the person;

dd. (§ 552.127) information identifying a person as a participant in a neighborhood crime watch organization;

ee. (§ 552.128) information submitted by a potential vendor or contractor to a governmental body in connection with an application for certification as a historically under-utilized or disadvantaged business;

ff. (§ 552.129) records created during a motor vehicle emissions inspection that relate to an individual vehicle or owner of an individual vehicle;

gg. (§ 552.130) a motor vehicle operator's or driver's license or permit issued by a Texas agency, a motor vehicle title or registration issued by a Texas agency, or a personal identification document issued by a Texas agency or local agency authorized to issue an identification document. Information may only be released as authorized by Chapter 730 of the Transportation Code;

hh. (§ 552.131) information relating to economic development negotiations involving a governmental body and a business prospect that the government seeks to have locate, stay, or expand in or near the territory of the governmental body and the information pertains to a trade secret of the business prospect, or commercial or financial information the disclosure of which would cause substantial harm to the individual from whom the information was obtained. However, after an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person, if the financial or other incentive may directly or indirectly result in the expenditure of public funds by a governmental body or a reduction in revenue received by a governmental body from any source, is subject to the Act.

ii. (§ 552.132) a crime victim as defined by the Code of Criminal Procedure who has filed for compensation may elect to allow access to information revealing the name, Social Security number, or telephone number of the victim (however, if the crime victim is awarded compensation, as of the date of the award of compensation, the name of the crime victim and the amount of compensation awarded are public information);

jj. (§ 552.1325) information relating to a crime victim's name, Social Security number, address, home telephone number, or any other information which may identify the victim contained in the victim's impact statement as defined by the Code of Criminal Procedure;

kk. (§ 552.133) information relating to the public power utility's competitive activity that if disclosed would give advantage to competitors or prospective competitors. Certain information such as that relating to the provision of distribution access service or transmission service, the distribution system pertaining to reliability and continuity of service, or service offerings, service regulations, customer protections, or customer service;

ll. (§ 552.134) information maintained by the Texas Department of Criminal Justice pertaining to an inmate. Exception does not apply to an inmate sentenced to death or statistical or other aggregated information relating to inmates confined in a facility operated or under contract with the department;

mm. (§ 552.135) information that might reveal the identity of an informant who revealed information of another person's possible violation of criminal, civil, or regulatory law to the school district unless the informant gives consent or the informer planned, initiated, or participated in the possible violation;

nn. (§ 552.136) information relating to a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential. "Access device" is defined as any instrument or means of account access that can be used to obtain money, goods, or services, or initiate a transfer of funds;

oo. (§ 552.137) e-mail addresses of members of the public provided for the purpose of communicating electronically with a governmental body is excepted from disclosure, unless the member of the public consents to its release. E-mail addresses not excepted include those

from a person who has a contractual relationship with a governmental body, a vendor who seeks to contract with the agency, a response to a request for bids or proposals, or on letterhead or other document made available to the public;

pp. (§ 552.138) information revealing the identity of clients, private donors, trustees, and board members, or the location or physical layout of family violence shelter centers and sexual assault programs are all excepted from disclosure;

qq. (§ 552.139) information relating to computer network security or to the design, operation, or defense of a computer network;

rr. (§ 552.140) military discharge records are confidential for the first 75 years following the date a record is recorded with or first comes into the possession of a governmental body. During that time, the veteran who is the subject of the record, the spouse, child, legal guardian, or parent of the veteran, the personal representative of the estate of the veteran, a person named by the veteran, or another governmental body may view the record by presenting proper identification;

ss. (§ 552.141) information relating to the Social Security number of an applicant for a marriage license maintained by a county clerk and on an application for a marriage license;

tt. (§ 552.142) information subject to an order of nondisclosure with respect to information issued under a deferred adjudication;

uu. (§ 552.1425) information relating to criminal histories compiled by private entities for compensation subject to an order of non-disclosure;

vv. (§ 552.143) information prepared or provided by a private investment fund, held by a government body, and not listed in section 552.0225(b);

ww. (§ 552.144) the working papers and electronic communications of an administrative law judge;

xx. (§ 552.145) a Texas no-call list as established in the Business and Commerce Code and any information received from the national no-call registry as established under federal law;

yy. (§ 552.146) written or otherwise recorded communications between a member of the legislature or the lieutenant governor and an assistant or an employee of the Legislative Budget Board. Record or memoranda of a communication occurring in public during an open meeting or public hearing conducted by the Legislative Budget Board is not exempt;

zz. (§ 552.147) the Social Security number of a living person may be redacted from any information disclosed by a government body.

B. Other statutory exclusions.

In 1995, the Texas legislature added two other “exclusions:” requests from individuals who are imprisoned or confined in a correctional facility; and copies of information in resource materials made available to the public, such as library books, and inspection and copying of information in books or publications commercially available to the public that are purchased or acquired by the governmental body for research purposes. § 552.027-.028. However, a governmental body must allow the inspection of such information if it is part of or referred to in a rule or policy of a governmental body. § 552.027.

In 1999, the Texas legislature further limited a governmental body’s obligation to disclose information so as to not require disclosure of information in response to repetitious or redundant requests although the governmental body must certify to the requestor that all or part of the requested information was previously furnished to the requestor or made available. § 552.232.

In addition, since section 552.101 exempts information deemed confidential by constitutional law, statute, or judicial decision, the legislature can indirectly create other exceptions to the Texas Public Information Act without specifically amending that Act.

C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

Since section 552.101 excepts from public disclosure information deemed confidential by constitutional and statutory law and judicial decisions, federal and state court opinions describing the limits of the constitutional and common law “right of privacy” can affect application of the Texas Public Information Act. See *Industrial Foundation of the South v. Texas Indus. Acc. Bd.*, 540 S.W.2d 668 (Tex. 1976) and *Doe v. Tarrant County Dist. Attorney’s Office*, 269 S.W.3d 147 (Tex. App.—Fort Worth 2008, no pet.). See *Texas Department of Public Safety vs. Cox Newspapers, Inc.*, 287 S.W.3d 390, 398 (Tex. App.—Austin 2009, pet. granted) (DPS failed to establish that the information contained in the travel expense vouchers of the governor’s security detail were not excepted under either a common-law right of privacy or a constitutional right of privacy).

D. Are segregable portions of records containing exempt material available?

A governmental body cannot completely withhold from public inspection public records that contain some exempt information. In *Industrial Foundation*, for example, the Texas Supreme Court held that only the specific information found to be private and confidential could be withheld. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 686 (Tex. 1976) (“If the nature of a particular claim is held to be confidential, only that information need be withheld from disclosure. As we have already stated, there is nothing intimate or embarrassing about the fact, in and of itself, that an individual has filed a claim for benefits. The claimant’s name may therefore normally be disclosed, as may other information in the claimant’s file which does not itself reveal private facts, even though information concerning the nature of his injury is withheld.”).

E. Homeland Security Measures.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Tex. Att’y Gen. Informal Letter Ruling No OR2011-05009 (2011). This section encompasses information protected by other statutes including the Texas Homeland Security Act. *Id.*

The Texas Homeland Security Act added sections 418.176 through 418.182 to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. However, the fact that information may relate to a governmental body’s security measures does not make the information *per se* confidential. Tex. Att’y Gen. Informal Letter Ruling No OR2011-05009 (2011); see Tex. Att’y Gen. ORD-649 (1996) (ruling that language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation of the statute’s key terms is not sufficient to demonstrate the applicability of the claimed provision. *Id.* As with any exception to disclosure, a claim must be accompanied by an adequate explanation of how the responsive records fall within the scope of the claimed provision. *Id.* (citing Tex. Gov’t Code Ann. § 552.301(e)(1)(A) (stating that a governmental body must explain how claimed exception to disclosure applies)).

Under section 418.181, documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Under section 418.176, information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and (1) relates to the staffing requirements of an emergency response provider; (2) relates to a tactical plan of the provider; or (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider. Nurses licensed by the Texas Board of Nursing are not included within the meaning of “emergency

response provider” and, therefore, the business facsimile numbers of nurses collected and maintained by the Board are not excepted from disclosure pursuant to section 552.101 of the Act in conjunction with section 418.176(a). *Abbott v. Texas Bd. of Nursing*, 2010 WL 392335, at *6.

Under section 418.177, information is confidential if it (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Under section 418.178, information is confidential if it is information collected, assembled, or maintained by or for a governmental entity and (1) is more than likely to assist in the construction or assembly of an explosive weapon or a chemical, biological, radiological, or nuclear weapon of mass destruction; or (2) indicates the specific location of (A) a chemical, biological agent, toxin, or radioactive material that is more than likely to be used in the construction or assembly of such a weapon; or (B) unpublished information relating to a potential vaccine or to a device that detects biological agents or toxins.

Under section 418.179, information is confidential if the information (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and (2) relates to the details of the encryption codes or security keys for a public communications system. Section 418.179 does not prohibit a governmental entity from making available, at cost, to bona fide local news media, for the purpose of monitoring emergency communications of public interest, the communications terminals used in the entity’s trunked communications system that have encryption codes installed.

Under section 418.180, information, other than financial information, in the possession of a governmental entity is confidential if the information (1) is part of a report to an agency of the United States; (2) relates to an act of terrorism or related criminal activity; and (3) is specifically required to be kept confidential (A) under section 552.101 because of a federal statute or regulation; (B) to participate in a state-federal information sharing agreement; or (C) to obtain federal funding.

Under section 418.182, information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential. However, financial information in the possession of a governmental entity that relates to the expenditure of funds by a governmental entity for a security system is public information that is not exempt from required disclosure under Chapter 552.

Additionally under section 418.182, information in the possession of a governmental entity that relates to the location of a security camera in a private office at a state agency, including an institution of higher education, as defined by section 61.003 of the Education Code is public information and is not exempt from required disclosure under Chapter 552 unless the security camera (1) is located in an individual personal residence for which the state provides security; or (2) is in use for surveillance in an active criminal investigation. *See Texas Dept. of Public Safety v. Abbott*, 310 S.W.3d 670, 678 (Tex. App.—Austin 2010, no pet.) (DVDs containing video images recorded by the Texas Capitol’s security system were confidential and excepted from disclosure).

Release of information relating to aviation security is governed by federal law. 49 U.S.C. § 114(a), (b)(1), 40119(b)(1); 49 C.F.R. §1520. The Attorney General has decided that requests for that kind of information should be directed to the Under Secretary of Transportation for Security who implements all regulations determining whether to

disclose information sought pursuant to the federal Freedom of Information Act. *See Op. Tex. Att’y Gen. No. OR 2004-3969* (2004). This includes personnel information of individuals working at airports or other facilities regulated by the United States Transportation Security Administration. *Id.*

III. STATE LAW ON ELECTRONIC RECORDS

A. Can the requester choose a format for receiving records?

Pursuant to section 552.228(b), if public information exists in an electronic or magnetic medium, a requestor may request a copy either on paper or in an electronic medium, such as on diskette or on magnetic tape, if the following three requirements are met: (1) the governmental body has the technological ability to produce a copy of the requested information in the requested medium, (2) such body is not required to purchase any software or hardware to accommodate the request, and (3) provision of a copy of the information in the requested medium would not violate any copyright agreements between the body and a third party. If a governmental body is unable to comply with a request for any of these reasons, it shall provide a paper copy of the information or a copy in another medium that is acceptable to the requestor. § 552.228(c). In addition, a governmental body does not comply with the Act by releasing substitute documents to the requestor unless the requestor agrees to such substitution. *See Tex. Att’y Gen. ORD-633* (1995).

B. Can the requester obtain a customized search of computer databases to fit particular needs?

Read together, sections 552.228 and 552.231 appear to allow a requestor to obtain information through customized searches. Section 552.228 provides the requestor with the option of obtaining information in an electronic or magnetic medium, with some restrictions. *See supra*. Section 552.231 provides that the governmental body shall timely provide to the requestor a written statement, generally within 20 days after receipt of the request, if that body determines: (1) that responding to the request will require programming or manipulation of data, and (2) that (A) compliance is not feasible or will result in substantial interference with ongoing operations, or (B) the information could be made available only at a cost that covers the programming and manipulation of data. The written statement must include, among other things specified in that provision, a statement of the estimated cost and time of providing the information in the requested form. § 552.231. Upon properly notifying the requestor, the governmental body is under no further obligation to provide the information until the requestor states in writing that it wants the governmental body to proceed with the request under the terms specified by the governmental body or other terms to which the requestor and the governmental body agree. § 552.231(d).

C. Does the existence of information in electronic format affect its openness?

The liberal language of the Act, including its general policy statement, coupled with the fact that the Act expressly includes (1) devices that can store an electronic signal, and (2) data held in computer memory as media containing public information, provide an argument that the electronic medium on which information is contained does not affect the “openness” of the information. *See* § § 552.001; 552.002(b) (3), (c).

D. How is e-mail treated?

Electronic mail generated or received by a public entity may be but is not automatically subject to public disclosure. *See Op. Tex. Att’y Gen. No. JC-3828* (2001).

The City of Bedford received a request for all messages, notes, and other correspondence sent by electronic mail to and from Mayor John Murphy to and from all city employees on June 4, 2001 and June 5, 2001. *See Op. Tex. Att’y Gen. No. JC-3828* (2001). The City argued

that the responsive information was not subject to disclosure under the Public Information Act as it did not fall within the Act's definition of "public information." *See id.*

In the letter ruling the Attorney General reasoned that section 552.021 provides for public access to "public information." *See id.* Section 552.002 defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." § 552.002(a). Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 if a governmental body owns or has a right of access to the information. *See Tex. Att'y Gen. ORD-462 (1987); see also Tex. Att'y Gen. ORD-499 (1988)* (stating that generally records held by a private attorney related to legal services performed by the attorney at the request of a municipality are subject to the Open Records Act and disclosure depends on whether the records fall within any of the Act's specific exceptions). Information is generally "public information" within the Act when it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties even though it may be in the possession of one person. *See Tex. Att'y Gen. ORD-635 (1995)*. Although not an exhaustive list, the Attorney General stated that the following factors were relevant in determining whether documents are essentially personal in nature or whether they contain information that is collected, assembled, or maintained by or for a governmental body: who prepared the document; the nature of its contents; its purpose or use; who possessed it; who had access to it; whether the employer required its preparation; and whether its existence was necessary to or in furtherance of the employer's business. *Op. Tex. Att'y Gen. No. JC-3828 (2001)* (citing *In re Grand Jury Proceedings*, 55 F.3d 1012, 1014 (5th Cir. 1995)).

After reviewing the responsive e-mail, the Attorney General found that the e-mail sent by Mayor Murphy to city staff employees was for the personal use of the sender and recipients, and that it was neither created nor maintained under a law or ordinance or connected to official business of any kind. *See id.* The letter ruling concluded that the information at issue was not used in the transaction of official business, and thus, was not public information under section 552.002. *See id.* Therefore, e-mail was not subject to public disclosure. *See id.*

Under section 552.137(a)-(b), an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure unless the member of the public affirmatively consents to its release.

The exemption under section 552.137(c) does not apply to an e-mail address (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent; (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent; (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or (4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

Under section 552.137(d), a governmental body is not prevented from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

1. Does e-mail constitute a record?

E-mail is subject to the same "public information" and exception analysis that all material requested under the Public Information Act must go through to determine whether it is subject to disclosure. *See Op. Tex. Att'y Gen. No. GA-4274 (2003)*.

2. Public matter on government e-mail or government hardware

Information is within the scope of the Act if it relates to the official business of a governmental body and is maintained by a public official or employee of the governmental body. § 552.002(a).

3. Private matter on government e-mail or government hardware

E-mail sent from a personal e-mail account utilizing a government computer may also be subject to public disclosure. *See Op. Tex. Att'y Gen. No. GA-4274 (2003)*. To be subject to the Act the information must be "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the district. § 552.021. *See Tex. Atty. Gen. Op. ORD-4120 (2011)*. In *Tex. Atty. Gen. ORD-3624 (2011)* it was found that e-mail inadvertently forwarded from a personal computer to the city's computer system was not covered by the Act because they were created or sent "in the performance of [the employees'] official job duties." *See also Tex. Atty. Gen. ORD-635 (1995)* (e-mail not subject to public disclosure where they constituted personal information unrelated to official business and were created or maintained by a state employee involving de minimis use of state resources).

4. Public matter on private e-mail

E-mails about public matters sent from private accounts or home computers may be subject to disclosure. *Tex. Att'y Gen. ORD-1790 (2001)* (council member solicited citizens to communicate with her as a council member on her personal computer by including her home e-mail address on her business card).

5. Private matter on private e-mail

Where information was created for campaign and personal political purposes in a public officeholder's personal e-mail account that is not in the city's possession is not "public information" subject to the Act. *Tex. Atty. Gen. ORD-1126 (2005)*.

E. How are text messages and instant messages treated?

Virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Tex. Att'y Gen. ORD-12267 (2010)* (suggesting that instant messages are subject to public disclosure if they are collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by or for the governmental body).

1. Do text messages and/or instant messages constitute a record?

Information is within the scope of the Act if it relates to the official business of a governmental body and is maintained by a public official or employee of the governmental body. § 552.002(a). Thus, to the extent text messages relate to the official business of the governmental body, they are subject to the Act.

2. Public matter message on government hardware.

See III.D.2, infra.

3. Private matter message on government hardware.

See III.D.3, infra.

4. Public matter message on private hardware.

See III.D.4, infra.

5. Private matter message on private hardware.

See III.D.5, infra.

F. How are social media postings and messages treated?

Not specifically addressed.

G. How are online discussion board posts treated?

Not specifically addressed.

H. Computer software

Not specifically addressed.

1. Is software public?

The Attorney General addressed a request for copies of computer programs used by Southwest Texas State University to maintain records. Tex. Att’y Gen. ORD-581 (1990). While the Attorney General found that the term “information” as used in the Act “is certainly comprehensive,” he determined that “where information has no other significance than its use as a tool for the maintenance, manipulation, or protection of public property, we find that it is not the kind of information made public” by the Act. *Id.* at 4. Accordingly, the Attorney General advised that the computer programs need not be released. *Id.* at 5. In addition, where release of copies of computer programs owned by third parties and protected by copyright would violate federal law, disclosure is not required. Tex. Att’y Gen. ORD-505 (1988).

2. Is software and/or file metadata public?

Not specifically addressed.

I. How are fees for electronic records assessed?

Generally, the cost of obtaining a copy of public information must be an amount that reasonably includes all costs related to producing the public information, including costs of materials, labor, and overhead. See § 552.261. In the event the response to a request for information requires programming or manipulation of data, the cost of providing the information in electronic form is determined in accordance with the rules established by the Attorney General under section 552.262. See § 552.231(b)(4). If a request for a copy of public information will result in the imposition of a charge under this subchapter that exceeds \$40, or a request to inspect a paper record will result in the imposition of a charge under section 552.271 exceeding \$40, the governmental body must provide the requester with a written itemized statement that details all estimated charges. See § 552.2615.

J. Money-making schemes.

As stated earlier, § 552.261 provides that “[t]he charge for providing a copy of public information shall be an amount that reasonably includes all costs related to reproducing the public information, including costs of materials, labor, and overhead.” And, as a safeguard, if a request for a copy of public information will result in the imposition of a charge under this subchapter that exceeds \$40, or a request to inspect a paper record will result in the imposition of a charge under section 552.271 exceeding \$40, the governmental body must provide the requester with a written itemized statement that details all estimated charges. See § 552.2615.

Further, if the governmental body determines that waiver or reduction of the charge is in the public interest because providing the copy of the information primarily benefits the general public, it should provide a copy of the requested information without charge or at a reduced charge. § 552.267(a). And, if the cost to a governmental body of processing the collection of a charge for providing a copy of public information will exceed the amount of the charge, the governmental body may waive the charge. § 552.267(b)

1. Revenues.

Not specifically addressed.

K. On-line dissemination.

Section 552.272 provides for the inspection of electronic records when copies are not requested. Subsection (d) states that “if information is created or kept in an electronic form, a governmental body is encouraged to explore options to separate out confidential information and to make public information available to the public through

electronic access through a computer network or by other means.” Generally, a charge may not be imposed for access to online information unless complying with a request will require programming or manipulation of data. § 552.272(a).

IV. RECORD CATEGORIES -- OPEN OR CLOSED**A. Autopsy reports.**

Autopsy reports are subject to required public disclosure unless one of the Act’s exceptions applies. Tex. Att’y Gen. ORD-7790 (2004). However, the release of a “provisional autopsy report” prepared in connection with a request by a justice of the peace is not required to be released but may be made available for inspection by the public. Tex. Atty. Gen. Op. JC-0422 (2001).

B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

A completed report, audit, evaluation, or investigation made of, for, or by a governmental body is public information unless it qualifies as information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime where the release of the information would interfere with the detection, investigation, or prosecution of crime, pursuant to Section 552.108. § 552.022.

A city inspection report on nursing homes is public unless prepared solely in connection with state licensing for and on behalf of the State Department of Health Resources on their forms and according to their standards. Tex. Atty. Gen. Op. No. ORD-138 (1976). Documents relating to inspection reports on amusement rides at the state fair are not exempted from disclosure under statute. Tex. Atty. Gen. Op. No. ORD-404 (1984).

1. Rules for active investigations.

Not specifically addressed.

2. Rules for closed investigations.

Not specifically addressed.

C. Bank records.

Banks and similar financial institutions usually are not considered “governmental bodies,” so their records generally are not subject to the Act. Tex. Att’y Gen. ORD-1 (1973). The exception further protects from public disclosure some of the information generated by governmental bodies during their regulation and supervision of financial institutions. See § 552.112 (stating that statistical or demographic information submitted to the Texas Legislative Council or to any state agency overseen by The Finance Commission of Texas is exempt from disclosure); Tex. Att’y Gen. ORD-446 (1986) (stating that reports pertaining to the financial condition of a credit union not otherwise intended for publication are exempt from disclosure).

However, some information on financial institutions has been made public under the Act or under other Texas laws. For example, information provided by banks to the local tax assessor-collector regarding the identity and address of bank stockholders, as well as the size and value of their stockholdings, was found to be specifically public under state tax laws. Tex. Att’y Gen. ORD-39 (1974). Likewise, while the Texas Savings and Loan Department’s investigative reports and orders regarding a particular savings and loan institution were found to be exempt from public disclosure under a specific provision of the Texas Savings and Loan Act, the public was entitled to the department’s general report concerning the conditions of the industry where a particular savings and loan was not identified. Tex. Att’y Gen. ORD-483 (1987). Insurance companies have been held not to be “financial institutions” for purposes of establishing this particular exception to disclosure. *Birnbaum v. Alliance of Am. Insurers.*, 994 S.W.2d 766, 772-73 (Tex. App.-Austin 1999, pet denied) (abrogated on other grounds by *In re: Bass*, 113 S.W.3d 735 (Tex. 2003)).

D. Budgets.

Budgets are subject to public disclosure. Tex. Att’y Gen. ORD-8594 (2004). Supporting documentation also is subject to disclosure unless it is confidential under other law. *Id.*

E. Business records, financial data, trade secrets.

In addition to budgets, a governmental bank account records, and canceled checks are public. Tex. Att’y Gen. ORD-52 (1974); Tex. Att’y Gen. ORD-7 (1973). Tax records can provide additional public information about businesses. For example, a taxpayer’s name, place of business, and name of the city to which local sales taxes and use taxes are credited are not exempt from public disclosure. § 552.022(6). However, the amount of gross sales taxes is confidential under a specific taxation provision. Tex. Att’y Gen. ORD-17 (1974). A school district tax assessor’s rendition book is public. Tex. Att’y Gen. ORD-76 (1975). Although some Tax Code provisions make certain types of tax information confidential, “[t]ax information is not, per se, confidential.” Tex. Att’y Gen. ORD-568 (1990). The Texas Attorney General at least once rejected an argument that a constitutional right of privacy exists concerning financial affairs. Op. Tex. Att’y Gen. No. H-258 (1974). In *A & T Consultants Inc. v. Sharp*, the Texas Supreme Court granted mandamus relief compelling disclosure of certain information regarding the state’s franchise taxpayers in the possession of the state comptroller. 904 S.W.2d 668 (Tex. 1995) (holding that information revealing why certain entities were selected for auditing and methods of auditors was exempt from disclosure while other data from completed audits was subject to disclosure). This information included corporate charters, certificates and degrees of dissolution, and facts from completed audits. However, the Court did not compel the comptroller to disclose the reasons for which audits were conducted, the choice of an audit method, taxpayers’ responses to an audit, codes assigned to each audit, or the amounts of deficiencies or refunds. *Id.* at 679-81.

While trade secrets themselves are specifically excepted, information concerning whether a required public filing of trade secret information has been made is public information. § 552.110; Tex. Att’y Gen. ORD-89 (1975). Determination of whether particular information is a trade secret is a fact question. Tex. Att’y Gen. ORD-609 (1992). Following the holding in *Hyde Corp., v. Huffines*, 314 S.W.2d 763 (Tex. 1958), *cert. denied*, 358 U.S. 898 (1958), the Attorney General has relied on the trade secrets definition in the Restatement of Torts, Section 757, comment b (1939). Tex. Att’y Gen. ORD-609 (1992). This definition considers six factors: (1) the extent to which the information is known outside the company; (2) the extent to which it is known by employees and others in the company; (3) the extent of company measures to guard the information’s secrecy; (4) the information’s value to the company and its competitors; (5) the effort and money spent developing the information; and (6) the ease or difficulty to properly acquire or duplicate the information. *Id.* For example, the volume and location of chemicals used by semiconductor manufacturers may be trade secrets protected from public disclosure, but the identity of chemicals commonly used in the business is not. Tex. Att’y Gen. ORD-554 (1990). Even if records are not protected as trade secrets, copying of some records may be protected under federal copyright law. Tex. Att’y Gen. ORD-550 (1990).

F. Contracts, proposals and bids.

All contracts dealing with the receipt or expenditure of a governmental body’s funds are specifically made public unless “otherwise made confidential by law.” § 552.022(3). The general terms of a contract with the government cannot be withheld under the Act unless the government meets a heightened burden of showing that a particular exception applies. Tex. Att’y Gen. ORD-514 (1988). Two exceptions frequently claimed deal with harm to the government’s position with competitors or bidders and trade secrets. § 552.104; 552.110. For example, one section of a proposal to furnish services was found to be an exempt trade secret even though the company making the proposal ultimately received the contract. Tex. Att’y Gen. ORD-305 (1982). The names of individuals or companies who wish to be informed of

the opportunity to bid is public although the list of actual bidders (before the last day of bidding) can be exempt from disclosure. Tex. Att’y Gen. ORD-453 (1986). Upon completion of the bidding and award of the contract, the bids are public. Tex. Att’y Gen. ORD-184 (1978). Because section 552.104 applies only when release of information would cause specific harm to a governmental body “in a particular competitive situation . . . [this exception] does not apply after bidding is over and the contract has been awarded.” Tex. Att’y Gen. ORD-509 (1988). Certain “trade secret” information in bid proposals, however, may remain exempt. *Id.* For example, a financial statement submitted by a bidder may be exempt under section 552.110. Op. Tex. Att’y Gen. No. GA-10830 (2005).

G. Collective bargaining records.

The terms of a collectively bargained agreement cannot prohibit disclosure of public information. Tex. Att’y Gen. ORD-484 (1987).

H. Coroners reports.

Not specifically addressed.

I. Economic development records.

All working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate are explicitly made public unless made confidential by other law. Section 552.022(a)(5).

J. Election records.

Texas election laws provide that, once the polls for a particular election are closed, a list of registered voters who cast ballots is public. Tex. Att’y Gen. ORD-38 (1974). Further, nominating petitions for primary elections in the custody of political parties are available for public inspection under the Open Records Act. (1980) Tex. Att’y Gen. Op., No. MW-175.

1. Voter registration records.

Applications to register to vote that are on file with a county registrar constitute public information. *Nixon v. Slagle*, 885 S.W.2d 658, 661 (Tex. App.-Tyler 1994, no writ).

2. Voting results.

Voted ballots from a primary election become public records available for inspection after a 22-month retention period required by state law, but public copying of the computer programs used to tabulate the votes would violate federal copyright law. Tex. Att’y Gen. ORD-505 (1988).

K. Gun permits.

Not specifically addressed.

L. Hospital reports.

A hospital district’s personnel records stating the name, height, weight, position, and salary of employees are not protected by common law privacy. Op. Tex. Att’y Gen. DM-081 (1994). The accounts receivable of a public hospital-including patient names, amount owed, and when an account became delinquent-are public. Tex. Att’y Gen. ORD-385 (1983).

Several types of health-related records are made confidential by other statutes and therefore are excepted from disclosure under section 552.101. For example, diagnosis and treatment records, if prepared by or under the supervision of a physician, are confidential. Tex. Occ. Code Ann. § 159.002. Daily hospital logs that are not prepared by or under the supervision of a physician are not confidential. Tex. Att’y Gen. ORD-487 (1988). Additionally, emergency medical services’ records are excepted from public disclosure if they are created under the delegated authority of a physician. Tex. Att’y Gen. ORD-578 (1990). The records of a “medical peer review committee” of a “healthcare entity” are confidential only when the committee actually

evaluates the quality of medical care. Tex. Att’y Gen. ORD-595 (1991) (addressing the records of a “death review committee” of a state mental health and mental retardation residential facility); *see also* Tex. Att’y Gen. ORD-591 (1991) (stating that the meeting minutes of a hospital’s “quality management committee” are confidential to encourage frank discussion). Information concerning specific people receiving government funded medical assistance is generally confidential. Tex. Hum. Res. Code Ann. § 12.003, 21.012; *see also* Tex. Att’y Gen. ORD-641 (1996) (stating that information collected under the Americans with Disabilities Act from an applicant or employee concerning that person’s medical condition and medical history is confidential under section 552.101). HIPAA does not preempt state TPIA. *Abbott v. Texas Dep’t. of Mental Health and Mental Retardation*, 212 S.W.3d 648, 664-6 (Tex. App.—Austin 2006, no pet.) (governmental body must determine whether the TPIA compels disclosure or whether the information is excepted from disclosure under the TPIA).

Separate legislation governs the release of records from mental health facilities. Tex. Health & Safety Code Ann. § 576.005. Generally, reviews of medical files, correspondence between patients and their parents, correspondence from hospital staff to parents of patients, and notes of visits with parents of patients are excepted as highly intimate or embarrassing facts. Tex. Att’y Gen. ORD-163 (1977). Some detailed medical histories might be exempt in their entirety while other records might be public if the information identifying patients can be deleted. *Id.*

The Texas Board of Medical Examiner’s licensing file on a particular doctor including the completed application is public. Tex. Att’y Gen. ORD-215 (1978). However, information in the file concerning an applicant’s substance abuse, criminal history, or mental illness is subject to disclosure on a case by case basis. *Id.* Records of a Department of Health investigation of a home health services agency are confidential. Tex. Health & Safety Code Ann. § 142.009(d); *see also* Tex. Att’y Gen. ORD-603 (1992).

The Texas Department of Health Records concerning routine examinations of dairy and meat products are public. Tex. Att’y Gen. ORD-48 (1974). Official orders of county health departments concerning cafeterias are also public information. Tex. Att’y Gen. ORD-27 (1974). Generally, however, records of a county health department’s investigation of food poisoning at a restaurant are confidential. Tex. Att’y Gen. ORD-577 (1990) (*citing* Tex. Health & Safety Code Ann. § 81.046(a)).

M. Personnel records.

Special disclosure exemptions exist only for the names of applicants for chief executive officer of institutions of higher education and for superintendent of public school districts. § 552.123-124. Otherwise, the names and resume information about all individuals who apply for employment directly with a governmental body are public. Tex. Att’y Gen. ORD-257 (1980); Tex. Att’y Gen. ORD-264 (1981); Tex. Att’y Gen. ORD-439 (1986). This is true even if the governmental body uses a search committee or a consulting group to find and screen applicants. Tex. Att’y Gen. ORD-439 (1986); Tex. Att’y Gen. ORD-585 (1991); *see also* *Hubert v. Harve-Hanks Texas Newspapers Inc.*, 652 S.W.2d 546, 551 (Tex. App.—Austin 1983, *writ ref’d n.r.e.*). Names of finalists for positions should be made public. *Hubert*, 652 S.W.2d at 551; Tex. Att’y Gen. ORD-439 (1986), overruling Tex. Att’y Gen. ORD-425 (1985) and Tex. Att’y Gen. ORD-273 (1981).

A public employee’s employment history and salary are public as are federally mandated equal employment opportunity reports that contain salary, sex, and ethnicity information. Op. Tex. Att’y Gen. GA-8761 (2005). Generally, information about a public employee’s certification, licenses, educational levels, professional awards and memberships, dates of employment, character references, and prior employment is public. Tex. Att’y Gen. ORD-298 (1981); Tex. Att’y Gen. ORD-329 (1982); Tex. Att’y Gen. ORD-342 (1982); Tex. Att’y Gen. ORD-455 (1987). However, in 1989 the Legislature amended the Act to exempt from public disclosure college transcripts in pro-

fessional public school employees’ personnel files provided, however, that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript. § 552.102; *see* Tex. Att’y Gen. ORD-526 (1989) (applying this exception according to the Legislature’s revision to previous rule). Only transcripts of employees of public schools under Title 2 of the Education Code benefit from this exception — employees of colleges and universities fall under Title 3 of the Education Code. *See* Open Records Letter Nos. 2002 - 6930 (2002), 2002 - 1827 (2002), 2001 - 2740 (2001), 2000 - 2621 (2000). Information in a worker’s compensation claim file held by or obtained from the Industrial Accident Board is confidential. Tex. Lab. Code Ann. § 402.083. However, a public employer’s file on a worker’s compensation claim is public unless otherwise protected by a common law, constitutional, or employee privacy right. Tex. Att’y Gen. ORD-533 (1989). Information about disciplinary actions, dismissals, demotions, or promotions of public employees is public. Tex. Att’y Gen. ORD-444 (1986). Usually, the circumstances of a public employee’s resignation are public. *Id.*; Tex. Att’y Gen. ORD-278 (1981); Tex. Att’y Gen. ORD-329 (1982).

Civil service departments must maintain a personnel file on all police officers and firefighters. Tex. Loc. Gov’t Code Ann. § 143.089. Such files are subject to the Act. Tex. Att’y Gen. ORD-562 (1990). However, the same provision of the Local Government Code allows a police or fire department to keep a confidential, separate personnel file on the same employees. Tex. Loc. Gov’t Code Ann. § 143.089(g). This file is excepted from public disclosure “if the information is reasonably related to the firefighter’s or police officer’s employment relationship with the fire or police department.” Tex. Att’y Gen. ORD-562 (1990). Similarly, documents relating to an investigation into a firefighter or police officer’s misconduct can be withheld upon a decision that the allegations of wrongdoing were unfounded. Tex. Att’y Gen. ORD-642 (1996) (*citing* Tex. Loc. Gov’t Code Ann. § 143.1214(b)).

Several of the Act’s exceptions protect public employees’ privacy. Information revealing home addresses, home telephone numbers, and Social Security numbers of current or former governmental officials and employees as well as certain peace officers and security officers is protected. § 552.117. Further, information that reveals whether such persons have family members is also exempt from disclosure unless such persons choose to allow public disclosure pursuant to a procedure outlined in the Act. § 552.117; 552.024. Photographs of peace officers (even in personnel files) generally are not public. § 552.119. However, a peace officer’s photograph after he has died is not exempt from disclosure. § 552.119; Tex. Att’y Gen. ORD-536 (1989). An employee’s W-4 tax form, I.Q. score, psychological testing results, and certain financial records are confidential under a constitutional or common law right of privacy. § 552.101; Tex. Att’y Gen. ORD-600 (1992) (discussing in detail a wide variety of personnel records). Personnel evaluations are also exempted. § 552.111; Tex. Att’y Gen. ORD-600 (1992). However, privacy interests may not protect certain employee accident reports and insurance and benefits information. Tex. Att’y Gen. ORD-600 (1992).

1. Salary.

Salary and bonus records information, when public information, are discoverable under the TPIA. *The Baytown Sun v. City of Mont Belvieu*, 145 S.W.3d 268, 271 (Tex.App.—Houston [14 Dist.] 2004, no pet.) (because the City was entitled to “inspect the books and records” employee salary information constituted public information under the TPIA); *Houston Mun. Employees Pension System v. Abbott*, 192 S.W.3d 862, 866 (Tex.App.—Texarkana 2006, pet. denied) (The Pension Statute specifically states that records in the custody of the pension system about its members are not subject to the TPIA).

2. Disciplinary records.

Disciplinary records are generally not exempt from disclosure unless they are confidential under other law or statute. *See* Tex. Att’y Gen. ORD-470 (1987) (stating public employee’s job performance records do not generally constitute employee’s private affairs and, thus,

is subject to disclosure); Tex. Att’y Gen. ORD-455 (1987) (stating that a public employee’s job preferences or abilities are generally not protected by his right to privacy); Tex. Att’y Gen. ORD-423 (1984) (ruling that the release of a public employee’s picture after his arrest for sexual assault is allowed because the public interest outweighs the highly embarrassing nature of the picture).

Disciplinary records of a police officer working in a civil service city which are maintained in the police officer’s civil service file are not exempt. Tex. Loc. Gov’t Code Ann. § 143.089.

Records maintained in an internal police department file that reasonably relates to a police officer’s employment relationship with the police department is confidential and must not be released but information not reasonably related to the individual’s employment relationship remains subject to disclosure. Tex. Loc. Gov’t Code Ann. § 143.089(g); *City of San Antonio v. San Antonio Express News*, 47 S.W.3d 556, 563 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Tex. Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied) (“[A]llegations of misconduct made against a police officer shall not be subject to compelled disclosure under the Act unless they have been substantiated and resulted in disciplinary action.”).

3. Applications.

Information in applications for employment are usually not exempt from disclosure as they generally contain the names and qualifications of the candidates the disclosure of which would not constitute an unwarranted invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers Inc.*, 652 S.W.2d 546, 551-52 (Tex. App.—Austin 1983, writ ref’d n.r.e.) (holding that names and qualifications of candidates for office of university president were not exempt from disclosure); Tex. Att’y Gen. ORD-277 (1981) (stating that information on qualifications of applicants for commissioner of the Texas Board of Human Resources not exempt from disclosure); Tex. Att’y Gen. ORD-316 (1982) (stating that questionnaires from character references in a policeman’s personnel file did not contain information considered to be intimate or embarrassing and thus were not exempt from disclosure).

4. Personally identifying information.

Section 552.101 specifically excepts information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *Abbott v. State Bar of Texas*, 214 S.W.3d 604, 606, 609 (Tex. App.—Austin 2007, pet. denied) (State Bar of Texas maintains membership records “for the judiciary,” and therefore, access to such records is governed by Rule 12 rather than the TPIA).

5. Expense reports.

It is undecided as to whether common law right of privacy provides a basis for protecting from disclosure to newspapers, under the Texas Public Information Act (PIA), expense vouchers for Governor Rick Perry’s security detail held by the Department of Public Safety (DPS). *Texas Dept. of Public Safety v. Cox Texas Newspapers, L.P.*, ___ S.W.3d ___ (2011). The Texas Supreme Court held that common law protects from public disclosure highly intimate or embarrassing facts as well as information that substantially threatens physical harm. In doing so, the Texas Supreme Court reversed the Court of Appeals’ decision that the information was public and remanded the case so the trial court can examine each of the disputed documents to determine what information may be confidential and what must be disclosed in light of the ruling that information is protected if it creates a substantial threat of physical harm. And, as applied here, the Court opined that the vouchers may be protected since the documents reveal specific details about the number of officers assigned to protect the governor, their general location in relation to him, and their dates of travel.

6. Other.

Business facsimile numbers of nurses collected and maintained by the board of nursing are public information. *Abbott v. Texas Bd. of Nursing*, No. 03-09-00154-CV, 2010 WL 392335, at *6 (Tex. App.—Austin 2010, no pet.).

N. Police records.

1. Accident reports.

Accident reports must be disclosed to requestors unless otherwise exempted. *Texas Dept. of Public Safety v. Abbott*, 310 S.W.3d 670, 675-76 (Tex.App.—Austin 2010, no pet.). A law enforcement entity must release the accident report under section 550.065 of the Transportation Code if an individual provides at least two of the following three pieces of information:

- (1) the date of the accident,
- (2) the specific address or the highway or street where the accident occurred, or
- (3) the name of any person involved in the accident.

Tex. Transp. Code § 550.065.

2. Police blotter.

A series of decisions involving the City of Houston and the Houston Chronicle Publishing Company has provided an imperfect outline of what basic police records are public or exempt. See *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 185 (Tex. Civ. App.—Houston [14th Dist.] 1975, writ ref’d n.r.e.) (“Chronicle I”). The police “blotter,” “showup sheet,” and arrest sheet are not exempt from disclosure while the offense report, arrest record, and personal history are exempt. *Id.* The Attorney General specifically discussed the *Chronicle I* case in detail and concluded that public release is required of:

- a. Police blotter. (1) arrestee’s Social Security number, name, alias, race, sex, age, occupation, address, police department identification number, and physical condition; (2) name of arresting officer; (3) date and time of arrest; (4) booking information; (5) charge; (6) court in which charge is filed; (7) details of arrest; (8) notification of any release or transfer; (9) bonding information;
- b. Show-up sheet (chronological listing of people arrested during 24-hour period). (1) arrestee’s name, age, police department identification number; (2) place of arrest; (3) names of arresting officers; (4) numbers for statistical purposes relating to modus operandi of those apprehended;
- c. Arrest sheet (similar chronological listing of arrests made during 24-hour period). (1) arrestee’s name, race and age; (2) place of arrest; (3) names of the arresting officers; (4) offense for which suspect is arrested;
- d. Offense report—front page. (1) offense committed; (2) location of crime; (3) identification and description of complainant; (4) premises involved; (5) time of occurrence; (6) property involved; (7) vehicle involved; (8) description of weather; (9) detailed description of offense; (10) names of investigating officers.

Tex. Att’y Gen. ORD-127 (1976).

Although in particular circumstances this list has been somewhat modified, it still accurately summarizes the basic test. Tex. Att’y Gen. ORD-408 (1984).

The Texas Family Code makes certain juvenile records open to the public. Tex. Fam. Code Ann. § 58.007. Accordingly, the Family Code does not make confidential juvenile law enforcement records concerning conduct occurring on or after January 1, 1996 that are maintained by law enforcement agencies. Tex. Att’y Gen. ORD-644 (1996). Other statutory provisions and exceptions to disclosure may apply to this information. Law enforcement records concerning conduct that occurred before January 1, 1996, are governed by former section 51.14(d) of the Family Code, which is continued in effect for that purpose. *Id.*

3. 911 tapes.

Tape recordings of calls made to the 911 number constitute public information. Tex. Att’y Gen. ORD-519 (1989). Such records are sub-

ject to public disclosure even if they are held by a “911 network district” established under the Emergency Communication District Act. Tex. Health & Safety Code Ann. §§ 772.201-772.229 (formerly Tex. Rev. Civ. Stat. Ann. art. 1432d); Tex. Att’y Gen. ORD-519 (1989); *see also* Tex. Att’y Gen. ORD-633 (1995) (although this opinion addresses the withholding of a police narrative report, it notes that the City of Waco was willing to release the 911 audiotape copy of the incident made the subject of the report). A police department’s “radio logs” or “radio cards” that describe the police department’s records of all calls answered by the police, including a brief description of the nature or reason for the call and its location, generally are public, although exceptions might arise exempting the names of complainants. Tex. Att’y Gen. ORD-394 (1983).

Additionally, the 911 Emergency Number Act makes confidential the originating telephone numbers and addresses of 911 callers that are furnished by a service supplier. Tex. Health & Safety Code Ann. § 772.218(c); *see also* Tex. Atty. Gen. Op. OR 11538 (2011) (911 calls made on specified dates pertaining to a specified address may be withheld because although case is inactive, Houston Police Department indicated case may be reactivated once additional leads are developed). Records prepared by emergency medical services personnel can be public, unless the information relates to highly intimate or embarrassing facts, such as information concerning a drug overdose, acute alcohol intoxication, obstetrical or gynecological illness, and severe emotional or mental distress; such exempt information is confidential under common law and constitutional privacy grounds. Tex. Att’y Gen. ORD-487 (1988). Emergency medical service records also may be excepted from public disclosure under the Medical Practice Act, Tex. Occ. Code Ann. § 159.002, if the records were created under the delegated authority of a physician unless the documents are requested by a person who bears a written consent of the patient or other person authorized to act on the patient’s behalf for release of confidential information. Tex. Att’y Gen. Nos. ORD-598 (1991), ORD-578 (1990).

4. Investigatory records.

The Act specifically exempts records dealing with law enforcement agency investigations. § 552.108. This exception generally covers offense reports and personal history and arrest records maintained for internal use. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 185 (Tex. Civ. App.-Houston [14th Dist.] 1975, *writ ref’d n.r.e.*). The first page of most common offense reports, however, is public when it includes information about the offense committed, crime location, identification and description of complainant, time of occurrence, property, premises and vehicles involved, description of the weather, a detailed description of the offense, and the names of the investigating officers. *Houston Chronicle Publ’g Co.*, 531 S.W.2d at 186-87. Although prior opinions of the Attorney General supported the proposition that material is far less likely to be exempt under section 552.108 when an investigative file is closed, *see, e.g.*, Tex. Att’y Gen. ORD-378 (1983), the Texas Supreme Court concluded that the “statute’s plain language does not discriminate between ‘open’ and ‘closed’ files,” holding that section 552.108’s “blanket exemption” does not require district attorneys to disclose internal records, whether open or closed, that deal with detection, investigation, or prosecution of crime. *Holmes v. Morales*, 924 S.W.2d 920, 925 (Tex. 1996).

a. Rules for active investigations.

Section 552.108(a)(1) of the Act exempts information and internal records held by a law enforcement agency relating to an active investigation. Specifically, information that would interfere with the detection, investigation, or prosecution of a crime. *See id.*; *see also* Op. Tex. Att’y Gen. OR2005-10719 (2005); *see also* Tex. Atty. Gen. Op. OR2011-11538 (2011) (911 calls made on specified dates pertaining to a specified address may be withheld because although case is inactive, Houston Police Department indicated case may be reactivated once additional leads are developed). However, basic information about an arrested person, an arrest, or a crime is not exempt. Op. Tex. Att’y Gen. No. OR2005-10660 (2005).

b. Rules for closed investigations.

Section 552.108(a)(2) of the Act excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See, e.g.*, Op. Tex. Att’y Gen. Nos. OR2005-10866 (2005), OR2005-10876 (2005). However, as with information relating to an active investigation, basic front page offenses and arrest information, as described in *Houston Chronicle Publishing Co.* and discussed in Section IV.N.2. above, are not excepted. *Id.*

5. Arrest records.

The appellate court in *Chronicle I* denied the newspaper access to “Personal History and Arrest Records,” which contained personal information on individuals suspected of crimes and a listing of all offenses for which the person had ever been arrested. *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 185 (Tex. Civ. App.-Houston [14th Dist.] 1975, *writ ref’d n.r.e.*). However, the *Chronicle I* court also concluded that “arrest sheets” containing arrestee’s name, race, age, place of arrest, names of arresting officers and offense for which suspect is arrested are required to be released. *Id.* at 179-80, 188.

6. Compilations of criminal histories.

Tex. Att’y Gen. ORD-565 (1990) discusses whether an individual may be entitled to a special right of access to his own federal criminal history when it is in the hands of local government and stated that criminal history information in the hands of a local governmental body obtained from the National Crime Information Center must be released pursuant to section 3B of the Open Records Act if the only interest protected by withholding it is the privacy of the requestor. Pursuant to § 552.023, a person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests. Also, all information contained in either an adult or juvenile’s sex offender registration form and which is subsequently entered into the department of Public Safety database is public information and must be released upon request, except for the registrant’s photograph, Social Security number, driver’s license number, street address and telephone number, and any information that, on its face, would directly reveal the identity of the victim. Tex. Att’y Gen. ORD-645 (1996).

7. Victims.

“As a rule, . . . the names of complainants are public information. . . . Only in unusual instances, such as where the complainant was the victim of a sexual assault may the identity of a complainant be withheld.” Tex. Att’y Gen. ORD-482 (1987) (citations omitted); *see Houston Chronicle Publ’g Co.*, 531 S.W.2d at 186-87 (finding a constitutionally protected right of the press to the front page of offense reports, including, among other things, the identity and description of the complainant); *see also* Tex. Att’y Gen. Nos. ORD-611 (1992) (advising that documents relating to a police department’s investigation of

adult victims of family violence are likewise not per se excepted from disclosure), ORD-440 (1986) (advising that the investigation file on alleged child abuse at a state school for the deaf is excepted), ORD-422 (1984) (advising that the identity of a shooting victim is not per se excepted by common law privacy), ORD-409 (1984) (advising that the names of burglary victims are not ordinarily excepted from disclosure), ORD-393 (1983) (advising that the identity of a child who may have been sexually abused is excepted by common law privacy), ORD-339 (1982) (opining that “common law privacy permits the withholding of the name of every victim of a serious sexual offense”); *see also In re Westwood Affiliates, L.L.C.*, 263 S.W.3d 176 (Tex. App.—Houston [1st Dist.] 2007, orig. proceeding) (Mother of shooting victim who brought premises liability action against owner of the retail establishment outside of which the shooting occurred not entitled to police department’s murder investigation records because such records are exempted by the law-enforcement privilege).

Article 57.02 of the Texas Code of Criminal Procedure allows victims of sex crimes to use pseudonyms in all public records concerning the offense, including in police reports and during testimony in court. Under this law, law enforcement officials cannot disclose the victim's name, address or telephone number unless ordered to do so by a court. Tex. Crim. Proc. Code Ann. art. 57.02.

8. Confessions.

A synopsis of a reported confession generally is exempt. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 185 (Tex. Civ. App.-Houston [14th Dist.] 1975, writ ref'd n.r.e.).

9. Confidential informants.

Generally the identity of confidential informants and his statements are exempt. See *Houston Chronicle Publ'g Co.*, 531 S.W.2d at 187.

10. Police techniques.

Internal law enforcement detection and investigation methods are generally exempt under section 552.108. In *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977), the Texas Supreme Court held that the Act exempts law enforcement information if release "will unduly interfere with law enforcement and crime prevention." In Tex. Att'y Gen. ORD-531 (1989), the Attorney General advised that detailed portions of a police department's "use of force" procedures are excepted from disclosure under the Act because it "is reasonable to conclude that knowledge of these detailed guidelines would place an individual at an advantage in confrontations with police officers and would increase his chances of evading arrest or injuring the officer or other persons." However, other portions of the procedures that only restate generally known common law, constitutional, or Penal Code provisions are public.

11. Mug shots.

In cases that are still under active investigation, section 552.108 may exempt mug shots from disclosure. Op. Tex. Att'y Gen. No. 0R2011-02525 (2011). Several Attorney General decisions have concluded that when the mug shot was taken in connection with an arrest for which the arrestee was subsequently convicted and the case is closed, information may be withheld only if its release will unduly interfere with law enforcement or crime prevention. Tex. Att'y Gen. ORD-616 (1993). However, in *Holmes v. Morales*, 924 S.W.2d 920, 925 (Tex. 1996), the Texas Supreme Court found that section 552.108's plain language makes no distinction between "open" and "closed" cases, ultimately deciding that the Act categorically exempts the Harris County District Attorney's "closed" litigation files from disclosure. Thus, the Court rejected the Attorney General's construction of section 552.108, that a prosecutor can withhold information only if its release "will unduly interfere with law enforcement or crime prevention." *Id.* at 923-25. In reaching its decision, the Court noted that, while the federal Freedom of Information Act specifically includes an exception for materials which, if produced, would "interfere with enforcement proceedings," the Act does not impose such a limitation on the broad scope of section 552.108." *Id.* at 925.

12. Sex offender records.

The information contained in the sexual offender database including the numeric risk level assigned to the sex offender is public information. Tex. Code Crim. P. §62.005. However, information regarding the sex offender's social security number or driver's license number, or any home, work, or cellular telephone number, information that would identify the victim of the offense for which the person is subject to registration, is not public. *Id.* The department is tasked with maintaining the database and must post any photograph of the person that is available.

Further, a local law enforcement authority shall release information deemed public to any person who requests the information from the authority. The authority may charge the person a fee not to exceed the amount reasonably necessary to cover the administrative costs associ-

ated with the authority's release of information to the person under this subsection. Tex. Code Crim. P. §62.005(d).

The Texas Code of Criminal Procedure requires *juvenile* sex offenders to provide "registration information" but this information is not public information and is restricted to use by law enforcement and criminal justice agencies, the Council on Sex Offender Treatment, and public or private institutions of higher education. Tex. Code Crim. P. §62.352(b)(2).

13. Emergency medical services records.

Personal information regarding patients attended by emergency medical services personnel may not be accessed under Open Records Act, given that such information is made confidential by both Health and Safety Code and Transportation Code. *Butler v. State*, No. 14-00-01186-CR, 2003 WL 253296, at *7 (Tex. App.—Houston [14th Dist.] 2003, no pet.).

O. Prison, parole and probation reports.

The Act provides for required disclosure of certain information relating to an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice. § 552.029. The information required to be disclosed includes, among other things, the inmate's name, the inmate's assigned unit or the date on which the unit received the inmate (unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment), the offense for which the inmate was convicted, the inmate's earliest or latest possible release dates, or the basic information regarding the death of an inmate in custody. See § 552.029.

The names of prisoners transferred on specific days from county jail to the Texas Department of Criminal Justice are public. Tex. Att'y Gen. ORD-508 (1988). Inmates' correspondence lists and prison mail logs are exempt (Tex. Att'y Gen. Nos. ORD-428 (1985), ORD-185 (1978)), as are sketches of prison security measures related to a scheduled execution. Tex. Att'y Gen. ORD-413 (1984). Recommendations for or against parole have been declared confidential, but basic parole board information, including inmates' names, ages, gender, race, addresses, date and court of sentencing, crimes of which convicted, length of sentence, and time served of individuals whose sentences have been commuted by the Governor, was declared public. Tex. Att'y Gen. ORD-190 (1978). Specific records regarding individuals on probation and subject to the direct supervision of a court that are held by a community supervision and corrections department fall within the Act's judiciary exclusion because such records are held on behalf of the judiciary. Op. Tex. Att'y Gen. No. OR2003-9004 (2003). Because the department maintains the submitted information on behalf of the judiciary, the Act is inapplicable to such information, and that information is therefore not subject to public release under the act. *Id.* Certain reports that law enforcement agencies, jails and prisons are required by statute to file with the Attorney General when a prisoner dies while in custody are not public information. Tex. Att'y Gen. ORD-521 (1989).

As a result of a lawsuit filed against the Texas prison system, a federal court ordered certain prison reforms, including adoption of a reporting system for incidents when prison employees use force on inmates. A "stipulated modification" to the court's reform order specifies that inmates should not have access to "sensitive" information. The Attorney General has advised that the federal court, not the Attorney General, should determine whether "use of force" reports are "sensitive" and exempt from public disclosure. Tex. Att'y Gen. ORD-560 (1990).

P. Public utility records.

Section 552.022(3) specifically provides for disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body," unless otherwise made confidential by law. The Attorney General has interpreted this section to apply to a public utility's bill ledgers, even

where these records would show which customers are delinquent in payment. Tex. Att’y Gen. ORD-443 (1986). In so advising, the Attorney General explained that citizens may have privacy rights concerning private debts, but the public has a legitimate interest in knowing who owes money to governmental bodies. *Id.* The tax status of municipal utility customers likewise is public. Tex. Att’y Gen. ORD-520 (1989). In addition, the Attorney General concluded that the Public Utility Commission may publicly disclose a report regarding the scope of competition in the telecommunication market without implicating the proprietary interests of the entities that were required to provide the information on which the report was based, as long as the commission avoided the identification, either explicitly or implicitly, of any of the responding utilities. Op. Tex. Att’y Gen. No. 95-043 (1995).

Q. Real estate appraisals, negotiations.

Section 552.105 of the Act exempts from disclosure information concerning the location of real or personal property for public purposes before public announcement of the project, as well as information concerning appraisals or purchase prices of real or personal property before formal award of a contract for the property. Section 552.105 “was designed to protect a governmental body’s planning and negotiating position with respect to particular transactions” and even can exempt “appraisal information about a parcel of property acquired in advance of other parcels, if release of this information would harm the department’s negotiating position with respect to the other parcels of land.” Tex. Att’y Gen. ORD-564 (1990).

1. Appraisals.

Information is excepted from the requirements of Section 552.021 if it is information relating to appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property. § 552.105,

2. Negotiations.

Information is excepted from the requirements of Section 552.021 if it is information relating to the location of real or personal property for a public purpose prior to public announcement of the project. § 552.105. Section 552.105 “was designed to protect a governmental body’s planning and negotiating position with respect to particular transactions.” Tex. Att’y Gen. ORD-564 (1990). However, when negotiations for acquisition of real property has been completed, factual information relating to the project will become open to the public. Tex. Atty. Gen. Op. No. ORD-291 (1981); Tex. Atty. Gen. Op., No. ORD-234 (1980).

3. Transactions.

Information relating to real property sales prices, descriptions, characteristics, and other related information received from a private entity by the comptroller or the chief appraiser of an appraisal district under Chapter 6, Tax Code, is excepted from the requirements of Section 552.021. § 552.149(a).

4. Deeds, liens, foreclosures, title history.

Not specifically addressed.

5. Zoning records.

Not specifically addressed.

R. School and university records.

1. Athletic records.

Nothing in the Act exempts athletic records, as long as the records are in the custody of a “governmental body” and are not exempt student or educational records. *See* Tex. Att’y Gen. ORD-447 (1986). In Tex. Att’y Gen. ORD-539 (1990), the Attorney General advised that tape recordings of an interview between public university officials and a former student athlete are exempt education records “to the extent that they contain information about the former student’s attendance

at the university. Portions of the interview relating to the former student’s recruitment by the university are also education records.”

2. Trustee records.

As long as the university involved is a “governmental body” as defined by section 552.003, there is nothing in the Act to suggest that the records of trustees should be treated any differently than the records of other deliberative governing bodies. However, tape recordings of closed Board of Trustees meetings are excepted from disclosure as information deemed confidential by law. Op. Tex. Att’y Gen. No. OR2003-4288 (2003).

3. Student records.

Section 552.114 excludes from disclosure information found in a student record at an educational institution. Section 552.026 provides that a governmental body is not required to release “information contained in education records” except in conformity with the Federal Educational Rights and Privacy Act of 1974 (FERPA). FERPA, Section 1232g(b)(1) & (2), provides for the release of “educational records” and “any personally identifiable information in education records,” other than directory information, only when a parent consents or when one of the specific exceptions applies. *See Fish v. Dallas Independent School Dist.*, 31 S.W.3d 678, 680 (Tex.App.—Eastland 2000, pet. denied).

The federal act gives educational institutions discretion to release “directory information” about students after compliance with federal notice requirements. 20 U.S.C.A. § 1232g(a)(5). This section defines “directory information” as including a student’s “name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, [and] degrees and awards received.” Even though the federal act gives an educational institution discretion as to what records the institution classifies as “directory,” the Texas Attorney General has advised that the Texas Public Information Act requires a stricter standard. “Any student record which could be treated as directory information under federal law must be accorded that status unless its release would, as a matter of law, constitute an invasion of any person’s right of privacy. Such a standard [is] essentially the same as that of [section 552.114].” Tex. Att’y Gen. ORD-242 (1980) (emphasis added) (advising that student parking permit records should be “directory” information and released after the institution complies with federal notice requirements).

4. Other.

Despite the prohibition on release of student records described above, a wide range of information about schools, teachers, and faculty is public. For example, the public is entitled to a list of teachers including name, home address, home and district office telephone numbers, district e-mail addresses, and the courses they are teaching, unless they timely elect to keep such information confidential (Op. Tex. Att’y Gen. No. OR2005-02954 (2005)); anonymous student evaluations of named faculty members (Tex. Att’y Gen. ORD-206 (1978)); a school district’s contract with the superintendent (Op. Tex. Att’y Gen. No. OR2005-04313 (2005)); and records concerning disciplinary actions and test scores, as long as students are not personally identifiable from the records (Tex. Att’y Gen. ORD-165 (1977); Op. Tex. Att’y Gen. No. OR2002-2824 (2002)). Also public are records identifying donors to public universities and the amounts of donations or outstanding pledges (Tex. Att’y Gen. ORD-590 (1991)); and the names of members of a public university’s animal care and use committee (Tex. Att’y Gen. ORD-557 (1990)). However, the Texas Employment Commission does not have to publicly disclose the contents of the General Aptitude Test Battery it administers. Tex. Att’y Gen. ORD-543 (1990). The 1995 amendments deleted the exception for “curriculum objectives” which the Attorney General previously advised referred to “descriptions of educational goals that are so detailed that release of them would impair the evaluation and testing process.” Tex. Att’y Gen. ORD-566 (1990).

S. Vital statistics.

Section 552.115 excepts from public disclosure birth and death records maintained by the Bureau of Vital Statistics of the Texas Department of Health, except that birth records become public 75 years after the date of birth shown on the record filed and death records become public 25 years after the date shown on the record filed. “[S]ubject to [Texas Board of Health] rules controlling the accessibility of vital records, the state registrar shall supply to a properly qualified applicant, on request, a certified copy of a record, or part of a record, of a birth, death, or fetal death registered under this title.” Tex. Health & Safety Code Ann. § 191.051(a). The Bureau of Vital Statistics “shall furnish on request any information it has on record relating to any marriage, divorce, or annulment of marriage.” Tex. Health & Safety Code Ann. § 194.0049(a). But, the Bureau may not issue a *certificate or a certified copy* of information relating to a marriage, report of divorce or annulment of marriage. Tex. Health & Safety Code Ann. § 194.0049(b).

1. Birth certificates.

Section 552.115 provides that a birth record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from required public disclosure except that “a birth record is public information and available to the public on and after the 75th anniversary of the date of birth as shown on the record filed with the bureau of vital statistics or local registration official.” See Op. Tex. Att’y Gen. Nos. OR2005-08527 (2005) (finding that the city could not withhold a city peace officer’s birth certificate as it was not maintained by the bureau of vital statistics or local registration official).

2. Marriage & divorce.

Section 552.141(a) of the Act exempts the Social Security number of an individual that is maintained by a county clerk and that is on an application for a marriage license. Under this section, if a the county clerk receives a request to make the information in a marriage license application available, the county clerk must redact the portion of the application that contains such Social Security number and then release the remainder of the information on the application. §552.141(b). A divorce decree is a court-filed document that is expressly public under section 552.022 of the Government Code and may not be withheld unless confidential under other law. Op. Tex. Att’y Gen. Nos. OR2004-5118 (2004).

3. Death certificates.

Under section 552.115 of the Act, a death record becomes public information on and after the 25th anniversary of the date of death as shown on the record filed with the bureau of vital statistics or local registration official. As with birth records, death records maintained by the bureau of vital statistics or local registration official are available to the public. Op. Tex. Att’y Gen. OR2005-07470 (2005).

V. PROCEDURE FOR OBTAINING RECORDS

A. How to start.

Although the Act does not prohibit oral requests, a request must be in writing before § 552.301 applies. Under that section, a governmental body that receives a written request for information it considers exempt from disclosure (even though there has been no specific previous determination that such information is exempt) *must* ask for a decision from the Attorney General *within 10 days* of receiving the written request. § 552.301(a) and (b). Oral requests do not trigger this 10-day deadline. See Tex. Att’y Gen. ORD-304 (1982). Accordingly, a written request is an implied requirement of the Act. A subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under the Act. § 552.0055.

Written requests do not have to be in any particular form or use “magic words.” Tex. Att’y Gen. ORD-483 (1987). A written request includes a request made in writing by electronic mail or facsimile

transmission. § 552.301. The written request should be made to the officer for public information, § 552.301(c), defined in § 552.201 as the “chief administrative officer of a governmental body.” Also, each elected county officer is the officer for public information created or received by that county officer’s office. § 552.201(b).

As a practical matter, though, and to help avoid delays, it is advisable to send a duplicate copy to the clerk who normally handles the requested records. And while the Act does not require a requestor to specify a deadline for requested production of information, such a specification may hasten release of the information. The statute requires only “prompt” production by the officer for public records and requires that the officer seek within a reasonable time — no later than 10 business days after receipt of the request — an Attorney General’s opinion if the governmental body deems the records excepted from the statute’s disclosure requirements. While custodians frequently take the 10-day limit to either furnish the requested records or request an Attorney General opinion, the ready availability of many records and the importance of timely disclosure to the requestor in many cases suggest a reasonable time would be less than 10 days. Consequently, the requestor should designate a short deadline where appropriate.

The request should identify what information is sought as accurately as possible, because the governmental body can ask for clarification if it cannot reasonably understand the request. Tex. Att’y Gen. ORD-23 (1974); § 552.222. Likewise, the governmental body must make a good faith effort to explain what type of records are available, so a vague request can be narrowed. Tex. Att’y Gen. ORD-87 (1975).

Arrangements to inspect & copy. “It shall be a policy of a governmental body to provide a suitable copy of public information within a reasonable time after the date on which the copy is requested.” § 552.228(a). If the information exists in an electronic or magnetic form, the requestor may request a copy in paper or electronic form. § 552.228(b). Under section 552.230 of the Act a governmental body may promulgate reasonable rules, which are consistent with the Act, of procedure under which public information may be inspected and copied efficiently, safely, and without delay. Examination of the information must be completed within 10 business days after the custodian of the information makes it available. § 552.225(a). The officer for public information shall extend the initial examination period by an additional 10 business days if, within the initial period, the requestor files a written request for additional time. The officer for public information shall extend an additional examination period by another 10 business days if, within the additional period, the requestor files a written request for more additional time. § 552.225(b). The time during which a person may examine information may be interrupted by the officer for public information if the information is needed for use by the governmental body. The period of interruption is not considered to be a part of the time during which the person may examine the information. § 552.225(c).

Charges for providing copies of public information. The charge for providing a copy of public information shall be an amount that reasonably includes all costs related to reproducing the requested information. § 552.261. If a copy request or request to inspect a paper record exceeds \$40, the governmental body must provide an itemized statement that details all estimated charges. § 552.2615. If the requestor does not request a copy of the public information, a charge may not be imposed for making that information available for inspection. § 552.271. For requests to inspect electronic information that is not available directly online to the requestor, a charge may not be imposed, unless complying with the request will require programming or manipulation of data. § 552.272. If a request is for 50 or fewer pages of paper records, the charge for providing the copy of the public information may not include costs of materials, labor, or overhead, unless the pages to be photocopied are located in two or more separate buildings that are not physically connected with each other; or a remote storage facility. § 552.261(a).

1. Who receives a request?

The written request should be made to the officer for public information, § 552.301(c), defined in § 552.201 as the “chief administrative officer of a governmental body.” Also, each elected county officer is the officer for public information created or received by that county officer’s office. § 552.201(b).

2. Does the law cover oral requests?

If a requestor wants to timely receive requested records under the Act and start the applicable deadlines, she should memorialize her request in writing. Although the Act does not prohibit oral requests, a request must be in writing before § 552.301 applies. Tex. Att’y Gen. ORD-304 (1982) (“[T]he statute [Open Records Act] does not require any governmental body to produce information in the absence of a written request.”); Tex. Att’y Gen. Informal Letter Ruling No. OR2000-1597 (2000) (stating that a written request triggers the deadlines of the Act).

a. Arrangements to inspect & copy.

Under section 552.230 of the Act a governmental body may promulgate reasonable rules, which are consistent with the Act, of procedure under which public information may be inspected and copied efficiently, safely, and without delay. Examination of the information must be completed within 10 business days after the custodian of the information makes it available. § 552.225(a). The governmental official “must provide access to public records *on a daily basis* for a minimum of 10 days per request.” *Felix v. Thaler*, 923 S.W.2d 650, 653 (Tex. App.—Houston [1st Dist.] 1995, no pet.); Op. Tex. Att’y Gen. Letter Opinion No. 94-010 (1994). When a governmental body cannot produce requested information within ten business days of receipt of the request for the information, the public information officer must certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available. Tex. Att’y Gen. No. ORD-664 (2000).

The officer for public information shall extend the initial examination period by an additional 10 business days if, within the initial period, the requestor files a written request for additional time. The officer for public information shall extend an additional examination period by another 10 business days if, within the additional period, the requestor files a written request for more additional time. § 552.225(b). The time during which a person may examine information may be interrupted by the officer for public information if the information is needed for use by the governmental body. The period of interruption is not considered to be a part of the time during which the person may examine the information. § 552.225(c).

b. If an oral request is denied:

(1). How does the requester memorialize the refusal?

If an oral request is denied, the requestor should send a second request in writing since a request must be in writing before § 552.301 applies. § 552.225(a).

(2). Do subsequent steps need to be in writing?

Yes. Although the Act does not prohibit oral requests, a request must be in writing before § 552.301 applies. Tex. Att’y Gen. ORD-304 (1982) (“[T]he statute [Open Records Act] does not require any governmental body to produce information in the absence of a written request.”); Tex. Att’y Gen. Informal Letter Ruling No. OR2000-1597 (2000) (stating that a written request triggers the deadlines of the Act).

3. Contents of a written request.

a. Description of the records.

The request should identify what information is sought as accurately as possible, because the governmental body can ask for clarification

if it cannot reasonably understand the request. Tex. Att’y Gen. ORD-23 (1974); § 552.222. Likewise, the governmental body must make a good faith effort to explain what type of records are available, so a vague request can be narrowed. Tex. Att’y Gen. ORD-87 (1975). Written requests do not have to be in any particular form or use “magic words.” Tex. Att’y Gen. ORD-483 (1987). A written request includes a request made in writing by electronic mail or facsimile transmission. § 552.301.

The written request should be made to the officer for public information, § 552.301(c), defined in § 552.201 as the “chief administrative officer of a governmental body.” Also, each elected county officer is the officer for public information created or received by that county officer’s office. § 552.201(b).

b. Need to address fee issues.

The request need not inquire about the cost associated with the request. Rather, if a copy request or request to inspect a paper record exceeds \$40, the governmental body must provide an itemized statement that details all estimated charges. § 552.2615. If the requestor does not request a copy of the public information, a charge may not be imposed for making that information available for inspection. § 552.271.

c. Plea for quick response.

While the Act does not require a requestor to specify a deadline for requested production of information, such a specification may hasten release of the information. The statute requires only “prompt” production by the officer for public records and requires that the officer seek within a reasonable time — no later than 10 business days after receipt of the request — an Attorney General’s opinion if the governmental body deems the records excepted from the statute’s disclosure requirements. While custodians frequently take the 10-day limit to either furnish the requested records or request an Attorney General opinion, the ready availability of many records and the importance of timely disclosure to the requestor in many cases suggest a reasonable time would be less than 10 days. Consequently, the requestor should designate a short deadline where appropriate.

d. Can the request be for future records?

Yes, however, as the information becomes available, it is proper to look to the applicable statute each time the data is available for release to determine if the requested information is exempt. *See Center for Economic Justice v. American Ins. Ass’n*, 39 S.W.3d 337, 342 (Tex. App.—Austin 2001, no pet.) (holding that an open-ended, continuing request under the Public Information Act for data as it becomes available necessarily involves looking to the version of the Act in effect each time the data is available for release).

e. Other.

A governmental agency does not comply with Act by releasing to the requestor another record as substitute for specifically requested record unless the requestor agrees to the substitution. Tex. Att’y Gen. Informal Letter Ruling No. OR2009-11812 (2009).

B. How long to wait.

Where a request for public information has been made, the officer for public information “shall promptly produce [such] information for inspection, duplication, or both on application.” § 552.221(a); *Moore v. Collins*, 897 S.W.2d 496, 499 (Tex. App.—Houston [1st Dist.] 1995, no writ) (the Act requires officers “to produce public [information] upon request”). Section 552.228 instructs governmental bodies to provide a “suitable copy of public information within a reasonable time” after the request. What is “reasonable” depends on the facts surrounding each request. Tex. Att’y Gen. ORD-467 (1987). If the information is unavailable at the time of the request to examine because it is in active use or in storage, the officer for public information should certify this fact in writing and set a reasonable date and hour when the information will be made available. *See* § 552.221(c). The 1995 legislature

amended § 552.222 to allow a governmental body to ask the requestor to clarify the request if it is unclear and to discuss the scope of the request if a large amount of information is requested. *See City of Dallas v. Abbott*,

304 S.W.3d 380, 384 (Tex. 2010) (“a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general opinion is measured from the date the request is clarified or narrowed”). However, the governmental body may not inquire into the purpose for which information will be used. § 552.222(b).

The 1995 legislature also amended section 552.221 to specify that an officer for public information complies with the Act by providing the public information for inspection or duplication in the offices of the governmental body or by sending copies of the public information by first class mail. Section 552.225(b) gives the person requesting the information 10 days to examine it after it has been made available. The requestor may extend the examination period by an additional 10 days if a written request for such extension is filed with the officer of public information before the initial period expires. A second 10-day extension may also be obtained in this manner. § 552.225(b).

If a governmental body receives a written request that it believes falls within one of the exceptions listed in the Act, it may still choose to release the information, unless the information is deemed confidential by law. If the governmental body believes the material falls within an exception and does not want to release the information, the governmental body must, no later than 10 business days after receiving the written request, request a decision from the Attorney General as to whether the information falls within the stated exception. § 552.301(b). This 10-day limit, however, is tolled between the time that the governmental body requests in good faith a clarification or narrowing of the request and the time that the governmental body receives a clarification or narrowing response. Tex. Att’y Gen. Nos. ORD-663 (1999), ORD-333 (1982). A governmental body that requests an Attorney General decision must provide to the requestor within a reasonable time, but not later than the tenth business day after the date of receiving the request, a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, as well as provide the requestor with a copy of the governmental body’s written communication to the Attorney General (or, if the governmental body’s written communication to the attorney general discloses the requested information, a redacted copy of that written communication). § 552.301(d); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 384-85 (Tex. 2010) (“[P]ublic entities requesting an attorney general opinion must specify the exceptions that apply within the same ten-day period in which an opinion must be requested.”).

If the governmental body fails to make a timely request for an Attorney General’s opinion, “the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.” § 552.302. When a private third party’s interest is at stake, this acts as a compelling reason to overcome the presumption. Tex. Att’y Gen. ORD-319 (1982). The governmental body’s letter to the Attorney General requesting an opinion is public under the Act, Tex. Att’y Gen. ORD-459 (1987), and must be disclosed to the requestor—however, if information that is in dispute is contained in the letter, that information can be redacted. *Id.*; § 552.301(d)(2). To avoid this issue, the best practice is for governmental bodies to submit information which is the subject of their request or which raises a privacy claim in a separate document accompanying their request letter, rather than in the letters themselves. Tex. Att’y Gen. ORD-459 (1987). A governmental body requesting an Attorney General opinion must, within a reasonable time but no later than the fifteenth business day after receiving the written request for information, submit to the Attorney General (A) written comments stating the reasons why the stated exception(s) apply that support the withholding of information requested, (2) a copy of the written request for information, (C) a signed statement as to the

date on which the written request was received, and (D) a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested. § 552.301(e). Further, the governmental body must label that copy of the specific information, or of the representative samples, to indicate which exceptions apply to which parts of the copy. § 552.301(e).

Section 552.306 provides that the Attorney General “shall promptly render a decision . . . consistent with the standards of due process” and issue a written opinion. The Attorney General determines whether the requested information is within one of the exceptions where disclosure is not required under the Act. *Id.*

Under revisions passed by the 1995 legislature, the Attorney General may determine whether the submission of information is sufficient to render a decision. § 552.303(b). If the governmental body has failed to provide the Attorney General with all of the specific information necessary to render a decision, the Attorney General is required to give written notice of that fact to the governmental body and to the requestor. § 552.303(c). The governmental body then has seven calendar days to submit the necessary additional information; otherwise, the requested information is presumed to be public. § 552.303(d), (e). Any member of the public may submit written comments stating reasons why the information should or should not be released. § 552.304. If an information request might involve a third party’s privacy or property interests, section 552.305 provides that “a governmental body may decline to release the information for the purpose of requesting an attorney general decision.” In such a case, the governmental body that requests an Attorney General decision shall make, no later than the tenth business day after receipt of the request, a good faith attempt to notify that person of the request for the Attorney General decision. § 552.305(d). Such third parties “whose interests may be involved . . . or any other person, may submit in writing to the attorney general the person’s reasons why the information should be withheld or released.” § 552.305(b).

The Attorney General must render a decision within 45 working days after receiving the request for a decision. § 552.306(a). If the Attorney General is unable to render a decision within that period, the Attorney General may extend that period by 10 business days by informing the governmental body and the requestor, during the initial 45-day period, of the reason for the delay. § 552.306(a). The Attorney General’s opinion must be in writing, copies of which must be provided to the requestor. § 552.306(b).

The Act does not set out any procedure for appealing the Attorney General’s decision. The governmental body requesting the Attorney General opinion is bound by that opinion unless it challenges it in court. § 552.324(b). The governmental body has 30 calendar days to file a challenge to the Attorney General’s decision in court. § 552.324(b).

1. Statutory, regulatory or court-set time limits for agency response.

Where a request for public information has been made, the officer for public information “shall promptly produce [such] information for inspection, duplication, or both on application.” § 552.221(a); *Moore v. Collins*, 897 S.W.2d 496, 499 (Tex. App.-Houston [1st Dist.] 1995, no writ) (the Act requires officers “to produce public [information] upon request”). An officer for public information complies with the Act by providing the public information for inspection or duplication in the offices of the governmental body or by sending copies of the public information by first class mail. § 552.221.

The Act requires a governmental body, in the usual case, to produce requested public information as soon as reasonably possible and without delay. Tex. Att’y Gen. No. ORD-664 (2000). What constitutes a reasonable period of time depends on the facts in each case. *Id.* The volume of information requested is “highly relevant to what constitutes a reasonable period of time.” *Id.* A reasonable period of time may be less than or greater than ten business days, depending on the

circumstances. *Id.* For example, a governmental body should be able to comply immediately with a request for one specified document that the governmental body has previously released to the public or that the Attorney General has previously determined to be public information, absent unusual circumstances. *Id.* On the other hand, a request for a voluminous amount of information which requires an extensive search for responsive information might require more than ten business days for production of the information. *Id.*

2. Informal telephone inquiry as to status.

Not specifically addressed.

3. Is delay recognized as a denial for appeal purposes?

Not specifically addressed.

4. Any other recourse to encourage a response.

If the governmental body fails to make a timely request for an Attorney General's opinion, "the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." § 552.302. When a private third party's interest is at stake, this acts as a compelling reason to overcome the presumption. Tex. Att'y Gen. ORD-319 (1982).

C. Administrative appeal.

The Act does not provide any "administrative appeal" procedure.

2. To whom is an appeal directed?

4. Contents of appeal letter.

D. Court action.

1. Who may sue?

Section 552.321(a) provides that if a governmental body refuses to request an Attorney General's decision or to supply public information, the person requesting the information or the Attorney General may file suit for a writ of mandamus compelling the governmental body to make the information available to the public. Such mandamus suits are controlled by the Texas Rules of Civil Procedure. Nothing in the Act, case law, or Attorney General opinions state what mandamus approach is preferred and some open records actions have been litigated as normal civil lawsuits. Amendments made to the Act in 1999 permit actions for declaratory judgment or injunctive relief to be brought against a governmental body that violates the Act. § 552.3215.

A governmental body may file a declaratory judgment action against the Attorney General to determine its rights and liabilities under the Act. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000). However, the only suit a governmental body or officer for public information may file seeking to withhold information from a requestor is a suit that is filed in accordance with sections 552.325 or 552.353, and must be brought no later than the thirtieth calendar day after the governmental body receives notice of the Attorney General's decision that the information must be disclosed. § 552.324. A governmental body, officer for public information, or other person or entity that files suit seeking to withhold information from the requestor may not file suit against the requestor, although the requestor is entitled to intervene in the suit. § 552.325(a). The governmental body must make a timely good faith effort to notify the requestor of the existence of the suit and inform the requestor, among other things, of his right to intervene. § 552.325(b).

2. Priority.

Generally, a plaintiff in a district court mandamus action may request a show cause order requiring the governmental body to respond to the mandamus petition within 10 days. Otherwise, there is no special, expedited docket treatment of public record questions. The Act does not address any such expedited treatment.

3. Pro se.

While it is possible for a party to pursue *pro se* court actions involving public information questions, it is not advisable for several reasons. First, judges generally are hostile to *pro se* actions. Second, anyone appearing in court (regardless of his or her legal abilities or the subject matter of the suit) must follow the Texas Rules of Civil Procedure, which are complex and occasionally quirky, especially to a layperson. Someone requesting public information probably wants access as soon as possible; a quicker resolution is more likely if the requestor's representative in court intimately knows its rules and the system. Third, the governmental body probably will be represented by an attorney. Fourth, laypersons may have difficulty researching prior open records decisions to cite to the court. Relatively few court opinions interpret the Act. Instead, the Texas Attorney General's opinions or more than 600 "Open Record Decisions" supply non-binding but persuasive interpretations of the Act.

4. Issues the court will address:

A requestor's mandamus suit asks the court for an order compelling a governmental body to make information available for public inspection, as required by the Act. See § 552.321. A court, therefore, can address any question related to such requested order, which potentially could include whether the governmental body's denial of access was proper, whether the fees charged are excessive or beyond the actual cost of providing such records, or whether the governmental body has failed to "promptly" produce public information for inspection. See § 552.221. However, one court has limited the authority of a trial court to issue a writ of mandamus pursuant to Section 552.321 to three instances: (1) where a governmental body refuses to request an attorney general's decision on whether information is public; (2) where the governmental body refuses to supply public information; (3) and where a governing body refuses to supply information that the attorney general has determined is public information not excepted from disclosure. *Thomas v. Cornyn*, 71 S.W.3d 473, 481 (Tex. App.—Austin 2002, no pet.).

A lawsuit brought under Texas' Uniform Declaratory Judgments Act can address questions involving rights under the Act, including future access. Tex. Civ. Prac. & Rem. Code Ann. § 37.001-.011. The governmental body may only raise in the suit exceptions that were raised before the Attorney General. § 552.326. Declaratory judgments may be reviewed as other orders, judgments, and decrees under Texas law. Tex. Civ. Prac. & Rem. Code Ann. § 37.010.

a. Denial.

"Section 552.321 confers upon the trial court the authority to issue a writ of mandamus in three circumstances: where a governmental body refuses to request an attorney general's decision on whether information is public; where the governmental body refuses to supply public information; and where a governing body refuses to supply information that the attorney general has determined is public information not excepted from disclosure." *Thomas v. Cornyn*, 71 S.W.3d 473, 481 (Tex. App.—Austin 2002, no pet.); see *Loving v. City of Houston*, 282 S.W.3d 555, 561 (Tex. App.—Houston [14th Dist.] 2009, pet. denied) ("A suit for mandamus may be filed to compel a governmental body to make information available for public inspection under certain circumstances; and *Hankins v. Dallas Independent School Dist.*, 698 F.Supp. 1323, 1332 (N.D. Tex. 1988) ("[H]ad Plaintiff not been allowed to inspect his personnel file, his recourse was to seek a writ of mandamus against the officials who refused to allow him to inspect his personnel file.").

b. Fees for records.

Not specifically addressed.

d. Patterns for future access (declaratory judgment).

A governmental body may file a declaratory judgment action against the Attorney General to determine its rights and liabilities under the

Act. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000). A requestor may also file a declaratory judgment action. *Dominiguez v. Gilbert*, 48 S.W.3d 789, 796 (Tex. App.—Austin 2001, no pet.). However, the Austin Court of Appeals stated that while under earlier versions of the Act, requestors could sue for declaratory judgment *in addition to* mandamus, the Court declined to express an opinion as to whether the 1999 amendments to the Act changed the law in that regard. *Id.*

5. Pleading format.

Pleadings for an open records mandamus or other action are no different than other civil pleadings and must comport with requirements of the Texas Rules of Civil Procedure. Proceedings brought under the Act are brought, heard, and determined in the same manner as civil actions generally. *Cornyn v. City of Garland*, 994 S.W.2d 258, 264 (Tex. App.—Austin 1999, no pet.).

6. Time limit for filing suit.

The Act does not set out any special time limit for filing suit. The requestor is not required to wait for a decision of the Attorney General before seeking redress in court. *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

7. What court.

The Act provides that a mandamus suit filed by a requestor must be filed in a district court for the county in which the main offices of the governmental body are located. § 552.321(b). A suit filed by the Attorney General under the Act must be filed in a district court of Travis County, except that a suit against a municipality with a population of 100,000 or less must be filed in a district court for the county in which the main offices of the municipality are located. *Id.*

8. Judicial remedies available.

The Act does not limit what judicial remedies are available. The court may issue a writ of mandamus directing a governmental body to produce records for public inspection. Depending on the circumstances, an injunction or declaratory judgment also may be appropriate remedies.

9. Litigation expenses.

Section 552.323(a) provides that in any suit brought under sections 552.321 or 552.3215 “the court shall assess costs of litigation and reasonable attorney fees incurred by a plaintiff or defendant who substantially prevails . . .” except that costs and fees may not be assessed if the court finds that the governmental body acted in reasonable reliance on a judgment or an order of a court, the published opinion of an appellate court, or a written decision of the Attorney General. *Id.*

In an action brought under section 552.324, “the court may assess costs of litigation and reasonable attorney’s fees . . .” In exercising its discretion, “the court shall consider whether the conduct of the officer for public information of the governmental body had a reasonable basis in law and whether the litigation was brought in good faith.” *Id.*

Costs assessed against a governmental body by the court run against the governmental body, not an individual office holder. *McNamara v. Fults*, 855 S.W.2d 782, 786 (Tex. App.—El Paso 1993, no writ).

a. Attorney fees.

Attorneys fees are recoverable for the party who substantially prevails. To qualify as a prevailing party, there must be judicially sanctioned “relief on the merits” that “materially alters the legal relationship between the parties.” *Intercontinental Group P’ship v. KB Home Lone Star L.P.*, 295 S.W.3d 650, 653-54 (Tex. 2009). However, fees may not be assessed if the court finds that the governmental body acted in reasonable reliance on a judgment or an order of a court, the published opinion of an appellate court, or a written decision of the Attorney General. § 552.323(a). The court also considers whether the conduct of the governmental body had a reasonable basis in law and whether the litigation was brought in good faith. § 552.323(b).

The court may choose not to award attorneys fees, especially if an attorney’s firm represents him on the matter. *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.) (“Kuzmich’s testimony provides a complete admission that neither his associate nor his firm were contemplating payment of attorneys’ fees in connection with representing him in this matter. On cross-examination, Kuzmich admits that neither he nor anyone from his office is billing for time spent representing him or incurring fees and that he has only ‘lost some time in the office.’”).

b. Court and litigation costs.

Court costs are recoverable for the party who substantially prevails. However, costs may not be assessed if the court finds that the governmental body acted in reasonable reliance on a judgment or an order of a court, the published opinion of an appellate court, or a written decision of the Attorney General. § 552.323(a). The court also considers whether the conduct of the governmental body had a reasonable basis in law and whether the litigation was brought in good faith. § 552.323(b).

10. Fines.

The Act does not contemplate the award of damages for an officer’s non-compliance with the Act. *Moore v. Collins*, 897 S.W.2d 496, 501 (Tex. App.—Houston [1st Dist.] 1995, no writ). However, sections 552.351-353 set forth fines and other penalties that can be assessed under the Act. An officer for public information who, with criminal negligence, “fails or refuses to give access to, or to permit or provide copying of, public information” may be found guilty of a misdemeanor and face up to six months in jail and a \$1,000 fine, or both. § 552.353(a), (e). Anyone who distributes information deemed confidential under the Act faces a similar criminal sentence and fine. § 552.352. Section 552.351 provides that any person who “willfully destroys, mutilates, removes without permission as provided [in the Act], or alters public information” may be found guilty of a misdemeanor and face up to three months in jail and a \$4,000 fine, or both.

11. Other penalties.

Not specified.

12. Settlement, pros and cons.

Nothing specific in the Act makes settlement more or less attractive, although the party that loses in court may be ordered to pay the prevailing party’s costs of litigation and reasonable attorney fees. § 552.323. Settlement considerations depend entirely on the situation involved. If the Attorney General enters into a proposed settlement that all or part of the information made the subject of the suit should be withheld, and if the requestor has not intervened, then the Attorney General must notify the requestor of his or her right to intervene and contest the withholding. § 552.325(c). In doing so, the Attorney General must comply with the notice requirements of section 552.325(c).

13. Dismissal of suit.

A court may dismiss a suit challenging a decision of the Attorney General if all parties to the suit agree to the dismissal and the Attorney General determines and represents to the court that the requestor has voluntarily withdrawn the request for information in writing or has abandoned the request. § 552.327.

E. Appealing initial court decisions.

1. Appeal routes.

The losing party may proceed to the intermediate Court of Appeals or the Texas Supreme Court by way of mandamus or, in some instances, by way of appeal. The normal rules for appellate actions found in the Texas Rules of Civil and Appellate Procedure apply.

2. Time limits for filing appeals.

The normal rules for appellate actions found in the Texas Rules of Civil and Appellate Procedure apply.

3. Contact of interested amici.

The Freedom of Information Foundation of Texas Inc. is a state-wide clearinghouse for freedom of information matters and will coordinate *amicus curiae* efforts. Interested people should contact Katherine Garner, executive director, Freedom of Information Foundation of Texas at (214) 977-6658. The foundation's address is 400 S. Record St., Suite 240, Dallas, Texas 75202. The foundation may also be contacted through its e-mail address, foift@foift.org, and over the Internet, at www.foift.org.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

F. Addressing government suits against disclosure.

Not addressed.

Open Meetings

I. STATUTE -- BASIC APPLICATION.

A. Who may attend?

The Texas Open Meetings Act ("the Act") (Tex. Gov't Code Ann. § 551.001 et seq., formerly Tex. Rev. Civ. Stat. Ann. art. 6252-17 (Vernon 2004 & Supp. 2005)) does not specifically address who may attend open meetings. However, section 551.142(a) provides that "[a]n interested person, including a member of the news media" may file suit to enforce the Act. See *San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762, 765 (Tex. 1991) (the "intended beneficiaries of the Act" are "members of the interested public"). "The majority of courts addressing the 'interested person' requirement have adopted an extremely broad interpretation regarding who constitutes an 'interested person.'" *Matagorda County Hosp. Dist. v. City of Palacios*, 47 S.W.3d 96, 102 (Tex. App.-Corpus Christi 2001, no pet.); *Save Our Springs Alliance Inc. v. Lowry*, 934 S.W.2d 161, 163 (Tex. App.-Austin 1996, no writ) (per curiam) (standing under the Texas Open Meetings Act is broader than under the common law).

In *Cameron County Good Gov't League v. Ramon*, 619 S.W.2d 224, 230 (Tex. App.-Beaumont 1981, writ ref'd n.r.e.), the plaintiffs consisted of a county good government league and two private citizens, all of whom were found to be within the statutory language of "interested persons" who had authority to commence a legal proceeding. The court wrote that "[i]t is difficult to see how the Legislature could broaden the class of 'any interested person.'" See also *City of Fort Worth v. Groves*, 746 S.W.2d 907, 913 (Tex. App.-Fort Worth 1988, no writ) (finding that "affected taxpayer and citizen" had standing under the Open Meetings Act). This is consistent with the Act's intent, which is to "safeguard the public's interest in knowing the workings of its governmental bodies." *Cox Enter. Inc. v. Board of Trustees of Austin Indep. Sch. Dist.*, 706 S.W.2d 956, 960 (Tex. 1986); see also *Acker v. Texas Water Comm'n*, 790 S.W.2d 299, 300 (Tex. 1990) ("The explicit command of the statute is for openness at every stage of the deliberations."); *Finlan v. City of Dallas*, 888 F. Supp. 779, 783 (N.D. Tex. 1995) ("Thus, the public policy embodied in the [Act] is that, absent compelling reasons to the contrary, the public business should be conducted in public.>").

B. What governments are subject to the law?

1. State.

Section 551.001(3)(A) defines a state "governmental body" as "a board, commission, department, committee, or agency within the executive or legislative branch of state government that is directed by one or more elected or appointed members." This definition has been interpreted broadly. For example, in *Gulf Regional Educ. Television Affiliates v. Univ. of Houston*, 746 S.W.2d 803, 809 (Tex. App.-Houston [14th Dist.] 1988, writ denied), the appellate court found that an auxiliary enterprise of a state university was a governmental body subject to the Act because its board of directors formulated policy, spent public funds, and operated with little control or supervision by the university. The court held that before the Act is applicable to a meeting of a statewide public body, five prerequisites must be met: "(1) The body must be an entity within the executive or legislative department of the state; (2) The entity must be under the control of one or more elected or appointed members; (3) The meeting must involve formal action or deliberation between a quorum of members[;] (4) The discussion or action must involve public business or public policy[; and] (5) The entity must have supervision or control over that public business or policy." *Id.* The Act does not, however, extend to the judicial branch of state government, although the meetings of the State Bar of Texas board of directors and the Board of Law Examiners must comply with the Act pursuant to Tex. Gov't Code Ann. §§ 81.021 & 82.003.

2. County.

Section 551.001(3)(B) specifically includes county commissioners courts (the basic county governing unit in Texas) in the definition of

“governmental body.” County boards of school trustees and of education are also included in that definition pursuant to section 551.001(3)(F) & (G); *Thomas v. Beaumont Heritage Society*, — S.W.3d —, 2011 WL 1675774 (Tex.App.-Beaumont, 2011) (a school board and staff also may be subject to an injunction concerning the requirements of the Open Meetings Act); *but see Forney Messenger, Inc. v. Tenmon*, 959 F.Supp. 389, 392-93 (N.D. Tex. 1997) (the individual members of a governmental body could not be sued in their individual capacity under Section 551.141). Finally, other county bodies may be covered by the Act by virtue of the broad language of section 551.001(3)(D), which includes the following in the definition of “governmental body:” “a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county. . .” *See, e.g., Op. Tex. Att’y Gen. No. JC-0411* (2001) (finding that the Board of Trustees of the Risk Pool for the El Paso County Health Benefits Program, which exercises governmental authority as an agent of the county, is subject to the Act). *But see City of Austin v. Evans*, 794 S.W.2d 78, 83-84 (Tex. App.-Austin 1990, no writ) (holding that a City of Austin grievance committee that made only recommendations was not a deliberative body with rulemaking authority and was not, therefore, subject to the Act); *Op. Tex. Att’y Gen. No. GA-0361* (2005) (“Because a county election commission is not a county commissioners court, a committee thereof, or a deliberative body with rulemaking or quasi-judicial power, it is not a governmental body.”)

3. Local or municipal.

Municipal governing bodies in the state, school district boards of trustees and governing boards of special districts created by law are all bound to comply with the Act, pursuant to sections 551.001(3)(C), (E) & (H). In *Sierra Club v. Austin Transp. Study Policy Advisory Comm.*, 746 S.W.2d 298 (Tex. App.-Austin 1988, writ denied), an appellate court concluded that a 17-member committee of state, county, regional and municipal public officials was a “special district” subject to the Act because it had decision-making powers. *See also Op. Tex. Att’y Gen. No. GA-0280* (2004) (the Border Health Institute created under the Texas Education Code, which is primarily composed of representatives of public entities, whose enabling statute indicates that it performs governmental functions, and which received appropriated and federal funds, “exhibits the kind of qualities sufficient to bring it within the category of a ‘special district’ for purposes of the [Act]”); *Op. Tex. Att’y Gen. No. H-238* (1974) (concluding that the governing body of the Harris County Hospital District was a special district subject to the Open Meetings Act). Section 551.001(3)(D) also includes the following within the definition of “governmental body:” “a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a . . . municipality.” *See also Finlan v. City of Dallas*, 888 F. Supp. 779, 782-84 (N.D. Tex. 1995) (an ad hoc municipal sports development committee is subject to the Act); *Bexar Medina Atascosa Water Dist. v. Bexar Medina Atascosa Landowners’ Ass’n*, 2 S.W.3d 459, 461 (Tex. App.-San Antonio 1999, pet. denied) (a water district is subject to the Act); *Blankenship v. Brazos Higher Educ. Auth. Inc.*, 975 S.W.2d 353, 360 (Tex. App.-Waco 1998, pet. denied) (finding that a nonprofit corporation that issues revenue bonds to purchase student loans was not a deliberative body within the Act, as it does not hear or make binding determinations on disputes); *City of Combes, Texas v. East Rio Hondo Water Supply Corp.*, 244 F.Supp.2d 778, 781 (S.D. Tex. 2003) (“for the purposes of the Texas Open Government and Open Meetings Acts, a water supply corporation is a ‘governmental body.’”).

C. What bodies are covered by the law?

1. Executive branch agencies.

a. What officials are covered?

Sections 551.143 and 551.144 provide that “[a] member” of a governmental body who knowingly violates the terms of the Act is subject to punishment by fine, imprisonment, or both. It is clear, therefore, that the Act applies to all public officials who are members of a governmental body. *See, e.g., Op. Tex. Att’y Gen. No. GA-0019* (2003)

(finding that a council within the executive branch of government that is directed by at least five members appointed by the administrative head of at least five agencies and which develops procedures that member agencies must follow in purchasing pharmaceuticals is “a governmental body that has supervision or control over public business is subject to the Open Meetings Act.”)

b. Are certain executive functions covered?

Any deliberation between a quorum of members of a governmental body at which any public business or public policy is discussed must be open. *See* the general language of section 551.002 and the definition of “meeting,” in section 551.001(4).

In *Op. Tex. Att’y Gen. No. JM-1127* (1989), the Attorney General was asked if the Act is violated when a quorum of one commission attends a meeting of a separate body it created that is managed by its own board of directors. The Attorney General advised that “[m]ere physical presence of a quorum . . . in the same room without such deliberations does not establish a meeting” within the Act. *Op. Tex. Att’y Gen. No. JM-1127* (1989). However, if the commission members “deliberate,” their attendance before the board will be a meeting of the commission. The Attorney General further warned that “[i]ndirect deliberations would occur when . . . commissioners speak to the . . . board in turn, addressing to it remarks intended for the other commissioners.” *Id.* at 6. Although section 551.001(4)’s definition of “meeting” discusses a “deliberation between a quorum of a governmental body,” the Attorney General has advised that subcommittees including even a single member of a governmental body may be subject to the Act if the subcommittee discusses public business or policy over which the parent body has supervision or control. *Op. Tex. Att’y Gen. No. JM-1072* (1989). An appellate court has also concluded that the Act applies to committees and subcommittees that supervise and control the parent governmental body’s public business or make recommendations that the governmental body routinely rubber-stamps. *Willmann v. City of San Antonio*, 123 S.W.3d 469, 478 (Tex. App.-San Antonio 2003, pet. denied) (“a governmental body does not always insulate itself from [the Act’s] application simply because less than a quorum of the parent body is present”).

c. Are only certain agencies subject to the act?

Section 551.001(3)(A) provides that an “agency within the executive branch of government that is directed by one or more elected or appointed members” is subject to the Act. *See Op. Tex. Att’y Gen. No. GA-0098* (2003) (The Sulphur River Basin Authority, which satisfied the criteria set forth in section 551.001(3)(A), is subject to the Act; noting that “Texas courts have long acknowledged that river authorities are subject to the Open Meetings Act.”). Certain functions of the Board of Pardons and Paroles are excluded from the Act (§ 551.080), as are certain meetings of the Texas Department of Insurance (§ 551.079), the Credit Union Commission (§ 551.081), The Finance Commission of Texas (§ 551.0811), certain school board meetings (§§ 551.082, 551.0821, and 551.083), certain meetings of the Texas Building and Procurement Commission (§ 551.0726), and certain meetings of the board of directors of a municipal hospital, a municipal hospital authority, hospital district, or nonprofit health maintenance organization (§ 551.085).

2. Legislative bodies.

Section 551.003 specifically provides that “the legislature is exercising its powers to adopt rules to prohibit secret meetings of the legislature, committees of the legislature, and other bodies associated with the legislature, except as specifically permitted in the constitution.” In *In re The Texas Senate*, 36 S.W.3d 119, 120 (Tex. 2000), the Texas Supreme Court stated that the Act “clearly covers the Committee of the Whole Senate.” Furthermore, a governmental body under the Act includes a committee within the executive or legislative branch of a state government that is directed by one or more elected or appointed members. *Op. Tex. Att’y Gen. No. LO 97-058* (1997). A legislative body can violate the Act when it “deliberates through a series of closed

meetings of members of less than a quorum.” Op. Tex. Att’y Gen. No. DM-95 (1992). *See also Hitt v. Mabry*, 687 S.W.2d 791, 796 (Tex. App.-San Antonio 1985, no writ) (the court upheld an injunction restraining the San Antonio Independent School District board of trustees from arriving at a decision affecting the District by way of private, informal telephone polls or conferences of the board members.)

3. Courts.

The judiciary is excluded from the Act. *See* § 551.001(3)(A). In *State ex. rel. White v. Bradley*, 956 S.W.2d 725, 743-44 (Tex. App.-Fort Worth 1997), *reversed on other grounds*, 990 S.W.2d 245 (Tex. 1999), the Fort Worth Court of Appeals found that a special court for removing a mayor, although consisting of the aldermen of the city, was not conducted by a governing body, and did not require that the removal proceeding strictly comply with the notice requirements of the Act. The court stated that “a careful reading of the Open Meetings Act reveals that courts, trials, and related court proceedings are not among the types of matters it governs.” *Id.* at 743.

4. Nongovernmental bodies receiving public funds or benefits.

Although nongovernmental bodies receiving public funds or spending public funds are subject to the Texas Public Information Act, they are not subject to the Texas Open Meetings Act merely because they receive public funds. For example, the Attorney General held that a private athletic conference with some public members was subject to the Public Information Act but not the Open Meetings Act. Op. Tex. Att’y Gen. No. JM-116 (1983) (construing prior statutory provisions). In Op. Tex. Att’y Gen. No. DM-7 (1991), the Attorney General advised that a nonprofit corporation that provides services to senior citizens, is financed by private donations and state and federal loans and grants, and that is governed by a board of directors that is *not* selected by city or county officials, is *not* a governmental body subject to the Open Meetings Act. In Op. Tex. Att’y Gen. No. LO 98-040 (1998), the Attorney General advised that a nonprofit water supply corporation organized under the terms of Vernon Texas Civil Statute article 1434a is not subject to the Act. *See also* Op. Tex. Att’y Gen. No. JC-0407 (2001) (stating that nonprofit corporations established pursuant to the Texas Non-Profit Corporation Act, that assist local entities pursuant to contract, and that are not delegated governmental authority, are not subject to the Open Meetings Act).

5. Nongovernmental groups whose members include governmental officials.

In *Commissioners’ Court of Hayes County v. District Judge*, 506 S.W.2d 630, 636 (Tex. Civ. App.-San Antonio 1974, *writ ref’d n.r.e.*), conferences and discussion took place between a district judge, who does not come within the provisions of the Act, and the Commissioners’ Court, which does. The Commissioners’ Court and judge advised one another with regard to the probation budget for the judicial district, but the Commissioners’ Court did not take any conclusive action. The appellate court found that such conferences were not within the mandatory requirements of the Act.

6. Multi-state or regional bodies.

Multistate or regional bodies are not specifically mentioned in the Act, although the definition of a “meeting” includes a deliberation between a quorum of a governmental body and “another person.” § 551.001(4). Such a body also may fit the definition of a “special district” covered by the Act. *See Sierra Club v. Austin Trans. Study Policy Advisory Comm.*, 746 S.W.2d 298, 301 (Tex. App.-Austin 1988, writ denied) (a 17-member committee of state, county, regional and municipal public officials was a “special district” subject to the Act because it had decision-making powers).

7. Advisory boards and commissions, quasi-governmental entities.

The Act does not cover advisory sub-units without rulemaking or quasi-judicial power. A city’s library board was not required to meet in

a public place because it was not a rulemaking body and had no quasi-judicial function. Op. Tex. Att’y Gen. No. H-467 (1974). In Op. Tex. Att’y Gen. No. JM-1185 (1990), the Attorney General concluded that a community criminal justice council created by district judges under a Code of Criminal Procedure provision was advisory and not a governmental body subject to the Act. However, if a committee formed from members of a governmental body covered by the statute is considering matters that are pending before the parent body, then the committee must meet in public. Op. Tex. Att’y Gen. No. H-3 (1973). *See also* Op. Tex. Att’y Gen. No. JM-1072 (1989); Op. Tex. Att’y Gen. No. JC-0060 (1999) (the Attorney General opined that the initial work of a committee containing two members of a commissioners court and seven other individuals, which evaluated architectural firm applicants, did not fall under the Act because it appeared to be “an advisory body, without power to supervise or control public business.”); Op. Tex. Att’y Gen. No. H-994 (1977) (opining that the Act does apply if the committee meets to discuss public business or policy; but does not apply to a purely advisory body which has no power to supervise or control public business).

Municipal Zoning Advisory Committees; Nursing Advisory Committees. Pursuant to Tex. Loc. Gov’t Code Ann. § 211.0075, a board or commission established by an ordinance or resolution adopted by the governing body of a municipality to assist the governing body in developing an initial comprehensive zoning plan or initial zoning regulations for the municipality, or a committee of the board or commission that includes one or more members of the board or commission, is subject to the Act. The nursing committee formed by the statewide health coordinating council also is subject to the Act. Tex. Health & Safety Code Ann. § 104.0155(e).

Property Owners’ Associations: The Act specifically is made applicable to certain property owners’ associations. Under section 551.0015, a property owners’ association is subject to the Act if (1) membership in the association is mandatory for a defined class of owners of private real property in or adjacent to a county with a population of over 2.8 million, (2) the association has the power to make mandatory special assessments for capital improvements or mandatory regular assessments, and (3) the amount of the mandatory special or regular assessments is or has ever been based in whole or in part on the value at which the state or a local government body assesses the property. § 551.0015.

8. Other bodies to which governmental or public functions are delegated.

Boards in the executive or legislative department such as the State Text Book Committee and the Senate Subcommittee on Consumer Affairs are required to hold open meetings under the Act. *See* Op. Tex. Att’y Gen. No. M-136 (1967); Op. Tex. Att’y Gen. No. LA-84 (1974). In addition, the Athletic Council at the University of Texas at Austin is considered a governing body because it supervises public business. Op. Tex. Att’y Gen. No. H-438 (1974).

The Act has been applied to a county commissioners court when it is sitting as a board of equalization, Op. Tex. Att’y Gen. No. H-1000 (1977), and has been applied to breakfast meetings of the commissioners court (Op. Tex. Att’y Gen. No. H-785 (1976)). Among the bodies that have been found to be subdivisions or departments of a county or city having rulemaking or quasi-judicial authority are Boards of Firemen’s Relief and Retirement Fund Trustees (Op. Tex. Att’y Gen. No. MW-174 (1980)); hospital authorities (Op. Tex. Att’y Gen. No. H-544 (1975)); higher educational authorities created under Chapter 53 of the Texas Education Code (Op. Tex. Att’y Gen. No. MW-177 (1980)); and a grievance committee organized under what is now codified in portions of the Local Government Code (Op. Tex. Att’y Gen. No. GA-0051 (2003)). In addition, there may be statutes other than the Open Meetings Act that provide for open meetings. *See Enterprise Co. v. City of Beaumont*, 574 S.W.2d 786 (Tex. Civ. App.-Beaumont 1978, no writ).

9. Appointed as well as elected bodies.

The Act makes no distinction between elected and appointed bodies so long as the governmental body has rulemaking or quasi-judicial authority. *See, e.g.*, Op. Tex. Att’y Gen. No. JC-0060 (1999); *Willmann v. City of San Antonio*, 123 S.W.3d 469, 478 (Tex. App.-San Antonio 2003, pet. denied) (“A committee appointed by a governmental body constituting less than a quorum of its members may be subject to [the Act] because it falls either within a definition of the term ‘governmental body’ or as a subcommittee of a governmental body.”). Thus, for example, the Dallas Area Rapid Transit Board is subject to the Act. *See* Op. Tex. Att’y Gen. No. JM-595 (1986).

D. What constitutes a meeting subject to the law.

1. Number that must be present.

a. Must a minimum number be present to constitute a “meeting”?

Every gathering of a quorum of a governmental body, no matter how informal, to deliberate public business must be held in public after proper notice. For example, in *Acker v. Texas Water Comm’n*, 790 S.W.2d 299 (Tex. 1990), the Texas Supreme Court held that the Act’s requirement, that all “meetings” should be open to the public, is violated if two members of a three-member commission discuss a contested public issue while in a restroom. “When a majority of a public decision-making body is considering a pending issue, there can be no ‘informal’ discussion. There is either formal consideration of a matter in compliance with the . . . Act or an illegal meeting.” *Id.* at 300. However, even without a quorum of the governing body, a committee of a governmental body is itself subject to the Act if the committee supervises or controls public business or policy. Op. Tex. Att’y Gen. No. LO 97-058 (1997). The attorney general has also opined that a city council member violates the Act when he telephones individually a quorum of the council members to express his views about public business that has not been formerly considered by the council in an open session. Op. Tex. Att’y Gen. No. LO-95-055 (1995).

Pursuant to § 551.0415, however, a quorum of the governing body of a municipality may receive from municipal staff and a member of the governing body may make a report about items of community interest during a meeting of the governing body without having given notice of the subject of the report as required by this subchapter if no action is taken and, except as provided by Section 551.042, possible action is not discussed regarding the information provided in the report.

b. What effect does absence of a quorum have?

If a quorum is not present, no public business may be transacted. *See* § 551.101; *see also Cox Enter. Inc. v. Board of Trustees of Austin Indep. Sch. Dist.*, 706 S.W.2d 956 (Tex. 1986). *But see Hispanic Educ. Comm. v. Houston Indep. Sch. Dist.*, 886 F. Supp. 606, 610 (S.D. Tex. 1994) (where no quorum was present and there was no attempt to “take action,” the informal discussions were not “meetings of the board,” and there was no violation of the Act).

Although section 551.001(4)’s definition of “meeting” discusses “a deliberation between a quorum of a governmental body,” the Attorney General has advised that subcommittees including even a single member of a governmental body may be subject to the Act if the subcommittee discusses public business or policy over which the parent body has supervision or control. Op. Tex. Att’y Gen. No. JM-1072 (1989). Also, some courts have found that “the Act would apply to meetings of groups of less than a quorum where a quorum or more of the body attempted to avoid the purposes of the Act by deliberately meeting in groups of less than a quorum in closed sessions to discuss and/or deliberate public business, and then ratifying their actions as a quorum in a subsequent public meeting.” *Esperanza Peace and Justice Center v. City of San Antonio*, 316 F. Supp. 2d 433, 476 (W.D. Tex. 2001); *U.S. v. City of Garland, Texas*, 124 F. Supp. 2d 442, 446 & n.2 (N.D. Tex. 2000) (“Simply put, if there is no quorum, there is no meeting,” noting that “[m]embers of a governmental body, however, may not conspire

to meet in numbers less than a quorum for the purpose of secret deliberations in violation of the [Act].”)

2. Nature of business subject to the law.

The statute defines “deliberation” as “a verbal exchange during a meeting between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body or any public business.” § 551.001(2). Where there has been a “reciprocal giving and receiving of spoken words” about a matter of public business or within the governmental body’s jurisdiction, a meeting has occurred. *Gardner v. Herring*, 21 S.W.3d 767 (Tex. App.-Amarillo 2000, no pet.). The key is whether the members directly or indirectly discuss a matter among themselves. In *Peapicker Inc. v. Reagan*, 632 S.W.2d 674 (Tex. App.-Tyler 1982, writ ref’d n.r.e.), the commissioners court met to hear a report from a representative of a state agency. The court implied that if the commissioners had merely listened to the report without discussing or questioning there would be no deliberation and, hence, the Act would not be triggered. However, members of a governmental body cannot use questions addressed to a non-member to indirectly deliberate with another member. In Op. Tex. Att’y Gen. No. JM-1127 (1989), the Attorney General was asked if the Act is violated when a quorum of one commission attends a meeting of a separate body it created that is managed by its own board of directors. The Attorney General warned that “[i]ndirect deliberations would occur when . . . commissioners speak to the . . . board in turn, addressing to it remarks intended for the other commissioners.” Op. Tex. Att’y Gen. No. JM-1127 (1989); *see also* Op. Tex. Att’y Gen. No. JC-307 (2000) (a verbal exchange may include an exchange of written or other non-spoken words).

Nor can members of a governmental body avoid the requirements of the Act by individually signing a letter expressing their opinion on a matter of public policy over which the body has supervision or control. “If a quorum of a governmental body agrees on a joint statement on a matter of such business or policy, the deliberation by which that agreement is reached is subject to the requirements of the act, and those requirements are not necessarily avoided by avoiding the physical gathering of a quorum in one place at one time.” Op. Tex. Att’y Gen. No. DM-95 (1992). “[A] governing body that deliberates through a series of closed meetings of members of less than a quorum risks a finding by a trier of fact that either a violation of [section 551.002] has occurred, or worse, that members have conspired to circumvent the act in violation of section [section 551.143].” Op. Tex. Att’y Gen. No. DM-95 (1992).

a. “Information gathering” and “fact-finding” sessions.

Section 551.001(4) provides that the Act applies to certain gatherings “at which the members receive information from, give information to, ask questions of, or receive questions from a third person, including an employee of the governmental body, about the public business or public policy over which the governmental body has supervision or control.” *See, e.g.* Op. Tex. Att’y Gen. No. GA-0098 (2003) (“An informational meeting of the Sulphur River Basin Authority (the ‘Authority’) that is open only to the Authority’s invitees, including members of the press and community leaders, contravenes the Open Meetings Act if a quorum of members of the Authority is present or otherwise participates in the deliberations.”); *Bexar Medina Atacosa Water Dist. v. Bexar Medina Atacosa Landowners’ Ass’n*, 25 S.W.3d 459, 461-62 (Tex. App. - San Antonio 1999, pet. denied) (finding that an informational gathering that involved discussion and consideration was subject to the Open Meetings Act).

b. Deliberations toward decisions.

Deliberations toward decisions may be subject to the Act. *See Willmann v. City of San Antonio*, 123 S.W.3d 469, 472 (Tex. App.-San Antonio 2003, pet. denied) (“[The Act] requires ‘openness at every stage of a governmental body’s deliberations’ because the citizens of Texas

are entitled to know not only what government decided but also to observe how and why every decision is enacted.”) (*citing Acker v. Tex. Water Comm’n*, 790 S.W.2d 299, 300 (Tex. 1990)). *City of Port Isabel v. Pinnell*, 207 S.W.3d 394, 406 (Tex.App.—Corpus Christi 2006, no pet.) (“Every regular, special, or called meeting or session of every governmental body shall be open to the public.”)(quoting § 551.002).

3. Electronic meetings.

a. Conference calls and video/Internet conferencing.

The Act authorizes meetings by telephone conference only under certain circumstances. Such meetings may only be held if an emergency or public necessity exists and convening at one location is “difficult or impossible,” or the meeting is held by an advisory board. § 551.125(b). In addition, such meetings must comply with the Act’s notice requirements: the location in the notice must specify the usual place where the governmental body meets, the call must be audible to the public at such location and shall be tape-recorded, two-way communication must be provided, and the identification of each speaker must be clearly stated prior to speaking. § 551.125(c)–(f).

The Act also limits the circumstances under which meetings may be held by videoconference calls. § 551.127. A meeting of a state governmental body or a governmental body that extends into three or more counties may be held by videoconference call only if a majority of the quorum of the governmental body is physically present at one location of the meeting. § 551.127(c). Meetings of other governmental bodies may only be conducted by videoconference call if a quorum of the governmental body is physically present at one location of the meeting. § 551.127(b). Meetings by videoconference call must comply with the notice requirements applicable to other meetings, and also must specify the location where each participating member will be located, where the quorum is physically situated, and specify the intent to have a quorum present at that location. § 551.127(d), (e). The open portions of the videoconference must be visible and audible to the public at each location where participating members are located, and an audio recording must be made available to the public. § 551.127(f), (g). If technical difficulties render portions of a meeting by videoconference call inaccessible to the public at any remote location, the governmental body must recess or adjourn the meeting. Op. Tex. Att’y Gen. No. DM-480 (1998). The Attorney General has opined that the meeting of members must occur within the State of Texas. Op. Tex. Att’y Gen. No. JC-0487 (2002) (“[T]he Open Meetings Act prohibits the Board of Regents of the University of Texas System from holding a meeting of a quorum of its members in Mexico, regardless of whether the Board broadcasts the meeting by videoconferencing technology to all geographic areas in Texas where component institutions of the University of Texas System are located.”)

The Board of Pardons and Paroles may hold a hearing on clemency matters by telephone conference call. § 551.124. The governing body of an institution of higher education may meet by telephone conference call, so long as each part of a meeting that is required to be open to the public can be heard by the public at the body’s normal meeting place. See § 551.121. Such telephone conference calls must be limited to special called meetings requiring “immediate action” when it is “difficult or impossible” to convene a quorum of the board, and they are subject to the notice requirements applicable to other meetings. The Texas Board of Criminal Justice may hold emergency meetings by telephone conference call. § 551.123. The Texas Higher Education Coordinating Board may hold an open meeting by telephone conference call or video conference call in order to consider a higher education impact statement if preparation thereof is to be provided under the rules of either the Texas House of Representatives or the Texas Senate. § 551.126.

A governmental body may also broadcast an open meeting over the Internet, and must provide in the notice of the meeting the Internet site that broadcasts the meeting. § 551.128.

b. E-mail.

The Act does not specifically address the treatment of e-mail. However, the Attorney General has stated that electronic mail exchanges can be included in the Act’s definition of deliberation. Op. Tex. Att’y Gen. JC-0307 (refusing to follow Texas case law which limited a “meeting” under the Act as an exchange of spoken words). See also *Asgeirsson v. Abbott*, — F.Supp.2d —, 2011 WL 1157624 (W.D. Tex. 2011) (council member accused of violating the Act by exchanging emails among a quorum of council members to schedule a council meeting).

c. Text messages.

Not addressed.

d. Instant messaging.

Not addressed.

e. Social media and online discussion boards.

Not addressed.

E. Categories of meetings subject to the law.

1. Regular meetings.

a. Definition.

Every gathering, no matter how informal, of a quorum of a governmental body to deliberate public business must be held in public after proper notice. *Acker v. Texas Water Comm’n*, 790 S.W.2d 299, 300 (Tex. 1990). Even breakfast sessions fall within this definition. Op. Tex. Att’y Gen. No. H-785 (1976).

b. Notice.

(1). Time limit for giving notice.

“The notice of a meeting of a governmental body must be posted in a place readily accessible to the general public at all times for at least 72 hours before the scheduled time of the meeting, except as provided by sections 551.044–551.046.” § 551.043(a). This may be satisfied in cases where the Act specifically requires or allows a governmental body to post notice of meetings on the Internet if the governmental body: (1) makes a good-faith attempt to continuously post the notice on the Internet during the prescribed period, and (2) complies with any duty to physically post notice at a particular location, where such physically posted notice is readily accessible to the general public during normal business hours. § 551.043(b). However, § 551.044(a) increases the time for notice from 72 hours to 7 days before meetings of a state board, commission, department, or officer having statewide jurisdiction, notice of which the secretary of state must post on the Internet. This section does not apply to the Texas Department of Insurance (as regards certain proceedings and activities) or the governing board of an institution of higher education. § 551.044(b). A governmental body that recesses an open meeting to the following regular business day is not required to post notice “if the action is taken in good faith and not to circumvent the Act.” § 551.0411(a). Where a catastrophe occurs, as defined in section 551.0411(c), and the notice of an open meeting was otherwise properly posted under section 551.041, then such meeting may convene in a convenient location within 72 hours pursuant to section 551.045 if the action is taken in good faith and not to circumvent the Act. § 551.0411(b). In *Rivera v. City of Laredo*, 948 S.W.2d 787 (Tex. App.—San Antonio 1997, writ denied), the court found that where a city recesses from a noticed meeting to reconvene more than one day later, the city must post a new notice, regardless of whether the city believed the second meeting is merely a continuation of the previous one. See also Op. Tex. Att’y Gen. No. DM-482 (1998).

(2). To whom notice is given.

The notice must be given to the general public. In some instances the news media must be given special notice by telephone or telegraph if they have requested it and have agreed to reimburse the district for

the cost of providing the special notice. *See* § 551.052 (school districts); § 551.047 (emergency meetings and where agenda has been supplemented).

(3). Where posted.

A state governmental body shall provide notice of each meeting to the secretary of state, who shall then “post the notice on the Internet.” § 551.048. Furthermore, the “secretary of state shall provide during regular office hours a computer terminal at a place convenient to the public in the office of the secretary of state that members of the public may use to view the notice.” § 551.048. “A county governmental body shall post notice of each meeting on a bulletin board at a place convenient to the public in the county courthouse.” § 551.049. “A municipal governmental body shall post notice of each meeting on a bulletin board at a place convenient to the public in the city hall.” § 551.050. “A school district shall post notice of each meeting on a bulletin board at a place convenient to the public in the central administrative office of the district” and shall give notice by telephone or telegraph to any news media requesting such notice and which has agreed to reimburse the district for the cost of providing the special notice. § 551.051-.052.

The governing board of a single institution of higher education, in addition to providing any other notice required under the Act, must post notice of each meeting at the county courthouse and in a student newspaper (if an issue of the newspaper is published between the time of posting and the time of the meeting), and may post notice at another place convenient to the public. § 551.055.

A governmental body of a water district or other district or political subdivision covering all or part of four or more counties must have a notice posted at a place convenient to the public in its administrative office or political subdivision, must furnish the notice to the Secretary of State (who must post the notice on the Internet and provide during regular office hours a computer terminal at a place convenient to the public in the office of the secretary of state that members of the public may use to view the notice), and must also furnish the notice to the county clerk of the county in which the administrative office of the district or political subdivision is located (who must post the notice on a bulletin board at a place convenient to the public in the county courthouse). § 551.053.

The governing body of a water district, other district, or other political subdivision [not covered by the preceding section 551.053] must post the notice at a place convenient to the public in its administrative office, and must also provide the notice to the county clerk or clerks of the county or counties in which the district or political subdivision is located. The county clerk(s) must post the notice on a bulletin board located at a place convenient to the public in the county courthouse. § 551.054.

The following governmental bodies and economic development corporations must post notice of a meeting on the internet: a) a municipality, b) a county, c) a school district, d) the governing body of a junior college, and e) a development corporation. This posting requirement is in addition to the other posting requirements. This section applies only to those governmental bodies or economic development corporations which maintain websites. A governmental body or economic development corporation which makes a good faith attempt to comply with this section is not affected by a technical problem beyond its control. § 551.056.

In *Smith County v. Thornton*, 726 S.W.2d 2, 3 (Tex. 1986), the Texas Supreme Court held that section 551.053 “requires literal compliance.” In that case, notice of a Monday Commissioners’ Court meeting was posted Friday in the county courthouse, which was locked over the weekend. The Texas Supreme Court held that this notice did not comply with the Act because it “was not posted in a place readily accessible to the general public for 72 hours.” *Id.* However, the Texas Supreme Court has ruled that the Act’s notice requirements can be satisfied by dual posting. In *City of San Antonio v. Fourth Court of Ap-*

peals, 820 S.W.2d 762 (Tex. 1991), the city posted notice of a council meeting in two locations—on a bulletin board inside City Hall (which is locked each night) and on a kiosk in front of City Hall’s main entrance. The inside notice met the location requirement of section 551.050. The kiosk notice met the requirement of section 551.043, that notice “be posted in a place readily accessible to the general public at all times for at least 72 hours.” The Texas Supreme Court rejected an argument that the notice requirements of section 551.050 and section 551.043 be read together to require that one notice be available inside City Hall for at least 72 hours. “[T]he legislative scheme does not require a single notice that must satisfy both subsections but permits dual notice.” *Id.* at 768. One dissenting justice criticized this position at length. *Id.* at 779-80 (J. Mauzy, dissenting).

(4). Public agenda items required.

The written notice must indicate the date, hour, place, and subject of each meeting held by the governmental body. § 551.041. The notice must specifically disclose the subjects to be considered at the upcoming meeting. *Cox Enter. Inc. v. Board of Trustees of Austin Indep. Sch. Dist.*, 706 S.W.2d 956, 959 (Tex. 1986). In addition, as public interest in a matter increases, the Act requires correspondingly more detailed descriptions of the subject to be discussed. *Id.* (Texas Supreme Court held that the label of “personnel” inadequately described the school board’s intention to hire a new school superintendent, as that issue was one of special interest; “litigation” is insufficient to describe consideration of a major pending desegregation lawsuit.). While a governmental body may permit members of the public to offer comments regarding matters not specified in the posted meeting notice, prior knowledge of subject matters on which the public will comment may give rise to an obligation on the part of the governmental body to tailor its notice to that knowledge. *Op. Tex. Att’y Gen. No. JC-0169* (2000).

Several other courts have also addressed the sufficiency of written notices: *Sokolow v. League City*, 37 F. Supp. 2d 940, 946-47 (S.D. Tex. 1999) (notice of meeting containing “discuss and possibly take action on the duties, responsibilities of the City Attorney” was sufficient to give notice of a meeting in which city council voted to terminate city attorney); *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762 (Tex. 1991) (notice of a meeting to consider a condemnation ordinance need not give a metes and bounds description of land to be condemned; a list of county blocks that might be affected is sufficient); *Odessa Tex. Sheriff’s Posse, Inc. v. Ector County*, 215 S.W.3d 458, 472 (Tex.App.-Eastland 2006, pet denied) (The test for the adequacy of a meeting notice under the Act is whether the notice is “sufficiently specific to alert the general public to the topic to be considered.”); *Point Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176, 179-82 (Tex. App.-Corpus Christi 1990, writ denied) (absent a showing of some special interest, the words “employment of personnel” adequately notified the public that the school board would consider, among other things, filling the position of band director; however, such description was too general to adequately inform the public of the decision to name three school principals because there was “special public interest” in these positions); *Mayes v. City of De Leon*, 922 S.W.2d 200, 204 (Tex. App.-Eastland 1996, writ denied) (mere recitation of “personnel” was insufficient notice because the public has a special interest relating to the employment of its police chief); *Finlan v. City of Dallas*, 888 F. Supp. 779, 790 (N.D. Tex. 1995) (where the upcoming closed meeting discussed a proposed \$141 million arena and the potential for two major sports teams moving to the suburbs, the notices, which “merely parroted” the statute with phrases like “Deliberation Regarding Real Property under Sec. 551.072 of the Texas Government Code” and “Attorney Consultation under Sec. 551.071 of the Texas Government Code,” were “woefully inadequate” and considered by the court “to be no notice at all”). The specificity of notice is tied to the level of public interest involved, not to the private interests of the individuals most likely to be affected by the proposed government action. *Stockdale v. Meno*, 867 S.W.2d 123,125-26 (Tex. App.-Austin 1993, writ denied); *Rettberg v. Texas Dept. of Health*, 873 S.W.2d 408, 411-12 (Tex. App.-Austin 1994, no writ).

(5). Other information required in notice.

No additional information is required in the notice.

(6). Penalties and remedies for failure to give adequate notice.

Actions taken in violation of the Act, including failure to give adequate notice, are voidable. § 551.141. In *Lower Colorado River Authority v. City of San Marcos*, 523 S.W.2d 641 (Tex. 1975), the Texas Supreme Court approved of a lower court invalidating the decisions of the Lower Colorado River Authority to change utility rates because it violated the notice provisions of the state's open meeting law. See also *Piazza v. City of Granger*, 909 S.W.2d 529, 534-35 (Tex. App.-Austin 1995, no writ) (holding that the city violated the 72 hours' notice requirement for meeting at which a policeman was terminated thereby entitling him to injunctive relief in the form of reinstatement, back pay, and attorneys' fees); *Meeker v. Tarrant County College Dist.*, 317 S.W.3d 754, 759 (Tex.App.-Fort Worth 2010, pet. denied) (the Act "does not state that governmental acts in violation of [the Act] are void or void ab initio"). In addition, an interested person, including a member of the news media, may seek mandamus relief or an injunction to stop, prevent, or reverse violations or threatened violations of the Act. § 551.142(a). *City of Elsa v. Gonzalez*, 325 S.W.3d 622, 627 (Tex. 2010).

Also, criminal penalties exist for a member of a governing body who, in connection with a closed meeting, knowingly violates the Act. § 551.144(a). Participation in such a meeting, among other things, is a misdemeanor punishable by a \$100 to \$500 fine, one to six months imprisonment in the county jail, or both. § 551.144(b). The same fine and punishment range exist for governmental body members who knowingly conspire to circumvent the Act by meeting in numbers less than a quorum to deliberate in secret. § 551.143.

c. Minutes.**(1). Information required.**

The governmental body must "prepare and keep minutes or make a tape recording of each open meeting of the body." § 551.021(a). The minutes must state the subject matter of each deliberation and must indicate each vote, order, decision, or other action taken by the governmental body. § 551.021(b).

(2). Are minutes public record?

The minutes and tape recordings of an open meeting are public records and must be made available for public inspection and copying on request to the chief administrative officer of the governmental body or the officer's designee. § 551.022. The minutes of a public meeting of a governmental body are public records when entered, are public in whatever form they exist, and public access may not be delayed until formal approval is obtained. Tex. Atty. Gen. Op. ORD.-06192 (2011) (finding draft minutes must be made available even if they had not been approved by the board).

2. Special or emergency meetings.**a. Definition.**

An emergency meeting can be called in the event of (1) an imminent threat to public health and safety, or (2) a reasonably unforeseeable situation. § 551.045(a)-(b). In the event of such a meeting, notice can be given up to two hours prior to the meeting. § 551.045(a); *Rogers v. State Bd. of Optometry*, 619 S.W.2d 603, 604 (Tex. App.-Eastland 1981, no writ).

Special or emergency meetings cannot be held in the absence of a bona fide emergency, and only if the meetings are properly noticed. *Harris County Emergency Serv. Dist. # 1 v. Harris County Emergency Corps*, 999 S.W.2d 163, 167 (Tex. App.-Houston [14thDist.] 1999, no pet.).

b. Notice requirements.**(1). Time limit for giving notice.**

"The notice of a meeting of a governmental body must be posted in a place readily accessible to the general public at all times for at least

72 hours before the scheduled time of the meeting, except as provided by sections 551.044-551.046." § 551.043(a).

(2). To whom notice is given.

Notice is given to the general public because the Open Meetings Act was enacted to ensure that the public has the opportunity to be informed concerning the transactions of public business. *Matagorda City Hosp. Dist. v. City of Palacios*, 47 S.W.3d 96 (Tex. App.-Corpus Christi 2001, no writ).

Notice is also given to news media that have (1) previously filed a request containing all pertinent information for the special notice, and (2) agreed to reimburse the government body for the cost of providing the special notice. § 551.047. Notice shall be given notice either by telephone or telegraph. *Id.*

(3). Where posted.

A state governmental body shall provide notice of each meeting to the Secretary of State for posting on the Internet. § 551.048. Furthermore, the "Secretary of State shall provide during regular office hours a computer terminal at a place convenient to the public in the office of the secretary of state that members of the public may use to view the notice." § 551.048. A county governmental body is required to post notice of meetings on conveniently placed bulletin boards in the county courthouse. § 551.049. Notices of a municipality's meetings are posted on a bulletin board in the city hall. § 551.050. A school district shall post notice of its meetings "central administrative office of the district." § 551.051. News media requesting notice and agreeing to reimburse for the associated costs shall receive it via telephone or telegraph. § 551.051-.052.

The governing board of a single institution of higher education, in addition to providing any other notice required under the Act, must post notice of each meeting at the county courthouse and in a student newspaper (if an issue of the newspaper is published between the time of posting and the time of the meeting), and may post notice at another place convenient to the public. § 551.055.

A governmental body of a water district or other district or political subdivision covering all or part of four or more counties must (1) have a notice posted at a place convenient to the public in its administrative office or political subdivision; (2) furnish the notice to the Secretary of State (who must post the notice on the Internet and provide during regular office hours a computer terminal at a place convenient to the public in the office of the secretary of state that members of the public may use to view the notice); and (3) also furnish the notice to the county clerk of the county in which the administrative office of the district or political subdivision is located (who must post the notice on a bulletin board at a place convenient to the public in the county courthouse). § 551.053.

The governing body of a water district, other district, or other political subdivision [not covered by the preceding section 551.053] must post the notice at a place convenient to the public in its administrative office, and must also provide the notice to the county clerk or clerks of the county or counties in which the district or political subdivision is located. § 551.054. The county clerk(s) must post the notice on a bulletin located at a place convenient to the public in the county courthouse. *Id.*

(4). Public agenda items required.

The subject of each meeting, the date, the hour, and the place must be included in each notice. § 551.041. The subject matter to be discussed must be described in highly specific detail. § 551.045(c); *Point Isabel Ind. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176, 180 (Tex. App.-Corpus Christi 1990, writ denied).

The notice must also state the reason for the emergency, clearly identifying the emergency or urgent public necessity. See Op. Tex. Att'y Gen. No. JM-1037 (1989); § 551.045(c); *Point Isabel Ind. Sch. Dist.*, 797 S.W.2d at 180; *Piazza v. City of Granger*, 909 S.W.2d 529,

529, 533-34 (Tex. App.-Austin 1995, no writ) (“Lack of confidence” in the city’s only police officer did not constitute grounds for an “emergency” meeting under the Act, as the notice failed to describe an unforeseeable situation requiring immediate action.). Likewise, if a supplemental notice is posted at least two hours before the meeting listing additional discussion subjects, the supplemental notice must express the “emergency” or “urgent public necessity” requiring consideration of such additional subjects. § 551.045(c).

(5). Other information required in notice.

No additional information is required in the notice.

(6). Penalties and remedies for failure to give adequate notice.

Actions taken by governmental body at a meeting convened in violation of the Act are voidable. *Piazza*, 909 S.W.2d at 534 (Tex. App.-Austin 1995, no writ). The statute authorizes holding meetings with only two hours notice only in emergencies as the statute defines. § 551.045(a)-(b); *Harris County Emergency Serv. Dist. # 1 v. Harris County Emergency Corps*, 999 S.W.2d 163, 167 (Tex. App.-Houston [14th Dist.] 1999, no pet.). Action in violation of emergency notice provisions cannot be validated simply by ratifying the minutes of the emergency meeting. Op. Tex. Att’y Gen. No. JM-985 (1988).

c. Minutes.

Minutes or tape recordings must be kept if the meeting is open. § 551.021.

(1). Information required.

Minutes or tape recordings of each open meeting of the body must state the subject of each deliberation and indicate each vote, order, decision or other action taken. § 551.021(b). A closed meeting’s 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 meeting indicating the date and time. § 551.103. A tape recording of a closed meeting must include announcements by the presiding officer at the beginning and the end of the meeting indicating the date and time. *Id.*

(2). Are minutes a public record?

Minutes or tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the government body’s chief administrative officer or the officer’s designee. § 551.022. The exception is for closed meetings for which a certified agenda or tape recording exists. § 551.103. The certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under certain circumstances. § 551.104(c).

3. Closed meetings or executive sessions.

Under certain circumstances, a closed meeting is permitted under the Act. However, before a governmental body can meet in a closed session, a quorum of the body first must convene in an open meeting for which proper notice has been given. § 551.101. The presiding officer must then publicly announce that a closed session will be held and identify what sections of the Act authorize the holding of such a session. § 551.101; *see also Lone Star Greyhound Park Inc. v. Texas Racing Comm’n*, 863 S.W.2d 742, 747 (Tex. App.-Austin 1993, pet. denied) (holding that failure to identify the section number of the exemption not fatal, where the presiding officer announced a briefing by “our legal staff” and reference to the content of the exemption provided sufficient identification of the applicable section of the Act). Notice of the attorney consultation exemption does not require disclosure of the “particulars of litigation” since this would defeat the very purpose of the exemption. *Id.*; *see also Cox Enter. Inc. v. Board of Trustees of Austin Indep. Sch. Dist.*, 706 S.W.2d 956, 959 (Tex. 1986) (A governmental body “is not expected to disclose litigation strategy.”). If one of the

exceptions to the Act does not apply and the governmental body holds a closed meeting anyway, then the closed meeting is violative of the statute regardless of whether that body complied with the procedural steps. *Finlan v. City of Dallas*, 888 F. Supp. 779, 783 (N.D. Tex. 1995). In addition, a prior action taken in violation of the Act may not be retroactively ratified. *Mayer v. City of De Leon*, 922 S.W.2d 200, 204 (Tex. App.-Eastland 1996, pet. denied) (although the governmental body may vote to take the same action as it originally intended to do at the prior meeting, that action may not be given retroactive effect); *Fielding v. Anderson*, 911 S.W.2d 858, 864-65 (Tex. App.-Eastland 1995, writ denied) (“[T]he law is clear that a governmental body may not ratify its prior illegal acts.”).

A closed session of a public meeting may be continued only until the following day. Op. Tex. Att’y Gen. No. JC-0285 (2000). The continuation must be announced in open session on both the day of the original meeting and the new date of the meeting. Op. Tex. Att’y Gen. No. JC-0285 (2000) (*citing* Op. Tex. Att’y Gen. No. DM-482 (1998)). The continuation of a closed session to any day other than the following day would require a re-posting of the session’s notice. *Id.* A final action, decision, or vote on a matter deliberated in a closed meeting may only be made in an open meeting that is held in compliance with the notice provisions. § 551.102; *Thompson v. City of Austin*, 979 S.W.2d 676, 685 (Tex. App.-Austin 1998, no pet.).

a. Definition.

Closed sessions can be held if an authorizing section of the Act is specified. § 551.101.

b. Notice requirements.

The presiding officer must publicly announce at an open meeting that a closed session will be held.

(1). Time limit for giving notice.

Notice of an open meeting at which the announcement of a closed meeting will be made must be posted in a public place 72 hours before the scheduled time of the open meeting. § 551.043; § 551.101.

The Act does not require a waiting period between the open meeting and the commencement of the closed meeting.

(2). To whom notice is given.

The notice must be given to the general public. § 551.041. In some instances the news media must be given special notice by telephone or telegraph if they have both requested it and agreed to reimburse the governing body for the cost of providing the special notice. § 551.052 (stating the special notice required of school districts); § 551.047 (stating the rule for noticing emergency meetings or when a meeting agenda has been supplemented).

(3). Where posted.

A state governmental body shall provide notice of each meeting to the secretary of state, who shall then “post the notice on the Internet.” § 551.048. Furthermore, the “secretary of state shall provide during regular office hours a computer terminal at a place convenient to the public in the office of the secretary of state that members of the public may use to view the notice.” § 551.048. “A county governmental body shall post notice of each meeting on a bulletin board at a place convenient to the public in the county courthouse.” § 551.049. “A municipal governmental body shall post notice of each meeting on a bulletin board at a place convenient to the public in the city hall.” § 551.050. “A school district shall post notice of each meeting on a bulletin board at a place convenient to the public in the central administrative office of the district” and shall give notice by telephone or telegraph to any news media requesting such notice after agreeing to reimburse the district for the cost of providing the special notice. § 551.051-.052.

The governing board of a single institution of higher education, in addition to providing any other notice required under the Act, must post notice of each meeting at the county courthouse and in a student

newspaper. § 551.055. The school can also post notice at another place convenient to the public. *Id.*

A governmental body of a water district or other district or political subdivision covering all or part of four or more counties must (1) post notice at a place convenient in its administrative office or political subdivision; (2) furnish the notice to the Secretary of State (who must post the notice on the Internet and provide during regular office hours a computer terminal at a place convenient to the public in the office of the secretary of state that members of the public may use to view the notice); and (3) furnish the notice to the county clerk of the county in which the administrative office of the district or political subdivision is located. § 551.053. The clerk must then post notice on a bulletin board in a convenient place in the county courthouse. *Id.*

The governing body of a water district, other district, or other political subdivision [not covered by the preceding section 551.053] must post the notice at a place convenient to the public in its administrative office and provide the notice to the county clerk or clerks of the county or counties in which the district or political subdivision is located. § 551.054. The county clerk(s) must post the notice on a bulletin located at a place convenient to the public in the county courthouse. *Id.*

The following governmental bodies and economic development corporations must post notice of a meeting on the internet: (a) a municipality, (b) a county, (c) a school district, (d) the governing body of a junior college, and (e) a development corporation. This posting requirement is in addition to the other posting requirements. This section applies only to those governmental bodies or economic development corporations which maintain websites. A governmental body or economic development corporation which makes a good faith attempt to comply with this section is not affected by a technical problem beyond its control. § 551.056.

(4). Public agenda items required.

The written notice must indicate the date, hour, place, and subject of each meeting held by the governmental body. § 551.041. The notice must specifically disclose the subjects to be considered at the upcoming meeting. *Cox Enter. Inc. v. Board of Trustees of Austin Indep. Sch. Dist.*, 706 S.W.2d 956, 959 (Tex. 1986). In addition, as public interest in a matter increases, the Act requires correspondingly more detailed descriptions of the subject to be discussed. *Id.* Therefore, notice should specifically and fully disclose the subjects to be considered. *Finlan v. City of Dallas*, 888 F. Supp. 779, 783 (N.D. Tex. 1995). As public interest in a particular subject of a closed meeting increases, the notice must become more specific than for open meetings. *Id.*

(5). Other information required in notice.

No additional information is required in the notice.

(6). Penalties and remedies for failure to give adequate notice.

Criminal penalties apply for a member of a governing body who, in connection with a closed meeting, knowingly violates the sections of the Act concerning closed meetings. § 551.144. Participation in such a meeting, among other things, is a misdemeanor punishable by a \$100 to \$500 fine, one to six months imprisonment in the county jail, or both. *Id.* The same fine and punishment range exist for governmental body members who knowingly conspire to circumvent the Act by meeting in numbers less than a quorum to deliberate in secret. § 551.143.

c. Minutes.

(1). Information required.

Except for private consultations permitted under § 551.071, the governmental body must keep a certified agenda or make a tape recording of the proceedings of each closed meeting. § 551.103(a). "This provides a method of verifying in court proceedings that closed meetings comply with" the Act. *Finlan v. City of Dallas*, 888 F. Supp.

779, 783 (N.D. Tex. 1995) (*citing* Op. Tex. Att'y Gen. No. JM-840 (1988)). The presiding officer must certify that the agenda is a true and correct record of the proceedings. § 551.103(b). The agenda must state the subject matter of each deliberation and include a record of any further action taken as well as the date and time of the beginning and end of the meeting. § 551.103(c). A tape recording must include the presiding officer announcing the date and the times of the beginning and end of the meeting. § 551.103(d).

A member of a governmental body may not copy for his own use a tape recording of a closed meeting in which he participated; nor may the governmental body permit him to do so. Op. Tex. Att'y Gen. No. LO 98-033 (1998). A member of the governmental body who did not attend the closed meeting may review its tape recording. Op. Tex. Att'y Gen. No. JC-0120 (1999). The governing body may also adopt procedures for the review. *Id.* The governing body may not, however, provide the member with a copy of the tape recording. *Id.* The governmental body may not permit a former member to review the tape recording of a closed meeting once the member has left office. *Id.*

(2). Are minutes a public record?

A certified agenda or tape recording must be preserved for at least two years after the meeting or (if an action is brought within that period) for as long as litigation involving the meeting is pending. § 551.104(a). These tapes are confidential unless a court rules otherwise in an action under the Act. *Finlan v. City of Dallas*, 888 F. Supp. 779, 783 (N.D. Tex. 1995); *see also* § 551.104(c) (mandating that the certified agenda or tape of a closed or executive session shall be made available for public inspection and copying only upon court order in an action brought under the Act). A governmental body member may be found guilty of a Class C misdemeanor if he participates in a closed meeting knowing that a certified agenda is not being kept or a tape recording is not being made. § 551.145.

Penalties exist for anyone who, without lawful authority, knowingly makes public the certified agenda or tape recording of a closed meeting. § 551.146. A violator is liable to a person injured or damaged by the disclosure for actual damages, court costs, attorneys' fees, and possibly even punitive damages. *Id.* The offense is also a Class B misdemeanor. *Id.*

Section 551.146(c) outlines good faith defenses to either a civil or criminal action brought under section 551.146. Nothing in section 551.146 prohibits governmental body members from making public statements about the subject matter of executive sessions. Op. Tex. Att'y Gen. No. JM-1071 (1989) (construing a similar predecessor provision).

d. Requirement to meet in public before closing meeting.

Before a governmental body can meet in a closed session, a quorum of the body first must convene in an open meeting for which proper notice has been given. During such open meeting, the presiding officer must publicly announce that a closed session will be held and identify what sections of the Act authorize the holding of such a closed session. § 551.101.

e. Requirement to state statutory authority for closing meetings before closure.

Failure to identify the section number of the exemption is not fatal. *See Lone Star Greyhound Park Inc. v. Texas Racing Comm'n*, 863 S.W.2d 742, 747 (Tex. App.-Austin, 1993, writ denied) (where the presiding officer announced a briefing by "our legal staff," reference to the content of the exemption provided sufficient identification of the applicable section of the Act).

f. Tape recording requirements.

The governmental body is required to either keep minutes or make a tape recording of each meeting of the open body. § 551.021(a). The minutes must include the subject of each deliberation and indicate

each action taken. § 551.021(b). Open meeting minutes and tape recordings are public records and shall be made available to the public on proper request. § 551.022.

F. Recording/broadcast of meetings.

A person in attendance may record all or any part of an open meeting by means of a tape recorder, video camera, or other means of aural or visual reproduction. § 551.023(a). However, the governmental body “may adopt reasonable rules to maintain order at a meeting” so long as the rules may not “prevent or unreasonably impair a person from exercising a right granted under Subsection (a).” § 551.023(b).

1. Sound recordings allowed.

A person in attendance may record all or any part of an open meeting by means of a tape recorder, video camera, or other means of aural or visual reproduction. § 551.023(a). The use of tape recorders are permitted at public meetings but not at executive sessions of same public bodies. *Zamora v. Edgewood Independent School Dist.*, 592 S.W.2d 649 (Tex. Civ. App.—Beaumont 1979, writ ref’d n.r.e.) (member of board of trustees for school district was not entitled to tape record proceedings of board in executive session against wishes of majority of the board)

2. Photographic recordings allowed.

A person in attendance may record all or any part of an open meeting by means of a tape recorder, video camera, or other means of aural or visual reproduction. § 551.023(a).

G. Are there sanctions for noncompliance?

For knowingly conspiring to circumvent the open meetings law by meeting in groups of less than a quorum, for improperly closing a meeting or participating in an improperly closed meeting, a member of a governmental body is guilty of a misdemeanor, punishable with a fine between \$100 and \$500 and/or confinement in county jail for one to six months. Attorneys’ fees can be recovered against either party. Action taken at an improperly closed meeting is voidable. Participation in a closed meeting knowing a certified agenda of the meeting is not being kept or that the meeting is not being recorded is a misdemeanor. One who discloses a certified agenda or tape recording of a properly closed meeting is guilty of a misdemeanor and is liable for actual damages, exemplary damages and attorneys’ fees. Tex. Gov’t Code Ann. § 551.141-146 (2006).

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open meetings statute.

1. Character of exemptions.

If a governmental body is subject to the Act, there is a presumption that all meetings will be open unless some exception applies. The exceptions are found in various provisions of the Act. To be sure, these exceptions are not “magic talismans that can be dragged out every time a body subject to the [Act] wants to have a secret meeting.” *Finlan v. City of Dallas*, 888 F. Supp. 779, 790 (N.D. Tex. 1995). Further, these exceptions are narrowly drawn. *Save Our Springs Alliance v. Austin Indep. Sch. Dist.*, 973 S.W.2d 378, 381 (Tex. App.—Austin 1998, no writ).

a. General or specific.

A handful of exceptions apply generally to all governmental bodies. The most common are the exception for consulting with an attorney (§ 551.071), the exception concerning certain matters pertaining to real property (§ 551.072), and the personnel matters exception (§ 551.074). Less common exceptions allow governmental bodies to deliberate in private regarding prospective gifts (§ 551.073), Texas growth fund discussions to obtain information on investments (§ 551.075), security devices (§ 551.076), licensing test items (§ 551.088), and certain economic development negotiations (§ 551.087). Several other exceptions apply only to certain specified governmental bodies. Also, section 551.084 of the Act permits a governmental body that is

investigating a matter to exclude a witness from a hearing during examination of another witness in the investigation. § 551.084.

b. Mandatory or discretionary closure.

Although these exceptions are discretionary, they are routinely invoked by governmental bodies.

2. Description of each exemption.

The exception for consulting with an attorney permits a governmental body and its attorney to consult in private only when the body seeks the attorney’s advice with respect to pending or contemplated litigation, settlement offers, or matters where the duty of the attorney to the governmental body under the Texas Rules of Disciplinary Conduct clearly conflicts with the Act. § 551.071. Section 551.071 incorporates the attorney-client privilege. *Olympic Waste Servs. v. City of Grand Saline*, 204 S.W.3d 496, 502 (Tex.App.—Tyler 2006, no pet.); see also Op. Tex. Att’y Gen. No. JC–0233 (2000). A consultation under this provision is still a meeting, and subject to the notice requirements of the Act. Op. Tex. Att’y Gen. No. JC-0057 (1999). While the Act permits consultation by a governmental body with its attorney in a closed meeting to receive advice on the legal issues raised by a proposed contract, the Act does not authorize discussion of “the merits of a proposed contract, financial considerations, or other non-legal matters related to the contract merely because its attorney is present.” Op. Tex. Att’y Gen. No. JC-0233 (2000).

The real property exception permits closed meetings to discuss “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.” § 551.072; *Save Our Springs Alliance v. Austin Indep. Sch. Dist.*, 973 S.W.2d 378, 382 (Tex. App.—Austin 1998, no writ).

The personnel matters exception permits a governmental body to hold a closed meeting “to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee” or “to hear a complaint or charge against an officer or employee” unless the officer or employee requests a public hearing. § 551.074. A 1997 amendment to the Act provides a similar exception for meetings of the commissioners court of a county “to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a member of an advisory body” or “to hear a complaint or charge against a member of an advisory body” unless the individual who is the subject of the deliberation or hearing requests a public hearing. § 551.0745.

The prospective gift exception permits closed meetings “to deliberate 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.” § 551.073.

The Texas growth fund exception permits closed meetings to confer with one or more employees of the Texas growth fund or with a third party in an open meeting if the only purpose of the conference is to receive information or to question employees or third parties relating to investment in certain business entities the disclosure of which would give advantage to a competitor. § 551.075. Only meetings relating to either investments in private business entities or investments in publicly traded business entities that need not be registered (under the Securities Exchange Act of 1934) may be closed under this section.

The security exception permits a governmental body to deliberate in private about “deployment, or specific occasions for implementation, of security personnel or devices.” § 551.076.

School boards have three additional exceptions they can use to close portions of their meetings. Section 551.082 permits closed sessions when school boards deliberate in cases “involving discipline of a public school child,” unless an open hearing is requested in writing by a parent or guardian of the child. That section also allows a school

board to close portions of its meetings to deliberate in cases “in which a complaint or charge is brought against an employee of the school district by another employee and the complaint or charge directly results in a need for a hearing,” unless the employee made the subject of the complaint or charge requests an open hearing in writing. § 551.082. Section 551.0821 permits a closed meeting “to deliberate a matter regarding a public school student if personally identifiable information about the student will necessarily be revealed by the deliberation.” This exception does not apply if an open meeting about the matter is requested in writing by a parent or guardian or by the student if the student has reached the age of 18. § 551.0821(c). Section 551.083 permits a school board operating under a consultation agreement authorized by section 13.901 of the Texas Education Code (repealed in 1993) to deliberate in private regarding “the standards, guidelines, terms, or conditions the board will follow, or instruct its representatives to follow, in consultation with a representative of an employee group.”

A medical board or committee is not required to hold open meetings “to deliberate the medical or psychiatric records of an individual applicant for a disability benefit from a public retirement system.” § 551.078. Section 551.0785 allows a governmental body that administers a public insurance, health, or retirement plan to conduct a closed meeting to deliberate records or information from the medical or psychiatric records of an individual applicant for a benefit from the plan. In addition, the governing board of a municipal hospital, municipal hospital authority, hospital district created under general or special law, or nonprofit health maintenance organization created under section 534.101 of the Health and Safety Code is not required to conduct open meetings to deliberate “pricing or financial planning information relating to a bid or negotiation for the arrangement or provision of services or product lines to another person if disclosure of the information would give advantage to competitors of the hospital, hospital district, or nonprofit health maintenance organization” or “information relating to a proposed new service or product line of the hospital, hospital district, or nonprofit health maintenance organization before publicly announcing the service or product line.” § 551.085.

The State Board of Insurance is not required to have open meetings when considering the solvency of people over whom the agency has regulatory authority. § 551.079. The Board of Pardons and Paroles is not required to have an open session when interviewing or counseling inmates of a facility of the institutional division of the Texas Department of Criminal Justice. § 551.080. The Credit Union Commission, The Finance Commission of Texas, and the State Banking Board are not required by the Act to deliberate in the open about matters “made confidential by law.” § 551.081; .0811; .0812. Finally, the Texas Building and Procurement Commission may conduct a closed meeting under certain circumstances. § 551.0726.

Section 551.086 permits certain power utilities to meet in private to deliberate, vote, or take final action on any competitive matter, defined as a utility related matter that the public power utility governing body in good faith determines by a vote is related to the public power utility’s competitive activity, including commercial information, and, if disclosed, would give advantage to competitors and prospective competitors. This provision expressly provides 13 categories of information that may not be considered “competitive matter” under the section. § 551.086.

Section 551.087 allows for closed meetings where a governmental body discusses or deliberates regarding commercial or financial information received from certain business prospects or to deliberate the offer of a financial or other incentives to such a prospect.

Deliberations about test items or information related to them may be closed in limited situations. § 551.088.

The governing board of the Department of Information Resources is not required to conduct an open meeting to deliberate: (1) security assessments or deployments relating to information resources technology; (2) network security information as described by Section

2059.055(b); or (3) the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices. § 551.089.

B. Any other statutory requirements for closed or open meetings.

In several instances the Attorney General concluded certain discussions were not “meetings” subject to the Act because the discussion topics were not “public business.” In Op. Tex. Att’y Gen. No. H-223 (1974), the Attorney General determined an open discussion was not necessary for administrative proceedings held by the comptroller hearing division. The Attorney General cited taxation statutory provisions that expressly prohibited the comptroller from making information about a taxpayer’s affairs public in any manner. In Op. Tex. Att’y Gen. No. H-1154 (1978), the Attorney General advised that a county’s child welfare board could meet in a closed session “for the limited purpose of discussing case files where an open meeting would result in a violation of section 33 of (Tex. Rev. Civ. Stat. Ann.] article 695(c),” which made it unlawful for anyone to disclose any information about public assistance applicants or recipients. In Op. Tex. Att’y Gen. No. JC-108 (1999), the Attorney General advised that a hospital district’s proceedings as a medical peer review committee are exempt from the Act.

C. Court mandated opening, closing.

None identified.

III. MEETING CATEGORIES -- OPEN OR CLOSED.

A. Adjudications by administrative bodies.

1. Deliberations closed, but not fact-finding.

The definition of “meeting” in section 551.001(4) includes “a deliberation between a quorum of a governmental body . . . during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action.”

2. Only certain adjudications closed, i.e. under certain statutes.

The Act exempts meetings for certain administrative actions including personnel matters, medical board or medical committee meetings where medical or psychiatric records of an individual applicant for a disability benefit from a public retirement system are debated, a meeting of the commissioner of insurance or the commissioner’s designee with the board of directors of a guaranty association, or a meeting involving The Finance Commission of Texas deliberations on a matter made confidential by law. *See* § 551.074; .078; .079; .082.

B. Budget sessions.

Budget sessions are not excepted from disclosure and, therefore, must be open.

C. Business and industry relations.

Meetings affecting business and industry relations are only excepted, in certain situations, in the area of the purchase, exchange, lease, or value of real property and “negotiated contract[s] 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.” § 551.073.

D. Federal programs.

The Act provides that an agency financed entirely by federal money is not required to conduct an open meeting. § 551.077.

E. Financial data of public bodies.

The financial data of public bodies is generally open.

F. Financial data, trade secrets or proprietary data of private corporations and individuals.

Other than Section 551.079, which deals with the solvency of private companies regulated by the Texas Department of Insurance, and Sections 551.081 and 551.0811 which deal with the Credit Union

Commission and The Finance Commission of Texas deliberations on matters “made confidential by law,” the Act does not contain any proprietary or trade secret protection.

G. Gifts, trusts and honorary degrees.

Section 551.073 permits meetings to be closed regarding 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.”

H. Grand jury testimony by public employees.

Although the Act previously specified that grand jury testimony by a public employee need not be open, the recent amendments no longer contain any such provision.

I. Licensing examinations.

In Op. Tex. Att’y Gen. No. JM-640 (1987), the Attorney General concluded that a session of the Polygraph Examiners Board held solely for the purpose of examining prospective licensees would involve no “deliberation” between members and, therefore, was not a “meeting” subject to the Act. The Attorney General has also concluded that testing committees of the Texas Department of Health that review and approve the contents of licensing examinations are not authorized to meet in executive sessions under the Act, since no provision of the Act or any other statute authorizes such sessions. Op. Tex. Att’y Gen. No. LO 96-058 (1996).

J. Litigation; pending litigation or other attorney-client privileges.

Section 551.071 provides that a private consultation between a governmental body and its attorney are not permitted except in those instances in which the body seeks the attorney’s advice with respect to pending or contemplated litigation, settlement offers, or matters where the duty of the attorney to the body, pursuant to the Texas Disciplinary Rules of Professional Conduct, clearly conflicts with the Open Meetings Act. See *Gonzalez v. Brazos River Harbor Navigations Dist.*, No. 14-99-00272-CV, 2000 WL 1201899, at *7 (Tex. App.-Houston [14th Dist.] Aug. 24, 2000, pet. denied) (holding that section 551.071 permits closed discussions with attorney regarding legal matters for which attorney has ethical duty of confidentiality). However, “[g]eneral discussion of policy, unrelated to legal matters, is not permitted under this . . . exception merely because an attorney is present.” *Finlan v. City of Dallas*, 888 F. Supp. 779, 782 n.9 (N.D. Tex. 1995) (citing Op. Tex. Att’y Gen. No. JM-100 (1983)); *Killam Ranch Properties, Ltd. v. Webb County*, — S.W.3d —, 2011 WL 1796139 (Tex.App.-San Antonio, 2011 (“under this provision the governmental body may not discuss the merits of a proposed contract, financial considerations, or other non-legal matters related to the contract merely because its attorney is present.”). In addition, the Attorney General has held that an administrative agency may conduct proceedings involving disputed claims of privilege or confidentiality of documents in camera in contested administrative proceedings. Op. Tex. Att’y Gen. No. JM-645, at *3-4 (1987). The Attorney General, basing its decision on an exception to the Act in the Administrative Procedure and Texas Register Act, Tex. Rev. Civ. Stat. art. 6252-13a, advised that the contested case procedural requirements in the Administrative Procedure and Texas Register Act “creates an exception to the Open Meetings Act with regard to contested cases.” *Id.* at *3.

K. Negotiations and collective bargaining of public employees.

The Attorney General has held that the internal deliberations of a city’s collective bargaining team in its preliminary discussions with elected city officials are open to the public but sometimes may be closed if counsel participates. See Op. Tex. Att’y Gen. No. H-816 (1976). The Attorney General went on to hold that actual bargaining sessions between the city and a police officer’s association are open to the public. *Id.* Also, pursuant to section 551.083, a school board

operating under section 13.901 of the Texas Education Code is not required to open its meetings 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.”

L. Parole board meetings, or meetings involving parole board decisions.

Meetings of the Board of Pardons and Paroles may be closed pursuant to section 551.080 if they are held “to interview or counsel an inmate of the Texas Department of Criminal Justice.”

M. Patients; discussions on individual patients.

The Act permits closed meetings of “a medical board or medical committee . . . to deliberate the medical or psychiatric records of an individual applicant for a disability benefit from a public retirement system.” § 551.078; see also Op. Tex. Att’y Gen. No. H-1154 (1978) (stating that The Montgomery County Child Welfare Board is a governmental body within the meaning of the Open Meetings Act but may meet in closed session for the limited purpose of discussing particular case files of persons receiving or applying for public assistance); Op. Tex. Att’y Gen. No. DM-340 (1995) (stating that the board of trustees of a public retirement system may consider the individual medical and psychiatric records of an applicant for disability retirement benefits in a closed meeting because in such circumstances, the board of trustees is serving as a medical board or medical committee for purposes of the Open Meetings Act).

N. Personnel matters.

The Act permits a closed meeting when there is discussion regarding “the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer,” or where the governmental body hears a complaint or charge against an officer or employee, unless the officer or employee requests a public hearing. § 551.074. The Act does not restrict the non-public disclosure procedure only to actions affecting a current employee. *Hispanic Educ. Comm. v. Houston Indep. Sch. Dist.*, 886 F. Supp. 606, 611 (S.D. Tex. 1994) (“The law allows closed sessions for the discussion of personnel, whether the position is filled or vacant, whether an employee is to be demoted or promoted, and whether the person is a prospective or current employee. The law does not restrict the non-public procedure only to actions affecting a current employee.”). This exception does not apply to an independent contractor. Op. Tex. Att’y Gen. No. MW-129 (1980) (“A governmental body may not meet in closed session to discuss the employment of an independent contractor such as an engineering, architectural or consultant firm.”). When the discussion is not about employees but instead concerns outside consultants, the meetings must be open. See Op. Tex. Att’y Gen. No. JM-595 (1986); Op. Tex. Att’y Gen. No. MW-129 (1979) (discussion of hiring professional consultants must be in open session). Nor does the exception apply when a governmental body wants to discuss the qualifications of people who may serve on an advisory subcommittee, unless those people are employees or public officers. Op. Tex. Att’y Gen. No. DM-149 (1992). An employee or public officer who is the subject of deliberations under section 551.074 has a right to an open hearing, but he cannot insist on a closed hearing. Op. Tex. Att’y Gen. No. JM-1191 (1990).

1. Interviews for public employment.

Not specifically addressed.

2. Disciplinary matters, performance or ethics of public employees.

Section 551.082 permits closed sessions when school boards consider 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” unless an open hearing is requested in writing by the employee against whom the complaint or charge is brought.

3. Dismissal; considering dismissal of public employees.

Generally, an employee or public officer who is the subject of deliberations under section 551.074 has a right to an open hearing, but he cannot insist on a closed hearing. *Op. Tex. Att’y Gen. No. JM-1191* (1990) (stating that the Open Meetings Act permits, but does not require a school board of trustees to hold an executive closed session to consider a teacher’s grievance); *Mayes v. City of De Leon*, 922 S.W.2d 200 (Tex. App.—Eastland 1996, writ denied) (“[T]ermination of a city’s police chief is a matter of special interest to the public that does not fall into the category of ordinary personnel matters.”).

O. Real estate negotiations.

Section 551.072 provides that meetings may be closed regarding “the purchase, exchange, lease, or value of real property if deliberations in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.” The exemption was created to keep a governmental entity from having to “‘telegraph its punch’ in an open meeting to the detriment of the taxpayers, not to use it as a blank check to cut a deal in private, devoid of public input or debate.” *Finlan v. City of Dallas*, 888 F. Supp. 779, 787 (N.D. Tex. 1995). Under this exemption, members of a governmental body “may consult with their employees in private, but may not consult with other third parties in private.” *Id.* (quoting *Op. Tex. Att’y Gen. No. DM-191* (1992)). Thus, “[w]hen third parties are allowed into closed meetings where they can observe [the governmental body’s] deliberations, the privilege is waived so that the public cannot be legitimately shut out.” *Id.*

P. Security, national and/or state, of buildings, personnel or other.

The Act permits closing of meetings regarding “the deployment, or specific occasions for implementation, of security personnel or devices.” § 551.076.

Q. Students; discussions on individual students.

Section 551.082 permits closed sessions when school boards consider “discipline of a public school child,” unless an open hearing is requested in writing by a parent or guardian of the child. *But see United Indep. Sch. Dist. v. Gonzalez*, 911 S.W.2d 118, 127 (Tex. App.—San Antonio 1995, writ denied per curiam, 940 S.W.2d 593 (Tex. 1996) (right to open session waived where, after providing written demand for open meeting, the student failed to object to the board president’s announcement that the board would retire to executive session to consider expulsion).

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

A. When to challenge.

Section 551.142 provides that an interested person, including a member of the news media, may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of the Act by members of a governmental body. § 551.142; *see also Finlan v. City of Dallas*, 888 F. Supp. 779, 784 (N.D. Tex. 1995). An action taken by a governmental body in violation of this Act is voidable. § 551.141.

1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

Generally, injunctions and petitions for writ of mandamus are reviewed by the Courts on a more expedited basis. If a party wishes to request attendance at an upcoming meeting, request that the court rule that she is not barred from a meeting or receive a ruling regarding future meetings, she should file a request for injunctive relief.

There are two general types of injunctions—prohibitory and mandatory. And, there are three types of injunctive orders—(1) temporary restraining order; (2) temporary injunction; and (3) permanent injunction. Each is extremely detailed and would require the assistance of an attorney. Their requirements are detailed in Texas Rules of Civil Procedure 680-693a.

When a party desires that the court require another party to act affirmatively—for example, when the party is requesting that the court rule that she is permitted to attend upcoming meetings (rather than merely to refrain from certain conduct), then she must file a request for a mandatory injunction. *RP&R, Inc. v. Territo*, 32 S.W.3d 396, 400 (Tex. App.—Houston [14th Dist.] 2000, no pet.) (mandatory injunction required when party requested to receive weekly paychecks).

2. When barred from attending.

When a party desires that the court issue a ruling that prohibits certain conduct—such as prohibiting a governmental body from holding a closed meeting pursuant to the Act—a request for a prohibitory injunction must be filed.

3. To set aside decision.

If a party dislikes a ruling issued by a district court judge, it can file a petition for a writ of mandamus in the appropriate appellate court. However, appellate courts have broad authority to determine what issues can be addressed through a mandamus. If the appellate court denies the request for mandamus, the party can file a motion for rehearing within fifteen days after the order is rendered. TRAP 52.9.

B. How to start.

The Act permits immediate access to the courts when there is a threatened violation. § 551.142. An application for writ of mandamus may be filed in a district court with a show cause order providing for a response within ten days. There are no cases detailing whether the show cause procedure is preferred and, on occasion, open meetings cases have been litigated as normal civil lawsuits.

1. Where to ask for ruling.

- a. Administrative forum.
- c. Court.

A party can file a petition for suit in the applicable district court or county court and include with it an application for an injunction. A party can also make an application for a writ of mandamus and file it in the appropriate appellate court, including a court of appeals or the Supreme Court of Texas. TRAP 52.1.

2. Applicable time limits.

Strategically, a request for injunctive relief should be made as soon as possible after the problem arises such that a party’s rights can be preserved and a ruling can be received before, for example, another closed meeting takes place. The same is true for a petition for writ of mandamus.

3. Contents of request for ruling.

The required contents of a petition for a writ of mandamus is detailed in Texas Rule of Appellate Procedure 52. The petition requesting a writ of mandamus must include the following: (1) Identity of Parties and Counsel; (2) Table of Contents; (3) Index of Authorities; (4) Statement of the Case; (5) Statement of Jurisdiction; (6) Issues Presented; (7) Statement of Facts; (8) Argument; (9) Prayer; (10) Certification; and an (1) Appendix. TRAP 52.3.

Excluding those pages containing the identity of parties and counsel, the table of contents, the index of authorities, the statement of the case, the statement of jurisdiction, the issues presented, the signature, the proof of service, the certification, and the appendix, the petition

and response must not exceed 50 pages each if filed in the court of appeals, or 15 pages each if filed in the Supreme Court. A reply may be no longer than 25 pages if filed in the court of appeals or 8 pages if filed in the Supreme Court, exclusive of the items stated above. The court may, on motion, permit a longer petition, response, or reply. TRAP 52.6

4. How long should you wait for a response?

Any party may file a response to the petition for writ of mandamus, but it is not mandatory. TRAP 52.4. The court must not grant relief—other than temporary relief—before a response has been filed or requested by the court. *Id.*

The response must conform to the requirements of TRAP 52.3, except that: (a) the list of parties and counsel is not required unless necessary to supplement or correct the list contained in the petition; (b) the response need not include a statement of the case, a statement of the issues presented, or a statement of the facts unless the responding party is dissatisfied with that portion of the petition; (c) a statement of jurisdiction should be omitted unless the petition fails to assert valid grounds for jurisdiction, in which case the reasons why the court lacks jurisdiction must be concisely stated; (d) the argument must be confined to the issues or points presented in the petition; and (e) the appendix to the response need not contain any item already contained in an appendix filed by the relator. *Id.*

A reply to the response may be filed. TRAP 52.5. However, the court may consider and decide the case before a reply brief is filed. *Id.*

C. Court review of administrative decision.

1. Who may sue?

Section 551.142 provides that an “interested person,” including members of the news media, may commence an action. § 551.142; see *Finlan v. City of Dallas*, 888 F. Supp. 779, 783 (N.D. Tex. 1995) (a taxpayer citizen of the City of Dallas was an “interested person” with standing to seek an injunction to prohibit violations of the Act by an ad hoc sports development committee created to consider the construction of a new sports facility); *City of Bells v. Greater Texoma Utility Authority*, 744 S.W.2d 636, 639-40 (Tex. App.—Dallas 1987, no writ) (City had standing to sue regarding utility authority’s violations of the Act where as result of meeting held in violation of this section, City was sued and placed in position of either posting two million dollar bond or forever losing any claims it had against utility authority)

2. Will the court give priority to the pleading?

If the suit is for injunction to remedy a threatened violation of the Act, the Texas Rules of Civil Procedure apply and provide for an expedited remedy. For example, a party may, on an ex parte basis, apply for a temporary restraining order followed by a hearing for a temporary injunction. If the suit is for mandamus, the plaintiff may request a show cause order requiring the governmental body to respond to the petition at a hearing within ten days.

3. Pro se possibility, advisability.

In Texas, it is not advisable to attempt to remedy violations of the Open Meetings Act on a *pro se* basis. The Texas Rules of Civil Procedure are extremely complex to a layperson and the governmental body will almost certainly have counsel representing it.

4. What issues will the court address?

With respect to meetings that have already been improperly closed, the court may void any action taken by the governmental body in violation of the Act. § 551.141. The court also may order meetings open if it is shown that the governmental body has threatened to violate the Act.

a. Open the meeting.

Through a proper request, the Court may order that the meeting be open but it is within their discretion.

b. Invalidate the decision.

The Texas Open Meetings Act expressly provides that “[a]n action by a governmental body in violation of this chapter is voidable.” § 551.141. It does not state that governmental acts in violation of act are void or void ab initio. *Id.* Because the governmental act is merely voidable, it is valid until adjudicated and declared void. *Meeker v. Tarrant County College Dist.*, 317 S.W.3d 754, 759 (Tex.App.—Fort Worth 2010, pet. denied). See also *Housing Authority of City of Dallas v. Killingsworth*, 331 S.W.3d 806, 812 n.5 (Tex. App.—Dallas 2011, pet. denied) (“Even assuming the manner in which the contract was approved violated [the Act], the approval of the contract in the executive session of the Board is not necessarily null or void. Rather, the approval is merely voidable at the instance of someone with standing to complain. Tex. Gov’t Code Ann. § 551.141. The approval remains valid ‘until adjudicated and declared void.’ . . . Thus, even a contract procured by a potentially voidable act is still a valid contract.”).

c. Order future meetings open.

The Pea Picker, Inc. v. Reagan, 632 S.W.2d 674, 677 (Tex. App.—Tyler 1982, writ ref’d n.r.e.) (stating that trial court had power to construe statute as to when meeting is required to be open).

5. Pleading format.

The pleading format in an Open Meetings Act case is no different than that for any other civil lawsuit in Texas. The procedures are governed by the Texas Rules of Civil Procedure.

6. Time limit for filing suit.

There is no time limit specified in the Act for filing suit. Therefore, the four-year residual statute of limitations applies. *Rivera v. City of Laredo*, 948 S.W.2d 787, 793 (Tex. App.—San Antonio 1997, writ denied) (“[A]n action brought under the Open Meetings Act would fall under the four-year residual limitations period in Tex. Civ. Prac. & Rem. Code § 16.051 since the Act does not specify the amount of time a plaintiff has to bring an action for open meetings violations.”); Tex. Civ. Prac. & Rem. Code §16.051 (“Every action for which there is no express limitations period, except an action for the recovery of real property, must be brought not later than four years after the day the cause of action accrues.”). The statute of limitations for mandamus actions is four years.

7. What court.

Venue for open meetings cases is governed by the Texas Civil Practices and Remedies Code. In a state as large as Texas, there are complicated venue provisions. Generally, local governmental bodies may be sued in the county where they are located. Some state agencies must be sued in Travis County where the state capital is located.

8. Judicial remedies available.

The court may issue a writ of mandamus directed to members of the governing body subject to the Act. The court also may issue a declaratory judgment or an injunction. See § 551.142; *The Pea Picker, Inc. v. Reagan*, 632 S.W.2d 674, 677 (Tex. App.—Tyler 1982, writ ref’d n.r.e.) (stating that since parties were uncertain whether meeting of public officials was required to be open, trial court had power to construe statute as to whether notice of meeting must be given and when meeting is required to be open; thus actual controversy existed as basis for declaratory judgment action)

9. Availability of court costs and attorneys’ fees.

Pursuant to section 551.142(b), the court may award costs of litigation and reasonable attorney fees to either a plaintiff or a defendant who substantially prevails. The award of these costs and fees is discretionary. “In exercising its discretion, the court shall consider whether the action was brought in good faith and whether the conduct of the governmental body had a reasonable basis in law.” § 551.142(b); see also *Piazza v. City of Granger*, 909 S.W.2d 529, 535 (Tex. App.—Austin 1995, no writ); *Ferris v. Texas Bd. of Chiropractic Exam’rs*, 808 S.W.2d 514,

519 (Tex. App.-Austin 1991, writ denied). *Meeker v. Tarrant County College Dist.*, 317 S.W.3d 754, 762 (Tex.App.-Fort Worth 2010, pet. denied) (“section 551.142(b) does not authorize attorney’s fees for succeeding on a claim for declaratory relief”).

10. Fines.

Pursuant to section 551.144, a member of a governmental body who knowingly calls or aids in calling or organizing a special or called closed meeting, or who knowingly closes or aids in closing a regular meeting to the public, or who knowingly participates in a regular, special, or called meeting that is closed to the public, commits a misdemeanor offense punishable by a fine of not less than \$100 or more than \$500 or confinement in the county jail for not less than one month or more than six months, or both. It is an affirmative defense to prosecution that the member of the governmental body acted in reasonable reliance on a court order or a written interpretation of this Act contained in an opinion of a court of record, the attorney general, or the attorney for the governmental body.

Section 551.143 provides that a member or group of members of a governmental body who knowingly conspires to circumvent the provisions of the Act by meeting in numbers less than a quorum for the purpose of secret deliberations in contravention of the Act commit a misdemeanor offense punishable by a fine of not less than \$100 or more than \$500 or confinement in the county jail for not less than one month or more than six months, or both.

Section 551.145 provides that a “member of a governmental body commits an offense if the member participates in a closed meeting of the governmental body knowing that a certified agenda of the closed meeting is not being kept or that a tape recording of the closed meeting is not being made.” A violation of this subsection is a Class C misdemeanor.

In *Asgeirsson v. Abbott*, the federal district court ruled that the criminal provisions of the Texas Open Meetings Act did not violate a City Councilmember’s free speech rights. 2011 WL 1157624, No. P-09-CV-59 (W.D. Tex. 2011). Members of the Alpine City Council brought suit against the Attorney General after being indicted for violating the Act following an email exchange that allegedly constituted a closed meeting under Act. Id. at 1. The indictments were later dismissed without prejudice. The court stated that, pursuant to the Act, citizens are entitled not only to know what the government decides but also to observe how and why every decision is reached and that the explicit command of the Act is for openness at every stage of the deliberations. Id. at 6. Ultimately, the court held that the Act is not a violation of free speech and explained:

“[the Act] is not about censorship but rather about the disclosure of the speech in question. If [the Act’s] true aim was to suppress the content of a governmental body’s speech, then there would be no disclosure requirement. [The Act] is not directed at the content of the public official’s speech or the effect that speech might have on the general public. [The Act] is concerned with giving the public more access to their government. Thus, this Court finds that [the Act] does not suppress speech.”

Id. at 10.

Under Section 551.146, an individual, corporation, or partnership commits an offense if, without lawful authority, he, she or it “knowingly discloses to a member of the public the certified agenda or tape recording of a meeting that was lawfully closed to the public” under the Act. An offense under section 551.146 is a Class B misdemeanor and there is a provision for a civil remedy including actual damages (including damages for personal injury or damage), lost wages, defamation, or mental or other emotional distress as well as reasonable attorney fees and court costs and exemplary damages. It is a defense to prosecution and an affirmative defense that the defendant had good reason to believe the disclosure was lawful or the disclosure was the result of a mistake of fact concerning the nature or content of the certified agenda or tape recording.

11. Other penalties.

See previous section, fines and possible jail time can result.

D. Appealing initial court decisions.

1. Appeal routes.

The losing party may proceed to the intermediate Court of Appeals or the Texas Supreme Court by way of mandamus or, in some instances, by way of appeal.

2. Time limits for filing appeals.

The normal rules for appellate actions found in the Texas Rules of Civil Procedure and the Texas Rules of Appellate Procedure apply.

3. Contact of interested amici.

The Freedom of Information Foundation of Texas Inc., is a state-wide clearing house for FOI matters and will coordinate *amicus curiae* efforts. Interested people should contact the foundation’s executive director, Katherine Garner, at (214) 977-6658. The foundation’s address is 400 S. Record St., Suite 240, Dallas, Texas 75202. The foundation may also be contacted through its e-mail address, foift@foift.org, and over the Internet, at www.foift.org.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state’s highest court.

V. ASSERTING A RIGHT TO COMMENT.

The Act does not create a right to comment. *Charlestown Homeowners Ass’n Inc. v. LaCoke*, 507 S.W.2d 876, 883 (Tex. Civ. App.-Dallas 1974, writ ref’d n.r.e.). In Op. Tex. Att’y Gen. No. H-188 (1973), the Attorney General concluded that, although the Act does not give the public a right to speak during meetings under the Act, the governmental body may allow members of the public to speak and participate. In doing so, however, the governmental body must allow comments in an even-handed fashion and may not discriminate among views seeking expression.

A. Is there a right to participate in public meetings?

Although it is customary practice that comments be heard from the general public during public meetings, the Open Meetings Act does not actually provide the public a right to participate or comment at public meetings. Op. Tex. Att’y Gen. No. JC-0169 (2000) (citing *Charlestown Homeowners Ass’n*, 507 S.W.2d at 883); Op. Tex. Att’y Gen. No. JM-584 (1986); Op. Tex. Att’y Gen. No. H-188 (1973); see also *Eudaly v. City of Colleyville*, 642 S.W.2d 75, 77 (Tex. App.-Fort Worth 1982, writ ref’d n.r.e.) (distinguishing between “public meeting,” where public was not entitled to comment, and “public hearing,” where public was entitled to comment). A meeting that is “open to the public” under the Act is one that the public is entitled to attend, not one in which they are entitled to participate. See Op. Tex. Att’y Gen. No. M-220 (1968); Op. Tex. Att’y Gen. No. LO-96-111 (1996).

B. Must a commenter give notice of intentions to comment?

A commenter does not have to give notice of an intention to comment. § 551.042; see also *Peavy v. Dallas Independent School Dist.*, 57 F.Supp.2d 38257 F.Supp.2d 382, 393 (N.D. Tex. 1999) (President of school district board of trustees did not violate Texas Open Meetings Act by allowing transcript of trustee’s telephone conversation, containing controversial and offensive comments, to be read during report period of school district meeting, where board had long established practice of allowing trustees to make reports, even though issue was not specifically listed on meeting’s agenda); and Op. Tex. Att’y Gen. No. JC-0169 (2000) (“Public comment’ provides sufficient notice under the Open Meetings Act of the subject matter of ‘public comment’ sessions where the general public addresses the governmental body about its concerns and where the governmental body does not

comment or deliberate except as authorized by section 551.042 of the Government Code.”). If a member of the public inquires about a subject for which notice was not given, the governmental body may respond with specific factual information or provide information on the current policy in response to the inquiry without violating the notice provisions of the Open Meetings Act. § 551.042. Any other discussion, deliberation, or decision regarding the subject matter will be limited to a proposal to place the subject on the agenda for another meeting. § 551.042; *Hays City Water Planning P’ship v. Hays County, Tex.*, 41 S.W.3d 174, 181 (Tex. App.-Austin 2001, pet. denied).

C. Can a public body limit comment?

A governmental body may limit comment since there is no right to comment at open public meetings. *See* Op. Tex. Att’y Gen. No. JC-0169 (2000). If a governmental body wishes to allow members of the public to speak at its public meetings, it may adopt reasonable rules consistent with relevant provisions of law allowing them to do so. *Id.* (citing Op. Tex. Att’y Gen. No. H-188 (1973); Op. Tex. Att’y Gen. No. LO-96-111 (1996)).

D. How can a participant assert rights to comment?

As stated above, the Open Meetings Act does not actually provide the public a right to participate or comment at public meetings. Op. Tex. Att’y Gen. No. JC-0169 (2000). Typically, the member of the public shows up at the meeting, fills out a card indicating they wish to address the body, and then is called upon when the comments section of the meeting is reached. *Id.* Topics are usually entirely at the discretion of the speaker. *Id.*

E. Are there sanctions for unapproved comment?

The governmental body may adopt reasonable rules consistent with relevant provisions of law allowing them to do so. Op. Tex. Att’y Gen. No. JC-0169 (2000). (citing Op. Tex. Att’y Gen. No. H-188 (1973); Op. Tex. Att’y Gen. No. LO-96-111 (1996)). However, if the governmental body allows comments it must allow them in an even-handed fashion and may not discriminate among views seeking expression. Op. Tex. Att’y Gen. No. LO-96-111 (1996)).

Statute

Open Records

Government Code
Title 5. Open Government; Ethics
Subtitle A. Open Government
Chapter 552. Public Information
Subchapter A. General Provisions

§ 552.001. Policy; Construction

(a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it 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. The provisions of this chapter shall be liberally construed to implement this policy.

(b) This chapter shall be liberally construed in favor of granting a request for information.

§ 552.002. Definition of Public Information; Media Containing Public Information

(a) In this chapter, “public information” means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

(b) The media on which public information is recorded include:

(1) paper;

(2) film;

(3) a magnetic, optical, or solid state device that can store an electronic signal;

(4) tape;

(5) Mylar;

(6) linen;

(7) silk; and

(8) vellum.

(c) The general forms in which the media containing public information exist include a book, paper, letter, document, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory.

§ 552.003. Definitions

In this chapter:

(1) “Governmental body”:

(A) means:

(i) a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;

(ii) a county commissioners court in the state;

(iii) a municipal governing body in the state;

(iv) a deliberative body that has rulemaking or quasi-judicial power

and that is classified as a department, agency, or political subdivision of a county or municipality;

- (v) a school district board of trustees;
- (vi) a county board of school trustees;
- (vii) a county board of education;
- (viii) the governing board of a special district;

(ix) the governing body of a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code;

(x) a local workforce development board created under Section 2308.253;

(xi) a nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state; and

(xii) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds; and

(B) does not include the judiciary.

(2) “Manipulation” means the process of modifying, reordering, or decoding of information with human intervention.

(3) “Processing” means the execution of a sequence of coded instructions by a computer producing a result.

(4) “Programming” means the process of producing a sequence of coded instructions that can be executed by a computer.

(5) “Public funds” means funds of the state or of a governmental subdivision of the state.

(6) “Requestor” means a person who submits a request to a governmental body for inspection or copies of public information.

§ 552.0035. Access to Information of Judiciary

(a) Access to information collected, assembled, or maintained by or for the judiciary is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.

(b) This section does not address whether information is considered to be information collected, assembled, or maintained by or for the judiciary.

§ 552.0036. Certain Property Owners’ Associations Subject to Law

A property owners’ association is subject to this chapter in the same manner as a governmental body if:

(1) membership in the property owners’ association is mandatory for owners or for a defined class of owners of private real property in a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more;

(2) the property owners’ association has the power to make mandatory special assessments for capital improvements or mandatory regular assessments; and

(3) the amount of the mandatory special or regular assessments is or has ever been based in whole or in part on the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation under Section 20, Article VIII, Texas Constitution.

§ 552.004. Preservation of Information

A governmental body or, for information of an elective county office, the elected county officer, may determine a time for which information that is not currently in use will be preserved, subject to any applicable rule or law governing the destruction and other disposition of state and local government records or public information.

§ 552.005. Effect of Chapter on Scope of Civil Discovery

(a) This chapter does not affect the scope of civil discovery under the Texas Rules of Civil Procedure.

(b) Exceptions from disclosure under this chapter do not create new privileges from discovery.

§ 552.0055. Subpoena Duces Tecum or Discovery Request

A subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under this chapter.

§ 552.006. Effect of Chapter on Withholding Public Information

This chapter does not authorize the withholding of public information or limit the availability of public information to the public, except as expressly provided by this chapter.

§ 552.007. Voluntary Disclosure of Certain Information When Disclosure Not Required

(a) This chapter does not prohibit a governmental body or its officer for public information from voluntarily making part or all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law.

(b) Public information made available under Subsection (a) must be made available to any person.

§ 552.008. Information for Legislative Purposes

(a) This chapter does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.

(b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with this chapter if the requesting member, agency, or committee states that the public information is requested under this chapter for legislative purposes. A governmental body, by providing public information under this section that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future. The governmental body may require the requesting individual member of the legislature, the requesting legislative agency or committee, or the members or employees of the requesting entity who will view or handle information that is received under this section and that is confidential under law to sign a confidentiality agreement that covers the information and requires that:

(1) the information not be disclosed outside the requesting entity, or within the requesting entity for purposes other than the purpose for which it was received;

(2) the information be labeled as confidential;

(3) the information be kept securely; or

(4) the number of copies made of the information or the notes taken from the information that implicate the confidential nature of the information be controlled, with all copies or notes that are not destroyed or returned to the governmental body remaining confidential and subject to the confidentiality agreement.

(c) This section does not affect:

(1) the right of an individual member, agency, or committee of the legislature to obtain information from a governmental body under other law, including under the rules of either house of the legislature;

(2) the procedures under which the information is obtained under other law; or

(3) the use that may be made of the information obtained under other law.

§ 552.009. *Open Records Steering Committee: Advice to Commission; Electronic Availability of Public Information*

(a) The open records steering committee is composed of two representatives of the attorney general's office and:

(1) a representative of each of the following, appointed by its governing entity:

- (A) the attorney general's office;
- (B) the comptroller's office;
- (C) the Department of Public Safety;
- (D) the Department of Information Resources; and
- (E) the Texas State Library and Archives Commission;
- (F) the Texas Building and Procurement Commission;

(2) five public members, appointed by the attorney general; and

(3) a representative of each of the following types of local governments, appointed by the attorney general:

- (A) a municipality;
- (B) a county; and
- (C) a school district.

(b) The representative of the attorney general designated by the attorney general is the presiding officer of the committee. The committee shall meet as prescribed by committee procedures or at the call of the presiding officer.

(c) The committee shall advise the attorney general regarding the office of the attorney general's performance of its duties under Sections 552.010, 552.205, 552.262, 552.269, and 552.274.

(d) The members of the committee who represent state governmental bodies and the public members of the committee shall periodically study and determine the types of public information for which it would be useful to the public or cost-effective for the government if the type of information were made available by state governmental bodies by means of the Internet or another electronic format. The committee shall report its findings and recommendations to the governor, the presiding officer of each house of the legislature, and the budget committee and state affairs committee of each house of the legislature.

(e) Chapter 2110 does not apply to the size, composition, or duration of the committee. Chapter 2110 applies to the reimbursement of a public member's expenses related to service on the committee. Any reimbursement of the expenses of a member who represents a state or local governmental body may be paid only from funds available to the state or local governmental body the member represents.

§ 552.010. *State Governmental Bodies: Fiscal and Other Information Relating to Making Information Accessible*

(a) Each state governmental body shall report to the attorney general the information the attorney general requires regarding:

(1) the number and nature of requests for information the state governmental body processes under this chapter in the period covered by the report; and

(2) the cost to the state governmental body in that period in terms of capital expenditures and personnel time of:

- (A) responding to requests for information under this chapter; and
- (B) making information available to the public by means of the Internet or another electronic format.

(b) The attorney general shall design and phase in the reporting requirements in a way that:

- (1) minimizes the reporting burden on state governmental bodies; and
- (2) allows the legislature and state governmental bodies to estimate the extent to which it is cost-effective for state government, and if possible the extent to which it is cost-effective or useful for members of the public, to make information available to the public by means of the Internet or another

electronic format as a supplement or alternative to publicizing the information only in other ways or making the information available only in response to requests made under this chapter.

(c) The attorney general shall share the information reported under this section with the open records steering committee.

§ 552.011. *Uniformity*

The attorney general shall maintain uniformity in the application, operation, and interpretation of this chapter. To perform this duty, the attorney general may prepare, distribute, and publish any materials, including detailed and comprehensive written decisions and opinions, that relate to or are based on this chapter.

§ 552.012. *Open Records Training*

(a) This section applies to an elected or appointed public official who is:

(1) a member of a multimember governmental body;

(2) the governing officer of a governmental body that is headed by a single officer rather than by a multimember governing body; or

(3) the officer for public information of a governmental body, without regard to whether the officer is elected or appointed to a specific term.

(b) Each public official shall complete a course of training of not less than one and not more than two hours regarding the responsibilities of the governmental body with which the official serves and its officers and employees under this chapter not later than the 90th day after the date the public official:

(1) takes the oath of office, if the person is required to take an oath of office to assume the person's duties as a public official; or

(2) otherwise assumes the person's duties as a public official, if the person is not required to take an oath of office to assume the person's duties.

(c) A public official may designate a public information coordinator to satisfy the training requirements of this section for the public official if the public information coordinator is primarily responsible for administering the responsibilities of the public official or governmental body under this chapter. Designation of a public information coordinator under this subsection does not relieve a public official from the duty to comply with any other requirement of this chapter that applies to the public official. The designated public information coordinator shall complete the training course regarding the responsibilities of the governmental body with which the coordinator serves and of its officers and employees under this chapter not later than the 90th day after the date the coordinator assumes the person's duties as coordinator.

(d) The attorney general shall ensure that the training is made available. The office of the attorney general may provide the training and may also approve any acceptable course of training offered by a governmental body or other entity. The attorney general shall ensure that at least one course of training approved or provided by the attorney general is available on videotape or a functionally similar and widely available medium at no cost. The training must include instruction in:

(1) the general background of the legal requirements for open records and public information;

(2) the applicability of this chapter to governmental bodies;

(3) procedures and requirements regarding complying with a request for information under this chapter;

(4) the role of the attorney general under this chapter; and

(5) penalties and other consequences for failure to comply with this chapter.

(e) The office of the attorney general or other entity providing the training shall provide a certificate of course completion to persons who complete the training required by this section. A governmental body shall maintain and make available for public inspection the record of its public officials' or, if applicable, the public information coordinator's completion of the training.

(f) Completing the required training as a public official of the governmental body satisfies the requirements of this section with regard to the public official's service on a committee or subcommittee of the governmental body and the public official's ex officio service on any other governmental body.

(g) The training required by this section may be used to satisfy any corresponding training requirements concerning this chapter or open records required by law for a public official or public information coordinator. The attorney general shall attempt to coordinate the training required by this section with training required by other law to the extent practicable.

(h) A certificate of course completion is admissible as evidence in a criminal prosecution under this chapter. However, evidence that a defendant completed a course of training offered under this section is not prima facie evidence that the defendant knowingly violated this chapter.

Subchapter B. Right of Access to Public Information

§ 552.021. Availability of Public Information

Public information is available to the public at a minimum during the normal business hours of the governmental body.

§ 552.022. Categories of Public Information; Examples

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body;

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

(4) the name of each official and the final record of voting on all proceedings in a governmental body;

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate;

(6) the name, place of business, and the name of the municipality to which local sales and use taxes are credited, if any, for the named person, of a person reporting or paying sales and use taxes under Chapter 151, Tax Code;

(7) a description of an agency's central and field organizations, including:

(A) the established places at which the public may obtain information, submit information or requests, or obtain decisions;

(B) the employees from whom the public may obtain information, submit information or requests, or obtain decisions;

(C) in the case of a uniformed service, the members from whom the public may obtain information, submit information or requests, or obtain decisions; and

(D) the methods by which the public may obtain information, submit information or requests, or obtain decisions;

(8) a statement of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures;

(9) a rule of procedure, a description of forms available or the places at which forms may be obtained, and instructions relating to the scope and content of all papers, reports, or examinations;

(10) a substantive rule of general applicability adopted or issued by an agency as authorized by law, and a statement of general policy or interpretation of general applicability formulated and adopted by an agency;

(11) each amendment, revision, or repeal of information described by Subdivisions (7)-(10);

(12) final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases;

(13) a policy statement or interpretation that has been adopted or issued by an agency;

(14) administrative staff manuals and instructions to staff that affect a member of the public;

(15) information regarded as open to the public under an agency's policies;

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege;

(17) information that is also contained in a public court record; and

(18) a settlement agreement to which a governmental body is a party.

(b) A court in this state may not order a governmental body or an officer for public information to withhold from public inspection any category of public information described by Subsection (a) or to not produce the category of public information for inspection or duplication, unless the category of information is expressly made confidential under other law.

§ 552.0225. Right of Access to Investment Information

(a) Under the fundamental philosophy of American government described by Section 552.001, it is the policy of this state that investments of government are investments of and for the people and the people are entitled to information regarding those investments. The provisions of this section shall be liberally construed to implement this policy.

(b) The following categories of information held by a governmental body relating to its investments are public information and not excepted from disclosure under this chapter:

(1) the name of any fund or investment entity the governmental body is or has invested in;

(2) the date that a fund or investment entity described by Subdivision (1) was established;

(3) each date the governmental body invested in a fund or investment entity described by Subdivision (1);

(4) the amount of money, expressed in dollars, the governmental body has committed to a fund or investment entity;

(5) the amount of money, expressed in dollars, the governmental body is investing or has invested in any fund or investment entity;

(6) the total amount of money, expressed in dollars, the governmental body received from any fund or investment entity in connection with an investment;

(7) the internal rate of return or other standard used by a governmental body in connection with each fund or investment entity it is or has invested in and the date on which the return or other standard was calculated;

(8) the remaining value of any fund or investment entity the governmental body is or has invested in;

(9) the total amount of fees, including expenses, charges, and other compensation, assessed against the governmental body by, or paid by the governmental body to, any fund or investment entity or principal of any fund or investment entity in which the governmental body is or has invested;

(10) the names of the principals responsible for managing any fund or investment entity in which the governmental body is or has invested;

(11) each recusal filed by a member of the governing board in connection with a deliberation or action of the governmental body relating to an investment;

(12) a description of all of the types of businesses a governmental body is or has invested in through a fund or investment entity;

(13) the minutes and audio or video recordings of each open portion of a meeting of the governmental body at which an item described by this subsection was discussed;

(14) the governmental body's percentage ownership interest in a fund or investment entity the governmental body is or has invested in;

(15) any annual ethics disclosure report submitted to the governmental body by a fund or investment entity the governmental body is or has invested in; and

(16) the cash-on-cash return realized by the governmental body for a fund or investment entity the governmental body is or has invested in.

(c) This section does not apply to the Texas Mutual Insurance Company or a successor to the company.

(d) This section does not apply to a private investment fund's investment in restricted securities, as defined in Section 552.143.

§ 552.023. *Special Right of Access to Confidential Information*

(a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

(b) A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

(c) A release of information under Subsections (a) and (b) is not an offense under Section 552.352.

(d) A person who receives information under this section may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release the information was obtained.

(e) Access to information under this section shall be provided in the manner prescribed by Sections 552.229 and 552.307.

§ 552.024. *Electing to Disclose Address and Telephone Number*

(a) Each employee or official of a governmental body and each former employee or official of a governmental body shall choose whether to allow public access to the information in the custody of the governmental body that relates to the person's home address, home telephone number, or social security number, or that reveals whether the person has family members.

(b) Each employee and official and each former employee and official shall state that person's choice under Subsection (a) to the main personnel officer of the governmental body in a signed writing not later than the 14th day after the date on which:

- (1) the employee begins employment with the governmental body;
- (2) the official is elected or appointed; or
- (3) the former employee or official ends service with the governmental body.

(c) If the employee or official or former employee or official chooses not to allow public access to the information, the information is protected under Subchapter C.

(d) If an employee or official or a former employee or official fails to state the person's choice within the period established by this section, the information is subject to public access.

(e) An employee or official or former employee or official of a governmental body who wishes to close or open public access to the information may request in writing that the main personnel officer of the governmental body close or open access.

(f) This section does not apply to a person to whom Section 552.1175 applies.

§ 552.025. *Tax Rulings and Opinions*

(a) A governmental body with taxing authority that issues a written determination letter, technical advice memorandum, or ruling that concerns a tax matter shall index the letter, memorandum, or ruling by subject matter.

(b) On request, the governmental body shall make the index prepared under Subsection (a) and the document itself available to the public, subject to the provisions of this chapter.

(c) Subchapter C does not authorize withholding from the public or limiting the availability to the public of a written determination letter, technical advice memorandum, or ruling that concerns a tax matter and that is issued by a governmental body with taxing authority.

§ 552.026. *Education Records*

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

§ 552.027. *Exception: Information Available Commercially; Resource Material*

(a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

§ 552.028. *Request for Information From Incarcerated Individual*

(a) A governmental body is not required to accept or comply with a request for information from:

- (1) an individual who is imprisoned or confined in a correctional facility; or
- (2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

(c) In this section, "correctional facility" means:

- (1) a secure correctional facility, as defined by Section 1.07, Penal Code;
- (2) a secure correctional facility and a secure detention facility, as defined by Section 51.02, Family Code; and
- (3) a place designated by the law of this state, another state, or the federal government for the confinement of a person arrested for, charged with, or convicted of a criminal offense.

§ 552.029. *Right of Access to Certain Information Relating to Inmate of Department of Criminal Justice*

Notwithstanding Section 508.313 or 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

- (1) the inmate's name, identification number, age, birthplace, department photograph, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;
- (2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;
- (3) the offense for which the inmate was convicted or the judgment and sentence for that offense;
- (4) the county and court in which the inmate was convicted;
- (5) the inmate's earliest or latest possible release dates;

(6) the inmate's parole date or earliest possible parole date;

(7) any prior confinement of the inmate by the Texas Department of Criminal Justice or its predecessor; or

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Subchapter C. Information Excepted from Required Disclosure

§ 552.101. Exception: Confidential Information

Information is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.

§ 552.102. Exception: Personnel Information

(a) Information is excepted from the requirements of Section 552.021 if it is information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter. The exception to public disclosure created by this subsection is in addition to any exception created by Section 552.024. Public access to personnel information covered by Section 552.024 is denied to the extent provided by that section.

(b) Information is excepted from the requirements of Section 552.021 if it is a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

§ 552.103. Exception: Litigation or Settlement Negotiations Involving the State or a Political Subdivision

(a) Information is excepted from the requirements of Section 552.021 if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

(b) For purposes of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

§ 552.104. Exception: Information Related to Competition or Bidding

(a) Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

(b) The requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under this section.

§ 552.105. Exception: Information Related to Location or Price of Property

Information is excepted from the requirements of Section 552.021 if it is information relating to:

(1) the location of real or personal property for a public purpose prior to public announcement of the project; or

(2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

§ 552.106. Exception: Certain Legislative Documents

(a) A draft or working paper involved in the preparation of proposed legislation is excepted from the requirements of Section 552.021.

(b) An internal bill analysis or working paper prepared by the governor's office for the purpose of evaluating proposed legislation is excepted from the requirements of Section 552.021.

§ 552.107. Exception: Certain Legal Matters

Information is excepted from the requirements of Section 552.021 if:

(1) it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct; or

(2) a court by order has prohibited disclosure of the information.

§ 552.108. Exception: Certain Law Enforcement, Corrections, and Prosecutorial Information

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

(3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

§ 552.109. Exception: Certain Private Communications of an Elected Office Holder

Private correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy are excepted from the requirements of Section 552.021.

§ 552.110. *Exception: Trade Secrets; Certain Commercial or Financial Information*

(a) A trade secret obtained from a person and privileged or confidential by statute or judicial decision is excepted from the requirements of Section 552.021.

(b) Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is excepted from the requirements of Section 552.021.

§ 552.111. *Exception: Agency Memoranda*

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency is excepted from the requirements of Section 552.021.

§ 552.112. *Exception: Certain Information Relating to Regulation of Financial Institutions or Securities*

(a) Information is excepted from the requirements of Section 552.021 if it is information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both.

(b) In this section, “securities” has the meaning assigned by The Securities Act (Article 581-1 et seq., Vernon’s Texas Civil Statutes).

(c) Information is excepted from the requirements of Section 552.021 if it is information submitted by an individual or other entity to the Texas Legislative Council, or to any state agency or department overseen by the Finance Commission of Texas and the information has been or will be sent to the Texas Legislative Council, for the purpose of performing a statistical or demographic analysis of information subject to Section 323.020. However, this subsection does not except from the requirements of Section 552.021 information that does not identify or tend to identify an individual or other entity and that is subject to required public disclosure under Section 323.020(e).

§ 552.113. *Exception: Geological or Geophysical Information*

(a) Information is excepted from the requirements of Section 552.021 if it is:

(1) an electric log confidential under Subchapter M, Chapter 91, Natural Resources Code;

(2) geological or geophysical information or data, including maps concerning wells, except information filed in connection with an application or proceeding before an agency; or

(3) confidential under Subsections (c) through (f).

(b) Information that is shown to or examined by an employee of the General Land Office, but not retained in the land office, is not considered to be filed with the land office.

(c) In this section:

(1) “Confidential material” includes all well logs, geological, geophysical, geochemical, and other similar data, including maps and other interpretations of the material filed in the General Land Office:

(A) in connection with any administrative application or proceeding before the land commissioner, the school land board, any board for lease, or the commissioner’s or board’s staff; or

(B) in compliance with the requirements of any law, rule, lease, or agreement.

(2) “Basic electric logs” has the same meaning as it has in Chapter 91, Natural Resources Code.

(3) “Administrative applications” and “administrative proceedings” include applications for pooling or unitization, review of shut-in royalty payments, review of leases or other agreements to determine their validity, review of any plan of operations, review of the obligation to drill offset wells, or an application to pay compensatory royalty.

(d) Confidential material, except basic electric logs, filed in the General Land Office on or after September 1, 1985, is public information and is available to the public under Section 552.021 on and after the later of:

(1) five years from the filing date of the confidential material; or

(2) one year from the expiration, termination, or forfeiture of the lease in connection with which the confidential material was filed.

(e) Basic electric logs filed in the General Land Office on or after September 1, 1985, are either public information or confidential material to the same extent and for the same periods provided for the same logs by Chapter 91, Natural Resources Code. A person may request that a basic electric log that has been filed in the General Land Office be made confidential by filing with the land office a copy of the written request for confidentiality made to the Railroad Commission of Texas for the same log.

(f) The following are public information:

(1) basic electric logs filed in the General Land Office before September 1, 1985; and

(2) confidential material, except basic electric logs, filed in the General Land Office before September 1, 1985, provided, that Subsection (d) governs the disclosure of that confidential material filed in connection with a lease that is a valid and subsisting lease on September 1, 1995.

(g) Confidential material may be disclosed at any time if the person filing the material, or the person’s successor in interest in the lease in connection with which the confidential material was filed, consents in writing to its release. A party consenting to the disclosure of confidential material may restrict the manner of disclosure and the person or persons to whom the disclosure may be made.

(h) Notwithstanding the confidential nature of the material described in this section, the material may be used by the General Land Office in the enforcement, by administrative proceeding or litigation, of the laws governing the sale and lease of public lands and minerals, the regulations of the land office, the school land board, or of any board for lease, or the terms of any lease, pooling or unitization agreement, or any other agreement or grant.

(i) An administrative hearings officer may order that confidential material introduced in an administrative proceeding remain confidential until the proceeding is finally concluded, or for the period provided in Subsection (d), whichever is later.

(j) Confidential material examined by an administrative hearings officer during the course of an administrative proceeding for the purpose of determining its admissibility as evidence shall not be considered to have been filed in the General Land Office to the extent that the confidential material is not introduced into evidence at the proceeding.

(k) This section does not prevent a person from asserting that any confidential material is exempt from disclosure as a trade secret or commercial information under Section 552.110 or under any other basis permitted by law.

§ 552.114. *Exception: Student Records*

(a) Information is excepted from the requirements of Section 552.021 if it is information in a student record at an educational institution funded wholly or partly by state revenue.

(b) A record under Subsection (a) shall be made available on the request of:

(1) educational institution personnel;

(2) the student involved or the student’s parent, legal guardian, or spouse; or

(3) a person conducting a child abuse investigation required by Subchapter D, Chapter 261, Family Code.

§ 552.115. *Exception: Birth and Death Records*

(a) A birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from the requirements of Section 552.021, except that:

(1) a birth record is public information and available to the public on and after the 75th anniversary of the date of birth as shown on the record filed with the bureau of vital statistics or local registration official;

(2) a death record is public information and available to the public on and after the 25th anniversary of the date of death as shown on the record filed with the bureau of vital statistics or local registration official;

(3) a general birth index or a general death index established or maintained by the bureau of vital statistics or a local registration official is public information and available to the public to the extent the index relates to a birth record or death record that is public information and available to the public under Subdivision (1) or (2);

(4) a summary birth index or a summary death index prepared or maintained by the bureau of vital statistics or a local registration official is public information and available to the public; and

(5) a birth or death record is available to the chief executive officer of a home-rule municipality or the officer's designee if:

(A) the record is used only to identify a property owner or other person to whom the municipality is required to give notice when enforcing a state statute or an ordinance;

(B) the municipality has exercised due diligence in the manner described by Section 54.035(e), Local Government Code, to identify the person; and

(C) the officer or designee signs a confidentiality agreement that requires that:

(i) the information not be disclosed outside the office of the officer or designee, or within the office for a purpose other than the purpose described by Paragraph (A);

(ii) the information be labeled as confidential;

(iii) the information be kept securely; and

(iv) the number of copies made of the information or the notes taken from the information that implicate the confidential nature of the information be controlled, with all copies or notes that are not destroyed or returned remaining confidential and subject to the confidentiality agreement.

(b) Notwithstanding Subsection (a), a general birth index or a summary birth index is not public information and is not available to the public if:

(1) the fact of an adoption or paternity determination can be revealed by the index; or

(2) the index contains specific identifying information relating to the parents of a child who is the subject of an adoption placement.

(c) Subsection (a)(1) does not apply to the microfilming agreement entered into by the Genealogical Society of Utah, a nonprofit corporation organized under the laws of the State of Utah, and the Archives and Information Services Division of the Texas State Library and Archives Commission.

(d) For the purposes of fulfilling the terms of the agreement in Subsection (c), the Genealogical Society of Utah shall have access to birth records on and after the 50th anniversary of the date of birth as shown on the record filed with the bureau of vital statistics or local registration official, but such birth records shall not be made available to the public until the 75th anniversary of the date of birth as shown on the record.

§ 552.116. Exception: Audit Working Papers

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, or a joint board operating under Section 22.074, Transportation Code, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

§ 552.117. Exception: Certain Addresses, Telephone Numbers, Social Security Numbers, and Personal Family Informations

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, or social security number of the following person or that reveals whether the person has family members:

(1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable;

(3) a current or former employee of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with Section 552.1175;

(4) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or other law, a reserve law enforcement officer, a commissioned deputy game warden, or a corrections officer in a municipal, county, or state penal institution in this state who was killed in the line of duty, regardless of whether the deceased complied with Section 552.024 or 552.1175; or

(5) a commissioned security officer as defined by Section 1702.002, Occupations Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable.

(b) All documents filed with a county clerk and all documents filed with a district clerk are exempt from this section.

§ 552.1175. Confidentiality of Addresses, Telephone Numbers, Social Security Numbers, and Personal Family Information of Peace Officers, County Jailers, Security Officers, and Employees of the Texas Department of Criminal Justice or a Prosecutor's Office

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

(2) county jailers as defined by Section 1701.001, Occupations Code;

(3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department;

(4) commissioned security officers as defined by Section 1702.002, Occupations Code; and

(5) employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters.

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

(c) A choice made under Subsection (b) remains valid until rescinded in writing by the individual.

(d) This section does not apply to information in the tax appraisal records of an appraisal district to which Section 25.025, Tax Code, applies.

(e) All documents filed with a county clerk and all documents filed with a district clerk are exempt from this section.

§ 552.118. *Exception: Official Prescription Form*

Information is excepted from the requirements of Section 552.021 if it is:

(1) information on or derived from an official prescription form filed with the director of the Department of Public Safety under Section 481.075, Health and Safety Code; or

(2) other information collected under Section 481.075 of that code.

§ 552.119. *Exception: Photograph of Peace Officer*

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from the requirements of Section 552.021 unless:

(1) the officer is under indictment or charged with an offense by information;

(2) the officer is a party in a civil service hearing or a case in arbitration; or

(3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

§ 552.120. *Exception: Certain Rare Books and Original Manuscripts*

A rare book or original manuscript that was not created or maintained in the conduct of official business of a governmental body and that is held by a private or public archival and manuscript repository for the purpose of historical research is excepted from the requirements of Section 552.021.

§ 552.121. *Exception: Certain Documents Held for Historical Research*

An oral history interview, personal paper, unpublished letter, or organizational record of a nongovernmental entity that was not created or maintained in the conduct of official business of a governmental body and that is held by a private or public archival and manuscript repository for the purpose of historical research is excepted from the requirements of Section 552.021 to the extent that the archival and manuscript repository and the donor of the interview, paper, letter, or record agree to limit disclosure of the item.

§ 552.122. *Exception: Test Items*

(a) A test item developed by an educational institution that is funded wholly or in part by state revenue is excepted from the requirements of Section 552.021.

(b) A test item developed by a licensing agency or governmental body is excepted from the requirements of Section 552.021.

§ 552.123. *Exception: Name of Applicant for Chief Executive Officer of Institution of Higher Education*

The name of an applicant for the position of chief executive officer of an institution of higher education is excepted from the requirements of Section 552.021, except that the governing body of the institution must give public notice of the name or names of the finalists being considered for the position at least 21 days before the date of the meeting at which final action or vote is to be taken on the employment of the person.

§ 552.1235. *Exception: Identity of Private Donor to Institution of Higher Education*

(a) The name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education or to another person with the intent that the money or property be transferred to an institution of higher education is excepted from the requirements of Section 552.021.

(b) Subsection (a) does not except from required disclosure other informa-

tion relating to gifts, grants, and donations described by Subsection (a), including the amount or value of an individual gift, grant, or donation.

(c) In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

§ 552.124. *Exception: Records of Library or Library System*

(a) A record of a library or library system, supported in whole or in part by public funds, that identifies or serves to identify a person who requested, obtained, or used a library material or service is excepted from the requirements of Section 552.021 unless the record is disclosed:

(1) because the library or library system determines that disclosure is reasonably necessary for the operation of the library or library system and the record is not confidential under other state or federal law;

(2) under Section 552.023; or

(3) to a law enforcement agency or a prosecutor under a court order or subpoena obtained after a showing to a district court that:

(A) disclosure of the record is necessary to protect the public safety; or

(B) the record is evidence of an offense or constitutes evidence that a particular person committed an offense.

(b) A record of a library or library system that is excepted from required disclosure under this section is confidential.

§ 552.125. *Exception: Certain Audits*

Any documents or information privileged under the Texas Environmental, Health, and Safety Audit Privilege Act are excepted from the requirements of Section 552.021.

§ 552.126. *Exception: Name of Applicant for Superintendent of Public School District*

The name of an applicant for the position of superintendent of a public school district is excepted from the requirements of Section 552.021, except that the board of trustees must give public notice of the name or names of the finalists being considered for the position at least 21 days before the date of the meeting at which a final action or vote is to be taken on the employment of the person.

§ 552.127. *Exception: Personal Information Relating to Participants in Neighborhood Crime Watch Organization*

(a) Information is excepted from the requirements of Section 552.021 if the information identifies a person as a participant in a neighborhood crime watch organization and relates to the name, home address, business address, home telephone number, or business telephone number of the person.

(b) In this section, "neighborhood crime watch organization" means a group of residents of a neighborhood or part of a neighborhood that is formed in affiliation or association with a law enforcement agency in this state to observe activities within the neighborhood or part of a neighborhood and to take other actions intended to reduce crime in that area.

§ 552.128. *Exception: Certain Information Submitted by Potential Vendor or Contractor*

(a) Information submitted by a potential vendor or contractor to a governmental body in connection with an application for certification as a historically underutilized or disadvantaged business under a local, state, or federal certification program is excepted from the requirements of Section 552.021, except as provided by this section.

(b) Notwithstanding Section 552.007 and except as provided by Subsection (c), the information may be disclosed only:

(1) to a state or local governmental entity in this state, and the state or local governmental entity may use the information only:

(A) for purposes related to verifying an applicant's status as a histori-

cally underutilized or disadvantaged business; or

(B) for the purpose of conducting a study of a public purchasing program established under state law for historically underutilized or disadvantaged businesses; or

(2) with the express written permission of the applicant or the applicant's agent.

(c) Information submitted by a vendor or contractor or a potential vendor or contractor to a governmental body in connection with a specific proposed contractual relationship, a specific contract, or an application to be placed on a bidders list, including information that may also have been submitted in connection with an application for certification as a historically underutilized or disadvantaged business, is subject to required disclosure, excepted from required disclosure, or confidential in accordance with other law.

§ 552.129. *Motor Vehicle Inspection Information*

A record created during a motor vehicle emissions inspection under Subchapter F, Chapter 548, Transportation Code, that relates to an individual vehicle or owner of an individual vehicle is excepted from the requirements of Section 552.021.

§ 552.130. *Exception: Motor Vehicle Records*

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

§ 552.131. *Exception: Economic Development Information*

(a) Information is excepted from the requirements of Section 552.021 if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from the requirements of Section 552.021.

(c) After an agreement is made with the business prospect, this section does not except from the requirements of Section 552.021 information about a financial or other incentive being offered to the business prospect:

(1) by the governmental body; or

(2) by another person, if the financial or other incentive may directly or indirectly result in the expenditure of public funds by a governmental body or a reduction in revenue received by a governmental body from any source.

§ 552.132. *Exception: Crime Victim Information*

(a) Except as provided by Subsection (f), in this section, "crime victim" means a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that subchapter.

(b) A crime victim may elect whether to allow public access to information held by the crime victim's compensation division of the attorney general's office that relates to:

(1) the name, social security number, address, or telephone number of the crime victim; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

(c) An election under Subsection (b) must be:

(1) made in writing on a form developed by the attorney general for that purpose and signed by the crime victim; and

(2) filed with the crime victims' compensation division before the third anniversary of the date that the crime victim filed the application for compensation.

(d) If the crime victim elects not to allow public access to the information, the information is excepted from the requirements of Section 552.021. If the crime victim does not make an election under Subsection (b) or (f) or elects to allow public access to the information, the information is not excepted from the requirements of Section 552.021 unless the information is made confidential or excepted from those requirements by another law.

(e) If the crime victim is awarded compensation under Section 56.34, Code of Criminal Procedure, as of the date of the award of compensation, the name of the crime victim and the amount of compensation awarded to that victim are public information and are not excepted from the requirements of Section 552.021.

(f) An employee of a governmental body who is also a crime victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the crime victim, including a photograph or other visual representation of the victim. An election under this subsection must be made in writing on a form developed by the governmental body, be signed by the employee, and be filed with the governmental body before the third anniversary of the latest to occur of one of the following: (1) the date the crime was committed; (2) the date employment begins; or (3) the date the governmental body develops the form and provides it to employees. If the employee fails to make an election, the identifying information is excepted from disclosure until the third anniversary of the date the crime was committed. In case of disability, impairment, or other incapacity of the employee, the election may be made by the guardian of the employee or former employee.

§ 552.1325. *Crime Victim Impact Statement: Certain Information Confidential*

(a) In this section:

(1) "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.

(2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

(1) the name, social security number, address, and telephone number of a crime victim; and

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

§ 552.133. *Exception: Public Power Utility Competitive Matters*

(a) In this section:

(1) "Public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(2) "Public power utility governing body" means the board of trustees or other applicable governing body, including a city council, of a public power utility.

(3) "Competitive matter" means a utility-related matter that the public power utility governing body in good faith determines by a vote under this section is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors

or prospective competitors but may not be deemed to include the following categories of information:

(A) information relating to the provision of distribution access service, including the terms and conditions of the service and the rates charged for the service but not including information concerning utility-related services or products that are competitive;

(B) information relating to the provision of transmission service that is required to be filed with the Public Utility Commission of Texas, subject to any confidentiality provided for under the rules of the commission;

(C) information for the distribution system pertaining to reliability and continuity of service, to the extent not security-sensitive, that relates to emergency management, identification of critical loads such as hospitals and police, records of interruption, and distribution feeder standards;

(D) any substantive rule of general applicability regarding service offerings, service regulation, customer protections, or customer service adopted by the public power utility as authorized by law;

(E) aggregate information reflecting receipts or expenditures of funds of the public power utility, of the type that would be included in audited financial statements;

(F) information relating to equal employment opportunities for minority groups, as filed with local, state, or federal agencies;

(G) information relating to the public power utility's performance in contracting with minority business entities;

(H) information relating to nuclear decommissioning trust agreements, of the type required to be included in audited financial statements;

(I) information relating to the amount and timing of any transfer to an owning city's general fund;

(J) information relating to environmental compliance as required to be filed with any local, state, or national environmental authority, subject to any confidentiality provided under the rules of those authorities;

(K) names of public officers of the public power utility and the voting records of those officers for all matters other than those within the scope of a competitive resolution provided for by this section;

(L) a description of the public power utility's central and field organization, including the established places at which the public may obtain information, submit information and requests, or obtain decisions and the identification of employees from whom the public may obtain information, submit information or requests, or obtain decisions; or

(M) information identifying the general course and method by which the public power utility's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures.

(b) Information or records are excepted from the requirements of Section 552.021 if the information or records are reasonably related to a competitive matter, as defined in this section. Excepted information or records include the text of any resolution of the public power utility governing body determining which issues, activities, or matters constitute competitive matters. Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiply certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter.

(c) In connection with any request for an opinion of the attorney general under Section 552.301 with respect to information alleged to fall under this exception, in rendering a written opinion under Section 552.306 the attorney general shall find the requested information to be outside the scope of this exception only if the attorney general determines, based on the information provided in connection with the request:

(1) that the public power utility governing body has failed to act in good faith in making the determination that the issue, matter, or activity in question is a competitive matter; or

(2) that the information or records sought to be withheld are not reasonably related to a competitive matter.

(d) The requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law

does not apply to information that is excepted from required disclosure under this section.

§ 552.134. Exception: Certain Information Relating to Inmate of Department of Criminal Justice

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

(b) Subsection (a) does not apply to:

(1) statistical or other aggregated information relating to inmates confined in one or more facilities operated by or under a contract with the department; or

(2) information about an inmate sentenced to death.

(c) This section does not affect whether information is considered confidential or privileged under Section 508.313.

(d) A release of information described by Subsection (a) to an eligible entity, as defined by Section 508.313(d), for a purpose related to law enforcement, prosecution, corrections, clemency, or treatment is not considered a release of information to the public for purposes of Section 552.007 and does not waive the right to assert in the future that the information is excepted from required disclosure under this section or other law.

§ 552.135. Exception: Certain Information Held by School District

(a) "Informer" means a student or a former student or an employee or former 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.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from the requirements of Section 552.021.

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

§ 552.136. Confidentiality of Credit Card, Debit Card, Charge Card, and Access Device Numbers

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

§ 552.137. *Confidentiality of Certain E-mail Addresses*

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

§ 552.138. *Exception: Family Violence Shelter Center and Sexual Assault Program Information*

(a) In this section:

(1) "Family violence shelter center" has the meaning assigned by Section 51.002, Human Resources Code.

(2) "Sexual assault program" has the meaning assigned by Section 420.003.

(b) Information maintained by a family violence shelter center or sexual assault program is excepted from the requirements of Section 552.021 if it is information that relates to:

(1) the home address, home telephone number, or social security number of an employee or a volunteer worker of a family violence shelter center or a sexual assault program, regardless of whether the employee or worker complies with Section 552.024;

(2) the location or physical layout of a family violence shelter center;

(3) the name, home address, home telephone number, or numeric identifier of a current or former client of a family violence shelter center or sexual assault program;

(4) the provision of services, including counseling and sheltering, to a current or former client of a family violence shelter center or sexual assault program;

(5) the name, home address, or home telephone number of a private donor to a family violence shelter center or sexual assault program; or

(6) the home address or home telephone number of a member of the board of directors or the board of trustees of a family violence shelter center or sexual assault program, regardless of whether the board member complies with Section 552.024.

§ 552.139. *Exception: Government Information Related to Security Issues for Computers*

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; and

(2) any other assessment of the extent to which data processing operations, a computer, or a computer program, network, system, or software of a

governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information is vulnerable to alteration, damage, or erasure.

§ 552.140. *Military Discharge Records*

(a) This section applies only to a military veteran's Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003.

(b) The record is confidential for the 75 years following the date it is recorded with or otherwise first comes into the possession of a governmental body. During that period the governmental body may permit inspection or copying of the record or disclose information contained in the record only in accordance with this section or in accordance with a court order.

(c) On request and the presentation of proper identification, the following persons may inspect the military discharge record or obtain from the governmental body free of charge a copy or certified copy of the record:

(1) the veteran who is the subject of the record;

(2) the legal guardian of the veteran;

(3) the spouse or a child or parent of the veteran or, if there is no living spouse, child, or parent, the nearest living relative of the veteran;

(4) the personal representative of the estate of the veteran;

(5) the person named by the veteran, or by a person described by Subdivision (2), (3), or (4), in an appropriate power of attorney executed in accordance with Section 490, Chapter XII, Texas Probate Code;

(6) another governmental body; or

(7) an authorized representative of the funeral home that assists with the burial of the veteran.

(d) A court that orders the release of information under this section shall limit the further disclosure of the information and the purposes for which the information may be used.

(e) A governmental body that obtains information from the record shall limit the governmental body's use and disclosure of the information to the purpose for which the information was obtained.

§ 552.141. *Confidentiality of Information in Application for Marriage License*

(a) Information that relates to the social security number of an individual that is maintained by a county clerk and that is on an application for a marriage license, including information in an application on behalf of an absent applicant and the affidavit of an absent applicant, or is on a document submitted with an application for a marriage license is confidential and may not be disclosed by the county clerk to the public under this chapter.

(b) If the county clerk receives a request to make information in a marriage license application available under this chapter, the county clerk shall redact the portion of the application that contains an individual's social security number and release the remainder of the information in the application.

§ 552.142. *Exception: Records of Certain Deferred Adjudications*

(a) Information is excepted from the requirements of Section 552.021 if an order of nondisclosure with respect to the information has been issued under Section 411.081(d).

(b) A person who is the subject of information that is excepted from the requirements of Section 552.021 under this section may deny the occurrence of the arrest and prosecution to which the information relates and the exception of the information under this section, unless the information is being used against the person in a subsequent criminal proceeding.

§ 552.1425. *Civil Penalty: Records of Certain Deferred Adjudications*

(a) A private entity that compiles and disseminates for compensation criminal history record information may not compile or disseminate information with respect to which an order of nondisclosure has been issued under Section 411.081(d).

(b) A district court may issue a warning to a private entity for a first violation of Subsection (a). After receiving a warning for the first violation, the private entity is liable to the state for a civil penalty not to exceed \$500 for each subsequent violation.

(c) The attorney general or an appropriate prosecuting attorney may sue to collect a civil penalty under this section.

(d) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

§ 552.143. *Confidentiality of Certain Investment Information*

(a) All information prepared or provided by a private investment fund and held by a governmental body that is not listed in Section 552.0225(b) is confidential and excepted from the requirements of Section 552.021.

(b) Unless the information has been publicly released, pre-investment and post-investment diligence information, including reviews and analyses, prepared or maintained by a governmental body or a private investment fund is confidential and excepted from the requirements of Section 552.021, except to the extent it is subject to disclosure under Subsection (c).

(c) All information regarding a governmental body's direct purchase, holding, or disposal of restricted securities that is not listed in Section 552.0225(b) (2)-(9), (11), or (13)-(16) is confidential and excepted from the requirements of Section 552.021. This subsection does not apply to a governmental body's purchase, holding, or disposal of restricted securities for the purpose of reinvestment nor does it apply to a private investment fund's investment in restricted securities. This subsection applies to information regarding a direct purchase, holding, or disposal of restricted securities by the Texas growth fund, created under Section 70, Article XVI, Texas Constitution, that is not listed in Section 552.0225(b).

(d) For the purposes of this chapter:

(1) "Private investment fund" means an entity, other than a governmental body, that issues restricted securities to a governmental body to evidence the investment of public funds for the purpose of reinvestment.

(2) "Reinvestment" means investment in a person that makes or will make other investments.

(3) "Restricted securities" has the meaning assigned by 17 C.F.R. Section 230.144(a)(3).

(e) This section shall not be construed as affecting the authority of the comptroller under Section 403.030.

(f) This section does not apply to the Texas Mutual Insurance Company or a successor to the company.

§ 552.144. *Exception: Working Papers of Administrative Law Judges at State Office of Administrative Hearings*

The following working papers of an administrative law judge at the State Office of Administrative Hearings are excepted from the requirements of Section 552.021:

(1) notes recording the observations, thoughts, or impressions of an administrative law judge;

(2) drafts of a proposal for decision;

(3) drafts of orders made in connection with conducting contested case hearings; and

(4) drafts of orders made in connection with conducting alternative dispute resolution procedures.

§ 552.146. *Exception: Certain Communications With Assistant or Employee of Legislative Budget Board*

(a) All written or otherwise recorded communications, including conversations, correspondence, and electronic communications, between a member of the legislature or the lieutenant governor and an assistant or employee of the Legislative Budget Board are excepted from the requirements of Section 552.021.

(b) Memoranda of a communication between a member of the legislature or the lieutenant governor and an assistant or employee of the Legislative Budget Board are excepted from the requirements of Section 552.021 without regard to the method used to store or maintain the memoranda.

(c) This section does not except from required disclosure a record or memoranda of a communication that occurs in public during an open meeting or public hearing conducted by the Legislative Budget Board.

§ 552.147. *Exception: Social Security Number of Living Person*

(a) The social security number of a living person is excepted from the requirements of Section 552.021.

(b) A governmental body may redact the social security number of a living person from any information the governmental body discloses under Section 552.021 without the necessity of requesting a decision from the attorney general under Subchapter G.

Subchapter D. Officer for Public Information

§ 552.201. *Identity of Officer for Public Information*

(a) The chief administrative officer of a governmental body is the officer for public information, except as provided by Subsection (b).

(b) Each elected county officer is the officer for public information and the custodian, as defined by Section 201.003, Local Government Code, of the information created or received by that county officer's office.

§ 552.202. *Department Heads*

Each department head is an agent of the officer for public information for the purposes of complying with this chapter.

§ 552.203. *General Duties of Officer for Public Information*

Each officer for public information, subject to penalties provided in this chapter, shall:

(1) make public information available for public inspection and copying;

(2) carefully protect public information from deterioration, alteration, mutilation, loss, or unlawful removal; and

(3) repair, renovate, or rebind public information as necessary to maintain it properly.

§ 552.204. *Scope of Responsibility of Officer for Public Information*

An officer for public information is responsible for the release of public information as required by this chapter. The officer is not responsible for:

(1) the use made of the information by the requestor; or

(2) the release of information after it is removed from a record as a result of an update, a correction, or a change of status of the person to whom the information pertains.

§ 552.205. *Informing Public of Basic Rights and Responsibilities Under this Chapter*

(a) An officer for public information shall prominently display a sign in the form prescribed by the attorney general that contains basic information about the rights of a requestor, the responsibilities of a governmental body, and the procedures for inspecting or obtaining a copy of public information under this chapter. The officer shall display the sign at one or more places in the administrative offices of the governmental body where it is plainly visible to:

(1) members of the public who request public information in person under this chapter; and

(2) employees of the governmental body whose duties include receiving or responding to requests under this chapter.

(b) The attorney general by rule shall prescribe the content of the sign and the size, shape, and other physical characteristics of the sign. In prescribing the content of the sign, the attorney general shall include plainly written basic information about the rights of a requestor, the responsibilities of a governmental body, and the procedures for inspecting or obtaining a copy of public information under this chapter that, in the opinion of the attorney general, is most useful for requestors to know and for employees of governmental bodies who receive or respond to requests for public information to know.

Subchapter E. Procedures Related to Access

§ 552.221. Application for Public Information; Production of Public Information

(a) An officer for public information of a governmental body shall promptly produce public information for inspection, duplication, or both on application by any person to the officer. In this subsection, “promptly” means as soon as possible under the circumstances, that is, within a reasonable time, without delay.

(b) An officer for public information complies with Subsection (a) by:

(1) providing the public information for inspection or duplication in the offices of the governmental body; or

(2) sending copies of the public information by first class United States mail if the person requesting the information requests that copies be provided and pays the postage and any other applicable charges that the requestor has accrued under Subchapter F.

(c) If the requested information is unavailable at the time of the request to examine because it is in active use or in storage, the officer for public information shall certify this fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

(d) If an officer for public information cannot produce public information for inspection or duplication within 10 business days after the date the information is requested under Subsection (a), the officer shall certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

§ 552.222. Permissible Inquiry by Governmental Body to Requestor

(a) The officer for public information and the officer’s agent may not make an inquiry of a requestor except to establish proper identification or except as provided by Subsection (b) or (c).

(b) If what information is requested is unclear to the governmental body, the governmental body may ask the requestor to clarify the request. If a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed, but the governmental body may not inquire into the purpose for which information will be used.

(c) If the information requested relates to a motor vehicle record, the officer for public information or the officer’s agent may require the requestor to provide additional identifying information sufficient for the officer or the officer’s agent to determine whether the requestor is eligible to receive the information under Chapter 730, Transportation Code. In this subsection, “motor vehicle record” has the meaning assigned that term by Section 730.003, Transportation Code.

§ 552.223. Uniform Treatment of Requests for Information

The officer for public information or the officer’s agent shall treat all requests for information uniformly without regard to the position or occupation of the requestor, the person on whose behalf the request is made, or the status of the individual as a member of the media.

§ 552.224. Comfort and Facility

The officer for public information or the officer’s agent shall give to a requestor all reasonable comfort and facility for the full exercise of the right granted by this chapter.

§ 552.225. Time for Examination

(a) A requestor must complete the examination of the information not later than the 10th business day after the date the custodian of the information makes it available. If the requestor does not complete the examination of the information within 10 business days after the date the custodian of the information makes the information available and does not file a request for additional time under Subsection (b), the requestor is considered to have withdrawn the request.

(b) The officer for public information shall extend the initial examination period by an additional 10 business days if, within the initial period, the requestor files with the officer for public information a written request for additional time. The officer for public information shall extend an additional examination period by another 10 business days if, within the additional period, the requestor files with the officer for public information a written request for more additional time.

(c) The time during which a person may examine information may be interrupted by the officer for public information if the information is needed for use by the governmental body. The period of interruption is not considered to be a part of the time during which the person may examine the information.

§ 552.226. Removal of Original Record

This chapter does not authorize a requestor to remove an original copy of a public record from the office of a governmental body.

§ 552.227. Research of State Library Holdings Not Required

An officer for public information or the officer’s agent is not required to perform general research within the reference and research archives and holdings of state libraries.

§ 552.228. Providing Suitable Copy of Public Information Within Reasonable Time

(a) It shall be a policy of a governmental body to provide a suitable copy of public information within a reasonable time after the date on which the copy is requested.

(b) If public information exists in an electronic or magnetic medium, the requestor may request a copy either on paper or in an electronic medium, such as on diskette or on magnetic tape. A governmental body shall provide a copy in the requested medium if:

(1) the governmental body has the technological ability to produce a copy of the requested information in the requested medium;

(2) the governmental body is not required to purchase any software or hardware to accommodate the request; and

(3) provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the governmental body and a third party.

(c) If a governmental body is unable to comply with a request to produce a copy of information in a requested medium for any of the reasons described by this section, the governmental body shall provide a paper copy of the requested information or a copy in another medium that is acceptable to the requestor. A governmental body is not required to copy information onto a diskette or other material provided by the requestor but may use its own supplies.

§ 552.229. Consent to Release Information Under Special Right of Access

(a) Consent for the release of information excepted from disclosure to the general public but available to a specific person under Sections 552.023 and 552.307 must be in writing and signed by the specific person or the person’s authorized representative.

(b) An individual under 18 years of age may consent to the release of information under this section only with the additional written authorization of the individual’s parent or guardian.

(c) An individual who has been adjudicated incompetent to manage the individual’s personal affairs or for whom an attorney ad litem has been appointed

may consent to the release of information under this section only by the written authorization of the designated legal guardian or attorney ad litem.

§ 552.230. *Rules of Procedure for Inspection and Copying of Public Information*

(a) A governmental body may promulgate reasonable rules of procedure under which public information may be inspected and copied efficiently, safely, and without delay.

(b) A rule promulgated under Subsection (a) may not be inconsistent with any provision of this chapter.

§ 552.231. *Responding to Requests for Information That Require Programming or Manipulation of Data*

(a) A governmental body shall provide to a requestor the written statement described by Subsection (b) if the governmental body determines:

(1) that responding to a request for public information will require programming or manipulation of data; and

(2) that:

(A) compliance with the request is not feasible or will result in substantial interference with its ongoing operations; or

(B) the information could be made available in the requested form only at a cost that covers the programming and manipulation of data.

(b) The written statement must include:

(1) a statement that the information is not available in the requested form;

(2) a description of the form in which the information is available;

(3) a description of any contract or services that would be required to provide the information in the requested form;

(4) a statement of the estimated cost of providing the information in the requested form, as determined in accordance with the rules established by the attorney general under Section 552.262; and

(5) a statement of the anticipated time required to provide the information in the requested form.

(c) The governmental body shall provide the written statement to the requestor within 20 days after the date of the governmental body's receipt of the request. The governmental body has an additional 10 days to provide the statement if the governmental body gives written notice to the requestor, within 20 days after the date of receipt of the request, that the additional time is needed.

(d) On providing the written statement to the requestor as required by this section, the governmental body does not have any further obligation to provide the information in the requested form or in the form in which it is available unless within 30 days the requestor states in writing to the governmental body that the requestor:

(1) wants the governmental body to provide the information in the requested form according to the cost and time parameters set out in the statement or according to other terms to which the requestor and the governmental body agree; or

(2) wants the information in the form in which it is available.

(d-1) If a requestor does not make a timely written statement under Subsection (d), the requestor is considered to have withdrawn the request for information.

(e) The officer for public information of a governmental body shall establish policies that assure the expeditious and accurate processing of requests for information that require programming or manipulation of data. A governmental body shall maintain a file containing all written statements issued under this section in a readily accessible location.

§ 552.232. *Responding to Repetitious or Redundant Requests*

(a) A governmental body that determines that a requestor has made a request for information for which the governmental body has previously furnished copies to the requestor or made copies available to the requestor on pay-

ment of applicable charges under Subchapter F, shall respond to the request, in relation to the information for which copies have been already furnished or made available, in accordance with this section, except that:

(1) this section does not prohibit the governmental body from furnishing the information or making the information available to the requestor again in accordance with the request; and

(2) the governmental body is not required to comply with this section in relation to information that the governmental body simply furnishes or makes available to the requestor again in accordance with the request.

(b) The governmental body shall certify to the requestor that copies of all or part of the requested information, as applicable, were previously furnished to the requestor or made available to the requestor on payment of applicable charges under Subchapter F. The certification must include:

(1) a description of the information for which copies have been previously furnished or made available to the requestor;

(2) the date that the governmental body received the requestor's original request for that information;

(3) the date that the governmental body previously furnished copies of or made available copies of the information to the requestor;

(4) a certification that no subsequent additions, deletions, or corrections have been made to that information; and

(5) the name, title, and signature of the officer for public information or the officer's agent making the certification.

(c) A charge may not be imposed for making and furnishing a certification required under Subsection (b).

(d) This section does not apply to information for which the governmental body has not previously furnished copies to the requestor or made copies available to the requestor on payment of applicable charges under Subchapter F. A request by the requestor for information for which copies have not previously been furnished or made available to the requestor, including information for which copies were not furnished or made available because the information was redacted from other information that was furnished or made available or because the information did not yet exist at the time of an earlier request, shall be treated in the same manner as any other request for information under this chapter.

Subchapter F. Charges for Providing Copies of Public Information

§ 552.261. *Charge for Providing Copies of Public Information*

(a) The charge for providing a copy of public information shall be an amount that reasonably includes all costs related to reproducing the public information, including costs of materials, labor, and overhead. If a request is for 50 or fewer pages of paper records, the charge for providing the copy of the public information may not include costs of materials, labor, or overhead, but shall be limited to the charge for each page of the paper record that is photocopied, unless the pages to be photocopied are located in:

(1) two or more separate buildings that are not physically connected with each other; or

(2) a remote storage facility.

(b) If the charge for providing a copy of public information includes costs of labor, the requestor may require the governmental body's officer for public information or the officer's agent to provide the requestor with a written statement as to the amount of time that was required to produce and provide the copy. The statement must be signed by the officer for public information or the officer's agent and the officer's or the agent's name must be typed or legibly printed below the signature. A charge may not be imposed for providing the written statement to the requestor.

(c) For purposes of Subsection (a), a connection of two buildings by a covered or open sidewalk, an elevated or underground passageway, or a similar facility is insufficient to cause the buildings to be considered separate buildings.

(d) Charges for providing a copy of public information are considered to accrue at the time the governmental body advises the requestor that the copy is available on payment of the applicable charges.

§ 552.2615. *Required Itemized Estimate of Charges*

(a) If a request for a copy of public information will result in the imposition of a charge under this subchapter that exceeds \$40, or a request to inspect a paper record will result in the imposition of a charge under Section 552.271 that exceeds \$40, the governmental body shall provide the requestor with a written itemized statement that details all estimated charges that will be imposed, including any allowable charges for labor or personnel costs. If an alternative less costly method of viewing the records is available, the statement must include a notice that the requestor may contact the governmental body regarding the alternative method. The governmental body must inform the requestor of the responsibilities imposed on the requestor by this section and of the rights granted by this entire section and give the requestor the information needed to respond, including:

(1) that the requestor must provide the governmental body with a mailing, facsimile transmission, or electronic mail address to receive the itemized statement and that it is the requestor's choice which type of address to provide;

(2) that the request is considered automatically withdrawn if the requestor does not respond in writing to the itemized statement and any updated itemized statement in the time and manner required by this section; and

(3) that the requestor may respond to the statement by delivering the written response to the governmental body by mail, in person, by facsimile transmission if the governmental body is capable of receiving documents transmitted in that manner, or by electronic mail if the governmental body has an electronic mail address.

(b) A request described by Subsection (a) is considered to have been withdrawn by the requestor if the requestor does not respond in writing to the itemized statement by informing the governmental body within 10 business days after the date the statement is sent to the requestor that:

(1) the requestor will accept the estimated charges;

(2) the requestor is modifying the request in response to the itemized statement; or

(3) the requestor has sent to the attorney general a complaint alleging that the requestor has been overcharged for being provided with a copy of the public information.

(c) If the governmental body later determines, but before it makes the copy or the paper record available, that the estimated charges will exceed the charges detailed in the written itemized statement by 20 percent or more, the governmental body shall send to the requestor a written updated itemized statement that details all estimated charges that will be imposed, including any allowable charges for labor or personnel costs. If the requestor does not respond in writing to the updated estimate in the time and manner described by Subsection (b), the request is considered to have been withdrawn by the requestor.

(d) If the actual charges that a governmental body imposes for a copy of public information, or for inspecting a paper record under Section 552.271, exceeds \$40, the charges may not exceed:

(1) the amount estimated in the updated itemized statement; or

(2) if an updated itemized statement is not sent to the requestor, an amount that exceeds by 20 percent or more the amount estimated in the itemized statement.

(e) An itemized statement or updated itemized statement is considered to have been sent by the governmental body to the requestor on the date that:

(1) the statement is delivered to the requestor in person;

(2) the governmental body deposits the properly addressed statement in the United States mail; or

(3) the governmental body transmits the properly addressed statement by electronic mail or facsimile transmission, if the requestor agrees to receive the statement by electronic mail or facsimile transmission, as applicable.

(f) A requestor is considered to have responded to the itemized statement or the updated itemized statement on the date that:

(1) the response is delivered to the governmental body in person;

(2) the requestor deposits the properly addressed response in the United States mail; or

(3) the requestor transmits the properly addressed response to the governmental body by electronic mail or facsimile transmission.

(g) The time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G.

§ 552.262. *Rules of the Attorney General*

(a) The attorney general shall adopt rules for use by each governmental body in determining charges for providing copies of public information under this subchapter and in determining the charge, deposit, or bond required for making public information that exists in a paper record available for inspection as authorized by Sections 552.271(c) and (d). The rules adopted by the attorney general shall be used by each governmental body in determining charges for providing copies of public information and in determining the charge, deposit, or bond required for making public information that exists in a paper record available for inspection, except to the extent that other law provides for charges for specific kinds of public information. The charges for providing copies of public information may not be excessive and may not exceed the actual cost of producing the information or for making public information that exists in a paper record available for inspection. A governmental body, other than an agency of state government, may determine its own charges for providing copies of public information and its own charge, deposit, or bond for making public information that exists in a paper record available for inspection but may not charge an amount that is greater than 25 percent more than the amount established by the attorney general unless the governmental body requests an exemption under Subsection (c).

(b) The rules of the attorney general shall prescribe the methods for computing the charges for providing copies of public information in paper, electronic, and other kinds of media and the charge, deposit, or bond required for making public information that exists in a paper record available for inspection. The rules shall establish costs for various components of charges for providing copies of public information that shall be used by each governmental body in providing copies of public information or making public information that exists in a paper record available for inspection.

(c) A governmental body may request that it be exempt from part or all of the rules adopted by the attorney general for determining charges for providing copies of public information or the charge, deposit, or bond required for making public information that exists in a paper record available for inspection. The request must be made in writing to the attorney general and must state the reason for the exemption. If the attorney general determines that good cause exists for exempting a governmental body from a part or all of the rules, the attorney general shall give written notice of the determination to the governmental body within 90 days of the request. On receipt of the determination, the governmental body may amend its charges for providing copies of public information or its charge, deposit, or bond required for making public information that exists in a paper record available for inspection according to the determination of the attorney general.

(d) The attorney general shall publish annually in the Texas Register a list of the governmental bodies that have authorization from the attorney general to adopt any modified rules for determining the cost of providing copies of public information or making public information that exists in a paper record available for inspection.

(e) The rules of the attorney general do not apply to a state governmental body that is not a state agency for purposes of Subtitle D, Title 10.

§ 552.263. *Bond for Payment of Costs or Cash Prepayment for Preparation of Copy of Public Information*

(a) An officer for public information or the officer's agent may require a deposit or bond for payment of anticipated costs for the preparation of a copy of public information if the officer for public information or the officer's agent has provided the requestor with the required written itemized statement detailing the estimated charge for providing the copy and if the charge for providing the copy of the public information specifically requested by the requestor is estimated by the governmental body to exceed:

(1) \$100, if the governmental body has more than 15 full-time employees; or

(2) \$50, if the governmental body has fewer than 16 full-time employees.

(b) The officer for public information or the officer's agent may not require a deposit or bond be paid under Subsection (a) as a down payment for copies of public information that the requestor may request in the future.

(c) An officer for public information or the officer's agent may require a

deposit or bond for payment of unpaid amounts owing to the governmental body in relation to previous requests that the requestor has made under this chapter before preparing a copy of public information in response to a new request if those unpaid amounts exceed \$100. The officer for public information or the officer's agent may not seek payment of those unpaid amounts through any other means.

(d) The governmental body must fully document the existence and amount of those unpaid amounts or the amount of any anticipated costs, as applicable, before requiring a deposit or bond under this section. The documentation is subject to required public disclosure under this chapter.

(e) For purposes of Subchapters F and G, a request for a copy of public information is considered to have been received by a governmental body on the date the governmental body receives the deposit or bond for payment of anticipated costs or unpaid amounts if the governmental body's officer for public information or the officer's agent requires a deposit or bond in accordance with this section.

(f) A requestor who fails to make a deposit or post a bond required under Subsection (a) before the 10th day after the date the deposit or bond is required is considered to have withdrawn the request for the copy of the public information that precipitated the requirement of the deposit or bond.

§ 552.264. *Copy of Public Information Requested by Member of Legislature*

One copy of public information that is requested from a state agency by a member, agency, or committee of the legislature under Section 552.008 shall be provided without charge.

§ 552.265. *Charge for Paper Copy Provided by District or County Clerk*

The charge for providing a paper copy made by a district or county clerk's office shall be the charge provided by Chapter 51 of this code, Chapter 118, Local Government Code, or other applicable law.

§ 552.266. *Charge for Copy of Public Information Provided by Municipal Court Clerk*

The charge for providing a copy made by a municipal court clerk shall be the charge provided by municipal ordinance.

§ 552.267. *Waiver or Reduction of Charge for Providing Copy of Public Information*

(a) A governmental body shall provide a copy of public information without charge or at a reduced charge if the governmental body determines that waiver or reduction of the charge is in the public interest because providing the copy of the information primarily benefits the general public.

(b) If the cost to a governmental body of processing the collection of a charge for providing a copy of public information will exceed the amount of the charge, the governmental body may waive the charge.

§ 552.268. *Efficient Use of Public Resources*

A governmental body shall make reasonably efficient use of supplies and other resources to avoid excessive reproduction costs.

§ 552.269. *Overcharge or Overpayment for Copy of Public Information*

(a) A person who believes the person has been overcharged for being provided with a copy of public information may complain to the attorney general in writing of the alleged overcharge, setting forth the reasons why the person believes the charges are excessive. The attorney general shall review the complaint and make a determination in writing as to the appropriate charge for providing the copy of the requested information. The governmental body shall respond to the attorney general to any written questions asked of the governmental body by the attorney general regarding the charges for providing the copy of the public information. The response must be made to the attorney general within 10 business days after the date the questions are received by the governmental body. If the attorney general determines that a governmental

body has overcharged for providing the copy of requested public information, the governmental body shall promptly adjust its charges in accordance with the determination of the attorney general.

(b) A person who overpays for a copy of public information because a governmental body refuses or fails to follow the rules for charges adopted by the attorney general is entitled to recover three times the amount of the overcharge if the governmental body did not act in good faith in computing the costs.

§ 552.270. *Charge for Government Publication*

(a) This subchapter does not apply to a publication that is compiled and printed by or for a governmental body for public dissemination. If the cost of the publication is not determined by state law, a governmental body may determine the charge for providing the publication.

(b) This section does not prohibit a governmental body from providing a publication free of charge if state law does not require that a certain charge be made.

§ 552.271. *Inspection of Public Information in Paper Record if Copy Not Requested*

(a) If the requestor does not request a copy of public information, a charge may not be imposed for making available for inspection any public information that exists in a paper record, except as provided by this section.

(b) If a requested page contains confidential information that must be edited from the record before the information can be made available for inspection, the governmental body may charge for the cost of making a photocopy of the page from which confidential information must be edited. No charge other than the cost of the photocopy may be imposed under this subsection.

(c) Except as provided by Subsection (d), an officer for public information or the officer's agent may require a requestor to pay, or to make a deposit or post a bond for the payment of, anticipated personnel costs for making available for inspection public information that exists in paper records only if:

(1) the public information specifically requested by the requestor:

(A) is older than five years; or

(B) completely fills, or when assembled will completely fill, six or more archival boxes; and

(2) the officer for public information or the officer's agent estimates that more than five hours will be required to make the public information available for inspection.

(d) If the governmental body has fewer than 16 full-time employees, the payment, the deposit, or the bond authorized by Subsection (c) may be required only if:

(1) the public information specifically requested by the requestor:

(A) is older than three years; or

(B) completely fills, or when assembled will completely fill, three or more archival boxes; and

(2) the officer for public information or the officer's agent estimates that more than two hours will be required to make the public information available for inspection.

§ 552.272. *Inspection of Electronic Record if Copy Not Requested*

(a) In response to a request to inspect information that exists in an electronic medium and that is not available directly on-line to the requestor, a charge may not be imposed for access to the information, unless complying with the request will require programming or manipulation of data. If programming or manipulation of data is required, the governmental body shall notify the requestor before assembling the information and provide the requestor with an estimate of charges that will be imposed to make the information available. A charge under this section must be assessed in accordance with this subchapter.

(b) If public information exists in an electronic form on a computer owned or leased by a governmental body and if the public has direct access to that computer through a computer network or other means, the electronic form of the information may be electronically copied from that computer without

charge if accessing the information does not require processing, programming, or manipulation on the government-owned or government-leased computer before the information is copied.

(c) If public information exists in an electronic form on a computer owned or leased by a governmental body and if the public has direct access to that computer through a computer network or other means and the information requires processing, programming, or manipulation before it can be electronically copied, a governmental body may impose charges in accordance with this subchapter.

(d) If information is created or kept in an electronic form, a governmental body is encouraged to explore options to separate out confidential information and to make public information available to the public through electronic access through a computer network or by other means.

(e) The provisions of this section that prohibit a governmental entity from imposing a charge for access to information that exists in an electronic medium do not apply to the collection of a fee set by the supreme court after consultation with the Judicial Committee on Information Technology as authorized by Section 77.031 for the use of a computerized electronic judicial information system.

§ 552.274. Reports by Attorney General and State Agencies on Cost of Copies

(a) The attorney general shall:

(1) biennially update a report prepared by the attorney general about the charges made by state agencies for providing copies of public information; and

(2) provide a copy of the updated report on the attorney general's open records page on the Internet not later than March 1 of each even-numbered year.

[Text of subsec. (b) as amended by Acts 2005, 79th Leg., ch. 329, § 9]

(b) Before the 30th day after the date on which a regular session of the legislature convenes, each state agency shall issue a report that describes that agency's procedures for charging and collecting fees for providing copies of public information. A state agency may comply with this subsection by posting the report on the agency's open records page or another easily accessible page on the agency's website on the Internet.

[Text of subsec. (b) as amended by Acts 2005, 79th Leg., ch. 716, § 9]

(b) Not later than December 1 of each odd-numbered year, each state agency shall provide the attorney general detailed information, for use by the attorney general in preparing the report required by Subsection (a), describing the agency's procedures for charging and collecting fees for providing copies of public information.

(c) In this section, "state agency" has the meaning assigned by Sections 2151.002(2)(A) and (C).

Subchapter G. Attorney General Decisions

§ 552.301. Request for Attorney General Decision

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

(c) For purposes of this subchapter, a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission.

(d) A governmental body that requests an attorney general decision under Subsection (a) must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request:

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney gen-

eral about whether the information is within an exception to public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

(e) A governmental body that requests an attorney general decision under Subsection (a) must within a reasonable time but not later than the 15th business day after the date of receiving the written request:

(1) submit to the attorney general:

(A) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;

(B) a copy of the written request for information;

(C) a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date; and

(D) a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested; and

(2) label that copy of the specific information, or of the representative samples, to indicate which exceptions apply to which parts of the copy.

(e-1) A governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body. If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy.

(f) A governmental body must release the requested information and is prohibited from asking for a decision from the attorney general about whether information requested under this chapter is within an exception under Subchapter C if:

(1) the governmental body has previously requested and received a determination from the attorney general concerning the precise information at issue in a pending request; and

(2) the attorney general or a court determined that the information is public information under this chapter that is not excepted by Subchapter C.

§ 552.302. Failure to Make Timely Request for Attorney General Decision; Presumption That Information is Public

If a governmental body does not request an attorney general decision as provided by Section 552.301 and provide the requestor with the information required by Sections 552.301(d) and (e-1), the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.

§ 552.303. Delivery of Requested Information to Attorney General; Disclosure of Requested Information; Attorney General Request for Submission of Additional Information

(a) A governmental body that requests an attorney general decision under this subchapter shall supply to the attorney general, in accordance with Section 552.301, the specific information requested. Unless the information requested is confidential by law, the governmental body may disclose the requested information to the public or to the requestor before the attorney general makes a final determination that the requested information is public or, if suit is filed under this chapter, before a final determination that the requested information is public has been made by the court with jurisdiction over the suit, except as otherwise provided by Section 552.322.

(b) The attorney general may determine whether a governmental body's submission of information to the attorney general under Section 552.301 is sufficient to render a decision.

(c) If the attorney general determines that information in addition to that required by Section 552.301 is necessary to render a decision, the attorney general shall give written notice of that fact to the governmental body and the requestor.

(d) A governmental body notified under Subsection (c) shall submit the necessary additional information to the attorney general not later than the seventh calendar day after the date the notice is received.

(e) If a governmental body does not comply with Subsection (d), the information that is the subject of a person's request to the governmental body and regarding which the governmental body fails to comply with Subsection (d) is presumed to be subject to required public disclosure and must be released unless there exists a compelling reason to withhold the information.

§ 552.3035. *Disclosure of Requested Information by Attorney General*

The attorney general may not disclose to the requestor or the public any information submitted to the attorney general under Section 552.301(e)(1)(D).

§ 552.304. *Submission of Public Comments*

(a) A person may submit written comments stating reasons why the information at issue in a request for an attorney general decision should or should not be released.

(b) A person who submits written comments to the attorney general under Subsection (a) shall send a copy of those comments to both the person who requested the information from the governmental body and the governmental body. If the written comments submitted to the attorney general disclose or contain the substance of the information requested from the governmental body, the copy of the comments sent to the person who requested the information must be a redacted copy.

(c) In this section, "written comments" includes a letter, a memorandum, or a brief.

§ 552.305. *Information Involving Privacy or Property Interests of Third Party*

(a) In a case in which information is requested under this chapter and a person's privacy or property interests may be involved, including a case under Section 552.101, 552.104, 552.110, or 552.114, a governmental body may decline to release the information for the purpose of requesting an attorney general decision.

(b) A person whose interests may be involved under Subsection (a), or any other person, may submit in writing to the attorney general the person's reasons why the information should be withheld or released.

(c) The governmental body may, but is not required to, submit its reasons why the information should be withheld or released.

(d) If release of a person's proprietary information may be subject to exception under Section 552.101, 552.110, 552.113, or 552.131, the governmental body that requests an attorney general decision under Section 552.301 shall make a good faith attempt to notify that person of the request for the attorney general decision. Notice under this subsection must:

(1) be in writing and sent within a reasonable time not later than the 10th business day after the date the governmental body receives the request for the information; and

(2) include:

(A) a copy of the written request for the information, if any, received by the governmental body; and

(B) a statement, in the form prescribed by the attorney general, that the person is entitled to submit in writing to the attorney general within a reasonable time not later than the 10th business day after the date the person receives the notice:

(i) each reason the person has as to why the information should be withheld; and

(ii) a letter, memorandum, or brief in support of that reason.

(e) A person who submits a letter, memorandum, or brief to the attorney general under Subsection (d) shall send a copy of that letter, memorandum, or brief to the person who requested the information from the governmental body. If the letter, memorandum, or brief submitted to the attorney general contains the substance of the information requested, the copy of the letter, memorandum, or brief may be a redacted copy.

§ 552.306. *Rendition of Attorney General Decision; Issuance of Written Opinion*

a) Except as provided by Section 552.011, the attorney general shall promptly render a decision requested under this subchapter, consistent with the standards of due process, determining whether the requested information is within one of the exceptions of Subchapter C. The attorney general shall render the decision not later than the 45th working day after the date the attorney general received the request for a decision. If the attorney general is unable to issue the decision within the 45-day period, the attorney general may extend the period for issuing the decision by an additional 10 working days by informing the governmental body and the requestor, during the original 45-day period, of the reason for the delay.

(b) The attorney general shall issue a written opinion of the determination and shall provide a copy of the opinion to the requestor.

§ 552.307. *Special Right of Access; Attorney General Decisions*

(a) If a governmental body determines that information subject to a special right of access under Section 552.023 is exempt from disclosure under an exception of Subchapter C, other than an exception intended to protect the privacy interest of the requestor or the person whom the requestor is authorized to represent, the governmental body shall, before disclosing the information, submit a written request for a decision to the attorney general under the procedures of this subchapter.

(b) If a decision is not requested under Subsection (a), the governmental body shall release the information to the person with a special right of access under Section 552.023 not later than the 10th day after the date of receiving the request for information.

§ 552.308. *Timeliness of Action by United States Mail, Interagency Mail, or Common or Contract Carrier*

(a) When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period, the requirement is met in a timely fashion if the document is sent to the person by first class United States mail or common or contract carrier properly addressed with postage or handling charges prepaid and:

(1) it bears a post office cancellation mark or a receipt mark of a common or contract carrier indicating a time within that period; or

(2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail or with a common or contract carrier within that period.

(b) When this subchapter requires an agency of this state to submit or otherwise give to the attorney general within a specified period a request, notice, or other writing, the requirement is met in a timely fashion if:

(1) the request, notice, or other writing is sent to the attorney general by interagency mail; and

(2) the agency provides evidence sufficient to establish that the request, notice, or other writing was deposited in the interagency mail within that period.

Subchapter H. Civil Enforcement

§ 552.321. *Suit for Writ of Mandamus*

(a) A requestor or the attorney general may file suit for a writ of mandamus compelling a governmental body to make information available for public inspection if the governmental body refuses to request an attorney general's decision as provided by Subchapter G or refuses to supply public information or information that the attorney general has determined is public information that is not excepted from disclosure under Subchapter C.

(b) A suit filed by a requestor under this section must be filed in a district court for the county in which the main offices of the governmental body are located. A suit filed by the attorney general under this section must be filed in a district court of Travis County, except that a suit against a municipality with a population of 100,000 or less must be filed in a district court for the county in which the main offices of the municipality are located.

§ 552.3215. *Declaratory Judgment or Injunctive Relief*

(a) In this section:

(1) “Complainant” means a person who claims to be the victim of a violation of this chapter.

(2) “State agency” means a board, commission, department, office, or other agency that:

- (A) is in the executive branch of state government;
- (B) was created by the constitution or a statute of this state; and
- (C) has statewide jurisdiction.

(b) An action for a declaratory judgment or injunctive relief may be brought in accordance with this section against a governmental body that violates this chapter.

(c) The district or county attorney for the county in which a governmental body other than a state agency is located or the attorney general may bring the action in the name of the state only in a district court for that county. If the governmental body extends into more than one county, the action may be brought only in the county in which the administrative offices of the governmental body are located.

(d) If the governmental body is a state agency, the Travis County district attorney or the attorney general may bring the action in the name of the state only in a district court of Travis County.

(e) A complainant may file a complaint alleging a violation of this chapter. The complaint must be filed with the district or county attorney of the county in which the governmental body is located unless the governmental body is the district or county attorney. If the governmental body extends into more than one county, the complaint must be filed with the district or county attorney of the county in which the administrative offices of the governmental body are located. If the governmental body is a state agency, the complaint may be filed with the Travis County district attorney. If the governmental body is the district or county attorney, the complaint must be filed with the attorney general. To be valid, a complaint must:

(1) be in writing and signed by the complainant;

(2) state the name of the governmental body that allegedly committed the violation, as accurately as can be done by the complainant;

(3) state the time and place of the alleged commission of the violation, as definitely as can be done by the complainant; and

(4) in general terms, describe the violation.

(f) A district or county attorney with whom the complaint is filed shall indicate on the face of the written complaint the date the complaint is filed.

(g) Before the 31st day after the date a complaint is filed under Subsection (e), the district or county attorney shall:

(1) determine whether:

(A) the violation alleged in the complaint was committed; and

(B) an action will be brought against the governmental body under this section.

(h) Notwithstanding Subsection (g)(1), if the district or county attorney believes that that official has a conflict of interest that would preclude that official from bringing an action under this section against the governmental body complained of, before the 31st day after the date the complaint was filed the county or district attorney shall inform the complainant of that official’s belief and of the complainant’s right to file the complaint with the attorney general. If the district or county attorney determines not to bring an action under this section, the district or county attorney shall:

(1) include a statement of the basis for that determination; and

(2) return the complaint to the complainant.

(i) If the district or county attorney determines not to bring an action under this section, the complainant is entitled to file the complaint with the attorney general before the 31st day after the date the complaint is returned to the complainant. On receipt of the written complaint, the attorney general shall comply with each requirement in Subsections (g) and (h) in the time required by those subsections. If the attorney general decides to bring an action under this section against a governmental body located only in one county in re-

sponse to the complaint, the attorney general must comply with Subsection (c).

(j) An action may be brought under this section only if the official proposing to bring the action notifies the governmental body in writing of the official’s determination that the alleged violation was committed and the governmental body does not cure the violation before the fourth day after the date the governmental body receives the notice.

(k) An action authorized by this section is in addition to any other civil, administrative, or criminal action provided by this chapter or another law.

§ 552.322. *Discovery of Information Under Protective Order Pending Final Determination*

In a suit filed under this chapter, the court may order that the information at issue may be discovered only under a protective order until a final determination is made.

§ 552.323. *Assessment of Costs of Litigation and Reasonable Attorney Fees*

(a) In an action brought under Section 552.321 or 552.3215, the court shall assess costs of litigation and reasonable attorney fees incurred by a plaintiff who substantially prevails, except that the court may not assess those costs and fees against a governmental body if the court finds that the governmental body acted in reasonable reliance on:

(1) a judgment or an order of a court applicable to the governmental body;

(2) the published opinion of an appellate court; or

(3) a written decision of the attorney general, including a decision issued under Subchapter G or an opinion issued under Section 402.042.

(b) In an action brought under Section 552.353(b)(3), the court may assess costs of litigation and reasonable attorney’s fees incurred by a plaintiff or defendant who substantially prevails. In exercising its discretion under this subsection, the court shall consider whether the conduct of the officer for public information of the governmental body had a reasonable basis in law and whether the litigation was brought in good faith.

§ 552.324. *Suit by Governmental Body*

(a) The only suit a governmental body or officer for public information may file seeking to withhold information from a requestor is a suit that is filed in accordance with Sections 552.325 and 552.353 and that challenges a decision by the attorney general issued under Subchapter G.

(b) The governmental body must bring the suit not later than the 30th calendar day after the date the governmental body receives the decision of the attorney general being challenged. If the governmental body does not bring suit within that period, the governmental body shall comply with the decision of the attorney general. This subsection does not affect the earlier deadline for purposes of Section 552.353(b)(3) for a suit brought by an officer for public information.

§ 552.325. *Parties to Suit Seeking to Withhold Information*

(a) A governmental body, officer for public information, or other person or entity that files a suit seeking to withhold information from a requestor may not file suit against the person requesting the information. The requestor is entitled to intervene in the suit.

(b) The governmental body, officer for public information, or other person or entity that files the suit shall demonstrate to the court that the governmental body, officer for public information, or other person or entity made a timely good faith effort to inform the requestor, by certified mail or by another written method of notice that requires the return of a receipt, of:

(1) the existence of the suit, including the subject matter and cause number of the suit and the court in which the suit is filed;

(2) the requestor’s right to intervene in the suit or to choose to not participate in the suit;

(3) the fact that the suit is against the attorney general; and

(4) the address and phone number of the office of the attorney general.

(c) If the attorney general enters into a proposed settlement that all or part of the information that is the subject of the suit should be withheld, the attorney general shall notify the requestor of that decision and, if the requestor has not intervened in the suit, of the requestor's right to intervene to contest the withholding. The attorney general shall notify the requestor:

(1) in the manner required by the Texas Rules of Civil Procedure, if the requestor has intervened in the suit; or

(2) by certified mail or by another written method of notice that requires the return of a receipt, if the requestor has not intervened in the suit.

(d) The court shall allow the requestor a reasonable period to intervene after the attorney general attempts to give notice under Subsection (c)(2).

§ 552.326. Failure to Raise Exceptions Before Attorney General

(a) Except as provided by Subsection (b), the only exceptions to required disclosure within Subchapter C that a governmental body may raise in a suit filed under this chapter are exceptions that the governmental body properly raised before the attorney general in connection with its request for a decision regarding the matter under Subchapter G.

(b) Subsection (a) does not prohibit a governmental body from raising an exception:

- (1) based on a requirement of federal law; or
- (2) involving the property or privacy interests of another person.

Subchapter I. Criminal Violations

§ 552.351. Destruction, Removal, or Alteration of Public Information

(a) A person commits an offense if the person wilfully destroys, mutilates, removes without permission as provided by this chapter, or alters public information.

(b) An offense under this section is a misdemeanor punishable by:

- (1) a fine of not less than \$25 or more than \$4,000;
- (2) confinement in the county jail for not less than three days or more than three months; or
- (3) both the fine and confinement.

(c) It is an exception to the application of Subsection (a) that the public information was transferred under Section 441.204.

§ 552.352. Distribution or Misuse of Confidential Information

(a) A person commits an offense if the person distributes information considered confidential under the terms of this chapter.

(a-1) An officer or employee of a governmental body who obtains access to confidential information under Section 552.008 commits an offense if the officer or employee knowingly:

- (1) uses the confidential information for a purpose other than the purpose for which the information was received or for a purpose unrelated to the law that permitted the officer or employee to obtain access to the information, including solicitation of political contributions or solicitation of clients;
- (2) permits inspection of the confidential information by a person who is not authorized to inspect the information; or
- (3) discloses the confidential information to a person who is not authorized to receive the information.

(a-2) For purposes of Subsection (a-1), a member of an advisory committee to a governmental body who obtains access to confidential information in that capacity is considered to be an officer or employee of the governmental body.

(b) An offense under this section is a misdemeanor punishable by:

- (1) a fine of not more than \$1,000;

(2) confinement in the county jail for not more than six months; or

(3) both the fine and confinement.

(c) A violation under this section constitutes official misconduct.

§ 552.353. Failure or Refusal of Officer for Public Information to Provide Access to or Copying of Public Information

(a) An officer for public information, or the officer's agent, commits an offense if, with criminal negligence, the officer or the officer's agent fails or refuses to give access to, or to permit or provide copying of, public information to a requestor as provided by this chapter.

(b) It is an affirmative defense to prosecution under Subsection (a) that the officer for public information reasonably believed that public access to the requested information was not required and that the officer:

- (1) acted in reasonable reliance on a court order or a written interpretation of this chapter contained in an opinion of a court of record or of the attorney general issued under Subchapter G;
- (2) requested a decision from the attorney general in accordance with Subchapter G, and the decision is pending; or

(3) not later than the 10th calendar day after the date of receipt of a decision by the attorney general that the information is public, filed a petition for a declaratory judgment, a writ of mandamus, or both, against the attorney general in a Travis County district court seeking relief from compliance with the decision of the attorney general, and a petition is pending.

(c) It is an affirmative defense to prosecution under Subsection (a) that a person or entity has, not later than the 10th calendar day after the date of receipt by a governmental body of a decision by the attorney general that the information is public, filed a cause of action seeking relief from compliance with the decision of the attorney general, and the cause is pending.

(d) It is an affirmative defense to prosecution under Subsection (a) that the defendant is the agent of an officer for public information and that the agent reasonably relied on the written instruction of the officer for public information not to disclose the public information requested.

(e) An offense under this section is a misdemeanor punishable by:

- (1) a fine of not more than \$1,000;
- (2) confinement in the county jail for not more than six months; or
- (3) both the fine and confinement.

(f) A violation under this section constitutes official misconduct.

Open Meetings

Texas Statutes and Codes

Title 5. Open Government; Subtitle A. Open Government

Chapter 551. Open Meetings

Subchapter A. General Provisions

§ 551.001. Definitions

In this chapter:

(1) "Closed meeting" means a meeting to which the public does not have access.

(2) "Deliberation" means a verbal exchange during a meeting between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body or any public business.

(3) "Governmental body" means:

(A) a board, commission, department, committee, or agency within the executive or legislative branch of state government that is directed by one or more elected or appointed members;

(B) a county commissioners court in the state;

(C) a municipal governing body in the state;

(D) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;

(E) a school district board of trustees;

(F) a county board of school trustees;

(G) a county board of education;

(H) the governing board of a special district created by law;

(I) a local workforce development board created under Section 2308.253;

(J) a nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state; and

(K) a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code.

(4) "Meeting" means:

(A) a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action; or

(B) except as otherwise provided by this subdivision, a gathering:

(i) that is conducted by the governmental body or for which the governmental body is responsible;

(ii) at which a quorum of members of the governmental body is present;

(iii) that has been called by the governmental body; and

(iv) at which the members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the governmental body, about the public business or public policy over which the governmental body has supervision or control.

The term does not include the gathering of a quorum of a governmental body at a social function unrelated to the public business that is conducted by the body, or the attendance by a quorum of a governmental body at a regional, state, or national convention or workshop, ceremonial event, or press conference, if formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event, or press conference.

The term includes a session of a governmental body.

(5) "Open" means open to the public.

(6) "Quorum" means a majority of a governmental body, unless defined differently by applicable law or rule or the charter of the governmental body.

§ 551.0015. Certain Property Owners' Associations Subject to Law

(a) A property owners' association is subject to this chapter in the same manner as a governmental body

(1) if:

(A) membership in the property owners' association is mandatory for owners or for a defined class of owners of private real property in a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more;

(B) the property owners' association has the power to make mandatory special assessments for capital improvements or mandatory regular assessments; and

(C) the amount of the mandatory special or regular assessments is or has ever been based in whole or in part on the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation under Section 20, Article VIII, Texas Constitution[1]; or

(2) if the property owners' association:

(A) provides maintenance, preservation, and architectural con-

trol of residential and commercial property within a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more; and

(B) is a corporation that

(i) is governed by a board of trustees who may employ a general manager to execute the association's bylaws and administer the business of the corporation;

(ii) does not require membership in the corporation by the owners of the property within the defined area; and

(iii) was incorporated before January 1, 2006

(b) The governing body of the association, a committee of the association, and members of the governing body or of a committee of the association are subject to this chapter in the same manner as the governing body of a governmental body, a committee of a governmental body, and members of the governing body or of a committee of the governmental body.

§ 551.002. Open Meetings Requirement

Every regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter.

§ 551.003. Legislature

In this chapter, the legislature is exercising its powers to adopt rules to prohibit secret meetings of the legislature, committees of the legislature, and other bodies associated with the legislature, except as specifically permitted in the constitution.

§ 551.0035. Attendance by Governmental Body at Legislative Committee or Agency Meeting

(a) This section applies only to the attendance by a quorum of a governmental body at a meeting of a committee or agency of the legislature. This section does not apply to attendance at the meeting by members of the legislative committee or agency holding the meeting.

(b) The attendance by a quorum of a governmental body at a meeting of a committee or agency of the legislature is not considered to be a meeting of that governmental body if the deliberations at the meeting by the members of that governmental body consist only of publicly testifying at the meeting, publicly commenting at the meeting, and publicly responding at the meeting to a question asked by a member of the legislative committee or agency.

§ 551.004. Open Meetings Required by Charter

This chapter does not authorize a governmental body to close a meeting that a charter of the governmental body:

(1) prohibits from being closed; or

(2) requires to be open.

§ 551.005. Open Meetings Training

(a) Each elected or appointed public official who is a member of a governmental body subject to this chapter shall complete a course of training of not less than one and not more than two hours regarding the responsibilities of the governmental body and its members under this chapter not later than the 90th day after the date the member:

(1) takes the oath of office, if the member is required to take an oath of office to assume the person's duties as a member of the governmental body; or

(2) otherwise assumes responsibilities as a member of the governmental body, if the member is not required to take an oath of office to assume the person's duties as a member of the governmental body.

(b) The attorney general shall ensure that the training is made available. The office of the attorney general may provide the training and may also approve any acceptable course of training offered by a governmental body or

other entity. The attorney general shall ensure that at least one course of training approved or provided by the attorney general is available on videotape or a functionally similar and widely available medium at no cost. The training must include instruction in:

- (1) the general background of the legal requirements for open meetings;
- (2) the applicability of this chapter to governmental bodies;
- (3) procedures and requirements regarding quorums, notice, and recordkeeping under this chapter;
- (4) procedures and requirements for holding an open meeting and for holding a closed meeting under this chapter; and
- (5) penalties and other consequences for failure to comply with this chapter.

(c) The office of the attorney general or other entity providing the training shall provide a certificate of course completion to persons who complete the training required by this section. A governmental body shall maintain and make available for public inspection the record of its members' completion of the training.

(d) Completing the required training as a member of the governmental body satisfies the requirements of this section with regard to the member's service on a committee or subcommittee of the governmental body and the member's ex officio service on any other governmental body.

(e) The training required by this section may be used to satisfy any corresponding training requirements concerning this chapter or open meetings required by law for the members of a governmental body. The attorney general shall attempt to coordinate the training required by this section with training required by other law to the extent practicable.

(f) The failure of one or more members of a governmental body to complete the training required by this section does not affect the validity of an action taken by the governmental body.

(g) A certificate of course completion is admissible as evidence in a criminal prosecution under this chapter. However, evidence that a defendant completed a course of training offered under this section is not prima facie evidence that the defendant knowingly violated this chapter.

Subchapter B. Record of Open Meeting

§ 551.021. Minutes or Tape Recording of Open Meeting Required

(a) A governmental body shall prepare and keep minutes or make a tape 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.

§ 551.022. Minutes and Tape Recordings of Open Meeting: Public Record

The minutes and tape 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.

§ 551.023. Recording of Meeting by Person in Attendance

(a) A person in attendance may record all or any part of an open meeting of a governmental body by means of a tape recorder, video camera, or other means of aural or visual reproduction.

(b) A governmental body may adopt reasonable rules to maintain order at a meeting, including rules relating to:

- (1) the location of recording equipment; and
- (2) the manner in which the recording is conducted.

(c) A rule adopted under Subsection (b) may not prevent or unreasonably impair a person from exercising a right granted under Subsection (a).

Subchapter C. Notice of Meetings

§ 551.041. Notice of Meeting Required

A governmental body shall give written notice of the date, hour, place, and subject of each meeting held by the governmental body.

§ 551.0411. Meeting Notice Requirements in Certain Circumstances

(a) Section 551.041 does not require a governmental body that recesses an open meeting to the following regular business day to post notice of the continued meeting if the action is taken in good faith and not to circumvent this chapter. If an open meeting is continued to the following regular business day and, on that following day, the governmental body continues the meeting to another day, the governmental body must give written notice as required by this subchapter of the meeting continued to that other day.

(b) A governmental body that is prevented from convening an open meeting that was otherwise properly posted under Section 551.041 because of a catastrophe may convene the meeting in a convenient location within 72 hours pursuant to Section 551.045 if the action is taken in good faith and not to circumvent this chapter. If the governmental body is unable to convene the open meeting within those 72 hours, the governmental body may subsequently convene the meeting only if the governmental body gives written notice of the meeting as required by this subchapter.

(c) In this section, "catastrophe" means a condition or occurrence that interferes physically with the ability of a governmental body to conduct a meeting, including:

- (1) fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;
- (2) power failure, transportation failure, or interruption of communication facilities;
- (3) epidemic; or
- (4) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

§ 551.042. Inquiry Made at Meeting

(a) If, at a meeting of a governmental body, a member of the public or of the governmental body inquires about a subject for which notice has not been given as required by this subchapter, the notice provisions of this subchapter do not apply to:

- (1) a statement of specific factual information given in response to the inquiry; or
- (2) a recitation of existing policy in response to the inquiry.

(b) Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.

§ 551.043. Time and Accessibility of Notice; General Rule

(a) The notice of a meeting of a governmental body must be posted in a place readily accessible to the general public at all times for at least 72 hours before the scheduled time of the meeting, except as provided by Sections 551.044-551.046.

(b) If this chapter specifically requires or allows a governmental body to post notice of a meeting on the Internet:

(1) the governmental body satisfies the requirement that the notice must be posted in a place readily accessible to the general public at all times by making a good-faith attempt to continuously post the notice on the Internet during the prescribed period;

(2) the governmental body must still comply with any duty imposed by this chapter to physically post the notice at a particular location; and

(3) if the governmental body makes a good-faith attempt to continuously post the notice on the Internet during the prescribed period, the notice physically posted at the location prescribed by this chapter must be readily accessible to the general public during normal business hours.

§ 551.044. *Exception to General Rule: Governmental Body With Statewide Jurisdiction*

(a) The secretary of state must post notice on the Internet of a meeting of a state board, commission, department, or officer having statewide jurisdiction for at least seven days before the day of the meeting. The secretary of state shall provide during regular office hours a computer terminal at a place convenient to the public in the office of the secretary of state that members of the public may use to view notices of meetings posted by the secretary of state.

(b) Subsection (a) does not apply to:

(1) the Texas Department of Insurance, as regards proceedings and activities under Title 5, Labor Code, of the department, the commissioner of insurance, or the commissioner of workers' compensation; or

(2) the governing board of an institution of higher education.

§ 551.045. *Exception to General Rule: Notice of Emergency Meeting or Emergency Addition to Agenda*

(a) In an emergency or when there is an urgent public necessity, the notice of a meeting or the supplemental notice of a subject added as an item to the agenda for a meeting for which notice has been posted in accordance with this subchapter is sufficient if it is posted for at least two hours before the meeting is convened.

(b) An emergency or an urgent public necessity exists only if immediate action is required of a governmental body because of:

(1) an imminent threat to public health and safety; or

(2) a reasonably unforeseeable situation.

(c) The governmental body shall clearly identify the emergency or urgent public necessity in the notice or supplemental notice under this section.

(d) A person who is designated or authorized to post notice of a meeting by a governmental body under this subchapter shall post the notice taking at face value the governmental body's stated reason for the emergency or urgent public necessity.

(e) For purposes of Subsection (b)(2), the sudden relocation of a large number of residents from the area of a declared disaster to a governmental body's jurisdiction is considered a reasonably unforeseeable situation for a reasonable period immediately following the relocation. Notice of an emergency meeting or supplemental notice of an emergency item added to the agenda of a meeting to address a situation described by this subsection must be given to members of the news media as provided by Section 551.047 not later than one hour before the meeting.

§ 551.046. *Exception to General Rule: Committee of Legislature*

The notice of a legislative committee meeting shall be as provided by the rules of the house of representatives or of the senate.

§ 551.047. *Special Notice to News Media of Emergency Meeting or Emergency Addition to Agenda*

(a) The presiding officer of a governmental body, or the member of a governmental body who calls an emergency meeting of the governmental body or adds an emergency item to the agenda of a meeting of the governmental body, shall notify the news media of the emergency meeting or emergency item as required by this section.

(b) The presiding officer or member is required to notify only those members of the news media that have previously:

(1) filed at the headquarters of the governmental body a request containing all pertinent information for the special notice; and

(2) agreed to reimburse the governmental body for the cost of providing the special notice.

(c) The presiding officer or member shall give the notice by telephone, facsimile transmission, or electronic mail..

§ 551.048. *State Governmental Body: Notice to Secretary of State; Place of Posting Notice*

(a) A state governmental body shall provide notice of each meeting to the secretary of state.

(b) The secretary of state shall post the notice on the Internet. The secretary of state shall provide during regular office hours a computer terminal at a place convenient to the public in the office of the secretary of state that members of the public may use to view the notice.

§ 551.049. *County Governmental Body: Place of Posting Notice*

A county governmental body shall post notice of each meeting on a bulletin board at a place convenient to the public in the county courthouse.

§ 551.050. *Municipal Governmental Body: Place of Posting Notice*

A municipal governmental body shall post notice of each meeting on a bulletin board at a place convenient to the public in the city hall.

§ 551.051. *School District: Place of Posting Notice*

A school district shall post notice of each meeting on a bulletin board at a place convenient to the public in the central administrative office of the district.

§ 551.052. *School District: Special Notice to News Media*

(a) A school district shall provide special notice of each meeting to any news media that has:

(1) requested special notice; and

(2) agreed to reimburse the district for the cost of providing the special notice.

(b) The notice shall be by telephone, facsimile transmission, or electronic mail.

§ 551.053. *District or Political Subdivision Extending Into Four or More Counties: Notice to Public, Secretary of State, and County Clerk; Place of Posting Notice*

(a) The governing body of a water district or other district or political subdivision that extends into four or more counties shall:

(1) post notice of each meeting at a place convenient to the public in the administrative office of the district or political subdivision;

(2) provide notice of each meeting to the secretary of state; and

(3) provide notice of each meeting to the county clerk of the county in which the administrative office of the district or political subdivision is located.

(b) The secretary of state shall post the notice provided under Subsection (a)(2) on the Internet. The secretary of state shall provide during regular office hours a computer terminal at a place convenient to the public in the office of the secretary of state that members of the public may use to view the notice.

(c) A county clerk shall post the notice provided under Subsection (a)(3) on a bulletin board at a place convenient to the public in the county courthouse.

§ 551.054. *District or Political Subdivision Extending Into Fewer Than Four Counties: Notice to Public and County Clerks; Place of Posting Notice*

(a) The governing body of a water district or other district or political subdivision that extends into fewer than four counties shall:

(1) post notice of each meeting at a place convenient to the public in the administrative office of the district or political subdivision; and

(2) provide notice of each meeting to the county clerk of each county in which the district or political subdivision is located.

(b) A county clerk shall post the notice provided under Subsection (a)(2) on a bulletin board at a place convenient to the public in the county courthouse.

§ 551.055. *Institution of Higher Education*

In addition to providing any other notice required by this subchapter, the governing board of a single institution of higher education:

- (1) shall post notice of each meeting at the county courthouse of the county in which the meeting will be held;
- (2) shall publish notice of a meeting in a student newspaper of the institution if an issue of the newspaper is published between the time of the posting and the time of the meeting; and
- (3) may post notice of a meeting at another place convenient to the public.

§ 551.056. *Additional Posting Requirements for Certain Municipalities, Counties, School Districts, Junior College Districts, and Development Corporations*

(a) This section applies only to a governmental body or economic development corporation that maintains an Internet website or for which an Internet website is maintained. This section does not apply to a governmental body described by Section 551.001(3)(D).

(b) In addition to the other place at which notice is required to be posted by this subchapter, the following governmental bodies and economic development corporations must also concurrently post notice of a meeting on the Internet website of the governmental body or economic development corporation:

- (1) a municipality;
- (2) a county;
- (3) a school district;

(4) the governing body of a junior college or junior college district, including a college or district that has changed its name in accordance with Chapter 130, Education Code; and

(5) a development corporation organized under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes); and

(6) a regional mobility authority included within the meaning of an "authority" as defined by Section 370.003, Transportation Code..

(c) The following governmental bodies and economic development corporations must also concurrently post the agenda for the meeting on the Internet website of the governmental body or economic development corporation:

- (1) a municipality with a population of 48,000 or more;
- (2) a county with a population of 65,000 or more;
- (3) a school district that contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more;
- (4) the governing body of a junior college district, including a district that has changed its name in accordance with Chapter 130, Education Code, that contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more; and

(5) a development corporation organized under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)[2] that was created by or for:

- (A) a municipality with a population of 48,000 or more; or
- (B) a county or district that contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more; and

(6) a regional mobility authority included within the meaning of an "authority" as defined by Section 370.003, Transportation Code.

(d) The validity of a posted notice of a meeting or an agenda by a governmental body or economic development corporation subject to this section that made a good faith attempt to comply with the requirements of this section is not affected by a failure to comply with a requirement of this section that is due to a technical problem beyond the control of the governmental body or economic development corporation.

Subchapter D. Exceptions to Requirement That Meetings Be Open

§ 551.071. *Consultation With Attorney; Closed Meeting*

A governmental body may not conduct a private consultation with its attorney except:

- (1) when the governmental body seeks the advice of its attorney about:
 - (A) pending or contemplated litigation; or
 - (B) a settlement offer; or

(2) on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.

§ 551.072. *Deliberation Regarding Real Property; Closed Meeting*

A governmental body may conduct a closed meeting to deliberate 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.

§ 551.0725. *Commissioners Courts: Deliberation Regarding Contract Being Negotiated; Closed Meeting*

(a) The commissioners court of a county with a population of 400,000 or more may conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated if, before conducting the closed meeting:

(1) the commissioners court votes unanimously that deliberation in an open meeting would have a detrimental effect on the position of the commissioners court in negotiations with a third person; and

(2) the attorney advising the commissioners court issues a written determination that deliberation in an open meeting would have a detrimental effect on the position of the commissioners court in negotiations with a third person.

(b) Notwithstanding Section 551.103(a), Government Code, the commissioners court must make a tape recording of the proceedings of a closed meeting to deliberate the information.

§ 551.0726. *Texas Facilities Commission; Provision for Closed Meeting.*

(a) The Texas Facilities Commission may conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated if, before conducting the closed meeting:

(1) the commission votes unanimously that deliberation in an open meeting would have a detrimental effect on the position of the state in negotiations with a third person; and

(2) the attorney advising the commission issues a written determination finding that deliberation in an open meeting would have a detrimental effect on the position of the state in negotiations with a third person and setting forth that finding therein.

(b) Notwithstanding Section 551.103(a), Government Code, the commission must make a tape recording of the proceedings of a closed meeting held under this section.

§ 551.073. *Deliberation Regarding Prospective Gift; Closed Meeting*

A governmental body may conduct a closed meeting to deliberate 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.

§ 551.074. *Personnel Matters; Closed Meeting*

(a) This chapter does not require a governmental body to conduct an open meeting:

(1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or

(2) to hear a complaint or charge against an officer or employee.

(b) Subsection (a) does not apply if the officer or employee who is the subject of the deliberation or hearing requests a public hearing.

§ 551.0745. Personnel Matters Affecting County Advisory Body; Closed Meeting

(a) This chapter does not require the commissioners court of a county to conduct an open meeting:

(1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a member of an advisory body; or

(2) to hear a complaint or charge against a member of an advisory body.

(b) Subsection (a) does not apply if the individual who is the subject of the deliberation or hearing requests a public hearing.

§ 551.075. Conference Relating to Investments and Potential Investments Attended by Board of Trustees of Texas Growth Fund; Closed Meeting

(a) This chapter does not require the board of trustees of the Texas growth fund to confer with one or more employees of the Texas growth fund or with a third party in an open meeting if the only purpose of the conference is to:

(1) receive information from the employees of the Texas growth fund or the third party relating to an investment or a potential investment by the Texas growth fund in:

(A) a private business entity, if disclosure of the information would give advantage to a competitor; or

(B) a business entity whose securities are publicly traded, if the investment or potential investment is not required to be registered under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), and its subsequent amendments, and if disclosure of the information would give advantage to a competitor; or

(2) question the employees of the Texas growth fund or the third party regarding an investment or potential investment described by Subdivision (1), if disclosure of the information contained in the questions or answers would give advantage to a competitor.

(b) During a conference under Subsection (a), members of the board of trustees of the Texas growth fund may not deliberate public business or agency policy that affects public business.

(c) In this section, "Texas growth fund" means the fund created by Section 70, Article XVI, Texas Constitution.

§ 551.076. Deliberation Regarding Security Device or Security Audits; Closed Meeting

This chapter does not require a governmental body to conduct an open meeting to deliberate:

(1) the deployment, or specific occasions for implementation, of security personnel or devices; or

(2) a security audit.

§ 551.077. Agency Financed by Federal Government

This chapter does not require an agency financed entirely by federal money to conduct an open meeting.

§ 551.078. Medical Board or Medical Committee

This chapter does not require a medical board or medical committee to conduct an open meeting to deliberate the medical or psychiatric records of an individual applicant for a disability benefit from a public retirement system.

§ 551.0785. Deliberations Involving Medical or Psychiatric Records of Individuals

This chapter does not require a benefits appeals committee for a public self-funded health plan or a governmental body that administers a public insurance, health, or retirement plan to conduct an open meeting to deliberate:

(1) the medical records or psychiatric records of an individual applicant for a benefit from the plan; or

(2) a matter that includes a consideration of information in the medical or psychiatric records of an individual applicant for a benefit from the plan.

§ 551.079. Texas Department of Insurance

(a) The requirements of this chapter do not apply to a meeting of the commissioner of insurance or the commissioner's designee with the board of directors of a guaranty association established under Chapter 2602, Insurance Code, or Article 21.28-C or 21.28-D, Insurance Code, in the discharge of the commissioner's duties and responsibilities to regulate and maintain the solvency of a person regulated by the Texas Department of Insurance.

(b) The commissioner of insurance may deliberate and determine the appropriate action to be taken concerning the solvency of a person regulated by the Texas Department of Insurance in a closed meeting with persons in one or more of the following categories:

(1) staff of the Texas Department of Insurance;

(2) a regulated person;

(3) representatives of a regulated person; or

(4) members of the board of directors of a guaranty association established under Chapter 2602 or Article 21.28-C, or 21.28-D, Insurance Code.

§ 551.080. Board of Pardons and Paroles

This chapter does not require the Board of Pardons and Paroles to conduct an open meeting to interview or counsel an inmate of the Texas Department of Criminal Justice.

§ 551.081. Credit Union Commission

This chapter does not require the Credit Union Commission to conduct an open meeting to deliberate a matter made confidential by law.

§ 551.0811. The Finance Commission of Texas

This chapter does not require The Finance Commission of Texas to conduct an open meeting to deliberate a matter made confidential by law.

§ 551.0812. State Banking Board

This chapter does not require the State Banking Board to conduct an open meeting to deliberate a matter made confidential by law.

§ 551.082. School Children; School District Employees; Disciplinary Matter or Complaint

(a) This chapter does not require a school board to conduct an open meeting to deliberate in a case:

(1) involving discipline of a public school child; or

(2) in which a complaint or charge is brought against an employee of the school district by another employee and the complaint or charge directly results in a need for a hearing.

(b) Subsection (a) does not apply if an open hearing is requested in writing by a parent or guardian of the child or by the employee against whom the complaint or charge is brought.

§ 551.0821. *School Board: Personally Identifiable Information About Public School Student*

(a) This chapter does not require a school board to conduct an open meeting to deliberate a matter regarding a public school student if personally identifiable information about the student will necessarily be revealed by the deliberation.

(b) Directory information about a public school student is considered to be personally identifiable information about the student for purposes of Subsection (a) only if a parent or guardian of the student, or the student if the student has attained 18 years of age, has informed the school board, the school district, or a school in the school district that the directory information should not be released without prior consent. In this subsection, “directory information” has the meaning assigned by the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), as amended.

(c) Subsection (a) does not apply if an open meeting about the matter is requested in writing by a parent or guardian of the student or by the student if the student has attained 18 years of age.

§ 551.083. *Certain School Boards; Closed Meeting Regarding Consultation With Representative of Employee Group*

This chapter does not require a school board operating under a consultation agreement authorized by Section 13.901, Education Code, to conduct an open meeting to deliberate 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.

§ 551.084. *Investigation; Exclusion of Witness From Hearing*

A governmental body that is investigating a matter may exclude a witness from a hearing during the examination of another witness in the investigation.

§ 551.085. *Governing Board of Certain Providers of Health Care Services*

(a) This chapter does not require the governing board of a municipal hospital, municipal hospital authority, hospital district created under general or special law, or nonprofit health maintenance organization created under Section 534.101, Health and Safety Code, to conduct an open meeting to deliberate:

(1) pricing or financial planning information relating to a bid or negotiation for the arrangement or provision of services or product lines to another person if disclosure of the information would give advantage to competitors of the hospital, hospital district, or nonprofit health maintenance organization; or

(2) information relating to a proposed new service or product line of the hospital, hospital district, or nonprofit health maintenance organization before publicly announcing the service or product line.

(b) The governing board of a health maintenance organization created under Section 281.0515, Health and Safety Code, that is subject to this chapter is not required to conduct an open meeting to deliberate information described by Subsection (a).

§ 551.086. *Certain Public Power Utilities: Competitive Matters*

(a) Notwithstanding anything in this chapter to the contrary, the rules provided by this section apply to competitive matters of a public power utility.

(b) In this section:

(1) “Public power utility” means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(2) “Public power utility governing body” means the board of trustees or other applicable governing body, including a city council, of a public power utility.

(3) “Competitive matter” means a utility-related matter that the public power utility governing body in good faith determines by a vote under this section is related to the public power utility’s competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors but may not be deemed to include the following

categories of information:

(A) information relating to the provision of distribution access service, including the terms and conditions of the service and the rates charged for the service but not including information concerning utility-related services or products that are competitive;

(B) information relating to the provision of transmission service that is required to be filed with the Public Utility Commission of Texas, subject to any confidentiality provided for under the rules of the commission;

(C) information for the distribution system pertaining to reliability and continuity of service, to the extent not security-sensitive, that relates to emergency management, identification of critical loads such as hospitals and police, records of interruption, and distribution feeder standards;

(D) any substantive rule of general applicability regarding service offerings, service regulation, customer protections, or customer service adopted by the public power utility as authorized by law;

(E) aggregate information reflecting receipts or expenditures of funds of the public power utility, of the type that would be included in audited financial statements;

(F) information relating to equal employment opportunities for minority groups, as filed with local, state, or federal agencies;

(G) information relating to the public power utility’s performance in contracting with minority business entities;

(H) information relating to nuclear decommissioning trust agreements, of the type required to be included in audited financial statements;

(I) information relating to the amount and timing of any transfer to an owning city’s general fund;

(J) information relating to environmental compliance as required to be filed with any local, state, or national environmental authority, subject to any confidentiality provided under the rules of those authorities;

(K) names of public officers of the public power utility and the voting records of those officers for all matters other than those within the scope of a competitive resolution provided for by this section;

(L) a description of the public power utility’s central and field organization, including the established places at which the public may obtain information, submit information and requests, or obtain decisions and the identification of employees from whom the public may obtain information, submit information or requests, or obtain decisions; or

(M) information identifying the general course and method by which the public power utility’s functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures.

(c) This chapter does not require a public power utility governing body to conduct an open meeting to deliberate, vote, or take final action on any competitive matter, as that term is defined in Subsection (b)(3). Before a public power utility governing body may deliberate, vote, or take final action on any competitive matter in a closed meeting, the public power utility governing body must first make a good faith determination, by majority vote of its members, that the matter is a competitive matter that satisfies the requirements of Subsection (b)(3). The vote shall be taken during the closed meeting and be included in the certified agenda or tape recording of the closed meeting. If a public power utility governing body fails to determine by that vote that the matter satisfies the requirements of Subsection (b)(3), the public power utility governing body may not deliberate or take any further action on the matter in the closed meeting. This section does not limit the right of a public power utility governing body to hold a closed session under any other exception provided for in this chapter.

(d) For purposes of Section 551.041, the notice of the subject matter of an item that may be considered as a competitive matter under this section is required to contain no more than a general representation of the subject matter to be considered, such that the competitive activity of the public power utility with respect to the issue in question is not compromised or disclosed.

(e) With respect to municipally owned utilities subject to this section, this section shall apply whether or not the municipally owned utility has adopted customer choice or serves in a multiply certificated service area under the Utilities Code.

(f) Nothing in this section is intended to preclude the application of the enforcement and remedies provisions of Subchapter G.

§ 551.087. *Deliberation Regarding Economic Development Negotiations; Closed Meeting*

This chapter does not require a governmental body to conduct an open meeting:

(1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or

(2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).

§ 551.088. *Deliberation Regarding Test Item*

This chapter does not require a governmental body to conduct an open meeting to deliberate a test item or information related to a test item if the governmental body believes that the test item may be included in a test the governmental body administers to individuals who seek to obtain or renew a license or certificate that is necessary to engage in an activity.

§ 551.089. *Department Of Information Resources*

This chapter does not require the governing board of the Department of Information Resources to conduct an open meeting to deliberate:(1) security assessments or deployments relating to information resources technology;(2) network security information as described by Section 2059.055(b); or(3) the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices.

Subchapter E. Procedures Relating to Closed Meeting

§ 551.101. *Requirement to First Convene in Open Meeting*

If a closed meeting is allowed under this chapter, a governmental body may not conduct the closed meeting unless a quorum of the governmental body first convenes in an open meeting for which notice has been given as provided by this chapter and during which the presiding officer publicly:

(1) announces that a closed meeting will be held; and

(2) identifies the section or sections of this chapter under which the closed meeting is held.

§ 551.102. *Requirement to Vote or Take Final Action in Open Meeting*

A final action, decision, or vote on a matter deliberated in a closed meeting under this chapter may only be made in an open meeting that is held in compliance with the notice provisions of this chapter.

§ 551.103. *Certified Agenda or Tape Recording Required*

(a) A governmental body shall either keep a certified agenda or make a tape recording of the proceedings of each closed meeting, except for a private consultation permitted under Section 551.071.

(b) The presiding officer shall certify that an agenda kept under Subsection (a) is a true and correct record of the proceedings.

(c) 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 meeting indicating the date and time.

(d) A tape recording made under Subsection (a) must include announcements by the presiding officer at the beginning and the end of the meeting indicating the date and time.

§ 551.104. *Certified Agenda or Tape; Preservation; Disclosure*

(a) A governmental body shall preserve the certified agenda or tape recording of a closed meeting for at least two years after the date of the meeting. If an action involving the meeting is brought within that period, the governmental body shall preserve the certified agenda or tape while the action is pending.

(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 tape;

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

(3) may grant legal or equitable relief if it considers appropriate, including an order that the governmental body make available to the public the certified agenda or tape of any part of a meeting that was required to be open under this chapter.

(c) The certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b) (3).

Subchapter F. Meetings Using Telephone, Videoconference, or Internet

§ 551.121. *Governing Board of Institution of Higher Education; Board for Lease of University Lands; Texas Higher Education Coordinating Board: Special Meeting for Immediate Action*

(a) In this section, “governing board,” “institution of higher education,” and “university system” have the meanings assigned by Section 61.003, Education Code.

(b) This chapter does not prohibit the governing board of an institution of higher education, the Board for Lease of University Lands, or the Texas Higher Education Coordinating Board from holding an open or closed meeting by telephone conference call.

(c) A meeting held by telephone conference call authorized by this section may be held only if:

(1) the meeting is a special called meeting and immediate action is required; and

(2) the convening at one location of a quorum of the governing board, the Board for Lease of University Lands, the Texas Higher Education Coordinating Board, as applicable, is difficult or impossible.

(d) The telephone conference call meeting is subject to the notice requirements applicable to other meetings.

(e) The notice of a telephone conference call meeting of a governing board must specify as the location of the meeting the location where meetings of the governing board are usually held. For a meeting of the governing board of a university system, the notice must specify as the location of the meeting the board’s conference room at the university system office. For a meeting of the Board for Lease of University Lands, the notice must specify as the location of the meeting a suitable conference or meeting room at The University of Texas System office. For a meeting of the Texas Higher Education Coordinating Board, the notice must specify as the location of the meeting a suitable conference or meeting room at the offices of the Texas Higher Education Coordinating Board or at an institution of higher education.

(f) Each part of the telephone conference call meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting and shall be tape recorded. The tape recording shall be made available to the public.

§ 551.122. *Governing Board of Junior College District: Quorum Present at One Location*

(a) This chapter does not prohibit the governing board of a junior college district from holding an open or closed meeting by telephone conference call.

(b) A meeting held by telephone conference call authorized by this section may be held only if a quorum of the governing board is physically present at the location where meetings of the board are usually held.

(c) The telephone conference call meeting is subject to the notice requirements applicable to other meetings.

(d) Each part of the telephone conference call meeting that is required to be open to the public shall be audible to the public at the location where the quorum is present and shall be tape-recorded. The tape recording shall be made available to the public.

(e) The location of the meeting shall provide two-way communication during the entire telephone conference call meeting, and the identification of each party to the telephone conference shall be clearly stated before the party speaks.

(f) The authority provided by this section is in addition to the authority provided by Section 551.121.

(g) A member of a governing board of a junior college district who participates in a board meeting by telephone conference call but is not physically present at the location of the meeting is considered to be absent from the meeting for purposes of Section 130.0845, Education Code.

§ 551.123. Texas Board of Criminal Justice

(a) The Texas Board of Criminal Justice may hold an open or closed emergency meeting by telephone conference call.

(b) The portion of the telephone conference call meeting that is open shall be recorded. The recording shall be made available to be heard by the public at one or more places designated by the board.

§ 551.124. Board of Pardons and Paroles

At the call of the presiding officer of the Board of Pardons and Paroles, the board may hold a hearing on clemency matters by telephone conference call.

§ 551.125. Other Governmental Body

(a) Except as otherwise provided by this subchapter, this chapter does not prohibit a governmental body from holding an open or closed meeting by telephone conference call.

(b) A meeting held by telephone conference call may be held only if:

(1) an emergency or public necessity exists within the meaning of Section 551.045 of this chapter; and

(2) the convening at one location of a quorum of the governmental body is difficult or impossible; or

(3) the meeting is held by an advisory board.

(c) The telephone conference call meeting is subject to the notice requirements applicable to other meetings.

(d) The notice of the telephone conference call meeting must specify as the location of the meeting the location where meetings of the governmental body are usually held.

(e) Each part of the telephone conference call meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting and shall be tape-recorded. The tape recording shall be made available to the public.

(f) The location designated in the notice as the location of the meeting shall provide two-way communication during the entire telephone conference call meeting and the identification of each party to the telephone conference shall be clearly stated prior to speaking.

§ 551.126. Higher Education Coordinating Board

(a) In this section, "board" means the Texas Higher Education Coordinating Board.

(b) The board may hold an open meeting by telephone conference call or video conference call in order to consider a higher education impact statement if the preparation of a higher education impact statement by the board is to be provided under the rules of either the house of representatives or the senate.

(c) A meeting held by telephone conference call must comply with the procedures described in Section 551.125.

(d) A meeting held by video conference call is subject to the notice requirements applicable to other meetings. In addition, a meeting held by video conference call shall:

(1) be visible and audible to the public at the location specified in the notice of the meeting as the location of the meeting;

(2) be recorded by audio and video; and

(3) have two-way audio and video communications with each participant in the meeting during the entire meeting.

§ 551.127. Videoconference Call

(a) Except as otherwise provided by this section, this chapter does not prohibit a governmental body from holding an open or closed meeting by videoconference call.

(b) A meeting may be held by videoconference call only if a quorum of the governmental body is physically present at one location of the meeting, except as provided by Subsection (c).

(c) A meeting of a state governmental body or a governmental body that extends into three or more counties may be held by videoconference call only if a majority of the quorum of the governmental body is physically present at one location of the meeting.

(d) A meeting held by videoconference call is subject to the notice requirements applicable to other meetings in addition to the notice requirements prescribed by this section.

(e) The notice of a meeting to be held by videoconference call must specify as a location of the meeting the location where a quorum of the governmental body will be physically present and specify the intent to have a quorum present at that location, except that the notice of a meeting to be held by videoconference call under Subsection (c) must specify as a location of the meeting each location where a majority of the quorum of the governmental body will be physically present and specify the intent to have a majority of the quorum of the governmental body present at that location. In addition, the notice of the meeting must specify as a location of the meeting each other location where a member of the governmental body who will participate in the meeting will be physically present during the meeting. Each of the locations shall be open to the public during the open portions of the meeting.

(f) Each portion of a meeting held by videoconference call that is required to be open to the public shall be visible and audible to the public at each location specified under Subsection (e).

(g) The governmental body shall make at least an audio recording of the meeting. The recording shall be made available to the public.

(h) Each location specified under Subsection (e) shall have two-way communication with each other location during the entire meeting. Each participant in the videoconference call, while speaking, shall be clearly visible and audible to each other participant and, during the open portion of the meeting, to the members of the public in attendance at a location of the meeting.

(i) The Department of Information Resources by rule shall specify minimum standards for audio and video signals at a meeting held by videoconference call. The quality of the audio and video signals perceptible at each location of the meeting must meet or exceed those standards.

(j) The quality of the audio and video signals perceptible by members of the public at each location of the meeting must:

(1) meet or exceed the quality of the audio and video signals perceptible by the members of the governmental body participating in the meeting; and

(2) be of sufficient quality so that members of the public at each location of the meeting can observe the demeanor and hear the voice of each participant in the open portion of the meeting.

(k) Without regard to whether a member of the governmental body is participating in a meeting from a remote location by videoconference call, a governmental body may allow a member of the public to testify at a meeting from a remote location by videoconference call.

§ 551.128. *Internet Broadcast of Open Meeting*

(a) In this section, “Internet” means the largest nonproprietary cooperative public computer network, popularly known as the Internet.

(b) Subject to the requirements of this section, a governmental body may broadcast an open meeting over the Internet.

(c) A governmental body that broadcasts a meeting over the Internet shall establish an Internet site and provide access to the broadcast from that site. The governmental body shall provide on the Internet site the same notice of the meeting that the governmental body is required to post under Subchapter C. The notice on the Internet must be posted within the time required for posting notice under Subchapter C.

§ 551.129. *Consultations Between Governmental Body and Its Attorney*

(a) A governmental body may use a telephone conference call, videoconference call, or communications over the Internet to conduct a public consultation with its attorney in an open meeting of the governmental body or a private consultation with its attorney in a closed meeting of the governmental body.

(b) Each part of a public consultation by a governmental body with its attorney in an open meeting of the governmental body under Subsection (a) must be audible to the public at the location specified in the notice of the meeting as the location of the meeting.

(c) Subsection (a) does not:

(1) authorize the members of a governmental body to conduct a meeting of the governmental body by telephone conference call, videoconference call, or communications over the Internet; or

(2) create an exception to the application of this subchapter.

(d) Subsection (a) does not apply to a consultation with an attorney who is an employee of the governmental body.

(e) For purposes of Subsection (d), an attorney who receives compensation for legal services performed, from which employment taxes are deducted by the governmental body, is an employee of the governmental body.

(f) Subsection (d) does not apply to:

(1) the governing board of an institution of higher education as defined by Section 61.003, Education Code; or

(2) the Texas Higher Education Coordinating Board.

Subchapter G. Enforcement and Remedies; Criminal Violations

§ 551.141. *Action Voidable*

An action taken by a governmental body in violation of this chapter is voidable.

§ 551.142. *Mandamus; Injunction*

(a) An interested person, including a member of the news media, may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of this chapter by members of a governmental body.

(b) The court may assess costs of litigation and reasonable attorney fees incurred by a plaintiff or defendant who substantially prevails in an action under Subsection (a). In exercising its discretion, the court shall consider whether the action was brought in good faith and whether the conduct of the governmental body had a reasonable basis in law.

§ 551.143. *Conspiracy to Circumvent Chapter; Offense; Penalty*

(a) A member or group of members of a governmental body commits an offense if the member or group of members knowingly conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.

(b) An offense under Subsection (a) is a misdemeanor punishable by:

(1) a fine of not less than \$100 or more than \$500;

(2) confinement in the county jail for not less than one month or more than six months; or

3) both the fine and confinement.

§ 551.144. *Closed Meeting; Offense; Penalty*

(a) A member of a governmental body commits an offense if a closed meeting is not permitted under this chapter and the member knowingly:

(1) calls or aids in calling or organizing the closed meeting, whether it is a special or called closed meeting;

(2) closes or aids in closing the meeting to the public, if it is a regular meeting; or

(3) participates in the closed meeting, whether it is a regular, special, or called meeting.

(b) An offense under Subsection (a) is a misdemeanor punishable by:

(1) a fine of not less than \$100 or more than \$500;

(2) confinement in the county jail for not less than one month or more than six months; or

(3) both the fine and confinement.

(c) It is an affirmative defense to prosecution under Subsection (a) that the member of the governmental body acted in reasonable reliance on a court order or a written interpretation of this chapter contained in an opinion of a court of record, the attorney general, or the attorney for the governmental body.

§ 551.145. *Closed Meeting Without Certified Agenda or Tape Recording; Offense; Penalty*

(a) A member of a governmental body commits an offense if the member participates in a closed meeting of the governmental body knowing that a certified agenda of the closed meeting is not being kept or that a tape recording of the closed meeting is not being made.

(b) An offense under Subsection (a) is a Class C misdemeanor.

§ 551.146. *Disclosure of Certified Agenda or Tape Recording of Closed Meeting; Offense; Penalty; Civil Liability*

(a) An individual, corporation, or partnership that without lawful authority knowingly discloses to a member of the public the certified agenda or tape recording of a meeting that was lawfully closed to the public under this chapter:

(1) commits an offense; and

(2) is liable to a person injured or damaged by the disclosure for:

(A) actual damages, including damages for personal injury or damage, lost wages, defamation, or mental or other emotional distress;

(B) reasonable attorney fees and court costs; and

(C) at the discretion of the trier of fact, exemplary damages.

(b) An offense under Subsection (a)(1) is a Class B misdemeanor.

(c) It is a defense to prosecution under Subsection (a)(1) and an affirmative defense to a civil action under Subsection (a)(2) that:

(1) the defendant had good reason to believe the disclosure was lawful; or

(2) the disclosure was the result of a mistake of fact concerning the nature or content of the certified agenda or tape recording.

[1] Article VIII, section 20 of the Texas Constitution addresses the valuation of property for ad valorem tax purposes.

[2] The citation to the Development Corporation Act in sections 511.056(b)(5) and (c)(6) has been amended effective April 1, 2009, to read “(Subtitle C1, Title 12, Local Government Code).” Tex. H.B. 2278, 80th Leg., R.S. (2007).

