HCRMA

HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY

BOARD OF DIRECTORS ETHICS & COMPLIANCE HANDBOOK

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CHAPTER 370. REGIONAL MOBILITY AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 370.001. SHORT TITLE. This chapter may be cited as the Regional Mobility Authority Act.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

The following section was amended by the 86th Legislature. Pending publication of the current statutes, see S.B. 2248, 86th Legislature, Regular Session, for amendments affecting the following section.

Sec. 370.003. DEFINITIONS. In this chapter:

(1) "Authority" means a regional mobility authority organized under this chapter or under Section 361.003, as that section existed before June 22, 2003.

(2) "Board" means the board of directors of an authority.

(3) "Bond" includes a bond, certificate, note, or other obligation of an authority authorized by this chapter, another statute, or the Texas Constitution.

(4) "Bond proceeding" includes a bond resolution and a bond indenture authorized by the bond resolution, a credit agreement, loan agreement, or other agreement entered into in connection with the bond or the payments to be made under the agreement, and any other agreement between an authority and another person providing security for the payment of a bond.

(5) "Bond resolution" means an order or resolution of a board authorizing the issuance of a bond.

(6) "Bondholder" means the owner of a bond and includes a trustee acting on behalf of an owner of a bond under the terms of a bond indenture.

(7) "Comprehensive development agreement" means an agreement under Section 370.305.

(8) "Governmental entity" means a political subdivision of the state, including a municipality or a county, a political subdivision of a county, a group of adjoining counties, a district organized or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, the department, a rail district, a transit authority, a nonprofit corporation, including a transportation corporation, that is created under Chapter 431, or any other public entity or instrumentality.

(9) "Highway" means a road, highway, farm-to-market road, or street under the supervision of the state or a political subdivision of this state.

(9-a) "Intermodal hub" means a central location where cargo containers can be easily and quickly transferred between trucks, trains, and airplanes.

(10) "Public utility facility" means:

(A) a water, wastewater, natural gas, or petroleum pipeline or associated equipment;

(B) an electric transmission or distribution line or associated equipment; or

(C) telecommunications information services, or cable television infrastructure or associated equipment, including fiber optic cable, conduit, and wireless communications facilities.

(11) "Revenue" means fares, fees, rents, tolls, and other money received by an authority from the ownership or operation of a transportation project.

(12) "Surplus revenue" means revenue that exceeds:

(A) an authority's debt service requirements for a transportation project, including the redemption or purchase price of bonds subject to redemption or purchase as provided in the applicable bond proceedings;

(A-1) an authority's payment obligations under a contract or agreement authorized by this chapter;

(B) coverage requirements of a bond indenture for a transportation project;

(C) costs of operation and maintenance for a transportation project;

(D) cost of repair, expansion, or improvement of a transportation project;

(E) funds allocated for feasibility studies; and

(F) necessary reserves as determined by the authority.

(13) "System" means a transportation project or a combination of transportation projects designated as a system by the board under Section 370.034.

(14) "Transportation project" means:

(A) a turnpike project;

(B) a system;

(C) a passenger or freight rail facility, including:

(i) tracks;

(ii) a rail line;

(iii) switching, signaling, or other operating equipment;

(iv) a depot;

(v) a locomotive;

(vi) rolling stock;

(vii) a maintenance facility; and

(viii) other real and personal property associated with a rail operation;

(D) a roadway with a functional classification greater than a local road or rural minor collector;

(D-1) a bridge;

(E) a ferry;

(F) an airport, other than an airport that on September 1, 2005, was served by one or more air carriers engaged in scheduled interstate transportation, as those terms were defined by 14 C.F.R. Section 1.1 on that date;

(G) a pedestrian or bicycle facility;

(H) an intermodal hub;

(I) an automated conveyor belt for the movement of freight;

(J) a border crossing inspection station, including:

(i) a border crossing inspection station located at or near an international border crossing; and

(ii) a border crossing inspection station located at or near a border crossing from another state of the United States and not more than 50 miles from an international border;

(K) an air quality improvement initiative;

(L) a public utility facility;

(M) a transit system;

(M-1) a parking area, structure, or facility, or a collection device for parking fees;

(N) if applicable, projects and programs listed in the most recently approved state implementation plan for the area covered by the authority, including an early action compact;

(O) improvements in a transportation reinvestment zone designated under Subchapter E, Chapter 222; and

(P) port security, transportation, or facility projects eligible for funding under Section 55.002.

(14-a) "Transportation project" does not include a border inspection facility that serves a bridge system that had more than 900,000 commercial border crossings during the state fiscal year ending August 31, 2002.

(15) "Turnpike project" means a highway of any number of lanes, with or without grade separations, owned or operated by an authority under this chapter and any improvement, extension, or expansion to that highway, including:

(A) an improvement to relieve traffic congestion or promote safety;

(B) a bridge, tunnel, overpass, underpass, interchange, service road, ramp, entrance plaza, approach, or tollhouse;

(C) an administration, storage, or other building the authority considers necessary for the operation of a turnpike project;

(D) a parking area or structure, rest stop, park, and other improvement or amenity the authority considers necessary, useful, or beneficial for the operation of a turnpike project; and

(E) a property right, easement, or interest the authority acquires to construct or operate the turnpike project.

(16) "Mass transit" means the transportation of passengers and hand-carried packages or baggage of a passenger by any means of

surface, overhead, or underground transportation, other than an aircraft or taxicab.

(17) "Service area" means the county or counties in which an authority or transit provider has established a transit system.

(18) "Transit provider" means an entity that provides mass transit for the public and that was created under Chapter 451, 452, 453, 454, 457, 458, or 460.

(19) "Transit system" means:

(A) property owned or held by an authority for mass transit purposes; and

(B) facilities necessary, convenient, or useful for:

(i) the use of or access to mass transit by persons or vehicles; or

(ii) the protection or environmental enhancement of mass transit.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 5.07, eff. Jan. 11, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.62, eff. June 14, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 118 (S.B. 1489), Sec. 1, eff. May 18, 2013.

Sec. 370.004. CONSTRUCTION COSTS DEFINED. (a) The cost of acquisition, construction, improvement, extension, or expansion of a transportation project under this chapter includes the cost of:

(1) the actual acquisition, construction, improvement, extension, or expansion of the transportation project;

(2) the acquisition of real property, rights-of-way, property rights, easements, and other interests in real property;

(3) machinery and equipment;

(4) interest payable before, during, and for not more than three years after acquisition, construction, improvement, extension, or expansion as provided in the bond proceedings;

(5) traffic estimates, revenue estimates, engineering and legal services, plans, specifications, surveys, appraisals, construction cost estimates, and other expenses necessary or incidental to determining the feasibility of the acquisition, construction, improvement, extension, or expansion;

(6) necessary or incidental administrative, legal, and other expenses;

(7) compliance with laws, regulations, and administrative rulings, including any costs associated with necessary environmental mitigation measures;

(8) financing;

(9) the assumption of debts, obligations, and liabilities of an entity relating to a transportation project transferred to an authority by that entity;

(10) expenses related to the initial operation of the transportation project; and

(11) payment obligations of an authority under a contract or agreement authorized by this chapter in connection with the acquisition, construction, improvement, extension, expansion, or financing of the transportation project.

(b) Costs attributable to a transportation project and incurred before the issuance of bonds to finance the transportation project may be reimbursed from the proceeds of sale of the bonds.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.63, eff. June 14, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 2, eff. June 17, 2011.

SUBCHAPTER B. CREATION AND POWERS OF REGIONAL MOBILITY AUTHORITIES

Sec. 370.031. CREATION OF A REGIONAL MOBILITY AUTHORITY. (a) At the request of one or more counties, the commission by order may authorize the creation of a regional mobility authority for the purposes of constructing, maintaining, and operating transportation

projects in a region of this state. An authority is governed in accordance with Subchapter F.

(b) An authority may not be created without the approval of the commission under Subsection (a) and the approval of the commissioners court of each county that will be a part of the authority.

(c) A municipality that borders the United Mexican States and has a population of 105,000 or more has the same authority as a county, within its municipal boundaries, to create and participate in an authority. A municipality creating or participating in an authority has the same powers and duties as a county participating in an authority, the governing body of the municipality has the same powers and duties as the commissioners court of a county participating in an authority, and an elected member of the municipality's governing body has the same powers and duties as a commissioner of a county that is participating in an authority.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.64, eff. June 14, 2005.

Sec. 370.0311. CERTAIN MUNICIPALITIES. (a) This section applies to a municipality:

(1) with a population of 5,000 or less; and

(2) in which a ferry system that is a part of the state highway system is located.

(b) A municipality has the same authority as a county under this chapter to create and participate in an authority.

(c) A municipality that creates or participates in an authority has the same powers and duties as a county that creates or participates in an authority under this chapter.

(d) The governing body of a municipality that creates or participates in an authority has the same powers and duties as a commissioners court of a county that creates or participates in an authority under this chapter.

(e) An elected member of the governing body of a municipality that creates or participates in an authority has the same powers and

duties as a commissioner of a county that creates or participates in an authority under this chapter.

Added by Acts 2005, 79th Leg., Ch. 877 (S.B. 1131), Sec. 5, eff. June 17, 2005.

Sec. 370.0315. ADDITION AND WITHDRAWAL OF COUNTIES. (a) One or more counties may petition the commission for approval to become part of an existing authority. The commission may approve the petition only if:

(1) the board has agreed to the addition; and

(2) the commission finds that the affected political subdivisions in the county or counties will be adequately represented on the board.

(b) One or more counties may petition the commission for approval to withdraw from an authority. The commission may approve the petition only if:

(1) the authority has no bonded indebtedness; or

(2) the authority has debt other than bonded indebtedness, but the board has agreed to the withdrawal.

(c) A county may not become part of an authority or withdraw from an authority without the approval of the commission.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.032. NATURE OF REGIONAL MOBILITY AUTHORITY. (a) An authority is a body politic and corporate and a political subdivision of this state.

(b) An authority is a governmental unit as that term is defined in Section 101.001, Civil Practice and Remedies Code.

(c) The exercise by an authority of the powers conferred by this chapter in the acquisition, design, financing, construction, operation, and maintenance of a transportation project or system is:

(1) in all respects for the benefit of the people of the counties in which an authority operates and of the people of this state, for the increase of their commerce and prosperity, and for the

improvement of their health, living conditions, and public safety; and

(2) an essential governmental function of the state.

(d) The operations of an authority are governmental, not proprietary, functions.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.033. GENERAL POWERS. (a) An authority, through its board, may:

(1) adopt rules for the regulation of its affairs and the conduct of its business;

(2) adopt an official seal;

(3) study, evaluate, design, finance, acquire, construct, maintain, repair, and operate transportation projects, individually or as one or more systems, provided that a transportation project that is subject to Subpart C, 23 C.F.R. Part 450, is:

(A) included in the plan approved by the applicable metropolitan planning organization; and

(B) consistent with the statewide transportation plan and the statewide transportation improvement program;

(4) acquire, hold, and dispose of property in the exercise of its powers and the performance of its duties under this chapter;

(5) enter into contracts or operating agreements with a similar authority, another governmental entity, or an agency of the United States, a state of the United States, the United Mexican States, or a state of the United Mexican States;

(6) enter into contracts or agreements necessary or incidental to its powers and duties under this chapter;

(7) cooperate and work directly with property owners and governmental entities and officials to support an activity required to promote or develop a transportation project;

(8) employ and set the compensation and benefits of administrators, consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, full-time and part-time employees, agents, consultants, and other persons as the authority considers necessary or useful;

(8-a) participate in the state travel management program administered by the comptroller for the purpose of obtaining reduced airline fares and reduced travel agent fees, provided that the comptroller may charge the authority a fee not to exceed the costs incurred by the comptroller in providing services to the authority;

(9) notwithstanding Sections 221.003 and 222.031 and subject to Subsections (j) and (m), apply for, directly or indirectly receive and spend loans, gifts, grants, and other contributions for any purpose of this chapter, including the construction of a transportation project, and receive and spend contributions of money, property, labor, or other things of value from any source, including the United States, a state of the United States, the United Mexican States, a state of the United Mexican States, the commission, the department, a subdivision of this state, or a governmental entity or private entity, to be used for the purposes for which the grants, loans, or contributions are made, and enter into any agreement necessary for the grants, loans, or contributions;

(10) install, construct, or contract for the construction of public utility facilities, direct the time and manner of construction of a public utility facility in, on, along, over, or under a transportation project, or request the removal or relocation of a public utility facility in, on, along, over, or under a transportation project;

(11) organize a corporation under Chapter 431 for the promotion and development of transportation projects;

(12) adopt and enforce rules not inconsistent with this chapter for the use of any transportation project, including tolls, fares, or other user fees, speed and weight limits, and traffic and other public safety rules, provided that an authority must consider the same factors that the Texas Turnpike Authority division of the department must consider in altering a prima facie speed limit under Section 545.354;

(13) enter into leases, operating agreements, service agreements, licenses, franchises, and similar agreements with a public or private party governing the party's use of all or any portion of a transportation project and the rights and obligations of the authority with respect to a transportation project;

(14) borrow money from or enter into a loan agreement or other arrangement with the state infrastructure bank, the department, the commission, or any other public or private entity; and

(15) do all things necessary or appropriate to carry out the powers and duties expressly granted or imposed by this chapter.

(b) Except as provided by this subsection, property that is a part of a transportation project of an authority is not subject to condemnation or the exercise of the power of eminent domain by any person, including a governmental entity. The department may condemn property that is a part of a transportation project of an authority if the property is needed for the construction, reconstruction, or expansion of a state highway or rail facility.

(c) An authority may perform any function not specified by this chapter to promote or develop a transportation project that the authority is authorized to develop or operate under this chapter.

(d) An authority may sue and be sued and plead and be impleaded in its own name.

(e) An authority may rent, lease, franchise, license, or make portions of its properties available for use by others in furtherance of its powers under this chapter by increasing the feasibility or the revenue of a transportation project. If the transportation project is a project other than a public utility facility an authority may rent, lease, franchise or make property available only to the extent that the renting, lease or franchise benefits the users of the project.

(f) An authority may enter into a contract, agreement, interlocal agreement, or other similar arrangement under which the authority may acquire, plan, design, construct, maintain, repair, or operate a transportation project on behalf of another governmental entity if:

(1) the transportation project is located in the authority's area of jurisdiction or in a county adjacent to the authority's area of jurisdiction;

(2) the transportation project is being acquired, planned, constructed, designed, operated, repaired, or maintained on behalf of the department or another toll project entity, as defined by Section 372.001; or

(3) for a transportation project that is not described by Subdivision (1) or (2), the department approves the acquisition, planning, construction, design, operation, repair, or maintenance of the project by the authority.

(f-1) A contract or agreement under Subsection (f) may contain terms and conditions as may be approved by an authority, including payment obligations of the governmental entity and the authority.

(g) Payments to be made to an authority under a contract or agreement described by Subsection (f) constitute operating expenses of the transportation project or system that is to be operated under the contract or agreement. The contract or agreement may extend for the number of years as agreed to by the parties.

(h) An authority shall adopt a written drug and alcohol policy restricting the use of controlled substances by officers and employees of the authority, prohibiting the consumption of alcoholic beverages by employees while on duty, and prohibiting employees from working for the authority while under the influence of a controlled substance or alcohol. An authority may adopt policies regarding the testing of employees suspected of being in violation of the authority's drug and alcohol policy. The policy shall provide that, unless required by court order or permitted by the person who is the subject of the testing, the authority shall keep the results of the test confidential.

(i) An authority shall adopt written procedures governing its procurement of goods and services that are consistent with general laws applicable to the authority.

(j) An authority may not apply for federal highway or rail funds without the approval of the department.

(k) An authority may not directly provide water, wastewater, natural gas, petroleum pipeline, electric transmission, electric distribution, telecommunications, information, or cable television services.

(l) If an authority establishes an airport in Central Texas, the authority may not establish the airport at a location prohibited to the department by Section 21.069(c).

(m) If an authority receives money from the general revenue fund, the Texas Mobility Fund, or the state highway fund, it:

(1) may use the money only to acquire, design, finance, construct, operate, or maintain a turnpike project under Section 370.003(14)(A) or (D) or a transit system under Section 370.351; and

(2) must repay the money.

(n) Nothing in this chapter or any contractual right obtained under a contract with an authority under this chapter supersedes or renders ineffective any provision of another law applicable to the owner or operator of a public utility facility, including any provision of the utilities code regarding licensing, certification, or regulatory jurisdiction of the Public Utility Commission of Texas or the Railroad Commission of Texas.

(o) Except as provided in Subchapter J, an authority may not provide mass transit services in the service area of another transit provider that has taxing authority and has implemented it anywhere in the service area unless the service is provided under a written agreement with the transit provider or under Section 370.186.

(p) Before providing public transportation or mass transit services in the service area of any other existing transit provider, including a transit provider operating under Chapter 458, an authority must first consult with that transit provider. An authority shall ensure there is coordination of services provided by the authority and an existing transit provider, including a transit provider operating under Chapter 458. An authority is ineligible to participate in the formula or discretionary program under Chapter 456 unless there is no other transit provider, including a transit provider operating under Chapter 458, providing public transportation or mass transit services in the service area of the authority.

(q) An authority, acting through its board, may agree with another entity to acquire a transportation project or system from that entity and to assume any debts, obligations, and liabilities of the entity relating to a transportation project or system transferred to the authority.

(r) This chapter may not be construed to restrict the ability of an authority to enter into an agreement under Chapter 791, Government Code, with another governmental entity located anywhere in this state.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.65, eff. June 14, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 3, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 118 (S.B. 1489), Sec. 2, eff. May 18, 2013.

Acts 2017, 85th Leg., R.S., Ch. 533 (S.B. 312), Sec. 40, eff. September 1, 2017.

Sec. 370.034. ESTABLISHMENT OF TRANSPORTATION SYSTEMS. (a) If an authority determines that the traffic needs of the counties in which it operates and the traffic needs of the surrounding region could be most efficiently and economically met by jointly operating two or more transportation projects as one operational and financial enterprise, it may create a system made up of those transportation projects. An authority may create more than one system and may combine two or more systems into one system. An authority may finance, acquire, construct, and operate additional transportation projects as additions to or expansions of a system if the authority determines that the transportation project could most efficiently and economically be acquired or constructed if it were a part of the system and that the addition will benefit the system.

(b) The revenue of a system shall be accounted for separately and may not be commingled with the revenue of a transportation project that is not a part of the system or with the revenue of another system.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.036. TRANSFER OF BONDED TURNPIKE PROJECT TO DEPARTMENT. (a) An authority may transfer to the department a turnpike project of the authority that has outstanding bonded indebtedness if the commission:

(1) agrees to the transfer; and

(2) agrees to assume the outstanding bonded indebtedness.

(b) The commission may assume the outstanding bonded indebtedness only if the assumption:

(1) is not prohibited under the terms of an existing trust agreement or indenture securing bonds or other obligations issued by the commission for another project;

(2) does not prevent the commission from complying with covenants of the commission under an existing trust agreement or indenture; and

(3) does not cause a rating agency maintaining a rating on outstanding obligations of the commission to lower the existing rating.

(c) If the commission agrees to the transfer under Subsection (a), the authority shall convey the turnpike project and any real property acquired to construct or operate the turnpike project to the department.

(d) At the time of a conveyance under this section, the commission shall designate the turnpike project as part of the state highway system. After the designation, the authority has no liability, responsibility, or duty to maintain or operate the transferred turnpike project.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.037. TRANSFER OF FERRY CONNECTING STATE HIGHWAYS. (a) The commission by order may transfer a ferry operated under Section 342.001 to an authority if:

(1) the commission determines that the proposed transfer is an integral part of the region's overall plan to improve mobility in the region; and

(2) the authority:

(A) agrees to the transfer; and

(B) agrees to assume all liability and responsibility for the maintenance and operation of the ferry on its transfer.

(b) An authority shall reimburse the commission for the cost of a transferred ferry unless the commission determines that the transfer will result in a substantial net benefit to the state, the

department, and the traveling public that equals or exceeds that cost.

(c) In computing the cost of the ferry, the commission shall:

(1) include the total amount spent by the department for the original construction of the ferry, including the costs associated with the preliminary engineering and design engineering for plans, specifications, and estimates, the acquisition of necessary rights-of-way, and actual construction of the ferry and all necessary appurtenant facilities; and

(2) consider the anticipated future costs of expanding, improving, maintaining, or operating the ferry to be incurred by the authority and not by the department if the ferry is transferred.

(d) The commission shall, at the time the ferry is transferred, remove the ferry from the state highway system. After a transfer, the commission has no liability, responsibility, or duty for the maintenance or operation of the ferry.

(e) Before transferring a ferry that is a part of the state highway system under this section, the commission shall conduct a public hearing at which interested persons shall be allowed to speak on the proposed transfer. Notice of the hearing must be published in the Texas Register, one or more newspapers of general circulation in the counties in which the ferry is located, and a newspaper, if any, published in the counties of the applicable authority.

(f) The commission shall adopt rules to implement this section. The rules must include criteria and guidelines for the approval of a transfer of a ferry.

(g) An authority shall adopt rules establishing criteria and guidelines for approval of the transfer of a ferry under this section.

(h) An authority may permanently charge a toll for use of a ferry transferred under this section. An authority may permanently charge a fee or toll for priority use of ferry facilities under Section 370.193.

(i) The commission may not transfer a ferry under this section if the ferry is located in a municipality with a population of 5,000 or less unless the city council of the municipality approves the transfer.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 877 (S.B. 1131), Sec. 6, eff. June 17, 2005.

Sec. 370.038. COMMISSION RULES. (a) The commission shall adopt rules that:

(1) govern the creation of an authority;

(2) govern the commission's approval of a project under Section 370.187 and other commission approvals required by this chapter;

(3) establish design and construction standards for a transportation project that will connect with a highway in the state highway system or a department rail facility;

(4) establish minimum audit and reporting requirements and standards;

(5) establish minimum ethical standards for authority directors and employees; and

(6) govern the authority of an authority to contract with the United Mexican States or a state of the United Mexican States.

(b) The commission shall appoint a rules advisory committee to advise the department and the commission on the development of the commission's initial rules required by this section. The committee must include one or more members representing an existing authority, if applicable. Chapter 2110, Government Code, does not apply to the committee. This subsection expires on the date the commission adopts initial rules under this section.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.039. TRANSFER OF TRANSPORTATION PROJECT OR SYSTEM. (a) An authority may transfer any of its transportation projects or systems to one or more governmental entities if:

(1) the authority has commitments from the governing bodies of the governmental entities to assume jurisdiction over the transferred projects or systems;

(2) property and contract rights in the transferred projects or systems and bonds issued for the projects or systems are not affected unfavorably;

(3) the transfer is not prohibited under the bond proceedings applicable to the transferred projects or systems;

(4) adequate provision has been made for the assumption of all debts, obligations, and liabilities of the authority relating to the transferred projects or systems by the governmental entities assuming jurisdiction over the transferred projects or systems;

(5) the governmental entities are authorized to assume jurisdiction over the transferred projects or systems and to assume the debts, obligations, and liabilities of the authority relating to the transferred projects or systems; and

(6) the transfer has been approved by the commissioners court of each county that is part of the authority.

(b) An authority may transfer to one or more governmental entities any traffic estimates, revenue estimates, plans, specifications, surveys, appraisals, and other work product developed by the authority in determining the feasibility of the construction, improvement, extension, or expansion of a transportation project or system, and the authority's rights and obligations under any related agreements, if the requirements of Subsections (a)(1) and (6) are met.

(c) A governmental entity shall, using any lawfully available funds, reimburse any expenditures made by an authority from its feasibility study fund or otherwise to pay the costs of work product transferred to the governmental entity under Subsection (b) and any other amounts expended under related agreements transferred to the governmental entity. The reimbursement may be made over time, as determined by the governmental entity and the authority.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.66, eff. June 14, 2005.

SUBCHAPTER C. FEASIBILITY OF REGIONAL TRANSPORTATION PROJECTS

Sec. 370.071. EXPENDITURES FOR FEASIBILITY STUDIES. (a) An authority may pay the expenses of studying the cost and feasibility of a transportation project, the design and engineering of a

transportation project, and any other expenses relating to the preparation and issuance of bonds for a proposed transportation project by:

(1) using legally available revenue derived from an existing transportation project;

(2) borrowing money and issuing bonds or entering into a loan agreement payable out of legally available revenue anticipated to be derived from the operation of an existing transportation project;

(3) pledging to the payment of the bonds or a loan agreement legally available revenue anticipated to be derived from the operation of transportation projects or revenue legally available to the authority from another source; or

(4) pledging to the payment of the bonds or a loan agreement the proceeds from the sale of other bonds.

(b) Money spent under this section for a proposed transportation project must be reimbursed to the transportation project from which the money was spent from the proceeds of bonds issued for the acquisition and construction of the proposed transportation project, unless the transportation projects are or become part of a system under Section 370.034.

(c) The use of any money of a transportation project to study the feasibility of another transportation project or used to repay any money used for that purpose does not constitute an operating expense of the transportation project producing the revenue and may be paid only from the surplus money of the transportation project as determined by the authority.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 4, eff. June 17, 2011.

Sec. 370.072. FEASIBILITY STUDY FUND. (a) An authority may maintain a feasibility study fund. The fund is a revolving fund held in trust by a banking institution chosen by the authority and shall be kept separate from the money for a transportation project.

(b) An authority may transfer an amount from a surplus fund established for a transportation project to the authority's feasibility study fund if the remainder of the surplus fund after the transfer is not less than any minimum amount required by the bond proceedings to be retained for that transportation project.

(c) Money in the feasibility study fund may be used only to pay the expenses of studying the cost and feasibility of a transportation project, the design and engineering of a transportation project, and any other expenses relating to:

(1) the preparation and issuance of bonds for the acquisition and construction of a proposed transportation project;

(2) the financing of the improvement, extension, or expansion of an existing transportation project; and

(3) private participation, as authorized by law, in the financing of a proposed transportation project, the refinancing of an existing transportation project or system, or the improvement, extension, or expansion of a transportation project.

(d) Money spent under Subsection (c) for a proposed transportation project must be reimbursed from the proceeds of revenue bonds issued for, or other proceeds that may be used for, the acquisition, construction, improvement, extension, expansion, or operation of the transportation project.

(e) For a purpose described by Subsection (c), an authority may borrow money and issue promissory notes or other interest-bearing evidences of indebtedness payable out of its feasibility study fund, pledging money in the fund or to be placed in the fund.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 5, eff. June 17, 2011.

Sec. 370.073. FEASIBILITY STUDY BY MUNICIPALITY, COUNTY, OTHER GOVERNMENTAL ENTITY, OR PRIVATE GROUP. (a) One or more municipalities, counties, or other governmental entities, a combination of municipalities, counties, and other governmental entities, or a private group or combination of individuals in this

state may pay all or part of the expenses of studying the cost and feasibility of a transportation project, the design and engineering of a transportation project, and any other expenses relating to:

(1) the preparation and issuance of bonds for the acquisition or construction of a proposed transportation project by an authority;

(2) the improvement, extension, or expansion of an existing transportation project of the authority; or

(3) the use of private participation under applicable law in connection with the acquisition, construction, improvement, expansion, extension, maintenance, repair, or operation of a transportation project by an authority.

(b) Money spent under Subsection (a) for a proposed transportation project is reimbursable without interest and with the consent of the authority to the person paying the expenses described in Subsection (a) out of the proceeds from revenue bonds issued for or other proceeds that may be used for the acquisition, construction, improvement, extension, expansion, maintenance, repair, or operation of the transportation project.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 6, eff. June 17, 2011.

SUBCHAPTER D. TRANSPORTATION PROJECT FINANCING

Sec. 370.111. TRANSPORTATION REVENUE BONDS. (a) An authority, by bond resolution, may authorize the issuance of bonds to pay all or part of the cost of a transportation project, to refund any bonds previously issued for the transportation project, or to pay for all or part of the cost of a transportation project that will become a part of another system.

(b) As determined in the bond resolution, the bonds of each issue shall:

(1) be dated;

(2) bear interest at the rate or rates provided by the bond resolution and beginning on the dates provided by the bond resolution and as authorized by law, or bear no interest;

(3) mature at the time or times provided by the bond resolution, not exceeding 40 years from their date or dates; and

(4) be made redeemable before maturity at the price or prices and under the terms provided by the bond resolution.

(c) An authority may sell the bonds at public or private sale in the manner and for the price it determines to be in the best interest of the authority.

(d) The proceeds of each bond issue shall be disbursed in the manner and under any restrictions provided in the bond resolution.

(e) Additional bonds may be issued in the same manner to pay the costs of a transportation project. Unless otherwise provided in the bond resolution, the additional bonds shall be on a parity, without preference or priority, with bonds previously issued and payable from the revenue of the transportation project. In addition, an authority may issue bonds for a transportation project secured by a lien on the revenue of the transportation project subordinate to the lien on the revenue securing other bonds issued for the transportation project.

(f) If the proceeds of a bond issue exceed the cost of the transportation project for which the bonds were issued, the surplus shall be segregated from the other money of the authority and used only for the purposes specified in the bond resolution.

(g) Bonds issued and delivered under this chapter and interest coupons on the bonds are a security under Chapter 8, Business & Commerce Code.

(h) Bonds issued under this chapter and income from the bonds, including any profit made on the sale or transfer of the bonds, are exempt from taxation in this state.

(i) Bonds issued under this chapter shall be considered authorized investments under Chapter 2256, Government Code, for this state, any governmental entity, and any other public entity proposing to invest in the bonds.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.112. INTERIM BONDS. (a) An authority may, before issuing definitive bonds, issue interim bonds, with or without coupons, exchangeable for definitive bonds.

(b) The interim bonds may be authorized and issued in accordance with this chapter, without regard to a requirement, restriction, or procedural provision in any other law.

(c) A bond resolution authorizing interim bonds may provide that the interim bonds recite that the bonds are issued under this chapter. The recital is conclusive evidence of the validity and the regularity of the bonds' issuance.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.113. PAYMENT OF BONDS; STATE AND COUNTY CREDIT. (a) The principal of, interest on, and any redemption premium on bonds issued by an authority are payable solely from:

(1) the revenue of the transportation project for which the bonds are issued;

(2) payments made under an agreement with the commission, the department, or other governmental entity as authorized by this chapter;

(3) money derived from any other source available to the authority, other than money derived from a transportation project that is not part of the same system or money derived from a different system, except to the extent that the surplus revenue of a transportation project or system has been pledged for that purpose;

(4) amounts received under a credit agreement relating to the transportation project for which the bonds are issued; and

(5) the proceeds of the sale of other bonds.

(b) Bonds issued under this chapter do not constitute a debt of this state or of a governmental entity, or a pledge of the faith and credit of this state or of a governmental entity. Each bond must contain on its face a statement to the effect that the state, the authority, or any governmental entity is not obligated to pay the bond or the interest on the bond from a source other than the amount pledged to pay the bond and the interest on the bond, and neither the

faith and credit and taxing power of this state or of any governmental entity are pledged to the payment of the principal of or interest on the bond. This subsection does not apply to a governmental entity that has entered into an agreement under Section 370.303.

(c) An authority may not incur a financial obligation that cannot be paid from revenue derived from owning or operating the authority's transportation projects or from other revenue provided by law.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 7, eff. June 17, 2011.

Sec. 370.114. EFFECT OF LIEN. (a) A lien on or a pledge of revenue from a transportation project under this chapter or on a reserve, replacement, or other fund established in connection with a bond issued under this chapter or a contract or agreement entered into under this chapter:

(1) is enforceable at the time of payment for and delivery of the bond or on the effective date of the contract or agreement;

(2) applies to each item on hand or subsequently received;

(3) applies without physical delivery of an item or other act; and

(4) is enforceable against any person having a claim, in tort, contract, or other remedy, against the applicable authority without regard to whether the person has notice of the lien or pledge.

(b) A copy of any bond resolution shall be maintained in the regular records of the authority.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 8, eff. June 17, 2011.

Sec. 370.115. BOND INDENTURE. (a) Bonds issued by an authority under this chapter may be secured by a bond indenture between the authority and a corporate trustee that is a trust company or a bank that has the powers of a trust company.

(b) A bond indenture may pledge or assign the revenues to be received but may not convey or mortgage any part of a transportation project.

(c) A bond indenture may:

(1) set forth the rights and remedies of the bondholders and the trustee;

(2) restrict the individual right of action by bondholders as is customary in trust agreements or indentures of trust securing corporate bonds and debentures; and

(3) contain provisions the authority determines reasonable and proper for the security of the bondholders, including covenants:

(A) establishing the authority's duties relating to:

(i) the acquisition of property;

(ii) the construction, maintenance, operation, and repair of and insurance for a transportation project; and

(iii) custody, safeguarding, and application of money;

(B) prescribing events that constitute default;

(C) prescribing terms on which any or all of the bonds become or may be declared due before maturity; and

(D) relating to the rights, powers, liabilities, or duties that arise on the breach of a duty of the authority.

(d) An expense incurred in carrying out a trust agreement may be treated as part of the cost of operating the transportation project.

(e) In addition to all other rights by mandamus or other court proceeding, an owner or trustee of a bond issued under this chapter may enforce the owner's rights against an issuing authority, the authority's employees, the authority's board, or an agent or employee of the authority's board and is entitled to:

(1) require the authority or the board to impose and collect tolls, fares, fees, charges, and other revenue sufficient to carry out any agreement contained in the bond proceedings; and

(2) apply for and obtain the appointment of a receiver for the transportation project or system.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.116. APPROVAL OF BONDS BY ATTORNEY GENERAL. (a) An authority shall submit to the attorney general for examination the record of proceedings relating to bonds authorized under this chapter. The record shall include the bond proceedings and any contract securing or providing revenue for the payment of the bonds.

(b) If the attorney general determines that the bonds, the bond proceedings, and any supporting contract are authorized by law, the attorney general shall approve the bonds and deliver to the comptroller:

(1) a copy of the legal opinion of the attorney general stating the approval; and

(2) the record of proceedings relating to the authorization of the bonds.

(c) On receipt of the legal opinion of the attorney general and the record of proceedings relating to the authorization of the bonds, the comptroller shall register the record of proceedings.

(d) After approval by the attorney general, the bonds, the bond proceedings, and any supporting contract are valid, enforceable, and incontestable in any court or other forum for any reason and are binding obligations according to their terms for all purposes.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.117. FURNISHING OF INDEMNIFYING BONDS OR PLEDGES OF SECURITIES. (a) A bank or trust company incorporated under the laws of this state that acts as depository of the proceeds of bonds or of revenue may furnish indemnifying bonds or pledge securities that an authority requires.

(b) Bonds of an authority may secure the deposit of public money of this state or a political subdivision of this state to the

extent of the lesser of the face value of the bonds or their market value.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.118. APPLICABILITY OF OTHER LAW; CONFLICTS. All laws affecting the issuance of bonds by local governmental entities, including Chapters 1201, 1202, 1204, and 1371, Government Code, apply to bonds issued under this chapter. To the extent of a conflict between those laws and this chapter, the provisions of this chapter prevail.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

SUBCHAPTER E. ACQUISITION, CONSTRUCTION, AND OPERATION OF TRANSPORTATION PROJECTS

Sec. 370.161. TRANSPORTATION PROJECTS EXTENDING INTO OTHER COUNTIES. An authority may study, evaluate, design, finance, acquire, construct, operate, maintain, repair, expand, or extend a transportation project in:

(1) a county that is a part of the authority;

(2) a county in this state that is not a part of the authority if the county and authority enter into an agreement under Section 370.033(f); or

(3) a county in another state or the United Mexican States if:

(A) each governing body of a political subdivision in which the project will be located agrees to the proposed study, evaluation, design, financing, acquisition, construction, operation, maintenance, repair, expansion, or extension;

(B) the project will bring significant benefits to the counties in this state that are part of the authority;

(C) the county in the other state is adjacent to a county that:

(i) is part of the authority studying, evaluating, designing, financing, acquiring, constructing, operating,

maintaining, repairing, expanding, or extending the transportation project; and

(ii) has a municipality with a population of 500,000 or more; and

(D) the governor approves the proposed study, evaluation, design, financing, acquisition, construction, operation, maintenance, repair, expansion, or extension.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.102, eff. June 14, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 118 (S.B. 1489), Sec. 3, eff. May 18, 2013.

Sec. 370.162. POWERS AND PROCEDURES OF AUTHORITY IN ACQUIRING PROPERTY. (a) An authority may construct or improve a transportation project on real property, including a right-of-way acquired by the authority or provided to the authority for that purpose by the commission, a political subdivision of this state, or any other governmental entity.

(b) Except as provided by this chapter, an authority has the same powers and may use the same procedures as the commission in acquiring property.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.163. ACQUISITION OF PROPERTY. (a) Except as otherwise provided by this subchapter, the governing body of an authority has the same powers and duties relating to the condemnation and acquisition of real property for a transportation project that the commission and the department have under Subchapter D, Chapter 203, relating to the condemnation or purchase of real property for a toll project.

(b) Repealed by Acts 2005, 79th Leg., Ch. 281, Sec. 2.101(17), eff. June 14, 2005.

(c) The authority granted under this section does not include the authority to condemn a bridge connecting this state to the United Mexican States that is owned by a county or municipality.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.68, eff. June 14, 2005.
Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.101(17), eff. June 14, 2005.

Sec. 370.164. DECLARATION OF TAKING. (a) An authority may file a declaration of taking with the clerk of the court:

(1) in which the authority files a condemnation petition under Chapter 21, Property Code; or

(2) to which the case is assigned.

(b) An authority may file the declaration of taking concurrently with or subsequent to the filing of the condemnation petition but may not file the declaration after the special commissioners have made an award in the condemnation proceeding.

(c) An authority may not file a declaration of taking before the completion of all:

(1) environmental documentation, including a final environmental impact statement or a record of decision, that is required by federal or state law;

(2) public hearings and meetings, including those held in connection with the environmental rules adopted by the authority under Section 370.188, that are required by federal or state law; and

(3) notifications required by the rules adopted by the authority under Section 370.188.

(d) The declaration of taking must include:

(1) a specific reference to the legislative authority for the condemnation;

(2) a description and plot plan of the real property to be condemned, including the following information if applicable:

(A) the municipality in which the property is located;

(B) the street address of the property; and

(C) the lot and block number of the property;

(3) a statement of the property interest to be condemned;

(4) the name and address of each property owner that the authority can obtain after reasonable investigation and a description of the owner's interest in the property; and

(5) a statement that immediate possession of all or part of the property to be condemned is necessary for the timely construction of a transportation project.

(e) A deposit to the registry of the court of an amount equal to the appraised value as determined by the authority of the property to be condemned must accompany the declaration of taking.

(f) The date on which the declaration is filed is the date of taking for the purpose of assessing damages to which a property owner is entitled.

(g) After a declaration of taking is filed, the case shall proceed as any other case in eminent domain under Chapter 21, Property Code.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.165. POSSESSION OF PROPERTY. (a) Immediately on the filing of a declaration of taking, the authority shall serve a copy of the declaration on each person possessing an interest in the condemned property by a method prescribed by Section 21.016(d), Property Code. The authority shall file evidence of the service with the clerk of the court. On filing of that evidence, the authority may take possession of the property pending the litigation.

(b) If the condemned property is a homestead or a portion of a homestead as defined by Section 41.002, Property Code, the authority may not take possession before the 91st day after the date of service under Subsection (a).

(c) A property owner or tenant who refuses to vacate the property or yield possession is subject to forcible entry and detainer under Chapter 24, Property Code.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.166. PARTICIPATION PAYMENT FOR REAL PROPERTY. (a) As an alternative to paying for an interest in real property or a real property right with a single fixed payment, the authority may, with the owner's consent, pay the owner by means of a participation payment.

(b) A right to receive a participation payment under this section is subordinate to any right to receive a fee as payment on the principal of or interest on a bond that is issued for the construction of the applicable segment.

(c) In this section, "participation payment" means an intangible legal right to receive a percentage of one or more identified fees related to a segment constructed by the authority.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.167. SEVERANCE OF REAL PROPERTY. (a) If a transportation project of an authority severs a property owner's real property, the authority shall pay:

(1) the value of the property acquired; and

(2) the damages, if any, to the remainder of the owner's property caused by the severance, including damages caused by the inaccessibility of one tract from the other.

(b) At its option, an authority may negotiate for and purchase the severed real property or any part of the severed real property if the authority and the property owner agree on terms for the purchase. An authority may sell and dispose of severed real property that it determines is not necessary or useful to the authority. Severed property must be appraised before being offered for sale by the authority.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.168. ACQUISITION OF RIGHTS IN PUBLIC REAL PROPERTY. (a) An authority may use real property, including submerged land, streets, alleys, and easements, owned by this state or a local

government that the authority considers necessary for the construction or operation of a transportation project.

(b) This state or a local government having charge of public real property may consent to the use of the property for a transportation project.

(c) Except as provided by Section 228.201, this state or a local government may convey, grant, or lease to an authority real property, including highways and other real property devoted to public use and rights or easements in real property, that may be necessary or convenient to accomplish a purpose of the authority, including the construction or operation of a transportation project. A conveyance, grant, or lease under this section may be made without advertising, court order, or other action other than the normal action of this state or local government necessary for a conveyance, grant, or lease.

(d) This section does not deprive the School Land Board of the power to execute a lease for the development of oil, gas, and other minerals on state-owned real property adjoining a transportation project or in tidewater limits. A lease may provide for directional drilling from the adjoining property or tidewater area.

(e) This section does not affect the obligation of the authority under another law to compensate this state for acquiring or using property owned by or on behalf of this state. An authority's use of property owned by or on behalf of this state is subject to any covenants, conditions, restrictions, or limitations affecting that property.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.69, eff. June 14, 2005.

Sec. 370.169. COMPENSATION FOR AND RESTORATION OF PUBLIC PROPERTY. (a) Except as provided by Section 370.035, an authority may not pay compensation for public real property, parkways, streets, highways, alleys, or reservations it takes, other than:

(1) a park, playground, or designated environmental preserve;

(2) property owned by or on behalf of this state that under law requires compensation to this state for the use or acquisition of the property; or

(3) as provided by this chapter.

(b) Public property damaged in the exercise of a power granted by this chapter shall be restored or repaired and placed in its original condition as nearly as practicable.

(c) An authority has full easements and rights-of-way through, across, under, and over any property owned by the state or any local government that are necessary or convenient to construct, acquire, or efficiently operate a transportation project or system under this chapter. This subsection does not affect the obligation of the authority under other law, including Section 373.102, to compensate or reimburse this state for the use or acquisition of an easement or right-of-way on property owned by or on behalf of this state. An authority's use of property owned by or on behalf of this state is subject to any covenants, conditions, restrictions, or limitations affecting that property.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 8, eff. June 17, 2011.

Sec. 370.170. PUBLIC UTILITY FACILITIES. (a) An authority may adopt rules for the authority's approval of the installation, construction, relocation, and removal of a public utility facility in, on, along, over, or under a transportation project.

(b) If the authority determines that a public utility facility located in, on, along, over, or under a transportation project must be relocated, the utility and the authority shall negotiate in good faith to establish reasonable terms and conditions concerning the responsibilities of the parties with regard to sharing of information about the project and the planning and implementation of any necessary relocation of the public utility facility.

(c) The authority shall use its best efforts to provide an affected utility with plans and drawings of the project that are sufficient to enable the utility to develop plans for, and determine the cost of, the necessary relocation of a public utility facility. If the authority and the affected utility enter into an agreement after negotiations under Subsection (b), the terms and conditions of the agreement govern the relocation of each public utility facility covered by the agreement.

(d) If the authority and an affected utility do not enter into an agreement under Subsection (b), the authority shall provide to the affected utility:

(1) written notice of the authority's determination that the public utility facility must be removed;

(2) a final plan for relocation of the public utility facility; and

(3) reasonable terms and conditions for an agreement with the utility for the relocation of the public utility facility.

(e) Not later than the 90th day after the date a utility receives the notice from the authority, including the plan and agreement terms and conditions under Subsection (d), the utility shall enter into an agreement with the authority that provides for the relocation.

(f) If the utility fails to enter into an agreement within the 90-day period under Subsection (e), the authority may relocate the public utility facility at the sole cost and expense of the utility less any reimbursement of costs that would have been payable to the utility under applicable law. A relocation by the authority under this subsection shall be conducted in full compliance with applicable law, using standard equipment and construction practices compatible with the utility's existing facilities, and in a manner that minimizes disruption of utility service.

(g) The 90-day period under Subsection (e) may be extended:

(1) by mutual agreement between the authority and the utility; or

(2) for any period of time during which the utility is negotiating in good faith with the authority to relocate its facility.

(h) Subject to Subsections (a)-(g), the authority, as a part of the cost of the transportation project or the cost of operating the transportation project, shall pay the cost of the relocation, removal, or grade separation of a public utility facility under Subsection (a).

(i) The authority may reduce the total costs to be paid by the authority under Subsection (h) by 10 percent for each 30-day period or portion of a 30-day period by which the relocation or removal exceeds the reasonable limit specified by agreement between the authority and the owner or operator of the public utility facility, unless the failure of the owner or operator of the facility to timely relocate or remove the facility results directly from:

(1) a material action or inaction of the authority;

(2) an inability of the public utility facility owner or operator to obtain necessary line clearances to perform the removal or relocation; or

(3) conditions beyond the reasonable control of the owner or operator of the facility, including:

(A) an act of God; or

(B) a labor shortage or strike.

(j) The owner or operator of a public utility facility relocated or removed under Subsection (f) shall reimburse the authority for the expenses the authority reasonably incurred for the relocation or removal of the facility, less any costs that would have been payable to the owner or operator under Subsection (h) had the owner or operator relocated or removed the facility, except that the owner or operator is not required to reimburse the authority if the failure of the owner or operator to timely relocate or remove the facility was the result of circumstances beyond the control of the owner or operator.

(k) Subchapter C, Chapter 181, Utilities Code, applies to the erection, construction, maintenance, and operation of a line or pole owned by an electric utility, as that term is defined by Section 181.041, Utilities Code, over, under, across, on, and along a transportation project or system constructed by an authority. An authority has the powers and duties delegated to the commissioners court by that subchapter.

(l) Subchapter B, Chapter 181, Utilities Code, applies to the laying and maintenance of facilities used for conducting gas by a gas utility, as that term is defined by Section 181.021, Utilities Code, through, under, along, across, and over a transportation project or system constructed by an authority except as otherwise provided by this section. An authority has the powers and duties delegated to the commissioners court by that subchapter.

(m) The laws of this state applicable to the use of public roads, streets, and waters by a telephone or telegraph corporation apply to the erection, construction, maintenance, location, and operation of a line, pole, or other fixture by a telephone or telegraph corporation over, under, across, on, and along a transportation project constructed by an authority under this chapter.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.171. LEASE, SALE, OR CONVEYANCE OF TRANSPORTATION PROJECT. An authority may lease, sell, or convey in any other manner a transportation project to a governmental entity with the approval of the governing body of the governmental entity to which the project is transferred.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.172. REVENUE. (a) An authority may:

(1) impose tolls, fees, fares, or other charges for the use of each of its transportation projects and the different parts or sections of each of its transportation projects; and

(2) subject to Subsection (j), contract with a person for the use of part of a transportation project, or lease or sell part of a transportation project, including the right-of-way adjoining the portion used to transport people and property, for any purpose, including placing on the adjoining right-of-way a gas station, garage, store, hotel, restaurant, parking facility, railroad track, billboard, livestock pasturage, telephone line or facility,

telecommunication line or facility, data transmission line or facility, or electric line or facility, under terms set by the authority.

(b) Tolls, fees, fares, or other charges must be set at rates or amounts so that the aggregate of tolls, fees, fares, or other charges from an authority's transportation project, together with other revenue of the transportation project:

(1) provides revenue sufficient to pay:

(A) the cost of maintaining, repairing, and operating the transportation project;

(B) the principal of and interest on any bonds issued for the transportation project as those bonds become due and payable; and

(C) any other payment obligations of an authority under a contract or agreement authorized under this chapter; and

(2) creates reserves for a purpose listed under Subdivision (1).

(c) Any toll, fee, fare, or other charge imposed on an owner of a public utility facility under this section must be imposed in a manner that is competitively neutral and nondiscriminatory among similarly situated users of the transportation project.

(d) Tolls, fees, fares, or other usage charges are not subject to supervision or regulation by any agency of this state or another governmental entity.

(e) Revenue derived from tolls, fees, and fares, and other revenue derived from a transportation project for which bonds are issued, other than any part necessary to pay the cost of maintenance, repair, and operation and to provide reserves for those costs as provided in the bond proceedings, shall be set aside at regular intervals as provided in the bond resolution or trust agreement in a sinking fund that is pledged to and charged with the payment of:

(1) interest on the bonds as it becomes due;

(2) principal of the bonds as it becomes due;

(3) necessary charges of paying agents for paying principal and interest;

(4) the redemption price or the purchase price of bonds retired by call or purchase as provided in the bond proceedings; and

(5) any amounts due under credit agreements.

(f) Use and disposition of money deposited to the credit of the sinking fund is subject to the bond proceedings.

(g) To the extent permitted under the applicable bond proceedings, revenue from one transportation project of an authority may be used to pay the cost of another transportation project of the authority.

(h) An authority may not use revenue from a transportation project in a manner not authorized by this chapter. Except as provided by this chapter, revenue derived from a transportation project may not be applied for a purpose or to pay a cost other than a cost or purpose that is reasonably related to or anticipated to be for the benefit of a transportation project.

(i) An authority may not require the owner of a public utility facility to pay a fee as a condition of placing a facility across the rights-of-way.

(j) If the transportation project is a project other than a public utility facility, an authority may contract for the use of part of a transportation project or lease or sell part of a transportation project under Subsection (a)(2) only to the extent that the contract, lease, or sale benefits the users of the transportation project.

(k) Notwithstanding any other provision of this chapter, an authority may pledge all or any part of its revenues and any other funds available to the authority to the payment of any obligations of the authority under a contract or agreement authorized by this chapter.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 9, eff. June 17, 2011.

Sec. 370.173. AUTHORITY REVOLVING FUND. (a) An authority may maintain a revolving fund to be held in trust by a banking institution chosen by the authority separate from any other funds and administered by the authority's board.

(b) An authority may transfer into its revolving fund money from any permissible source, including:

(1) money from a transportation project if the transfer does not diminish the money available for the project to less than any amount required to be retained by the bond proceedings pertaining to the project;

(2) money received by the authority from any source and not otherwise committed, including money from the transfer of a transportation project or system or sale of authority assets;

(3) money received from the state highway fund; and

(4) contributions, loans, grants, or assistance from the United States, another state, another political subdivision of this state, a foreign governmental entity, including the United Mexican States or a state of the United Mexican States, a local government, any private enterprise, or any person.

(c) The authority may use money in the revolving fund to:

(1) finance the acquisition, construction, maintenance, or operation of a transportation project, including the extension, expansion, or improvement of a transportation project;

(2) provide matching money required in connection with any federal, state, local, or private aid, grant, or other funding, including aid or funding by or with public-private partnerships;

(3) provide credit enhancement either directly or indirectly for bonds issued to acquire, construct, extend, expand, or improve a transportation project;

(4) provide security for or payment of future or existing debt for the design, acquisition, construction, operation, maintenance, extension, expansion, or improvement of a transportation project or system;

(5) borrow money and issue bonds, promissory notes, or other indebtedness payable out of the revolving fund for any purpose authorized by this chapter; and

(6) provide for any other reasonable purpose that assists in the financing of an authority as authorized by this chapter.

(d) Money spent or advanced from the revolving fund for a transportation project must be reimbursed from the money of that transportation project. There must be a reasonable expectation of repayment at the time the expenditure or advancement is authorized.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 10, eff. June 17, 2011.

Sec. 370.174. USE OF SURPLUS REVENUE. (a) Each year, if an authority determines that it has surplus revenue from transportation projects, it shall reduce tolls, spend the surplus revenue on other transportation projects in the counties of the authority in accordance with Subsection (b), or deposit the surplus revenue to the credit of the Texas Mobility Fund.

(b) Consistent with other law and commission rule, an authority may spend surplus revenue on other transportation projects by:

(1) constructing a transportation project located within the counties of the authority;

(2) assisting in the financing of a toll or toll-free transportation project of another governmental entity; or

(3) with the approval of the commission, constructing a toll or toll-free transportation project and, on completion of the project, transferring the project to another governmental entity if:

(A) the other governmental entity authorizes the authority to construct the project and agrees to assume all liability and responsibility for the maintenance and operation of the project on its transfer; and

(B) the project is constructed in compliance with all laws applicable to the governmental entity.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.175. EXEMPTION FROM TAXATION OR ASSESSMENT. (a) An authority is exempt from taxation of or assessments on:

(1) a transportation project or system;

(2) property the authority acquires or uses under this chapter for a transportation project or system; or

(3) income from property described by Subdivision (1) or (2).

(b) An authority is exempt from payment of development fees, utility connection fees, assessments, and service fees imposed or assessed by any governmental entity or any property owners' or homeowners' association. This subsection does not apply to fees or assessments charged under approved rate schedules or line extension policies of a municipally owned electric or gas utility.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.176. ACTIONS AFFECTING EXISTING ROADS. (a) An authority may impose a toll for transit over an existing free road, street, or public highway transferred to the authority under this chapter.

(b) An authority may construct a grade separation at an intersection of a transportation project with a railroad or highway and change the line or grade of a highway to accommodate the design of the grade separation. The action may not affect a segment of the state highway system without the department's consent. The authority shall pay the cost of a grade separation and any damage incurred in changing a line or grade of a railroad or highway as part of the cost of the transportation project.

(c) If feasible, an authority shall provide access to properties previously abutting a county road or other public road that is taken for a transportation project and shall pay abutting property owners the expenses or any resulting damages for a denial of access to the road.

(d) If an authority changes the location of a segment of a county road as part of its development of a transportation project, the authority shall, on the request of the county, reconstruct that segment of the road at a location that the authority determines, in its discretion, restores the utility of the road. The reconstruction and its associated costs are in furtherance of a transportation project.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

The following section was amended by the 86th Legislature. Pending publication of the current statutes, see S.B. 1311, 86th Legislature, Regular Session, for amendments affecting the following section.

Sec. 370.177. FAILURE OR REFUSAL TO PAY TURNPIKE PROJECT TOLL; OFFENSE; ADMINISTRATIVE PENALTY. (a) Except as provided by Subsection (a-1), the operator of a vehicle, other than an authorized emergency vehicle as defined by Section 541.201, that is driven or towed through a toll collection facility of a turnpike project shall pay the proper toll. The operator of a vehicle who drives or tows a vehicle through a toll collection facility and does not pay the proper toll commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $250. The exemption from payment of a toll for an authorized emergency vehicle applies regardless of whether the vehicle is:

(1) responding to an emergency;

(2) displaying a flashing light; or

(3) marked as an emergency vehicle.

(a-1) Notwithstanding Subsection (a), the board may waive the requirement of the payment of a toll or may authorize the payment of a reduced toll for any vehicle or class of vehicles.

(b) In the event of nonpayment of the proper toll as required by Subsection (a), on issuance of a written notice of nonpayment, the registered owner of the nonpaying vehicle is liable for the payment of both the proper toll and an administrative fee.

(c) The authority may impose and collect the administrative fee to recover the cost of collecting the unpaid toll, not to exceed $100. The authority shall send a written notice of nonpayment to the registered owner of the vehicle at that owner's address as shown in the vehicle registration records of the department by first class mail not later than the 30th day after the date of the alleged failure to pay and may require payment not sooner than the 30th day after the date the notice was mailed. The registered owner shall pay a separate toll and administrative fee for each event of nonpayment under Subsection (a).

(d) The registered owner of a vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under Subsection (c) and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an

offense. Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(e) It is an exception to the application of Subsection (b) or (d) that the registered owner of the vehicle is a lessor of the vehicle and not later than the 30th day after the date the notice of nonpayment is mailed provides to the authority:

(1) a copy of the rental, lease, or other contract document covering the vehicle on the date of the nonpayment under Subsection (a), with the name and address of the lessee clearly legible; or

(2) electronic data, other than a photocopy or scan of a rental or lease contract, that contains the information required under Sections 521.460(c)(1), (2), and (3) covering the vehicle on the date of the nonpayment under Subsection (a).

(e-1) If the lessor provides the required information within the period prescribed under Subsection (e), the authority may send a notice of nonpayment to the lessee at the address provided under Subsection (e) by first class mail before the 30th day after the date of receipt of the required information from the lessor. The lessee of the vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under this subsection and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. The lessee shall pay a separate toll and administrative fee for each event of nonpayment. Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(f) It is an exception to the application of Subsection (b) or (d) that the registered owner of the vehicle transferred ownership of the vehicle to another person before the event of nonpayment under Subsection (a) occurred, submitted written notice of the transfer to the department in accordance with Section 501.147, and before the 30th day after the date the notice of nonpayment is mailed, provides to the authority the name and address of the person to whom the vehicle was transferred. If the former owner of the vehicle provides the required information within the period prescribed, the authority may send a notice of nonpayment to the person to whom ownership of the vehicle was transferred at the address provided by the former owner by first class mail before the 30th day after the date of receipt of the required information from the former owner. The

subsequent owner of the vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under this subsection and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. The subsequent owner shall pay a separate toll and administrative fee for each event of nonpayment under Subsection (a). Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(g) An offense under Subsection (d), (e-1), or (f) is a misdemeanor punishable by a fine not to exceed $250.

(h) The court in which a person is convicted of an offense under this section shall also collect the proper toll and administrative fee and forward the toll and fee to the authority.

(i) In the prosecution of an offense under this section, proof that the vehicle passed through a toll collection facility without payment of the proper toll together with proof that the defendant was the registered owner or the driver of the vehicle when the failure to pay occurred, establishes the nonpayment of the registered owner. The proof may be by testimony of a peace officer or authority employee, video surveillance, or any other reasonable evidence, including:

(1) evidence obtained by automated enforcement technology that the authority determines is necessary, including automated enforcement technology described by Sections 228.058(a) and (b); or

(2) a copy of the rental, lease, or other contract document or the electronic data provided to the authority under Subsection (e) that shows the defendant was the lessee of the vehicle when the underlying event of nonpayment occurred.

(j) It is a defense to prosecution under this section that the motor vehicle in question was stolen before the failure to pay the proper toll occurred and was not recovered by the time of the failure to pay, but only if the theft was reported to the appropriate law enforcement authority before the earlier of:

(1) the occurrence of the failure to pay; or

(2) eight hours after the discovery of the theft.

(k) In this section, "registered owner" means the owner of a vehicle as shown on the vehicle registration records of the

department or the analogous department or agency of another state or country.

(l) In addition to the other powers and duties provided by this chapter, with regard to its toll collection and enforcement powers for its turnpike projects or other toll projects developed, financed, constructed, and operated under an agreement with the authority or another entity, an authority has the same powers and duties as the department under Chapter 228, a county under Chapter 284, and a regional tollway authority under Chapter 366.

(m) Information collected for the purposes of this section, including contact, payment, and other account information and trip data, is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 23 (S.B. 129), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.70, eff. June 14, 2005.

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 4.04, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 918 (H.B. 2983), Sec. 6, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 11, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 20.004, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1129 (S.B. 57), Sec. 3, eff. June 19, 2015.

Sec. 370.178. USE AND RETURN OF TRANSPONDERS. (a) For purposes of this section, "transponder" means a device placed on or within a motor vehicle that is capable of transmitting or receiving information used to assess or collect tolls or provide toll exemptions. A transponder is insufficiently funded if there is no money in the account for which the transponder was issued.

(b) Any law enforcement or peace officer of an entity with which an authority has contracted under Section 370.181(c) may seize a stolen or insufficiently funded transponder and return it to the authority that issued the transponder. An insufficiently funded transponder may not be seized before the 30th day after the date that an authority has sent a notice of delinquency to the holder of the account.

(c) The following entities shall consider offering motor vehicle operators the option of using a transponder to pay tolls without stopping, to mitigate congestion at toll locations, to enhance traffic flow, and to otherwise increase the efficiency of operations:

(1) the authority;

(2) an entity to which a project authorized by this chapter is transferred; or

(3) a third-party service provider under contract with an entity described by Subdivision (1) or (2).

(d) Transponder account information, including contact and payment information and trip data, is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.71, eff. June 14, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1129 (S.B. 57), Sec. 4, eff. June 19, 2015.

Sec. 370.179. CONTROLLED ACCESS TO TURNPIKE PROJECTS. (a) An authority by order may designate a turnpike project or a portion of a project as a controlled-access toll road.

(b) An authority by order may:

(1) prohibit the use of or access to or from a turnpike project by a motor vehicle, bicycle, another classification or type of vehicle, or a pedestrian;

(2) deny access to or from:

(A) a turnpike project;

(B) real property adjacent to a turnpike project; or

(C) a street, road, alley, highway, or other public or private way intersecting a turnpike project;

(3) designate locations on a turnpike project at which access to or from the toll road is permitted;

(4) control, restrict, and determine the type and extent of access permitted at a designated location of access to a turnpike project; or

(5) erect appropriate protective devices to preserve the utility, integrity, and use of a turnpike project.

(c) Denial of access to or from a segment of the state highway system is subject to the approval of the commission.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.180. PROMOTION OF TRANSPORTATION PROJECT. An authority may promote the use of a transportation project, including a project that it operates on behalf of another entity, by appropriate means, including advertising or marketing as the authority determines appropriate.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.181. OPERATION OF TRANSPORTATION PROJECT. (a) An authority shall operate a transportation project with employees of the authority or by using services contracted under Subsection (b) or (c).

(b) An authority may enter into an agreement with one or more persons to provide, on terms and conditions approved by the authority, personnel and services to design, construct, operate, maintain, expand, enlarge, or extend a transportation project owned or operated by the authority.

(c) An authority may contract with any state or local government for the services of peace officers of that agency.

(d) An authority may not directly provide water, wastewater, natural gas, petroleum pipeline, electric transmission, electric

distribution, telecommunications, information, or cable television services.

(e) Nothing in this chapter, or any contractual right obtained under a contract with an authority authorized by this chapter, supersedes or renders ineffective any provision of another law applicable to the owner or operator of a public utility facility, including any provision of the Utilities Code regarding licensing, certification, and regulatory jurisdiction of the Public Utility Commission of Texas or Railroad Commission of Texas.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 118 (S.B. 1489), Sec. 4, eff. May 18, 2013.

Sec. 370.182. AUDIT. (a) An authority shall have a certified public accountant audit the authority's books and accounts at least annually. The cost of the audit may be treated as part of the cost of construction or operation of a transportation project.

(b) The commission may initiate an independent audit of the authority or any of its activities at any time the commission considers appropriate. An audit under this subsection shall be conducted at the expense of the department.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.183. DISADVANTAGED BUSINESSES. (a) Consistent with general law, an authority shall:

(1) set goals for the award of contracts to disadvantaged businesses and attempt to meet the goals;

(2) attempt to identify disadvantaged businesses that provide or have the potential to provide supplies, materials, equipment, or services to the authority; and

(3) give disadvantaged businesses full access to the authority's contract bidding process, inform the businesses about the

process, offer the businesses assistance concerning the process, and identify barriers to the businesses' participation in the process.

(b) This section does not exempt an authority from competitive bidding requirements provided by other law.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.184. PROCUREMENT. An authority shall adopt rules governing the award of contracts for goods and services. Notwithstanding any other provision of state law, an authority may procure goods and services, including materials, engineering, design, construction, operations, maintenance, and other goods and services, through any procedure authorized by this chapter. Procurement of professional services is governed by Chapter 2254, Government Code.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.185. COMPETITIVE BIDDING. A contract made by an authority may be let by a competitive bidding procedure in which the contract is awarded to the lowest responsible bidder that complies with the authority's criteria.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.186. CONTRACTS WITH GOVERNMENTAL ENTITIES. (a) Except as provided by Subsection (c), an authority may not construct, maintain, or operate a turnpike or toll project in an area having a governmental entity established under Chapter 284 or 366 unless the governmental entity and the authority enter into a written agreement specifying the terms and conditions under which the project shall be undertaken. An authority may not construct, maintain, or operate a transportation project that another governmental entity has determined to be a project under Chapter 451, 452, or 460 unless the governmental entity and the authority enter into a written agreement specifying the terms and conditions under which the project shall be undertaken.

(b) An authority may not receive or be paid revenue derived by another governmental entity operating under Chapter 284, 366, 451, 452, or 460 unless the governmental entity and the authority enter into a written agreement specifying the terms and conditions under which the revenue shall be received by or paid to the authority.

(c) Subsection (a) does not apply to a turnpike or toll project located in a county in which a regional tollway authority has transferred under Section 366.036 or 366.172:

(1) all turnpike projects of the regional tollway authority that are located in the county; and

(2) all work product developed by the regional tollway authority in determining the feasibility of the construction, improvement, extension, or expansion of a turnpike project to be located in the county.

(d) An authority may not construct, maintain, or operate a passenger rail facility within the boundaries of an intermunicipal commuter rail district created under former Article 6550c-1, Vernon's Texas Civil Statutes, as those boundaries existed on September 1, 2005, unless the district and the authority enter into a written agreement specifying the terms and conditions under which the project will be undertaken.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.72, eff. June 14, 2005.

Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 4.09, eff. April 1, 2011.

Sec. 370.187. PROJECT APPROVAL. (a) An authority may not begin construction of a transportation project that will connect to the state highway system or to a department rail facility without the approval of the commission.

(b) The commission by rule shall establish procedures and criteria for an approval under this section. The rules must require the commission to consider a request for project approval not later

than the 60th day after the date the department receives all information reasonably necessary to review the request.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.188. ENVIRONMENTAL REVIEW OF AUTHORITY PROJECTS. (a) An authority shall adopt rules for environmental review of a transportation project that is not subject to review under the National Environmental Policy Act (42 U.S.C. Section 4321 et seq.), as amended. The rules must:

(1) specify the types of projects for which a public hearing is required;

(2) establish procedures for public comment on the environmental review, including a procedure for requesting a public hearing on an environmental review for which a public hearing is not required; and

(3) require:

(A) an evaluation of any direct or indirect environmental effect of the project;

(B) an analysis of project alternatives; and

(C) a written report that briefly explains the authority's review of the project and that specifies any mitigation measures on environmental harm on which the project is conditioned.

(b) An environmental review of a project must be conducted before the authority may approve the location or alignment of the project.

(c) The authority shall consider the results of the environmental review in executing its duties.

(d) The authority shall coordinate with the Texas Commission on Environmental Quality and the Parks and Wildlife Department in the preparation of an environmental review.

(e) This section does not prohibit an owner of a public utility facility or a proposed public utility facility from conducting any necessary environmental evaluation for the public utility facility. The authority is entitled to review and give final approval regarding the sufficiency of any environmental evaluation conducted for a facility that is part of a transportation project.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.189. DEPARTMENT MAINTENANCE AND OPERATION. (a) If requested by an authority, the department may agree to assume all or part of the duty to maintain or operate a turnpike project or ferry of the authority.

(b) The authority shall reimburse the department for necessary costs of maintaining or operating the turnpike project or ferry as agreed by the department and the authority.

(c) Money received by the department under Subsection (b) shall be deposited to the credit of the state highway fund and is exempt from the application of Sections 403.095 and 404.071, Government Code.

(d) If the department assumes all of the duty to maintain or operate a turnpike project or ferry under Subsection (a), the authority is not liable for damages resulting from the maintenance or operation of the turnpike project or ferry.

(e) An agreement under this section is not a joint enterprise for purposes of liability.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.190. PROPERTY OF CERTAIN TRANSPORTATION AUTHORITIES. An authority may not condemn or purchase real property of a transportation authority operating under Chapter 451, 452, or 460 unless the authority has entered into a written agreement with the transportation authority specifying the terms and conditions under which the condemnation or the purchase of the real property will take place.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.191. COMMERCIAL TRANSPORTATION PROCESSING SYSTEMS. (a) In this section, "port of entry" means a place designated by executive order of the president of the United States, by order of

the United States secretary of the treasury, or by act of the United States Congress at which a customs officer is authorized to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws.

(b) This section applies only to a port of entry for land traffic from the United Mexican States and does not apply to a port of entry for marine traffic.

(c) To the extent an authority considers appropriate to expedite commerce and based on the Texas ITS/CVO Business Plan prepared by the department, the Department of Public Safety, and the comptroller, the authority shall provide for implementation by the appropriate agencies of the use of Intelligent Transportation Systems for Commercial Vehicle Operations (ITS/CVO) in any new commercial motor vehicle inspection facility constructed by the authority and in any existing facility located at a port of entry to which this section applies. The authority shall coordinate with other state and federal transportation officials to develop interoperability standards for the systems.

(d) If an authority constructs a facility at which commercial vehicle safety inspections are conducted, the facility may not be used solely for the purpose of conducting commercial motor vehicle inspections by the Department of Public Safety and the facility must include implementation of ITS/CVO technology by the appropriate agencies to support all commercial motor vehicle regulation and enforcement functions.

(e) As part of its implementation of technology under this section, an authority shall to the greatest extent possible as a requirement of the construction of the facility:

(1) enhance efficiency and reduce complexity for motor carriers by providing a single point of contact between carriers and regulating state and federal government officials and providing a single point of information, available to wireless access, about federal and state regulatory and enforcement requirements;

(2) prevent duplication of state and federal procedures and locations for regulatory and enforcement activities, including consolidation of collection of applicable fees;

(3) link information systems of the authority, the department, the Department of Public Safety, the comptroller, and, to

the extent possible, the United States Department of Transportation and other appropriate regulatory and enforcement entities; and

(4) take other necessary action to:

(A) facilitate the flow of commerce;

(B) assist federal interdiction efforts;

(C) protect the environment by reducing idling time of commercial motor vehicles at the facilities;

(D) prevent highway damage caused by overweight commercial motor vehicles; and

(E) seek federal funds to assist in the implementation of this section.

(f) Construction of a facility to which this section applies is subject to the availability of federal funding for that purpose.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.1911. COMMERCIAL TRANSPORTATION PROCESSING SYSTEMS AT INSPECTION FACILITIES AT INTERSTATE BORDERS. (a) Notwithstanding Section 370.191, an authority may construct a border inspection facility to be used solely for the purpose of conducting commercial motor vehicle inspections by the Department of Public Safety, provided that the facility is located:

(1) at or near a border crossing from another state of the United States; and

(2) not more than 50 miles from an international border.

(b) To the extent an authority constructing a border inspection facility under this section considers appropriate to expedite commerce, the facility may include implementation of Intelligent Transportation Systems for Commercial Vehicle Operations (ITS/CVO) technology.

Added by Acts 2013, 83rd Leg., R.S., Ch. 118 (S.B. 1489), Sec. 5, eff. May 18, 2013.

Sec. 370.192. PROPERTY OF RAPID TRANSIT AUTHORITIES. An authority may not condemn or purchase real property of a rapid transit authority operating pursuant to Chapter 451 that was

confirmed before July 1, 1985, and in which the principal municipality has a population of less than 850,000, unless the authority has entered into a written agreement with the rapid transit authority specifying the terms and conditions under which the condemnation or the purchase of the real property will take place.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 128, eff. September 1, 2011.

Sec. 370.193. PRIORITY BOARDING OF FERRY. An authority may establish a system under which an owner of a motor vehicle may pay an additional fee or toll that entitles the vehicle to have priority in boarding a ferry operated by the authority.

Added by Acts 2005, 79th Leg., Ch. 877 (S.B. 1131), Sec. 7, eff. June 17, 2005.

SUBCHAPTER F. GOVERNANCE

Sec. 370.251. BOARD OF DIRECTORS. (a) Except as provided by Subsection (a-1), the governing body of an authority is a board of directors consisting of representatives of each county in which a transportation project of the authority is located or is proposed to be located. The commissioners court of each county that initially forms the authority shall appoint at least two directors to the board. Additional directors may be appointed to the board at the time of initial formation by agreement of the counties creating the authority to ensure fair representation of political subdivisions in the counties of the authority that will be affected by a transportation project of the authority, provided that the number of directors must be an odd number. The commissioners court of a county that is subsequently added to the authority shall appoint at least one director to the board. The governor shall appoint one director to the board who shall serve as the presiding officer of the board and shall appoint an additional director to the board if an

appointment is necessary to maintain an odd number of directors on the board.

(a-1) To be eligible to serve as director of an authority created by a municipality an individual:

(1) may be a representative of an entity that also has representation on a metropolitan planning organization in the region where the municipality is located; and

(2) is required to be a resident of Texas regardless of whether the metropolitan planning organization's geographic area includes territory in another state.

(b) The appointment of additional directors from a county subsequently added to an authority or from a county of an authority that contains an operating transportation project of the authority shall be by a process unanimously agreed to by the commissioners courts of all the counties of the authority.

(c) Directors serve two-year terms, with as near as possible to one-half of the directors' terms expiring on February 1 of each year.

(d) If six-year terms are permitted under the constitution of this state, one director appointed to the initial board of an authority by the commissioners court of a county shall be designated by the court to serve a term of two years and one director designated to serve a term of four years. If six-year terms are not permitted under the constitution, one director appointed to the initial board of an authority by the commissioners court of a county shall be designated by the court to serve a term of one year and one director designated to serve a term of two years. If one or more directors are subsequently appointed to the board, the directors other than the subsequent appointees shall determine the length of the appointees' terms, to comply with Subsection (c).

(e) If a vacancy occurs on the board, the appointing authority shall promptly appoint a successor to serve for the unexpired portion of the term.

(f) All appointments to the board shall be made without regard to race, color, disability, sex, religion, age, or national origin.

(g) The following individuals are ineligible to serve as a director:

(1) an elected official;

(2) a person who is not a resident of a county within the geographic area of the authority;

(3) a department employee;

(4) an employee of a governmental entity any part of which is located within the geographic boundaries of the authority; and

(5) a person owning an interest in real property that will be acquired for an authority project, if it is known at the time of the person's proposed appointment that the property will be acquired for the authority project.

(h) Each director has equal status and may vote.

(i) The vote of a majority attending a board meeting is necessary for any action taken by the board. If a vacancy exists on a board, the majority of directors serving on the board is a quorum.

(j) The commission may refuse to authorize the creation of an authority if the commission determines that the proposed board will not fairly represent political subdivisions in the counties of the authority that will be affected by the creation of the authority.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.73, eff. June 14, 2005.

Acts 2007, 80th Leg., R.S., Ch. 180 (H.B. 3718), Sec. 1, eff. May 23, 2007.

Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 10.01, eff. June 11, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 12, eff. June 17, 2011.

Sec. 370.2511. BOARD OF DIRECTORS: CERTAIN AUTHORITIES. (a) This section applies only to an authority created by a municipality.

(b) The governing body of a municipality may, by a resolution approved by at least two-thirds of the members of the governing body, establish the governing body as the board of directors of an authority.

(c) If the board of directors of an authority created by a municipality consists of the members of the governing body of the

municipality, the governor shall appoint an additional director who is not a member of the governing body of the municipality and who serves as the presiding officer of the board.

(d) Each director of a board under this section has equal status and may vote.

(e) The vote of a majority attending a board meeting is necessary for any action taken by a board under this section. If a vacancy exists on a board, the majority of directors serving on the board is a quorum.

(f) The governing body of a municipality that becomes the board of an existing authority under this section shall by resolution provide for the transfer process that establishes the governing body as the board of the authority.

(g) If the board of directors of an authority created by a municipality consists of the members of the governing body of the municipality, Sections 370.251, 370.2515, 370.252, 370.2521, 370.2522, 370.2523, 370.253, 370.254, and 370.255 do not apply to the board, except that, to the extent applicable, those provisions apply to the governor's appointee under Subsection (c).

(h) This section has no effect if the attorney general issues an opinion stating that, notwithstanding the statutory authority under this section, the Texas Constitution, the common law doctrine of incompatibility, or any other legal principle would prohibit a member of the governing body of a municipality from serving as a director of an authority.

(i) A board under this section is not required to have an odd number of directors.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 13, eff. June 17, 2011.

Sec. 370.2515. BOARD COMPOSITION PROPOSAL BY TURNPIKE AUTHORITY. If a county in which a turnpike authority under Chapter 366 operates or a county owning or operating a toll project under Chapter 284 is part of an authority, the turnpike authority or the county may submit to the commission a proposed structure for the board and a method of appointment to the board:

(1) at the creation of the authority if the county is a county that initially forms an authority;

(2) when a new county is added to the authority; and

(3) when the county is initially added to the authority.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.252. PROHIBITED CONDUCT FOR DIRECTORS AND EMPLOYEES. (a) A director or employee of an authority may not:

(1) accept or solicit any gift, favor, or service that:

(A) might reasonably influence the director or employee in the discharge of an official duty; or

(B) the director or employee knows or should know is being offered with the intent to influence the director's or employee's official conduct;

(2) accept other employment or engage in a business or professional activity that the director or employee might reasonably expect would require or induce the director or employee to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the director's or employee's independence of judgment in the performance of the director's or employee's official duties;

(4) make personal investments that could reasonably be expected to create a substantial conflict between the director's or employee's private interest and the interest of the authority;

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the director's or employee's official powers or performed the director's or employee's official duties in favor of another; or

(6) have a personal interest in an agreement executed by the authority.

(b) A person is not eligible to serve as a director or chief administrative officer of an authority if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization, other than a governmental

entity, that is regulated by or receives funds from the authority or the department;

(2) directly or indirectly owns or controls more than a 10 percent interest in a business or other organization that is regulated by or receives funds from the authority or the department;

(3) uses or receives a substantial amount of tangible goods, services, or funds from the authority or the department; or

(4) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the authority or the department.

(c) A person is not eligible to serve as a director or chief administrative officer of an authority if the person is an officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation, or aviation, or if the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation, or aviation.

(d) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

(e) A person is not ineligible to serve as a director or chief administrative officer of an authority if the person has received funds from the department for acquisition of highway right-of-way unless the acquisition was for a project of the authority.

(f) In addition to the prohibitions and restrictions of this section, directors are subject to Chapter 171, Local Government Code.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.74, eff. June 14, 2005.

Sec. 370.2521. FILING OF FINANCIAL STATEMENT BY DIRECTOR. (a) Except as provided by Subsection (c), (d), or (e) a director shall file the financial statement required of state officers under Subchapter B, Chapter 572, Government Code, with the Texas Ethics Commission.

(b) Subchapter B, Chapter 572, Government Code:

(1) applies to a director as if the director were a state officer; and

(2) governs the contents, timeliness of filing, and public inspection of a statement filed under Subsection (a).

(c) Subsection (a) does not apply to a director who is a state officer subject to Subchapter B, Chapter 572, Government Code.

(d) A director who is a municipal officer subject to Chapter 145, Local Government Code, or a county officer subject to Subchapter A, Chapter 159, Local Government Code, shall file with the Texas Ethics Commission a copy of the financial statement filed under Chapter 145, Local Government Code, or Subchapter A, Chapter 159, Local Government Code, as applicable. Subchapter B, Chapter 572, Government Code, governs the timeliness of filing and public inspection of a copy of a statement filed under this subsection.

(e) Subsection (a) does not apply to an authority if each county that is a part of the authority has a population of less than 200,000. The commissioners courts of the counties that are a part of an authority to which this subsection applies may jointly adopt a process that requires the directors of the authority to disclose personal financial activity as specified by the commissioners courts.

(f) A person subject to Subsection (a) or (d) commits an offense if the person fails to file the statement required by Subsection (a) or the copy required by Subsection (d), as applicable. An offense under this subsection is a Class B misdemeanor.

Added by Acts 2005, 79th Leg., Ch. 590 (H.B. 1708), Sec. 1, eff. September 1, 2005.

Sec. 370.2522. APPLICABILITY OF CONFLICTS OF INTEREST LAW TO DIRECTORS. (a) A director is considered to be a local public official for purposes of Chapter 171, Local Government Code.

(b) For purposes of Chapter 171, Local Government Code, a director, in connection with a vote or decision by the board, is considered to have a substantial interest in a business entity if a person related to the director in the second degree by consanguinity, as determined under Chapter 573, Government Code, has a substantial interest in the business entity.

Added by Acts 2005, 79th Leg., Ch. 590 (H.B. 1708), Sec. 1, eff. September 1, 2005.

Sec. 370.2523. APPLICABILITY OF NEPOTISM LAWS. A director is a public official for purposes of Chapter 573, Government Code.

Added by Acts 2005, 79th Leg., Ch. 590 (H.B. 1708), Sec. 1, eff. September 1, 2005.

Sec. 370.253. SURETY BONDS. (a) Before beginning a term, each director shall execute a surety bond in the amount of $25,000, and the secretary and treasurer shall execute a surety bond in the amount of $50,000.

(b) Each surety bond must be:

(1) conditioned on the faithful performance of the duties of office;

(2) executed by a surety company authorized to transact business in this state; and

(3) filed with the secretary of state's office.

(c) The authority shall pay the expense of the bonds.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.254. REMOVAL OF DIRECTOR. (a) It is a ground for removal of a director from the board if the director:

(1) did not have at the time of appointment the qualifications required by Section 370.251;

(2) at the time of appointment or at any time during the director's term, is ineligible under Section 370.251 or 370.252 to serve as a director;

(3) cannot discharge the director's duties for a substantial part of the term for which the director is appointed because of illness or disability; or

(4) is absent from more than half of the regularly scheduled board meetings that the director is eligible to attend during a calendar year.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a director exists.

(c) If the chief administrative officer of the authority has knowledge that a potential ground for removal exists, that person shall notify the presiding officer of the board of the ground. The presiding officer shall then notify the person that appointed the director that a potential ground for removal exists.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.255. COMPENSATION OF DIRECTOR. Each director is entitled to reimbursement for the director's actual expenses necessarily incurred in the performance of the director's duties. A director is not entitled to any additional compensation for the director's services.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.256. EVIDENCE OF AUTHORITY ACTIONS. Actions of an authority are the actions of its board and may be evidenced in any legal manner, including a board resolution.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.257. PUBLIC ACCESS. An authority shall:

(1) make and implement policies that provide the public with a reasonable opportunity to appear before the board to speak on any issue under the jurisdiction of the authority; and

(2) prepare and maintain a written plan that describes how an individual who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the authority's programs.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.258. INDEMNIFICATION. (a) An authority may indemnify one or more of its directors or officers for necessary expenses and costs, including attorney's fees, incurred by the directors or officers in connection with any claim asserted against the directors or officers in their respective capacities as directors or officers.

(b) If an authority does not fully indemnify a director or officer as provided by Subsection (a), the court in a proceeding in which any claim against the director or officer is asserted or any court with jurisdiction of an action instituted by the director or officer on a claim for indemnity may assess indemnity against the authority, its receiver, or trustee only if the court finds that, in connection with the claim, the director or officer is not guilty of negligence or misconduct.

(c) A court may not assess indemnity under Subsection (b) for an amount paid by the director or officer to the authority.

(d) This section applies to a current or former director or officer of the authority.

(e) If an officer or director who has been indemnified by an authority under Subsection (a) is subsequently convicted of an offense involving the conduct for which the officer or director was indemnified, the officer or director is liable to the authority for the amount of indemnification paid, with interest at the legal rate for interest on a judgment from the date the indemnification was paid.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 590 (H.B. 1708), Sec. 2, eff. September 1, 2005.

Sec. 370.259. PURCHASE OF LIABILITY INSURANCE. (a) An authority shall insure its officers and employees from liability arising from the use, operation, or maintenance of equipment that is used or may be used in connection with the laying out, construction, or maintenance of the authority's transportation projects.

(b) Insurance coverage under this section must be provided by the purchase of a policy of liability insurance from a reliable insurance company authorized to do business in this state. The form of the policy must be approved by the commissioner of insurance.

(c) This section is not a waiver of immunity of the authority or the counties in an authority from liability for the torts or negligence of an officer or employee of an authority.

(d) In this section, "equipment" includes an automobile, motor truck, trailer, aircraft, motor grader, roller, tractor, tractor power mower, locomotive, rail car, and other power equipment.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.260. CERTAIN CONTRACTS AND SALES PROHIBITED. (a) A director, agent, or employee of an authority may not:

(1) contract with the authority; or

(2) be directly or indirectly interested in:

(A) a contract with the authority; or

(B) the sale of property to the authority.

(b) A person who violates Subsection (a) is liable for a civil penalty to the authority in an amount not to exceed $1,000.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.261. STRATEGIC PLANS AND ANNUAL REPORTS. (a) An authority shall make a strategic plan for its operations. A majority of the commissioners courts of the counties of the authority shall by concurrent resolution determine the types of information required to be included in the strategic plan. Each even-numbered year, an

authority shall issue a plan covering the succeeding five fiscal years, beginning with the next odd-numbered fiscal year.

(b) Not later than March 31 of each year, an authority shall file with the commissioners court of each county of the authority a written report on the authority's activities describing all transportation revenue bond issuances anticipated for the coming year, the financial condition of the authority, all project schedules, and the status of the authority's performance under the most recent strategic plan. At the invitation of a commissioners court of a county of the authority, representatives of the board and the administrative head of an authority shall appear before the commissioners court to present the report and receive questions and comments.

(c) The authority shall give notice to the commissioners court of each county of the authority not later than the 90th day before the date of issuance of revenue bonds.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.262. MEETINGS BY TELEPHONE CONFERENCE CALL. (a) Chapter 551, Government Code, does not prohibit any open or closed meeting of the board, a committee of the board, or the staff, or any combination of the board or staff, from being held by telephone conference call. The board may hold an open or closed meeting by telephone conference call subject to the requirements of Sections 551.125(c)-(f), Government Code, but is not subject to the requirements of Subsection (b) of that section.

(b) A telephone conference call meeting is subject to the notice requirements applicable to other meetings.

(c) Notice of a telephone conference call meeting that by law must be open to the public must specify the location of the meeting. The location must be a conference room of the authority or other facility in a county of the authority that is accessible to the public.

(d) Each part of the telephone conference call meeting that by law must be open to the public shall be audible to the public at the location specified in the notice and shall be tape-recorded or

documented by written minutes. On conclusion of the meeting, the tape recording or the written minutes of the meeting shall be made available to the public.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.75, eff. June 14, 2005.

SUBCHAPTER G. PARTICIPATION IN FINANCING, CONSTRUCTION, AND OPERATION OF TRANSPORTATION PROJECTS

Sec. 370.301. DEPARTMENT CONTRIBUTIONS TO TURNPIKE PROJECTS. (a) The department may agree with an authority to provide for or contribute to the payment of costs of financial or engineering and traffic feasibility studies and the design, financing, acquisition, construction, operation, or maintenance of a turnpike project or system on terms agreed on by the commission or department, as applicable, and the authority. The agreement may not be inconsistent with the rights of the bondholders or persons operating the turnpike project under a lease or other contract.

(b) The department may use its engineering and other personnel, including consulting engineers and traffic engineers, to conduct feasibility studies under Subsection (a).

(c) An obligation or expense incurred by the commission or department under this section is a part of the cost of the turnpike project for which the obligation or expense was incurred. The commission or department shall require money contributed by the commission or department under this section to be repaid. The commission or department may require the money to be repaid from tolls or other revenue of the turnpike project on which the money was spent. Money repaid as required by the commission or department shall be deposited to the credit of the fund from which the contribution was made. Money deposited as required by this section is exempt from the application of Section 403.095, Government Code.

(d) The commission or department may use federal money for any purpose described by this chapter. An action of an authority taken under this chapter must comply with the requirements of applicable

federal law, including provisions relating to the role of metropolitan planning organizations under federal law and the approval of projects for conformity with the state implementation plan relating to air quality, the use of toll revenue, and the use of the right-of-way of and access to federal-aid highways. Notwithstanding an action of an authority taken under this chapter, the commission or the department may take any action that in its reasonable judgment is necessary to comply with any federal requirement to enable this state to receive federal-aid highway funds.

(e) A turnpike project developed by an authority may not be part of the state highway system unless otherwise agreed to by the authority and the department.

(f) The commission may loan department money to an authority for the acquisition of land for or the construction, maintenance, or operation of a turnpike project. The commission shall require the authority to repay money loaned under this section. The commission may require the money to be repaid from toll revenue or other sources on terms established by the commission.

(g) Money repaid as required by the commission shall be deposited to the credit of the fund from which the money was provided. Money deposited as required by this section is exempt from the application of Section 403.095, Government Code.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 10.02, eff. June 11, 2007.

Acts 2017, 85th Leg., R.S., Ch. 533 (S.B. 312), Sec. 41, eff. September 1, 2017.

Sec. 370.302. AGREEMENTS TO CONSTRUCT, MAINTAIN, AND OPERATE TRANSPORTATION PROJECTS. (a) An authority may enter into an agreement with a public or private entity, including a toll road corporation, the United States, a state of the United States, the United Mexican States, a state of the United Mexican States, another governmental entity, or a political subdivision, to permit the

entity, independently or jointly with the authority, to study the feasibility of a transportation project or to acquire, design, finance, construct, maintain, repair, operate, extend, or expand a transportation project. An authority and a private entity jointly may enter into an agreement with another governmental entity to study the feasibility of a transportation project or to acquire, design, finance, construct, maintain, repair, operate, extend, or expand a transportation project.

(b) An authority has broad discretion to negotiate provisions in a development agreement with a private entity. The provisions may include provisions relating to:

(1) the design, financing, construction, maintenance, and operation of a transportation project in accordance with standards adopted by the authority; and

(2) professional and consulting services to be rendered under standards adopted by the authority in connection with a transportation project.

(c) An authority may not incur a financial obligation on behalf of, or guarantee the obligations of, a private entity that constructs, maintains, or operates a transportation project.

(d) An authority or a county in an authority is not liable for any financial or other obligation of a transportation project solely because a private entity constructs, finances, or operates any part of a transportation project.

(e) An authority may authorize the investment of public and private money, including debt and equity participation, to finance a function described by this section.

(f) An authority may not directly provide water, wastewater, natural gas, petroleum pipeline, electric transmission, electric distribution, telecommunications, information, or cable television services.

(g) Nothing in this chapter, or any contractual right obtained under a contract with an authority authorized by this chapter, supersedes or renders ineffective any provision of another law applicable to the owner or operator of a public utility facility, including any provision of the Utilities Code regarding licensing, certification, and regulatory jurisdiction of the Public Utility Commission of Texas or Railroad Commission of Texas.

(h) If an authority enters into an agreement with a private entity that includes the collection by the private entity of tolls for the use of a transportation project, the private entity shall submit to the authority for approval:

(1) the methodology for:

(A) the setting of tolls; and

(B) increasing the amount of the tolls;

(2) a plan outlining methods the entity will use to collect the tolls, including:

(A) any charge to be imposed as a penalty for late payment of a toll; and

(B) any charge to be imposed to recover the cost of collecting a delinquent toll; and

(3) any proposed change in an approved methodology for the setting of a toll or a plan for collecting the toll.

(i) An agreement with a private entity that includes the collection by the private entity of tolls for the use of a transportation project may not be for a term longer than 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private entity, not to exceed a total term of 52 years. The agreement must contain an explicit mechanism for setting the price for the purchase by the authority of the interest of the private entity in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.77, eff. June 14, 2005.

Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 1.04, eff. June 11, 2007.

The following section was amended by the 86th Legislature. Pending publication of the current statutes, see S.B. 2248, 86th Legislature, Regular Session, for amendments affecting the following section.

Sec. 370.303. AGREEMENTS BETWEEN AUTHORITY AND LOCAL GOVERNMENTAL ENTITIES. (a) A governmental entity may, consistent with the Texas Constitution, issue bonds, notes, or other obligations or enter into and make payments under agreements with an authority in connection with the financing, acquisition, construction, or operation of a transportation project by an authority, whether inside or outside the geographic boundaries of the governmental entity, including agreements to pay the principal of, and interest on, bonds, notes, or other obligations issued by the authority and make payments under any related credit agreements. The entity may impose and collect taxes to pay the interest on the bonds and to provide a sinking fund for the redemption of the bonds.

(b) In addition to the powers provided by Subsection (a), a governmental entity may, to the extent constitutionally permitted, agree with an authority to:

(1) issue bonds, notes, or other obligations;

(2) create:

(A) a taxing district;

(B) a transportation reinvestment zone under Subchapter E, Chapter 222; or

(C) an entity to promote economic development;

(3) collect and remit to an authority taxes, fees, or assessments collected for purposes of developing transportation projects;

(4) fund public improvements to promote economic development; or

(5) enter into and make payments under an agreement to acquire, construct, maintain, or operate any portion of a transportation project of the authority.

(b-1) An agreement under Subsection (b) may include a means for a local governmental entity to pledge or otherwise provide funds for a transportation project that benefits the governmental entity to be developed by the authority.

(c) To make payments under an agreement under Subsection (b), to pay the interest on bonds issued under Subsection (b), or to provide a sinking fund for the bonds or the agreement, a governmental entity may:

(1) pledge revenue from any available source, including annual appropriations;

(2) impose and collect taxes; or

(3) pledge revenue and impose and collect taxes.

(d) The term of an agreement under this section may not exceed 40 years.

(e) An election required to authorize action under this subchapter must be held in conformity with Chapter 1251, Government Code, or other law applicable to the governmental entity.

(f) The governing body of any governmental entity issuing bonds, notes, or other obligations or entering into agreements under this section may exercise the authority granted to the governing body of an issuer with regard to issuance of obligations under Chapter 1371, Government Code, except that the prohibition in that chapter on the repayment of an obligation with ad valorem taxes does not apply to an issuer exercising the authority granted by this section.

(g) An agreement under this section may contain repayment or reimbursement obligations of an authority.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 14, eff. June 17, 2011.

Sec. 370.304. ADDITIONAL AGREEMENTS OF AUTHORITY. An authority may enter into any contract, loan agreement, or other agreement necessary or convenient to achieve the purposes of this subchapter.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 15, eff. June 17, 2011.

Sec. 370.305. COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) A comprehensive development agreement is an agreement with a private entity that, at a minimum, provides for the design and construction

of a transportation project, that may provide for the financing, acquisition, maintenance, or operation of a transportation project, and that entitles the private entity to:

(1) a leasehold interest in the transportation project; or

(2) the right to operate or retain revenue from the operation of the transportation project.

(b) An authority may negotiate provisions relating to professional and consulting services provided in connection with a comprehensive development agreement.

(c) Except as provided by this chapter, an authority's authority to enter into a comprehensive development agreement expires on August 31, 2011.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 4.02, eff. June 11, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 37, eff. September 1, 2011.

Sec. 370.306. PROCESS FOR ENTERING INTO COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) If an authority enters into a comprehensive development agreement, the authority shall use a competitive procurement process that provides the best value for the authority. The authority may accept unsolicited proposals for a proposed transportation project or solicit proposals in accordance with this section.

(b) An authority shall establish rules and procedures for accepting unsolicited proposals that require the private entity to include in the proposal:

(1) information regarding the proposed project location, scope, and limits;

(2) information regarding the private entity's qualifications, experience, technical competence, and capability to develop the project; and

(3) a proposed financial plan for the proposed project that includes, at a minimum:

(A) projected project costs; and

(B) proposed sources of funds.

(c) An authority shall publish a request for competing proposals and qualifications in the Texas Register that includes the criteria used to evaluate the proposals, the relative weight given to the criteria, and a deadline by which proposals must be received if:

(1) the authority decides to issue a request for qualifications for a proposed project; or

(2) the authority authorizes the further evaluation of an unsolicited proposal.

(d) A proposal submitted in response to a request published under Subsection (c) must contain, at a minimum, the information required by Subsections (b)(2) and (3).

(e) An authority may interview a private entity submitting an unsolicited proposal or responding to a request under Subsection (c). The authority shall evaluate each proposal based on the criteria described in the notice. The authority must qualify at least two private entities to submit detailed proposals for a project under Subsection (f) unless the authority does not receive more than one proposal or one response to a request under Subsection (c).

(f) An authority shall issue a request for detailed proposals from all private entities qualified under Subsection (e) if the authority proceeds with the further evaluation of a proposed project. A request under this subsection may require additional information relating to:

(1) the private entity's qualifications and demonstrated technical competence;

(2) the feasibility of developing the project as proposed;

(3) detailed engineering or architectural designs;

(4) the private entity's ability to meet schedules;

(5) costing methodology; or

(6) any other information the authority considers relevant or necessary.

(g) In issuing a request for proposals under Subsection (f), an authority may solicit input from entities qualified under Subsection (e) or any other person. An authority may also solicit input regarding alternative technical concepts after issuing a request under Subsection (f).

(h) An authority shall rank each proposal based on the criteria described in the request for proposals and select the private entity whose proposal offers the best value to the authority.

(i) An authority may enter into discussions with the private entity whose proposal offers the apparent best value. The discussions shall be limited to:

(1) incorporation of aspects of other proposals for the purpose of achieving the overall best value for the authority;

(2) clarifications and minor adjustments in scheduling, cash flow, and similar items; and

(3) matters that have arisen since the submission of the proposal.

(j) If at any point in discussions under Subsection (i), it appears to the authority that the highest ranking proposal will not provide the authority with the overall best value, the authority may enter into discussions with the private entity submitting the next-highest ranking proposal.

(k) An authority may withdraw a request for competing proposals and qualifications or a request for detailed proposals at any time. The authority may then publish a new request for competing proposals and qualifications.

(l) An authority may require that an unsolicited proposal be accompanied by a nonrefundable fee sufficient to cover all or part of its cost to review the proposal.

(m) An authority may pay an unsuccessful private entity that submits a response to a request for detailed proposals under Subsection (f) a stipulated amount of the final contract price for any costs incurred in preparing that proposal. A stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the authority, be used by the authority in the performance of its functions. The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipulated amount under this subsection. After payment of the stipulated amount:

(1) the authority owns the exclusive rights to, and may make use of any work product contained in, the proposal, including

the technologies, techniques, methods, processes, and information contained in the project design; and

(2) the work product contained in the proposal becomes the property of the authority.

(n) An authority shall prescribe the general form of a comprehensive development agreement and may include any matter the authority considers advantageous to the authority. The authority and the private entity shall negotiate the specific terms of a comprehensive development agreement.

(o) Subchapter A, Chapter 223, of this code and Chapter 2254, Government Code, do not apply to a comprehensive development agreement entered into under Section 370.305.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 2.02, eff. June 11, 2007.

Sec. 370.307. CONFIDENTIALITY OF NEGOTIATIONS FOR COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) To encourage private entities to submit proposals under Section 370.306, the following information is confidential, is not subject to disclosure, inspection, or copying under Chapter 552, Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract for a proposed project is entered into:

(1) all or part of a proposal submitted by a private entity for a comprehensive development agreement, except information provided under Sections 370.306(b)(1) and (2);

(2) supplemental information or material submitted by a private entity in connection with a proposal for a comprehensive development agreement; and

(3) information created or collected by an authority or its agent during consideration of a proposal for a comprehensive development agreement.

(b) After an authority completes its final ranking of proposals under Section 370.306(h), the final rankings of each proposal under each of the published criteria are not confidential.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.308. PERFORMANCE AND PAYMENT SECURITY. (a) Notwithstanding Section 223.006 and the requirements of Subchapter B, Chapter 2253, Government Code, an authority shall require a private entity entering into a comprehensive development agreement under Section 370.305 to provide a performance and payment bond or an alternative form of security in an amount sufficient to:

(1) ensure the proper performance of the agreement; and

(2) protect:

(A) the authority; and

(B) payment bond beneficiaries who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material.

(b) A performance and payment bond or alternative form of security shall be in an amount equal to the cost of constructing or maintaining the project.

(c) If an authority determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the authority shall set the amount of the bonds or the alternative forms of security.

(d) A payment or performance bond or alternative form of security is not required for the portion of an agreement that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.

(e) The amount of the payment security must not be less than the amount of the performance security.

(f) In addition to performance and payment bonds, an authority may require the following alternative forms of security:

(1) a cashier's check drawn on a financial entity specified by the authority;

(2) a United States bond or note;

(3) an irrevocable bank letter of credit; or

(4) any other form of security determined suitable by the authority.

(g) An authority by rule shall prescribe requirements for alternative forms of security provided under this section.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.309. OWNERSHIP OF TRANSPORTATION PROJECTS. (a) A transportation project other than a public utility facility that is the subject of a development agreement with a private entity, including the facilities acquired or constructed on the project, is public property and belongs to the authority.

(b) Notwithstanding Subsection (a), an authority may enter into an agreement that provides for the lease of rights-of-way, the granting of easements, the issuance of franchises, licenses, or permits, or any lawful uses to enable a private entity to construct, operate, and maintain a transportation project, including supplemental facilities. At the termination of the agreement, the transportation project, including the facilities, must be in a state of proper maintenance as determined by the authority and shall be returned to the authority in satisfactory condition at no further cost.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.310. LIABILITY FOR PRIVATE OBLIGATIONS. An authority may not incur a financial obligation for a private entity that constructs, maintains, or operates a transportation project. The authority or a political subdivision of the state is not liable for any financial or other obligation of a transportation project solely because a private entity constructs, finances, or operates any part of the project.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.311. TERMS OF PRIVATE PARTICIPATION. (a) An authority shall negotiate the terms of private participation in a transportation project, including:

(1) methods to determine the applicable cost, profit, and project distribution between the private equity investors and the authority;

(2) reasonable methods to determine and classify toll rates or user fees;

(3) acceptable safety and policing standards; and

(4) other applicable professional, consulting, construction, operation, and maintenance standards, expenses, and costs.

(b) A comprehensive development agreement entered into under Section 370.305 must include a provision authorizing the authority to purchase, under terms agreed to by the parties, the interest of a private equity investor in a transportation project.

(c) An authority may only enter into a comprehensive development agreement under Section 370.305 with a private equity investor if the project is identified in the department's unified transportation program or is located on a transportation corridor identified in the statewide transportation plan.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.312. RULES, PROCEDURES, AND GUIDELINES GOVERNING NEGOTIATING PROCESS. (a) An authority shall adopt rules, procedures, and other guidelines governing selection and negotiations to promote fairness, obtain private participants in transportation projects, and promote confidence among those participants. The rules must contain criteria relating to the qualifications of the participants and the award of the contracts.

(b) An authority shall have up-to-date procedures for participation in negotiations on transportation projects.

(c) An authority has exclusive judgment to determine the terms of an agreement.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.313. PARTICIPATION ON CERTAIN OTHER BOARDS, COMMISSIONS, OR PUBLIC BODIES. (a) An authority may participate in and designate board members to serve as representatives on boards, commissions, or public bodies, the purposes of which are to promote the development of joint toll facilities in this state, between this state and other states of the United States, or between this state and the United Mexican States or states of the United Mexican States.

(b) A fee or expense associated with authority participation under this section may be reimbursed from money in the authority's feasibility study fund.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.315. PERFORMANCE AND PAYMENT BONDS AND SECURITY. Notwithstanding Chapter 2253, Government Code, an authority shall require any party to an agreement to operate or maintain a transportation project to provide performance and payment bonds or other forms of security, including corporate guarantee, in amounts considered by the authority to be adequate to protect the authority and to assure performance of all obligations to the authority and to subcontractors providing materials or labor for a transportation project.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.317. AGREEMENTS WITH LOCAL GOVERNMENTS. (a) In this section, "local government" means a:

(1) county, municipality, special district, or other political subdivision of this state;

(2) local government corporation created under Subchapter D, Chapter 431; or

(3) combination of two or more entities described by Subdivision (1) or (2).

(b) A local government may enter into an agreement with an authority or a private entity under which the local government

assists in the financing of the construction, maintenance, and operation of a turnpike project located in the government's jurisdiction in return for a percentage of the revenue from the project.

(c) A local government may use any revenue available for road purposes, including bond and tax proceeds, to provide financing under Subsection (b).

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1279, Sec. 17, eff. June 17, 2011.

(e) Revenue received by a local government under an agreement under this section must be used for transportation purposes.

Added by Acts 2005, 79th Leg., Ch. 1297 (H.B. 2650), Sec. 2, eff. September 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 17, eff. June 17, 2011.

SUBCHAPTER H. DISSOLUTION OF AUTHORITY

Sec. 370.331. VOLUNTARY DISSOLUTION. (a) An authority may not be dissolved unless the dissolution is approved by the commission.

(b) A board may submit a request to the commission for approval to dissolve.

(c) The commission may approve a request to dissolve only if:

(1) all debts, obligations, and liabilities of the authority have been paid and discharged or adequate provision has been made for the payment of all debts, obligations, and liabilities;

(2) there are no suits pending against the authority, or adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in any pending suit; and

(3) the authority has commitments from other governmental entities to assume jurisdiction of all authority transportation facilities.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.332. INVOLUNTARY DISSOLUTION. (a) The commission by order may require an authority to dissolve if the commission determines that the authority has not substantially complied with the requirements of a commission rule or an agreement between the department and the authority.

(b) The commission may not require dissolution unless:

(1) the conditions described in Sections 370.331(c)(1) and (2) have been met; and

(2) the holders of any indebtedness have evidenced their agreement to the dissolution.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.333. VOLUNTARY DISSOLUTION OF AUTHORITY GOVERNED BY GOVERNING BODY OF MUNICIPALITY. In addition to the requirements of Section 370.331, an authority governed under Section 370.2511 may not be dissolved unless:

(1) the dissolution is approved by a vote of at least two-thirds of the members of the governing body;

(2) all debts, obligations, and liabilities of the authority have been paid and discharged or adequate provision has been made for the payment of all debts, obligations, and liabilities;

(3) there are no suits pending against the authority, or adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in any pending suit; and

(4) the authority has commitments from other governmental entities to assume jurisdiction of all authority transportation facilities.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1279 (H.B. 1112), Sec. 16, eff. June 17, 2011.

SUBCHAPTER I. TRANSIT SYSTEMS

Sec. 370.351. TRANSIT SYSTEMS. (a) An authority may construct, own, operate, and maintain a transit system.

(b) An authority shall determine each transit route, including transit route changes.

(c) This chapter does not prohibit an authority, municipality, or transit provider from providing any service that complements a transit system, including providing parking garages, special transportation for persons who are disabled or elderly, or medical transportation services.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

Sec. 370.352. PUBLIC HEARING ON FARE AND SERVICE CHANGES. (a) In this section:

(1) "Service change" means any addition or deletion resulting in the physical realignment of a transit route or a change in the type or frequency of service provided in a specific, regularly scheduled transit route.

(2) "Transit revenue vehicle mile" means one mile traveled by a transit vehicle while the vehicle is available to public passengers.

(3) "Transit route" means a route over which a transit vehicle travels that is specifically labeled or numbered for the purpose of picking up or discharging passengers at regularly scheduled stops and intervals.

(4) "Transit route mile" means one mile along a transit route regularly traveled by transit vehicles while available to public passengers.

(b) Except as provided by Section 370.353, an authority shall hold a public hearing on:

(1) a fare change;

(2) a service change involving:

(A) 25 percent or more of the number of transit route miles of a transit route; or

(B) 25 percent or more of the number of transit revenue vehicle miles of a transit route, computed daily, for the day of the week for which the change is made; or

(3) the establishment of a new transit route.

(c) An authority shall hold the public hearing required by Subsection (b) before the cumulative amount of service changes in a fiscal year equals a percentage amount described in Subsection (b)(2)(A) or (B).

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

Sec. 370.353. PUBLIC HEARING ON FARE AND SERVICE CHANGES: EXCEPTIONS. (a) In this section, "experimental service change" means an addition of service to an existing transit route or the establishment of a new transit route.

(b) A public hearing under Section 370.352 is not required for:

(1) a reduced or free promotional fare that is instituted daily or periodically over a period of not more than 180 days;

(2) a headway adjustment of not more than five minutes during peak-hour service and not more than 15 minutes during nonpeak-hour service;

(3) a standard seasonal variation unless the number, timing, or type of the standard seasonal variation changes; or

(4) an emergency or experimental service change in effect for 180 days or less.

(c) A hearing on an experimental service change in effect for more than 180 days may be held before or while the experimental service change is in effect and satisfies the requirement for a public hearing if the hearing notice required by Section 370.354 states that the change may become permanent at the end of the effective period. If a hearing is not held before or while the experimental service change is in effect, the service that existed before the change must be reinstituted at the end of the 180th day after the change became effective and a public hearing must be held in accordance with Section 370.352 before the experimental service change may be continued.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

Sec. 370.354. NOTICE OF HEARING ON FARE OR SERVICE CHANGE. (a) After calling a public hearing required by Section 370.352, the authority shall:

(1) at least 30 days before the date of the hearing, publish notice of the hearing at least once in a newspaper of general circulation in the territory of the authority; and

(2) post notice in each transit vehicle in service on any transit route affected by the proposed change for at least two weeks within 30 days before the date of the hearing.

(b) The notice must contain:

(1) a description of each proposed fare or service change, as appropriate;

(2) the time and place of the hearing; and

(3) if the hearing is required under Section 370.352(c), a description of the latest proposed change and the previous changes.

(c) The requirement for a public hearing under Section 370.352 is satisfied at a public hearing required by federal law if:

(1) the notice requirements of this section are met; and

(2) the proposed fare or service change is addressed at the meeting.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

Sec. 370.355. CRIMINAL PENALTIES. (a) An authority by resolution may prohibit the use of the transit system by a person who fails to possess evidence showing that the appropriate fare for the use of the system has been paid and may establish reasonable and appropriate methods, including using peace officers under Section 370.181(c), to ensure that persons using the transit system pay the appropriate fare for that use.

(b) An authority by resolution may provide that a fare for or charge for the use of the transit system that is not paid incurs a penalty, not to exceed $100.

(c) The authority shall post signs designating each area in which a person is prohibited from using the transit system without possession of evidence showing that the appropriate fare has been paid.

(d) A person commits an offense if:

(1) the person or another for whom the person is criminally responsible under Section 7.02, Penal Code, uses the transit system and does not possess evidence showing that the appropriate fare has been paid; and

(2) the person fails to pay the appropriate fare or other charge for the use of the transit system and any penalty on the fare on or before the 30th day after the date the authority notifies the person that the person is required to pay the amount of the fare or charge and the penalty.

(e) The notice required by Subsection (d)(2) may be included in a citation issued to the person by a peace officer under Article 14.06, Code of Criminal Procedure, in connection with an offense relating to the nonpayment of the appropriate fare or charge for the use of the transit system.

(f) An offense under Subsection (d) is a Class C misdemeanor.

(g) An offense under Subsection (d) is not a crime of moral turpitude.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

SUBCHAPTER J. ACQUIRING TRANSIT SYSTEMS

Sec. 370.361. TRANSFER OF TRANSIT SYSTEMS. (a) In this section, "unit of election" means a political subdivision that previously voted to join the service area of a transit provider.

(b) An authority may request in writing a transit provider to transfer the provider's transit system and taxing authority to the authority if the board determines that the traffic needs of the counties in which the authority operates could be most efficiently and economically met by the transfer.

(c) On receipt of a written request under Subsection (b), the governing body of the transit provider may authorize the authority to solicit public comment and conduct at least one public hearing on the proposed transfer in each unit of election in the transit provider's service area. Notice of a hearing must be published in the Texas Register, one or more newspapers of general circulation in the transit provider's service area, and a newspaper, if any, published

in the counties of the requesting authority. The notice shall also solicit written comments on the proposed transfer. The transit provider may participate fully with the authority in conducting a public hearing.

(d) A board may approve the acquisition of the transit provider if the governing body of the transit provider approves transfer of its operations to the authority and dissolution of the transit provider is approved in an election ordered under Subsection (e). Before approving the acquisition, the board shall consider public comments received under Subsection (c).

(e) After considering public comments received under Subsection (c), the governing body of the transit provider may order an election to dissolve the transit provider and transfer all services, property, funds, assets, employees, debts, and obligations to the authority. The governing body of the transit provider shall submit to the qualified voters in the units of election in the transit provider's service area a proposition that reads substantially as follows: "Shall (name of transit provider) be dissolved and its services, property, funds, assets, employees, debts, and obligations be transferred to (name of regional mobility authority)?"

(f) An election under Subsection (e) shall be conducted so that votes are separately tabulated and canvassed in each participating unit of election in the transit provider's service area.

(g) The governing body of the transit provider shall canvass the returns and declare the results of the election separately with respect to each unit of election. If a majority of the votes received in a unit of election are in favor of the proposition, the proposition is approved in that unit of election. The transit provider is dissolved and its services, property, funds, assets, employees, debts, and obligations are transferred to the authority only if the proposition is approved in every unit of election. If the proposition is not approved in every unit of election, the proposition does not pass and the transit provider is not dissolved.

(h) A certified copy of the order or resolution recording the results of the election shall be filed with the department, the comptroller, and the governing body of each unit of election in the transit provider's service area.

(i) The authority shall assume all debts or other obligations of the transferred transit provider in connection with the acquisition of property under Subsection (g). The authority may not use revenue from sales and use tax collected under this subchapter or other revenue of the transit system in a manner inconsistent with any pledge of that revenue for the payment of any outstanding bonds, unless provisions have been made for a full discharge of the bonds.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

Sec. 370.362. SALES AND USE TAX. (a) If an authority acquires a transit provider that has taxing authority, the authority may impose a sales and use tax at a permissible rate that does not exceed the rate approved by the voters residing in the service area of the transit provider's transit system at an election under this subchapter.

(b) The authority by resolution may:

(1) decrease the rate of the sales and use tax to a permissible rate; or

(2) call an election for the increase or decrease of the sales and use tax to a permissible rate.

(c) If an authority orders an election, the authority shall publish notice of the election in a newspaper of general circulation in the territory of the authority at least once each week for three consecutive weeks, with the first publication occurring at least 21 days before the date of the election.

(d) A resolution ordering an election and the election notice required by Subsection (c) must show, in addition to the requirements of the Election Code, the hours of the election and polling places in election precincts.

(e) A copy of the election notice required by Subsection (c) shall be furnished to the commission and the comptroller.

(f) The permissible rates for a sales and use tax imposed under this subchapter are:

(1) one-quarter of one percent;

(2) one-half of one percent;

(3) three-quarters of one percent; or

(4) one percent.

(g) Chapter 322, Tax Code, applies to a sales and use tax imposed under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

Sec. 370.363. MAXIMUM TAX RATE. (a) An authority may not adopt a sales and use tax rate, including a rate increase, that when combined with the rates of all sales and use taxes imposed by all political subdivisions of this state having territory in the service area of the transferred transit system exceeds two percent in any location in the service area.

(b) An election to approve a sales and use tax or increase the rate of an authority's sales and use tax has no effect if:

(1) the voters in the service area approve the authority's sales and use tax rate or rate increase at an election held on the same day on which a municipality or county having territory in the jurisdiction of the service area adopts a sales and use tax or an additional sales and use tax; and

(2) the combined rates of all sales and use taxes imposed by the authority and all political subdivisions of this state would exceed two percent in any part of the territory in the service area.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

Sec. 370.364. ELECTION TO CHANGE TAX RATE. (a) At an election ordered under Section 370.362(b)(2), the ballots shall be printed to permit voting for or against the proposition: "The increase (decrease) of the local sales and use tax rate for mass transit to (percentage)."

(b) The increase or decrease in the tax rate becomes effective only if it is approved by a majority of the votes cast.

(c) A notice of the election and a certified copy of the order canvassing the election results shall be:

(1) sent to the commission and the comptroller; and

(2) filed in the deed records of the county.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

Sec. 370.365. SALES TAX: EFFECTIVE DATES. (a) A sales and use tax implemented under this subchapter takes effect on the first day of the second calendar quarter that begins after the date the comptroller receives a copy of the order required to be sent under Section 370.364(c).

(b) An increase or decrease in the rate of a sales and use tax implemented under this subchapter takes effect on:

(1) the first day of the first calendar quarter that begins after the date the comptroller receives the notice provided under Section 370.364(c); or

(2) the first day of the second calendar quarter that begins after the date the comptroller receives the notice, if within 10 days after the date of receipt of the notice the comptroller gives written notice to the board that the comptroller requires more time to implement tax collection and reporting procedures.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.76, eff. June 14, 2005.

SUBCHAPTER K. DESIGN-BUILD CONTRACTS

Sec. 370.401. SCOPE OF AND LIMITATIONS ON CONTRACTS. (a) Notwithstanding the requirements of Chapter 2254, Government Code, an authority may use the design-build method for the design, construction, financing, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a transportation project.

(b) A design-build contract under this subchapter may not grant to a private entity:

(1) a leasehold interest in the transportation project; or

(2) the right to operate or retain revenue from the operation of the transportation project.

(c) In using the design-build method and in entering into a contract for the services of a design-build contractor, the authority

and the design-build contractor shall follow the procedures and requirements of this subchapter.

(d) An authority may enter into not more than two design-build contracts for transportation projects in any fiscal year.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

Sec. 370.402. DEFINITIONS. In this subchapter:

(1) "Design-build contractor" means a partnership, corporation, or other legal entity or team that includes an engineering firm and a construction contractor qualified to engage in the construction of transportation projects in this state.

(2) "Design-build method" means a project delivery method by which an entity contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

Sec. 370.403. USE OF ENGINEER OR ENGINEERING FIRM. (a) To act as an authority's representative, independent of a design-build contractor, for the procurement process and for the duration of the work on a transportation project, an authority shall select or designate:

(1) an engineer;

(2) a qualified firm, selected in accordance with Section 2254.004, Government Code, that is independent of the design-build contractor; or

(3) a general engineering consultant that was previously selected by an authority and is selected or designated in accordance with Section 2254.004, Government Code.

(b) The selected or designated engineer or firm has full responsibility for complying with Chapter 1001, Occupations Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

Sec. 370.404. OTHER PROFESSIONAL SERVICES. (a) An authority shall provide or contract for, independently of the design-build firm, the following services as necessary for the acceptance of the transportation project by the authority:

(1) inspection services;

(2) construction materials engineering and testing; and

(3) verification testing services.

(b) An authority shall ensure that the engineering services contracted for under this section are selected based on demonstrated competence and qualifications.

(c) This section does not preclude the design-build contractor from providing construction quality assurance and quality control under a design-build contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

Sec. 370.405. REQUEST FOR QUALIFICATIONS. (a) For any transportation project to be delivered through the design-build method, an authority must prepare and issue a request for qualifications. A request for qualifications must include:

(1) information regarding the proposed project's location, scope, and limits;

(2) information regarding funding that may be available for the project and a description of the financing to be requested from the design-build contractor, as applicable;

(3) criteria that will be used to evaluate the proposals, which must include a proposer's qualifications, experience, technical competence, and ability to develop the project;

(4) the relative weight to be given to the criteria; and

(5) the deadline by which proposals must be received by the authority.

(b) An authority shall publish notice advertising the issuance of a request for qualifications in the Texas Register and on an Internet website maintained by the authority.

(c) An authority shall evaluate each qualifications statement received in response to a request for qualifications based on the criteria identified in the request. An authority may interview

responding proposers. Based on the authority's evaluation of qualifications statements and interviews, if any, an authority shall qualify or short-list proposers to submit detailed proposals.

(d) An authority shall qualify or short-list at least two, but no more than five, firms to submit detailed proposals under Section 370.406. If an authority receives only one responsive proposal to a request for qualifications, the authority shall terminate the procurement.

(e) An authority may withdraw a request for qualifications or request for detailed proposals at any time.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

Sec. 370.406. REQUEST FOR DETAILED PROPOSALS. (a) An authority shall issue a request for detailed proposals to proposers qualified or short-listed under Section 370.405. A request for detailed proposals must include:

(1) information on the overall project goals;

(2) the authority's cost estimates for the design-build portion of the work;

(3) materials specifications;

(4) special material requirements;

(5) a schematic design approximately 30 percent complete;

(6) known utilities, provided that an authority is not required to undertake an effort to locate utilities;

(7) quality assurance and quality control requirements;

(8) the location of relevant structures;

(9) notice of any rules or goals adopted by the authority pursuant to Section 370.183 relating to awarding contracts to disadvantaged businesses;

(10) available geotechnical or other information related to the project;

(11) the status of any environmental review of the project;

(12) detailed instructions for preparing the technical proposal required under Subsection (c), including a description of the form and level of completeness of drawings expected;

(13) the relative weighting of the technical and cost proposals required under Subsection (c) and the formula by which the proposals will be evaluated and ranked, provided that the formula shall allocate at least 70 percent of the weighting to the cost proposal; and

(14) the criteria and weighting for each element of the technical proposal.

(b) A request for detailed proposals shall also include a general form of the design-build contract that the authority proposes if the terms of the contract may be modified as a result of negotiations prior to contract execution.

(c) Each response to a request for detailed proposals must include a sealed technical proposal and a separate sealed cost proposal.

(d) The technical proposal must address:

(1) the proposer's qualifications and demonstrated technical competence, provided that the proposer shall not be requested to resubmit any information that was submitted and evaluated pursuant to Section 370.405(a)(3);

(2) the feasibility of developing the project as proposed, including identification of anticipated problems;

(3) the proposed solutions to anticipated problems;

(4) the ability of the proposer to meet schedules;

(5) the conceptual engineering design proposed; and

(6) any other information requested by the authority.

(e) An authority may provide for the submission of alternative technical concepts by a proposer. If an authority provides for the submission of alternative technical concepts, the authority must prescribe a process for notifying a proposer whether the proposer's alternative technical concepts are approved for inclusion in a technical proposal.

(f) The cost proposal must include:

(1) the cost of delivering the project;

(2) the estimated number of days required to complete the project; and

(3) any terms for financing for the project that the proposer plans to provide.

(g) A response to a request for detailed proposals shall be due not later than the 180th day after the final request for detailed proposals is issued by the authority. This subsection does not preclude the release by the authority of a draft request for detailed proposals for purposes of receiving input from short-listed proposers.

(h) An authority shall first open, evaluate, and score each responsive technical proposal submitted on the basis of the criteria described in the request for detailed proposals and assign points on the basis of the weighting specified in the request for detailed proposals. The authority may reject as nonresponsive any proposer that makes a significant change to the composition of its design-build team as initially submitted that was not approved by the authority as provided in the request for detailed proposals. The authority shall subsequently open, evaluate, and score the cost proposals from proposers that submitted a responsive technical proposal and assign points on the basis of the weighting specified in the request for detailed proposals. The authority shall rank the proposers in accordance with the formula provided in the request for detailed proposals.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

Sec. 370.407. NEGOTIATION. (a) After ranking the proposers under Section 370.406(h), an authority shall first attempt to negotiate a contract with the highest-ranked proposer. If an authority has committed to paying a stipend to unsuccessful proposers in accordance with Section 370.409, an authority may include in the negotiations alternative technical concepts proposed by other proposers.

(b) If an authority is unable to negotiate a satisfactory contract with the highest-ranked proposer, the authority shall, formally and in writing, end all negotiations with that proposer and proceed to negotiate with the next proposer in the order of the selection ranking until a contract is reached or negotiations with all ranked proposers end.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

Sec. 370.408. ASSUMPTION OF RISKS. (a) Unless otherwise provided in the final request for detailed proposals, including all addenda and supplements to that request, the authority shall assume:

(1) all risks and costs associated with:

(A) scope changes and modifications, as requested by the authority;

(B) unknown or differing site conditions;

(C) environmental clearance and other regulatory permitting for the project; and

(D) natural disasters and other force majeure events; and

(2) all costs associated with property acquisition, excluding costs associated with acquiring a temporary easement or work area associated with staging or construction for the project.

(b) Nothing herein shall prevent the parties from agreeing that the design-build contractor should assume some or all of the risks or costs set forth in Subsection (a) provided that such agreement is reflected in the final request for detailed proposals, including all addenda and supplements to the agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

Sec. 370.409. STIPEND AMOUNT FOR UNSUCCESSFUL PROPOSERS. (a) Pursuant to the provisions of the request for detailed proposals, an authority shall pay an unsuccessful proposer that submits a responsive proposal to the request for detailed proposals a stipend for work product contained in the proposal. The stipend must be specified in the initial request for detailed proposals in an amount of at least two-tenths of one percent of the contract amount, but may not exceed the value of the work product contained in the proposal to the authority. In the event the authority determines that the value of the work product is less than the stipend amount, the authority must provide the proposer with a detailed explanation of the valuation, including the methodology and assumptions used in

determining value. After payment of the stipend, the authority may make use of any work product contained in the unsuccessful proposal, including the techniques, methods, processes, and information contained in the proposal. The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipend under this subsection.

(b) An authority may provide in a request for detailed proposals for the payment of a partial stipend in the event a procurement is terminated prior to securing project financing and execution of a design-build contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

Sec. 370.410. PERFORMANCE AND PAYMENT BOND. (a) An authority shall require a design-build contractor to provide:

(1) a performance and payment bond;

(2) an alternative form of security; or

(3) a combination of the forms of security described by Subdivisions (1) and (2).

(b) Except as provided by Subsection (c), a performance and payment bond, alternative form of security, or combination of the forms of security shall be in an amount equal to the cost of constructing or maintaining the project.

(c) If the authority determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the authority shall set the amount of the security.

(d) A performance and payment bond is not required for the portion of a design-build contract under this section that includes design services only.

(e) An authority may require one or more of the following alternative forms of security:

(1) a cashier's check drawn on a financial entity specified by the authority;

(2) a United States bond or note;

(3) an irrevocable bank letter of credit drawn from a federal or Texas chartered bank; or

(4) any other form of security determined suitable by the authority.

(f) Chapter 2253, Government Code, does not apply to a bond or alternative form of security required under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 38, eff. September 1, 2011.

SECTION A.2

Title 43, Chapter 26, Texas Administrative Code

TEXAS ADMINISTRATIVE CODE

TITLE 43 TRANSPORTATION

PART 1 TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 26 REGIONAL MOBILITY AUTHORITIES

SUBCHAPTER A
GENERAL PROVISIONS

§26.1 Purpose

Transportation Code, Chapter 370, provides that the Texas Transportation Commission may authorize the creation of a regional mobility authority for the purposes of constructing, maintaining, and operating transportation projects in a region of the state. Chapter 370 further provides for commission approval or regulation of certain actions and operations of a regional mobility authority. This chapter prescribes the policies and procedures governing commission regulation of regional mobility authorities as provided by Chapter 370.

§26.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) AASHTO--The American Association of State Highway and Transportation Officials.

(2) Board--The board of directors of a regional mobility authority.

(3) Commission--The Texas Transportation Commission.

(4) County--Includes the cities of El Paso, Laredo, Brownsville, McAllen, and Port Aransas.

(5) Director--A director of a board.

(6) Department--The Texas Department of Transportation.

(7) Environmental Permits, Issues, and Commitments (EPIC)--Any permit, issue, coordination, commitment, or mitigation obtained to satisfy social, economic, or environmental impacts of a transportation project, including, but not limited to, sole source aquifer coordination, wetland permits, stormwater permits, traffic noise abatement, threatened or endangered species coordination, archeological permits, and any mitigation or other commitment associated with any of those issues.

(8) Executive director--The executive director of the department or the executive director's designee not below district engineer, division director, or office director.

(9) Fiscal year--An accounting period of 12 months that is consistent, to the extent feasible, with the fiscal year of an RMA's member counties.

(10) Governmental entity--A municipality, county, the department, or other public entity authorized to construct, maintain, and operate a transportation project within the region of a regional mobility authority.

(11) Metropolitan planning organization--An organization designated to carry out the transportation planning process in prescribed urbanized areas as required by 23 U.S.C. §134.

(12) Nonattainment area--An area designated by the U.S. Environmental Protection Agency as not meeting the air quality standards outlined in the Clean Air Act.

(13) Petitioner--The county or counties petitioning for the creation of a regional mobility authority.

(14) Public utility facility--Means:

(A) a water, wastewater, natural gas, or petroleum pipeline or associated equipment;

(B) an electric transmission or distribution line or associated equipment; or

(C) telecommunications information services, or cable television infrastructure or associated equipment, including fiber optic cable, conduit, and wireless communications facilities.

(15) RMA--A regional mobility authority.

(16) Revenue--Fares, fees, rents, tolls, and other money received by an authority from the ownership or operation of a transportation project.

(17) State Implementation Plan--The plan prepared by the Texas Commission on Environmental Quality as required by 42 USC §7410 to attain and maintain air quality standards.

(18) Surplus revenue--Revenue that exceeds:

(A) the regional mobility authority's debt service requirements for a transportation project, including the redemption or purchase price of bonds subject to redemption or purchase as provided in the applicable bond proceedings;

(B) coverage requirements of a bond indenture for a transportation project;

(C) costs of operation and maintenance for a transportation project;

(D) cost of repair, expansion, or improvement of a transportation project;

(E) funds allocated for feasibility studies; and

(F) necessary reserves as determined by the regional mobility authority.

(19) Transportation project--Means:

(A) a turnpike project;

(B) a system designated under Transportation Code, §370.034;

(C) a passenger or freight rail facility, including:

(i) tracks;

(ii) a rail line;

(iii) switching, signaling, or other operating equipment;

(iv) a depot;

(v) a locomotive;

(vi) rolling stock;

(vii) a maintenance facility; and

(viii) other real and personal property associated with a rail operation;

(D) a roadway with a functional classification greater than a local road or rural minor collector;

(E) a bridge;

(F) a ferry;

(G) an airport, other than an airport that on September 1, 2005 was served by one or more air carriers engaged in scheduled interstate transportation, as those terms were defined by 14 C.F.R. §1.1 on that date;

(H) a pedestrian or bicycle facility;

(I) an intermodal hub;

(J) an automated conveyor belt for the movement of freight;

(K) a border crossing inspection station, including an inspection station located at or near an international border crossing or a border crossing from another state of the United States that is not more than 50 miles from an international border;

(L) an air quality improvement initiative;

(M) a public utility facility;

(N) a transit system;

(O) a parking area, structure, or facility, or a collection device for parking fees;

(P) if applicable, projects and programs listed in the most recently approved state implementation plan for the area covered by the RMA, including an early action compact;

(Q) improvements in a transportation reinvestment zone designated under Transportation Code, Chapter 222, Subchapter E; and

(R) port security, transportation, or facility projects eligible for funding under Transportation Code, §55.002.

(20) Turnpike project--A highway of any number of lanes, with or without grade separations, owned or operated by an RMA under this chapter and any improvement, extension, or expansion to that highway, including:

(A) an improvement to relieve traffic congestion and promote safety;

(B) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll house, service road, or ramp;

(C) an administration, storage, or other building the RMA considers necessary for the operation of a turnpike project;

(D) a property right, easement, or interest the RMA acquires to construct or operate the turnpike project; and

(E) a parking area or structure, rest stop, park, and any other improvement or amenity the RMA considers necessary, useful, or beneficial for the operation of a turnpike project.

SUBCHAPTER B
CREATION OF A REGIONAL MOBILITY AUTHORITY

§26.11 Petition

(a) One or more counties may petition the commission for approval to create an RMA. The petition shall include:

(1) an adopted resolution from the commissioners court of each county indicating its approval of the creation by the county of an RMA;

(2) a description of how the RMA would improve mobility in the region;

(3) a description of a potential candidate transportation project or system of projects the RMA may undertake depending on study outcomes, including:

(A) an explanation of how the project or system of projects will be consistent with the appropriate policies, strategies, and actions of the Texas Transportation Plan, and, if appropriate, with the metropolitan transportation plan developed by the metropolitan planning organization;

(B) a brief description of any known environmental, social, economic, or cultural resource issues, such as impacts on wetlands and other water resources, endangered species, parks, neighborhoods, businesses, historic buildings or bridges, and archeological sites;

(C) the name and address of any individuals or organizations known to be opposed to any element of the project or system of projects, and a description of any known controversies concerning the project or system of projects; and

(D) a preliminary financing plan for the project or system of projects, which shall include an estimate of the following information, if available to the petitioner:

(i) total estimated cost, including planning, design, right of way acquisition, environmental mitigation, and construction; and

(ii) proposed financing, specifying the source and use of the funds, including debt financing and department contributions, identified as a loan or a grant;

(4) a commitment by the RMA to be fully responsible for identifying all EPIC, obtaining all required environmental permits, and other required environmental approvals;

(5) a brief description of any other transportation projects the petitioner is currently considering to be developed by the RMA; and

(6) the representation criteria and the appointment process for board members.

(b) The cities of El Paso, Laredo, Brownsville, McAllen, or Port Aransas may petition the commission for approval to create an RMA in the same manner as a county under subsection (a) of this section. Instead of the requirements of subsection (a)(1) of this section, the city must submit a resolution from its city council indicating its approval of the creation by the city of an RMA.

(c) For purposes of this subchapter, a system means a combination or network of transportation projects that the RMA may undertake.

§26.12 Public Hearing

(a) If the department finds that the petition meets the requirements of §26.11 of this subchapter, it will notify the petitioner of its findings and will conduct one or more public hearings to receive public comment on the proposed RMA.

(b) The department will hold at least one hearing within at least one of the counties of the petitioner.

(c) The department will file a notice of each hearing with the Secretary of the State for publication in the *Texas Register*.

(d) The petitioner shall advertise each hearing in accordance with an outreach plan developed in consultation with the department.

§26.13 Approval

(a) The commission may authorize the petitioner to create an RMA if it finds that:

(1) the creation of an RMA:

(A) has sufficient public support based upon:

(i) public comments received at public hearings;

(ii) any resolutions of support from affected political subdivisions; and

(iii) the expressed opinion, if any, of the affected metropolitan planning organizations;

(B) will result in direct benefits to the state, local governments, and the traveling public; and

(C) will improve the efficiency of the state's transportation systems; and

(2) each potential candidate project or system of projects:

(A) if it is a highway project, the project is consistent with the Texas Transportation Plan, the metropolitan transportation plan, the metropolitan mobility plan, and the Statewide Transportation Improvement Program; and

(B) subject to the completion of required studies and subject to commission approval under §26.31 of this chapter (relating to Request), will benefit the traveling public.

(b) The commission may refuse to authorize the creation of an RMA if the commission determines that the proposed board will not fairly represent political subdivisions in the counties of the RMA that will be affected by the creation of the RMA.

§26.14 Commission Action

(a) Order. If approved under §26.13 of this subchapter, the commission will adopt a minute order authorizing the creation of the RMA. The minute order will:

(1) describe the potential candidate project or system of projects to be developed, maintained, and operated by the RMA; and

(2) establish, consistent with Transportation Code, §370.251, the initial size of the board, which shall be composed of an odd number of directors.

(b) Approval of project. Approval of the creation of an RMA shall not constitute final commission approval of any transportation project subject to approval under §26.31 of this chapter (relating to Request).

§26.15 Creation

(a) The petitioner shall create an RMA authorized under §26.14 of this subchapter by resolution of each county. Each resolution shall appoint directors consistent with the provisions of §26.14(a)(2) of this subchapter.

(b) Additional directors. The petitioner shall provide for the appointment of any additional members described in §26.11(a)(6) of this subchapter.

§26.16 Alternative Board Composition and Method of Appointment

(a) If a petition under §26.11 of this subchapter includes a county in which a regional tollway authority under Transportation Code, Chapter 366 operates or a county owning or operating a toll project under Transportation Code, Chapter 284, the petitioner may submit to the commission an alternative board structure and method of appointment.

(b) The commission may approve a proposal submitted under subsection (a) of this section if:

(1) the proposal includes an adopted resolution from the commissioners court of each county in the RMA indicating its approval of the alternative board structure and method of appointment; and

(2) the commission determines that the alternative will provide for adequate representation of affected political subdivisions.

§26.17 Board Membership after Commission Approval

(a) After the commission approves the composition and appointment method of the board of an RMA under §26.13 or §26.16 of this subchapter (relating to Approval and Alternate Board Composition and Method of Appointment, respectively) and the RMA has been created and the initial board members have been appointed, the representation criteria and appointment process for the RMA's board members may be revised by the governing body of each county that is a member of the RMA or the city that created the RMA.

(b) A revision under subsection (a) of this section is not subject to review or approval of the commission.

(c) After the appointment of the initial board members, an appointment to an RMA's board is not subject to review or approval of the commission. **SUBCHAPTER C REVISIONS TO REGIONAL MOBILITY AUTHORITY--ADDITIONS, WITHDRAWALS, AND DISSOLUTION**

§26.21 Addition of Counties

(a) One or more counties may request the commission for approval to become part of an existing RMA. The commission may approve the request only if:

(1) the county has submitted a resolution from its commissioners court indicating support for the request;

(2) the board of the RMA has agreed in writing to the addition;

(3) each county that is a member of the RMA has submitted an adopted resolution from its commissioners court indicating support for the request;

(4) the commission finds that the addition will benefit the mobility of the region; and

(5) the commission finds that affected political subdivisions in the new county or counties will be adequately represented on the board.

(b) If one of the counties requesting approval under subsection (a) of this section is part of a regional tollway authority under Transportation Code, Chapter 366 or owns or operates a toll project under Transportation Code, Chapter 284, the county may submit to the commission an alternative board structure and method of appointment. The commission may approve the alternative board structure and method of appointment if:

(1) the proposal includes an adopted resolution from the commissioners court of each county in the RMA indicating its approval of the alternative board structure and method of appointment;

(2) the commission determines that the alternative will provide for adequate representation of affected political subdivisions; and

(3) the commission approves the request submitted under subsection (a) of this section.

§26.22 Withdrawal of Counties

(a) One or more counties may petition the commission for approval to withdraw from an RMA. The commission may approve the petition only if the RMA has no bonded indebtedness.

(b) If the RMA has any debt other than bonded indebtedness, the petitioning county must obtain the approval of the board of the RMA.

§26.23 Dissolution of an RMA

(a) Voluntary dissolution. The board of an RMA may request the commission for approval to dissolve. The commission may approve the request if:

(1) all debts, obligations, and liabilities of the RMA have been paid and discharged or adequate provision has been made for the payment of all debts, obligations, and liabilities;

(2) there are no suits pending against the RMA, or adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit; and

(3) the RMA has commitments from other governmental entities to assume jurisdiction of all RMA transportation projects.

(b) Involuntary dissolution.

(1) The commission may by order require the RMA to dissolve if it determines that the RMA has not, as determined by the commission, substantially complied with the requirements of a commission rule or an agreement between the department and the RMA.

(2) The commission may not require dissolution unless:

(A) the conditions described in subsection (a)(1) and (2) of this section have been met; and

(B) the holders of any indebtedness have evidenced their agreement to the dissolution.

(3) At least 30 days prior to adopting an order under this section, the department will provide written notice to the RMA's board offering an opportunity for the RMA to speak before the commission.

SUBCHAPTER D
APPROVAL OF A TRANSPORTATION PROJECT

§26.31 Request

(a) In accordance with Transportation Code, §370.187, the RMA must request commission approval of a transportation project that will connect to the state highway system or to a department rail facility. The RMA must obtain approval after completing the environmental review required by Transportation Code, §370.188 and federal law and before construction of the project begins.

(b) To secure approval under this section, the RMA shall submit:

(1) a report identifying relocations or reconstruction to state highway system facilities or department rail facilities anticipated in connection with the proposed project;

(2) a copy of any report, study, or analysis prepared pursuant to the federal National Environmental Policy Act or Transportation Code, §370.188; and

(3) a commitment that the RMA will comply with §26.33 of this subchapter.

§26.32 Approval

In deciding whether to grant approval under this subchapter, the commission will consider whether the project may be effectively integrated into the state's transportation system.

§26.33 Design and Construction

(a) Applicability. This section applies to an RMA transportation project that will connect to the state highway system or a department rail facility.

(b) State or federal funds. RMA turnpike projects that use federal or state funds provided by the department must also comply with Chapter 27, Subchapter E of this title (relating to Financial Assistance for Toll Facilities). If a requirement of Chapter 27, Subchapter E conflicts with any provision of this section, the most stringent requirement, as determined by the executive director, will apply.

(c) Responsibility. The RMA is fully responsible for the design and construction of each project it undertakes, including ensuring that all EPIC are addressed in project design and construction.

(d) Design criteria for highway facilities.

(1) State criteria. All designs developed by or on behalf of the RMA shall comply with the latest version of the department's manuals, including, but not limited to, the Roadway Design Manual, Pavement Design Manual, Hydraulic Design Manual, the Texas Manual on Uniform Traffic Control Devices, Bridge Design Manual, and the Texas Accessibility Standards.

(2) Alternative criteria. An RMA may request approval to use different accepted criteria for a particular item of work. Alternative criteria may include, but are not limited to, the latest version of the AASHTO Policy on Geometric Design of Highways and Streets, the AASHTO Pavement Design Guide, and the AASHTO Bridge Design Specifications. The use of alternative criteria is subject to the approval of the Federal Highway Administration for those projects involving federal funds. The executive director may approve the use of alternative criteria if the alternative criteria are determined to be sufficient to protect the safety of the traveling public and protect the integrity of the transportation system.

(3) Exceptions to design criteria. An RMA may deviate from the state or alternative criteria for a particular design element on a case by case basis after determining that the particular criteria could not reasonably be met due to physical, environmental, or other relevant factors and that the proposed design is a prudent engineering solution. Documentation of the exceptions shall be retained by the RMA and furnished to the department in accordance with subsection (h) of this section.

(e) Design and construction criteria for rail facilities. Rail facilities developed by or on behalf of the RMA shall comply with the current version of the American Railway Engineering and Maintenance of Way Association (AREMA) standards.

(f) Access. For proposed projects that will change the access control line to an interstate highway, the RMA shall submit to the department all data necessary for the department to request Federal Highway Administration approval.

(g) Construction specifications for highway projects.

(1) All plans, specifications, and estimates developed by or on behalf of the RMA shall conform to the latest version of the department's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, and shall conform to department required special specifications and special provisions.

(2) The executive director may approve the use of an alternative specification if the proposed specification is determined to be sufficient to ensure the quality and durability of the finished product for the intended use and the safety of the traveling public.

(h) Design and construction review and approval.

(1) Applicability. This subsection applies to the segment of an RMA transportation project that connects to the state highway system or a department rail facility, including an overpass, underpass, intersection, or interchange.

(2) Exceptions to design criteria. An RMA may request approval to deviate from the state or alternative criteria for a particular design element on a case by case basis. The request for approval shall state the criteria for which an exception is being requested and must include a comprehensive description of the circumstances and engineering analysis supporting the request. The executive director may approve an exception after determining that the particular criteria could not reasonably be met due to physical, environmental, or other relevant factors and that the proposed design is a prudent engineering solution.

(3) Preliminary plan review. When design of the connection is approximately 30% complete, the RMA shall send the following preliminary design information to the department for review and approval in accordance with the procedures and timeline established in the project development agreement described in §26.34 of this subchapter:

(A) a design schematic depicting plan, profile, and superelevation information for each roadway and rail line;

(B) typical sections showing existing and proposed horizontal dimensions, cross slopes, location of profile grade line, pavement layer thickness and composition, earthen slopes, right of way lines, if applicable, rail cross ties, type and size of rail and ballast type;

(C) bridge, retaining wall, and sound wall layouts, including, where applicable, an indication of structural capacity in terms of design loading;

(D) hydraulic studies and drainage area maps showing the drainage of waterways entering the project and local project drainage; and

(E) the location and text of proposed mainlane guide signs shown on a schematic that includes lane lines or arrows indicating the number of lanes.

(4) Final plan review. When final plans are complete, the RMA shall send the following information to the executive director for review and approval in accordance with the procedures and timelines established in the project development agreement described in §26.34 of this subchapter:

(A) seven copies of the final set of plans, specifications, and engineer's estimate (PS&E) that have been signed and sealed by the responsible engineer; and

(B) revisions to the preliminary design submission previously approved by the department summarized or highlighted for the department.

(5) Contract bidding and award. The RMA shall not advertise the project for receipt of bids until it has received approval of the PS&E from the department. This paragraph does not apply to a project developed under a comprehensive development agreement.

(6) Contract revisions.

(A) All contract revisions related to the connections to the department facility shall comply with the latest version of the applicable national or state administration criteria and manuals, and must be submitted to the department for its records. Major contract revisions must be submitted to the executive director for approval prior to beginning the revised construction work. Procedures governing the executive director's approval, including time limits for department review, shall be included in the project agreement described in §26.34 of this subchapter.

(B) For purposes of this subsection, "major contract revision" means a revision to a construction contract that:

(i) reduces geometric design or structural capacity below project design criteria;

(ii) changes the location or configuration of the physical connection to the department facility;

(iii) changes the placement of columns and other structural elements within the department's right of way;

(iv) changes the traffic control plan in a manner that reduces the capacity on the department facility as shown on the approved PS&E

(v) changes the access on a controlled access facility; or

(vi) for federally funded projects, eliminates or revises EPICs.

(i) As-built plans. Within six months after final acceptance of the construction project, the RMA shall file with the department a set of the as-built plans incorporating any contract revisions. These plans shall be signed, sealed, and dated by a Texas licensed professional engineer certifying that the project was constructed in accordance with the plans and specifications.

(j) Document and information exchange. If available, the RMA agrees to deliver to the department all materials used in the development of the project including, but not limited to, aerial photography, computer files, surveying information, engineering reports, environmental documentation, general notes, specifications, and contract provision requirements.

(k) State and federal law. The RMA shall comply with all federal and state laws and regulations applicable to the project and the state highway system, and shall provide or obtain all applicable permits, plans, and other documentation required by a federal or state entity.

(l) Work on state right of way. All work required within the limits of state owned right of way shall be accomplished only pursuant to express written agreement with the department.

§26.34 Project Development Agreement

The RMA and the department shall enter into an agreement governing the development of a project under this subchapter. The agreement shall, at a minimum, include:

(1) the responsibilities of each party concerning the design and construction of the project and EPIC;

(2) procedures governing the submittal of information required by this subchapter;

(3) timelines governing approvals of the executive director under this subchapter; and

(4) other terms or conditions mutually agreed upon by the parties.

§26.35 RMA Project on State Highway System

(a) An RMA may request the commission to designate a highway project as a part of the state highway system. The commission may approve the request if:

> (1) the commission determines that the project can be efficiently integrated into the state highway system;
>
> (2) the RMA agrees to design, construct, maintain, and operate the project in accordance with standards established by the department, and to be subject to department reviews and approvals as deemed necessary by the department; and
>
> (3) the RMA agrees to be responsible for all EPIC.

(b) The RMA and the department may agree to allocate maintenance or operation responsibilities to the department.

§26.36 Projects of Another Governmental Entity

(a) Purpose. Except as for a transportation project described in Transportation Code, §370.033(f)(1) or (2), the department must approve an RMA's acquisition, planning, design, construction, maintenance, repair, or operation of a transportation project on behalf of another governmental entity. Feasibility analysis, including preliminary design, is not subject to the approval requirements of this section. This section prescribes the procedures by which the commission will consider approval.

(b) Request. An RMA seeking commission approval under this section must submit a request to the executive director. The request must include:

(1) an overview of the transportation project for which the request is being made, including a description of the project, the total estimated cost of the project, and a description of the work to be performed by the RMA and by the governmental entity;

(2) a description of the need for the project and the benefits anticipated to result from completion of the project, including any anticipated:

(A) impacts on the economic development potential in the area;

(B) reductions in congestion;

(C) improvements in efficiency on the region's transportation system;

(D) enhancements to safety; and

(E) improvements to air quality in the region;

(3) a proposed project funding plan that includes amounts proposed for each of the project cost categories, including design, development, financing, construction, maintenance, and operation;

(4) department contributions and participation anticipated to be requested for the project;

(5) official written approval of the project by the board of the RMA and the governing body of the governmental entity with jurisdiction over the project;

(6) a description of and any documentation evidencing local public support for the project and any local public opposition;

(7) a preliminary project development and implementation schedule, including an estimated date when the project will be completed;

(8) a description of the RMA's experience in developing transportation projects comparable to the project for which the request is being made;

(9) if applicable, given the nature of the project, information explaining how the project will be consistent with the Statewide Transportation Plan and, if appropriate, with the metropolitan transportation plan developed by the metropolitan planning organization with jurisdiction over the project;

(10) a preliminary identification of any known environmental, social, economic, or cultural resource issues, such as hazardous material sites, impacts on wetlands and other water resources, endangered species, parks, neighborhoods, businesses, historic buildings or bridges, and archeological sites;

(11) a binding commitment that the environmental consequences of the proposed project will be fully considered in accordance with, and that the proposed project will comply with, all applicable local, state, and federal environmental laws, regulations, and requirements; and

(12) a binding commitment to implement all EPIC.

(c) Commission approval.

(1) Compliance with applicable requirements. The commission may approve a request submitted under this section if the RMA commits to the department and in the agreement with the governmental entity that the RMA will comply with all applicable federal, state, and, if applicable, department requirements.

(2) Considerations. In determining whether to approve a request submitted under this section, the commission will consider:

(A) the ability of the RMA to award, manage, and complete the work to be performed by the RMA for the project;

(B) the need for the project and whether the project is ready for development;

(C) the anticipated benefit of the project to the governmental entity and the region; and

(D) evidence of local support in the area in which the project is located.

(3) Findings. The commission may approve a request submitted under this section if it finds that:

(A) if applicable, given the nature of the project, the project is consistent with the appropriate policies, strategies, and actions of the statewide transportation plan and, if appropriate, with the regional transportation plan developed by the metropolitan planning organization with jurisdiction over the project;

(B) the RMA's participation in the project will facilitate the ability of the governmental entity to construct the project and achieve the benefits anticipated to be derived from the project;

(C) the project will neither duplicate nor conflict with the operations of the department;

(D) the project is supported by the RMA, the governmental entity and metropolitan planning organization with jurisdiction over the project, and each other governmental entity affected by the project; and

(E) the project is in the best interest of the region.

SUBCHAPTER E
TRANSFER OF TXDOT FERRY

§26.41 Request

(a) An RMA may request the commission to transfer a department owned and operated ferry to an RMA.

(b) A request submitted under subsection (a) of this section must be in writing and must include:

(1) an explanation of how the proposed transfer is an integral part of the region's overall plan to improve mobility in the region;

(2) an explanation of how the request complies with §26.43(a)(3) and (4) of this subchapter;

(3) copies of any completed studies concerning the transfer;

(4) a brief description of any known environmental, social, economic, or cultural resource issues, such as impacts on wetlands and other water resources, endangered species, parks, neighborhoods, businesses, historic buildings or bridges, and archeological sites concerning the transfer; and

(5) the name and address of any individuals or organizations known to be opposed to the transfer, and a description of any known controversies concerning the transfer.

§26.42 Public Involvement

(a) If the commission determines that the proposed transfer is an integral part of the region's overall plan to improve mobility in the region, the department will:

(1) hold one or more public hearings in each county in which the project is located for the purpose of seeking oral comments;

(2) hold one or more informal public meetings, which will be held, if practicable, in the project area; and

(3) solicit written comments.

(b) Notice of a solicitation of written comments, a public meeting, and a public hearing held under subsection (a) of this section will be:

(1) published in the *Texas Register;*

(2) published in one or more newspapers of general circulation in each of the counties in which the ferry is located;

(3) published in a newspaper, if any, published in each of the counties of the applicable authority;

(4) posted on the department's website, with a link to the RMA's website, if available; and

(5) posted on the RMA's website, if available, with a link to the department's website.

(c) The department will publish and post notices under subsection (b) of this section at least 10 days prior to the date of a hearing or meeting.

(d) A notice published or posted under subsection (b) of this section will inform the public that the RMA's request and any studies submitted by the RMA in support of the request are available for review at one or more designated offices of the department and can be found on the websites of the department and, if available, the RMA. The notice will provide the links to the request and studies. The department will not make studies available on the websites if it determines such action to be impractical due to size of the files.

§26.43 Approval

(a) The commission may, after considering public input concerning the proposed transfer, approve a proposed transfer under this subchapter if:

(1) the RMA agrees to assume all liability and responsibility for the safe and effective maintenance and operation of the ferry upon its transfer;

(2) the RMA agrees to assume all liability and responsibility for compliance with all federal laws, regulations, and policies applicable to the ferry;

(3) the commission determines that the transfer is in the public interest;

(4) the RMA agrees to assume all liability and responsibility for EPIC; and

(5) the RMA has adopted rules providing criteria and guidelines for approval of the transfer of a ferry.

(b) Commission approval under this section is conditioned on the approval of the governor.

§26.44 Preliminary Approval

(a) The commission may grant preliminary approval of the transfer, with final approval conditioned on the completion of preliminary studies necessary for the commission to make findings required by §26.43 of this subchapter. The preliminary studies may include, but are not limited to, social, economic, and environmental studies and the preparation of traffic and revenue forecasts.

(b) The commission may require the RMA to pay for or complete all or a portion of the preliminary studies.

(c) Upon completion of the preliminary studies, the department will hold one or more additional public hearings. The department will publish and post notice of a hearing held under this subsection in accordance with §26.42(b)-(d).

(d) The commission may grant final approval of the transfer consistent with the requirements of §26.43 of this subchapter.

§26.45 Reimbursement

(a) An authority shall reimburse the commission for the cost of a transferred ferry unless the commission determines that the transfer will result in a substantial net benefit to the state, the department, and the traveling public that equals or exceeds the cost.

(b) In computing the cost of the ferry, the commission will:

(1) include the total amount spent by the department for the original construction of the ferry, including the costs associated with the preliminary engineering and design engineering for plans, specifications, and estimates, the acquisition of necessary rights-of-way, and actual construction of the ferry and all necessary appurtenant facilities; and

(2) consider the anticipated future costs of expanding, improving, maintaining, operating, or extending the ferry to be incurred by the RMA and not by the department if the ferry is transferred.

§26.46 Use of Surplus Revenue

Notwithstanding the provisions of §26.53 of this chapter (relating to Surplus Revenue) to the contrary, the commission may, as a condition to the transfer, require that expenditures of surplus revenue, if any, derived from a transferred ferry be made to implement projects included in the metropolitan transportation plan or the department's unified transportation program. Within the project operating agreement described under §26.54 of this chapter (relating to Project Operating Agreement), the commission and the RMA shall, prior to transfer, mutually agree to the amount of expenditures subject to this section and projects to be funded under this section. These provisions may be revised at any time upon agreement of both parties.

§26.47 Applicability

This subchapter does not apply to a ferry located in a municipality with a population of 5,000 or less unless the city council of the municipality approves the transfer.

SUBCHAPTER F
MISCELLANEOUS OPERATION PROVISIONS

§26.51 Conflict of Interest

(a) Prohibited conduct for directors and employees. A director or employee of an RMA may not:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence the director or employee in the discharge of official duties or that the director or employee knows or should know is being offered with the intent to influence the director's or employee's official conduct;

(2) accept other employment or engage in a business or professional activity that the director or employee might reasonably expect would require or induce the director or employee to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the director's or employee's independence of judgment in the performance of the director's or employee's official duties;

(4) make personal investments, including investments of a spouse, that could reasonably be expected to create a conflict between the director's or employee's private interest and the interest of the RMA or that could impair the ability of the individual to make independent decisions;

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the director's or employee's official powers or performed the director's or employee's official duties in favor of another; or

(6) have a personal interest in an agreement executed by the RMA.

(b) Eligibility of directors and chief administrative officer.

(1) A person is not eligible to serve as a director or chief administrative officer of an RMA if the person or the person's spouse:

(A) is employed by or participates in the management of a business entity or other organization, other than a political subdivision, that is regulated by or receives funds from the department, the RMA, or a member county;

(B) directly or indirectly owns or controls more than a 10% interest in a business or other organization that is regulated by or receives funds from the department, the RMA, or a member county;

(C) uses or receives a substantial amount of tangible goods, services, or funds from the department, the RMA, or a member county; or

(D) is required to register as a lobbyist under Government Code, Chapter 305, because of the person's activities for compensation on behalf of a profession related to the operation of the department, the RMA, or a member county.

(2) A person is not eligible to serve as a director or chief administrative officer of an RMA if the person is an officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation, rail, or aviation, or if the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation, rail, or aviation.

(3) Except as provided in Transportation Code, §370.251(g), a person is not ineligible to serve as a director or chief administrative officer of an RMA if the person has received funds from the department, the RMA, or a member county for acquisition of highway right of way.

(4) The commission may approve an exception to the requirements of subsection (b)(1)(A) of this section if:

(A) the RMA or the applicable county has properly disclosed to the public the details of the potential conflict;

(B) the potential conflict concerns employment with an entity that receives funds from a member county; and

(C) the commission determines that the employment will not result in the director or chief administrative officer incurring any obligation of any nature that is in substantial conflict with the director or officer's proper discharge of his or her duties on behalf of the RMA.

(c) In addition to the prohibitions and restrictions of this section, a director is subject to Local Government Code, Chapter 171.

§26.52 Donations

An RMA may only accept donations of cash, goods, services, and property that will further the performance of its functions. All donations shall be used by the RMA for their intended purpose in accordance with applicable law. All RMAs, in receiving donations, shall accept and use the donations only for specific purposes legally supported and authorized by the donors and shall be strictly accountable to the donors.

§26.53 Surplus Revenue

(a) General. Each fiscal year, if an RMA determines that it has surplus revenue from transportation projects, the RMA shall:

(1) reduce tolls;

(2) spend the surplus revenue on other transportation projects in the counties of the RMA, in accordance with the provisions of this subchapter and, if applicable, as authorized by federal law; or

(3) deposit the surplus revenue to the credit of the Texas Mobility Fund.

(b) Expenditures on transportation projects. Subject to any applicable restrictions under federal law, an RMA may spend surplus revenue in the region on other transportation projects by:

(1) constructing a transportation project located within the counties of the RMA;

(2) assisting in the financing of a toll or toll-free transportation project of another governmental entity; or

(3) constructing a toll or toll-free transportation project and, on completion of the project, transferring the project to a governmental entity if:

(A) approved by the commission under subsection (c) of this section;

(B) the governmental entity authorizes the RMA to construct the project and agrees to assume all liability and responsibility for the maintenance and operation of the project on its transfer; and

(C) the project is constructed in compliance with all laws applicable to the governmental entity.

(c) Commission approval. The commission will approve an RMA constructing a transportation project under subsection (b)(3) of this section if:

(1) the project comes from a conforming transportation plan and transportation improvement program, when required by federal law;

(2) the project is consistent with the Texas Transportation Plan, the metropolitan transportation plan, and the Statewide Transportation Improvement Program; and

(3) the commission determines that the project will have a significant positive impact on the mobility of the region of the RMA.

(d) Considerations. When approving or disapproving a project under subsection (c) of this section, the commission will consider:

(1) the anticipated reduction to traffic congestion;

(2) potential social, environmental, and economic impacts of the project, and the extent to which the RMA has complied with all EPIC;

(3) benefit to state and local government; and

(4) whether the construction will expand the availability of funding for transportation projects or reduce direct state costs.

§26.54 Project Operating Agreement

An RMA and the department may enter into a project operating agreement governing the maintenance and operation of a transportation project. The agreement may include provisions governing:

(1) bridge inspection; and

(2) department maintenance or operation of the turnpike project, provided the RMA reimburses the department for necessary costs of maintaining or operating the project unless the RMA is provided assistance under Chapter 27, Subchapter E of this title (relating to Financial Assistance for Toll Facilities).

§26.55 Contracts with Mexico

(a) Prior to entering into a contract with the United Mexican States or a state of the United Mexican States, the RMA must submit to the department:

(1) a summary of the purpose of the agreement;

(2) a list of the duties and responsibilities to be performed by each party to the contract;

(3) a description of any federal, state, or local funds to be spent in Mexico; and

(4) a description of any work to be done by RMA employees or contractors within Mexico.

(b) The commission will authorize the RMA to enter into a contract with the United Mexican States or a state of the United Mexican States if it determines that, based on the information provided by the RMA and any other factors the commission deems relevant, the contract will provide a significant benefit to the State of Texas.

§26.56 Required Internal Ethics and Compliance Program

(a) An RMA shall adopt an internal compliance and ethics program that satisfies the requirements of §10.51 of this title (relating to Internal Ethics and Compliance Program).

(b) An RMA must finally adopt a program described by subsection (a) of this section before the later of:

(1) April 1, 2011; or

(2) the first anniversary of the date on which the RMA is created.

(c) An RMA shall enforce compliance with its internal compliance and ethics program.

SUBCHAPTER G
REPORTS AND AUDITS

§26.61 Written Reports

(a) Financial and operating reports. An RMA shall submit the following financial and operating reports to each county or city that is a part of the RMA:

(1) the annual operating and capital budgets adopted by the RMA each fiscal year pursuant to the trust agreement or indenture securing bonds issued for a project, and any amended or supplemental operating or capital budget;

(2) annual financial information and notices of material events required to be disclosed under Rule 15c2-12 of the United States Securities and Exchange Commission (17 C.F.R. §240.15c2-12); and

(3) to the extent not otherwise disclosed in another report required under this subsection, a statement of any surplus revenue held by the RMA and a summary of how it intends to use the surplus revenue.

(b) Investment reports. An RMA shall submit to each county or city that is a part of the RMA an independent auditor's review, if required by law, of the reports of investment transactions prepared by an RMA's investment officers under Government Code, §2256.023.

(c) Certification. Reports submitted under this section must be approved by official action of the board and certified as correct by the chief administrative officer of the RMA.

(d) Submission dates. Reports required by subsection (a)(1) and (3) of this section must be submitted within 90 days after the beginning of the fiscal year or the adoption of any amended or supplemental budget. Reports required by subsection (a)(2) and subsection (b) of this section must be submitted within 30 days after disclosure under Rule 15c2-12 or approval of the independent auditor's report.

§26.62 Annual Audits

(a) General. The RMA shall maintain its books and records in accordance with generally accepted accounting principles in the United States, as promulgated by the Government Accounting Standards Board, the Financial Accounting Standards Board, or pursuant to applicable federal or state laws or regulations, and shall have an annual financial and compliance audit of such books and records in accordance with this section.

(b) Submission date. The annual audit shall be submitted to each county or city that is a part of the RMA within 120 days after the end of the fiscal year.

(c) Certification. The financial and compliance audit must be conducted by an independent certified public accountant in accordance with generally accepted auditing standards, as modified by the governor's Uniform Grant Management Standards, or the standards of the Office of Management and Budget Circular A-133, Audits of States, Local Governments and Non-profit Organizations, as applicable.

(d) Paperwork retention period. All work papers and reports shall be retained for a minimum of four years from the date of the audit report, unless the counties or cities that are parts of the RMA require a longer retention period.

§26.63 Other Reports to Counties and Cities

The RMA will provide other reports and information regarding its activities promptly when requested by the counties or cities that are parts of the RMA.

§26.64 Operating Records

The department will have access to all operating and financial records of the RMA. The executive director will provide notification if access is desired by the department.

§26.65 Annual Reports to the Commission

(a) Compliance Report. Within 150 days after the end of the fiscal year of an RMA, the RMA shall submit to the executive director a report that lists each duty that the RMA is required to perform under this subchapter and that indicates that the RMA has performed that requirement for that fiscal year. Each report submitted under this subsection must be in the form prescribed by the department, approved by official action of the board, and certified as correct by the chief administrative officer of the RMA.

(b) Project Report. Not later than December 31 of each year, an RMA shall submit to the commission a written report that describes the progress made during that year on each transportation project or system of projects of the RMA, including the initial project for which the RMA was created.

SECTION B.

CONFLICT OF INTEREST

SECTION B.1

TML's Conflict of Interest/Disclosure Laws

Applicable to City Officials, Employees, and Vendors

Conflict of Interest/Disclosure Laws Applicable to City Officials, Employees, and Vendors

This publication is for educational purposes and meant to provide basic information regarding *state* conflict of interest and disclosure laws applicable to city officials, employees, and vendors. A home rule charter, local policy, or ordinance may provide for more stringent requirements in some circumstances. This paper is neither an exhaustive treatment of the law on this subject nor a substitute for the advice of an attorney. It is important to consult the individual state laws cited for detailed information about the issues discussed here and to consult an attorney in order to apply these legal principles to specific fact situations. You can find additional resources regarding many of the topics discussed in this paper on our Web site at www.tml.org.

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A common source of alleged wrongdoing revolves around conflicts of interest. Whether real or perceived, these allegations often arise out of situations involving personal financial gain, employment, or special treatment for family members or business relations. To protect city transactions from the undue influence of such conflicts, various state laws require disclosure of city officer, employee, and vendor interests. In the past decade, the number and type of interests that must be disclosed have increased. Keep in mind that each state law discussed here comes with its own separate legal requirements. Thus, complying with one does not fulfill the obligations imposed by the other. In some circumstances, the same financial interest may require a city officer, employee, or vendor to file more than one disclosure form.

I. Local Government Code Chapter 171: Real Property and Business Interests

Chapter 171 of the Local Government Code regulates local public officials' conflicts of interest.[1] It prohibits a local public official from voting on or participating in a matter involving a business entity or real property in which the official has a substantial interest if an action on the matter will result in a special economic effect on the business that is distinguishable from the effect on the public, or in the case of a substantial interest in real property, it is reasonably foreseeable that the action will have a special economic effect on the value of the property, distinguishable from its effect on the public.[2]

A public official who has such interest is required to file, before a vote or decision on any matter involving the business entity or real property, an affidavit with the city's official record keeper (usually the city secretary), stating the nature and extent of the interest.[3] In addition, a public official is required to abstain from further participation in the matter except when a majority of the members of the governing body also have a substantial interest and are required to file and do file affidavits of similar interests on the same official matter.[4]

The term "local public official" is defined to mean "a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any . . . municipality . . . or other local governmental entity who exercises responsibilities beyond those that are advisory in nature."[5] This term includes a member of a planning and zoning commission.[6]

A public official has a substantial interest in a business entity if the official:

1. owns 10 percent or more of the voting stock or shares of the business entity;

2. owns either 10 percent or more or $15,000 or more of the fair market value of the business entity; or

[1] TEX. LOC. GOV'T CODE §§ 171.001–.010.
[2] *Id.* § 171.004.
[3] *Id*. An example (not a model) affidavit is available here: http://www.tml.org/legal_pdf/Chap171-affidavit.pdf.
[4] TEX. LOC. GOV'T CODE § 171.004.
[5] *Id.* § 171.001(1).
[6] Tex. Att'y Gen. Op. Nos. KP-0105 (2016), DM-309 (1994).

3. receives funds from the business entity that exceed 10 percent of the person's gross income for the preceding year.[7]

A public official has a substantial interest in real property if the interest is an equitable or legal ownership interest with a fair market value of $2,500 or more.[8]

A public official is also considered to have a substantial interest in a business entity or real property if the official's relative within the first degree of consanguinity (blood) or affinity (marriage) has a substantial interest in the business entity or real property.[9] As such, any "substantial interest" that a public official's spouse, parent, child, step-child, father or mother-in-law, or son or daughter-in-law has is imputed to the public official. For example, a public official has a "substantial interest" in a business that employs the official's daughter if the official's daughter earns a small income, which exceeds ten percent of her gross income.[10]

A business entity is defined as "a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law."[11] A nonprofit corporation is considered a business entity.[12] The term also includes a business entity that represents an entity or person with an interest in a matter before the city council.[13] Public entities such as a city, state university or school district, are not a business entities.[14]

The limit on "further participation" by a public official who has a conflict does not preclude the public official from attending meetings, including executive session meetings, relevant to the matter in which he has a substantial interest, provided that the official remains silent during the deliberations.[15] Thus, an interested public official does not participate in a matter by merely attending an executive session on the matter and remaining silent during the deliberations.[16]

The question of whether a vote or decision has a "special economic effect" on a business entity or on the value of real property is generally a question of fact.[17] However, a vote or decision will, as a matter of law, have a "special economic effect" if the governing body considers purchasing goods or services from a business entity in which a local public official has a substantial interest.[18] Additionally, the issue of whether a vote or decision has a special

[7] TEX. LOC. GOV'T CODE § 171.002(a).
[8] *Id.* § 171.002(b).
[9] *Id.* § 171.002(c).
[10] Tex. Att'y Gen. Op. No. JC-0063 (1999).
[11] TEX. LOC. GOV'T CODE § 171.001(2).
[12] Tex. Att'y Gen. Op. No. JM-424 (1986), at 2.
[13] Tex. Att'y Gen. Op. No. DM-309 (1994), at 2.
[14] Tex. Att'y Gen. Op. Nos. GA-0826 (2010), at 1, DM-267 (1993), at 2, JM-852 (1988), at 2.
[15] Tex. Att'y Gen. Op. No. GA-0334 (2005), at 6.
[16] *Id.*
[17] Tex. Att'y Gen. Op. No. GA-0796, at 4 (2010); Tex. Att'y Gen. LO-98-052.
[18] Tex. Att'y Gen. Op. No. GA-0136 (2004), at 3.

economic effect may be answered as a matter of law in the context of the purchase or sale of an interest in real property.[19]

Whether it is "reasonably foreseeable" that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public, is fact specific.[20] In instances where the economic effect is direct and apparent at the time of the action, both a court and the attorney general have concluded that the economic effect was "reasonably foreseeable."[21]

There are special rules beyond the filing of an affidavit and abstaining from voting that apply to the adoption of a budget. If an item of the budget is specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest, the governing body must vote on that line item separately.[22] The affected member may not generally participate in consideration of that item.[23]

If a public official votes on a matter that he or she has a substantial interest in or fails to abstain from further participation, the action of the governing body on the matter is not voidable, unless the matter that was the subject of the action would not have passed without the vote of the person who had a substantial interest.[24] A knowing violation of Chapter 171 is a Class A misdemeanor, which is punishable by a fine and/or confinement.[25]

II. Local Government Code Chapter 176: Income and Gifts from, and Family Relationships with Vendors

Chapter 176 of the Local Government Code requires certain local government officers to disclose employment, business, and familial relationships with vendors who conduct business, or consider conducting business, with local government entities. The requirements apply to most political subdivisions, including cities.[26] The Chapter also applies to a "local government corporation, a board, commission, district, or authority" whose members are appointed by a mayor or the city council.[27]

A "local government officer" (officer) includes: (1) a mayor or city councilmember; (2) a director, administrator, or other person designated as the executive officer of the city; and (3) an

[19] Tex Att'y Gen. Op. No. GA-0796 (2010), at 4 (discussing *Dallas Cnty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 281-82 (Tex. App.—Dallas 1991, writ denied)).
[20] Tex. Att'y Gen. LO-96-049.
[21] *Dallas Cty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 278 (Tex. App.—Dallas 1991, writ denied); Tex. Att'y Gen. Op. No. GA-0796 (2010), at 6.
[22] TEX. LOC. GOV'T CODE § 171.005.
[23] *Id.*
[24] *Id.* § 171.006.
[25] *Id.* § 171.003.
[26] TEX. LOC. GOV'T CODE § 176.001.
[27] *Id.*

agent (including an employee) of the city who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.[28]

An officer is required to file a conflicts disclosure statement in three situations:

1. An officer must file a statement if the officer or officer's family member[29] has an employment or other business relationship with a vendor that results in the officer or officer's family member receiving taxable income of more than $2,500 in the preceding twelve months.[30] An officer who only receives investment income, regardless of amount, is not required to file a disclosure statement. Investment income includes dividends, capital gains, or interest income gained from a personal or business checking or savings account or other similar account, a personal or business investment, or a personal or business loan.[31]

2. An officer is required to file a statement if the officer or officer's family member accepts one or more gifts (including lodging, transportation, and entertainment accepted as a guest) from a vendor that has an aggregate value of more than $100 in the preceding twelve months.[32] An officer is not required to file a statement in relation to a gift, regardless of amount, if the gift: (1) is a political contribution; (2) is food accepted as a guest; or (3) is offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.[33]

3. An officer is required to file a statement if the officer has a family relationship with the vendor.[34]

There is at least one exception to the three situations set out above. A local government officer does not have to file a statement if the vendor is an administrative agency supervising the performance of an interlocal agreement.[35]

An officer is required to file a statement no later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of facts that require a filing of the statement.[36]

A "vendor" includes any person that enters or seeks to enter into a contract with a city.[37] The term also includes: (1) an agent of a vendor; (2) an officer or employee of a state agency when

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[28] *Id.*
[29] An officer's "family member" is a person related to the officer within the first degree by consanguinity (blood) or affinity (marriage). *Id.*
[30] *Id.* § 176.003(a)(2)(A).
[31] *Id.* § 176.001.
[32] *Id.* § 176.003(a)(2)(B) . It is important to remember that state law prohibits the acceptance of certain gifts. *See, e.g.*, TEX. PENAL CODE §§ 36.02, 36.08.
[33] TEX. LOC. GOV'T CODE §§ 176.001(2-b), 176.003(a-1).
[34] *Id.* § 176.003(a)(2)(C). An officer has a family relationship with a vendor if they are related within the third degree by consanguinity (blood) or second degree by affinity (marriage). *Id.* § 176.001.
[35] *Id.* § 176.003(a-2).
[36] *Id.* §176.003(b).
[37] *Id.* §176.001.

that individual is acting in a private capacity; and (3) Texas Correctional Industries (but no other state agency).[38]

Chapter 176 applies to any written contract for the sale or purchase of real property, goods (personal property), or services.[39] A contract for services would include one for skilled or unskilled labor, as well as professional services.[40]

A vendor is required to file a conflict of interest questionnaire if the vendor has a business relationship with the city and has: (1) an employment or other business relationship with an officer or an officer's family member that results in the officer receiving taxable income that is more than $2,500 in the preceding twelve months; (2) has given an officer or an officer's family member one or more gifts totaling more than $100 in the preceding twelve months; or (3) has a family relationship with an officer.[41]

A vendor is required to file a questionnaire not later than the seventh business day after the later of the following: (1) the date that the vendor begins discussions or negotiations to enter into a contract with the city or submits an application or response to a bid proposal; or (2) the date that the vendor becomes aware of a relationship or gives a gift to an officer or officer's family member, or becomes aware of a family relationship with an officer.[42]

The statements and disclosures must be filed with the records administrator of the city.[43] A records administrator includes a city secretary, a person responsible for maintaining city records, or a person who is designated by the city to maintain the statements and disclosures filed under Chapter 176.[44]

A city that maintains a Web site is required to post on that site statements and disclosures that are required to be filed under Chapter 176.[45] However, a city that does not have a Web site is not required to create or maintain one.[46]

An officer or vendor who knowingly fails to file a statement or a disclosure when required to do so commits a Class A, B, or C misdemeanor, depending on the amount of the contract.[47] It is an exception to prosecution that an officer/vendor files a statement/questionnaire not later than the seventh day after the date the person receives notice from the city of the alleged violation.[48] The

[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.* §176.006(a).
[42] *Id.* §176.006(a-1).
[43] *Id.* §§176.003(b), 176.006(a-1).
[44] *Id.* §176.001(5).
[45] *Id.* § 176.009.
[46] *Id.*
[47] *Id.* §§ 176.013.
[48] *Id.*

validity of a contract between a city and a vendor is not affected solely because a vendor fails to file a questionnaire.[49]

The Texas Ethics Commission is charged with creating statements and disclosure forms. The forms (Form CIS and Form CIQ) may be found at https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm.

III. Government Code Chapter 553: Property Acquired with Public Funds

Chapter 553 of the Government Code provides that a "[a] public servant who has a legal or equitable interest in property that is to be acquired with public funds shall file an affidavit within 10 days before the date on which the property is to be acquired by purchase or condemnation."[50]

Chapter 553's affidavit requirement applies to a "public servant," defined as a person who is elected, appointed, employed, or designated, even if not yet qualified for or having assumed the duties of office, as: (1) a candidate for nomination or election to public office; or (2) an officer of government.[51]

The term "public funds" is defined to "include[] only funds collected by or through a government."[52] The language of Chapter 553 suggests that a public servant is required to disclose his/her interest in property even when the property is to be acquired by a separate governmental entity with which the public servant is not affiliated. There appears to be no case or attorney general opinion that addresses this issue. Thus, a public servant or official subject to Chapter 553 should consult his/her private legal counsel regarding the application of Chapter 553 in this scenario.

Chapter 553 is not, by its language, limited to real property interests. Thus, if a public servant has a legal or equitable interest in any real (e.g., land) or personal (e.g., a vehicle) property acquired with public funds, and has actual notice of the acquisition or intended acquisition of the property, the public servant should file a Chapter 553 affidavit.[53]

A Chapter 553 affidavit has to be filed within ten days before the date on which the property is to be acquired by purchase or condemnation.[54] The affidavit is filed with the county clerk of the county in which the public servant resides as well as the county clerk of each county in which the property is located.[55]

The affidavit must include: (1) the name of the public servant; (2) the public servant's office, public title, or job designation; (3) a full description of the property; (4) a full description of the

[49] *Id.* § 176.006(i).
[50] TEX. GOV'T CODE § 553.002(a).
[51] *Id.* § 553.001(2).
[52] *Id.* § 553.001(1).
[53] *Id.* § 553.002. An example (not a model) affidavit is available on the TML Web site, here: http://www.tml.org/legal_pdf/Chapter553AffidavitSample.pdf
[54] TEX. GOV'T CODE § 553.002(a).
[55] *Id.* § 553.002(c).

nature, type, and amount of interest in the property, including the percentage of ownership interest; (5) the date the public servant acquired an interest in the property; (6) the following verification: "I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code;" and (7) an acknowledgement of the same type required for recording a deed in the deed records of the county.[56] An affidavit example is available on our Web site at: http://www.tml.org/example-documents.

A person who violates Section 553.002 of the Government Code by failing to file the required affidavit is presumed to have committed a Class A misdemeanor offense if the person had actual notice of the acquisition or intended acquisition of the legal or equitable interest in the property.[57]

IV. Local Government Code Chapter 145: Financial Disclosure in Cities with a population of 100,000 or more

Local Government Code Chapter 145's financial disclosure requirements apply *only in a city with a population of 100,000 or more*.[58] In general terms, Chapter 145:

1. requires each mayor, each member of a city council, each city attorney, each city manager, and each candidate for city office to file an annual financial statement with the city clerk or secretary;[59]

2. requires that the financial statement include an account of the financial activity of the covered individual and the individual's spouse and dependent children, if the individual had control over that activity; and[60]

3. requires that the financial statement include all sources of income; shares of stocks owned, acquired, or sold; bonds, notes, or other paper held, acquired, or sold; any interest, dividend, royalty, or rent exceeding $500; each person or institution to whom a personal debt of $1,000 or more exists; all beneficial interests in real property or businesses owned, acquired, or sold; certain gifts received; income in excess of $500 from a trust; and a list of all boards of directors on which the individual serves; and information about certain contracts with a governmental entity.[61]

Candidates for elected city office are required to file the financial disclosure statement not later than the earlier of: (1) the twentieth day after the deadline for filing an application for a place on the ballot in the election; or (2) the fifth day before the date of the election.[62] Annually, the

[56] *Id.* § 553.002(b).
[57] *Id.* § 553.003.
[58] TEX. LOC. GOV'T CODE § 145.001.
[59] *Id.* §§ 145.002–.003.
[60] TEX. LOC. GOV'T CODE § 145.003(b)(2), TEX. GOV'T CODE § 572.023(a).
[61] TEX. LOC. GOV'T CODE § 145.003(b)(2), TEX. GOV'T CODE § 572.023(b).
[62] TEX. LOC. GOV'T CODE § 145.004(c).

mayor, city councilmembers, the city manager, and the city attorney[63] must file a financial disclosure statement for the preceding year by April 30.[64] A new city manager or a new city attorney must file a financial disclosure statement within forty-five days of assuming the duties of office.[65]

City officers and candidates for elected city office must generally file the financial statement on a form (Form PFS-LOCAL) provided by the Texas Ethics Commission, available here: https://www.ethics.state.tx.us/filinginfo/pfsforms_ins.html.[66] A detailed listing of the required contents is found in Section 572.023 of the Texas Government Code. If information in the financial disclosure form is required to be filed by category, Section 572.022 sets forth reporting categories. The city secretary must deliver (by mail, personal delivery, e-mail, or other electronic transfer) copies of the form to city officers and candidates for city office within certain time deadlines.[67]

The completed financial disclosure statement is filed with the city clerk or secretary.[68] Statements are public records and are to be maintained so as to be accessible to the public during regular office hours.[69]

Both criminal and civil penalties may be imposed for failure to file a financial disclosure statement. An offense under Chapter 145 is a class B misdemeanor, which is punishable by a fine up to $2,000 and/or confinement up to 180 days.[70] Section 145.010 sets forth a process whereby a civil penalty up to $1,000 may be assessed upon failure to comply after notice is received from the city attorney.

The city secretary shall grant an extension of not more than sixty days for the filing of the financial disclosure statement to a city officer or a person appointed to a city office if: (1) the individual makes an extension request before the filing deadline; or (2) the individual's physical or mental capacity prevents either the filing or the request for an extension before the filing date.[71] Extensions shall not be granted to candidates for elected city office.[72]

The city secretary shall maintain a list of the city officers and candidates required to file a financial disclosure statement. No later than ten days after the filing deadline, the city secretary shall provide a list to the city attorney showing for each city officer and candidate for city office: (1) whether the individual filed a timely statement; (2) whether the individual was granted an

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[63] While there appears to be no case or opinion directly on point, advisory opinions issued by the Texas Ethics Commission suggest that an interim city manager or city attorney that has all the duties and powers of a permanent city manager or attorney would also be subject to this requirement. *See* Ethics Advisory Opinion Nos. 27 (1992), 265 (1995).
[64] TEX. LOC. GOV'T CODE § 145.004, TEX. GOV'T CODE § 572.026(a).
[65] TEX. LOC. GOV'T CODE § 145.004, TEX. GOV'T CODE § 572.026(c).
[66] TEX. LOC. GOV'T CODE § 145.005(a).
[67] *Id.* §§ 145.002, 145.005(b)
[68] *Id.* § 145.003(b).
[69] *Id.* § 145.007(a).
[70] *Id.* § 145.009.
[71] *Id.* § 145.004(e).
[72] *Id.* § 145.004(f).

extension and the new filing deadline; or (3) whether the individual did not timely file a financial statement or receive an extension of time.[73]

V. Government Code Section 2252.908: Vendor Disclosure of Interested Parties

Government Code Section 2252.908 is a governmental transparency law that was enacted by H.B. 1295 in 2015 and amended by Senate Bill 255 in 2017. It prohibits a governmental entity (defined to include a city[74]) or state agency from entering into certain contracts with a business entity unless the business entity submits a disclosure of interested parties (a Form 1295).

The Texas Ethics Commission (Commission) is charged with adopting rules to implement the statute, developing the disclosure of interested parties form, and posting the form on its Web site.[75]

This new disclosure law applies only to contracts that: (1) require an action or vote by the city council before the contract may be signed; or (2) have a value of at least $1 million.[76] Pursuant to the Commission's rules, a contract does not require an action or vote by the city council if:

1. The governing body has legal authority to delegate to its staff the authority to execute the contract;

2. The governing body has delegated to its staff the authority to execute the contract; and

3. The governing body does not participate in the selection of the business entity with which the contract is entered into.[77]

It is important to note that the Commission defines the term "contract" to include an amended, extended, or renewed contract.[78] A new rule, effective January 1, 2017, further clarifies when a change to an existing contract triggers the filing of a disclosure form.[79]

The business entities subject to this law are those entities "recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation."[80] The Commission's rules clarify that the term "business entity" includes nonprofits, but does not

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[73] *Id.* § 145.008.
[74] TEX. GOV'T CODE § 2252.908(a)(2) (defining "governmental entity" to include a city, county, public school district, or special-purpose district or authority).
[75] *Id.* § 2252.908(g).
[76] *Id.* § 2252.908(b); *but see id.* § 2252.908(c) (expressly exempting certain contracts including a contract with a publicly traded business entity, a contract with an electric utility, and a contract with a gas utility).
[77] 1 T.A.C. § 46.1(c).
[78] *Id.* § 46.3(a).
[79] *Id.* § 46.4.
[80] TEX. GOV'T CODE § 2252.908(a)(1).

include a governmental entity.[81] That means, for instance, if a city executes an interlocal agreement with another city the disclosure requirements of Section 2252.908 are not triggered.

Exactly what types of interested parties must a business entity disclose? A business entity must disclose: (1) a person who has a controlling interest in the business; and (2) any intermediary.[82] The Commission defines the terms "controlling interest" and "intermediary" as follows:

> "Controlling interest" means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.
>
> "Intermediary," . . . means, a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:
> (1) receives compensation from the business entity for the person's participation;
> (2) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
> (3) is not an employee of the business entity or of an entity with a controlling interest in the business entity.[83]

It is quite possible that, although a business entity is subject to Section 2252.908, no interested parties will exist. Thus, a business entity may end up filing a form that has very little information on it.

The process for completing and submitting Form 1295 is as follows:

1. A business entity must use the Commission's online filing application to enter the required information on Form 1295.[84]

2. The completed Form 1295 must be filed with the city "at the time the business entity submits the signed contract" to the city.[85]

3. The city must notify the Commission, using the Commission's filing application, of the receipt of the filed Form 1295 and certification of filing not later than the 30th day after the date the city receives the disclosure.[86]

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[81] 1 T.A.C. § 46.3(b).
[82] *Id.* § 46.3(d).
[83] *Id.* § 46.3(c),(e).
[84] *Id.* § 46.5.
[85] TEX. GOV'T CODE § 2252.908(d).
[86] *Id.* § 2252.908(f), 1 T.A.C. § 46.5(c).

To further explain the process, the Commission has prepared instructional videos and a "FAQ" document, available here: https://www.ethics.state.tx.us/.

In order for a business entity to complete Form 1295, it will need some information from the city. Although not required by Section 2252.908, the Commission's rules provide that the business entity must include on the form an "identification number used by the [city] . . . to track or identify the contract for which the form is being filed."[87] Even though the rules provide for such a number, nothing in the rule requires a city to create a numbering system of any type.

The whole purpose behind this new disclosure requirement is to give the public more information about government contracts. To that end, the Commission is required to post the completed Form 1295 on its Web site within seven business days after receiving notice from the city that the city has received the filed Form 1295 and certification of filing.[88] In addition, cities must provide the completed forms in accordance with the Public Information Act.

The Commission takes the position that it does not have any authority (beyond rulemaking and adoption of the form) to enforce or interpret Government Code Section 2252.908.[89] All the possible ramifications for a city's failure to comply with Section 2252.908 are unclear at this time. As for a business entity, the statute requires a Form 1295 disclosure contain "a written, unsworn declaration subscribed by the authorized agent of the contracting business entity as true under penalty of perjury."[90]

VI. Miscellaneous Conflicts Provisions

A. Plat Approval

A provision governing conflicts of interest in the plat approval process was added to state law in 1989. It requires "[a] member of a municipal authority responsible for approving plats [who] has a substantial interest in a subdivided tract" to file an affidavit stating the nature and extent of the interest and abstain from further participation in the matter.[91] The affidavit must be filed with the municipal secretary or clerk before a vote or decision regarding the approval of a plat for the tract.

For purposes of this disclosure requirement, "subdivided tract" means a tract of land, as a whole, that is subdivided. The term does not mean an individual lot in a subdivided tract of land.[92]

A person has a substantial interest in a subdivided tract if the person:

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[87] 1 T.A.C. § 46.5(a)(4).
[88] TEX. GOV'T CODE § 2252.908(g), 1 T.A.C. § 46.5(d).
[89] *Cf., e.g.*, TEX. GOV'T CODE §§ 571.061 (listing the laws that the Commission administers and enforces), 571.091 (listing the statutes about which the Commission may issue advisory opinions).
[90] *Id*. § 2252.908(e)(2); *see also* TEX. PENAL CODE ch. 37 (providing for offense of perjury).
[91] TEX. LOC. GOV'T CODE § 212.017(d).
[92] *Id*. § 212.017(a).

1. has an equitable or legal ownership interest in the tract with a fair market value of $2,500 or more;

2. acts as a developer of the tract;

3. owns 10% or more of the voting stock or shares of or owns either 10% or more or $5,000 or more of the fair market value of a business entity that:
   (A) has an equitable or legal ownership interest in the tract with a fair market value of 2,500 or more; or
   (B) acts as a developer of the tract; or

4. receives in a calendar year funds from a business entity described in (3) that exceed 10% of the person's gross income for the previous year.[93]

A person is also considered to have a substantial interest in a subdivided tract if the person is related in the first degree by consanguinity or affinity to another person who has a substantial interest in the tract. An offense under this subsection is a Class A misdemeanor.[94] The finding by a court of a violation of this requirement does not render voidable an action of the municipal authority responsible for approving plats, unless the measure would not have passed without the vote of the member who violated the requirement.[95]

B. Selection of City Depository

Local Government Code Section 131.903 regulates conflicts of interest with respect to a city's selection of a depository. A bank is disqualified from serving as the depository of the city if an officer or employee of the city who has a duty to select the depository owns or has a beneficial interest, individually or collectively, in more than 10 percent of the outstanding capital stock of the bank.[96] In other words, a city council may not select a bank as the city's depository if a mayor or councilmember owns more than 10 percent of the bank.

If an officer or employee of the city is a director or officer of the bank, or owns 10 percent or less of the capital stock of the bank, the bank is not disqualified from serving as the city's depository so long as: (1) the interested officer or employee does not vote or take part in the proceedings; and (2) a majority of the other members of the city council vote to select the bank as the depository.[97]

The attorney general has concluded that Section 131.903 is an exception to the general conflicts of interest statute in Chapter 171 of the Local Government Code.[98] That being said, TML attorneys advise that any local public official with a "substantial interest" in a bank, as that term

[93] *Id.* § 212.017(b).
[94] *Id.* § 212.017(e).
[95] *Id.* § 212.017(f).
[96] *Id.* § 131.903(a)(2).
[97] *Id.*
[98] Tex. Att'y Gen. LO-97-093.

is defined by Chapter 171 of the Local Government Code, comply with the Chapter 171 requirements of (1) filing an affidavit that discloses the potential conflict; and (2) abstaining from participating in the selection of the bank, even if the potential conflict doesn't trigger the specific conflict of interest provision under Local Government Code Section 131.903.

C. Prohibition Against Acting as a Surety

There are various instances in which a city may require an entity with which it contracts to utilize a surety (sometimes referred to as a guarantor or secondary obligor).[99] In addition, certain city officers may be required to execute a bond in conjunction with their office.[100]

A local public official commits a Class A misdemeanor offense if the official knowingly: (1) acts as a surety for a business entity that has work, business, or a contract with the governmental entity or (2) acts as a surety on any official bond required of an officer of the governmental entity.[101] For the purposes of these violations, a "local public official" is defined to mean "a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any . . . municipality . . . who exercises responsibilities beyond those that are advisory in nature."[102]

D. Profession-Specific Requirements

While it is beyond the scope of this publication to discuss in detail, it is important to remember that vendors must sometimes comply with disclosure requirements that are specific to their profession. For instance, investment advisers must disclose to their clients (on Form ADV) ownership and other details about their firm through the Securities and Exchange Commission's Investment Adviser Public Disclosure Web site. *See* https://www.sec.gov/fast-answers/answerscrdhtm.html.

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[99] *See, e.g., Wisenbaker v. Johnny Folmar Drilling Co.*, 334 S.W.2d 465, 466 (Tex. Civ. App.—Texarkana 1960, writ dism'd)(describing that the City of Quitman had filed suit against a drilling company and its surety on the company's performance bond for breach of contract).

[100] *See, e.g.,* TEX. LOC. GOV'T CODE § 22.072(c) (authorizing the city council in a type A general law city to require municipal officers to execute a bond payable to the city and conditioned that the officer will faithfully perform the duties of the office).

[101] TEX. LOC. GOV'T CODE § 171.003; *see also* Tex. Att'y Gen. Op. No. KP-0132 (2017) (concluding that 171.003 does not prohibit a local public official from acting as a surety on a bail bond, i.e., a surety for an individual made to secure the release of an individual defendant from the State's custody).

[102] TEX. LOC. GOV'T CODE § 171.001(1).

SECTION B.2

Title 43, Chapter 26, Rule 26.51 (Section A-2)

TEXAS ADMINISTRATIVE CODE
TITLE 43 TRANSPORTATION
PART 1 TEXAS DEPARTMENT OF TRANSPORTATION
CHAPTER 26 REGIONAL MOBILITY AUTHORITIES
SUBCHAPTER F - MISCELLANEOUS OPERATION PROVISIONS

§26.51 Conflict of Interest

(a) Prohibited conduct for directors and employees. A director or employee of an RMA may not:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence the director or employee in the discharge of official duties or that the director or employee knows or should know is being offered with the intent to influence the director's or employee's official conduct;

(2) accept other employment or engage in a business or professional activity that the director or employee might reasonably expect would require or induce the director or employee to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the director's or employee's independence of judgment in the performance of the director's or employee's official duties;

(4) make personal investments, including investments of a spouse, that could reasonably be expected to create a conflict between the director's or employee's private interest and the interest of the RMA or that could impair the ability of the individual to make independent decisions;

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the director's or employee's official powers or performed the director's or employee's official duties in favor of another; or

(6) have a personal interest in an agreement executed by the RMA.

(b) Eligibility of directors and chief administrative officer.

(1) A person is not eligible to serve as a director or chief administrative officer of an RMA if the person or the person's spouse:

(A) is employed by or participates in the management of a business entity or other organization, other than a political subdivision, that is regulated by or receives funds from the department, the RMA, or a member county;

(B) directly or indirectly owns or controls more than a 10% interest in a business or other organization that is regulated by or receives funds from

the department, the RMA, or a member county;

(C) uses or receives a substantial amount of tangible goods, services, or funds from the department, the RMA, or a member county; or

(D) is required to register as a lobbyist under Government Code, Chapter 305, because of the person's activities for compensation on behalf of a profession related to the operation of the department, the RMA, or a member county.

(2) A person is not eligible to serve as a director or chief administrative officer of an RMA if the person is an officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation, rail, or aviation, or if the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation, rail, or aviation.

(3) Except as provided in Transportation Code, §370.251(g), a person is not ineligible to serve as a director or chief administrative officer of an RMA if the person has received funds from the department, the RMA, or a member county for acquisition of highway right of way.

(4) The commission may approve an exception to the requirements of subsection (b)(1)(A) of this section if:

(A) the RMA or the applicable county has properly disclosed to the public the details of the potential conflict;

(B) the potential conflict concerns employment with an entity that receives funds from a member county; and

(C) the commission determines that the employment will not result in the director or chief administrative officer incurring any obligation of any nature that is in substantial conflict with the director or officer's proper discharge of his or her duties on behalf of the RMA.

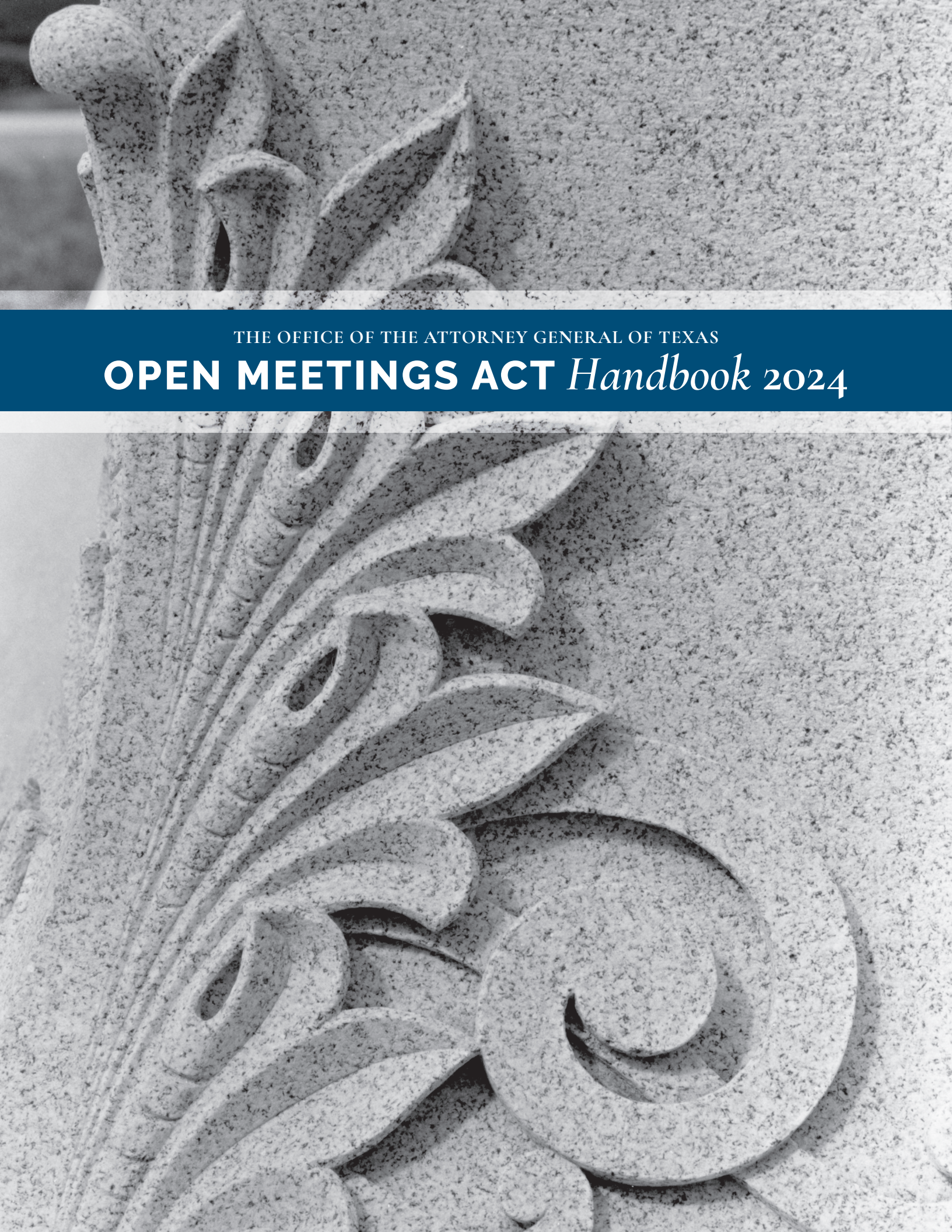
(c) In addition to the prohibitions and restrictions of this section, a director is subject to Local Government Code, Chapter 171.

SECTION C.

OPEN GOVERNMENT

SECTION C.1

Texas Attorney General Handbook – Open Meetings



THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

OPEN MEETINGS ACT *Handbook 2024*

KEN PAXTON
ATTORNEY GENERAL OF TEXAS

Dear Fellow Texans:

Founding Father James Madison once wrote that democracy without information was "but prologue to a farce or a tragedy," and he regarded the diffusion of knowledge as "the only guardian of true liberty." Texas law has long agreed the inherent right of Texans to govern themselves depends on their ability to observe how public officials conduct the people's business. The Texas Open Meetings Act was enacted to ensure the Texas government is transparent, open, and accountable to the people.

At its core, the Texas Open Meetings Act requires government entities to keep official business accessible to the public. The *Open Meetings Act Handbook* helps public officials comply with the provisions of the Texas Open Meetings Act and familiarizes our citizens with using the Open Meetings Act as a resource for obtaining information about their government. The handbook is available online and as a printable document at www.texasattorneygeneral.gov/openmeetings_hb.pdf.

As Attorney General, I am proud of my office's efforts to promote open government. We have established an Open Government Hotline for anyone seeking a better understanding of their rights and responsibilities under the law. The toll-free number is 877-OPEN TEX (877-673-6839).

Public access to the proceedings and decision-making processes of government is essential to a properly functioning and free state. It is my sincere hope that this handbook will make it easier for public officials and citizens to understand and comply with the Texas Open Meetings Act.

Best regards,

Ken Paxton

Ken Paxton
Attorney General of Texas

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I. Introduction

A. Open Meetings Act

The Open Meetings Act (the "Act") was adopted to help make governmental decision-making accessible to the public. It requires meetings of governmental bodies to be open to the public, except for expressly authorized closed sessions,[1] and to be preceded by public notice of the time, place, and subject matter of the meeting. "The provisions of [the Act] are mandatory and are to be liberally construed in favor of open government."[2]

The Act was adopted in 1967[3] as article 6252-17 of the Revised Civil Statutes, substantially revised in 1973,[4] and codified without substantive change in 1993 as Government Code chapter 551.[5] It has been amended many times since its enactment.

Before addressing the Act itself, we will briefly mention certain other issues relevant to conducting public meetings.

B. A Governmental Body Must Hold a Meeting to Exercise its Powers

Predating the Act is the common-law rule that decisions entrusted to governmental bodies must be made by the body as a whole at a properly called meeting.[6] This requirement gives each member of the body an opportunity to state his or her views to other board members and to give them the benefit of his or her judgment, so that the decision "may be the composite judgment of the body as a whole."[7] This rule may be changed by the Legislature.[8]

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1 The term "executive session" is often used to mean "closed meeting," even though the Act uses the latter term. *See* TEX. GOV'T CODE § 551.101; *Cox Enters., Inc. v. Bd. of Trs.*, 706 S.W.2d 956, 957 (Tex. 1986) (stating that an executive session is a meeting or part of a meeting that is closed to the public).

2 *See City of Laredo v. Escamilla*, 219 S.W.3d 14, 19 (Tex. App.—San Antonio 2006, pet. denied); *Willmann v. City of San Antonio*, 123 S.W.3d 469, 473 (Tex. App.—San Antonio 2003, pet. denied); *Toyah Indep. Sch. Dist. v. Pecos-Barstow Indep. Sch. Dist.*, 466 S.W.2d 377, 380 (Tex. App.—San Antonio 1971, no writ).

3 Act of May 8, 1967, 60th Leg., R.S., ch. 271, § 1, 1967 Tex. Gen. Laws 597, 597–98.

4 Act of Mar. 28, 1973, 63d Leg., R.S., ch. 31, § 1, 1973 Tex. Gen. Laws 45, 45–48.

5 Act of May 4, 1993, 73d Leg., R.S., ch. 268, § 1, 1993 Tex. Gen. Laws 583, 583–89.

6 *See Webster v. Tex. & Pac. Motor Transp. Co.*, 166 S.W.2d 75, 76–77 (Tex. 1942); *Fielding v. Anderson*, 911 S.W.2d 858, 864 (Tex. App.—Eastland 1995, writ denied).

7 *Webster*, 166 S.W.2d at 76–77.

8 *See Faulder v. Tex. Bd. of Pardons & Paroles*, 990 S.W.2d 944, 946 (Tex. App.—Austin 1999, pet. ref'd) (concluding that board was authorized by statute to perform duties in clemency matters without meeting face-to-face as a body).

C. Quorum and Majority Vote

The authority vested in a governmental body may generally be exercised only at a meeting of a quorum of its members.[9] The Code Construction Act[10] states as follows:

> (a) A grant of authority to three or more persons as a public body confers the authority on a majority of the number of members fixed by statute.[11]
>
> (b) A quorum of a public body is a majority of the number of members fixed by statute.[12]

The Act defines "quorum" as a majority of the governing body, unless otherwise defined by applicable law or the governing body's charter.[13] For example, three members of the five-member commissioners court constitute a quorum for conducting county business, except for levying a county tax, which requires the presence of at least four members of the court.[14] Ex officio, nonvoting members of a governmental body are counted for purposes of determining the presence of a quorum.[15] A person who has been elected to serve as a member of a governmental body but whose election has not been certified and who has not yet taken the oath of office is not yet a member of the governmental body.[16] Thus, a meeting between two newly elected persons who have not yet taken the oath of office and two serving directors is not subject to the Act because no quorum is present.[17] A board member may not delegate his or her authority to deliberate or vote to another person, absent express statutory authority to do so.[18]

Absent an express provision to the contrary, a proposition is carried in a deliberative body by a majority of the legal votes cast, a quorum being present.[19] Thus, if a body is "composed of twelve members, a quorum of seven could act, and a majority of that quorum, four, could bind the body."[20]

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9 *But see* TEX. GOV'T CODE § 418.1102(b) (providing that a quorum is not required of local governmental entities if the entity's "jurisdiction is wholly or partly located in the area of a disaster declared by the president . . . or governor; and . . . a majority of the members of the governing body are unable to be present at a meeting of the governing body as a result of the disaster").

10 *Id.* §§ 311.001–.034 (chapter 311).

11 A statute may expressly provide a different rule. *See* TEX. LOC. GOV'T CODE § 363.105 (providing that two-thirds majority vote required of a board of crime control and prevention district to reject application for funding).

12 TEX. GOV'T CODE § 311.013; *see id.* § 312.004 ("A joint authority given to any number of officers or other persons may be executed by a majority of them unless expressly provided otherwise."); *see also Tex. State Bd. of Dental Exam'rs v. Silagi*, 766 S.W.2d 280, 284 (Tex. App.—El Paso 1989, writ denied) (stating that absent a statutory provision, the common-law rule that a majority of all members of a board constitutes a quorum applies).

13 TEX. GOV'T CODE § 551.001(6).

14 TEX. LOC. GOV'T CODE § 81.006.

15 Tex. Att'y Gen. Op. No. JC-0580 (2002) at 2–3 (overruling Tex. Att'y Gen. Op. No. DM-160 (1992) in part).

16 Tex. Att'y Gen. Op. No. GA-0355 (2005) at 3.

17 *Id.* at 4.

18 Tex. Att'y Gen. Op. No. JM-903 (1988) at 4–5.

19 *Comm'rs Ct. of Limestone Cnty. v. Garrett*, 236 S.W. 970, 973 (Tex. [Comm'n Op.] 1922); Tex. Att'y Gen. Op. Nos. GA-0554 (2007) at 2, GA-0412 (2006) at 3.

20 *Webster*, 166 S.W.2d at 77.

D. Other Procedures

1. In General

Governmental bodies should consult their governing statutes for procedures applicable to their meetings. Home-rule cities should also consult their charter provisions.[21]

Governmental bodies may draw on a treatise such as *Robert's Rules of Order* to assist them in conducting their meetings, as long as the provisions they adopt are consistent with the Texas Constitution, statutes, and common law.[22] A governmental body subject to the Act may not conduct its meetings according to procedures inconsistent with the Act.[23]

2. Preparing the Agenda

An agenda is "[a] list of things to be done, as items to be considered at a meeting."[24] The terms "agenda" and "notice" are often used interchangeably in discussing the Act because of the practice of posting the agenda as the notice of a meeting or as an appendix to the notice.[25]

Some governmental entities are subject to statutes that expressly address agenda preparation.[26] Other entities may adopt their own procedures for preparing the agenda of a meeting.[27] Officers and employees of the governmental body must avoid deliberations subject to the Act while preparing the agenda.[28]

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21 *See Shackelford v. City of Abilene*, 585 S.W.2d 665, 667 (Tex. 1979) (considering home-rule city charter that required all city meetings to be open to the public).

22 *See* Tex. Att'y Gen. Op. No. GA-0412 (2006) at 2; *see also generally* Tex. Att'y Gen. Op. No. GA-0554 (2007).

23 *See* Tex. Att'y Gen. Op. Nos. GA-0412 (2006) at 2; DM-228 (1993) at 3 (addressing governmental body's adoption of provisions of *Robert's Rules of Order* to govern conduct of meetings).

24 BLACK'S LAW DICTIONARY 72 (9th ed. 2009).

25 *See, e.g.*, *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762, 764 (Tex. 1991).

26 *See* TEX. TRANSP. CODE § 201.054 (providing that Chair of Transportation Commission shall oversee the preparation of an agenda for each meeting).

27 *See* Tex. Att'y Gen. Op. No. DM-473 (1998) at 3 (discussing home-rule city's procedure for agenda preparation).

28 *Id.*

II. Recent Amendments

Below is a brief discussion of the relevant enactments of the 88th Legislature, Regular Session:

A. Section 551.056. Additional Posting Requirements for Certain Municipalities, Counties, School Districts, Junior College Districts, Development Corporations, Authorities, and Joint Boards

House Bill 3440 amends subsection 551.056(b) in two main aspects.[29] First, it requires specified governmental bodies or economic development corporations to post a meeting agenda concurrently with the meeting notice on the entity's website.[30] Second, it adds "a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution" as one of the specified governmental bodies subject to the provision.[31] House Bill 3440 also repeals subsection 551.056(c), which had previously required the concurrent posting of the meeting agenda of only a subset of governmental bodies and economic development corporations based on population.[32] The repeal of subsection 551.056(c) does away with the population limitation such that all of the specified governmental bodies, regardless of population, must post both a meeting notice and a meeting agenda on their internet website. House Bill 3440 takes effect on September 1, 2023.[33]

B. Other Notable Changes[34]

The Legislature adopted legislation that does not amend Government Code chapter 551 but nonetheless implicates open meetings.

House Bill 2800 amends Election Code section 51.002 to require that a meeting of the county election board be held in person and be open to the public.[35] House Bill 2800 also requires the county clerk to post notice of a meeting of the county election board on the county's internet website, if it maintains one, "[n]ot later than 48 hours before each meeting . . . ."[36] House Bill 2800 takes effect on September 1, 2023.[37]

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29 *See* Act of May 28, 2023, 88th Leg., R.S., ch. 855, § 1, 2023 Tex. Sess. Law Serv. 2656 (to be codified at TEX. GOV'T CODE § 551.056(b)).

30 *See id.* (to be codified at TEX. GOV'T CODE § 551.056(b)).

31 *Id.* (to be codified at TEX. GOV'T CODE § 551.056(b)(8)).

32 *See id.* § 2.

33 *See id.* § 4.

34 The Legislature also adopted Senate Bill 335, which amended Human Resources Code chapter 40 to require the Family and Protective Services Council to broadcast its meetings live over the internet and to provide access to the meeting over the internet or to make a recording of the meeting available on its internet website within two days of the meeting. *See* Tex. S.B. 335, 88th Leg., R.S. (2023). However, the bill was vetoed by Governor Abbott. *See* Veto Message of Gov. Abbott, Tex. S.B. 335, 88th Leg., R.S. (2023).

35 *See* Act of May 24, 2023, 88th Leg., R.S., ch. 733, § 1, 2023 Tex. Sess. Law Serv. 1780, 1781 (to be codified at TEX. ELEC. CODE § 51.002(d)).

36 *Id.* (to be codified at TEX. ELEC. CODE § 51.002(e)).

37 *See id.* § 2.

House Bill 4611 relates to the Health and Human Services Commission, Medicaid, and other social services.[38] Relevant to open meetings, House Bill 4611 adds several new chapters to the Government Code, including chapter 522, subchapter E, titled "Public Access to Meetings."[39] It requires the Health and Human Services Commission or a health and human services agency, and their advisory bodies, with certain exceptions, to broadcast live video and audio of each open meeting, to make a video and audio recording of the meeting, and to provide access to the archived video and audio recording on their website not later than seven days after the meeting.[40] The bill also requires the Health and Human Services Commission or a health and human services agency to provide the same notice of an open meeting that is required by the Act on its internet website and to do so in the same time required for posting required by the Act.[41] House Bill 4611 expressly directs the Health and Human Services Commission to consider contracting with a private individual or entity to broadcast and archive the meeting.[42] It also requires the Health and Human Services Commission Executive Council established under Government Code chapter 523 to comply with chapter 522, subchapter E.[43] House Bill 4611 takes effect on April 1, 2025.[44]

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38 *See* Act of May 19, 2023, 88th Leg., R.S., ch. 769, § 1.01, 2023 Tex. Sess. Law Serv. 2015.

39 *See id.* at 2023–24 (to be codified at TEX. GOV'T CODE §§ 522.0201–.0206).

40 *See id.* (to be codified at TEX. GOV'T CODE §§ 522.0202(a), (b), 522.0203(a), (c)); *see also id.* at 2016 (defining "Commission" and "Health and human services agencies") (to be codified at TEX. GOV'T CODE § 521.0001(3), (5)).

41 *See id.* at 2024 (to be codified at TEX. GOV'T CODE § 522.0204).

42 *See id.* (to be codified at TEX. GOV'T CODE § 522.0206).

43 *See id.* at 2031 (to be codified at TEX. GOV'T CODE § 523.0106(c)).

44 *See id.* § 4.02 at 2371.

III. Noteworthy Judicial Decisions Since 2022 *Handbook*

A. Judicial Decisions

In *Pete v. Dunn*, a federal district court clarified that individuals cannot generally assert claims for monetary damages for violations of the Act.[45] The *pro-se* plaintiff, Pete, filed a claim in federal district court that the Beaumont Independent School District's adoption of a mask mandate violated the 1st and 14th Amendments.[46] To these claims, he joined a state-law claim seeking monetary damages from the school board for violating the Act.[47] The court dismissed his Open Meetings Act claim as lacking "facial plausibility" under federal pleading rules.[48] The court added that Pete could not "assert a claim for monetary damages for violations of [the Act]" because the relief provided for by the Act was injunctive.[49] The court concluded the statute which Pete claimed was violated did not allow for damages and his pleading failed to state a claim for which relief could be granted.[50]

In *Hardy v. Carthage Independent School District*, a federal district court ruled on the scope of section 551.146 of the Act, which makes it an offense to knowingly disclose the certified agenda or recording of a closed meeting.[51] Hardy filed an employment discrimination lawsuit against his former employee, the school district.[52] During the deposition of a school board member, the school district's counsel objected to a line of questioning related to discussions between board members at a closed meeting.[53] Counsel advised the board member not to answer questions on the substance of the closed meeting invoking the criminal penalty in section 551.146.[54] The court stated that section 551.146 "is not a blanket prohibition against testifying about conversations occurring in a closed meeting, it merely penalizes disclosure of the certified agenda or recording—nothing more."[55] Noting that the plain language of section 551.146 limits its application to the agenda and recording, the court declined to expand its scope beyond its plain meaning.[56]

In *Burleson v. Collin County Community College District*, the Dallas Court of Appeals considered who constitutes an "interested person" in section 551.142, which sets out who has standing to sue for a violation under the Act.[57] In connection with the plaintiffs' claims, the court had the

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45 *Pete v. Dunn*, No. 1:21-CV-546, 2022 WL 2032306 (E.D. Tex. May 11, 2022).
46 *Id.* at *1.
47 *Id.* at *5–6.
48 *Id.* at 5.
49 *Id.* at 6.
50 *Id.*
51 *Hardy v. Carthage Indep. Sch. Dist.*, No. 2:19-CV-00277, 2022 WL 609151 (E.D. Tex. Mar. 1, 2022).
52 *Id.* at *1.
53 *Id.*
54 *Id.*
55 *Id.*
56 *Id.* at *2 (noting that its interpretation of section 551.146 is "further corroborated by" Attorney General Opinion JM-1071, which construed section 551.146's statutory predecessor to not prohibit persons present at an executive session from afterwards talking about the subject matter of the session).
57 *Burleson v. Collin Cnty. Cmty. Coll. Dist.*, No. 05-21-00088-CV, 2022 WL 17817965 (Tex. App.—Dallas Dec. 20, 2022, no pet. h.) (mem. op.).

opportunity to address disagreement among Texas appellate courts.[58] Noting that only one Texas court requires a plaintiff to allege a particular injury or damage, the court recognized the majority view is that the Act "broadly confers standing on any person who shares an injury in common with the general public."[59] Agreeing with the majority view, the court said "[i]t makes little sense to require a plaintiff to demonstrate an injury distinct from the general public when 'the interest protected by the Open Meetings Act *is* the interest of the general public.'"[60]

In *State ex rel. Durden v. Shahan*, the Texas Supreme Court addressed the scope of "interested person" in section 551.142 of the Act in a different context.[61] Durden filed three separate cases in his official capacity as county attorney on behalf of the State of Texas, two of which involved violations of the Act.[62] He argued that because Government Code subsection 311.005(2), the Code Construction Act, defines "person" to include a "governmental subdivision or agency," that he—acting as county attorney on the state's behalf—qualified as an "interested person" under the Act.[63] The court rejected the argument because he "purported to file the[] suits on behalf of *the state*, not on behalf of a governmental subdivision or agency."[64] The court said it found nothing in the Act or in the Code Construction Act "to support the notion that the state itself qualifies as an 'interested person.'"[65] The Court referred to the Legislature's 2019 amendment of section 551.142, which authorizes the attorney general to bring certain actions related to the enforcement of one of the Act's provisions and observed that such change would have been unnecessary and meaningless if an "interested person" included the state.

In an unpublished opinion, *In re City of Amarillo*, the Amarillo Court of Appeals held a meeting notice failed to substantially comply with the Act.[66] The case involved a taxpayer's suit against the City of Amarillo challenging the city's plan to pay for renovations and expansion of its civic center complex.[67] For context, the city's voters had previously voted against a $275 million bond proposition regarding the civic center complex, and the city was precluded from issuing certificates of obligation to fund the project for three years.[68] The city worked on a plan involving several proposed ordinances to generate $260.525 million by other financing mechanisms not requiring voter approval.[69] The court considered meeting notice issues with respect one of the ordinances.[70] The notice vaguely recited "the discussion and consideration of an ordinance authorizing the issuance of the City of Amarillo, Texas Combination Tax and Revenue Notes, Series 2022A

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58 *Id.* at *9.

59 *Id.* (citing *Dallas Indep. Sch. Dist. v. Peters*, No. 05-14-00759-CV, 2015 WL 8732420, at *9 (Tex. App.—Dallas Dec. 14, 2015, pet. denied) (mem. op.).

60 *Id.* (quoting *Save Our Springs All., Inc. v. Lowry*, 934 S.W.2d 161, 163 (Tex. App.—Austin 1996, orig. proceeding [leave denied]).

61 *State ex rel. Durden v. Shahan*, 658 S.W.3d 300 (Tex. 2022).

62 *Id.* at 302.

63 *Id.* at 303–04.

64 *Id.*

65 *Id.* at 304.

66 *In re City of Amarillo*, No. 07-22-00341-CV, 2023 WL 5279473, at *5 (Tex. App.—Amarillo Aug. 16, 2023, no pet. h.) (mem. op.).

67 *Id.* at *1.

68 *See id.*

69 *See id.*

70 *See id.* at *1–2.

resolving other matters incident and related thereto including the approval of a paying agent/registrar agreement and a purchase contract."[71] Citing two prior Texas Supreme Court cases, the court first considered whether the notice's description of the ordinance required a higher degree of specificity due to any special interest of the public.[72] Then it considered the adequacy of the notice.[73]

In concluding the issue was one of special interest to the public such that the notice required more detail, the court noted that the project had occupied over a decade of the city's time and that the proposed financing "would have an effect to be felt for years to come."[74] The court was particularly troubled by the fact that the issue had been submitted to—and rejected by—the voters less than two years earlier.[75] The court also observed that the notice did not adequately inform the public that the purpose of the alternative financing vehicle was to revive the "previously-voter-rejected civic center project."[76] The court recognized that notice under the Act need not state all the consequences that might flow from an action, but criticized the city's vague description of the financing vehicles and its omission from the notice of the its intent to finance more than a quarter-billion dollars.[77] Lastly, the court noted the notice was "patently incorrect" and misled the public by suggesting that the debt would be secured by a "combination of taxes and revenue" instead of solely by ad valorem taxes as provided by the actual executed ordinance and finance documents.[78]

Lastly, the court also considered and disregarded the city's argument that a citizen's appearance at the city council meeting "refuted" any conclusion that the notice was deficient.[79] The court asked whether attendance by one citizen excused the city's obligations to its other citizens.[80] The court concluded the notice did not substantially comply with the Act and found the ordinance void.[81]

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71 *Id*. at *2.

72 *See id.* at *4–5 (relying on *Cox Enters., Inc. v. Bd. of Trs.,* 706 S.W.2d 956 (Tex. 1986) and *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762, 763 (Tex. 1991)).

73 *See id*. at *5–6.

74 *Id*. at *5.

75 *Id*.

76 *Id*.

77 *See id.* at *6 (disagreeing with the city's position that the Act is satisfied "so long as the notice mentions possible debt issuance of some amount" when the debt was anticipated to be in excess of $260 million).

78 *Id*. at *3, 6.

79 *See id.* at *6.

80 *Id*.

81 *See id.*

IV. Training for Members of Governmental Bodies

Section 551.005 requires each elected or appointed public official who is a member of a governmental body subject to the Act to complete a course of training addressing the member's responsibilities under the Act. The public official must complete the training not later than the 90th day after taking the oath of office, if required to take an oath to assume duties as a member of the governmental body, or after the public official otherwise assumes these duties if the oath is not required.

Completing training as a member of the governmental body satisfies the training requirements for the member's service on a committee or subcommittee of the governmental body and ex officio service on any other governmental body. The training may also be used to satisfy any corresponding training requirements concerning the Act that another law requires members of a governmental body to complete. The failure of one or more members of a governmental body to complete the training does not affect the validity of an action taken by the governmental body.

The attorney general is required to ensure that the training is made available, and the attorney general's office may provide the training and may approve any acceptable training course offered by a governmental body or other entity. The attorney general must also ensure that at least one course approved or provided by the attorney general's office is available at no cost on videotape, DVD, or a similar and widely available medium.[82]

The training course must be at least one and no more than two hours long and must include instruction on the following subjects:

(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;

(5) penalties and other consequences for failure to comply with this chapter.[83]

The entity providing the training shall provide a certificate of completion to public officials who complete the training course. A governmental body shall maintain and make available for public inspection the record of its members' completion of training. A certificate of course completion is

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[82] An Open Meetings Act training video is available online at https://www.texasattorneygeneral.gov/open-government/open-meetings-act-training.

[83] In its review of Open Meetings Act training materials submitted for approval, the Office of the Attorney General considers whether the written materials demonstrate that each subject is accurately and sufficiently covered. Materials may be submitted for review at https://www.texasattorneygeneral.gov/open-government/online-training-application-approval.

admissible as evidence in a criminal prosecution under the Act, but evidence that a defendant completed a training course under this section is not *prima facie* evidence that the defendant knowingly violated the Act.

V. Governmental Bodies

A. Definition

Section 551.002 of the Government Code provides that "[e]very regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter."[84] "Governmental body" is defined by subsection 551.001(3) as follows:

"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;[85] 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;

(L) a joint board created under Section 22.074, Transportation Code; and

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84 TEX. GOV'T CODE § 551.002. An agency financed entirely by federal money is not required by the Act to conduct an open meeting. *Id.* § 551.077.

85 *See* 42 U.S.C.A. §§ 9901–26 (Community Services Block Grant Program).

(M) a board of directors of a reinvestment zone created under Chapter 311, Tax Code.

Section 551.0015 provides that certain property owners' associations 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 are subject to the Act in the same manner as a governmental body.[86]

B. State-Level Governmental Bodies

Subsection 551.001(3)(A), the definition of "governmental body" applicable to state-level entities, does not name specific entities but instead sets out a general description of such entities. Thus, a state-level entity will be a governmental body within the Act if it is "within the executive or legislative branch of state government" and under the direction of "one or more elected or appointed members."[87] Moreover, it must have supervision or control over public business or policy.[88] A university auxiliary enterprise was a governmental body under the Act because (1) as an auxiliary enterprise of a state university, it was part of the executive branch of state government; (2) a board of directors elected by its membership controlled the entity, formulated policy, and operated the organization; (3) the board acted by vote of a quorum; (4) the board's business concerned public education and involved spending public funds; and (5) the university exerted little control over the auxiliary enterprise.[89] In contrast, an advisory committee without control or supervision over public business or policy is not subject to the Act, even though its membership includes some members, but less than a quorum, of a governmental body.[90] *See Handbook* Part V.E.

The subsection 551.001(3)(A) definition of "governmental body" includes only entities within the executive and legislative departments of the State. It therefore excludes the judiciary from the Act.[91]

Other entities are excluded from the Act or from some parts of the Act by statutes other than chapter 551. For instance, the Texas HIV Medication Advisory Committee is expressly excluded from the

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86 TEX. GOV'T CODE § 551.0015; *but see* TEX. PROP. CODE § 209.0051(c) (requiring that regular and special board meetings of property owner associations not otherwise subject to chapter 551 be open to the owners), 209.0051(b)(1) (defining "board meeting" as "a deliberation between a quorum of the voting board of the property owners' association, or between a quorum of the voting board and another person, during which property owners' association business is considered and the board takes formal action").

87 TEX. GOV'T CODE § 551.001(3)(A); *see id.* § 551.003.

88 *Id*. § 551.001(4) (definition of "meeting"); *Beasley v. Molett*, 95 S.W.3d 590, 606 (Tex. App.—Beaumont 2002, pet. denied); Tex. Att'y Gen. Op. No. GA-0019 (2003) at 5.

89 *Gulf Reg'l Educ. Television Affiliates v. Univ. of Houston*, 746 S.W.2d 803, 809 (Tex. App.—Houston [14th Dist.] 1988, writ denied); Tex. Att'y Gen. Op. No. H-438 (1974) at 4 (concluding that Athletic Council of The University of Texas, as governmental body that supervises public business, must comply with the Act).

90 Tex. Att'y Gen. Op. Nos. JM-331 (1985) at 3 (concluding that citizens advisory panel of Office of Public Utility Counsel, with no power to supervise or control public business, is not governmental body), H-994 (1977) at 2–3 (concluding that committee appointed to study process of choosing university president and make recommendations to Board of Regents not subject to the Act).

91 *See* Tex. Att'y Gen. Op. No. JM-740 (1987) at 4 (concluding that meetings of district judges to choose county auditor is not subject to the Act).

definition of "governmental body" but still must hold its open meetings in compliance with chapter 551, "except that the provisions allowing executive sessions do not apply to the committee."[92]

C. Local Governmental Bodies

Subsection 551.001(3)(B) through (M) lists a number of specific types of local governmental bodies. These include a county commissioners court, a municipal governing body and the board of trustees of a school district.

Subsection 551.001(3)(D) describes another kind of local 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 or municipality.[93] An inquiry into a local entity's powers and relationship to the city or county government is necessary to determine whether it is a governmental body under subsection 551.001(3)(D).

A judicial decision guides us in applying subsection 551.001(3)(D) to particular entities. The court in *City of Austin v. Evans*[94] analyzed the powers of a city grievance committee and determined it was not a governmental body within this provision. The court stated that the committee had no authority to make rules governing personnel disciplinary standards or actions or to change the rules on disciplinary actions or complaints.[95] It could only make recommendations and could not adjudicate cases. The committee did not possess quasi-judicial power, described as including the following:

(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.[96]

An entity did not need all of these powers to be considered quasi-judicial, but the more of those powers it had, the more clearly it was quasi-judicial in the exercise of its powers.[97]

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92 TEX. HEALTH & SAFETY CODE § 85.276(d).
93 TEX. GOV'T CODE § 551.001(3)(D).
94 *City of Austin v. Evans*, 794 S.W.2d 78, 83 (Tex. App.—Austin 1990, no writ).
95 *Id.*
96 *Id.* (emphasis omitted); *see also Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353, 360 (Tex. App.—Waco 1998, pet. denied).
97 *City of Austin*, 794 S.W.2d at 83.

The court in *Fiske v. City of Dallas*[98] concluded that a citizens group set up to advise the city council as to persons qualified to serve as municipal judges was not a governmental body within the Act because it was not part of the city council or a committee of the city council, and it had no rulemaking power or quasi-judicial power.[99]

In contrast, Attorney General Opinion DM-426 (1996) concluded that a municipal housing authority created under chapter 392 of the Local Government Code was a governmental body subject to the Act.[100] It was "a department, agency, or political subdivision of a . . . municipality" as well as "a deliberative body that has rule-making or quasi-judicial power" within section 551.001(3)(D) of the Act.[101] Attorney General Opinion DM-426 concluded on similar grounds that a county housing authority was a governmental body.[102]

Subsection 551.001(3)(H) provides "the governing board of a special district created by law"[103] is a governmental body. This office has concluded that a hospital district[104] and the Dallas Area Rapid Transit Authority[105] are special districts.

Sierra Club v. Austin Transportation Study Policy Advisory Committee[106] is the only judicial decision that has addressed the meaning of "special district" in the Act. The court in *Sierra Club* decided that the Austin Transportation Study Policy Advisory Committee (ATSPAC) was a "special district" within the Act. The committee, a metropolitan planning organization that engaged in transportation planning under federal law, consisted of state, county, regional and municipal public officials. Its decisions as to transportation planning within a five-county area were used by federal agencies to determine funding for local highway projects. Although such committees did not exist when the Act was adopted in 1967, the court compared ATSPAC's functions to those of a "governmental body" and concluded that the committee was the kind of body that the Act should govern.[107] The court relied on the following definition of special district:

> a limited governmental structure created to bypass normal borrowing limitations, to insulate certain activities from traditional political influence, to allocate functions to entities reflecting particular expertise, to provide services in otherwise

98 *Fiske v. City of Dallas*, 220 S.W.3d 547, 551 (Tex. App.—Texarkana 2007, no pet.).

99 *See id.*; *see also* Tex. Att'y Gen. Op. No. GA-0361 (2005) at 5–7 (concluding that a county election commission is not a deliberative body with rulemaking or quasi-judicial powers).

100 Tex. Att'y Gen. Op. No. DM-426 (1996) at 2.

101 *Id.* at 2.

102 *Id.*; *see also* Tex. Att'y Gen. Op. Nos. JC-0327 (2001) at 2 (concluding that board of the Bryan-College Station Economic Development Corporation did not act in a quasi-judicial capacity or have rulemaking power), H-467 (1974) at 3 (concluding that city library board, a department of the city, did not act in a quasi-judicial capacity or have rulemaking power).

103 TEX. GOV'T CODE § 551.001(3)(H).

104 *See* Tex. Att'y Gen. Op. No. H-238 (1974) at 2.

105 *See* Tex. Att'y Gen. Op. No. JM-595 (1986) at 2.

106 *Sierra Club v. Austin Transp. Study Pol'y Advisory Comm.*, 746 S.W.2d 298, 301 (Tex. App.—Austin 1988, writ denied).

107 *Id.* at 300–01.

> unincorporated areas, or to accomplish a primarily local benefit or improvement, *e.g.*, parks and planning mosquito control, sewage removal.[108]

Relying on the *Sierra Club* case, this office has concluded that a committee of judges meeting to participate in managing a community supervision and corrections department is a "special district" subject to the Act.[109] It also relied on *Sierra Club* to decide that the Act applied to the Border Health Institute, a consortium of public and private entities established to assist the work of health-related institutions in the Texas-Mexico border region.[110] It determined that other governmental entities, such as a county committee on aging created under the Non-Profit Corporation Act, were not "special districts."[111]

D. Committees and Subcommittees of Governmental Bodies

Generally, meetings of less than a quorum of a governmental body are not subject to the Act.[112] However, when a governmental body appoints a committee that includes less than a quorum of the parent body and grants it authority to supervise or control public business or public policy, the committee may itself be a "governmental body" subject to the Act.[113] In *Willmann v. City of San Antonio*,[114] the city council established a subcommittee consisting of less than a quorum of council members and charged it with recommending the appointment and reappointment of municipal judges.[115] The appellate court, reviewing the conclusion on summary judgment that the committee was not subject to the Act, stated that 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."[116] Because the evidence indicated that the subcommittee actually made final decisions and the city council merely "rubber stamped" them, the appellate court reversed the summary judgment as to the Open Meetings Act issue.[117]

Attorney General Opinion GA-0957 recently concluded that if a quorum of a governmental body attends a meeting of a committee of the governmental body at which a deliberation as defined by

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108 *Id.* at 301 (quoting BLACK'S LAW DICTIONARY 1253 (5th ed. 1986)).

109 *See* Tex. Att'y Gen. Op. No. DM-395 (1996) at 3–4; *but see* Tex. Att'y Gen. Op. No. KP-0038 (2015) at 2 (acknowledging statutory changes to judges' managerial authority modified conclusion in DM-395).

110 *See* Tex. Att'y Gen. Op. No. GA-0280 (2004) at 8–9; *see also* Tex. Att'y Gen. Op. No. DM-426 (1996) at 4 (concluding that regional housing authority created under chapter 392 of the Local Government Code is special district within the Act).

111 *See* Tex. Att'y Gen. Op. No. DM-7 (1991) at 2–3; *see also* Tex. Att'y Gen. Op. No. JC-0160 (1999) at 3 (concluding that *ad hoc* intergovernmental working group of employees is not a "special district" within the Act).

112 *See Hays Cnty. v. Hays Cnty. Water Plan. P'ship*, 106 S.W.3d 349, 356 (Tex. App.—Austin 2003, no pet.); Tex. Att'y Gen. Op. No. JC-0407 (2001) at 9.

113 Tex. Att'y Gen. Op. Nos. JC-0060 (1999) at 2, JC-0053 (1999) at 3; Tex. Att'y Gen. LO-97-058 (1997) at 2–5; LO-97-017 (1997) at 5.

114 *Willmann v. City of San Antonio*, 123 S.W.3d 469 (Tex. App.—San Antonio 2003, pet. denied).

115 *See id.* at 471–72.

116 *Id.* at 478.

117 *See id.* at 480; *see also Finlan v. City of Dallas*, 888 F. Supp. 779, 785 (N.D. Tex. 1995) (noting concern that danger exists that full council is merely a "rubber stamp" of committee); Tex. Att'y Gen. Op. Nos. JC-0060 (1999) at 3, H-823 (1976) at 2, H-438 (1974) at 3 (discussing "rubber stamping" of committee and subcommittee decisions).

the Act takes place, the committee meeting will constitute a meeting of the governmental body.[118] Yet, in at least one statute, the Legislature has expressly provided that a committee of a board "where less than a quorum of any one board is present is not subject to the provisions of the open meetings law."[119]

E. Advisory Bodies

An advisory committee that does not control or supervise public business or policy is not subject to the Act,[120] even though its membership includes some members, but less than a quorum, of a governmental body.[121] For example, the multidisciplinary team established to review offenders' records under the Commitment of Sexually Violent Predators Act was not subject to the Act.[122] The team made an initial assessment of certain offenders to determine whether they should be subject to further evaluation for civil commitment. Subsequent assessments by other persons determined whether commitment proceedings should be filed. Thus, the team lacked ultimate supervision or control over public business or policy.[123]

However, if a governmental body that has established an advisory committee routinely adopts or "rubber stamps" the advisory committee's recommendations, the committee probably will be considered to be a governmental body subject to the Act.[124] Thus, the fact that a committee is called an advisory committee does not necessarily mean it is excepted from the Act.

The Legislature has adopted statutes providing that particular advisory committees are subject to the Act, including a board or commission established by a municipality to assist it in developing a zoning plan or zoning regulations,[125] the nursing advisory committee established by the statewide health coordinating council,[126] advisory committees for existing Boll Weevil Eradication zones appointed by the commissioner of the Official Cotton Growers' Boll Weevil Eradication Foundation,[127] and an education research center advisory board.[128]

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118 *See* Tex. Att'y Gen. Op. No. GA-0957 (2012) at 2–3.

119 TEX. WATER CODE § 49.064 (applicable to general law water districts); *see also Tarrant Reg'l Water Dist. v. Bennett*, 453 S.W.3d 51, 58 (Tex. App.—Fort Worth 2014, pet. denied) (discussing Water Code section 49.064 in relation to the Act and questioning previous attorney general opinions' conclusions that an advisory committee could be subject to the Act as a governmental body).

120 *See* Tex. Att'y Gen. Op. No. GA-0232 (2004) at 3–5 (concluding that student fee advisory committee established under Education Code section 54.5031 is not subject to the Act).

121 Tex. Att'y Gen. Op. Nos. JM-331 (1985) at 3 (concluding that citizens advisory panel of Office of Public Utility Counsel, with no power to supervise or control public business, is not governmental body), H-994 (1977) at 3 (discussing fact question as to whether committee appointed to study process of choosing university president and make recommendations to Board of Regents is subject to the Act).

122 *See Beasley*, 95 S.W.3d at 606.

123 *Id.*

124 Tex. Att'y Gen. Op. Nos. H-467 (1974) at 3–4, H-438 (1974) at 3.

125 TEX. LOC. GOV'T CODE § 211.0075.

126 TEX. HEALTH & SAFETY CODE § 104.0155(e).

127 TEX. AGRIC. CODE § 74.1041(e).

128 TEX. EDUC. CODE § 1.006(b).

F. Public and Private Entities That Are Not Governmental Bodies

Nonprofit corporations established to carry out governmental business generally are not subject to the Act because they are not within the Act's definition of "governmental body."[129] A nonprofit created under the Texas Nonprofit Corporation Act to provide services to a county's senior citizens was not a governmental body because it was not a governmental structure, and it had no power to supervise or control public business.[130]

However, the Act itself provides that certain nonprofit corporations are governmental bodies.[131] Other statutes provide that specific kinds of nonprofit corporations are subject to the Act, such as development corporations created under the Development Corporation Act of 1979[132] and the governing body of an open-enrollment charter school, which may be a private school or a nonprofit entity.[133] If a nonprofit corporation provides in its articles of incorporation or bylaws that its board of directors will conduct meetings in accord with the Act, then the board must do so.[134]

A private entity does not become a governmental body within the Act merely because it receives public funds.[135] A city chamber of commerce, a private entity, is not a governmental body within the Act although it receives public funds.[136]

G. Legislature

There is very little authority on section 551.003. A 1974 attorney general letter advisory discussed its connection with Texas Constitution article III, section 11, which provides in part that "[e]ach House may determine the rules of its own proceedings . . . ."[137] The letter advisory raised the possibility that the predecessor of section 551.003 is unconstitutional to the extent of conflict with Texas Constitution article III, section 11, stating that "neither House may infringe upon or limit the present or future right of the other to adopt its own rules."[138] However, it did not address the constitutional issue, describing the predecessor to Government Code section 551.003 as an exercise of rulemaking power for the 1973–74 legislative sessions.[139]

The Texas Supreme Court addressed Government Code section 551.003 in a 2000 case challenging the Senate's election by secret ballot of a senator to perform the duties of lieutenant governor.[140] Members of the media contended that the Act prohibited the Senate from voting by secret ballot.[141]

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129 TEX. GOV'T CODE § 551.001(3); *cf. id.* § 552.003(1)(A)(xi) (including certain nonprofit corporations in definition of "governmental body" for purposes of the Public Information Act).
130 Tex. Att'y Gen. Op. No. DM-7 (1991) at 3.
131 TEX. GOV'T CODE § 551.001(3)(J)–(K).
132 TEX. LOC. GOV'T CODE § 501.072.
133 TEX. EDUC. CODE § 12.1051.
134 Tex. Att'y Gen. LO-96-146 (1996) at 5.
135 Tex. Att'y Gen. LO-98-040 (1998) at 2.
136 Tex. Att'y Gen. LO-93-055 (1993) at 3.
137 Tex. Att'y Gen. LA-84 (1974) at 2.
138 *Id.*
139 *See id.*
140 *In re The Tex. Senate*, 36 S.W.3d 119 (Tex. 2000).
141 *See id.* at 119.

The Supreme Court stated that section 551.003 "clearly covers the Committee of the Whole Senate. Thus, its meeting and votes cannot be secret 'except as specifically provided' by the Texas Constitution."[142] The court then determined that Texas Constitution article III, section 41, which authorizes the Senate to elect its officers by secret ballot, provided an exception to section 551.003.[143]

More recently, the attorney general recognized in Opinion KP-0347 that pursuant to article III, section 11, "House and Senate rules supersede any contradictory procedural requirements for the Legislature found in the Texas Open Meetings Act or other state law."[144]

142 *Id.* at 120.
143 *See id.*
144 Tex. Att'y Gen. Op. No. KP-0347 (2021) at 2; *see* TEX. CONST. art. III, § 11.

VI. Meetings

A. Definitions

The Act applies to a governmental body, as defined by subsection 551.001(3), when it engages in a "regular, special, or called meeting."[145] Informal meetings of a quorum of members of a governmental body are also subject to the Act.[146]

"Deliberation," a key term for understanding the Act, is defined as follows:

> "Deliberation" means a verbal or written exchange 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.[147]

"Deliberation" and "discussion" are synonymous for purposes of the Act.[148] And since 2019, the definition of "deliberation" includes written materials.[149]

The Act includes two definitions of "meeting."[150] Subsection 551.001(4)(A) uses the term "deliberation" to define "meeting":

> (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 . . . .[151]

B. Deliberations Among a Quorum of a Governmental Body or Between a Quorum and a Third Party

The following test has been applied to determine when a discussion among members of a statewide governmental entity is a "meeting" as defined by subsection 551.001(4)(A):

(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.

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145 TEX. GOV'T CODE § 551.002.

146 *Acker v. Tex. Water Comm'n*, 790 S.W.2d 299, 300 (Tex. 1990) (considering meeting in restroom of two members of three-person board); *Bexar Medina Atascosa Water Dist. v. Bexar Medina Atascosa Landowners' Ass'n*, 2 S.W.3d 459, 460–61 (Tex. App.—San Antonio 1999, pet. denied) (considering "informational gathering" of water district board with landowners in board member's barn).

147 TEX. GOV'T CODE § 551.001(2).

148 *Bexar Medina Atascosa Water Dist.*, 2 S.W.3d at 461.

149 *See* TEX. GOV'T CODE § 551.001(2).

150 Tex. Att'y Gen. Op. Nos. GA-0896 (2011) at 2, JC-0307 (2000) at 5, DM-95 (1992) at 5.

151 TEX. GOV'T CODE § 551.001(4)(A).

(3) The meeting must involve formal action or deliberation between a quorum of members.[152]

(4) The discussion or action must involve public business or public policy.

(5) The entity must have supervision or control over that public business or policy.[153]

Statewide governmental bodies that have supervision or control over public business or policy are subject to the Act, and so are the local governmental bodies expressly named in the definition of "governmental body."[154] In contrast, a group of public officers and employees in a county who met to share information about jail conditions did not supervise or control public business or public policy and thus was not subject to the Act.[155] A purely advisory body, which has no authority over public business or policy, is not subject to the Act,[156] unless a governmental body routinely adopts or "rubber stamps" the recommendations of the advisory body.[157] *See* Part V.E.

C. Gathering at Which a Quorum Receives Information from or Provides Information to a Third Party

Subsection 551.001(4)(B) defines "meeting" as follows:

> (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.

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152 Deliberation between a quorum and a third party now satisfies this part of the test. *See id.* § 551.001(2).

153 *Gulf Reg'l Educ. Television Affiliates v. Univ. of Houston*, 746 S.W.2d 803, 809 (Tex. App.—Houston [14th Dist.] 1988, writ denied) (citing Attorney General Opinion H-772 (1976)); *see also* Tex. Att'y Gen. Op. No. GA-0232 (2004) at 3–5 (relying on quoted test to determine that student fee advisory committee established under Education Code section 54.5031 is not subject to the Act).

154 *See* TEX. GOV'T CODE § 551.001(3).

155 *See* Tex. Att'y Gen. Op. No. GA-0504 (2007) at 3.

156 Tex. Att'y Gen. Op. Nos. H-994 (1977) at 2 (concluding that committee appointed to study process of choosing university president and to make recommendations to Board of Regents likely is not subject to the Act), H-772 (1976) at 6 (concluding that meeting of group of employees, such as general faculty of university, is not subject to the Act), H-467 (1974) at 3 (concluding that city library board, which is advisory only, is not subject to the Act).

157 Tex. Att'y Gen. Op. Nos. H-467 (1974) at 4, H-438 (1974) at 3–4.

> 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, press conference, or the attendance by a quorum of a governmental body at a candidate forum, appearance, or debate to inform the electorate, if formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event, press conference, forum, appearance, or debate.
>
> The term includes a session of a governmental body.[158]

Subsection 551.001(4)(A) applies when a quorum of a governmental body engages in deliberations, either among the members of the quorum or between the quorum and a third party.[159] Subsection 551.001(4)(B) reaches gatherings of a quorum of a governmental body even when the members of the quorum do not participate in deliberations among themselves or with third parties.[160] Under the circumstances described by subsection 551.001(4)(B), the governmental body may be subject to the Act when it merely listens to a third party speak at a gathering the governmental body conducts or for which the governmental body is responsible.[161]

D. Informal or Social Meetings

When a quorum of the members of a governmental body assembles in an informal setting, such as a social occasion, it will be subject to the requirements of the Act if the members engage in a verbal exchange about public business or policy. The Act's definition of a meeting expressly excludes gatherings of a "quorum of a governmental body at a social function unrelated to the public business that is conducted by the body[.]"[162] The definition also excludes from its reach the attendance by a quorum at certain other events such as a regional, state or national convention or workshop, ceremonial events, press conferences, and a candidate forum, appearance, or debate to inform the electorate.[163] In both instances, there is no "meeting" under the Act "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[.]"[164]

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158 TEX. GOV'T CODE § 551.001(4)(B).

159 *Id.* § 551.001(4)(A); *but see* Tex. Att'y Gen. Op. No. GA-0989 (2013) at 2 (concluding that a private consultation between a member of a governmental body and an employee that does not take place within the hearing of a quorum of other members does not constitute a meeting under subsection 551.001(4)).

160 *Cf.* Tex. Att'y Gen. Op. Nos. JC-0248 (2000) at 2 (concluding that quorum of state agency board may testify at public hearing conducted by another agency), JC-0203 (2000) at 4 (concluding that quorum of members of standing committee of hospital district may attend public speech and comment on matters of hospital district business within supervision of committee).

161 Tex. Att'y Gen. Op. No. JC-2000) at 3–4 (discussing the Act's application when quorum of governmental body listens to members of the public in a session commonly known as a "public comment" session, "public forum" or "open mike" session).

162 TEX. GOV'T CODE § 551.001(4)(B).

163 *See id.*

164 *Id.* (emphasis added).

E. Discussions Among a Quorum through a Series of Communications

On occasion, a governmental body has tried to avoid complying with the Act by deliberating about public business without a quorum being physically present in one place and claiming that this was not a "meeting" within the Act.[165] Conducting secret deliberations and voting over the telephone, when no statute authorized this, was one such method.[166]

Section 551.143 as originally written prohibited machinations to avoid complying with the Act by criminalizing multiple meetings in numbers less than a quorum to "conspire to circumvent the Act." One example of such a so-called walking quorum was described by *Esperanza Peace and Justice Center v. City of San Antonio*.[167]

Amended section 551.143 now prohibits discussion about an item of public business among a quorum of a governmental body through a series of communications. Section 551.143 provides that it is a criminal offense for a member of a governmental body to knowingly engage "in at least one communication among a series of communications that each occur outside of a meeting" and that "concern an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constitute fewer than a quorum of members but the members engaging in the series of communications constitute a quorum of members[.]"[168] The member must know at the time he or she engaged in the communication that the series of communications "involved or would involve a quorum" and would "constitute a deliberation once a quorum of members engaged in the series of communications."[169]

Section 551.006 authorizes members of a governmental body to communicate through an online message board or similar internet application.[170] A governmental body utilizing an electronic message board may have only one such board and it can be used by only members of the governmental body and their authorized staff.[171] The online message board must be prominently displayed on the governmental body's primary internet web page and no more than one click away from that page.[172] A governmental body that removes a communication from the online message board that has been posted for at least 30 days must maintain the posting for a period of six years, and the communication is public information under the Public Information Act.[173] Most importantly, a governmental body may not vote or take any action by communication on an online message board.[174]

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165 One court of appeals stated that "[o]ne board member asking another board member her opinion on a matter does not constitute a deliberation of public business." *Foreman v. Whitty*, 392 S.W.3d 265, 277 (Tex. App.—San Antonio 2012, no pet.).

166 *See Hitt v. Mabry*, 687 S.W.2d 791, 793, 796 (Tex. App.—San Antonio 1985, no writ).

167 *Esperanza Peace & Just. Ctr. v. City of San Antonio*, 316 F. Supp. 2d. 433 (W.D. Tex. 2001).

168 *See* TEX. GOV'T CODE § 551.143(a)(1).

169 *Id.* § 551.143(a)(2).

170 *Id.* § 551.006.

171 *Id.* § 551.006(b), (c) (providing that a posting by a staff member must include the staff member's name and title).

172 *Id.* § 551.006(b).

173 *Id.* § 551.006(d).

174 *Id.* § 551.006(e).

F. Meetings Using Telephone, Videoconference, and the Internet

A governmental body may not conduct meetings subject to the Act by telephone or videoconference unless a statute expressly authorizes it to do so.[175]

1. Telephone Meetings

The Act authorizes governmental bodies to conduct meetings by telephone conference call under limited circumstances and subject to procedures that may include special requirements for notice, record-keeping and two-way communication between meeting locations.[176]

A governmental body may hold an open or closed meeting by telephone conference call 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.[177]

The emergency telephone meeting is subject to the notice requirements applicable to other meetings held under the Act. The open portions of the meeting are required to be audible to the public at the location specified in the notice and must be recorded. The provision also requires the location of the meeting to be set up to provide two-way communication during the entire conference call and the identity of each party to the conference call to be clearly stated prior to speaking.[178]

The Act authorizes the governing board of an institution of higher education, water districts whose territory includes land in three or more counties, the Board for Lease of University Lands, or the Texas Higher Education Coordinating Board to meet by telephone conference call if the meeting is a special called meeting, immediate action is required, and it is difficult or impossible to convene a quorum at one location.[179] The Texas Board of Criminal Justice may hold an emergency meeting by telephone conference call,[180] and, at the call of its presiding officer, the Board of Pardons and Paroles may hold a hearing on clemency matters by telephone conference call.[181] The Act permits

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175 *See generally Hitt*, 687 S.W.2d at 796; *Elizondo v. Williams*, 643 S.W.2d 765, 766–67 (Tex. App.—San Antonio 1982, no writ) (telephone meetings); Tex. Att'y Gen. Op. No. DM-207 (1993) at 3 (videoconference meeting); *but see Harris Cnty. Emergency Serv. Dist. No. 1 v. Harris Cnty. Emergency Corps.*, 999 S.W.2d 163, 169 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (concluding that telephone discussion by fewer than a quorum of board members about placing items on the agenda, without evidence of intent, did not violate the Act.

176 TEX. GOV'T CODE §§ 551.121–.126, .129–.131 (authorizing meetings by telephone conference call under specified circumstances).

177 *Id.* § 551.125(b); *see* Tex. Att'y Gen. Op. No. GA-0379 (2005) at 2–3 (addressing Government Code subsection 551.125(b)(3)).

178 TEX. GOV'T CODE § 551.125(b)–(f).

179 *Id.* § 551.121(c).

180 *Id.* § 551.123.

181 *Id.* § 551.124.

the board of trustees of the Teacher Retirement System to hold an open or closed meeting by telephone conference call if a quorum of the board is present at one location and other requirements of the Act are followed.[182]

Section 551.091 authorizes certain county commissioners courts to hold an "open or closed meeting, including a telephone conference call, solely to deliberate about disaster or emergency conditions and related public safety matters that require an immediate response without complying with the requirements" of chapter 551.[183] The commissioners court must be in a county "for which the governor has issued an executive order or proclamation declaring a state of disaster or emergency" and "in which transportation to the meeting location is dangerous or difficult as a result of the disaster or emergency."[184]

Statutes other than the Act authorize some governing bodies to meet by telephone conference call under limited circumstances. For example, if the joint chairs of the Legislative Budget Board are physically present at a meeting, and the meeting is held in Austin, any number of the other board members may attend by use of telephone conference call, videoconference call, or other similar telecommunication device.[185]

A governmental body may consult with its attorney by telephone conference call, videoconference call or communications over the internet, unless the attorney is an employee of the governmental body.[186] If the governmental body deducts employment taxes from the attorney's compensation, the attorney is an employee of the governmental body.[187] The restriction against remote communications with an employee attorney does not apply to the governing board of an institution of higher education or the Texas Higher Education Coordinating Board.[188]

2. Videoconference Call Meetings

The Act also authorizes governmental bodies to conduct meetings by videoconference call and, unlike with telephone meetings, does not limit that authority to emergency circumstances.[189] Section 551.127 authorizes a member or employee of a governmental body to participate remotely in a meeting of the governmental body through a videoconference call if there is live video and

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182 *Id.* § 551.130.

183 *Id.* § 551.091(b). Section 551.091 expires on September 1, 2027. *See id.* § 551.091(e).

184 *Id.* § 551.091(a).

185 TEX. GOV'T CODE § 322.003(d); *see also* TEX. AGRIC. CODE §§ 41.205(b) (Texas Grain Producer Indemnity Board), 62.0021(a) (State Seed and Plant Board); TEX. FIN. CODE § 11.106(c) (Finance Commission); TEX. GOV'T CODE §§ 501.139(b) (Correctional Managed Health Care Committee), 436.054 (Texas Military Preparedness Commission).

186 TEX. GOV'T CODE § 551.129(a), (d).

187 *Id.* § 551.129(e).

188 *Id.* § 551.129(f).

189 *Id.* § 551.127.

audio feed of the remote participant that is broadcast live at the meeting and the feed complies with the other provisions of section 551.127.[190]

As a preliminary matter, a meeting held by videoconference call must meet the regular notice requirements of the Act.[191] In addition, section 551.127 authorizes two logistical scenarios depending on the territorial jurisdiction of the governmental body and requires that the notice specify a particular location of the meeting and who will be physically present there, as follows:

A state governmental body or a governmental body that extends into three or more counties may meet by videoconference call only if the member of the governmental body presiding over the meeting is physically present at one location of the meeting.[192] The notice must specify that location, which must be open to the public during the open portions of the meeting, as well as state the intent to have the member of the governmental body presiding over the meeting present there.[193]

For all other governmental bodies, the Act authorizes a meeting by videoconference call only if a full quorum of the governmental body is physically present at one location of the meeting.[194] In that instance, the notice must specify that location, as well as the intent to have a quorum present there.[195]

The location where the presiding member is physically present must be open to the public during the open portions of the meeting.[196]

Beyond notice and location, the Act specifies certain technical requirements. The meeting location where the quorum or presiding member is present as well as each remote location from which a member participates "shall have two-way audio and video communication with each other location during the entire meeting."[197] The Act requires that, while speaking, each participant's face must be clearly visible and the voice audible to each other participant and to the members of the public in attendance at the location where the quorum or presiding member is present and any other location of the meeting that is open to the public.[198] The Act additionally requires that each open portion of the meeting is to be visible and audible to the public at the meeting location where the

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190 *Id.* § 551.127(a-1); *see id.* § 551.127(a) ("[T]his chapter does not prohibit a governmental body from holding an open or closed meeting by videoconference call."). Subsection 81.001(b) of the Local Government Code, which provides that the county judge, if present, is the presiding officer of the county commissioners court, does not apply to a meeting held by videoconference. *See* TEX. LOC. GOV'T CODE § 81.001(b). The subsection ensures that a county judge may remotely participate in a videoconference meeting while another member of the commissioners court presides over the meeting at the physical location accessible to the public.

191 TEX. GOV'T CODE § 551.127(d).

192 *Id.* § 551.127(c).

193 *Id.* § 551.127(e).

194 *Id.* § 551.127(b).

195 *Id.* § 551.127(e).

196 *Id.*

197 *Id.* § 551.127(h). "The audio and video signals perceptible by members of the public at each location of the meeting described by Subsection (h) must be of sufficient quality so that members of the public at each location can observe the demeanor and hear the voice of each participant in the open portion of the meeting." *Id.* § 551.127(j).

198 *Id.* § 551.127(h).

quorum or presiding member is present and that at any time that the meeting is no longer visible and audible to the public, the meeting must be recessed until the problem is resolved.[199] The meeting must be adjourned if the problem is not resolved in six hours.[200] The Act tasks the Department of Information Resources to specify minimum standards for the audio and video signals required at a videoconference meeting and the quality of the signals at each location of the meeting must meet or exceed those standards.[201]

Generally speaking, a remote participant "shall be counted as present at the meeting for all purposes."[202] However, if the audio or video communication is lost for any portion of the meeting, the remote participant is considered absent during that time.[203] Should this occur, the governmental body may continue the meeting only as follows: (1) If the meeting is being held by a statewide body or one that extends into three or more counties, there must continue to be a quorum participating in the meeting. (2) If the meeting is held by another governmental body, a full quorum must remain physically present at the meeting location.[204]

Section 551.127 also requires the governmental body to "make at least an audio recording of the meeting" and to make the recording available to the public.[205] And section 551.127 expressly permits a governmental body to allow a member of the public to testify at a meeting from a remote location by videoconference call.[206]

Relating to certain special districts subject to specific chapters of the Water Code and with a population of 500 or more, subsection 551.1283(e) provides that "[n]othing in this chapter shall prohibit a district from allowing a person to watch or listen to a board meeting by video or telephone conference call."[207]

3. Meetings Broadcast over the Internet

Section 551.128 of the Act provides that with certain exceptions a governmental body has discretion to broadcast an open meeting over the internet and sets out the requirements for a broadcast.[208] The exceptions referred to in section 551.128(b-1) make the broadcast of open meetings over the internet mandatory for a transit authority or department, an elected school district board of trustees for a school district with a student enrollment of 10,000 or more, an elected governing body of a home-rule municipality that has a population of 50,000 or more, and a county commissioners court in a county with a population of 125,000 or more.[209]

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199 *See id.* § 551.127(f).
200 *Id.*
201 *Id.* § 551.127(i); *see* 1 TEX. ADMIN. CODE §§ 209.1–.33 (Tex. Dept. of Info. Res., Minimum Standards for Meetings Held by Videoconference). The Department of Information Resources has published guidelines at https://pubext.dir.texas.gov/portal/internal/resources/DocumentLibrary/Videoconferencing%20Guidelines.pdf.
202 *See* TEX. GOV'T CODE § 551.127(a-2).
203 *See id.* § 551.127(a-3).
204 *See id.*
205 *Id.* § 551.127(g).
206 *See id.* § 551.127(k).
207 *See id.* § 551.1283(e).
208 *Id.* § 551.128(b).
209 *Id.* § 551.128(b-1).

A governmental body required to broadcast its open meetings over the internet under section 551.128(b-1) must make a video and audio recording of "each regularly scheduled open meeting that is not a work session or a special called meeting" and must make the recording available not later than seven days after the date of the meeting.[210] And the governmental body must maintain an archived recording of the meeting on the internet "for not less than two years after the date the recording was first made available."[211] Subsection 551.128(b-1) further requires an elected school district board of trustees of a school district with an enrollment of 10,000 or more to make an audio or video recording of any work session or special called meeting at which the board of trustees "votes on any matter or allows public comment or testimony."[212] Subsection 551.128(b-2) provides that a governmental body is not required to establish a separate internet site but may make the archived recording available "on an existing Internet site, including a publicly accessible video-sharing or social networking site."[213] Similarly, section 472.036 of the Transportation Code requires a metropolitan planning organization that serves one or more counties with a population of 350,000 to broadcast over the internet each open meeting held by the policy board of the metropolitan planning organization.[214]

Certain junior college districts and general academic teaching institutions are required under sections 551.1281 and 551.1282 to broadcast their open meetings in the manner provided by section 551.128.[215] An internet broadcast does not substitute for conducting an in-person meeting but provides an additional way of disseminating the meeting.

Outside of the Act, certain entities may have specific provisions imposing broadcasting requirements.[216]

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210 *Id.* § 551.128(b-1)(1), (b-4)(1).

211 *Id.* § 551.128(b-4)(2).

212 *See id.* § 551.128(b-1)(B).

213 *See id.* § 551.128(b-2).

214 *See* TEX. TRANSP. CODE § 472.036.

215 *See* TEX. GOV'T CODE §§ 551.1281–.1282.

216 *See id.* § 531.0165 (imposing broadcasting and recording requirements on the Health and Human Services Commission and related entities).

VII. Notice Requirements

A. Content

The Act requires written notice of all meetings. Section 551.041 of the Act provides:

> A governmental body shall give written notice of the date, hour, place, and subject of each meeting held by the governmental body.[217]

A governmental body must give the public advance notice of the subjects it will consider in an open meeting or a closed executive session.[218] The Act does not require the notice of a closed meeting to cite the section or subsection numbers of provisions authorizing the closed meeting.[219] No judicial decision or attorney general opinion states that a governmental body must indicate in the notice whether a subject will be discussed in open or closed session,[220] but some governmental bodies do include this information. If the notices posted for a governmental body's meetings consistently distinguish between subjects for public deliberation and subjects for executive session deliberation, an abrupt departure from this practice may raise a question as to the adequacy of the notice.[221]

Governmental actions taken in violation of the notice requirements of the Act are voidable.[222] If some actions taken at a meeting do not violate the notice requirements while others do, only the actions in violation of the Act are voidable.[223] (For a discussion of the voidability of the governmental body's actions, refer to Part XI.C. of this *Handbook*).

B. Sufficiency

The notice must be sufficient to apprise the general public of the subjects to be considered during the meeting. In *City of San Antonio v. Fourth Court of Appeals*,[224] the Texas Supreme Court considered whether the following item in the notice posted for a city council meeting gave sufficient notice of the subject to be discussed:

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217 *Id.* § 551.041.

218 *Cox Enters., Inc. v. Bd. of Trs.*, 706 S.W.2d 956, 958 (Tex. 1986); *Porth v. Morgan*, 622 S.W.2d 470, 475–76 (Tex. App.—Tyler 1981, writ ref'd n.r.e.); *but see* TEX. GOV'T CODE § 551.091(b), (c) (authorizing county commissioners court in limited circumstances involving a governor-declared disaster or emergency to hold a meeting "without complying with the requirements" of chapter 551 but requiring such county to post "reasonable public notice" to the "extent practicable under the circumstances.").

219 *See Rettberg v. Tex. Dep't of Health*, 873 S.W.2d 408, 411–12 (Tex. App.—Austin 1994, no writ); Tex. Att'y Gen. Op. No. GA-0511 (2007) at 4.

220 Tex. Att'y Gen. Op. No. JC-0057 (1999) at 5; Tex. Att'y Gen. LO-90-27 (1990) at 1.

221 Tex. Att'y Gen. Op. No. JC-0057 (1999) at 5; *see also Mares v. Tex. Webb Cnty.*, No. 5:18-CV-121, 2020 WL 619902, at *4–5 (S.D. Tex. Feb. 10, 2020) (discussing a county's retreat from its custom of providing adequate notice).

222 TEX. GOV'T CODE § 551.141.

223 *Point Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176, 182–83 (Tex. App.—Corpus Christi 1990, writ denied).

224 *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762 (Tex. 1991).

> An Ordinance determining the necessity for and authorizing the condemnation of certain property in County Blocks 4180, 4181, 4188, and 4297 in Southwest Bexar County for the construction of the Applewhite Water Supply Project.[225]

A property owner argued that this notice item violated the subject requirement of the statutory predecessor to section 551.041 because it did "not describe the condemnation ordinance, and in particular the land to be condemned by that ordinance, in sufficient detail" to notify an owner reading the description that the city was considering condemning the owner's land.[226] The Texas Supreme Court rejected the argument that the notice be sufficiently detailed to notify specific owners that their tracts might be condemned. The Court explained that the "Open Meetings Act is not a legislative scheme for service of process; it has no due process implications."[227] Its purpose was to provide public access to and increase public knowledge of the governmental decision-making process.[228]

The Court held that the condemnation notice complied with the Act because the notice apprised the public at large in general terms that the city would consider the condemnation of certain property in a specific area for purposes of the Applewhite project. The Court also noted that the description would notify a landowner of property in the four listed blocks that the property might be condemned, even though it was insufficient to notify an owner that his or her tracts in particular were proposed for condemnation.[229]

In *City of San Antonio v. Fourth Court of Appeals*, the Texas Supreme Court reviewed its earlier decisions on notice.[230] In *Texas Turnpike Authority v. City of Fort Worth*,[231] the Court had addressed the sufficiency of the following notice for a meeting at which the turnpike authority board adopted a resolution approving the expansion of a turnpike: "Consider request . . . to determine feasibility of a bond issue to expand and enlarge [the turnpike]."[232] Prior resolutions of the board had reflected the board's intent to make the turnpike a free road once existing bonds were paid. The Court found the notice sufficient, refuting the arguments that the notice should have included a copy of the proposed resolution, that the notice should have indicated the board's proposed action was at variance with its prior intent, or that the notice should have stated all the consequences that might result from the proposed action.[233]

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225 *Id.* at 764.

226 *Id.*

227 *Id.* at 765 (quoting *Acker v. Tex. Water Comm'n*, 790 S.W.2d 299, 300 (Tex. 1990)); *see Rettberg*, 873 S.W.2d at 413 (holding that the Act does not entitle the executive secretary of a state agency to special notice of a meeting where his employment was terminated); *Stockdale v. Meno*, 867 S.W.2d 123, 125 (Tex. App.—Austin 1993, writ denied) (holding that Act does not entitle a teacher whose contract was terminated to more specific notice than notice that would inform the public at large).

228 *Fourth Court of Appeals*, 820 S.W.2d at 765.

229 *Id.* at 765–66.

230 *Id.* at 765.

231 *Tex. Tpk. Auth. v. City of Fort Worth*, 554 S.W.2d 675 (Tex. 1977).

232 *Id.* at 676.

233 *Id.*; *see also Charlie Thomas Ford, Inc., v. A.C. Collins Ford, Inc.*, 912 S.W.2d 271, 274 (Tex. App.—Austin 1995, writ dism'd) (holding that notice stating "Proposals for Decision and Other Actions–License and Other Cases" was sufficient to apprise the public that Motor Vehicle Commission would consider proposals for decision in dealer-licensing cases); *Washington v. Burley*, 930 F. Supp. 2d 790, 807 (S.D. Tex. 2013)

In *Lower Colorado River Authority v. City of San Marcos*,[234] the Texas Supreme Court found sufficient a Lower Colorado River Authority Board notice providing "ratification of the prior action of the Board taken on October 19, 1972, in response to changes in electric power rates for electric power sold within the boundaries of the City of San Marcos, Texas."[235] "Although conceding that the notice was 'not as clear as it might be,'" the Court held that it complied with the Act "because 'it would alert a reader to the fact that some action would be considered with respect to charges for electric power sold in San Marcos.'"[236]

The Texas Supreme Court noted that in *Cox Enterprises, Inc. v. Board of Trustees*[237] "we finally held a notice inadequate."[238] In the *Cox Enterprises* case, the Court held insufficient the notice of a school board's executive session that listed only general topics such as "litigation" and "personnel."[239] One of the items considered at the closed session was the appointment of a new school superintendent. The Court noted that the selection of a new superintendent was not in the same category as ordinary personnel matters, because it is a matter of special interest to the public; thus, the use of the term "personnel" was not sufficient to apprise the general public of the board's proposed selection of a new superintendent. The Court also noted that "litigation" would not sufficiently describe a major desegregation suit that had occupied the district's time for a number of years.[240]

(determining that notice indicating that school board would "[c]onsider recommendation to propose the termination of the . . . employment of the . . . Chief of Police" was sufficient to inform the public that the board would actually be terminating police chief's employment and that "the notice need not state all of the possible consequences resulting from consideration of the topic"); *City of San Angelo v. Tex. Nat. Res. Conservation Comm'n*, 92 S.W.3d 624, 630 (Tex. App.—Austin 2002, no pet.) (recognizing that "consideration" necessarily encompasses action and stating that the word "consideration alone was sufficient to put the general public on notice that the Commission might act during the meeting"); *but see Save Our Springs All., Inc. v. City of Dripping Springs*, 304 S.W.3d 871, 890 (Tex. App.—Austin 2010, pet. denied) (considering sufficiency of notice about development agreements and recognizing that a notice listing all possible consequences could overwhelm, rather than inform, the reader).

234 *Lower Colo. River Auth. v. City of San Marcos*, 523 S.W.2d 641 (Tex. 1975).

235 *Id.* at 646.

236 *Fourth Court of Appeals*, 820 S.W.2d at 765 (quoting *Lower Colo. River Auth.*, 523 S.W.2d at 646).

237 *Cox Enters. Inc. v. Bd. of Trs.*, 706 S.W.2d 956 (Tex. 1986).

238 *Fourth Court of Appeals*, 820 S.W.2d at 765 (describing its opinion in *Cox Enterprises*); *see also Lugo v. Donna Indep. Sch. Dist. Bd. of Trs.*, 557 S.W.3d 93, 98 (Tex. App.—Corpus Christi 2017, no pet.) (holding that an agenda item notifying the public that the board would discuss a special election to fill board vacancies by a special election did not give notice that the board would appoint replacement trustees to the board vacancies).

239 *Cox Enters. Inc.*, 706 S.W.2d at 959.

240 *Id.*; *see also Mayes v. City of De Leon*, 922 S.W.2d 200, 203 (Tex. App.—Eastland 1996, writ denied) (determining that "personnel" was not sufficient notice of termination of police chief); *Stockdale*, 867 S.W.2d at 124–25 (holding that "discussion of personnel" and "proposed nonrenewal of teaching contract" provided sufficient notice of nonrenewal of band director's contract); *Lone Star Greyhound Park, Inc. v. Tex. Racing Comm'n*, 863 S.W.2d 742, 747 (Tex. App.—Austin 1993, writ denied) (indicating that notice need not list "the particulars of litigation discussions," which would defeat purpose of statutory predecessor to section 551.071 of the Government Code); *Point Isabel Indep. Sch. Dist.*, 797 S.W.2d at 182 (holding that "employment of personnel" is insufficient to describe hiring of principals, but is sufficient for hiring school librarian, part-time counselor, band director, or school teacher); *In re City of Amarillo*, No. 07-22-00341-CV, 2023 WL 5279473, at *5 (Tex. App.—Amarillo Aug. 16, 2023, no pet. h.) (mem. op.) (concluding notice of a city's intention to issue funding notes for a civic center project required more detail due to increased public interest given the amount of time the city had previously devoted to the project and the fact that voters had previously rejected funding for

"If the facts as to the content of a notice are undisputed, the adequacy of the notice is a question of law."[241] The courts examine the facts to determine whether a particular subject or personnel matter is sufficiently described or requires more specific treatment because it is of special interest to the community.[242] Consequently, counsel for the governing body should be consulted if any doubt exists concerning the specificity of notice required for a particular matter.

In *City of Donna v. Ramirez*, a court of appeals considered a meeting notice indicating a cancelled meeting.[243] The meeting notice of the Donna city council posted outside city hall had the word "cancelled" written on it, but the notices posted online and inside the city hall did not.[244] The meeting occurred and the notice was challenged.[245] The court held the notice violated section 551.041's requirement that a governmental body give written notice of the date, hour, place, and subject of each meeting and section 551.043's requirement that the notice be posted at least 72 hours before the meeting.

C. Generalized Terms

Generalized terms such as "old business," "new business," "regular or routine business," and "other business" are not proper terms to give notice of a meeting because they do not inform the public of its subject matter.[246] The term "public comment," however, provides sufficient notice of a "public comment" session, where the general public addresses the governmental body about its concerns and the governmental body does not comment or deliberate, except as authorized by section 551.042 of the Government Code.[247] "Public comment" will not provide adequate notice if the governmental body is, prior to the meeting, aware, or reasonably should have been aware, of specific topics to be raised.[248] When a governmental body is responsible for a presentation, it an easily give notice of its subject matter, but it usually cannot predict the subject matter of public comment sessions.[249] Thus, a meeting notice stating "Presentation by [County] Commissioner" did not provide adequate notice of the presentation, which covered the commissioner's views on development and substantive policy issues of importance to the county.[250] The term "presentation"

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the project); Tex. Att'y Gen. Op. No. H-1045 (1977) at 5 (concluding "discussion of personnel changes" insufficient to describe selection of university system chancellor or university president).

241 *Burks v. Yarbrough*, 157 S.W.3d 876, 883 (Tex. App.—Houston [14th Dist.] 2005, no pet.); *see also Friends of Canyon Lake, Inc. v. Guadalupe-Blanco River Auth.*, 96 S.W.3d 519, 529 (Tex. App.—Austin 2002, pet. denied).

242 *River Rd. Neighborhood Ass'n v. S. Tex. Sports*, 720 S.W.2d 551, 557 (Tex. App.—San Antonio 1986, writ dism'd) (concluding that notice stating only "discussion" is insufficient to indicate board action is intended, given prior history of stating "discussion/action" in agenda when action is intended).

243 *City of Donna v. Ramirez*, 548 S.W.3d 26, 35–36 (Tex. App.—Corpus Christi 2017, pet. denied)

244 *See id.* at 33.

245 *See id.*

246 Tex. Att'y Gen. Op. No. H-662 (1975) at 3.

247 Tex. Att'y Gen. Op. No. JC-0169 (2000) at 4; *see* TEX. GOV'T CODE § 551.042 (providing that governmental body may respond to inquiry about subject not on posted notice by stating factual information, reciting existing policy or placing subject of inquiry on agenda of future meeting).

248 Tex. Att'y Gen. Op. No. JC-0169 (2000) at 4.

249 *Id.*

250 *Hays Cnty. Water Plan. P'ship v. Hays Cnty.*, 41 S.W.3d 174, 180 (Tex. App.—Austin 2001, pet. denied).

was vague; moreover, it was noticed for the "Proclamations & Presentations" portion of the meeting, which otherwise consisted of formalities.[251]

Attorney General Opinion GA-0668 (2008) had previously determined that notice such as "City Manager's Report" was not adequate notice for items similar to those included in section 551.0415 and that the subject of a report by a member of the city staff or governing body must be included in the notice in a manner that informs a reader about the subjects to be addressed. Section 551.0415, modifying Attorney General Opinion GA-0668, authorizes a quorum of the governing body of a municipality or county to receive reports about items of community interest during a meeting without having given notice of the subject of the report if no action is taken.[252] Section 551.0415 defines an "item of community interest" to include:

> (1) expressions of thanks, congratulations, or condolence;
>
> (2) information regarding holiday schedules;
>
> (3) an honorary or salutary recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in status of a person's public office or public employment is not an honorary or salutary recognition for purposes of this subdivision;
>
> (4) a reminder about an upcoming event organized or sponsored by the governing body;
>
> (5) information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the political subdivision; and
>
> (6) announcements involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posting of the agenda.[253]

D. Time of Posting

Notice must be posted for a minimum length of time before each meeting. Section 551.043(a) states the general time requirement as follows:

> 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.[254]

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251 *Id.* at 180 (citing Tex. Att'y Gen. Op. No. JC-0169 (2000)).
252 TEX. GOV'T CODE § 551.0415(a).
253 *Id.* § 551.0415(b).
254 *Id.* § 551.043(a).

Section 551.043(b) relates to posting notice on the internet. Where the Act allows or requires a governmental body to post notice on the internet, the following provisions apply to the posting:

> (1) the governmental body satisfies the requirement that the notice 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.[255]

Section 551.044, which excepts from the general rule governmental bodies with statewide jurisdiction, provides as follows:

> (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.[256]

Section 551.046 excepts a committee of the legislature from the general rule:

> The notice of a legislative committee meeting shall be as provided by the rules of the house of representatives or of the senate.[257]

The interplay between the 72-hour rule applicable to local governmental bodies and the requirement that the posting be in a place convenient to the general public in a particular location, such as the city hall or the county courthouse, at one time created legal and practical difficulties for local entities, because the required locations are not usually accessible during the night or on

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255 *Id.* § 551.043(b).
256 *Id.* § 551.044.
257 *Id.* § 551.046.

weekends. Section 551.043(b) solves this problem in part, providing that "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*."[258]

The Texas Supreme Court had previously addressed this matter in *City of San Antonio v. Fourth Court of Appeals*.[259] The city had posted notice of its February 15, 1990, meeting in two different locations. One notice was posted on a bulletin board inside the city hall, and the other notice was posted on a kiosk outside the main entrance to the city hall. This was done because the city hall was locked at night, thereby preventing continuous access during the 72-hour period to the notice posted inside. The court held that the double posting satisfied the requirements of the statutory predecessors to sections 551.043 and 551.050.[260]

State agencies have generally had little difficulty providing seven days' notice of their meetings, but difficulties have arisen when a quorum of a state agency's governing body wished to meet with a legislative committee.[261] If one or more of the state agency board members were to testify or answer questions, the agency itself would have held a meeting subject to the notice, record-keeping and openness requirements of the Act.[262] Legislative committees, however, post notices "as provided by the rules of the house of representatives or of the senate,"[263] and these generally require shorter time periods than the seven-day notice required for state agencies.[264] Thus, a state agency could find it impossible to give seven days' notice of a quorum's attendance at a legislative hearing concerning its legislation or budget. The Legislature dealt with this difference in notice requirements by adopting section 551.0035 of the Government Code, which provides as follows:

> (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.[265]

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258 *Id.* § 551.043(b)(3) (emphasis added).
259 *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762 (Tex. 1991).
260 *Id.* at 768.
261 Tex. Att'y Gen. Op. No. JC-0308 (2000) at 2.
262 *Id.*; *see also* Tex. Att'y Gen. Op. No. JC-0248 (2000) at 2.
263 TEX. GOV'T CODE § 551.046.
264 Tex. Att'y Gen. Op. No. JC-0308 (2000) at 2.
265 TEX. GOV'T CODE § 551.0035.

E. Place of Posting

The Act expressly states where notice shall be posted. The posting requirements vary depending on the governing body posting the notice.[266] Sections 551.048 through 551.056 address the posting requirements of state entities, cities and counties, school districts, and other districts and political subdivisions. These provisions are quite detailed and, therefore, are set out here in full:

§ 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.[267]

(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) In this section, "electronic bulletin board" means an electronic communication system that includes a perpetually illuminated screen on which the governmental body can post messages or notices viewable without manipulation by the public.

(b) A municipal governmental body shall post notice of each meeting on a physical or electronic bulletin board at a place convenient to the public in the city hall.

§ 551.0501. Joint Board: Place of Posting Notice

(a) In this section, "electronic bulletin board" means an electronic communication system that includes a perpetually illuminated screen on which the governmental body can post messages or notices viewable without manipulation by the public.

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266 The Amarillo Court of Appeals recently rejected a challenge to the sufficiency of a notice that identified the building of the meeting "without identifying the meeting room, full street address, or name of the city." *Terrell v. Pampa Indep. Sch. Dist.*, 572 S.W.3d 294, 299 (Tex. App.—Amarillo 2019, pet. denied).

267 Notices of open meetings filed in the office of the secretary of state as provided by law are published in the Texas Register. TEX. GOV'T CODE § 2002.011(3); *see* 1 TEX. ADMIN. CODE § 91.21 (Tex. Sec'y of State, How to File an Open Meeting Notice).

(b) A joint board created under Section 22.074, Transportation Code, shall post notice of each meeting on a physical or electronic bulletin board at a place convenient to the public in the board's administrative offices.

§ 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) either 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 or post notice of each meeting on the district's or political subdivision's Internet website.

(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 a notice provided to the clerk 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) either provide notice of each meeting to the county clerk of each county in which the district or political subdivision is located or post notice of each meeting on the district's or political subdivision's Internet website.

(b) A county clerk shall post a notice provided to the clerk 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.

Posting notice is mandatory, and actions taken at a meeting for which notice was posted incorrectly will be voidable.[268] In *Sierra Club v. Austin Transportation Study Policy Advisory Committee*, the court held that the committee was a special district covering four or more counties for purposes of the Act and, as such, was required to submit notice to the secretary of state pursuant to the statutory predecessor to section 551.053.[269] Thus, a governmental body that does not clearly fall within one of the categories covered by sections 551.048 through 551.056 should consider satisfying all potentially applicable posting requirements.[270]

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268 TEX. GOV'T CODE § 551.141; *see Smith Cnty. v. Thornton*, 726 S.W.2d 2, 3 (Tex. 1986).

269 *Sierra Club v. Austin Transp. Pol'y Advisory Comm.*, 746 S.W.2d 298, 301 (Tex. App.—Austin 1988, writ denied).

270 *See* Tex. Att'y Gen. Op. No. JM-120 (1983) at 3 (concluding that industrial development corporation must post notice in the same manner and location as political subdivision on whose behalf it was created).

§ 551.056. Additional Posting Requirements for Certain Municipalities, Counties, School Districts, Junior College Districts, Development Corporations, Authorities, and Joint Boards

Section 551.056 requires certain governmental bodies and economic development corporations to post notice and an agenda of the meeting on their internet websites, in addition to other postings required by the Act. This provision applies to the following entities, if the entity maintains an internet website or has a website maintained for it:

(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;

(5) a development corporation organized under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code);

(6) a regional mobility authority included within the meaning of an "authority" as defined by Section 370.003, Transportation Code;

(7) a joint board created under Section 22.074, Transportation Code, and

(8) a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.[271]

Section 551.056 also provides that the validity of a posted notice made in good faith to comply with the Act is not affected by a failure to comply with its requirements due to a technical problem beyond the control of the entity.[272]

F. Internet Posting of Notice and Meeting Materials

Provisions in the Act specific to general academic teaching institutions and certain junior college districts require such institutions to post specified meeting materials to their internet website. If applicable, section 551.1281 and section 551.1282 require the internet posting "as early as practicable in advance of the meeting" of "any written agenda and related supplemental written materials" that are provided to the governing board members for their use in the meeting.[273] This

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271 TEX. GOV'T CODE § 551.056(b).

272 *Id.* § 551.056(d); *see also Argyle Indep. Sch. Dist. v. Wolf*, 234 S.W.3d 229, 248–49 (Tex. App.—Fort Worth 2007, no pet.) (determining that there was no evidence of bad faith on part of the school district). *Cf. Terrell v. Pampa Indep. Sch. Dist.*, 345 S.W.3d 641, 644 (Tex. App.—Amarillo 2011, pet. denied) (finding a material issue in summary judgment proceedings about whether ISD "actually attempted to post the notices and, therefore, met the good faith exception to the requirement to concurrently post notices").

273 *Id.* §§ 551.1281–.1282.

posting requirement excludes any written materials "that the general counsel or other appropriate attorney" for the particular governmental body certifies are confidential.[274]

G. Emergency Meetings: Providing and Supplementing Notice

Special rules allow for posting notice of emergency meetings and for supplementing a posted notice with emergency items. These rules affect the timing and content of the notice but not its physical location. Section 551.045 provides:

> (a) In an emergency or when there is an urgent public necessity, the notice of a meeting to deliberate or take action on the emergency or urgent public necessity, or the supplemental notice to add the deliberation or taking of action on the emergency or urgent public necessity as an item to the agenda for a meeting for which notice has been posted in accordance with this subchapter, is sufficient if the notice or supplemental notice is posted for at least one hour before the meeting is convened.
>
> (a-1) A governmental body may not deliberate or take action on a matter at a meeting for which notice or supplemental notice is posted under Subsection (a) other than:
>
> (1) a matter directly related to responding to the emergency or urgent public necessity identified in the notice or supplemental notice of the meeting as provided by Subsection (c); or
>
> (2) an agenda item listed on a notice of the meeting before the supplemental notice was posted.
>
> (b) An emergency or 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, including a threat described by Subdivision (2) if imminent; or
>
> (2) a reasonably unforeseeable situation, including:
>
> (A) fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;
>
> (B) power failure, transportation failure, or interruption of communication facilities;
>
> (C) epidemic; or

[274] *Id.*

(D) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

(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.[275]

The public notice of a meeting to deliberate or take action on an emergency or urgent public necessity must be posted at least one hour before the meeting is scheduled to begin. A governmental body may decide to consider an emergency item during a previously scheduled meeting instead of calling a new emergency meeting. The governmental body must post a supplemental notice to add the deliberation or taking of action on the emergency or urgent public necessity as an item to the agenda at least one hour before the meeting begins.[276]

In addition to posting the public notice of an emergency meeting or supplementing a notice with an emergency item, the governmental body must give special notice of the emergency meeting or emergency item to members of the news media who have previously (1) filed a request with the governmental body, and (2) agreed to reimburse the governmental body for providing the special notice.[277] The notice to members of the news media is to be given by telephone, facsimile transmission or electronic mail at least one hour before the meeting is convened.[278]

The public notice of an emergency meeting or an emergency item must "clearly identify" the emergency or urgent public necessity for calling the meeting or for adding the item to the agenda of a previously scheduled meeting.[279] The Act defines "emergency" for purposes of emergency meetings and emergency items.[280]

Section 551.045(a-1) prohibits a governmental body from deliberating or taking action on a matter at an emergency meeting or one for which a supplemental notice has been posted other than a matter directly related to responding to the emergency or urgent public necessity identified in the emergency notice or supplemental notice or an agenda item listed on the meeting notice before the

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275 *Id.* § 551.045.
276 *Id.* § 551.045(a).
277 *Id.* § 551.047(b).
278 *Id.* § 551.047(c).
279 *Id.* § 551.045(c).
280 *Id.* § 551.045(b); *see River Rd. Neighborhood Ass'n v. S. Tex. Sports*, 720 S.W.2d 551, 557 (Tex. App.—San Antonio 1986, writ dism'd) (construing "emergency" consistently with definition later adopted by Legislature).

supplemental notice was posted.[281] Section 551.142 expressly authorizes the attorney general to bring an action by mandamus or injunction in a Travis County district court to stop, prevent, or reverse a violation or threated violation of section 551.045(a-1).[282]

Because section 551.045 provides for one-hour notice only for emergency meetings or for adding emergency items to the agenda, a governmental body adding a *non*emergency item to its agenda must satisfy the general notice period of section 551.043 or section 551.044, as applicable, regarding the subject of that item.

A governmental body's determination that an emergency exists is subject to judicial review.[283] The existence of an emergency depends on the facts in a particular case.[284]

Under section 551.091, a commissioners court can hold an open or closed meeting, including by telephone, "solely to deliberate about disaster or emergency conditions and related public safety matters that require an immediate response."[285] This provision is limited and only applicable when the following two circumstances are present:

> (1) [The county is one] for which the governor has issued an executive order or proclamation declaring a state of disaster or a state of emergency; and
>
> (2) . . . transportation to the meeting location is dangerous or difficult as a result of the disaster or emergency.[286]

A meeting held under this provision may be held without complying with the requirements of chapter 551, including the requirement to provide notice.[287] However, to the extent practicable under the circumstances, the commissioners court shall provide reasonable public notice of a meeting held under section 551.091 and to allow members of the public and the media to observe the meeting if it is an open meeting.[288] Though it may deliberate, the commissioners court may not vote or take final action in the meeting.[289] The commissioners court is also required to prepare and

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281 TEX. GOV'T CODE § 551.045(a-1).

282 *Id.* § 551.142(c), (d).

283 *See River Rd. Neighborhood Ass'n*, 720 S.W.2d at 557–58 (concluding that immediate need for action was brought about by board's decisions not to act at previous meetings and was not due to an emergency); *Garcia v. City of Kingsville*, 641 S.W.2d 339, 341–42 (Tex. App.—Corpus Christi 1982, no writ) (concluding that dismissal of city manager was not a matter of urgent public necessity); *see also Markowski v. City of Marlin*, 940 S.W.2d 720, 724 (Tex. App.—Waco 1997, writ denied) (concluding that city's receipt of lawsuit filed against it by fire captain and fire chief was emergency); *Piazza v. City of Granger*, 909 S.W.2d 529, 533 (Tex. App.—Austin 1995, no writ) (concluding that notice stating city council's "lack of confidence" in police officer did not identify emergency).

284 *Common Cause v. Metro. Transit Auth.*, 666 S.W.2d 610, 613 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); *see generally* Tex. Att'y Gen. Op. No. JC-0406 (2001) at 5–6.

285 *See* TEX. GOV'T CODE § 551.091(b).

286 *Id.* § 551.091(a).

287 *Id.* § 551.091(b) .

288 *Id.* § 551.091(c).

289 *Id.* § 551.091(d)(1).

keep minutes or a recording of the meeting and make the minutes or recording available to the public as soon as practicable.[290]

H. Recess in a Meeting: Postponement in Case of a Catastrophe

Under section 551.0411, a governmental body that recesses an open meeting to the following regular business day need not post notice of the continued meeting if the action is taken in good faith and not to circumvent the Act. If a meeting continued to the following regular business day is then continued to another day, the governmental body must give notice of the meeting's continuance to the other day.[291]

Section 551.0411 also provides for a catastrophe that prevents the governmental body from convening an open meeting that was properly posted under section 551.041. The governmental body 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. However, if the governmental body is unable to convene the meeting within 72 hours, it may subsequently convene the meeting only if it gives written notice of the meeting.

A "catastrophe" is defined as "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.[292]

I. County Clerk May Charge a Fee for Posting Notice

A county clerk may charge a reasonable fee to a district or political subdivision to post an Open Meetings Act notice.[293]

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290 *Id.* § 551.091(d)(2). Section 551.091 expires on September 1, 2027. *See id.* § 551.091(e).

291 *See id.* § 551.0411(a). Before section 551.0411 was adopted, the court in *Rivera v. City of Laredo*, held that a meeting could not be continued to any day other than the immediately following day without reposting notice. *See Rivera v. City of Laredo*, 948 S.W.2d 787, 793 (Tex. App.—San Antonio 1997, writ denied).

292 TEX. GOV'T CODE § 551.0411(c).

293 *See* TEX. LOC. GOV'T CODE § 118.011(c); Tex. Att'y Gen. Op. Nos. GA-0152 (2004) at 3, M-496 (1969) at 3.

VIII. Open Meetings

A. Convening the Meeting

A meeting may not be convened unless a quorum of the governmental body is present in the meeting room.[294] This requirement applies even if the governmental body plans to go into an executive session, or closed meeting, immediately after convening.[295] The public is entitled to know which members are present for the executive session and whether there is a quorum.[296]

B. Location of the Meeting

The Act requires a meeting of a governmental body to be held in a location accessible to the public.[297] It thus precludes a governmental body from meeting in an inaccessible location. Recognizing that the question whether a specific location is accessible is a fact question, this office recently opined that a court would unlikely conclude as a matter of law that the Act prohibits a governmental body from holding a meeting held in a location that requires the presentation of photo identification for admittance.[298] This office has also opined that the Board of Regents of a state university system could not meet in Mexico, regardless of whether the board broadcast the meeting by videoconferencing technology to areas in Texas where component institutions were located.[299] Nor could an entity subject to the Act meet in an underwriter's office in another state.[300] In addition, pursuant to the Americans with Disabilities Act, a meeting room in which a public meeting is held must be physically accessible to individuals with disabilities. *See infra* Part XII.C of this *Handbook*.

C. Rights of the Public

A meeting that is "open to the public" under the Act is one that the public is permitted to attend.[301] Many governmental bodies conduct "public comment," "public forum" or "open mike" sessions at which members of the public may address comments on any subject to the governmental body.[302] A public comment session is a meeting as defined by section 551.001(4)(B) of the Government

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294 TEX. GOV'T CODE § 551.001(2), (4) (defining "deliberation" and "meeting"); *Cox Enters., Inc. v. Bd. of Trs.*, 706 S.W.2d 956, 959 (Tex. 1986); *but see* TEX. GOV'T CODE § 551.091(b) (authorizing commissioners courts in certain disaster circumstances to hold a meeting without complying with chapter 551, "including the requirement to . . . first convene in an open meeting").

295 TEX. GOV'T CODE § 551.101; *see Martinez v. State*, 879 S.W.2d 54, 56 (Tex. Crim. App. 1994); *Cox. Enters., Inc.*, 706 S.W.2d at 959.

296 *Martinez*, 879 S.W.2d at 56; *Cox Enters., Inc.*, 706 S.W.2d at 959.

297 Other statutes may specify the location of a governmental body's meeting. *See* TEX. WATER CODE § 49.062 (special purpose districts), TEX. LOC. GOV'T CODE §§ 504.054, .055 (specifying alternative meeting locations for a board of an economic development corporation organized under the Development Corporation Act, Title 12, subtitle C1, Local Government Code).

298 Tex. Att'y Gen. Op. No. KP-0020 (2015) at 2 (acknowledging that a court would likely weigh the need for the identification requirement as a security measure against the public's right of access guaranteed under the Act).

299 Tex. Att'y Gen. Op. No. JC-0487 (2002) at 7.

300 Tex. Att'y Gen. Op. No. JC-0053 (1999) at 5–6.

301 Tex. Att'y Gen. Op. No. M-220 (1968) at 5.

302 Tex. Att'y Gen. Op. No. JC-0169 (2000) at 4.

Code because the members of the governmental body "receive information from . . . or receive questions from [a] third person."[303] Accordingly, the governmental body must give notice of a public comment session.

Since 2019, section 551.007 has entitled members of the public to speak about items on the agenda at meetings of certain governmental bodies.[304] Section 551.007 applies to governmental bodies listed in subsections 551.001(3)(B)–(L), including most local governmental bodies and other specified entities.[305] But section 551.007 excludes a governmental body listed in subsection 551.001(3)(A), which is "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 officials."[306] Section 551.007 provides that a governmental body to which the section applies "shall allow each member of the public who desires to address the body regarding an item on an agenda . . . to address the body regarding the item at the meeting before or during the body's consideration of the item."[307]

The United States Court of Appeals for the Fifth Circuit gave some meaning to the phrase "member of the public" as it appears in section 551.007 of the Act.[308] Stratta was a member of the Brazos Valley Groundwater Conservation District board of directors but attended a meeting of the board as a member of the public and signed up to speak as such during the period reserved for public comment on a matter not included on the agenda.[309] The District prohibited him from speaking on the matter claiming that because he was a director he could not discuss subjects that were not on the agenda even though the agenda included a public comment section on non-agenda items.[310]

In addressing Stratta's contention that he had a right to address the board of directors as a member of the public during a period reserved for public comment on open agenda items, the court recognized that the Act does not define "member of the public."[311] Looking to its common meaning, the court stated that "[w]hen 'member of the public' is used in conjunction with an identified or identifiable group—as it is here with 'governmental body'—its meaning is contextually modified to mean a person who does not belong to the identified group."[312] The court determined that Stratta could not bypass the Act's notice requirement by attending a meeting as a member of the public.[313]

Section 551.007 expressly authorizes a governmental body to adopt reasonable rules regarding the public's right to address the body, "including rules that limit the total amount of time that a member

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303 TEX. GOV'T CODE § 551.001(4)(B)(iv); *see* Tex. Att'y Gen. Op. No. JC-0169 (2000) at 3.

304 TEX. GOV'T CODE § 551.007; *see Stratta v. Roe*, 961 F.3d 340, 363 (5th Cir. 2020) (considering scope of the term "member of the public").

305 TEX. GOV'T CODE § 551.007(a); *see also id.* § 551.001(3)(B)–(L).

306 *See id.* §§ 551.007(a), .001(3)(A).

307 *See id.* § 551.007(b).

308 *Stratta*, 961 F.3d at 363.

309 *Id.* at 348–49.

310 *Id.* at 349.

311 *See id.* at 363.

312 *Id.* (quotation marks and citation omitted).

313 *See id.*

of the public may address the body on a given item."[314] In setting such rules, a governmental body may not unfairly discriminate among speakers for or against a particular point of view.[315] Additionally, section 551.007 provides that "a governmental body may not prohibit public criticism of the governmental body, including criticism of any act, omission, policy, procedure, program, or service," except criticism otherwise prohibited by law.[316] Further, a governmental body making a rule limiting the amount of time for a member to address the governmental body and that does not use simultaneous translation equipment must give twice as much time to a person who addresses the governmental body through a translator.[317]

The Act does not entitle the public to choose the items to be placed on the agenda for discussion at the meeting.[318] The Act permits a member of the public or a member of the governmental body to raise a subject that has not been included in the notice for the meeting, but any discussion of the subject must be limited to a proposal to place the subject on the agenda for a future meeting. Section 551.042 of the Act provides for this procedure:

> (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.[319]

Another section of the Act permits members of the public to record open meetings with a recorder or a video camera:

> (a) A person in attendance may record all or any part of an open meeting of a governmental body by means of a 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:

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314 *See* TEX. GOV'T CODE § 551.007(c); *see also* Tex. Att'y Gen. Op. No. KP-0300 (2020) at 2.

315 Tex. Att'y Gen. LO-96-111 (1996) at 1.

316 *See* TEX. GOV'T CODE § 551.007(e).

317 *See id.* § 551.007(d).

318 *See generally Charlestown Homeowners Ass'n, Inc. v. LaCoke*, 507 S.W.2d 876, 883 (Tex. App.—Dallas 1974, writ ref'd n.r.e.) (stating that the Act "does not mean that all such meetings must be 'open' in the sense that persons other than members are free to speak").

319 TEX. GOV'T CODE § 551.042.

(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).[320]

D. Final Actions

Section 551.102 of the Act provides as follows:

> 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.[321]

A governmental body's final action, decision or vote on any matter within its jurisdiction may be made only in an open session held in compliance with the notice requirements of the Act. The governmental body may not vote in an open session by secret written ballot.[322] Furthermore, a governmental body may not take action by written agreement without a meeting.[323]

A city governing body may delegate to others the authority to make decisions affecting the transaction of city business if it does so in a meeting by adopting a resolution or ordinance by majority vote.[324] When six cities delegated to a consultant corporation the right to investigate and pursue claims against a gas company, including the right to hire counsel for those purposes, the attorney hired by the consultant could opt out of a class action on behalf of each city, and the cities did not need to hold an open meeting to approve the attorney's decision to opt out in another instance.[325] When the city attorney had authority under the city charter to bring a lawsuit and did not need city council approval to appeal, a discussion of the appeal by the city manager, a quorum of council members and the city attorney did not involve a final action.[326]

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320 *Id.* § 551.023.

321 *Id.* § 551.102; *see Rubalcaba v. Raymondville Indep. Sch. Dist.*, No. 13-14-00224-CV, 2016 WL 1274486, at *3 (Tex. App.—Corpus Christi, Mar. 31, 2016, no pet.) (mem. op.) (determining that "[w]hile a discussion may have taken place in executive session which may have been in violation of the Act," the fact that the vote occurred in open session after the alleged violations meant that "the vote was not taken in violation" of the Act); *Tex. State Bd. of Pub. Accountancy v. Bass*, 366 S.W.3d 751, 762 (Tex. App.—Austin 2012, no pet.) ("[T]he statute contemplates that some deliberations may occur in executive session, but establishes that the final resolution of the matter must occur in open session.").

322 Tex. Att'y Gen. Op. No. H-1163 (1978) at 2.

323 *Webster v. Tex. & Pac. Motor Transp. Co.*, 166 S.W.2d 75, 77 (Tex. 1942); Tex. Att'y Gen. Op. Nos. GA-0264 (2004) at 6–7, JM-120 (1983) at 4; *see also* Tex. Att'y Gen. Op. No. DM-95 (1992) at 5–6 (considering letter concerning matter of governmental business or policy that was circulated and signed by individual members of governmental body outside of open meeting).

324 *City of San Benito v. Rio Grande Valley Gas Co.*, 109 S.W.3d 750, 757 (Tex. 2003) (quoting from *Cent. Power & Light Co. v. City of San Juan*, 962 S.W.2d 602, 613 (Tex. App.—Corpus Christi 1998, pet. dism'd w.o.j.)).

325 *See id.* at 758.

326 *See City of San Antonio v. Aguilar*, 670 S.W.2d 681, 685–86 (Tex. App.—San Antonio 1984, no writ) (stating that the decision to appeal was "an internal administrative decision and not within the purview of the Open Meetings Act"); *see also* Tex. Att'y Gen. Op. No. MW-32 (1979) at 1–2 (concluding that procedure whereby

The fact that the State Board of Insurance discussed and approved a reduction in force at meetings that violated the Act did not affect the validity of the reduction, where the commissioner of insurance had independent authority to terminate employees.[327] The board's superfluous approval of the firings was irrelevant to their validity.[328] Similarly, the fact that the State Board of Public Accountancy's discussions in closed sessions, even if the closed sessions were improper under the Act, touched on the accountants' license revocations did not void the board's order removing the accountants' licenses when the vote of revocation was taken in open session.[329]

In the usual case, when the authority to make a decision or to take an action is vested in the governmental body, the governmental body must act in an open session. In *Toyah Independent School District v. Pecos-Barstow Independent School District*,[330] for example, the Toyah school board sued to enjoin enforcement of an annexation order approved by the board of trustees of Reeves County in a closed meeting.[331] The board of trustees of Reeves County had excluded all members of the public from the meeting room before voting in favor of an order annexing the Toyah district to a third school district.[332] The court determined that the board of trustees' action violated the Act and held that the order of annexation was ineffective.[333] The *Toyah Independent School District* court thus developed the remedy of judicial invalidation of actions taken by a governmental body in violation of the Act. This remedy is now codified in section 551.141 of the Act. The voidability of a governmental body's actions taken in violation of the Act is discussed in Part XI.C of this *Handbook*.

Furthermore, the actual vote or decision on the ultimate issue confronting the governmental body must be made in an open session.[334] In *Board of Trustees v. Cox Enterprises, Inc.*,[335] the court of appeals held that a school board violated the statutory predecessor to section 551.102 when it

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executive director notified board of his intention to request attorney general to bring lawsuit and board member could request in writing that matter be placed on agenda of next meeting did not violate the Act).

327 *Spiller v. Tex. Dep't of Ins.*, 949 S.W.2d 548, 551 (Tex. App.—Austin 1997, writ denied); *see also Swate v. Medina Cmty. Hosp.*, 966 S.W.2d 693, 698 (Tex. App.—San Antonio 1998, pet. denied) (concluding that hospital board's alleged violation of Act did not render termination void where hospital administrator had independent power to hire and fire).

328 *Spiller*, 949 S.W.2d at 551.

329 *Tex. State Bd. of Pub. Accountancy*, 366 S.W.3d at 761–62 ("Thus, to establish that the Board's orders violated the Act, the accountants must establish that 'the actual vote or decision' to adopt the orders was not made in open session.") (footnote and citation omitted).

330 *Toyah Indep. Sch. Dist. v. Pecos-Barstow Indep. Sch. Dist.*, 466 S.W.2d 377 (Tex. App.—San Antonio 1971, no writ).

331 *Id.* at 377.

332 *Id.* at 378 n.1.

333 *Id.* at 380; *see also City of Stephenville v. Tex. Parks & Wildlife Dep't*, 940 S.W.2d 667, 674–75 (Tex. App.—Austin 1996, writ denied) (noting that Water Commission's decision to hear some complaints raised on motion for rehearing and to exclude others should have been taken in open session held in compliance with Act); *Gulf Reg'l Educ. Television Affiliates v. Univ. of Houston*, 746 S.W.2d 803, 809 (Tex. App.—Houston [14th Dist.] 1988, writ denied) (concluding that governmental body's decision to hire attorney to bring lawsuit was invalid because it was not made in open meeting); Tex. Att'y Gen. Op. No. H-1198 (1978) at 2 (concluding that Act does not permit governmental body to enter into agreement and authorize expenditure of funds in closed session).

334 TEX. GOV'T CODE § 551.102; *see also Nash v. Civil Serv. Comm'n*, 864 S.W.2d 163, 166 (Tex. App.—Tyler 1993, no writ).

335 *Bd. of Trs. v. Cox Enters., Inc.*, 679 S.W.2d 86, 90 (Tex. App.—Texarkana 1984*), aff'd in part, rev'd in part on other grounds*, 706 S.W.2d 956 (Tex. 1986).

selected a board member to serve as board president. In an executive session, the board took a written vote on which of two board members would serve as president, and the winner of the vote was announced. The board then returned to the open session and voted unanimously for the individual who won the vote in the executive session.[336] Although the board argued that the written vote in the executive session was "simply a straw vote" that did not violate the Act, the court of appeals found that "there is sufficient evidence to support the trial court's conclusion that the actual resolution of the issue was made in the executive session contrary to the provisions of" the statutory predecessor to section 551.102.[337] Thus, as *Cox Enterprises* makes clear, a governmental body should not take a "straw vote" or otherwise attempt to count votes in an executive session.

On the other hand, members of a governmental body deliberating in a permissible executive session may express their opinions or indicate how they will vote in the open session. The court in *Cox Enterprises* stated that "[a] contrary holding would debilitate the role of the deliberations which are permitted in the executive sessions and would unreasonably limit the rights of expression and advocacy."[338]

In certain circumstances, a governmental body may make a "decision" or take an "action" in an executive session that will not be considered a "final action, decision, or vote" that must be taken in an open session. The court in *Cox Enterprises* held that the school board did not take a "final action" when it discussed making public the names and qualifications of the candidates for superintendent or when it discussed selling surplus property and instructed the administration to solicit bids. The court concluded that the board was simply announcing that the law would be followed rather than taking any action in deciding to make public the names and qualifications of the candidates. The court also noted that further action would be required before the board could decide to sell the surplus property; therefore, the instruction to solicit bids was not a "final action."[339]

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336 *Id.* at 90.

337 *Id.*

338 *Id.* at 89 (footnote omitted); *see also Nash*, 864 S.W.2d at 166 (stating that Act does not prohibit board from reaching tentative conclusion in executive session and announcing it in open session where members have opportunity to comment and cast dissenting vote); *City of Dallas v. Parker*, 737 S.W.2d 845, 850 (Tex. App.—Dallas 1987, no writ) (holding that proceedings complied with Act when "conditional" vote was taken during recess, result was announced in open session, and vote of each member was apparent).

339 *Bd. of Trs.*, 679 S.W.2d at 89–90.

IX. Closed Meetings

A. Overview of Subchapter D of the Open Meetings Act

The Act provides certain narrowly drawn exceptions to the requirement that meetings of a governmental body be open to the public.[340] These exceptions are found in sections 551.071 through 551.090 and are discussed in detail in Part B of this section of the *Handbook*.

Section 551.101 states the requirements for holding a closed meeting. It provides:

> 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.[341]

Thus, a quorum of the governmental body must be assembled in the meeting room, the meeting must be convened as an open meeting pursuant to proper notice, and the presiding officer must announce that a closed session will be held and must identify the sections of the Act authorizing the closed session.[342] There are several purposes for requiring the presiding officer to identify the section or sections that authorize the closed session: to cause the governmental body to assess the applicability of the exceptions before deciding to close the meeting; to fix the governmental body's legal position as relying upon the exceptions specified; and to inform those present of the exceptions, thereby giving them an opportunity to object intelligently.[343] Judging the sufficiency of the presiding officer's announcement in light of whether it effectuated or hindered these purposes, the court of appeals in *Lone Star Greyhound Park, Inc. v. Texas Racing Commission* determined that the presiding officer's reference to the content of a section, rather than to the section number, sufficiently identified the exception.[344]

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340 TEX. GOV'T CODE §§ 551.071–.091; *see also Cox Enters., Inc. v. Bd. of Trs.*, 706 S.W.2d 956, 958 (Tex. 1986) (noting the narrowly drawn exceptions).

341 TEX. GOV'T CODE § 551.101.

342 *Martinez v. State*, 879 S.W.2d 54, 56 n.5 (Tex. Crim. App. 1994).

343 *Lone Star Greyhound Park, Inc. v. Tex. Racing Comm'n*, 863 S.W.2d 742, 747 (Tex. App.—Austin 1993, writ denied); *see also Standley v. Sansom*, 367 S.W.3d 343, 355 (Tex. App.—San Antonio 2012, pet. denied) (using the four purposes outlined in *Lone Star* to determine sufficiency of challenged notice for executive session).

344 *Lone Star Greyhound Park, Inc.*, 863 S.W.2d at 748.

B. Provisions Authorizing Deliberations in Closed Meeting

1. Section 551.071. Consultations with Attorney

Section 551.071 authorizes a governmental body to consult with its attorney in an executive session to seek his or her advice on legal matters. It provides as follows:

> 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.[345]

This provision implements the attorney-client privilege, an attorney's duty to preserve the confidences of a client.[346] It allows a governmental body to meet in executive session with its attorney when it seeks the attorney's advice with respect to pending or contemplated litigation or settlement offers,[347] including pending or contemplated administrative proceedings governed by the Administrative Procedure Act.

In addition, subsection 551.071(2) of the Government Code permits a governmental body to consult in an executive session with its attorney "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 the Act.[348] Thus, a governmental body may hold an executive session to seek or receive its attorney's advice on legal matters that are not related to litigation or the settlement of litigation.[349] A governmental body may not invoke section 551.071 to convene a closed session and then discuss matters outside of that provision.[350] "General discussion of policy, unrelated to legal matters is not permitted under the language of [this exception] merely because

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345 TEX. GOV'T CODE § 551.071.

346 *Tex. State Bd. of Pub. Accountancy*, 366 S.W.3d at 759; *see* Tex. Att'y Gen. Op. Nos. JC-0506 (2002) at 4, JC-0233 (2000) at 3, H-816 (1976) at 4, M-1261 (1972) at 9–10.

347 TEX. GOV'T CODE § 551.071(1); *Lone Star Greyhound Park Inc.*, 863 S.W.2d at 748.

348 TEX. GOV'T CODE § 551.071(2).

349 *Cf. Weatherford v. City of San Marcos*, 157 S.W.3d 473, 486 (Tex. App.—Austin 2004, pet. denied) (concluding that city council did not violate Act when it went into executive session to seek attorney's advice about land use provision); Tex. Att'y Gen. Op. Nos. JC-0233 (2000) at 3, JM-100 (1983) at 2.

350 *Gardner v. Herring*, 21 S.W.3d 767, 776 (Tex. App.—Amarillo 2000, no pet.); *but see In re City of Galveston*, No. 14-14-01005-CV, 2015 WL 971314, at *5–6 (Tex. App.—Houston [14th Dist.] Mar. 3, 2015, orig. proceeding) (mem. op.) (acknowledging that the Act does not mandate a "rigid stricture of direct legal question . . . followed by a direct legal answer" and that the "conveyance of factual information or the expression of opinion or intent by a member of the governmental body may be appropriate in a closed meeting . . . if the purpose of such statement is to facilitate the rendition of legal advice by the government's attorney").

an attorney is present."[351] A governmental body may, for example, consult with its attorney in executive session about the legal issues raised in connection with awarding a contract, but it may not discuss the merits of a proposed contract, financial considerations, or other nonlegal matters in an executive session held under section 551.071 of the Government Code.[352]

The attorney-client privilege can be waived by communicating privileged matters in the presence of persons who are not within the privilege.[353] Two governmental bodies waived this privilege by meeting together for discussions intended to avoid litigation between them, each party consulting with its attorney in the presence of the other, "the party from whom it would normally conceal its intentions and strategy."[354] An executive session under section 551.071 is not allowed for such discussions. A governmental body may, however, admit to a session closed under this exception its agents or representatives, where those persons' interest in litigation is aligned with that of the governmental body and their presence is necessary for full communication between the governmental body and its attorney.[355]

This exception is an affirmative defense on which the governmental body bears the burden of proof.[356]

2. Section 551.072. Deliberations about Real Property

Section 551.072 authorizes a governmental body to deliberate in executive session on certain matters concerning real property. It provides as follows:

> 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.[357]

Section 551.072 permits an executive session only where public discussion of the subject would have a detrimental effect on the governmental body's negotiating position with respect to a third party.[358] Where a court found that open discussion would not be detrimental to a city's negotiations, a closed session under this provision was not permitted.[359] It does not allow a governmental body

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351 Tex. Att'y Gen. Op. No. JM-100 (1983) at 2; *see Finlan v. City of Dallas*, 888 F. Supp. 779, 782 n.9 (N.D. Tex. 1995); Tex. Att'y Gen. No. JC-0233 (2000) at 3.

352 *Olympic Waste Servs. v. City of Grand-Saline*, 204 S.W.3d 496, 503–04 (Tex. App.—Tyler 2006, no pet.) (citing Tex. Att'y Gen. Op. No. JC-0233 (2000) at 3).

353 *See* Tex. Att'y Gen. Op. Nos. JC-0506 (2002) at 6, JM-100 (1983) at 2.

354 Tex. Att'y Gen. Op. No. MW-417 (1981) at 2–3; *see also* Tex. Att'y Gen. Op. No. JM-1004 (1989) at 4 (concluding that school board member who has sued other board members may be excluded from executive session held to discuss litigation).

355 *See* Tex. Att'y Gen. Op. No. JC-0506 (2002) at 6; *see also* Tex. Att'y Gen. Op. No. JM-238 (1984) at 5.

356 *See Killam Ranch Props., Ltd. v. Webb Cnty.*, 376 S.W.3d 146, 157 (Tex. App.—San Antonio 2012, pet. denied); *City of Farmers Branch v. Ramos*, 235 S.W.3d 462, 466 (Tex. App.—Dallas 2007, no pet.); *Olympic Waste Servs.*, 204 S.W.3d at 504.

357 TEX. GOV'T CODE § 551.072.

358 Tex. Att'y Gen. Op. No. MW-417 (1981) at 2 (construing statutory predecessor to Government Code section 551.072).

359 *See City of Laredo v. Escamilla*, 219 S.W.3d 14, 21 (Tex. App.—San Antonio 2006, pet. denied).

to "cut a deal in private, devoid of public input or debate."[360] A governmental body's discussion of nonmonetary attributes of property to be purchased that relate to the property's value may fall within this exception if deliberating in open session would detrimentally affect subsequent negotiations.[361]

3. Section 551.0725. Deliberations by Certain Commissioners Courts about Contract Being Negotiated

Section 551.0725 provides as follows:

> (a) The commissioners court of a county 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 recording of the proceedings of a closed meeting to deliberate the information.

Section 551.103(a) provides that a governmental body shall either keep a certified agenda or make a recording of the proceedings of each closed meeting, except for a private consultation with its attorney permitted by section 551.071.

4. Section 551.0726. Texas Facilities Commission: Deliberation Regarding Contract Being Negotiated

This section, which provides as follows, is very similar to section 551.0725:

> (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

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360 *Finlan*, 888 F. Supp. at 787.

361 *Save Our Springs All., Inc. v. Austin Indep. Sch. Dist.*, 973 S.W.2d 378, 382 (Tex. App.—Austin 1998, no pet.).

(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), the commission must make a recording of the proceedings of a closed meeting held under this section.[362]

5. Section 551.073. Deliberation Regarding Prospective Gifts

Section 551.073 provides as follows:

> 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.[363]

Before the Act was codified as Government Code chapter 551 in 1993, a single provision encompassed the present sections 551.073 and 551.072.[364] The authorities construing the statutory predecessor to section 551.072 may be relevant to section 551.073.[365]

6. Section 551.074. Personnel Matters

Section 551.074 authorizes certain deliberations about officers and employees of the governmental body to be held in executive session:

(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 a 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.[366]

This section permits executive session deliberations concerning an individual officer or employee.[367] Deliberations about a *class* of employees, however, must be held in an open

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362 TEX. GOV'T CODE § 551.0726.

363 *Id.* § 551.073.

364 *See* Act of Mar. 28, 1973, 63d Leg., R.S., ch. 31, § 2, 1973 Tex. Gen. Laws 45, 46 (former article 6252-17, § 2(f), Revised Civil Statutes).

365 *See, e.g.*, *Dallas Cnty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 282–83 (Tex. App.—Dallas 1991, writ denied).

366 TEX. GOV'T CODE § 551.074.

367 A federal court has said that this provision is not restricted "only to actions affecting a current employee." *Hispanic Educ. Comm. v. Houston Indep. Sch. Dist.*, 886 F. Supp. 606, 611 (S.D. Tex. 1994), *aff'd*, 68 F.3d 467

session.[368] For example, when a governmental body discusses salary scales without referring to a specific employee, it must meet in open session.[369] The closed meetings authorized by section 551.074 may deal only with officers and employees of a governmental body; closed deliberations about the selection of an independent contractor are not authorized.[370]

Section 551.074 authorizes the public officer or employee under consideration to request a public hearing.[371] In *Bowen v. Calallen Independent School District*,[372] a teacher requested a public hearing concerning nonrenewal of his contract but did not object when the school board moved to go into executive session. The court concluded that the school board did not violate the Act.[373] Similarly, in *James v. Hitchcock Independent School District*,[374] a school librarian requested an open meeting on the school district's unilateral modification of her contract. The court stated that refusal of the request for a hearing before the school board "is permissible only where the teacher does not object to its denial."[375] However, silence may not be deemed a waiver if the employee has no opportunity to object.[376] When a board heard the employee's complaint, moved onto other topics, and then convened an executive session to discuss the employee after he left, the court found that the employee had not had an opportunity to object.[377]

7. Section 551.0745. Deliberations by Commissioners Court about County Advisory Body

Attorney General Opinion DM-149 (1992) concluded that members of an advisory committee are not public officers or employees within section 551.074 of the Government Code, authorizing executive session deliberations about certain personnel matters. Section 551.0745 now provides that a commissioners court of a county is not required to deliberate in an open meeting about 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."[378] However, this provision does not apply if the person who is the subject of the deliberation requests a public hearing.[379]

(5th Cir. 1995); *but see* Tex. Att'y Gen. LO-88-52 (1988) at 3 (stating that the exception "applies only to public employees and officers, not to applicants for public employment or office").

368 *Gardner*, 21 S.W.3d at 777; Tex. Att'y Gen. Op. No. H-496 (1975) (construing predecessor to Government Code section 551.074).

369 *See* Tex. Att'y Gen. Op. No. H-496 (1975).

370 *Swate v. Medina Cmty. Hosp.*, 966 S.W.2d 693, 699 (Tex. App.—San Antonio 1998, pet. denied); *Bd. of Trs. v. Cox Enters., Inc.*, 679 S.W.2d 86, 90 (Tex. App.—Texarkana 1984*), aff'd in part, rev'd in part on other grounds*, 706 S.W.2d 956 (Tex. 1986); Tex. Att'y Gen. Op. No. MW-129 (1980) at 1–2.

371 TEX. GOV'T CODE § 551.074(b); *see City of Dallas*, 737 S.W.2d at 848; *Corpus Christi Classroom Tchrs. Ass'n v. Corpus Christi Indep. Sch. Dist.*, 535 S.W.2d 429, 430 (Tex. App.—Corpus Christi 1976, no writ).

372 *Bowen v. Calallen Indep. Sch. Dist.*, 603 S.W.2d 229 (Tex. App.—Corpus Christi 1980, writ ref'd n.r.e.).

373 *Id.* at 236; *accord Thompson v. City of Austin*, 979 S.W.2d 676, 685 (Tex. App.—Austin 1998, no pet.).

374 *James v. Hitchcock Indep. Sch. Dist.*, 742 S.W.2d 701 (Tex. App.—Houston [1st Dist.] 1987, writ denied).

375 *Id.* at 707 (citing *Bowen*, 603 S.W.2d at 236).

376 *Gardner*, 21 S.W.3d at 775.

377 *Id.*.

378 TEX. GOV'T CODE § 551.0745.

379 *See id.*

8. Section 551.075. Conference Relating to Investments and Potential Investments Attended by Board of Trustees Growth Fund

Section 551.075 authorizes a closed meeting between the board of trustees of the Texas Growth Fund and an employee of the Fund or a third party in certain circumstances.[380]

9. Section 551.076. Deliberations Regarding Security Devices or Security Audits

Section 551.076 provides as follows:

> 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.[381]

10. Section 551.077. Agency Financed by Federal Government

Section 551.077 provides that chapter 551 does not require an agency financed entirely by federal money to conduct an open meeting.[382]

11. Section 551.078, .0785. Deliberations Involving Individuals' Medical or Psychiatric Records

These two provisions permit specified governmental bodies to discuss an individual's medical or psychiatric records in closed session. Section 551.078 is the narrower provision, applying to a medical board or medical committee when discussing the records of an applicant for a disability benefit from a public retirement system.[383] Section 551.0785 is much broader, allowing a governmental body that administers a public insurance, health or retirement plan to hold a closed session when discussing the records or information from the records of an individual applicant for a benefit from the plan. The benefits appeals committee for a public self-funded health plan may also meet in executive session for this purpose.[384]

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380 *Id.* § 551.075.

381 *Id.* § 551.076; *see* Tex. Att'y Gen. LO-93-105 (1993) at 3 (indicating a belief that "the applicability of 551.076 rests upon the definition of 'security personnel'").

382 TEX. GOV'T CODE § 551.077.

383 *Id.* § 551.078; *see also* Tex. Att'y Gen. Op. No. DM-340 (1995) at 2 (concluding that section 551.078 authorizes board of trustees of a public retirement system to consider medical and psychiatric records in closed session).

384 TEX. GOV'T CODE § 551.0785.

12. Sections 551.079–.0811. Exceptions Applicable to Specific Entities

Sections 551.079 through 551.0811 are set out below. The judicial decisions and attorney general opinions construing the Act have had little to say about these provisions.

§ 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, Insurance Code, 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.

13. Sections 551.082, .0821, .083. Certain School Board Deliberations

Section 551.082 provides as follows:

> (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.[385]

A student who makes a written request for an open hearing on a disciplinary matter but does not object to an executive session when announced, waives his or her right to an open hearing.[386]

Section 551.0821 provides as follows:

> (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.

The Federal Family Educational Rights and Privacy Act provides for withholding federal funds from an educational agency or institution with a policy or practice of releasing education records

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385 *Id.* § 551.082.

386 *United Indep. Sch. Dist. v. Gonzalez*, 911 S.W.2d 118, 127 (Tex. App.—San Antonio 1995, writ denied).

or personally identifiable information.[387] Section 551.0821 enables school boards to deliberate in closed session to avoid revealing personally identifiable information about a student.

Section 551.083 provides as follows:

> This chapter does not require a school board operating under a consultation agreement authorized by Section 13.901, Education Code [repealed in 1993], 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.[388]

14. Section 551.085. Deliberation by Governing Board of Certain Providers of Health Care Services

Section 551.085 provides as follows:

> (a) This chapter does not require the governing board of a municipal hospital, municipal hospital authority, county hospital, county hospital authority, hospital district created under general or special law, or nonprofit health maintenance organization created under Section 534.101, Health and Safety Code,[389] 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,[390] that is subject to this chapter is not required to conduct an open meeting to deliberate information described by Subsection (a).[391]

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387 20 U.S.C.A. § 1232g; *see also Axtell v. Univ. of Tex.*, 69 S.W.3d 261, 267 (Tex. App.—Austin 2002, no pet.) (holding that student did not have cause of action under Tort Claims Act for release of his grades to radio station).

388 *See* Act of May 28, 1993, 73d Leg., R.S., ch. 347, § 8.33, 1993 Tex. Gen. Laws 1479, 1556. *See* Tex. Att'y Gen. Op. No. H-651 (1975) at 3 (construing predecessor of Government Code section 551.083).

389 Section 534.101 of the Health and Safety Code authorizes community mental health and mental retardation centers to create a limited purpose health maintenance organization. TEX. HEALTH & SAFETY CODE §§ 534.101–.124.

390 This provision authorizes certain hospital districts to establish HMOs.

391 TEX. GOV'T CODE § 551.085.

15. Section 551.086. Certain Public Power Utilities: Competitive Matters

This section was adopted as part of an act relating to electric utility restructuring and is only briefly summarized here.[392] Anyone wishing to know when and how it applies should read it in its entirety.[393] It provides that certain public power utilities are not required to conduct an open meeting to deliberate, vote or take final action on any competitive matter as defined by section 552.133 of the Government Code.[394] Section 552.133 defines "competitive matter" as "a utility-related matter that is related to the public power utility's competitive activity, including commercial information and would, if disclosed, give advantage to competitors or prospective competitors."[395] The definition of "competitive matter" further provides that the term is reasonably related to several categories of information specifically defined[396] and does not include other specified categories of information.[397] "Public power utility" is defined as "an entity providing electric or gas utility services" that is subject to the provisions of the Act.[398] Finally, this executive session provision includes the following provision on notice:

> 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.[399]

16. Section 551.087. Deliberation Regarding Economic Development Negotiations

The provision reads as follows:

> 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).[400]

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392 *See* Act of May 27, 1999, 76th Leg., R.S., ch. 405, 1999 Tex. Gen. Laws 2543, 2543–2625.
393 TEX. GOV'T CODE § 551.086.
394 *Id.* § 551.086(c).
395 *Id.* § 552.133(a-1).
396 *Id.* § 552.133(a-1)(1)(A)–(F).
397 *Id.* § 552.133(a-1)(2)(A)–(O).
398 *Id.* § 551.086(b)(1).
399 *Id.* § 551.086(d).
400 *Id.* § 551.087.

17. Section 551.088. Deliberation Regarding Test Item

This provision states as follows:

> 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. [401]

An executive session may be held only when expressly authorized by law. Thus, before section 551.088 was adopted, the Act did not permit a governmental body to meet in executive session to discuss the contents of a licensing examination.[402]

18. Section 551.089. Deliberation Regarding Security Devices or Security Audits; Closed Meeting

Section 551.089 provides as follows:

> This chapter does not require a governmental body 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.[403]

19. Section 551.090. Enforcement Committee Appointed by Texas State Board of Public Accountancy

Section 551.090 provides that an enforcement committee appointed by the State Board of Public Accountancy is not required to conduct an open meeting to investigate and deliberate a disciplinary action under Subchapter K, Chapter 901, Occupations Code, relating to the enforcement of Chapter 901 or the rules of the Texas State Board of Public Accountancy.[404]

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401 *Id.* § 551.088.

402 *See* Tex. Att'y Gen. LO-96-058 (1996) at 2.

403 TEX. GOV'T CODE § 551.089. Chapter 2059 of the Government Code relates to the "Texas Computer Network Security System." *Id.* §§ 2059.001–.153.

404 *Id.* § 551.090; *see also* TEX. OCC. CODE §§ 901.501–.511 (subchapter K entitled "Prohibited Practices and Disciplinary Procedures").

20. Section 551.091. Commissioners Courts: Deliberation Regarding Disaster or Emergency

Section 551.091 provides that a commissioners court in a county "for which the governor has issued an executive order or proclamation declaring a state of disaster or a state of emergency" and "in which transportation to the meeting location is dangerous or difficult as a result of the disaster or emergency" may hold a closed meeting to deliberate about disaster or emergency conditions "without complying" with the Act, including the requirement to first convene the meeting in an open meeting.[405]

C. Closed Meetings Authorized by Other Statutes

Some state agencies are authorized by their governing law to hold closed meetings in addition to those authorized by the Act.[406] Chapter 418 of the Government Code, the Texas Disaster Act, which relates to managing emergencies and disasters, including those caused by terroristic acts, provides in section 418.183(f):

> A governmental body subject to Chapter 551 is not required to conduct an open meeting to deliberate information to which this section applies. Notwithstanding Section 551.103(a), the governmental body must make a tape recording of the proceedings of a closed meeting to deliberate the information.[407]

Section 418.183 states that "[t]his section applies only to information that is confidential under" specific sections of chapter 418.[408]

Similarly, the Texas Oyster Council is subject to the Act but is "not required to conduct an open meeting to deliberate confidential communications and records . . . relating to the investigation of a food-borne illness that is suspected of being related to molluscan shellfish."[409] And though an appraisal review board is generally required to conduct protest hearings in the open, it is authorized to conduct a closed hearing if the hearing involves disclosure or proprietary or confidential information.[410]

D. No Implied Authority for Closed Meetings

Older attorney general opinions have stated that a governmental body could deliberate in a closed session about confidential information, even though no provision of the Act authorizing a closed

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405 TEX. GOV'T CODE § 551.091(a)–(b). Section 551.091 expires on September 1, 2027. *See id.* § 551.091(e).

406 *See, e.g.*, TEX. FAM. CODE § 264.005(g) (County Child Welfare Boards); TEX. LAB. CODE § 401.021(3) (certain proceedings of Workers' Compensation Commission); TEX. OCC. CODE § 152.009(c) (Board of Medical Examiners; deliberation about license applications and disciplinary actions).

407 TEX. GOV'T CODE § 418.183(f).

408 *Id.* § 418.183(a).

409 TEX. HEALTH & SAFETY CODE § 436.108(f); *see also* TEX. LOC. GOV'T CODE § 161.172(b) (excluding county ethics commissions in certain counties from operation of parts of chapter 551).

410 TEX. TAX CODE § 41.66(d-1).

session applied to the deliberations.[411] These opinions reasoned that information made confidential by statute was not within the Act's prohibition against privately discussing "public business or public policy," or that the board members could deliberate on information in a closed session if an open meeting would result in violation of a confidentiality provision.[412]

However, Attorney General Opinion MW-578 (1982) held that the Texas Employment Commission had no authority to review unemployment benefit cases in closed session, even though in some of the cases very personal information was disclosed about claimants and employers. Reasoning that the Act states that closed meetings may be held only where specifically authorized, the opinion concluded that there was no basis to read into it implied authority for closed meetings.[413] It disapproved the language in earlier opinions that suggests otherwise, but stated that the commission could protect privacy rights by avoiding discussion of private information.[414] Thus, the disapproved opinions should no longer be relied on as a source of authority for a closed session.

E. Who May Attend a Closed Meeting

Only the members of a governmental body have a right to attend an executive session,[415] except that the governmental body's attorney must be present when it meets under section 551.071. A governmental body has discretion to include in an executive session any of its officers and employees whose participation is necessary to the matter under consideration.[416] Thus, a school board could require its superintendent of schools to attend all executive sessions of the board without violating the Act.[417] Given the board's responsibility to oversee the district's management and the superintendent's administrative responsibility and leadership of the district, the board could reasonably conclude that the superintendent's presence was necessary at executive sessions.[418]

A commissioners court may include the county auditor in a meeting closed under section 551.071 to consult with its attorney if the court determines that (1) the auditor's interests are not adverse to the county's; (2) the auditor's presence is necessary for the court to communicate with its attorney;

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411 Tex. Att'y Gen. Op. Nos. H-1154 (1978) at 3 (concluding that county child welfare board may meet in executive session to discuss case files made confidential by statute), H-780 (1976) at 3 (concluding that Medical Advisory Board must meet in closed session to consider confidential reports about medical condition of applicants for a driver's license), H-484 (1974) at 3 (concluding that licensing board may discuss confidential information from applicant's file and may prepare examination questions in closed session), H-223 (1974) at 5 (concluding that administrative hearings in comptroller's office concerning confidential tax information may be closed).

412 Tex. Att'y Gen. Op. No. H-484 (1974) at 2.

413 *See* Tex. Att'y Gen. Op. No. MW-578 (1982) at 4.

414 *Id.*

415 *See* Tex. Att'y Gen. Op. Nos. JM-6 (1983) at 1–2 (stating that only members of the governmental body have the right to convene in executive session), KP-0006 (2015) at 2.

416 Tex. Att'y Gen. Op. No. JC-0375 (2001) at 2; *see also* Tex. Att'y Gen. Op. No. GA-0277 (2004) at 3 (concluding that commissioners court may allow the county clerk to attend its executive sessions), KP-0006 (2015) at 2 (concluding that a representative of a municipality may attend an executive session of a housing authority if the governing body of the housing authority determines the municipal representative's participation is necessary to the matter to be discussed).

417 Tex. Att'y Gen. Op. No. JC-0375 (2001) at 2.

418 *Id.*

and (3) the county auditor's presence will not waive the attorney-client privilege.[419] If the meeting is closed under an executive session provision other than section 551.071, the commissioners court may include the county auditor if the auditor's interests are not adverse to the county and his or her participation is necessary to the discussion.[420]

A governmental body must not admit to an executive session a person whose presence is contrary to the governmental interest protected by the provision authorizing the session. A person who wishes to sell real estate to a city may not attend an executive session under section 551.072, a provision designed to protect the city's bargaining position in negotiations with a third party.[421] Nor may a governmental body admit the opposing party in litigation to an executive session under section 551.071.[422] A governmental body has no authority to admit members of the public to a meeting closed under section 551.074 to give input about the public officer or employee being considered at the meeting.[423]

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419 Tex. Att'y Gen. Op. No. JC-0506 (2002) at 6; *see* Tex. Att'y Gen. Op. No. JM-238 (1984) at 5 (concluding that county officers and employees may attend closed session of county commissioners court to discuss litigation against sheriff and commissioners court about county jail conditions).

420 *See* Tex. Att'y Gen. Op. No. JC-0506 (2002) at 6.

421 *Finlan v. City of Dallas*, 888 F. Supp. 779, 787 (N.D. Tex. 1995).

422 *See* Tex. Att'y Gen. Op. Nos. JM-1004 (1989) at 4 (concluding that school board member who has sued other board members may be excluded from executive session held to discuss litigation), MW-417 (1981) at 2–3 (concluding that provision authorizing governmental body to consult with attorney in executive session about contemplated litigation does not apply to joint meeting between the governmental bodies to avoid lawsuit between them).

423 *See* Tex. Att'y Gen. Op. No. GA-0511 (2007) at 6.

X. Records of Meetings

A. Minutes or Recordings of Open Meeting

Section 551.021 of the Government Code provides as follows:

> (a) A governmental body shall prepare and keep minutes or make a 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.[424]

Section 551.022 of the Government Code provides:

> The minutes and 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.[425]

If minutes are kept instead of a recording, the minutes should record every action taken by the governmental body.[426] If open sessions of a commissioners court meeting are recorded, the recordings are available to the public under the Public Information Act.[427] (For a discussion of record retention laws, refer to Part XII.F of this *Handbook*).

B. Special Recording Requirements

Section 551.1283 requires special purpose districts subject to chapters 51, 53, 54, or 55 of the Water Code with populations of 500 or more to post the minutes of a meeting held to consider the adoption of an ad valorem tax rate on the district's internet website if it has one.[428] Such districts are also required to make an audio recording of the public hearing on written request of a resident

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424 TEX. GOV'T CODE § 551.021; *see also* Tex. Att'y Gen. Op. No. GA-0727 (2009) at 2 (opining that Texas State Library and Archives Commission rule requiring written minutes of every open meeting of a state agency is likely invalid as inconsistent with section 551.021(a), which authorizes a governmental body to make a recording of an open meeting).

425 TEX. GOV'T CODE § 551.022; *see York v. Tex. Guaranteed Student Loan Corp.*, 408 S.W.3d 677, 688 (Tex. App.—Austin 2013, no pet.) (concluding that exceptions in the Public Information Act do not operate to prevent public disclosure of minutes requested under section 551.022).

426 *See York*, 408 S.W.3d at 687 (defining "minutes" to refer "to the record or notes of a meeting or proceeding, whatever they may contain").

427 Tex. Att'y Gen. Op. No. JM-1143 (1990) at 2–3 (concluding that tape recording of open session of commissioners court meeting is subject to Open Records Act); *see* Tex. Att'y Gen. ORD-225 (1979) at 3 (concluding that handwritten notes of open meetings made by secretary of governmental body are subject to disclosure under Open Records Act); ORD-32 (1974) at 2 (concluding that audio tape recording of open meeting of state licensing agency used as aid in preparation of accurate minutes is subject to disclosure under Open Records Act).

428 *See* TEX. GOV'T CODE § 551.1283(a)–(b).

and to provide the recording to the resident no later than five days after the hearing.[429] These special districts must also post "links to any other Internet website or websites the district uses to comply with Section 2051.202 of this code and Section 26.18, Tax Code."[430]

Section 551.091, which authorizes county commissioners courts in limited disaster circumstances to hold an open or closed meeting without complying with the requirements of chapter 551, still requires the commissioners court prepare and keep minutes or a recording of the meeting and make the minutes or recording available to the public as soon as practicable.[431]

C. Certified Agenda or Recording of Closed Meeting

A governmental body must make and keep either a certified agenda or a recording of each executive session, except for an executive session held by the governmental body to consult with its attorney in accordance with section 551.071 of the Government Code.[432] If a certified agenda is kept, the presiding officer must certify that the agenda is a true and correct record of the executive session.[433] 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 closed meeting indicating the date and time."[434] While the agenda does not have to be a verbatim transcript of the meeting, it must at least provide a brief summary of each deliberation.[435] Whether a particular agenda satisfies the Act is a question of fact that must be addressed by the courts. Attorney General Opinion JM-840 (1988) cautioned governmental bodies to consider providing greater detail in the agenda with regard to topics not authorized for consideration in executive session or to avoid the uncertainty concerning the requisite detail required in an agenda by recording executive sessions.[436] Any member of a governmental body participating in a closed session knowing that an agenda or recording is not being made commits a Class C misdemeanor.[437]

The certified agenda or recording of an executive session must be kept a minimum of two years after the date of the session.[438] If during that time a lawsuit that concerns the meeting is brought,

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429 *See id.* § 551.1283(b).

430 *Id.* § 551.1283(d). Section 2051.202 of the Government Code requires a district to post on its website, among other things, the location and schedule of meetings, as well as meeting notices, minutes, and instructions for requesting certain meeting locations. *See* TEX. GOV'T CODE § 2051.202(d)(11), (13), (14). Generally, section 26.18 of the Tax Code requires taxing units to post information relating to their tax rate and budget information on a website. *See* TEX. TAX CODE § 26.18.

431 TEX. GOV'T CODE § 551.091(d)(2).

432 *Id.* § 551.103(a); *see* Tex. Att'y Gen. Op. No. JM-840 (1988) at 3 (discussing meaning of "certified agenda"); *but see* TEX. GOV'T CODE §§ 551.0725(b) (providing that notwithstanding section 551.103(a), the commissioners court must make a recording of the proceedings of a closed meeting under this section), 551.0726(b) ("[N]otwithstanding Section 551.103(a), the [Texas Facilities] Commission must make a recording of the proceedings of a closed meeting held under this section.").

433 TEX. GOV'T CODE § 551.103(b).

434 *Id.* § 551.103(c).

435 Tex. Att'y Gen. Op. No. JM-840 (1988) at 4–7.

436 *Id.* at 5–6 (referring to legislative history of section indicating that its primary purpose is to document fact that governmental body did not discuss unauthorized topics in closed session).

437 TEX. GOV'T CODE § 551.145.

438 *Id.* § 551.104(a).

the agenda or recording of that meeting must be kept pending resolution of the lawsuit.[439] The commissioners court, not the county clerk, is the proper custodian for the certified agenda or recording of a closed meeting, but it may delegate that duty to the county clerk.[440]

A certified agenda or recording of an executive session is confidential. A person who knowingly and without lawful authority makes these records public commits a Class B misdemeanor and may be held liable for actual damages, court costs, reasonable attorney fees and exemplary or punitive damages.[441] Section 551.104 provides for court-ordered access to the certified agenda or recording under specific circumstances:

> (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 recording;
>
> (2) may admit all or part of the certified agenda or recording as evidence, on entry of a final judgment; and
>
> (3) may grant legal or equitable relief it considers appropriate, including an order that the governmental body make available to the public the certified agenda or recording of any part of a meeting that was required to be open under this chapter.
>
> (c) the certified agenda or recording of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3).[442]

Section 551.104 authorizes a district court to admit all or part of the certified agenda or recording of a closed session as evidence in an action alleging a violation of the Act, thus providing the only means under state law whereby a certified agenda or recording of a closed session may be released to the public.[443] The Office of the Attorney General has recognized that it lacks authority under the Public Information Act[444] to review certified agendas or recordings of closed sessions for compliance with the Open Meetings Act.[445] However, the confidentiality provision may be preempted by federal law.[446] When the Equal Employment Opportunity Commission served a

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439 *Id.*

440 Tex. Att'y Gen. Op. No. GA-0277 (2004) at 3–4.

441 TEX. GOV'T CODE § 551.146.

442 *Id.* § 551.104.

443 Tex. Att'y Gen. Op. No. JM-995 (1988) at 5; *In re Smith Cnty.*, 521 S.W.3d 447, 454 (Tex. App.—Tyler 2017, no pet.) (stating that "it is clear that [section 551.104] applies to litigation before the recording of a closed meeting is made available to the public[;] . . . . once the recordings of the closed meetings become readily available to the public, section 551.104 no longer applies").

444 TEX. GOV'T CODE §§ 552.001–.376.

445 *See* Tex. Att'y Gen. ORD-495 (1988) at 2, 4.

446 *Equal Emp. Opportunity Comm'n v. City of Orange, Tex.*, 905 F. Supp. 381, 382 (E.D. Tex. 1995).

Texas city with an administrative subpoena for tapes of closed city council meetings, the Open Meetings Act did not excuse compliance.[447]

A member of the governmental body has a right to inspect the certified agenda or recording of a closed meeting, even if he or she did not participate in the meeting.[448] This is not a release to the public in violation of the confidentiality provisions of the Act, because a board member is not a member of the public within that prohibition. The governmental body may adopt a procedure permitting review of the certified agenda or recording but may not entirely prohibit a board member from reviewing the record. The board member may not copy the recording or certified agenda of a closed meeting, nor may a former member of a governmental body inspect these records once he or she leaves office.[449]

D. Additional Recording Requirements for Certain Districts

Section 551.1283 requires a special purpose district subject to chapter 51, 53, 54, or 55 of the Water Code with a population of 500 or more to "make an audio recording of reasonable quality" of a "public hearing to consider the adoption of an ad valorem tax rate" upon timely request of a resident of the district.[450] The district must make the recording available to the resident not later than the fifth business day after the date of the hearing and also maintain a copy of the recording for at least one year.[451]

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447 *Id.*

448 Tex. Att'y Gen. Op. No. JC-0120 (1999) at 4, 5, 7 (overruling Tex. Att'y Gen. Op. No. DM-227 (1993), in part).

449 Tex. Att'y Gen. LO-98-033 (1998) at 2–3; *cf.* Tex. Att'y Gen. Op. No. DM-227 (1993) at (2) (concluding that the Act does not preclude a member of a governmental body from reviewing the certified agenda or tape recording of a closed meeting in which the member had participated).

450 TEX. GOV'T CODE § 551.1283(b).

451 *Id.*

XI. Penalties and Remedies

A. Introduction

The Act provides civil remedies and criminal penalties for violations of its provisions. District courts have original jurisdiction over criminal violations of the Act as misdemeanors involving official misconduct.[452] As a general matter, the Act does not authorize the attorney general to enforce its provisions.[453] However, a district attorney, criminal district attorney or county attorney may request the attorney general's assistance in prosecuting a criminal case, including one under the Act.[454]

B. Mandamus or Injunction

Section 551.142 of the Act provides as follows:

> (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.[455]

Texas courts examining this provision have said that "[t]he Open Meetings Act expressly waives sovereign immunity for violations of the [A]ct."[456] The four-year limitations period in section 16.051 of the Civil Practices and Remedies Code applies to an action under this provision.[457]

Generally, a writ of mandamus would be issued by a court to require a public official or other person to perform duties imposed on him or her by law. A mandamus ordinarily commands a person or entity to act, while an injunction restrains action.[458] The Act does not automatically confer jurisdiction on the county court, but where the plaintiff's money demand brings the amount

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452 *See State v. Williams*, 780 S.W.2d 891, 892–93 (Tex. App.—San Antonio 1989, no writ).

453 *See State ex rel. Durden v. Shahan*, 658 S.W.3d 300, 304 (Tex. 2022) (acknowledging the Legislature's 2019 amendment to section 551.142 authorizing the attorney general to bring certain actions to enforce "*one* of [the Act's] provisions").

454 *See* TEX. GOV'T CODE § 402.028(a).

455 *Id.* § 551.142; *see also Burleson v. Collin Cnty. Cmty. Coll. Dist.*, No. 05-21-00088-CV, 2022 WL 17817965 (Tex. App.—Dallas Dec. 20, 2022) (noting the majority view of the Texas appellate courts is that the Act "broadly confers standing on any person who shares an injury in common with the general public"); *State ex rel. Durden*, 658 S.W.3d at 304 (concluding that "interested person" did not authorize a county attorney to file suit for a violation of the Act suit on behalf of the state).

456 *Hays Cnty. v. Hays Cnty. Water Plan. P'ship*, 69 S.W.3d 253, 257 (Tex. App.—Austin 2002, no pet.); *see Riley v. Comm'rs Court*, 413 S.W.3d 774, 776–77 (Tex. App.—Austin 2013, pet. denied).

457 *Rivera v. City of Laredo*, 948 S.W.2d 787, 793 (Tex. App.—San Antonio 1997, writ denied).

458 *Boston v. Garrison*, 256 S.W.2d 67, 69 (Tex. 1953).

in controversy within the court's monetary limits, the county court has authority to issue injunctive and mandamus relief.[459] Absent such a pleading, jurisdiction in original mandamus and original injunction proceedings lies in the district court.[460]

Section 551.142(a) authorizes any interested person, including a member of the news media, to bring a civil action seeking either a writ of mandamus or an injunction.[461] In keeping with the purpose of the Act, standing under the Act is interpreted broadly.[462] Standing conferred by the Act is broader than taxpayer standing, and a citizen does not need to prove an interest different from the general public, "because 'the interest protected by the Open Meetings Act is the interest of the general public.'"[463] The phrase "any interested person" includes a government league,[464] an environmental group,[465] the president of a local homeowners group,[466] a city challenging the closure of a hospital by the county hospital district,[467] a town challenging annexation ordinances,[468] and a city manager regarding a meeting he attended.[469] A suspended police officer and a police officers' association were "interested persons" who could bring a suit alleging that the city council had violated the Act in selecting a police chief.[470]

Despite previous court opinions recognizing that an individual may bring a declaratory judgment action pursuant to the Uniform Declaratory Judgments Act, chapter 37 of the Texas Civil Practice and Remedies Code,[471] the Texas Supreme Court recently concluded that section 551.421's waiver of sovereign immunity includes only a mandamus or injunction.[472] Thus, a "declaration" that an action is void is no longer a vehicle by which to challenge a governmental body's action taken in violation of the Act.

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459 *Martin v. Victoria Indep. Sch. Dist.*, 972 S.W.2d 815, 818 (Tex. App.—Corpus Christi 1998, pet. denied).

460 *Id.*

461 TEX. GOV'T CODE § 551.142(a); *see Cameron Cnty. Good Gov't League v. Ramon*, 619 S.W.2d 224, 230–31 (Tex. App.—Beaumont 1981, writ ref'd n.r.e.).

462 *See Burks v. Yarbrough*, 157 S.W.3d 876, 880 (Tex. App.—Houston [14th Dist.] 2005, no pet.); *Hays Cnty. Water Plan. P'ship v. Hays Cnty.*, 41 S.W.3d 174, 177 (Tex. App.—Austin 2003, no pet.).

463 *See Hays Cnty. Plan. P'ship*, 41 S.W.3d at 177–78 (quoting *Save Our Springs All., Inc. v. Lowry*, 934 S.W.2d 161, 163 (Tex. App.—Austin 1996, orig. proceeding [leave denied]).

464 *See Cameron Cnty.*, 619 S.W.2d at 230.

465 *See Save Our Springs All., Inc.*, 934 S.W.2d at 162–64.

466 *Id.*

467 *Matagorda Cnty. Hosp. Dist. v. City of Palacios*, 47 S.W.3d 96, 102 (Tex. App.—Corpus Christi 2001, no pet.).

468 *City of Port Isabel v. Pinnell*, 161 S.W.3d 233, 241 (Tex. App.—Corpus Christi 2005, no pet.).

469 *City of Donna v. Ramirez*, 548 S.W.3d 26, 34–35 (Tex. App.—Corpus Christi 2017, pet. denied).

470 *Rivera v. City of Laredo*, 948 S.W.2d 787, 792 (Tex. App.—San Antonio 1997, writ denied).

471 *Bd. of Trs. v. Cox Enters., Inc.*, 679 S.W.2d 86, 88 (Tex. App.—Texarkana 1984), *aff'd in part, rev'd in part on other grounds*, 706 S.W.2d 956 (Tex. 1986) (recognizing news media's right to bring declaratory judgment action to determine if board violated the Act); *see also City of Fort Worth v. Groves*, 746 S.W.2d 907, 913 (Tex. App.—Fort Worth 1988, no writ) (concluding that resident and taxpayer of city had standing to bring suit for declaratory judgment and injunction against city for violation of the Act).

472 *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 554 (Tex. 2019) (holding that section 551.142 set the boundaries of a governmental body's immunity waiver to the express relief provided therein—to that of an injunction or mandamus).

Section 551.142(b) authorizes a court to award reasonable attorney fees and litigation costs to the party who substantially prevails in an action brought under the Act.[473] This relief, however, is discretionary.

In one instance, the Act gives the attorney general specific enforcement authority. Section 551.142(c) authorizes the attorney general, in a district court in Travis County, to seek mandamus or an injunction to stop, prevent, or reverse a violation or threatened violation of section 551.142(a-1), a provision which limits a governmental body's actions in an emergency meeting or one for which an emergency supplemental notice is posted.[474]

Depending on the nature of the violation, additional monetary damages may be assessed against a governmental body that violated the Act. In *Ferris v. Texas Board of Chiropractic Examiners*,[475] the appellate court awarded back pay and reinstatement to an executive director whom the board had attempted to fire at two meetings convened in violation of the Act. Finally, at the third meeting held to discuss the matter, the board lawfully fired the executive director. Back pay was awarded for the period between the initial unlawful firing and the third meeting at which the director's employment was lawfully terminated.[476]

Court costs or attorney fees as well as certain other monetary damages can also be assessed under section 551.146, which relates to the confidentiality of the certified agenda. It provides that an individual, corporation or partnership that knowingly and without lawful authority makes public the certified agenda or recording of an executive session shall be liable for:

(1) actual damages, including damages for personal injury or damage, lost wages, defamation, or mental or other emotional distress;

(2) reasonable attorney fees and court costs; and

(3) at the discretion of the trier of fact, exemplary damages.[477]

C. Voidability of a Governmental Body's Action in Violation of the Act; Ratification of Actions

Section 551.141 provides that "[a]n action taken by a governmental body in violation of this chapter is voidable."[478] Before this section was adopted, Texas courts held as a matter of common law that a governmental body's actions that are in violation of the Act are subject to judicial

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473 TEX. GOV'T CODE § 551.142(b); *see Austin Transp. Study Pol'y Advisory Comm. v. Sierra Club*, 843 S.W.2d 683, 690 (Tex. App.—Austin 1992, writ denied) (upholding award of attorney fees).

474 TEX. GOV'T CODE § 551.142(c).

475 *Ferris v. Tex. Bd. of Chiropractic Exam'rs*, 808 S.W.2d 514, 518–19 (Tex. App.—Austin 1991, writ denied).

476 *Id.* at 519 (awarding executive director attorney fees of $7,500).

477 TEX. GOV'T CODE § 551.146(a)(2).

478 *Id.* § 551.141.

invalidation.[479] Section 551.141 does not require a court to invalidate an action taken in violation of the Act, and it may choose not to do so, given the facts of a specific case.[480]

In *Point Isabel Independent School District v. Hinojosa*,[481] the Corpus Christi Court of Appeals construed this provision to permit the judicial invalidation of only the specific action or actions found to violate the Act. Prior to doing so, the court addressed the sufficiency of the notice for the school board's July 12, 1988, meeting. With regard to that issue, the court determined that the description "personnel" in the notice was insufficient notice of the selection of three principals at the meeting, a matter of special interest to the public, but was sufficient notice of the selection of a librarian, an English teacher, an elementary school teacher, a band director and a part-time counselor.[482] (For further discussion of required content of notice under the Act, *see supra* Part VII.A of this *Handbook*.) The court in *Point Isabel Independent School District* then turned to the question of whether the board's invalid selection of the three principals tainted all hiring decisions made at the meeting. The court felt that, given the reference in the statutory predecessor to section 551.141 to "an action taken" and not to "all actions taken," this provision meant only that a specific action or specific actions violating the Act were subject to judicial invalidation. Consequently, the court refused the plaintiff's request to invalidate all hiring decisions made at the meeting and held void only the board's selection of the three principals.[483]

In *City of Brownsville v. Brownsville GMS*, the Corpus Christi Court of Appeals interpreted sections 551.141 and 551.142 of the Act to address what remedies are permissible under the Act.[484] Brownsville GMS was a commercial and industrial waste service provider, which served the City of Brownsville on a month-to-month basis.[485] Alleging that the City rejected a fully negotiated long-term agreement with Brownsville GMS as a result of a discussion that violated the Act, Brownsville GMS sought a temporary injunction from the trial court.[486] The injunction prevented the City of Brownsville from terminating its contract with Brownsville GMS or executing or performing a new contract with a third party for the same services.[487] But the City never actually

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479 *See Lower Colorado River Auth. v. City of San Marcos*, 523 S.W.2d 641, 646 (Tex. 1975); *Toyah Indep. Sch. Dist. v. Pecos-Barstow Indep. Sch. Dist.*, 466 S.W.2d 377, 380 (Tex. App.—San Antonio 1971, no writ); *see also Ferris*, 808 S.W.2d at 517; Tex. Att'y Gen. Op. No. H-594 (1975) at 2 (noting that governmental body cannot independently assert its prior action that governmental body failed to ratify is invalid when it is to governmental body's advantage to do so).

480 *See Collin Cnty., Tex. v. Homeowners Ass'n for Values Essential to Neighborhoods*, 716 F. Supp. 953, 960 n.12 (N.D. Tex. 1989) (declining to dismiss lawsuit that county authorized in violation of Act's notice requirements if county within thirty days of court's opinion and order authorized lawsuit at meeting in compliance with the Act); *but see City of Bells v. Greater Texoma Util. Auth.*, 744 S.W.2d 636, 640 (Tex. App.—Dallas 1987, no writ) (dismissing authority's lawsuit initiated at meeting in violation of the Act's notice requirements).

481 *Point Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176 (Tex. App.—Corpus Christi 1990, writ denied).

482 *Id.* at 182.

483 *Id.* at 182–83; *see also Hill v. Palestine Indep. Sch. Dist.*, 113 S.W.3d 14, 17 (Tex. App.—Tyler 2000, pet. denied) (holding a deliberation that violated the Open Meetings Act did not render voidable a subsequent vote held in compliance with the Act).

484 *City of Brownsville v. Brownsville GMS, Ltd.*, No. 13-19-00311-CV, 2021 WL 1804388, at *8 (Tex. App.—Corpus Christi-Edinburg May 6, 2021, no pet.).

485 *Id.* at *1.

486 *Id.*

487 *Id.* at *8.

did any of these things.[488] The Court of Appeals determined that the Act permits courts to void only actions which were approved in violation of the Act.[489] Thus, the court could not restrain an entity from engaging in an action which had not actually been approved in violation of the Act.[490]

A governmental body cannot give retroactive effect to a prior action taken in violation of the Act but may ratify the invalid act in a meeting held in compliance with the Act.[491] The ratification will be effective only from the date of the meeting at which the valid action is taken.[492]

In *Ferris v. Texas Board of Chiropractic Examiners*, the Austin Court of Appeals refused to give retroactive effect to a decision to fire the executive director reached at a meeting of the board that was held in compliance with the Act.[493] The board had attempted to fire the director at two previous meetings that did not comply with the Act. The subsequent lawful termination did not cure the two previous unlawful firings retroactively, and the court awarded back pay to the director for the period between the initial unlawful firing and the final lawful termination.[494]

Ratification of an action previously taken in violation of the Act must comply with all applicable provisions of the Act.[495] In *Porth v. Morgan*, the Houston County Hospital Authority Board attempted to reauthorize the appointment of an individual to the board but did not comply fully with the Act.[496] The board had originally appointed the individual during a closed meeting, violating the requirement that final action take place in an open meeting. The original appointment also violated the notice requirement, because the posted notice did not include appointing a board member as an item of business. At a subsequent open meeting, the board chose the individual as its vice-chairman and, as such, a member of the board, but the notice did not say that the board might appoint a new member or ratify its prior invalid appointment. Accordingly, the board's subsequent selection of the individual as vice-chairman did not ratify the board's prior invalid appointment.

D. Criminal Provisions

Certain violations of the Act's requirements concerning certified agendas or recordings of executive sessions are punishable as Class C or Class B misdemeanors. Section 551.145 provides as follows:

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488 *Id.*

489 *Id.*

490 *Id.*

491 *Lower Colo River Auth.*, 523 S.W.2d at 646–47 (recognizing effectiveness of increase in electric rates only from date reauthorized at lawful meeting); *City of San Antonio v. River City Cabaret, Ltd.*, 32 S.W.3d 291, 293 (Tex. App.—San Antonio 2000, pet. denied). *Cf. Dallas Cnty. Flood Control v. Cross*, 815 S.W.2d 271, 284 (Tex. App.—Dallas 1991, writ denied) (holding ineffective district's reauthorization at lawful meeting of easement transaction initially authorized at unlawful meeting, because to do so, given the facts in that case, would give retroactive effect to transaction).

492 *River City Cabaret, Ltd.*, 32 S.W.3d at 293.

493 *Ferris*, 808 S.W.2d at 518–19.

494 *Id.*

495 *See id.* at 518 ("A governmental entity may ratify only what it could have lawfully authorized initially.").

496 *Porth v. Morgan*, 622 S.W.2d 470, 473, 475–76 (Tex. App.—Tyler 1981, writ ref'd n.r.e.).

(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 recording of the closed meeting is not being made.

(b) An offense under Subsection (a) is a Class C misdemeanor.[497]

Section 551.146 provides:

(a) An individual, corporation, or partnership that without lawful authority knowingly discloses to a member of the public the certified agenda or 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 recording.[498]

In order to find that a person has violated one of these provisions, the person must be determined to have acted "knowingly." Subsection 6.03(b) of the Penal Code, defines that state of mind as follows:

> A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with

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497 TEX. GOV'T CODE § 551.145.

498 *Id.* § 551.146; *but see Pete v. Dunn*, No. 1:21-CV-546, 2022 WL 2032306 (E.D. Tex. May 11, 2022) (considering pleading generally alleging a violation of the Act and concluding that the Act does not provide for monetary relief).

> knowledge, with respect to his conduct when he is aware that his conduct is reasonably certain to cause the result.[499]

A 2012 court of appeals case enumerated the elements of this criminal offense to be: (1) a lawfully closed meeting; (2) a knowing disclosure of the agenda or tape recording of the lawfully closed meeting to a member of the public; and (3) a disclosure made without lawful authority.[500] In *Cooksey v. State*, Cooksey attached a copy of the tape recording of a closed meeting to his petition in his suit to remove the county judge.[501] He was later charged with a violation of section 551.146.[502] The court of appeals determined that the posted notice for the emergency meeting did not clearly identify the emergency and thus the meeting was not sufficient as a "lawfully closed meeting" to uphold Cooksey's conviction.[503]

Section 551.146 does not prohibit members of the governmental body or other persons who attend an executive session from making public statements about the subject matter of the executive session.[504] Other statutes or duties, however, may limit what a member of the governmental body may say publicly.

Sections 551.143 and 551.144 of the Government Code establish criminal sanctions for certain conduct that violates openness requirements. A member of a governmental body must be found to have acted "knowingly" to be found guilty of either of these offenses. Section 551.143 provides:

> (a) A member of a governmental body commits an offense if the member:
>
> (1) knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by this chapter and that concern an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constitute fewer than a quorum of members but the members engaging in the series of communications constitute a quorum of members; and
>
> (2) knew at the time the member engaged in the communication that the series of communications:
>
> (A) involved or would involve a quorum; and
>
> (B) would constitute a deliberation once a quorum of members engaged in the series of communications.[505]

Section 551.144 provides as follows:

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499 TEX. PENAL CODE § 6.03(b).

500 *Cooksey v. State*, 377 S.W.3d 901, 905 (Tex. App.—Eastland 2012, no pet.).

501 *Id.* at 903–04.

502 *Id.* at 904.

503 *Id.* at 907.

504 Tex. Att'y Gen. Op. No. JM-1071 (1989) at 2–3; *see also Hardy v. Carthage Indep. Sch. Dist.*, No. 2:19-CV-00277, 2022 WL 609151, at *2 (E.D. Tex. Mar. 1, 2022) (acknowledging that Opinion JM-1071 corroborated support for the proposition that section 551.146 is limited to disclosure of the certified agenda or recording).

505 TEX. GOV'T CODE § 551.143.

(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.[506]

(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.[507]

(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.[508]

In 1998, the Texas Court of Criminal Appeals determined in *Tovar v. State*[509] that a government official who knowingly participated in an impermissible closed meeting may be found guilty of violating the Act even though he did not know that the meeting was prohibited under the Act. Subsection 551.144(c) now provides an affirmative defense to prosecution under subsection (a) if the member of the governmental body acted in reasonable reliance on a court order or a legal opinion as set out in subsection (c).[510]

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506 *See Asgeirsson v. Abbott*, 773 F. Supp. 2d 684, 690 (W.D. Tex. 2011), *aff'd*, 696 F. 3d 454 (5th Cir. 2012), *cert. denied*, 568 U.S. 1249 (2013) (upholding constitutionality of section 551.144).

507 *See Martinez v. State*, 879 S.W.2d 54, 55–56 (Tex. Crim. App. 1994) (upholding validity of information which charged county commissioners with violating Act by failing to comply with procedural prerequisites for holding closed session).

508 TEX. GOV'T CODE § 551.144.

509 *Tovar v. State*, 978 S.W.2d 584 (Tex. Crim. App. 1998).

510 TEX. GOV'T CODE § 551.144(c).

XII. Open Meetings Act and Other Statutes

A. Other Statutes May Apply to a Public Meeting

The Act is not the only provision of law relevant to a public meeting of a particular governmental entity. For example, section 551.004 of the Government Code expressly provides:

> 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.[511]

In *Shackelford v. City of Abilene*,[512] the Texas Supreme Court held that an Abilene resident had a right to require public meetings under the Abilene city charter, which included the following provision:

> All meetings of the Council and all Boards or Commissions appointed by the Council shall be open to the public.[513]

Members of a particular governmental body should consult any applicable statutes, charter provisions, ordinances and rules for provisions affecting the entity's public meetings. Laws other than the Act govern preparing the agenda for a meeting[514] but the procedures for agenda preparation must be consistent with the openness requirements of the Act.[515]

Even though a particular entity is not a "governmental body" as defined by the Act, another statute may require it to comply with the Act's provisions.[516] Some exercises of governmental power, for example, a city's adoption of zoning regulations, require the city to hold a public hearing at which parties in interest and citizens have an opportunity to be heard.[517] Certain governmental actions may be subject to statutory notice provisions[518] in addition to notice required by the Act.

The Act does not answer all questions about conducting a public meeting. Thus, persons responsible for a particular governmental body's meetings must know about other laws applicable to these meetings. While this *Handbook* cannot identify all provisions relevant to meetings of

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511 *Id.* § 551.004.

512 *Shackelford v. City of Abilene*, 585 S.W.2d 665, 667 (Tex. 1979).

513 *Id.* at 667 (emphasis omitted).

514 Tex. Att'y Gen. Op. Nos. DM-473 (1998) at 3, DM-228 (1993) at 2–3, JM-63 (1983) at 3, MW-32 (1979) at 1.

515 Tex. Att'y Gen. Op. Nos. DM-473 (1998) at 3, DM-228 (1993) at 3.

516 *See* TEX. EDUC. CODE § 12.1051 (applying open meetings and public information laws to open-enrollment charter schools); *see also* TEX. ELEC. CODE §§ 31.033(d), .155(d) (applying the Act to county election commissions and joint election commission); TEX. WATER CODE § 16.053(h)(12) (providing that regional water planning groups are subject to the Open Meetings Act).

517 *See* TEX. LOC. GOV'T CODE § 211.006.

518 *See id.* § 152.013(b); *see also* TEX. ELEC. CODE §§ 31.033(d), .155(d).

Texas governmental bodies, we will point out statutes that are of special importance to governmental bodies.

B. Administrative Procedure Act

The Administrative Procedure Act (the "APA") establishes "minimum standards of uniform practice and procedure for state agencies" in the rulemaking process and in hearing and resolving contested cases.[519] The state agencies subject to the APA are as a rule also subject to the Act.[520] The decision-making process under the APA is not excepted from the requirements of the Act.[521]

However, this office has concluded that the APA creates an exception to the requirements of the Act with regard to contested cases.[522] A governmental body may consider a claim of privilege in a closed meeting when (1) the claim is made during a contested case proceeding under the APA, and (2) the resolution of the claim requires the examination and discussion of the allegedly privileged information.[523] Although the Act does not authorize a closed meeting for this purpose, the APA incorporates certain rules of evidence and civil procedure, including the requirement that claims of privilege or confidentiality be determined in a nonpublic forum.[524]

The APA does not, on the other hand, create exceptions to the requirements of the Act when the two statutes can be harmonized. In *Acker v. Texas Water Commission*, the Texas Supreme Court concluded that the statutory predecessor to section 2001.061 of the Government Code did not authorize a quorum of the members of a governmental body to confer in private regarding a contested case.[525] Section 2001.061(b) provides in pertinent part: "A state agency member may communicate ex parte with another member of the agency unless prohibited by other law."[526] The court concluded that, when harmonized with the provisions of the Act, this section permits a state agency's members to confer ex parte, but only when less than a quorum is present.[527]

C. The Americans with Disabilities Act

Title II of the Americans with Disabilities Act of 1990 (the "ADA") prohibits discrimination against disabled individuals in the activities, services and programs of public entities.[528] All the activities of state and local governmental bodies are covered by the ADA, including meetings. Governmental bodies subject to the Act must also ensure that their meetings comply with the ADA.[529] For purposes of the ADA, an individual is an individual with a disability if he or she meets one of the following three tests: the individual must have a physical or mental impairment

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519 TEX. GOV'T CODE § 2001.001(1); *see also id.* § 2001.003(1), (6).
520 *See id.* § 2001.003(7) (defining "state agency").
521 Tex. Att'y Gen. Op. No. H-1269 (1978) at 1 (considering statutory predecessor to APA).
522 Tex. Att'y Gen. Op. No. JM-645 (1987) at 5–6.
523 *Id.*
524 *Id.* at 4–5; *see* TEX. GOV'T CODE § 2001.083.
525 *Acker v. Tex. Water Comm'n*, 790 S.W.2d 299, 301 (Tex. 1990).
526 TEX. GOV'T CODE § 2001.061.
527 *Acker*, 790 S.W.2d at 301.
528 42 U.S.C.A. §§ 12131–12165.
529 *See id.* § 12132; 28 C.F.R. §§ 35.130, .149, .160; *see generally Tyler v. City of Manhattan*, 849 F. Supp. 1429, 1434–35 (D. Kan. 1994).

that substantially limits one or more of the individual's major life activities; he or she has a record of having this type of physical or mental impairment; or he or she is regarded by others as having this type of impairment.[530]

A governmental body may not exclude a disabled individual from participation in the activities of the governmental body because the facilities are physically inaccessible.[531] The room in which a public meeting is held must be physically accessible to a disabled individual.[532] A governmental body must also ensure that communications with disabled individuals are as effective as communications with others.[533] Thus, a governmental body must take steps to ensure that disabled individuals have access to and can understand the contents of the meeting notice and to ensure that they can understand what is happening at the meeting. This duty includes furnishing appropriate auxiliary aids and services when necessary.[534]

The following statement about meeting accessibility is included on the Secretary of State's internet site where state and regional agencies submit notice of their meetings:

> Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining the type of auxiliary aid or services, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.[535]

D. The Open Meetings Act and the Whistleblower Act

In *City of Elsa v. Gonzalez*, a former city manager complained to the city council that it had violated the Open Meetings Act in the meeting at which he was fired.[536] His court challenge included a Whistleblower claim based on his report to the city council of the violation of the Open Meetings Act.[537] The Texas Supreme Court determined that the former city manager had not established, under the Whistleblower Act, an appropriate law enforcement agency to which to report a violation.[538]

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530 42 U.S.C.A. § 12102(1); 28 C.F.R. § 35.104.

531 *See* 28 C.F.R. § 35.149–.150.

532 *See Dees v. Austin Travis Cnty. Mental Health & Mental Retardation*, 860 F. Supp. 1186, 1190 (W.D. Tex. 1994); *see generally Tyler*, 849 F. Supp. at 1442.

533 28 C.F.R. § 35.160.

534 *Id.* § 35.160(b)(1).

535 *Available at* http://www.sos.state.tx.us/open/access.shtml.

536 *City of Elsa v. Gonzalez*, 325 S.W.3d 622 (Tex. 2010).

537 *See id.* at 626–28.

538 *See id.* at 628.

E. The Open Meetings Act Distinguished from the Public Information Act

Although the Open Meetings Act and the Public Information Act[539] both serve the purpose of making government accessible to the people, they work differently to accomplish this goal.[540] The definitions of "governmental body" in the two statutes are generally similar, but the Public Information Act also applies to entities supported by public funds,[541] while the Open Meetings Act does not.[542] Each statute contains a different set of exceptions.[543] The Public Information Act authorizes the attorney general to determine whether records requested by a member of the public may be withheld and to enforce his rulings by writ of mandamus.[544] The Open Meetings Act has no comparable provisions. Chapter 402, subchapter C of the Government Code authorizes the attorney general to issue legal opinions at the request of certain officers. Pursuant to this authority, the attorney general has addressed and resolved numerous questions of law arising under the Open Meetings Act.[545] Because questions of fact cannot be resolved in the opinion process, an attorney general opinion will not determine whether particular conduct of a governmental body violated the Open Meetings Act.[546]

In addition, the exceptions in one statute are not necessarily incorporated into the other statute. The mere fact that a document was discussed in an executive session does not make it confidential under the Public Information Act.[547] Nor does the Public Information Act authorize a governmental body to hold an executive session to discuss records merely because the records are within one of the exceptions to the Public Information Act.[548] While some early attorney general opinions treated the exceptions to one statute as incorporated into the other, these decisions have been expressly or implicitly overruled.[549]

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539 TEX. GOV'T CODE ch. 552.

540 *See York v. Tex. Guaranteed Student Loan Corp.*, 408 S.W.3d. 677, 684–87 (Tex. App.—Austin 2013, no pet.) (discussing interplay between the Open Meetings Act and the Public Information Act).

541 TEX. GOV'T CODE § 552.003(1)(A)(xiv).

542 *See* Tex. Att'y Gen. LO-98-040 (1998) at 2.

543 *See* Tex. Att'y Gen. ORD-491 (1988) at 4.

544 *See* TEX. GOV'T CODE §§ 552.301–.309, .321–.327.

545 *Id.* §§ 402.041–.045.

546 *See* Tex. Att'y Gen. Op. Nos. GA-0326 (2005) at 4, JC-0307 (2000) at 1, DM-95 (1992) at 1, JM-840 (1988) at 6, H-772 (1976) at 6; *see also 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) (stating that whether specific conduct violates the Act is generally a question of fact).

547 *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 366–67 (Tex. 2000) (stating "[t]hat a matter can be discussed in closed meetings does not mean that all documents involving the same matter are exempt from public access"); Tex. Att'y Gen. ORD-605 (1992) at 3 (names of applicants); ORD-485 (1987) at 4–5 (investigative report); *see also* Tex. Att'y Gen. ORD-491 (1988) at 7 (noting the fact that meeting was not subject to the Act does not make minutes of meeting confidential under Open Records Act).

548 Tex. Att'y Gen. Op. Nos. JM-595 (1986) at 4–5 (concluding that Open Records Act does not authorize executive session discussion of written evaluations on selection of consultants and bidders), MW-578 (1982) at 4 (concluding there is no implied authority under the Act to hold closed session to review private information in unemployment benefit case files).

549 *See, e.g.*, Tex. Att'y Gen. Op. No. H-1154 (1978) at 3 (closed meeting for discussion of confidential child welfare case files); Tex. Att'y Gen. ORD-461 (1987) (tape recording of closed session is not public under Open Records Act); ORD-259 (1980) (value of donation pledged to city is confidential under statutory predecessor to section 551.072 of the Government Code).

F. Records Retention

The Open Meetings Act requires a governmental body to prepare and keep minutes or make a recording of each open meeting.[550] It also requires a governmental body to keep a certified agenda or make a recording of each closed meeting, except for a closed meeting held under the attorney consultation exception, and to preserve the certified agenda or recording for a period of two years.[551] Other than these provisions, the Open Meetings Act does not speak to a governmental body's record-keeping obligations. Similarly, the Public Information Act, in its provisions governing access to a governmental body's public information, does not specifically address a governmental body's responsibility to retain its records.[552]

Instead, other provisions require a local governmental body or state agency to retain and manage its governmental records.[553] These provisions require local governments and state agencies to establish a records management program that complies with record retention schedules adopted by the Texas State Library and Archives Commission ("TSLAC").[554] A local government record means

> [a]ny document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business.[555]

A state record is "any written, photographic, machine-readable, or other recorded information created or received by or on behalf of a state agency or an elected state official that documents activities in the conduct of state business or use of public resources."[556] Under either of these definitions, a governmental body's meeting minutes, notices, agenda and agenda packets, recordings of meetings, and any other record associated with an open or closed meeting are going

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550 TEX. GOV'T CODE § 551.021(a).

551 *Id.* §§ 551.103, .104.

552 *See id.* §§ 552.001–.376 ("Public Information Act"); *see also id.* § 552.004 (providing that governmental bodies, and elected public officials, may determine the time its information 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").

553 *See* TEX. LOC. GOV'T CODE §§ 201.001–205.009 (the "Local Government Records Act"); TEX. GOV'T CODE §§ 441.180–.205 (subchapter L entitled: "Preservation and Management of State Records and Other Historical Resources").

554 *See* TEX. LOC. GOV'T CODE §§ 203.002, .005 (elected county officer shall provide for the administration of an "active and continuing records management program"), 203.021 (governing body of a local government shall provide for an "active and continuing program for the efficient and economical management of all local government records"); TEX. GOV'T CODE § 441.183 (head of each state agency "shall establish and maintain a records management program on a continuing and active basis"); *see also* TEX. LOC. GOV'T CODE § 203.042(b)(2) (retention period may not be less than a retention period for the record established by the TSLAC); TEX. GOV'T CODE § 441.185(a) (agency records management officer shall submit a records retention schedule to the state records administrator).

555 TEX. LOC. GOV'T CODE § 201.003(8).

556 TEX. GOV'T CODE § 441.180(11).

to be local or state records. As such, they must be retained and managed by the local government or state agency as required by the respective retention schedule and may be destroyed only as permitted under the retention schedule.[557]

[557] *See* TEX. LOC. GOV'T CODE §§ 202.001–.009 ("Destruction and Alienation of Records"); TEX. GOV'T CODE § 441.187 (governing destruction of state records).

Appendix A: Text of the Open Meetings Act

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 or written exchange 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.

(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 authority 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;

(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;

(L) a joint board created under Section 22.074, Transportation Code; and

(M) a board of directors of a reinvestment zone created under Chapter 311, 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 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, the attendance by a quorum of a governmental body at a regional, state, or national convention or workshop, ceremonial event, or press conference, or the attendance by a quorum of a governmental body at a candidate forum, appearance, or debate to inform the electorate, if formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event, press conference, forum, appearance, or debate.

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.

(7) "Recording" means a tangible medium on which audio or a combination of audio and video is recorded, including a disc, tape, wire, film, electronic storage drive, or other medium now existing or later developed.

(8) "Videoconference call" means a communication conducted between two or more persons in which one or more of the participants communicate with the other participants through duplex audio and video signals transmitted over a telephone network, a data network, or the Internet.

§ 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; or

(2) if the property owners' association:

(A) provides maintenance, preservation, and architectural control 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.

§ 551.006. Written Electronic Communications Accessible to Public

(a) A communication or exchange of information between members of a governmental body about public business or public policy over which the governmental body has supervision or control does not constitute a meeting or deliberation for purposes of this chapter if:

(1) the communication is in writing;

(2) the writing is posted to an online message board or similar Internet application that is viewable and searchable by the public; and

(3) the communication is displayed in real time and displayed on the online message board or similar Internet application for no less than 30 days after the communication is first posted.

(b) A governmental body may have no more than one online message board or similar Internet application to be used for the purposes described in Subsection

(a). The online message board or similar Internet application must be owned or controlled by the governmental body, prominently displayed on the governmental body's primary Internet web page, and no more than one click away from the governmental body's primary Internet web page.

(c) The online message board or similar Internet application described in Subsection (a) may only be used by members of the governmental body or staff members of the governmental body who have received specific authorization from a member of the governmental body. In the event that a staff member posts a communication to the online message board or similar Internet application, the name and title of the staff member must be posted along with the communication.

(d) If a governmental body removes from the online message board or similar Internet application a communication that has been posted for at least 30 days, the governmental body shall maintain the posting for a period of six years. This communication is public information and must be disclosed in accordance with Chapter 552.

(e) The governmental body may not vote or take any action that is required to be taken at a meeting under this chapter of the governmental body by posting a communication to the online message board or similar Internet application. In no event shall a communication or posting to the online message board or similar Internet application be construed to be an action of the governmental body.

§ 551.007. Public Testimony

(a) This section applies only to a governmental body described by Sections 551.001(3)(B)–(L).

(b) A governmental body shall allow each member of the public who desires to address the body regarding an item on an agenda for an open meeting of the body to address the body regarding the item at the meeting before or during the body's consideration of the item.

(c) A governmental body may adopt reasonable rules regarding the public's right to address the body under this section, including rules that limit the total amount of time that a member of the public may address the body on a given item.

(d) This subsection applies only if a governmental body does not use simultaneous translation equipment in a manner that allows the body to hear the translated public testimony simultaneously. A rule adopted under Subsection (c) that limits the amount of time that a member of the public may address the governmental body must provide that a member of the public who addresses the body through a translator must be given at least twice the amount of time as a member of the public who does not require the assistance of a translator in

order to ensure that non-English speakers receive the same opportunity to address the body.

(e) A governmental body may not prohibit public criticism of the governmental body, including criticism of any act, omission, policy, procedure, program, or service. This subjection does not apply to public criticism that is otherwise prohibited by law.

SUBCHAPTER B. RECORD OF OPEN MEETING

§ 551.021. Minutes or Recording of Open Meeting Required

(a) A governmental body shall prepare and keep minutes or make a 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 Recordings of Open Meeting: Public Record

The minutes and 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 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.

§ 551.0415. Governing Body of Municipality or County: Reports About Items of Community Interest Regarding Which No Action Will be Taken

(a) Notwithstanding Sections 551.041 and 551.042, a quorum of the governing body of a municipality or county may receive from staff of the political subdivision 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) For purposes of Subsection (a), "items of community interest" includes:

(1) expressions of thanks, congratulations, or condolence;

(2) information regarding holiday schedules;

(3) an honorary or salutary recognition of a public official, public employee, or other citizen, except that a discussion regarding a change

in the status of a person's public office or public employment is not an honorary or salutary recognition for purposes of this subdivision;

(4) a reminder about an upcoming event organized or sponsored by the governing body;

(5) information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the political subdivision; and

(6) announcements involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posting of the agenda.

§ 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 to deliberate or take action on the emergency or urgent public necessity, or the supplemental notice to add the deliberation or taking of action on the emergency or urgent public necessity as an item to the agenda for a meeting for which notice has been posted in accordance with this subchapter, is sufficient if the notice or supplemental notice is posted for at least one hour before the meeting is convened.

(a-1) A governmental body may not deliberate or take action on a matter at a meeting for which notice or supplemental notice is posted under Subsection (a) other than:

(1) a matter directly related to responding to the emergency or urgent public necessity identified in the notice or supplemental notice of the meeting as provided by Subsection (c); or

(2) an agenda item listed on a notice of the meeting before the supplemental notice was posted.

(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, including a threat described by Subdivision (2) if imminent; or

(2) a reasonably unforeseeable situation, including:

(A) fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;

(B) power failure, transportation failure, or interruption of communication facilities;

(C) epidemic; or

(D) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

(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.

§ 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 at least one hour before the meeting is convened.

§ 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) In this section, "electronic bulletin board" means an electronic communication system that includes a perpetually illuminated screen on which the governmental body can post messages or notices viewable without manipulation by the public.

(b) A municipal governmental body shall post notice of each meeting on a physical or electronic bulletin board at a place convenient to the public in city hall.

§ 551.0501. Joint Board: Place of Posting Notice

(a) In this section, "electronic bulletin board" means an electronic communication system that includes a perpetually illuminated screen on which the governmental body can post messages or notices viewable without manipulation by the public.

(b) A joint board created under Section 22.074, Transportation Code, shall post notice of each meeting on a physical or electronic bulletin board at a place convenient to the public in the board's administrative offices.

§ 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 other 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) either 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 or post notice of each meeting on the district's or political subdivision's Internet website.

(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 a notice provided to the clerk 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) either provide notice of each meeting to the county clerk of each county in which the district or political subdivision is located or post notice of each meeting on the district's or political subdivision's Internet website.

(b) A county clerk shall post a notice provided to the clerk 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, Development Corporations, Authorities, and Joint Boards

(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 or an agenda of a meeting is required to be posted by this subchapter, the following governmental bodies and economic development corporations must also concurrently post notice of a meeting and the agenda for the 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;

(5) a development corporation organized under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code);

(6) a regional mobility authority included within the meaning of an "authority" as defined by Section 370.003, Transportation Code;

(7) a joint board created under Section 22.074, Transportation Code, and

(8) a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(c) Repealed by Acts 2023, 88th Leg., R.S., ch. 855 (HB 3440), § 2, eff. Sept. 1, 2023.

(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 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 recording of the proceedings of a closed meeting to deliberate the information.

§ 551.0726. Texas Facilities Commission: Deliberation Regarding Contract Being Negotiated; 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), the commission must make a 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 and 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 question 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 Devices 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,[558] 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, Insurance Code, 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.

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[558] Now, repealed.

§ 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.

§ 551.082. 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 the 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,[559] 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 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, county hospital, county 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.

[559] Now, repealed.

(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.

(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 by Section 552.133. 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 business prospect described by Subdivision (1).

§ 551.088. Deliberations 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. Deliberation Regarding Security Devices or Security Audits; Closed Meeting

This chapter does not require a governmental body 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.

§ 551.090. Enforcement Committee Appointed by Texas State Board of Public Accountancy

This chapter does not require an enforcement committee appointed by the Texas State Board of Public Accountancy to conduct an open meeting to investigate and deliberate a disciplinary action under Subchapter K, Chapter 901, Occupations Code, relating to the enforcement of Chapter 901 or the rules of the Texas State Board of Public Accountancy.

§ 551.091. Commissioners Courts: Deliberation Regarding Disaster or Emergency

(a) This section applies only to the commissioners court of a county:

(1) for which the governor has issued an executive order or proclamation declaring a state of disaster or a state of emergency; and

(2) in which transportation to the meeting location is dangerous or difficult as a result of the disaster or emergency.

(b) Notwithstanding any other provision of this chapter and subject to Subsection (c), a commissioners court to which this section applies may hold an open or closed meeting, including a telephone conference call, solely to deliberate about disaster or emergency conditions and related public safety matters that require an immediate response without complying with the requirements of this chapter, including the requirement to provide notice before the meeting or to first convene in an open meeting.

(c) To the extent practicable under the circumstances, the commissioners court shall provide reasonable public notice of a meeting under this section and if the meeting is an open meeting allow members of the public and the press to observe the meeting.

(d) The commissioners court:

(1) may not vote or take final action on a matter during a meeting under this section; and

(2) shall prepare and keep minutes or a recording of a meeting under this section and make the minutes or recording available to the public as soon as practicable.

(e) This section expires September 1, 2027.

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 Recording Required

(a) A governmental body shall either keep a certified agenda or make a 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 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 Recording; Preservation; Disclosure

(a) A governmental body shall preserve the certified agenda or 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 recording 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 recording;

(2) may admit all or part of the certified agenda or recording as evidence, on entry of a final judgment; and

(3) may grant legal or equitable relief it considers appropriate, including an order that the governmental body make available to the public the certified agenda or recording of any part of a meeting that was required to be open under this chapter.

(c) The certified agenda or recording 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, or 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 must be:

(1) audible to the public at the location specified in the notice of the meeting as the location of the meeting;

(2) broadcast over the Internet in the manner prescribed by Section 551.128; and

(3) recorded and made available to the public in an online archive located on the Internet website of the entity holding the meeting.

§ 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 recorded. The 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 recorded. The 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 call 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.

(a-1) A member or employee of a governmental body may participate remotely in a meeting of the governmental body by means of a videoconference call if the video and audio feed of the member's or employee's participation, as applicable, is broadcast live at the meeting and complies with the provisions of this section.

(a-2) A member of a governmental body who participates in a meeting as provided by Subsection (a-1) shall be counted as present at the meeting for all purposes.

(a-3) A member of a governmental body who participates in a meeting by videoconference call shall be considered absent from any portion of the meeting during which audio or video communication with the member is lost or disconnected. The governmental body may continue the meeting only if a quorum of the body remains present at the meeting location or, if applicable, continues to participate in a meeting conducted under Subsection (c).

(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 the member of the governmental body presiding over the meeting is physically present at one location of the meeting that is open to the public during the open portions 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 the location where the member of the governmental body presiding over the meeting will be physically present and specify the intent to have the member of the governmental body presiding over the meeting present at that location. The location where the member of the governmental body presiding over the meeting is physically present 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 the location specified under Subsection (e). If a problem occurs that causes a meeting to no longer be visible and audible to the public at that location, the meeting must be recessed until the problem is resolved. If the problem is not resolved in six hours or less, the meeting must be adjourned.

(g) The governmental body shall make at least an audio recording of the meeting. The recording shall be made available to the public.

(h) The location specified under Subsection (e), and each remote location from which a member of the governmental body participates, shall have two-way audio and video communication with each other location during the entire meeting. The face of each participant in the videoconference call, while that participant is speaking, shall be clearly visible, and the voice 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 that is open to the public.

(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 audio and video signals perceptible by members of the public at each location of the meeting described by Subsection (h) must be of sufficient quality so that members of the public at each location 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) Except as provided by Subsection (b-1) and subject to the requirements of this section, a governmental body may broadcast an open meeting over the Internet.

(b-1) A transit authority or department subject to Chapter 451, 452, 453, or 460, Transportation Code, an elected school district board of trustees for a school district that has a student enrollment of 10,000 or more, an elected governing body of a home-rule municipality that has a population of 50,000 or more, or a county commissioners court for a county that has a population of 125,000 or more shall:

(1) make a video and audio recording of reasonable quality of each:

(A) regularly scheduled open meeting that is not a work session or a special called meeting; and

(B) open meeting that is a work session or special called meeting if:

(i) the governmental body is an elected school district board of trustees for a school district that has a student enrollment of 10,000 or more; and

(ii) at the work session or special called meeting, the board of trustees votes on any matter or allows public comment or testimony; and

(2) make available an archived copy of the video and audio recording of each meeting described by Subsection (1) on the Internet.

(b-2) A governmental body described by Subsection (b-1) may make available the archived recording of a meeting required by Subsection (b-1) on an existing Internet site, including a publicly accessible video-sharing or social networking site. The governmental body is not required to establish a separate Internet site and provide access to archived recordings of meetings from that site.

(b-3) A governmental body described by Subsection (b-1) that maintains an Internet site shall make available on that site, in a conspicuous manner:

(1) the archived recording of each meeting to which Subsection (b-1) applies; or

(2) an accessible link to the archived recording of each such meeting.

(b-4) A governmental body described by Subsection (b-1) shall:

(1) make the archived recording of each meeting to which Subsection (b-1) applies available on the Internet not later than seven days after the date the recording was made; and

(2) maintain the archived recording on the Internet for not less than two years after the date the recording was first made available.

(b-5) A governmental body described by Subsection (b-1) is exempt from the requirements of Subsections (b-2) and (b-4) if the governmental body's failure to make the required recording of a meeting available is the result of a

catastrophe, as defined by Section 551.0411, or a technical breakdown. Following a catastrophe or breakdown, a governmental body must make all reasonable efforts to make the required recording available in a timely manner.

(b-6) A governmental body described by Subsection (b-1) may broadcast a regularly scheduled open meeting of the body on television.

(c) Except as provided by Subsection (b-2), 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.

§ 551.1281. Governing Board of General Academic Teaching Institution or University System: Internet Posting of Meeting Materials and Broadcast of Open Meeting

(a) In this section, "general academic teaching institution" and "university system" have the meanings assigned by Section 61.003, Education Code.

(b) The governing board of a general academic teaching institution or of a university system that includes one or more component general academic teaching institutions, for any regularly scheduled meeting of the governing board for which notice is required under this chapter, shall:

(1) post as early as practicable in advance of the meeting on the Internet website of the institution or university system, as applicable, any written agenda and related supplemental written materials provided to the governing board members in advance of the meeting by the institution or system for the members' use during the meeting;

(2) broadcast the meeting, other than any portions of the meeting closed to the public as authorized by law, over the Internet in the manner prescribed by Section 551.128; and

(3) record the broadcast and make the recording publicly available in an online archive located on the institution's or university system's Internet website.

(c) Subsection (b)(1) does not apply to written materials that the general counsel or other appropriate attorney for the institution or university system certifies are confidential or may be withheld from public disclosure under Chapter 552.

(d) The governing board of a general academic teaching institution or of a university system is not required to comply with the requirements of this section if that compliance is not possible because of an act of God, force majeure, or a similar cause not reasonably within the governing board's control.

§ 551.1282. Governing Board of Junior College District: Internet Posting of Meeting Materials and Broadcast of Open Meeting

(a) This section applies only to the governing board of a junior college district with a total student enrollment of more than 20,000 in any semester of the preceding academic year.

(b) A governing board to which this section applies, for any regularly scheduled meeting of the governing board for which notice is required under this chapter, shall:

(1) post as early as practicable in advance of the meeting on the Internet website of the district any written agenda and related supplemental written materials provided by the district to the board members for the members' use during the meeting;

(2) broadcast the meeting, other than any portions of the meeting closed to the public as authorized by law, over the Internet in the manner prescribed by Section 551.128; and

(3) record the broadcast and make that recording publicly available in an online archive located on the district's Internet website.

(c) Subsection (b)(1) does not apply to written materials that the general counsel or other appropriate attorney for the district certifies are confidential or may be withheld from public disclosure under Chapter 552.

(d) The governing board of a junior college district is not required to comply with the requirements of this section if that compliance is not possible because of an act of God, force majeure, or a similar cause not reasonably within the governing board's control.

§ 551.1283. Governing Body of Certain Water Districts: Internet Posting of Meeting Materials; Recording of Certain Hearings

(a) This section only applies to a special purpose district subject to Chapter 51, 53, 54, or 55, Water Code, that has a population of 500 or more.

(b) On written request of a district resident made to the district not later than the third day before a public hearing to consider the adoption of an ad valorem tax rate, the district shall make an audio recording of reasonable quality of the hearing and provide the recording to the resident in an electronic format not later than the fifth business day after the date of the hearing. The district shall maintain a copy of the recording for at least one year after the date of the hearing.

(c) A district shall post the minutes of the meeting of the governing body to the district's Internet website if the district maintains an Internet website.

(d) A district that maintains an Internet website shall post on that website links to any other Internet website or websites the district uses to comply with Section 2051.202 of this code and Section 26.18, Tax Code.

(e) Nothing in this chapter shall prohibit a district from allowing a person to watch or listen to a board meeting by video or telephone conference call.

§ 551.129. Consultations Between Governmental Body and Its Attorney

(a) A governmental body may use a telephone conference call, video conference 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 the 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, video conference 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.

§ 551.130. Board of Trustees of Teacher Retirement System of Texas: Quorum Present at One Location

(a) In this section, "board" means the board of trustees of the Teacher Retirement System of Texas.

(b) This chapter does not prohibit the board or a board committee from holding an open or closed meeting by telephone conference call.

(c) The board or a board committee may hold a meeting by telephone conference call only if a quorum of the applicable board or board committee is physically present at one location of the meeting,

(d) A telephone conference call meeting is subject to the notice requirements applicable to other meetings. The notice must also specify:

(1) the location of the meeting where a quorum of the board or board committee, as applicable, will be physically present; and

(2) the intent to have a quorum present at that location.

(e) The location where a quorum is physically present must be open to the public during the open portions of a telephone conference call meeting. The open portions of the meeting must be audible to the public at the location where the quorum is present and be recorded at that location. The recording shall be made available to the public.

(f) 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 call must be clearly stated before the party speaks.

(g) The authority provided by this section is in addition to the authority provided by Section 551.125.

(h) A member of the board who participates in a board or board committee meeting by telephone conference call but is not physically present at the location of the meeting is not considered to be absent from the meeting for any purpose. The vote of a member of the board who participates in a board or board committee meeting by telephone conference call is counted for the purpose of determining the number of votes cast on a motion or other proposition before the board or board committee.

(i) A member of the board may participate remotely by telephone conference call instead of by being physically present at the location of a board meeting for not more than one board meeting per calendar year. A board member who participates remotely in any portion of a board meeting by telephone conference call is considered to have participated in the entire board meeting by telephone conference call. For purposes of the limit provided by this subsection, remote participation by telephone conference call in a meeting of a board committee does not count as remote participation by telephone conference call in a meeting of the board, even if:

(1) a quorum of the full board attends the board committee meeting; or

(2) notice of the board committee meeting is also posted as notice of a board meeting.

(j) A person who is not a member of the board may speak at the meeting from a remote location by telephone conference call.

§ 551.131. Water Districts

(a) In this section, "water district" means a river authority, groundwater conservation district, water control and improvement district, or other district

created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(b) This section applies only to a water district whose territory includes land in three or more counties.

(c) A meeting held by telephone conference call or video 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 body of the applicable water district is difficult or impossible.

(d) A meeting held by telephone conference call must otherwise comply with the procedures under Sections 551.125(c), (d), (e), and (f).

(e) 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.

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.

(c) The attorney general may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of Section 551.045(a-1) by members of a governmental body.

(d) A suit filed by the attorney general under Subsection (c) must be filed in a district court of Travis County.

§ 551.143. Prohibited Series of Communications; Offense; Penalty

(a) A member of a governmental body commits an offense if the member:

(1) knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by this chapter and that concern an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constitute fewer than a quorum of members but the members engaging in the series of communications constitute a quorum of the members; and

(2) knew at the time the member engaged in the communication that the series of communications:

(A) involved or would involve a quorum; and

(B) would constitute a deliberation once a quorum of members engaged in the series of communications.

(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 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 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 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 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 recording.

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SECTION C.2

Texas Attorney General Handbook – Public Information Act



THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

PUBLIC INFORMATION ACT *Handbook* 2024



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

Dear Fellow Texans:

In 1888, James Bryce wrote that sunlight kills the germs of corruption that can infect a government, and his words remain true today. As Attorney General, I make it a priority to encourage open government and to enforce the laws that mandate it. The Texas Public Information Act assures that government entities give citizens access to information about the business government officials are conducting on their behalf—information that enables the people of Texas to observe how their government works and to hold their public officials accountable. Texas government does not belong to elected officials, but to the people.

This updated guide helps public officials and the people they serve understand and comply with the Texas Public Information Act. You can view the handbook by visiting www.texasattorneygeneral.gov/publicinfo_hb.pdf. Where further help is needed, my office's Open Government Hotline is available to answer questions about open government in Texas. The toll-free number is 877-OPEN TEX (877-673-6839).

Texans have the right to monitor their government's decision making, including spending tax dollars and exercising powers granted by the people. That knowledge is essential to preserving the rule of law, protecting the democratic process, and defending the liberty we all cherish. The Public Information Act is a critical protection for that right, and I am proud to offer this guide in service of that goal.

Best regards,

Ken Paxton

Ken Paxton
Attorney General of Texas

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A PREFACE TO THE PUBLIC INFORMATION HANDBOOK

The Act. The Texas Public Information Act (the "Public Information Act" or the "Act") gives the public the right to request access to government information. Below is a description of the basic procedures, rights and responsibilities under the Act.

Making a Request. The Act is triggered when a person submits a written request to a governmental body. The request must ask for records or information already in existence. The Act does not require a governmental body to create new information, to do legal research, or to answer questions. In preparing a request, a person may want to ask the governmental body what information is available.

Charges to the Requestor. A person may ask to view the information, get copies of the information, or both. If a request is for copies of information, the governmental body may charge for the copies. If a request is only for an opportunity to inspect information, then usually the governmental body may not impose a charge on the requestor. However, under certain limited circumstances a governmental body may impose a charge for access to information. All charges imposed by a governmental body for copies or for access to information must comply with the rules prescribed by the Office of the Attorney General ("OAG"), unless another statute authorizes a governmental body to set its own charges.

Exceptions to the Act. Although the Act makes most government information available to the public, some exceptions exist. If an exception might apply and the governmental body wishes to withhold the information, the governmental body generally must, within ten business days of receiving the open records request, refer the matter to the OAG for a ruling on whether an exception applies. If the OAG rules that an exception applies, the governmental body will not release the information. If a governmental body improperly fails to release information, the Act authorizes the requestor or the OAG to file a civil lawsuit to compel the governmental body to release the information.

Questions or Complaints. To reach the OAG's Open Government Hotline, call toll-free (877) 673-6839 (877-OPEN TEX). Hotline staff can answer questions about the proper procedures for using and complying with the Act and can assist both governmental bodies and people requesting information from a governmental body. Hotline staff also review written complaints about alleged violations of the Act. If a complaint relates to charges, contact the OAG's Cost Hotline toll-free at (888) 672-6787 (888-ORCOSTS) or forward a written complaint. Certain violations of the Act may involve possible criminal penalties. Those violations must be reported to the appropriate county attorney or criminal district attorney.

Federal Agencies. The Act does not apply to the federal government or to any of its departments or agencies. If you are seeking information from the federal government, the appropriate law is the federal Freedom of Information Act ("FOIA"). FOIA's rules and procedures are different from those of the Public Information Act.

Rights of Requestors

All people who request public information have the right to:

- Receive treatment equal to all other requestors
- Receive a statement of estimated charges in advance
- Choose whether to inspect the requested information, receive a copy of the information, or both
- Be notified when the governmental body asks the OAG for a ruling on whether the information may or must be withheld
- Be copied on the governmental body's written comments to the OAG stating the reason why the stated exceptions apply
- Lodge a complaint with the OAG regarding any improper charges for responding to a public information request
- Lodge a complaint with the OAG or the county attorney or criminal district attorney, as appropriate, regarding any alleged violation of the Act

Responsibilities of Requestors

All people who request public information have the responsibility to:

- Submit a written request according to a governmental body's reasonable procedures
- Include enough description and detail of the requested information so the governmental body can accurately identify and locate the requested items
- Cooperate with the governmental body's reasonable requests to clarify the type or amount of information requested
- Respond promptly in writing to all written communications from the governmental body (including any written estimate of charges)
- Make a timely payment for all valid charges
- Keep all appointments for inspection of records or for pick-up of copies

Rights of Governmental Bodies

All governmental bodies responding to information requests have the right to:

- Establish reasonable procedures for inspecting or copying information
- Request and receive clarification of vague or overly broad requests
- Request an OAG ruling regarding whether any information may or must be withheld
- Receive timely payment for all copy charges or other charges
- Obtain payment of overdue balances exceeding $100 or obtain a security deposit before processing additional requests from the same requestor
- Request a bond, prepayment or deposit if estimated costs exceed $100 (or, if the governmental body has fewer than 16 employees, $50)

Responsibilities of Governmental Bodies

All governmental bodies responding to information requests have the responsibility to:

- Treat all requestors equally
- Complete open records training as required by law
- Be informed of open records laws and educate employees on the requirements of those laws
- Inform the requestor of cost estimates and any changes in the estimates
- Confirm the requestor agrees to pay the costs before incurring the costs
- Provide requested information promptly
- Inform the requestor if the information will not be provided within ten business days and give an estimated date on which it will be provided
- Cooperate with the requestor to schedule reasonable times for inspecting or copying information
- Follow attorney general rules on charges; do not overcharge on any items; do not bill for items that must be provided without charge
- Inform third parties if their proprietary information is being requested from the governmental body
- Inform the requestor when the OAG has been asked to rule on whether information may or must be withheld
- Copy the requestor on written comments submitted to the OAG stating the reasons why the stated exceptions apply
- Comply with any OAG ruling on whether an exception applies or file suit against the OAG within 30 days
- Respond in writing to all written communications from the OAG regarding complaints about violations of the Act

This *Handbook* is available on the OAG's website at www.texasattorneygeneral.gov/open-government/office-attorney-general-and-public-information-act. The website also provides access to the following:

- Attorney General Opinions dating from 1939 through the present;
- all formal Open Records Decisions (ORDs); and
- most informal Open Records letter rulings (ORLs) issued since January 1989.

Additional tools found on the site include the *Open Meetings Handbook*, the text of the Public Information and Open Meetings Acts, and other valuable publications and resources for governmental bodies and citizens.

The following is a list of telephone numbers that may be helpful to those needing answers to open government questions.

Open Government Hotline *for questions regarding the Act and the Texas Open Meetings Act*	TOLL-FREE or	(877) OPEN TEX (512) 478-6736
Cost Hotline *for questions regarding charges under the Act*	TOLL-FREE or	(888) OR COSTS (512) 475-2497
Freedom of Information Foundation *for questions regarding FOIA*		(800) 580-6651
State Library and Archives Commission Records Management Assistance *for records retention questions*		(512) 463-7610
U.S. Department of Education Family Policy Compliance Office *for questions regarding FERPA and education records*		(800) 872-5327
U.S. Department of Health and Human Services Office for Civil Rights *for questions regarding the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and protected health information*		(800) 368-1019

Note on Terminology
In previous publications and rulings, the OAG has referred to chapter 552 of the Government Code as the "Open Records Act." The OAG, in conformity with the statute, has adopted the term "Public Information Act" to refer to the provisions of chapter 552. However, the OAG will continue, in this *Handbook* and elsewhere, to use the term "open records" in other contexts, such as "open records request" and "open records decision."

The ★ symbol is used throughout the *Handbook* to indicate sections that discuss significant changes in the law that have occurred since publication of the 2022 *Handbook*.

PART ONE: HOW THE PUBLIC INFORMATION ACT WORKS

I. OVERVIEW

A. Historical Background

The Texas Public Information Act (the "Public Information Act" or the "Act") was adopted in 1973 by the reform-minded 63rd Legislature.[1] The Sharpstown scandal, which occurred in 1969 and came to light in 1971, provided the motivation for several enactments opening up government to the people.[2]

The Act was initially codified as V.T.C.S. article 6252-17a, which was repealed in 1993[3] and replaced by the Public Information Act now codified in the Texas Government Code at chapter 552.[4] The codification of the Act was a nonsubstantive revision.[5]

B. Policy; Construction

The preamble of the Public Information Act is codified at section 552.001 of the Government Code. It declares the basis for the policy of open government expressed in the Public Information Act. It finds that basis in "the American constitutional form of representative government" and "the principle that government is the servant and not the master of the people." It further explains this principle in terms of the need for an informed citizenry:

> **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**

---

1 Act of May 19, 1973, 63rd Leg., R.S., ch. 424, 1973 Tex. Gen. Laws 1112.

2 *See generally Mutscher v. State*, 514 S.W.2d 905 (Tex. Crim. App. 1974) (summarizing events of Sharpstown scandal); *see also* "Sharpstown Stock-Fraud Scandal," *Handbook of Texas Online*, published by the Texas State Historical Association, at http://www.tshaonline.org/handbook/entries/sharpstown-stock-fraud-scandal.

3 Act of May 4, 1993, 73rd Leg., R.S., ch. 268, § 46, 1993 Tex. Gen. Laws 583, 986.

4 Act of May 4, 1993, 73rd Leg., R.S., ch. 268, § 1, 1993 Tex. Gen. Laws 583, 594-607.

5 Act of May 4, 1993, 73rd Leg., R.S., ch. 268, § 47, 1993 Tex. Gen. Laws 583, 986.

> **insist on remaining informed so that they may retain control over the instruments they have created.**

The purpose of the Public Information Act is to maintain the people's control "over the instruments they have created." The Public Information Act requires the attorney general to construe the Act liberally in favor of open government.[6]

C. Attorney General to Maintain Uniformity in Application, Operation and Interpretation of the Act

Section 552.011 of the Government Code authorizes the attorney general to prepare, distribute and publish materials, including detailed and comprehensive written decisions and opinions, in order to maintain uniformity in the application, operation and interpretation of the Act.[7]

D. Section 552.021

Section 552.021 of the Government Code is the starting point for understanding the operation of the Public Information Act. It provides as follows:

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

This provision tells us information in the possession of a governmental body is generally available to the public. Section 552.002(a) of the Government Code defines "public information" as:

> **[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:**
>
> **(1) by a governmental body;**
>
> **(2) for a governmental body and the governmental body:**
>
> **(A) owns the information;**
>
> **(B) has a right of access to the information; or**
>
> **(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or**
>
> **(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.**

---

[6] Gov't Code § 552.001(b); *see A & T Consultants v. Sharp*, 904 S.W.2d 668, 675 (Tex. 1995); *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 118 (Tex. App.—Austin 2003, no pet.); *Thomas v. Cornyn*, 71 S.W.3d 473, 480 (Tex. App.—Austin 2002, no pet.).

[7] Gov't Code § 552.011.

If the governmental body wishes to withhold information from a member of the public, it must show that the requested information is within at least one of the exceptions to required public disclosure.[8] Subchapter C of the Act, sections 552.101 through 552.163, lists the specific exceptions to required public disclosure; these exceptions are discussed in Part Two of this *Handbook*.

E. Open Records Training

The Act applies to every governmental body in Texas, yet prior to 2006 there was no uniform requirement or mechanism for public officials to receive training in how to comply with the law. The 79th Legislature enacted section 552.012 of the Government Code, which mandates public officials to receive training in the requirements of the Public Information Act. The 88th Legislature amended section 552.012, which provides:

(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.

(b-1) The attorney general may require each public official of a governmental body to complete the course of training if the attorney general determines that the governmental body has failed to comply with a requirement of this chapter. The attorney general must notify each public official in writing of the attorney general's determination and the requirement to complete the training. A public official who receives notice from the attorney general under this subsection must complete the training not later than the 60th day after the date the official receives the notice.

(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

[8] Open Records Decision No. 363 (1983) (information is public unless it falls within specific exception).

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.**

Minimum Training Requirement: The law requires elected and appointed officials to attend, at a minimum, a one-hour approved educational course on the Public Information Act. This is a one-time-only training requirement; no refresher courses are required.

Compliance Deadlines: Officials who are elected or appointed have 90 days within which to complete the required training.

Who Must Obtain the Training: The requirement applies to all governmental bodies subject to the Act. It requires the elected and appointed officials from governmental bodies subject to these laws to complete a training course on the Act. Alternatively, public officials may designate a public information coordinator to attend training in their place so long as the designee is the person primarily responsible for the processing of public information requests for the governmental body. It is presumed most governmental bodies already have a designated public information coordinator; therefore, officials may choose to opt out of the training provided they designate their public information coordinator to receive the training in their place. However, officials are encouraged to complete the required training, and designation of a public information coordinator to complete training on their behalf does not relieve public officials of the responsibility to comply with the law.

May Not Opt Out of Training if Required by Other Law: Open government training is already required for the top officials of many state agencies under the Sunset Laws. The opt-out provisions of the training requirement would not apply to officials who are already required by another law to receive open government training.

Judicial Officials and Employees: Judicial officials and employees do not need to attend training regarding the Act because public access to information maintained by the judiciary is governed by Rule 12 of the Judicial Administration Rules of the Texas Supreme Court and by other applicable laws and rules.[9]

Training Curriculum: The basic topics to be covered by the training include:

1. the general background of the legal requirements for open records and public information;
2. the applicability of the Act to governmental bodies;
3. procedures and requirements regarding complying with open records requests;
4. the role of the attorney general under the Act; and
5. penalties and other consequences for failure to comply with the Act.

Training Options: The law contains provisions to ensure that training is widely available and free training courses are available so all officials in the state can have easy access to the training. The OAG provides a training video and live training courses.

[9] Gov't Code § 552.0035.

Governmental Entities May Provide Training: Governmental entities that already provide their own internal training on the Act may continue to do so provided the curriculum meets the minimum requirements set forth by section 552.012 and is reviewed and approved by the OAG.[10]

Other Entities May Provide Training: Officials may obtain the required training from any entity that offers a training course that has been reviewed and approved by the OAG.[11] This encompasses courses by various interest groups, professional organizations, and continuing education providers.

Evidence of Course Completion: The trainer is required to provide the participant with a certificate of course completion. The official or public information coordinator's governmental body is then required to maintain the certificate and make it available for public inspection. The OAG does not maintain certificates for governmental bodies.

No Penalty for Failure to Receive Training: The purpose of the law is to foster open government by making open government education a recognized obligation of public service. The purpose is not to create a new civil or criminal violation, so there are no specific penalties for failure to comply with the mandatory training requirement. Despite the lack of a penalty provision, officials should be cautioned that a deliberate failure to attend training may result in an increased risk of criminal conviction should they be accused of violating the Act.

Training Requirements Will Be Harmonized: To avoid imposing duplicate training requirements on public officials, the attorney general is required to harmonize the training required by section 552.012 with any other statutory training requirements that may be imposed on public officials.

Please visit the attorney general's website at http://www.texasattorneygeneral.gov for more information on section 552.012.

[10] Gov't Code § 552.012(d).

[11] Gov't Code § 552.012(d).

II. ENTITIES SUBJECT TO THE PUBLIC INFORMATION ACT

The Public Information Act applies to information of every "governmental body." "Governmental body" is defined in section 552.003(1)(A) of the Government Code to mean:

(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;

(xii) a confinement facility operated under a contract with any division of the Texas Department of Criminal Justice;

(xiii) a civil commitment housing facility owned, leased, or operated by a vendor under contract with the state as provided by Chapter 841, Health and Safety Code;

(xiv) an entity that receives public funds in the current or preceding state fiscal year to manage the daily operations or restoration of the Alamo, or an entity that oversees such an entity; and

(xv) 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[.]

The judiciary is expressly excluded from the definition of "governmental body."[12] The required public release of records of the judiciary is governed by Rule 12 of the Texas Rules of Judicial Administration.[13] In addition to the judiciary, specified economic development entities are also expressly excluded from the definition of "governmental body" pursuant to section 552.003(1)(B)(ii).[14]

An entity that does not believe it is a "governmental body" within this definition may make a timely request for a decision from the attorney general under Subchapter G of the Act if there has been no previous determination regarding this issue and it wishes to withhold the requested information.[15]

A. State and Local Governmental Bodies

The definition of the term "governmental body" encompasses all public entities in the executive and legislative branches of government at the state and local levels. Although a sheriff's office, for example, is not within the scope of section 552.003(1)(A)(i)–(xiv), it is supported by public funds and is therefore a "governmental body" within section 552.003(1)(A)(xv).[16]

B. Private Entities

1. Private Entities Supported by Public Funds

An entity that is supported in whole or in part by public funds or that spends public funds is a governmental body under section 552.003(1)(A)(xv) of the Government Code. Public funds are "funds of the state or of a governmental subdivision of the state."[17] The Texas Supreme Court has defined "'supported in whole or part by public funds' to include only those private entities or their sub-parts sustained, at least in part, by public funds, meaning they could not perform the same or similar services without the public funds."[18] Thus, section 552.003(1)(A)(xv) encompasses only those private entities that are dependent on public funds to operate as a going concern,[19] and only those entities acting as the functional equivalent of the government.[20]

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12 Gov't Code § 552.003(1)(B)(i).

13 Rule 12 of the Texas Rules of Judicial Administration is located in Part Five of this *Handbook*.

14 Gov't Code § 552.003(1)(B)(ii).

15 *See Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353, 362 (Tex. App.—Waco 1998, pet. denied) (entity does not admit it is governmental body by virtue of request for opinion from attorney general).

16 Open Records Decision No. 78 (1975) (discussing statutory predecessor to Gov't Code § 552.003(1)(A)(xv)); *see Permian Report v. Lacy*, 817 S.W.2d 175 (Tex. App.—El Paso 1991, writ denied) (suggesting county clerk's office is subject to Act as agency supported by public funds).

17 Gov't Code § 552.003(5).

18 *Greater Houston P'ship v. Paxton*, 468 S.W. 3d 51, 63 (Tex. 2015).

19 *Greater Houston P'ship v. Paxton*, 468 S.W. 3d 51, 61 (Tex. 2015).

20 *Greater Houston P'ship v. Paxton*, 468 S.W. 3d 51, 62 (Tex. 2015).

2. Private Entities Deemed Governmental Bodies by Statute

Section 51.212 of the Education Code provides:

> **(f) A campus police department of a private institution of higher education is a law enforcement agency and a governmental body for purposes of Chapter 552, Government Code, only with respect to information relating solely to law enforcement activities.**[21]

C. Certain Property Owners' Associations Subject to Act

Section 552.0036 provides:

> **A property owners' association is subject to [the Act] 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; or**
>
> **(2) if the property owners' association:**
>
> **(A) provides maintenance, preservation, and architectural control 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**

[21] Educ. Code § 51.212(f).

(iii) was incorporated before January 1, 2006.

The only county in Texas with a population of 2.8 million or more is Harris County. The counties adjoining Harris County are Waller, Fort Bend, Brazoria, Galveston, Chambers, Liberty, and Montgomery. Thus, property owners' associations located in those counties and otherwise within the parameters of section 552.0036 are considered to be governmental bodies for purposes of the Act.

D. A Governmental Body Holding Records for Another Governmental Body

One governmental body may hold information on behalf of another governmental body. For example, state agencies may transfer noncurrent records to the Records Management Division of the Texas State Library and Archives Commission for storage.[22] State agency records held by the state library under the state records management program should be requested from the originating state agency, not the state library. The governmental body by or for which information is collected, assembled, or maintained pursuant to section 552.002(a) retains ultimate responsibility for disclosing or withholding information in response to a request under the Public Information Act, even though another governmental body has physical custody of it.[23]

E. Private Entities Holding Records for Governmental Bodies

On occasion, when a governmental body has contracted with a private consultant to prepare information for the governmental body, the consultant keeps the report and data in the consultant's office, and the governmental body reviews it there. Although the information is not in the physical custody of the governmental body, the information is in the constructive custody of the governmental body and is therefore subject to the Act.[24] The private consultant is acting as the governmental body's agent in holding the records.

The definition of "public information" in section 552.002 of the Government Code reads as follows:

(a) information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

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[22] Open Records Decision No. 617 (1993); *see* Open Records Decision No. 674 (2001).

[23] Open Records Decision No. 576 (1990).

[24] Open Records Decision No. 462 (1987).

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

(a-1) Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

The following decisions recognize that various records held for governmental bodies by private entities are subject to the Act:

Open Records Decision No. 585 (1991) — the city manager may not contract away the right to inspect the list of applicants maintained by a private consultant for the city;

Open Records Decision No. 499 (1988) — the records held by a private attorney employed by a municipality that relate to legal services performed at the request of the municipality;

Open Records Decision No. 462 (1987) — the records regarding the investigation of a university football program prepared by a law firm on behalf of the university and kept at the law firm's office; and

Open Records Decision No. 437 (1986) — the records prepared by bond underwriters and attorneys for a utility district and kept in an attorney's office.[25]

Section 2252.907 of the Government Code contains specific requirements for a contract between a state governmental entity and a nongovernmental vendor involving the exchange or creation of public information.

Additionally, the 86th Legislature added subchapter J of the Act, sections 552.371 through 552.376. These sections are intended to make government contracting information public and require its disclosure. Subchapter J details the requirements of certain private entities that contract with a governmental body to provide contracting information to the governmental body in response to a request for information. Section 552.371 specifically applies to information related to contracts involving the expenditure of at least $1 million in public funds for the purchase of goods or services by the governmental body or that results in the expenditure of at least $1 million in public funds for the purchase of goods or services by the governmental body in a fiscal year of the governmental

[25] *See also Baytown Sun v. City of Mont Belvieu*, 145 S.W.3d 268 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (municipality had right of access to employee salary information of company it contracted with to manage recreational complex); Open Records Decision No. 585 (1991) (overruling Open Records Decision Nos. 499 (1988), 462 (1987), 437 (1986) to extent they suggest governmental body can waive its right of access to information gathered on its behalf).

body.[26] This section requires a governmental body that receives a request for contracting information pertaining to such a contract to obtain the responsive information from the contracting entity and sets out the procedural requirements for obtaining the information.[27] Further, section 552.372 establishes records retention and preservation requirements for the contracting entities.[28] Section 552.374 authorizes a governmental body to terminate a contract if a contracting entity does not provide contracting information pursuant to the requirements laid out in subchapter J.[29]

F. Judiciary Excluded from the Public Information Act

Section 552.003(1)(B)(i) of the Government Code excludes the judiciary from the Public Information Act. Section 552.0035 of the Government Code specifically provides that access to judicial records is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.[30] (*See* Part Five of this *Handbook* for Rule 12 of the Texas Rules of Judicial Administration.) This provision, however, expressly provides that it does not address whether particular records are judicial records.

The purposes and limits of section 552.003(1)(B)(i) were discussed in *Benavides v. Lee*.[31] At issue in that case were applications for the position of chief juvenile probation officer submitted to the Webb County Juvenile Board. The court determined that the board was not "an extension of the judiciary" for purposes of the Public Information Act, even though the board consisted of members of the judiciary and the county judge. The court stated as follows:

> The Board is not a court. A separate entity, the juvenile court, not the Board, exists to adjudicate matters concerning juveniles. Nor is the Board directly controlled or supervised by a court.
>
> Moreover, simply because the legislature chose judges as Board members, art. 5139JJJ, § 1, does not in itself indicate they perform on the Board as members of the judiciary. . . . [C]lassification of the Board as judicial or not depends on the functions of the Board, not on members' service elsewhere in government.[32]

The decisions made by the board were administrative, not judicial, and the selection of a probation officer was part of the board's administration of the juvenile probation system, not a judicial act by a judicial body. The court continued:

> The judiciary exception, § 2(1)(G) [now section 552.003(1)(B)(i) of the Government Code], is important to safeguard judicial proceedings and maintain the independence of the judicial

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[26] Gov't Code § 552.371(a).

[27] Gov't Code § 552.371(b)-(e).

[28] Gov't Code § 552.372(a)-(c).

[29] Gov't Code §§ 552.373, .374.

[30] Gov't Code § 552.0035; *see* R. Jud. Admin. 12; *see also, e.g.*, *Ashpole v. Millard*, 778 S.W.2d 169, 170 (Tex. App.—Houston [1st Dist.] 1989, no writ) (public has right to inspect and copy judicial records subject to court's inherent power to control public access to its records); Attorney General Opinion DM-166 (1992); Open Records Decision No. 25 (1974).

[31] *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ).

[32] *Benavides v. Lee*, 665 S.W.2d 151, 151-52 (Tex. App.—San Antonio 1983, no writ) (footnote omitted).

> branch of government, preserving statutory and case law already governing access to judicial records. But it must not be extended to every governmental entity having any connection with the judiciary.[33]

The Texas Supreme Court also addressed the judiciary exception in *Holmes v. Morales*.[34] In that case, the court found that "judicial power" as provided for in article V, section 1, of the Texas Constitution "embraces powers to hear facts, to decide issues of fact made by pleadings, to decide questions of law involved, to render and enter judgment on facts in accordance with law as determined by the court, and to execute judgment or sentence."[35] Because the court found the Harris County District Attorney did not perform these functions, it held the district attorney's office is not a member of the judiciary, but is a governmental body within the meaning of the Public Information Act.

In Open Records Decision No. 657 (1997), the attorney general concluded telephone billing records of the Supreme Court did not relate to the exercise of judicial powers but rather to routine administration and were not "records of the judiciary" for purposes of the Public Information Act. The Texas Supreme Court subsequently overruled Open Records Decision No. 657 (1997), finding the court was not a governmental body under the Act and its records were therefore not subject to the Act.[36]

The State Bar of Texas is a "public corporation and an administrative agency of the judicial department of government."[37] Section 81.033 of the Government Code provides that, with certain exceptions, all records of the State Bar are subject to the Public Information Act.[38]

The following decisions address the judiciary exclusion:

> Open Records Decision No. 671 (2001) — the information contained in the weekly index reports produced by the Ellis County District Clerk's office is derived from a case disposition database that is "collected, assembled, or maintained . . . for the judiciary." Gov't Code § 552.0035(a). Therefore, the information contained in weekly index reports is not public information under the Act;
>
> Open Records Decision No. 646 (1996) — a community supervision and corrections department is a governmental body and is not part of the judiciary for purposes of the Public Information Act. Administrative records such as personnel files and other records reflecting the day-to-day management of a community supervision and corrections department are

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33 *Benavides v. Lee*, 665 S.W.2d 151, 152 (Tex. App.—San Antonio 1983, no writ).

34 *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996).

35 *Holmes v. Morales*, 924 S.W.2d 920, 923 (Tex. 1996).

36 *Order and Opinion Denying Request Under Open Records Act*, No. 97-9141, 1997 WL 583726 (Tex. August 21, 1997) (not reported in S.W.2d).

37 Gov't Code § 81.011(a); *see* Open Records Decision No. 47 (1974) (records of state bar grievance committee were confidential pursuant to Texas Supreme Court rule; not deciding whether state bar was part of judiciary).

38 *Compare* Open Records Decision No. 604 (1992) (considering request for list of registrants for Professional Development Programs) *with In re Nolo Press/Folk Law, Inc.*, 991 S.W.2d 768 (Tex. 1999) (Unauthorized Practice of Law Committee of state bar is judicial agency and therefore subject to Rule 12 of Texas Rules of Judicial Administration).

subject to the Public Information Act.[39] On the other hand, 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 are not subject to the Public Information Act because such records are held on behalf of the judiciary;

Open Records Decision No. 610 (1992) — the books and records of an insurance company placed in receivership pursuant to article 21.28 of the Insurance Code are excluded from the Public Information Act as records of the judiciary;

Open Records Decision No. 572 (1990) — certain records of the Bexar County Personal Bond Program are within the judiciary exclusion;

Open Records Decision No. 513 (1988) — records held by a district attorney on behalf of a grand jury are in the grand jury's constructive possession and are not subject to the Public Information Act. However, records a district attorney collects, prepares, and submits to grand jury are not in the constructive possession of the grand jury when that information is held by the district attorney.

Open Records Decision No. 204 (1978) — information held by a county judge as a member of the county commissioners court is subject to the Public Information Act; and

Open Records Decision No. 25 (1974) — the records of a justice of the peace are not subject to the Public Information Act but may be inspected under statutory and common-law rights of access.

III. Information Subject to the Public Information Act

A. Public Information is Contained in Records of All Forms

Section 552.002(b) of the Government Code states the Public Information Act applies to recorded information in practically any medium, including: paper; film; a magnetic, optical, solid state or other device that can store an electronic signal; tape; Mylar; and any physical material on which information may be recorded, including linen, silk, and vellum.[40] Section 552.002(c) specifies that "[t]he general forms in which the media containing public information exist include a book, paper, letter, document, e-mail, Internet posting, text message, instant message, other electronic communication, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory."

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[39] *But see* Gov't Code § 76.006(g) (document evaluating performance of officer of community supervision and corrections department who supervises defendants placed on community supervision is confidential).

[40] *See also* Open Records Decision Nos. 660 (1999) (Section 52(a) of article III of Texas Constitution does not prohibit Port of Corpus Christi Authority from releasing computer generated digital map), 492 (1988) (raw data collected by outside consultant, but accessed by comptroller through data link and stored on comptroller's computer system), 432 (1985) (photographic negatives), 413 (1984) (sketches), 364 (1983) (videotapes), 352 (1982) (computer tapes), 32 (1974) (tape recordings).

B. Information Held by a Temporary Custodian

The Public Information Act can also apply to information on a privately owned device of a current or former governmental body employee or official. Section 552.203(4) of the Government Code requires each governmental body's officer for public information to make reasonable efforts to obtain public information from a temporary custodian. Section 552.003(7) of the Government Code defines "temporary custodian" as a current or former governmental employee or official who maintains public information that has not been provided to a governmental body's officer for public information or the officer's agent. Pursuant to section 552.203(4) of the Government Code, a governmental body's public information officer is required to obtain information from a temporary custodian if:

(A) the information has been requested from the governmental body;

(B) the officer for public information is aware of facts sufficient to warrant a reasonable belief that the temporary custodian has possession, custody, or control of the information;

(C) the officer for public information is unable to comply with the duties imposed by this chapter without obtaining the information from the temporary custodian; and

(D) the temporary custodian has not provided the information to the officer for public information or the officer's agent.

Section 552.233(a) states a current or former officer or employee of a governmental body does not have a personal or property right to public information created or received while acting in an official capacity. Section 552.233(b) provides that a temporary custodian with possession, custody, or control of public information shall surrender the information to the governmental body no later than the 10th business day after the governmental body requests it from the temporary custodian. Furthermore, pursuant to section 552.233(c), a temporary custodian's failure to surrender or return the information would be grounds for disciplinary action by the temporary custodian's employer or any other applicable penalties provided by the Act or other law.

C. Exclusion of Tangible Items

Despite the assumption in Open Records Decision No. 252 (1980) that the Public Information Act applies to physical evidence, the prevailing view is that tangible items such as a tool or a key are not "information" within the Act, even though they may be copied or analyzed to produce information. In Open Records Decision No. 581 (1990), the attorney general dealt with a request for the source code, documentation, and computer program documentation standards of computer programs used by a state university. The requested codes, documentation, and documentation standards contained security measures designed to prevent unauthorized access to student records. The attorney general noted the sole significance of the computer source code, documentation, and documentation standards was "as a tool for the storage, manipulation, and security of other information."[41] While acknowledging the comprehensive scope of the term "information," the attorney general nevertheless determined the legislature could not have intended that the Public

[41] Open Records Decision No. 581 at 6 (1990).

Information Act compromise the physical security of information management systems or other government property.[42] The attorney general concluded that information used solely as a tool to maintain, manipulate, or protect public property was not the kind of information made public by the statutory predecessor to section 552.021 of the Public Information Act.[43]

D. Exclusion of Protected Health Information

Section 552.002(d) of the Government Code specifically excludes protected health information, as defined by section 181.006 of the Health and Safety Code, from the requirements of the Act.[44] Section 181.006 of the Health and Safety Code defines protected health information as "any information that reflects that an individual received health care from [a] covered entity[.]"[45]

Furthermore, section 181.001(b)(2)(A) defines "covered entity" to include any person who:

> **(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]**

Therefore, protected health information is not subject to disclosure under the Act.

E. Personal Notes and E-mail in Personal Accounts or Devices

A few early decisions of the attorney general found certain personal notes of public employees were not "information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business."[46] Thus, such personal notes were not considered subject to the Public Information Act.[47] Governmental bodies are advised to use caution in relying on early open records decisions that address "personal notes."

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42 Open Records Decision No. 581 at 5-6 (1990) (drawing comparison to door key, whose sole significance as "information" is its utility as tool in matching internal mechanism of lock).

43 Open Records Decision No. 581 at 6 (1990) (overruling in part Open Records Decision No. 401 (1983), which had suggested implied exception to required public disclosure applied to requested computer programs); *see also* Attorney General Opinion DM-41 (1991) (formatting codes are not "information" subject to Act).

44 Gov't Code § 552.002(d).

45 Health & Safety Code § 181.006.

46 Open Records Decision No. 77 (1975) (quoting statutory predecessor to Gov't Code § 552.021).

47 *See* Open Records Decision No. 116 (1975) (portions of desk calendar kept by governor's aide comprising notes of private activities and aide's notes made solely for his own informational purposes are not public information); *see also* Open Records Decision No. 145 (1976) (handwritten notes on university president's calendar are not public information).

More recent decisions have concluded personal notes are not necessarily excluded from the definition of "public information" and may be subject to the Act.[48] The characterization of information as "public information" under the Act is not dependent on whether the requested records are in the possession of an individual, rather than a governmental body, or whether a governmental body has a particular policy or procedure that establishes a governmental body's access to the information.[49] If information was made, transmitted, maintained, or received in connection with a governmental body's official business, the mere fact that the governmental body does not possess the information does not take the information outside the scope of the Act.[50] In *Adkisson v. Paxton*, the court of appeals considered a request for correspondence related to a county commissioner's official capacity from his personal and county e-mail accounts. The court concluded the information in the commissioner's official-capacity e-mails is necessarily connected with the transaction of the county's official business, and the county owns the information regardless of whether the information is created or received in a personal e-mail account or an official county e-mail account. Thus, the court held the requested information is "public information" subject to the Act. This case construes a prior version section 552.002 of the Act, which the 83rd Legislature amended, along with section 552.003, in 2013.[51]

The amended definition of "public information" in section 552.002(a-2) now specifically includes:

> **any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.**

Section 552.002(a-1) further defines "information . . . in connection with the transaction of official business" as:

> **[I]nformation . . . created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.**

Adopting the attorney general's long-standing interpretation, the definition of "public information" now takes into account the use of electronic devices and cellular phones by public employees and officials in the transaction of official business. The Act does not distinguish between personal or employer-issued devices, but rather focuses on the nature of the communication or document. If the information was created, transmitted, received, or maintained in connection with the

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[48] *See, e.g.*, Open Records Decision Nos. 635 (1995) (public official's or employee's appointment calendar, including personal entries, may be subject to Act), 626 (1994) (handwritten notes taken during oral interview by Texas Department of Public Safety promotion board members are subject to Act), 450 (1986) (handwritten notes taken by appraiser while observing teacher's classroom performance are subject to Act), 120 (1976) (faculty members' written evaluations of doctoral student's qualifying exam are subject to Act).

[49] Open Records Decision No. 635 at 3-4 (1995) (information does not fall outside definition of "public information" in Act merely because individual member of governmental body possesses information rather than governmental body as whole); *see also* Open Records Decision No. 425 (1985) (information sent to individual school trustees' homes was public information because it related to official business of governmental body) (overruled on other grounds by Open Records Decision No. 439 (1986)).

[50] *See* Open Records Decision No. 635 at 6-8 (1995) (information maintained on privately-owned medium and actually used in connection with transaction of official business would be subject to Act).

[51] *Adkisson v. Paxton*, 459 S.W.3d 761 (Tex. App.—Austin 2015, no pet.).

transaction of "official business," meaning, "any matter over which a governmental body has any authority, administrative duties, or advisory duties[,]" the information constitutes public information subject to disclosure under the Act.[52]

There are no cases or formal decisions applying these amendments to section 552.002 or section 552.003.

F. Commercially Available Information

Section 552.027 provides:

> **(a) A governmental body is not required under the Act 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.**

This section is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. Therefore, section 552.027 provides exemptions from the definition of "public information" under section 552.002 for commercially available research material. However, pursuant to subsection (c) of section 552.027, a governmental body must allow inspection of a publication that is made a part of, or referred to in, a rule or policy of the governmental body.

IV. PROCEDURES FOR ACCESS TO PUBLIC INFORMATION

A. Informing the Public of Basic Rights and Responsibilities Under the Act

Section 552.205 of the Government Code requires the officer for public information of a governmental body to display a sign, in the form required 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 the Act.[53] The sign is to be displayed at one or more places in the administrative offices of the governmental body where it is plainly visible to members of the public requesting information and employees of the

[52] Gov't Code § 552.003(2-a).

[53] Gov't Code § 552.205.

governmental body whose duties involve receiving or responding to requests under the Act.[54] The sign's format as prescribed by the attorney general is available on the attorney general's website.

B. The Request for Public Information

A governmental body's duties under section 552.221(a) to produce information or under section 552.301(a) to request a ruling from the attorney general arise only after it receives a written request.[55] A governmental body that receives a verbal request for information may require the requestor to submit that request in writing. Sections 552.234 and 552.235 of the Government Code outline the proper methods to submit a request for public information. Section 552.234 reads:

(a) A person may make a written request for public information under this chapter only by delivering the request by one of the following methods to the applicable officer for public information or a person designated by that officer:

(1) United States mail;

(2) electronic mail;

(3) hand delivery; or

(4) any other appropriate method approved by the governmental body, including:

(A) facsimile transmission; and

(B) electronic submission through the governmental body's Internet website.

(b) For the purpose of Subsection (a)(4), a governmental body is considered to have approved a method described by that subdivision only if the governmental body includes a statement that a request for public information may be made by that method on:

(1) the sign required to be displayed by the governmental body under Section 552.205; or

(2) the governmental body's internet website.

(c) A governmental body may designate one mailing address and one electronic mail address for receiving written requests for public information. The governmental body shall provide the designated mailing address and electronic mailing address to any person on request.

(d) A governmental body that posts the mailing address and electronic mail address designated by the governmental body under Subsection (c) on the governmental body's Internet website or that prints those addresses on the sign required to be displayed by

[54] Gov't Code § 552.205(a).

[55] Open Records Decision No. 304 at 2 (1982).

the governmental body under Section 552.205 is not required to respond to a written request for public information unless the request is received:

(1) at one of those addresses;

(2) by hand delivery; or

(3) by a method described by Subsection (a)(4) that has been approved by the governmental body.

Requests for a state agency's records that are stored in the Texas State Library and Archives Commission's State and Local Records Management Division should be directed to the originating agency, rather than to the state library.[56]

Section 552.235 of the Government Code requires the attorney general to create a public information request form that provides a requestor the option of excluding information that the governmental body determines is confidential or is subject to an exception to disclosure.[57] This form can be found on the attorney general's website. A governmental body that chooses to use this form must post the form on its website if it maintains one.[58]

A governmental body must make a good faith effort to relate a request to information that it holds.[59] A governmental body may ask a requestor to clarify a request for information if the request is unclear.[60] Section 552.222(b) provides that if a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of the request might be narrowed, but the governmental body may not inquire into the purpose for which information will be used.[61] Section 552.222 also provides that a request for information is considered withdrawn if the requestor does not respond in writing to a governmental body's written request for clarification or additional information within 61 days.[62] The governmental body's written request for clarification or additional information must include a statement as to the consequences of the failure by the requestor to timely respond.[63] If the requestor's original request for information was sent by electronic mail, a governmental body may consider the request for information withdrawn if the governmental body sends its request for clarification to the electronic mail address from which the original request was sent or another electronic mail address provided by the requestor, and the governmental body does not receive a timely written response or response by electronic mail from the requestor.[64] If the requestor's original request for information was not sent by electronic mail, a governmental body may consider the request for information withdrawn if the governmental body sent its request for clarification by certified mail to the requestor's

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56 Open Records Decision No. 617 (1993).

57 Gov't Code § 552.235(a).

58 Gov't Code § 552.235(b).

59 Open Records Decision No. 561 at 8 (1990).

60 Gov't Code § 552.222(b).

61 Gov't Code § 552.222(b).

62 Gov't Code § 552.222(d).

63 Gov't Code § 552.222(e).

64 Gov't Code § 552.222(g).

physical or mailing address, and the governmental body does not receive a timely written response from the requestor.[65]

When a governmental body, acting in good faith, requests clarification or narrowing of an unclear or overbroad request, the ten business day period to request an attorney general ruling is measured from the date it receives the requestor's response to the request for clarification or narrowing.[66] In addition, a governmental body may make inquiries of a requestor in order to establish proper identification.[67] A governmental body may also make certain inquiries of a requestor who seeks information relating to motor vehicle records to determine if the requestor is authorized to receive the information under the governing statute.[68] Similarly, a governmental body may require a requestor seeking an interior photograph taken by an appraisal district for property tax appraisal purposes to provide additional information sufficient to determine whether the requestor is eligible to receive the photograph.[69]

It is implicit in several provisions of the Act that it applies only to information already in existence.[70] Thus, the Act does not require a governmental body to prepare new information in response to a request.[71] Furthermore, the Act does not require a governmental body to inform a requestor if the requested information comes into existence after the request has been made.[72] Consequently, a governmental body is not required to comply with a continuing request to supply information on a periodic basis as such information is prepared in the future.[73] Moreover, the Act does not require a governmental body to prepare answers to questions or to do legal research.[74] Additionally, section 552.227 states that "[a]n 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."[75]

Section 552.232 provides for the handling of repetitious or redundant requests. Under this section, a governmental body that receives a request for information for which it determines it has already furnished or made copies available to the requestor upon payment of applicable charges under Subchapter F may respond to the request by certifying to the requestor that it has already made the information available to the person. The certification must include a description of the information already made available; the date of the governmental body's receipt of the original request for the information; the date it furnished or made the information available; a certification that no changes

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65 Gov't Code § 552.222(f).

66 *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010).

67 Gov't Code § 552.222(a).

68 Gov't Code § 552.222(c) (referencing Transp. Code ch. 730).

69 Gov't Code § 552.155(b), .222(c-1).

70 *See* Gov't Code §§ 552.002, .021, .227, .351.

71 *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex. App.—Eastland 2000, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975).

72 Open Records Decision No. 452 at 3 (1986).

73 Attorney General Opinion JM-48 at 2 (1983); Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987).

74 *See* Open Records Decision Nos. 563 at 8 (1990) (considering request for federal and state laws and regulations), 555 at 1-2 (1990) (considering request for answers to fact questions).

75 Gov't Code § 552.227.

have been made to the information; and the name, title, and signature of the officer for public information, or his agent, who makes the certification.[76]

Section 552.0055 provides that a *subpoena duces tecum* or request for discovery issued in compliance with a statute or rule of civil or criminal procedure is not considered to be a request for information under the Public Information Act.

C. The Governmental Body's Duty to Produce Public Information Promptly

In general, the officer for public information must protect public information and promptly make it available to the public for copying or inspecting.[77] The Act designates the chief administrative officer and each elected county officer as the officer for public information for a governmental body.[78] Section 552.221 specifies the duties of the officer for public information upon receiving a request for public information. Section 552.221 reads in part:

> **(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.**
>
> **(b-1) In addition to the methods of production described by Subsection (b), an officer for public information for a governmental body of this state complies with Subsection (a) by referring a requestor to an exact Internet location or uniform resource locator (URL) address on a website maintained by the governmental body and accessible to the public if the requested information is identifiable and readily available on that website. If the person requesting the information prefers a manner other than access through the URL, the governmental body must supply the information in the manner required by Subsection (b).**

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[76] Gov't Code § 552.232(b).

[77] *See* Gov't Code § 552.203 (listing general duties of officer for public information).

[78] *See* Gov't Code §§ 552.201, .202 (designating officer for public information and identifying department heads as agents for that officer); *see also Keever v. Finlan*, 988 S.W.2d 300, 301 (Tex. App.—Dallas 1999, pet. dism'd) (school district superintendent, rather than school board member, is chief administrative officer and custodian of public records).

(b-2) If an officer for public information for a governmental body provides by e-mail an Internet location or uniform resource locator (URL) address as permitted by Subsection (b-1), the e-mail must contain a statement in a conspicuous font clearly indicating that the requestor may nonetheless access the requested information by inspection or duplication or by receipt through United States mail, as provided by Subsection (b).

Thus, in order to comply with section 552.221, generally a governmental body must either provide the information for inspection, duplication, or both, in its offices or send copies of the information by first class United States mail. A governmental body may also comply with section 552.221 by referring the requestor to an exact Internet location or URL address maintained by the governmental body and accessible to the public, if the requested information is identifiable and readily accessible on the website.[79] If the governmental body uses e-mail to refer the requestor to an Internet location or URL address, the e-mail must contain a statement in a conspicuous font indicating the requestor may still choose to inspect the information or receive copies of the information.[80] If the requestor prefers to inspect the information or receive copies instead of accessing the information on the governmental body's website, the governmental body must either provide the information for inspection or duplication in its offices or send copies of the information by first class mail.[81] An officer for public information is not responsible for how a requestor uses public information or for 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.[82]

The officer for public information must "promptly" produce public information in response to an open records request.[83] "Promptly" means that a governmental body may take a reasonable amount of time to produce the information, but may not delay.[84] It is a common misconception that a governmental body may wait ten business days before releasing the information. In fact, as discussed above, the requirement is to produce information "promptly." What constitutes a reasonable amount of time depends on the facts in each case. The volume of information requested is highly relevant to what constitutes a reasonable period of time.[85]

If the request is to inspect the information, the Public Information Act requires only that the officer in charge of public information make it available for review within the "offices of the governmental body[.]"[86] Temporarily transporting records outside the office for official use does not trigger a duty to make the records available to the public wherever they may be.[87]

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79 Gov't Code § 552.221(b-1).

80 Gov't Code § 552.221 (b-2).

81 Gov't Code § 552.221(b-1).

82 Gov't Code § 552.204; Open Records Decision No. 660 at 4 (1999).

83 Gov't Code § 552.221(a); *see Dominguez v. Gilbert*, 48 S.W.3d 789, 792 (Tex. App.—Austin 2001, no pet.); Open Records Decision No. 665 (2000).

84 Gov't Code § 552.221(a); *see* Open Records Decision No. 467 at 6 (1987).

85 Open Records Decision No. 467 at 6 (1987).

86 Gov't Code § 552.221(b).

87 *Conely v. Peck*, 929 S.W.2d 630, 632 (Tex. App.—Austin 1996, no writ).

Subsection 552.221(c) states:

> **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.**

The following decisions discuss when requested information is in "active use":

> Open Records Decision No. 225 (1979) — a secretary's handwritten notes are in active use while the secretary is typing minutes of a meeting from them;
>
> Open Records Decision No. 148 (1976) — a faculty member's file is not in active use the entire time the member's promotion is under consideration;
>
> Open Records Decision No. 96 (1975) — directory information about students is in active use while the notice required by the federal Family Educational Rights and Privacy Act of 1974 is being given; and
>
> Open Records Decision No. 57 (1974) — a file containing student names, addresses, and telephone numbers is in active use during registration.

If an officer for public information cannot produce public information for inspection or duplication within ten business days after the date the information is requested, section 552.221(d) requires the officer to "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."

Section 552.221(e) of the Government Code provides:

> **A request is considered to have been withdrawn if the requestor fails to inspect or duplicate the public information in the office of the governmental body on or before the 60th day after the date the information is made available or fails to pay the postage and any other applicable charges accrued under Subchapter F on or before the 60th day after the date the requestor is informed of the charges.**

A request may now be considered withdrawn if, after the 60th day, the requestor does not appear to inspect the information, fails to pick up the information, or fails to pay any applicable charges for the information.

The 87th Legislature redesignated the former section 552.233 that dealt with catastrophes as section 552.2325 of the Government Code. Section 552.2325 provides for the temporary suspension of the requirements of the Act when a governmental body is significantly impacted by a catastrophe.[88] A "catastrophe" means a condition or occurrence that directly interferes with the ability of a governmental body to comply with the requirements of the Act.[89] The 87th Legislature also added language clarifying that a "catastrophe" does not mean a period where staff is required

[88] Gov't Code § 552.2325.

[89] Gov't Code § 552.2325(a)(1).

to work remotely and can access information, even if the physical office is closed.[90] In order to suspend the requirements of the Act, a governmental body must provide notice to the OAG in accordance with subsections 552.2325(c) and 552.2325(e) of the Government Code.[91] A copy of the catastrophe notice form can be found on the OAG's website. A governmental body is allowed an initial suspension period of up to seven days that may begin up to two days prior to the submission of the notice.[92] A governmental body is also allowed one extension of the initial suspension period of seven consecutive days beginning on the day following the initial suspension period.[93] The 87th Legislature clarified that a governmental body may not suspend the requirements of the Act for more than fourteen consecutive calendar days for any single catastrophe.[94] Upon conclusion of any suspension period, a governmental body must immediately resume compliance with all requirements of the Act.[95]

The 87th Legislature also added section 552.2211 of the Government Code relating to the production of information when a governmental body's administrative offices are closed. Unless a governmental body has filed a catastrophe notice discussed above, if it closes its physical offices but requires staff to work, including remote work, it must make a good faith effort to continue responding to requests for information to the extent it has access to responsive information.[96] Failure to respond to requests in accordance with section 552.2211(a) may constitute a refusal to request an attorney general's decision as provided by Subchapter G of the Act or a refusal to supply information under Subchapter C of the Act.[97]

In addition, a chart outlining various deadlines to which governmental bodies are subject can be found in Part Six of this *Handbook*.

D. The Requestor's Right of Access

The Public Information Act prohibits a governmental body from inquiring into a requestor's reasons or motives for requesting information. In addition, a governmental body must treat all requests for information uniformly. Sections 552.222 and 552.223 of the Government Code provide as follows:

§ 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), (c), or (c-1).

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90 Gov't Code § 552.2325(a)(2).

91 Gov't Code §§ 552.2325(c), (e).

92 Gov't Code § 552.2325(d).

93 Gov't Code § 552.2325(e), (f).

94 Gov't Code § 552.2325(g).

95 Gov't Code § 552.2325(m).

96 Gov't Code § 552.2211(a).

97 Gov't Code § 552.2211(b).

(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.

(c-1) If the information requested includes a photograph described by Section 552.155(a), the officer for public information or the officer's agent may require the requestor to provide additional information sufficient for the officer or the officer's agent to determine whether the requestor is eligible to receive the information under Section 552.155(b).

§ 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.

Although section 552.223 requires an officer for public information to treat all requests for information uniformly, section 552.028 provides as follows:

(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.

Under section 552.028, a governmental body is not required to comply with a request for information from an inmate or the inmate's agent, other than the inmate's attorney, even if the requested information pertains to the inmate.[98] While subsection (b) does not prohibit a governmental body from complying with an inmate's request, it does not mandate compliance.[99]

Generally, a requestor may choose to inspect or copy public information, or to both inspect and copy public information.[100] In certain circumstances, a governmental body may charge the requestor for access to or copies of the requested information.

1. Right to Inspect

If a requestor chooses to inspect public information, the requestor must generally complete the inspection within ten business days after the date the governmental body makes the information available or the request will be withdrawn by operation of law.[101] However, a governmental body is required to extend the inspection period by an additional 10 business days upon receiving a written request for additional time from the requestor.[102] If the information is needed by the governmental body, the officer for public information may interrupt a requestor's inspection of public information.[103] When a governmental body interrupts a requestor's inspection of public information, the period of interruption is not part of the ten business day inspection period.[104] A governmental body may promulgate policies that are consistent with the Public Information Act for efficient, safe, and speedy inspection and copying of public information.[105]

2. Right to Obtain Copies

If a copy of public information is requested, a governmental body must provide "a suitable copy . . . within a reasonable time after the date on which the copy is requested."[106] However, the Act does not authorize the removal of an original copy of a public record from the office of a

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98 *See Harrison v. Vance*, 34 S.W.3d 660, 662-63 (Tex. App.—Dallas 2000, no pet.); *Hickman v. Moya*, 976 S.W.2d 360, 361 (Tex. App.—Waco 1998, pet. denied); *Moore v. Henry*, 960 S.W.2d 82, 84 (Tex. App.—Houston [1st Dist.] 1996, no writ).

99 *Moore v. Henry*, 960 S.W.2d 82, 84 (Tex. App.—Houston [1st Dist.] 1996, no writ); Open Records Decision No. 656 at 3 (1997) (statutory predecessor to Gov't Code § 552.028 applies to request for voter registration information under Elec. Code § 18.008 when request is from incarcerated individual).

100 Gov't Code §§ 552.221, .225, .228, .230.

101 Gov't Code § 552.225(a); *see also* Open Records Decision No. 512 (1988) (statutory predecessor to Gov't Code § 552.225 did not apply to requests for copies of public information or authorize governmental body to deny repeated requests for copies of public records).

102 Gov't Code § 552.225(b).

103 Gov't Code § 552.225(c).

104 Gov't Code § 552.225(c).

105 Gov't Code § 552.230; *see* Attorney General Opinion JM-757 (1987) (governmental bodies may deny requests from a requestor to make their own copies when requests raise questions of safety or unreasonable disruption of business).

106 Gov't Code § 552.228(a).

governmental body.[107] If the requested records are copyrighted, the governmental body must comply with federal copyright law.[108]

A governmental body may receive a request for a public record that contains both publicly available and excepted information. In a decision that involved a document that contained both publicly available information and information that was excepted from disclosure by the statutory predecessor to section 552.111, the attorney general determined the Act did not permit the governmental body to provide the requestor with a new document created in response to the request on which the publicly available information had been consolidated and retyped, unless the requestor agreed to receive a retyped document.[109] Rather, the attorney general concluded that the statutory predecessor to section 552.228 required the governmental body to make available to the public copies of the actual public records the governmental body had collected, assembled, or maintained, with the excepted information excised.[110]

The public's right to suitable copies of public information has been considered in the following decisions:

> Attorney General Opinion JM-757 (1987) — a governmental body may refuse to allow members of the public to duplicate public records by means of portable copying equipment when it is unreasonably disruptive of working conditions, when the records contain confidential information, when it would cause safety hazards, or when it would interfere with other persons' rights to inspect and copy records;
>
> Open Records Decision No. 660 (1999) — section 52(a) of article III of the Texas Constitution does not prohibit the Port of Corpus Christi Authority from releasing a computer generated digital map, created by the Port with public funds, in response to a request made under Chapter 552 of the Government Code;
>
> Open Records Decision No. 633 (1995) — a governmental body does not comply with the Public Information Act by releasing to the requestor another record as a substitute for any specifically requested portions of an offense report that are not excepted from required public disclosure, unless the requestor agrees to the substitution;
>
> Open Records Decision No. 571 (1990) — the Public Information Act does not give a member of the public a right to use a computer terminal to search for public records; and
>
> Open Records Decision No. 243 (1980) — a governmental body is not required to compile or extract information if the information can be made available by giving the requestor access to the records themselves.[111]

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107 Gov't Code § 552.226.

108 *See* Open Records Decision No. 660 at 5 (1999) (Federal Copyright Act "may not be used to deny access to or copies of the information sought by the requestor under the Public Information Act," but a governmental body may place reasonable restrictions on use of copyrighted information consistent with rights of copyright owner).

109 Open Records Decision No. 606 at 2-3 (1992).

110 Open Records Decision No. 606 at 2-3 (1992).

111 *See also* Open Records Decision Nos. 512 (1988), 465 (1987), 144 (1976).

E. Computer and Electronic Information

Section 552.228(b) provides:

> **If public information exists in an electronic or magnetic medium, the requestor may request a copy 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.**

If a governmental body is unable to provide the information in the requested medium for any of the reasons described by section 552.228(b), the governmental body shall provide the information in another medium that is acceptable to the requestor.[112] A governmental body is not required to use material provided by a requestor, such as a diskette, but rather may use its own supplies to comply with a request.[113]

A request for public information that requires a governmental body to program or manipulate existing data is not considered a request for the creation of new information.[114] If a request for public information requires "programming or manipulation of data,"[115] and "compliance with the request is not feasible or will result in substantial interference with its ongoing operations,"[116] or "the information could be made available in the requested form only at a cost that covers the programming and manipulation of data,"[117] a governmental body is required to provide the requestor with a written statement. This statement must include a statement that the information is not available in the requested form, a description of the form in which the information is available, a description of what would be required to provide the information in the requested form, and a statement of the estimated cost and time to provide the information in the requested form.[118] The governmental body shall provide the statement to the requestor within twenty days after the date the governmental body received the request.[119] If, however, the governmental body gives written notice within the twenty days that additional time is needed, the governmental body has an

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[112] Gov't Code § 552.228(c).

[113] Gov't Code § 552.228(c).

[114] *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681-82 (Tex. App.—Eastland 2000, pet. denied); *see* Gov't Code § 552.231; Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 87 (1975).

[115] Gov't Code § 552.231(a)(1); *see* Gov't Code § 552.003(2), (4) (defining "manipulation" and "programming").

[116] Gov't Code § 552.231(a)(2)(A).

[117] Gov't Code § 552.231(a)(2)(B).

[118] Gov't Code § 552.231(a), (b); *see Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 682 (Tex. App.—Eastland 2000, pet. denied); Open Records Decision No. 661 at 6-8 (1999).

[119] Gov't Code § 552.231(c).

additional ten days to provide the statement.[120] Once the governmental body provides the statement to the requestor, the governmental body has no obligation to provide the requested information in the requested form unless within thirty days the requestor responds to the governmental body in writing that the requestor wants the governmental body to provide the information in the requested form in accordance with the cost and time parameters agreed upon or wants the information in the form it is available.[121] If the requestor does not respond within thirty days, the request is considered withdrawn.[122]

V. DISCLOSURE TO SELECTED PERSONS

A. General Rule: Under the Public Information Act, Public Information is Available to All Members of the Public

The Public Information Act states in several provisions that public information is available to "the people," "the public," and "any person."[123] Thus, the Act deals primarily with the general public's access to information; it does not, as a general matter, give an individual a "special right of access" to information concerning that individual that is not otherwise public information.[124] Information that a governmental body writes, produces, collects, assembles or maintains is, in general, either open to all members of the public or closed to all members of the public.

Additionally, section 552.007 prohibits a governmental body from selectively disclosing information that is not confidential by law but that a governmental body may withhold under an exception to disclosure. Section 552.007 provides as follows:

> **(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.**[125]

If, therefore, a governmental body releases to a member of the public nonconfidential information, then the governmental body must release the information to all members of the public who request it. For example, in rendering an open records decision under section 552.306, the attorney general

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[120] Gov't Code § 552.231(c).

[121] Gov't Code § 552.231(d); *see also Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 682 (Tex. App.—Eastland 2000, pet. denied); Open Records Decision No. 661 (1999) (Gov't Code § 552.231 enables governmental body and requestor to reach agreement as to cost, time and other terms of responding to request requiring programming or manipulation of data).

[122] Gov't Code § 552.231(d-1).

[123] *See, e.g.*, Gov't Code §§ 552.001, .021, .221(a). The Act does not require a requestor be a Texas resident or an American citizen.

[124] Open Records Decision No. 507 at 3 (1988); *see also* Attorney General Opinion JM-590 at 4 (1986); Open Records Decision No. 330 at 2 (1982).

[125] *See also* Open Records Decision No. 463 at 1-2 (1987).

would not consider a governmental body's claim that section 552.111 authorized the governmental body to withhold a report from a requestor when the governmental body had already disclosed the report to another member of the public.[126]

B. Some Disclosures of Information to Selected Individuals or Entities Do Not Constitute Disclosures to the Public Under Section 552.007

As noted, the Public Information Act prohibits the selective disclosure of information to members of the public. A governmental body may, however, have authority to disclose records to certain persons or entities without those disclosures being voluntary disclosures to "the public" within the meaning of section 552.007 of the Government Code. In these cases, the governmental body normally does not waive applicable exceptions to disclosure by transferring or disclosing the records to these specific persons or entities.

1. Special Rights of Access: Exceptions to Disclosure Expressly Inapplicable to a Specific Class of Persons

a. Special Rights of Access Under the Public Information Act

The following provisions in the Act provide an individual with special rights of access to certain information even though the information is unavailable to members of the general public: sections 552.008, 552.023, 552.026, and 552.114.

i. Information for Legislative Use

Section 552.008 of the Government Code states in pertinent part:

> **(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.**

Section 552.008 provides that a governmental body shall provide copies of information, including confidential information, to an individual member, agency, or committee of the legislature if requested for legislative purposes.[127] The section provides that disclosure of excepted or confidential information to a legislator does not waive or affect the confidentiality of the

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[126] *See* Open Records Decision No. 400 at 2 (1983) (construing statutory predecessor to Gov't Code § 552.111); *see also Cornyn v. City of Garland*, 994 S.W.2d 258, 265 (Tex. App.—Austin 1999, no pet.) (information released pursuant to discovery in litigation was not voluntarily released and thus was excepted from disclosure under Public Information Act).

[127] *See Tex. Comm'n on Envtl. Quality v. Abbott*, 311 S.W.3d 663 (Tex. App.—Austin 2010, pet. denied) (Gov't Code § 552.008 required commission to release to legislator for legislative purposes attorney-client privileged documents subject to confidentiality agreement).

information or the right to assert exceptions in the future regarding that information, and provides specific procedures relating to the confidential treatment of the information.[128] An individual who obtains confidential information under section 552.008 commits an offense if that person misuses the information or discloses it to an unauthorized person.[129]

Subsections (b-1) and (b-2) of section 552.008 provide:

> **(b-1) A member, committee, or agency of the legislature required by a governmental body to sign a confidentiality agreement under Subsection (b) may seek a decision as provided by Subsection (b-2) about whether the information covered by the confidentiality agreement is confidential under law. A confidentiality agreement signed under Subsection (b) is void to the extent that the agreement covers information that is finally determined under Subsection (b-2) to not be confidential under law.**
>
> **(b-2) The member, committee, or agency of the legislature may seek a decision from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this subsection, determining whether the information covered by the confidentiality agreement is confidential under law, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court. A person may appeal a decision of the attorney general under this subsection to a Travis County district court if the person claims a proprietary interest in the information affected by the decision or a privacy interest in the information that a confidentiality law or judicial decision is designed to protect.**[130]

If a member of the legislature signs a confidentiality agreement but subsequently believes the information the governmental body has released pursuant to section 552.008 is not confidential, the member may request an attorney general decision regarding the confidentiality of the information.[131] If the attorney general determines the information is not confidential, any confidentiality agreement the member signed is void. The attorney general promulgated rules relating to its decisions under section 552.008(b-2).[132] These rules are available on the attorney general's website and in Part Four of this *Handbook*.

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[128] Gov't Code § 552.008(b).

[129] Gov't Code § 552.352(a-1).

[130] Gov't Code § 552.008(b-1), (b-2).

[131] *See*, *e.g.*, Open Records Letter No. 2013-08637 (2013).

[132] *See* 1 T.A.C. §§ 63.1-.6.

ii. Information About the Person Who Is Requesting the Information

Section 552.023 of the Government Code provides an individual with a limited special right of access to information about that individual. It states in pertinent part:

> **(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.**

Subsections (a) and (b) of section 552.023 prevent a governmental body from asserting an individual's own privacy as a reason for withholding records from that individual. However, the individual's right of access to private information about that individual under section 552.023 does not override exceptions to disclosure in the Act or confidentiality laws protecting some interest other than that individual's privacy.[133] The following decisions consider the statutory predecessor to section 552.023:

Open Records Decision No. 684 (2009) — when requestor is a person whose privacy interests are protected under section 552.130, concerning certain motor vehicle information, or section 552.136, concerning access device information, requestor has a right of access to the information under section 552.023;

Open Records Decision No. 587 (1991) — because former Family Code section 34.08, which made confidential reports, records, and working papers used or developed in an investigation of alleged child abuse, protected law enforcement interests as well as privacy interests, the statutory predecessor to section 552.023 did not provide the subject of the information a special right of access to the child abuse investigation file;

Open Records Decision No. 577 (1990) — under the Communicable Disease Prevention and Control Act, information in the possession of a local health authority relating to disease or health conditions is confidential but may be released with the consent of the person identified in the information; because this confidentiality provision is designed to protect the privacy of the subject of the information, the statutory predecessor to section 552.023 authorized a local

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[133] *See* Open Records Decision No. 556 (1990) (predecessor statute to section 552.111 applied to requestor's claim information); *see also Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253, 260 (Tex. App.—Austin 2012, no pet.) (because Pharmacy Act confidentiality provision protected integrity of board's regulatory process, board's withholding of requestor's records was based on law not intended solely to protect requestor's privacy interest); *Tex. State Bd. of Chiropractic Exam'rs v. Abbott*, 391 S.W.3d 343, 351 (Tex. App.—Austin 2013, no pet.) (because provision making board's investigation records confidential protected integrity of board's regulatory process rather than requestor's privacy interest, section 552.023 did not prevent board from denying access to requested information).

health authority to release to the subject medical or epidemiological information relating to the person who signed the consent.

iii. Information in a Student or Education Record

Section 552.114 of the Government Code, which defines "student record" and deems such records confidential, states a governmental body must make such information available if the information is requested by: 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 pursuant to Subchapter D of Chapter 261 of the Family Code.[134] Section 552.026 of the Government Code, which conforms the Act to the requirements of the federal Family Educational Rights and Privacy Act of 1974[135] ("FERPA"), also incorporates the rights of access established by that federal law.[136] To the extent FERPA conflicts with state law, the federal statute prevails.[137]

b. Special Rights of Access Created by Other Statutes

Statutes other than the Act grant specific entities or individuals a special right of access to specific information. For example, section 901.160 of the Occupations Code makes information about a licensee held by the Texas State Board of Public Accountancy available for inspection by the licensee. Exceptions in the Act cannot authorize the board to withhold this information from the licensee because the licensee has a statutory right to the specific information requested.[138] As is true for the right of access provided under section 552.023 of the Act, a statutory right of access does not affect the governmental body's authority to rely on applicable exceptions to disclosure when the information is requested by someone other than an individual with a special right of access.

2. Intra- or Intergovernmental Transfers

The transfer of information within a governmental body or between governmental bodies is not necessarily a release to the public for purposes of the Act. For example, a member of a governmental body, acting in his or her official capacity, is not a member of the public for purposes of access to information in the governmental body's possession. Thus, an authorized official may review records of the governmental body without implicating the Act's prohibition against

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134 Gov't Code § 552.114(a), (b), (c).

135 20 U.S.C. § 1232g.

136 Open Records Decision No. 431 at 2-3 (1985).

137 Open Records Decision No. 431 at 3 (1985).

138 Open Records Decision No. 451 at 4 (1986); *see also* Open Records Decision Nos. 500 at 4-5 (1988) (considering property owner's right of access to appraisal records under Tax Code), 478 at 3 (1987) (considering intoxilyzer test subject's right of access to test results under statutory predecessor to Transp. Code § 724.018).

selective disclosure.[139] Additionally, a state agency may ordinarily transfer information to another state agency or to another governmental body subject to the Act without violating the confidentiality of the information or waiving exceptions to disclosure.[140]

On the other hand, a federal agency is subject to an open records law that differs from the Texas Public Information Act. A state governmental body, therefore, should not transfer non-disclosable information to a federal agency unless some law requires or authorizes the state governmental body to do so.[141] A federal agency may not maintain the state records with the "same eye towards confidentiality that state agencies would be bound to do under the laws of Texas."[142]

Where information is confidential by statute, the statute specifically enumerates the entities to which the information may be released, and the governmental body is not among those entities, the information may not be transferred to the governmental body.[143]

3. Other Limited Disclosures That Do Not Implicate Section 552.007

The attorney general has recognized other specific contexts in which a governmental body's limited release of information to certain persons does not constitute a release to "the public" under section 552.007:

> Open Records Decision No. 579 at 7 (1990) — exchanging information among litigants in informal discovery was not a voluntary release under the statutory predecessor to section 552.007;
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> Open Records Decision No. 501 (1988) — while former article 9.39 of the Insurance Code prohibited the State Board of Insurance from releasing escrow reports to the public, the Board could release the report to the title company to which the report related;
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> Open Records Decision No. 454 at 2 (1986) — governmental body that disclosed information it reasonably concluded it had a constitutional obligation to do so could still invoke statutory predecessor to section 552.108; and

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[139] *See* Attorney General Opinions JC-0283 at 3-4 (2000), JM-119 at 2 (1983); *see also* Open Records Decision Nos. 678 at 4 (2003) (transfer of county registrar's list of registered voters to secretary of state and election officials is not release to public prohibited by Gov't Code § 552.1175), 674 at 4 (2001) (information in archival state records that was confidential in custody of originating governmental body remains confidential upon transfer to commission), 666 at 4 (2000) (municipality's disclosure to municipally appointed citizen advisory board of information pertaining to municipally owned power utility does not constitute release to public as contemplated under Gov't Code § 552.007), 464 at 5 (1987) (distribution of evaluations by university faculty members among faculty members does not waive exceptions to disclosure with respect to general public).

[140] *See* Attorney General Opinions H-917 at 1 (1976), H-242 at 4 (1974); Open Records Decision Nos. 667 at 3-4 (2000), 661 at 3 (1999). *But see* Attorney General Opinion JM-590 at 4-5 (1986) (comptroller's release to city prohibited where Tax Code made information confidential, enumerated entities to which information may be disclosed, and did not include city among enumerated entities).

[141] Open Records Decision No. 650 at 4 (1996); *see*, *e.g.*, Open Records Letter No. 2017-09880 (2017) (United States Army provided right of access under federal law to criminal history record information in certain city police records).

[142] Attorney General Opinion H-242 at 4 (1974); *accord* Attorney General Opinion MW-565 at 4 (1982); Open Records Decision No. 561 at 6 (1990) (quoting with approval Attorney General Opinion H-242 (1974)).

[143] *See generally* Attorney General Opinion JM-590 at 5 (1986); Open Records Decision Nos. 661 at 3 (1999), 655 at 8 (1997), 650 at 3 (1996).

Open Records Decision No. 400 (1983) — the prohibition against selective disclosure does not apply when a governmental body releases confidential information to the public.

VI. Attorney General Determines Whether Information Is Subject to an Exception

A. Duties of the Governmental Body and of the Attorney General Under Subchapter G

Sections 552.301, 552.302, and 552.303 of the Government Code set out the duty of a governmental body to seek the attorney general's decision on whether information is excepted from disclosure to the public.

Section 552.301, subsections (a) and (b), provides that when a governmental body receives a written request for information the governmental body wishes to withhold, it must seek an attorney general decision within ten business days of its receipt of the request and state the exceptions to disclosure that it believes are applicable. Subsections (a) and (b) read:

> **(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.**

Thus, a governmental body that wishes to withhold information from the public on the ground of an exception generally must seek the decision of the attorney general as to the applicability of that exception.[144] In addition, an entity contending that it is not subject to the Act may timely request a decision from the attorney general to avoid the consequences of noncompliance if the entity is determined to be subject to the Act.[145] Therefore, when requesting such a decision, the entity

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[144] *Thomas v. Cornyn*, 71 S.W.3d 473, 480 (Tex. App.—Austin 2002, no pet.); *Dominguez v. Gilbert*, 48 S.W.3d 789, 792 (Tex. App.—Austin 2001, no pet.); Open Records Decision Nos. 452 at 4 (1986), 435 (1986) (referring specifically to statutory predecessors to Gov't Code §§ 552.103 and 552.111, respectively); *see Conely v. Peck*, 929 S.W.2d 630, 632 (Tex. App.—Austin 1996, no writ) (requirement to request open records decision within ten days comes into play when governmental body denies access to requested information or asserts exception to public disclosure of information).

[145] *See Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353, 362 (Tex. App.—Waco 1998, pet. denied) (entity does not admit it is governmental body by virtue of request for opinion from attorney general).

should not only present its arguments as to why it is not subject to the Act, but should also raise any exceptions to required disclosure it believes apply to the requested information.

A governmental body need not request an attorney general decision if there has been a previous determination that the requested material falls within one of the exceptions to disclosure.[146] What constitutes a "previous determination" is narrow in scope, and governmental bodies are cautioned against treating most published attorney general decisions as "previous determinations" to avoid the requirements of section 552.301(a). The attorney general has determined that there are two types of previous determinations.[147] The first and by far the most common instance of a previous determination pertains to specific information that is again requested from a governmental body when the attorney general has previously issued a decision that evaluates the public availability of the precise information or records at issue. This first instance of a previous determination does not apply to records that are substantially similar to records previously submitted to the attorney general for review, nor does it apply to information that may fall within the same category as any given records on which the attorney general has previously ruled. The first type of previous determination requires that all of the following criteria be met:

1. the information at issue is precisely the same information that was previously submitted to the attorney general pursuant to section 552.301(e)(1)(D) of the Government Code;

2. the governmental body that received the request for the information is the same governmental body that previously requested and received a ruling from the attorney general;

3. the attorney general's prior ruling concluded the precise information is or is not excepted from disclosure under the Act; and

4. the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling.[148]

Absent all four of the above criteria, and unless the second type of previous determination applies, a governmental body must ask for a decision from the attorney general if it wishes to withhold from the public information that is requested under the Act.

The second type of previous determination requires that all of the following criteria be met:

1. the information at issue falls within a specific, clearly delineated category of information about which the attorney general has previously rendered a decision;

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[146] Gov't Code § 552.301(a); *Dominguez v. Gilbert*, 48 S.W.3d 789, 792-93 (Tex. App.—Austin 2001, no pet.).

[147] Open Records Decision No. 673 (2001).

[148] A governmental body should request a decision from the attorney general if it is unclear to the governmental body whether there has been a change in the law, facts or circumstances on which the prior decision was based.

2. the previous decision is applicable to the particular governmental body or type of governmental body from which the information is requested;[149]

3. the previous decision concludes the specific, clearly delineated category of information is or is not excepted from disclosure under the Act;

4. the elements of law, fact, and circumstances are met to support the previous decision's conclusion that the requested records or information at issue is or is not excepted from required disclosure; and[150]

5. the previous decision explicitly provides that the governmental body or bodies to which the decision applies may withhold the information without the necessity of again seeking a decision from the attorney general.

Absent all five of the above criteria, and unless the first type of previous determination applies, a governmental body must ask for a decision from the attorney general if it wishes to withhold requested information from the public under the Act.

An example of this second type of previous determination is found in Open Records Decision No. 670. In that decision, the attorney general determined that pursuant to the statutory predecessor of section 552.117(a)(2) of the Government Code, a governmental body may withhold the home address, home telephone number, personal cellular telephone number, personal pager number, social security number, and information that reveals whether the individual has family members, of any individual who meets the definition of "peace officer" without requesting a decision from the attorney general.

The governmental body may not unilaterally decide to withhold information on the basis of a prior open records decision merely because it believes the legal standard for an exception, as established in the prior decision, applies to the recently requested information.[151]

When in doubt, a governmental body should consult with the Open Records Division of the Office of the Attorney General prior to the ten business day deadline to determine whether requested information is subject to a previous determination.[152]

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[149] Previous determinations of the second type can apply to all governmental bodies if the decision so provides. *See, e.g.*, Open Records Decision No. 670 (2001) (all governmental bodies may withhold information subject to predecessor of Gov't Code § 552.117(a)(2) without necessity of seeking attorney general decision). On the other hand, if the decision is addressed to a particular governmental body and does not explicitly provide that it also applies to other governmental bodies or to all governmental bodies of a certain type, then only the particular governmental body to which the decision is addressed may rely on the decision as a previous determination. *See, e.g.*, Open Records Decision No. 662 (1999) (constituting second type of previous determination but only with respect to information held by Texas Department of Health).

[150] Thus, in addition to the law remaining unchanged, the facts and circumstances must also have remained unchanged to the extent necessary for all of the requisite elements to be met. With respect to previous determinations of the second type, a governmental body should request a decision from the attorney general if it is unclear to the governmental body whether all of the elements on which the previous decision's conclusion was based have been met with respect to the requested records or information.

[151] Open Records Decision No. 511 (1988) (no unilateral withholding of information under litigation exception).

[152] *See* Open Records Decision No. 435 at 2-3 (1986) (attorney general has broad discretion to determine whether information is subject to previous determination).

A request for an open records decision pursuant to section 552.301 must come from the governmental body that has received a written request for information.[153] Otherwise, the attorney general does not have jurisdiction under the Act to determine whether the information is excepted from disclosure to the public.

Section 552.301(f) expressly prohibits a governmental body from seeking an attorney general decision where the attorney general or a court has already determined that the same information must be released. Among other things, this provision precludes a governmental body from asking for reconsideration of an attorney general decision that concluded the governmental body must release information. Subsection (f) provides:

> **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.**

Section 552.301(g) authorizes a governmental body to ask for another attorney general decision if: (1) a suit challenging the prior decision was timely filed against the attorney general; (2) the attorney general determines that the requestor has voluntarily withdrawn the request for the information in writing or has abandoned the request; and (3) the parties agree to dismiss the lawsuit.[154]

Section 552.301(d) provides that if the governmental body seeks an attorney general decision as to whether it may withhold requested information, it must notify the requestor not later than the 10th business day after its receipt of the written request that it is seeking an attorney general decision. Section 552.301(d) reads:

> **(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 general 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 a decision or, if the governmental body's written communication to the**

[153] Open Records Decision Nos. 542 at 3 (1990), 449 (1986).

[154] Gov't Code § 552.301(g).

attorney general discloses the requested information, a redacted copy of that written communication.

The attorney general interprets subsection 552.301(d)(1) to mean that a governmental body substantially complies with subsection (d)(1) by sending the requestor a copy of the governmental body's written communication to the attorney general requesting a decision. Because governmental bodies may be required to submit evidence of their compliance with subsection (d), governmental bodies are encouraged to submit evidence of their compliance when seeking an attorney general decision. If a governmental body fails to comply with subsection (d), the requested information is presumed public pursuant to section 552.302.

B. Items the Governmental Body Must Submit to the Attorney General

Subsections 552.301(e) and (e-1) of the Government Code read:

(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 not later than the 15th business day after the date of receiving the written request. 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.

Thus, subsection (e) of section 552.301 requires a governmental body seeking an attorney general decision as to whether it may withhold requested information to submit to the attorney general, no later than the fifteenth business day after receiving the written request, written comments stating why the claimed exceptions apply, a copy of the written request, a signed statement as to the date of its receipt of the request or sufficient evidence of that date, and a copy of the specific information

it seeks to withhold, or representative samples thereof, labeled to indicate which exceptions are claimed to apply to which parts of the information. Within fifteen business days, a governmental body must also copy the requestor on those comments, redacting any portion of the comments that contains the substance of the requested information. Governmental bodies are cautioned against redacting more than that which would reveal the substance of the information requested from the comments sent to the requestor. A failure to comply with the requirements of section 552.301 can result in the information being presumed public under section 552.302 of the Government Code.

1. Written Communication from the Person Requesting the Information

A person may make a written request for information by delivering the request by U.S. mail, electronic mail, hand delivery, or any appropriate method approved by the governmental body to the public information officer or the officer's designee.[155] A copy of the written request from the member of the public seeking access to the records lets the attorney general know what information was requested, permits the attorney general to determine whether the governmental body met its statutory deadlines in requesting a decision, and enables the attorney general to inform the requestor of the ruling.[156] These written communications are generally public information.[157]

2. Information Requested from the Governmental Body

Section 552.303(a) provides:

> **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.**

Governmental bodies should submit a clean, legible copy of the information at issue. Original records should not be submitted. If the requested records are voluminous and repetitive, a governmental body may submit representative samples.[158] If, however, each document contains substantially different information, a copy of each and every requested document or all information must be submitted to the attorney general.[159] For example, it is not appropriate to submit a representative sample of information when the proprietary information of third parties is at issue. In that circumstance, it is necessary to submit the information of each third party with a potential proprietary interest rather than submitting the information of one third party as a representative

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155 Gov't Code § 552.234(a).

156 *See* Gov't Code § 552.306(b); Open Records Decision No. 150 (1977).

157 *Cf.* Gov't Code § 552.301(d)(2), (e-1) (requiring governmental body to provide requestor copies of its written communications to attorney general); Open Records Decision No. 459 (1987) (considering public availability of governmental body's letter to attorney general).

158 Gov't Code § 552.301(e)(1)(D).

159 Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

sample. The attorney general must not disclose the submitted information to the requestor or the public.[160]

3. Labeling Requested Information to Indicate Which Exceptions Apply to Which Parts of the Requested Information

When a governmental body raises an exception applicable to only part of the information, it must mark the records to identify the information it believes is subject to that exception. A general claim that an exception applies to an entire report or document, when the exception clearly does not apply to all information in that report or document, does not conform to the Act.[161] When labeling requested information, a governmental body should mark the records in such a way that all of the requested information remains visible for the attorney general's review. For obvious reasons, the attorney general cannot make a determination on information it cannot read.

4. Statement or Evidence as to Date Governmental Body Received Written Request

The governmental body, in its submission to the attorney general, must certify or provide sufficient evidence of the date it received the written request.[162] This will enable the attorney general to determine whether the governmental body has timely requested the attorney general's decision within ten business days of receiving the written request, as required by section 552.301(b), and timely submitted the other materials that are required by section 552.301(e) to be submitted by the fifteenth business day after receipt of the request. Section 552.301 provides that if a governmental body receives a written request by United States mail and cannot adequately establish the actual date on which the governmental body received the request, the written request is considered to have been received by the governmental body on the third business day after the date of the postmark on a properly addressed request.[163]



The attorney general only counts business days as provided by section 552.0031, which was added by the 88th Legislature.[164] A governmental body briefing the attorney general under section 552.301 should inform the attorney general in the briefing of any holiday observed by the governmental body.

5. Letter from the Governmental Body Stating Which Exceptions Apply and Why

The letter from the governmental body stating which exceptions apply to the information and why they apply is necessary because the Act presumes that governmental records are open to the public unless the records are within one of the exceptions set out in Subchapter C.[165] This presumption is based on the language of section 552.021, which makes virtually all information in the custody of a governmental body available to the public. This language places on the governmental body

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160 Gov't Code § 552.3035.

161 Gov't Code § 552.301(e)(2); Open Records Decision Nos. 419 at 3 (1984), 252 at 3 (1980), 150 at 2 (1977).

162 Gov't Code § 552.301(e)(1)(c).

163 Gov't Code § 552.301(a-1).

164 Gov't Code § 552.0031.

165 *See* Attorney General Opinion H-436 (1974); Open Records Decision Nos. 363 (1983), 150 (1977), 91 (1975).

the burden of proving that an exception applies to the records requested from it.[166] Thus, if the governmental body wishes to withhold particular information, it must establish that a particular exception applies to the information and must mark the records to identify the portion the governmental body believes is excepted from disclosure. Conclusory assertions that a particular exception applies to requested information will not suffice. The burden for establishing the applicability of each exception in the Act is discussed in detail in Part Two of this *Handbook*. If a governmental body does not establish how and why an exception applies to the requested information, the attorney general has no basis on which to pronounce it protected.[167]

The governmental body must send to the requestor a copy of its letter to the attorney general stating why information is excepted from public disclosure.[168] In order to explain how a particular exception applies to the information in dispute, the governmental body may find it necessary to reveal the content of the requested information in its letter to the attorney general. In such cases, the governmental body must redact comments containing the substance of the requested information in the copy of its letter it sends to the requestor.[169]

C. Section 552.302: Information Presumed Public if Submissions and Notification Required by Section 552.301 Are Not Timely

Section 552.302 of the Government Code provides:

> **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.**

Section 552.301(b) establishes a deadline of ten business days for the governmental body to request a decision from the attorney general and state the exceptions that apply.[170] Subsection (d) of section 552.301 requires that the governmental body notify the requestor within ten business days if it is seeking an attorney general decision as to whether the information may be withheld. Section 552.301(e) establishes a deadline of fifteen business days for the governmental body to provide the other materials required under that subsection to the attorney general. Subsection (e-1) of section 552.301 requires that the governmental body copy the requestor on its written comments, within fifteen business days, redacting any portion of the comments that contains the substance of the information requested.

Section 552.302 provides that if the governmental body does not make a timely request for a decision, notify and copy the requestor, and make the requisite submissions to the attorney general

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166 *See Thomas v. Cornyn*, 71 S.W.3d 473, 480-81 (Tex. App.—Austin 2002, no pet.); Open Records Decision Nos. 542 at 2-3 (1990) (burden is placed on governmental body when it requests ruling pursuant to statutory predecessor to Gov't Code § 552.301), 532 at 1 (1989), 363 (1983), 197 at 1 (1978).

167 Open Records Decision No. 363 (1983).

168 Gov't Code § 552.301(e-1).

169 Gov't Code § 552.301(e-1).

170 *See also* Gov't Code §§ 552.308 (timeliness of action by United States mail, interagency mail, or common or contract carrier), .309 (timeliness of action by electronic submission).

as required by section 552.301, the requested information will be presumed to be open to the public, and only the demonstration of a "compelling reason" for withholding the information can overcome that presumption.[171] In the great majority of cases, the governmental body will not be able to overcome that presumption and must promptly release the requested information. Whether failure to meet the respective ten and fifteen business day deadlines, by submitting the requisite information within those deadlines, has the effect of requiring disclosure depends on whether the governmental body asserts a compelling reason that would overcome the presumption of openness arising from the governmental body's failure to meet the submission deadlines.

In *Paxton v. City of Dallas*, the Texas Supreme Court determined (1) the failure of a governmental body to timely seek a ruling from the attorney general to withhold information subject to the attorney-client privilege does not constitute a waiver of the privilege, and (2) the attorney-client privilege constitutes a compelling reason to withhold information under section 552.302 of the Government Code.[172]

The supreme court's decision overrules a long line of attorney general decisions discussing the burden a governmental body must meet in order to overcome the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. However, notwithstanding *Paxton v. City of Dallas*, the section 552.302 presumption of openness is triggered as soon as the governmental body fails to meet any of the requisite deadlines for submissions or notification set out in section 552.301. Governmental bodies should review the determination in *Paxton v. City of Dallas* when considering the consequences of failing to comply with the procedures set out in section 552.301.

D. Section 552.303: Attorney General Determination that Information in Addition to that Required by Section 552.301 Is Necessary to Render a Decision

Section 552.303 of the Government Code provides for instances when the attorney general determines information other than that required to be submitted by section 552.301 is necessary to render a decision.[173] If the attorney general determines more information is necessary to render a decision, it must so notify the governmental body and the requestor.[174] If the additional material is not provided by the governmental body within seven *calendar* days of its receipt of the attorney general's notice, the information sought to be withheld is presumed public and must be disclosed unless a compelling reason for withholding the information is demonstrated.[175]

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[171] Gov't Code § 552.302; *see Hancock v. State Bd. of Ins*., 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); Open Records Decision Nos. 515 at 6 (1988), 452 (1986), 319 (1982); *see also Simmons v. Kuzmich*, 166 S.W.3d 342, 348-49 (Tex. App.—Fort Worth 2005, no pet.) (party seeking to withhold information has burden in trial court of proving exception from disclosure and presumably must comply with steps mandated by statute to seek and preserve such exception from disclosure); *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 n.6 (Tex. App.—Austin 2003, no pet.) (court need not decide whether law enforcement exception applies because city never submitted any reasons or comments as to how exception applied, and issue was not before it because city failed to meet Act's procedural requirements).

[172] *Paxton v. City of Dallas*, 509 S.W.3d 247, 262, 271 (Tex. 2017).

[173] Gov't Code § 552.303(b)-(e).

[174] Gov't Code § 552.303(c).

[175] Gov't Code § 552.303(d)-(e).

E. Section 552.3031: Electronic Submission of Request for Attorney General Decision

The 88th Legislature added section 552.3031 of the Government Code, which requires certain governmental bodies to use the attorney general's electronic filing system when seeking a request for an open records decision. This section does not apply to a governmental body with fewer than 16 full-time employees or located in a county with a population of less than 150,000.[176] Additionally, this section does not apply if the amount or format of the responsive information at issue in a particular request makes use of the attorney general's electronic filing system impractical or impossible.[177] Further, if the request is hand delivered to the office of the attorney general, section 552.3031 also does not apply.[178] A governmental body requesting an attorney general decision pursuant to section 552.3031 must use the attorney general's designated electronic filing system.[179]

Section 552.3031(c) authorizes the attorney general to promulgate rules necessary to implement this section, including rules regarding the type or size of files that make the use of the electronic-filing system impractical or impossible.[180] These rules will be available on the attorney general's website.

F. Section 552.305: When the Requested Information Involves a Third Party's Privacy or Property Interests

Section 552.305 of the Government Code reads as follows:

> **(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, 552.110, 552.1101, 552.114, 552.131, or 552.143, 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, 552.1101, 552.113, 552.131, or 552.143, the governmental**

[176] Gov't Code § 552.3031(a)(1).

[177] Gov't Code § 552.3031(a)(2).

[178] Gov't Code § 552.3031(a)(3).

[179] Gov't Code § 552.3031(b).

[180] Gov't Code § 552.3031(c).

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.

Section 552.305 relieves the governmental body of its duty under section 552.301(b) to state which exceptions apply to the information and why they apply when (1) a third party's privacy or property interests may be implicated, (2) the governmental body has requested a ruling from the attorney general, and (3) the third party or any other party has submitted reasons for withholding or releasing the information.[181] However, section 552.305 does not relieve a governmental body of its duty to request a ruling within ten business days of receiving a request for information, notify the requestor in accordance with section 552.301(d), or provide the attorney general's office with the information required in section 552.301(e).[182] The language of section 552.305(b) is permissive and does not require a third party with a property or privacy interest to seek relief from the attorney general before filing suit against the attorney general under section 552.325. The opportunity to submit comments during the ruling process does not automatically provide access to the courts. A third party must still meet jurisdictional requirements for standing before it may file suit over a ruling that orders information to be disclosed.

[181] Open Records Decision No. 542 at 3 (1990).

[182] *See* Gov't Code §§ 552.301(a)-(b), (e), .305.

Section 552.305(d) requires the governmental body to make a good faith effort to notify a person whose proprietary interests may be implicated by a request for information where the information may be excepted from disclosure under section 552.101, 552.110, 552.1101, 552.113, 552.131, or 552.143. The governmental body is generally not required to notify a party whose privacy, as opposed to proprietary, interest is implicated by a release of information. The governmental body may itself argue that the privacy interests of a third party except the information from disclosure.

The required notice must be in writing and sent within ten business days of the governmental body's receipt of the request. It must include a copy of the written request for information and a statement that the person may, within ten business days of receiving the notice, submit to the attorney general reasons why the information in question should be withheld and explanations in support thereof. The form of the statement required by section 552.305(d)(2)(B), as prescribed by the attorney general, can be found in Part Seven of this *Handbook*. Subsection (e) of section 552.305 requires a person who submits reasons under subsection (d) for withholding information to send a copy of such communication to the requestor of the information, unless the communication reveals the substance of the information at issue, in which case the copy sent to the requestor may be redacted.

The following open records decisions have interpreted the statutory predecessor to section 552.305:

> Open Records Decision No. 652 (1997) — if a governmental body takes no position pursuant to section 552.305 of the Government Code or has determined that requested information is not protected under a specific confidentiality provision, the attorney general will issue a decision based on a review of the information at issue and on any other information provided to the attorney general by the governmental body or third parties;
>
> Open Records Decision No. 609 (1992) — the attorney general is unable to resolve a factual dispute when a governmental body and a third party disagree on whether information is excepted from disclosure based on the third party's property interests;
>
> Open Records Decision No. 575 (1990) — the Public Information Act does not require a third party to substantiate its claims of confidentiality at the time it submits material to a governmental body;
>
> Open Records Decision No. 552 (1990) — explanation of how the attorney general deals with a request when, pursuant to the statutory predecessor to section 552.305 of the Public Information Act, a governmental body takes no position on a third party's claim that information is excepted from public disclosure by the third party's property interests and when relevant facts are in dispute; and
>
> Open Records Decision No. 542 (1990) — the statutory predecessor to section 552.305 did not permit a third party to request a ruling from the attorney general.

G. Section 552.3035: Attorney General Must Not Disclose Information at Issue

Section 552.3035 of the Government Code expressly prohibits the attorney general from disclosing information that is the subject of a request for an attorney general decision.

H. Section 552.304: Submission of Public Comments

Section 552.304 of the Government Code permits any person to submit written comments as to why information at issue in a request for an attorney general decision should or should not be released. In order to be considered, such comments must be received before the attorney general renders a decision under section 552.306, and must be submitted pursuant to sections 552.308 and 552.309, as discussed below.

I. Rendition of Attorney General Decision

Pursuant to section 552.306 of the Government Code the attorney general must render an open records decision "not later than the 45th business day after the date the attorney general received the request for a decision."[183] If the attorney general cannot render a decision by the 45 day deadline, the attorney general may extend the deadline by ten business days by informing the governmental body and the requestor of the reason for the delay.[184] The attorney general must provide a copy of the decision to the requestor.[185] The attorney general addressed this section in Open Records Decision No. 687 (2011), concluding section 552.306 imposes a duty on the attorney general to rule on a claimed exception to disclosure when, prior to the issuance of the decision, a party has brought an action before a Texas court posing the same open records question.



The 88th Legislature amended section 552.306 by adding subsections (c) and (d), which require a governmental body, as soon as practicable but no later than 30 days after the attorney general issued an opinion on a public information request, to: provide the requestor an itemized estimate of charges for production of the information if applicable; produce the information if required; notify the requestor in writing that the governmental body is withholding the information as authorized by the opinion; or notify the requestor in writing that the governmental body has filed suit against the attorney general regarding the information.[186]

J. Timeliness of Action

Pursuant to section 552.308 of the Government Code, when the Act requires a request, notice or other document to be submitted or otherwise given to a person within a specified period, then, except as provided by section 552.3031, the requirement is met in a timely fashion if the document is sent by first class United States mail or common or contract carrier properly addressed with postage or handling charges prepaid and: (1) bears a post office cancellation mark or a receipt mark of the carrier indicating a time within that period; or (2) the submitting person furnishes satisfactory proof the document was deposited in the mail or with the carrier within that period.[187] Further, except as provided by section 552.3031, if a state agency is required to submit information to the attorney general, the timeliness requirement is met if the information is sent by interagency

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183 Gov't Code § 552.306(a).

184 Gov't Code § 552.306(a).

185 Gov't Code § 552.306(b).

186 Gov't Code § 552.306(c)-(d).

187 Gov't Code § 552.308(a).

mail and the state agency provides sufficient evidence to establish the information was deposited within the proper period.[188]

The attorney general has established an electronic filing system that allows governmental bodies and interested third parties to submit information electronically for a fee.[189] Information submitted through this designated system will be considered timely if it is electronically submitted within the proper time period.[190] As previously noted, pursuant to section 552.3031, some governmental bodies are required to use the attorney general's electronic filing system when seeking a request for an Open Records decision. The attorney general will promulgate rules to administer the designated system.[191] These rules will be available on the attorney general's website. The creation of the electronic filing system does not affect the right of a person or governmental body to submit information to the attorney general under section 552.308.[192]

K. Section 552.310: Searchable Database

The 88th Legislature added section 552.310 of the Government Code, which provides:

(a) The office of the attorney general shall make available on the office's Internet website an easily accessible and searchable database consisting of:

(1) information identifying each request for an attorney general decision made under this subchapter; and

(2) the attorney general's opinion issued for the request.

(b) The database at a minimum must allow a person to search for a request or opinion described by Subsection (a) by:

(1) the name of the governmental body making the request; and

(2) the exception under Subchapter C that a governmental body asserts in the request applies to its request to withhold information from public disclosure.

(c) The database must allow a person to view the current status of a request described by Subsection (a)(1) and an estimated timeline indicating the date each stage of review of the request will be started and completed.

The database required by section 552.310 is available on the attorney general's website.

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188 Gov't Code § 552.308(b).

189 *See* Gov't Code § 402.006(d).

190 Gov't Code § 552.309(a).

191 1 T.A.C. §§ 63.21-.24. These rules are available on the attorney general's website and in Part Four of this *Handbook*.

192 Gov't Code § 552.309(c).

VII. Cost of Copies and Access

Subchapter F of the Public Information Act, sections 552.261 through 552.275, generally provides for allowable charges for copies of and access to public information. All charges must be calculated in accordance with the rules promulgated by the attorney general under section 552.262.[193] The rules establish the charges, as well as methods of calculation for those charges. The rules also provide that a governmental body that is not a state agency may exceed the costs established by the rules of the attorney general by up to 25 percent.[194] The cost rules are available on the attorney general's website and in Part Four of this *Handbook*. Also available on the website is the Public Information Cost Estimate Model, a tool designed to assist the public and governmental bodies in estimating costs associated with public information requests.[195]

A. Charges for Copies of Paper Records and Electronic Records

Section 552.261(a) of the Government Code allows a governmental body to recover costs related to reproducing public information. A request for copies may generally be assessed charges for labor, overhead (which is calculated as a percentage of the total labor), and materials.[196] However, if the request is for 50 or fewer pages of paper records, only the charge for the photocopy may be imposed.[197]

Requests that require programming and/or manipulation of data may be assessed charges for those tasks also, as well as computer time to process the request.[198] The law defines "programming" as "the process of producing a sequence of coded instructions that can be executed by a computer."[199] "Manipulation" of data is defined as "the process of modifying, reordering, or decoding of information with human intervention."[200] Finally, "processing" means "the execution of a sequence of coded instructions by a computer producing a result."[201] The amount allowed for computer processing depends on the type of computer used and the time needed for the computer to process the request. The time is calculated in CPU minutes for mainframe and mid-range computers, and in clock hours for client-servers, LAN, and PCs. Computer processing time is not charged for the same time that a governmental body is charging for labor or programming. The use of a computer during this time period is covered by the overhead charge.

Section 552.261 allows requests to be combined in some instances. Section 552.261(e) states:

> **(e) Except as otherwise provided by this subsection, all requests received in one calendar day from an individual may be treated as a single request for purposes of calculating**

193 *See* 1 T.A.C. §§ 70.1-.13.

194 Gov't Code § 552.262(a).

195 https://www.texasattorneygeneral.gov/open-government/governmental-bodies/charges-public-information/public-information-cost-estimate-model.

196 1 T.A.C. § 70.3(d), (e), (i).

197 Gov't Code § 552.261(a).

198 1 T.A.C. § 70.3(c), (d), (h).

199 Gov't Code § 552.003(4).

200 Gov't Code § 552.003(2).

201 Gov't Code § 552.003(3).

costs under this chapter. A governmental body may not combine multiple requests under this subsection from separate individuals who submit requests on behalf of an organization.

Therefore, a governmental body may combine separate requests from one individual received within one calendar day when calculating costs.

Examples:

1. A governmental body receives a request for copies of the last 12 months' worth of travel expenditures for employees, including reimbursements and backup documentation. The records are maintained in the governmental body's main office. The governmental body determines there are 120 pages, and it will take one and a half hours to locate and compile the requested information, redact confidential information and make copies. The total allowable charges for this request would be:

Copies, 120 pages @ $.10/page	$12.00
Labor, 1.5 hours @ $15.00/hour	$22.50
Overhead, $22.50 x .20	$4.50
Total for copies & labor (paper records)	$39.00

2. In addition to the above request, the requestor sends a separate request for copies of all e-mails between two named employees and members of the public for the same 12-month period. The governmental body has determined that it will take half of an hour to locate the responsive e-mails and that the e-mails contain confidential information that must be redacted. The governmental body's e-mail system allows electronic redaction by writing a program, which will take the governmental body's programmer half of an hour to write. Once the program is written it will take half of an hour to execute. The requestor wants the e-mails on a CD, and it will take an additional half of an hour to copy the information onto the CD. The total charges for this request would be:

Labor, .50 hours to locate responsive e-mails, @ $15.00/hour	$7.50
Labor, .50 hours to write program to redact, @ $28.50/hour	$14.25
Labor, .50 hours to copy to CD, @ $15.00/hour	$7.50
Overhead, $29.25 ($7.50 +$14.50 +$7.50) x .20	$5.85
Client Server, .50 hours to execute program, @ $2.20/hour	$1.10
Materials, 1 CD @ $1.00/each	$1.00
Total for materials & labor (electronic redaction/electronic records)	$37.20

Postage charges may be added if the requestor requests the CD be sent by mail.

3. The requestor makes an additional request to a second governmental body whose system does not allow electronic redaction of e-mail addresses. To provide the requestor the records in electronic medium, the governmental body has determined that it will take half

of an hour to locate, compile and print the request e-mails The governmental body has also determined that it will take half of an hour to manually redact confidential information, and an additional fifteen minutes to scan the redacted e-mails into an electronic file. The governmental body may charge to print out and redact the e-mails that must be manually redacted and scanned. The requestor wants the e-mails on a CD and the governmental body has determined that it will take three minutes for the computer to process this copy. The total charges for this request would be:

Printouts to be scanned, 80 pages, @ $.10/page	$8.00
Labor, .50 hours to locate/compile/print responsive e-mails, @ $15.00/hour	$7.50
Labor, .50 hours to redact, @ $15.00/hour	$7.50
Labor, .25 hours to scan redacted copies, @ $15.00/hour	$3.75
Overhead, $18.75 ($7.50 + $7.50 = $3.75) x .20	$3.75
Client Server, .05 hours to copy to CD, @ $2.20/hour	$0.18
Materials, 1 CD @ $1.00/each	$1.00
Total for materials and labor (manual redaction/electronic records)	$31.68

Postage charges may be added if the requestor requests the CD be sent by mail.

B. Charges for Inspection of Paper Records and Electronic Records

Charges for inspection of paper records are regulated by section 552.271 of the Government Code, and charges for inspection of electronic records are regulated in section 552.272 of the Government Code. Section 552.271 allows charges for copies for any page that must be copied so that confidential information may be redacted to enable the requestor to inspect the information subject to release.[202] No other charges are allowed unless[203] (a) the records to be inspected are older than five years, or (b) the records completely fill, or when assembled will completely fill, six or more archival boxes, and (c) the governmental body estimates it will require more than five hours to prepare the records for inspection.[204] If a governmental body has fewer than 16 full-time employees, the criteria are reduced to allow additional charges when (a) the records are older than three years, or (b) the records fill, or when assembled will completely fill, three or more archival boxes, and (c) the governmental body estimates it will require more than two hours to prepare the records for inspection.[205] An "archival box" is a box that measures approximately 12.5" W x 15.5" L x 10" H.[206] Only records responsive to the request may be counted towards the number of boxes. Preparing records that fall under subsections 552.271(c) or (d) for inspection includes the time needed to locate and compile the records, redact the confidential information, and make copies of

[202] Gov't Code § 552.271(b).

[203] Gov't Code § 552.271(a).

[204] Gov't Code § 552.271(c).

[205] Gov't Code § 552.271(d).

[206] 1 T.A.C. § 70.2(10).

pages that require redaction. Overhead charges are not allowed on requests for inspection of paper records.[207]

Section 552.272 allows charges for labor when providing access to electronic information requires programming and/or manipulation of data, regardless of whether or not the information is available directly on-line to the requestor.[208] No other charges are allowed. Printing electronic records is neither programming nor manipulation of data. Overhead is not allowed on requests for inspection of electronic records.[209]

Example:

1. The requestor states she wants to inspect travel expenditure records from two years ago, and then decide whether or not she wants copies. The governmental body keeps the responsive information in paper files. Of the 120 pages that are responsive, 112 pages have confidential information that must be redacted before the requestor may inspect the records. The total allowable charges for this request would be:

Redacted copies, 112 @ $.10/page	$11.20
Labor & Overhead	$0.00
Total for inspection (redacted copies)	$11.20

2. The requestor makes a second request to view travel documents for the past year. The governmental body has these more recent documents in an electronic format. The governmental body maintains 100 responsive electronic documents. The governmental body also has the ability to redact this information electronically and estimates it will take 30 minutes to redact the confidential information. The total allowable charges would be:

Labor, Manipulation of Data to redact	$7.50
Total for inspection	$7.50

C. Waivers or Reduction of Estimated Charges

If a governmental body determines that producing the information requested is in the "public interest" because it will primarily benefit the general public, the governmental body shall waive or reduce the charges.[210] The determination of whether providing information is in the "public interest" rests solely with the governmental body whose records are requested.[211] Additionally,

[207] Gov't Code § 552.271(c), (d).

[208] Gov't Code § 552.272(a), (b).

[209] Gov't Code § 552.272(a), (b).

[210] Gov't Code § 552.267(a).

[211] Gov't Code § 552.267(a).

the law allows a governmental body to waive charges if the cost of collecting the amount owed exceeds the actual amount charged.[212]

D. Providing a Statement of Estimated Charges as Required by Law

If a governmental body estimates that charges will exceed $40.00, the governmental body is required to provide the requestor with a written itemized statement of estimated charges before work is undertaken.[213] The statement must advise the requestor they may contact the governmental body if there is a less costly method of viewing the records.[214] The statement must also contain a notice that the request will be considered automatically withdrawn if the requestor does not respond in writing within ten business days of the date of the statement that the requestor: (a) accepts the charges, (b) modifies the request in response to the estimate, or (c) has sent, or is sending, a complaint regarding the charges to the attorney general.[215] If the governmental body has the ability to communicate with the general public by electronic mail and/or facsimile, the statement must also advise the requestor that a response may be sent by either of those methods, as well as by regular mail or in person.[216]

Governmental bodies are cautioned that an itemized statement lacking any of the required elements is considered to be "deficient" because it does not comply with the law. The consequences of providing a deficient statement may result in (a) limiting the amount the governmental body may recover through charges,[217] and/or (b) preventing the governmental body from considering the request withdrawn by operation of law.[218]

If after receiving agreement from the requestor for the charges, but before completing the request, the governmental body determines the actual charges will exceed the agreed-upon charges by more than 20 percent, the governmental body must provide the requestor an updated statement of estimated charges.[219] This updated statement has the same requirements as the initial statement. If the governmental body fails to provide the updated statement of estimated charges, charges for the entire request are limited to the initial agreed-upon estimate plus 20 percent.[220] If the requestor does not respond to the updated statement, the request is considered withdrawn.[221]



The 88th Legislature amended the procedures a governmental body must follow after receiving a decision from the attorney general. If a governmental body determines that a cost estimate is necessary after receiving a decision pursuant to section 552.306, the cost estimate should be provided as soon as practicable but within a reasonable time.[222]

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212 Gov't Code § 552.267(b).

213 Gov't Code § 552.2615(a); 1 T.A.C. § 70.7(a).

214 Gov't Code § 552.2615(a).

215 Gov't Code § 552.2615(b).

216 Gov't Code § 552.2615(a)(3).

217 1 T.A.C. § 70.7(a).

218 Gov't Code § 552.2615(a)(2).

219 Gov't Code § 552.2615(c).

220 Gov't Code § 552.2615(c).

221 Gov't Code § 552.2615(c).

222 Gov't Code § 552.306(c)(1).

If a request is estimated to exceed $100.00 ($50.00 if a governmental body has fewer than 16 full-time employees), a governmental body that provides the statement of estimated charges with all its required elements may also require that the requestor pay a deposit or bond.[223] If the request is for inspection of paper records, the deposit may not exceed 50 percent of the entire estimated amount.[224] Decisions about method of payment rest with the governmental body. A governmental body that requires a deposit or bond may consider the request withdrawn if payment is not made within ten business days of the date the governmental body requested the deposit or bond.[225] If the requestor makes payment within the required time, the request is considered received on the date the payment is made.[226] Additionally, a governmental body is not required to comply with a new request if a requestor owes more than $100.00 on unpaid charges for previous requests for which the requestor was provided, and accepted, an appropriate statement of estimated charges.[227] In such cases, the governmental body may require the requestor to pay the unpaid amounts before complying with that request. All unpaid charges must be duly documented.[228]

In addition to the statement of estimated charges required when a request will exceed $40.00, a governmental body is also required to provide a statement when it determines that a request will require programming and/or manipulation of data and (1) complying with the request is not feasible or will substantially interfere with the governmental body's ongoing operation, or (2) the request can only be fulfilled at a cost that covers the programming and/or manipulation of data.[229] Governmental bodies are cautioned that a statement under section 552.231, unlike section 552.2615, is not contingent on the charges being over a certain amount. Rather, the statement is mandated if the requisite conditions are present. The statement must state that the information is not available in the form requested. The statement must also include a description of the form in which the information is available, a description of any contracts or services needed to put the information in the form requested, the estimated charges calculated in accordance with the rules promulgated by the attorney general, and the estimated time of completion to provide the information in the form requested.[230] On provision of the statement, the governmental body is not required to provide the information in the form requested unless the requestor states, in writing, that the requestor agrees with the estimated charges and time parameters, or that the requestor will accept the information in the form that is currently available.[231] If the requestor fails to respond to the statement in writing within 30 days, the request is considered withdrawn.[232]

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223 Gov't Code § 552.263(c); 1 T.A.C. § 70.7(d), (e).

224 1 T.A.C. § 70.7(e).

225 Gov't Code § 552.263(f).

226 Gov't Code § 552.263(e).

227 Gov't Code § 552.263(c); 1 T.A.C. § 70.7(f).

228 Gov't Code § 552.263(c); 1 T.A.C. § 70.7(f).

229 Gov't Code § 552.231(a).

230 Gov't Code § 552.231(b).

231 Gov't Code § 552.231(d).

232 Gov't Code § 552.231(d-1).

E. Cost Provisions Regarding Requests Requiring a Large Amount of Personnel Time

Section 552.275 of the Government Code authorizes a governmental body to establish a reasonable limit, not less than 15 hours for a one month period or 36 hours in a 12 month period, on the amount of time that personnel are required to spend producing public information for inspection or copies to a requestor, without recovering the costs attributable to the personnel time related to that requestor.[233] If a governmental body chooses to establish a time limit under this section, a requestor will be required to compensate the governmental body for the costs incurred in satisfying subsequent requests once the time limit has been reached. Section 552.275 allows county officials who have designated the same officer for public information to calculate time for purposes of this section collectively.[234] A limit under this section does not apply if the requestor is an elected official of the United States, the State of Texas, or a political subdivision of the State of Texas; or an individual who, for a substantial portion of the individual's livelihood or for substantial financial gain is seeking the information for (a) dissemination by a new medium or communication service provider, or (b) creation or maintenance of an abstract plant as described by section 2501.004 of the Insurance Code.[235] Section 552.275 does not replace or supersede other sections, and it does not preclude a governmental body from charging labor for a request for inspection or copies for which a charge is authorized under other sections of this law.

On establishing the time limit, a governmental body must treat all requestors equally, except as provided by the exemptions of subsections (j), (k), and (l). A governmental body that avails itself of section 552.275 must provide a requestor with a statement detailing the time spent in complying with the instant request and the cumulative amount of time the requestor has accrued towards the established limit.[236] A governmental body may not charge for the time spent preparing the statement.[237] If a requestor meets or exceeds the established limit, the governmental body may assess charges for labor, overhead, and material for all subsequent requests. The governmental body is required to provide a written estimate within ten business days of receipt of the request, even if the estimated total will not exceed $40.00. All charges assessed under section 552.275 must be in compliance with the rules promulgated by the attorney general.[238] If a governmental body provides the requestor with a written statement under this section, and the time limits prescribed have been met, the governmental body is not required to respond unless the requestor submits payment.[239]



The 88th Legislature amended section 552.275 to add subsection (n) to allow a governmental body to request photo identification from a requestor in certain cases.[240] A governmental body may request the photo identification for the sole purpose of establishing that the request has not

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233 Gov't Code §552.275(a), (b).

234 Gov't Code §552.275(a-1).

235 Gov't Code §552.275(j).

236 Gov't Code § 552.275(d).

237 Gov't Code § 552.275(d).

238 Gov't Code § 552.275(e).

239 Gov't Code §552.275(g).

240 Gov't Code §552.275(n).

exceeded a limit established under section 552.275(a) and concealed the requestor's identity.[241] A request for photo identification must include a statement under subsection (e) and a statement that describes each specific reason why subsection (n) may apply to the requestor.[242] The governmental body shall accept as proof of a requestor's identification physical presentment of photo identification or an image of the photo identification electronically or through the mail.[243] Further, a reqestor may decline to provide identification and obtain the information by paying the charges.[244]

If a requestor fails to provide identification or submit payment before the 10th day, the request is considered withdrawn.[245]

F. Complaints Regarding Alleged Overcharges

Estimates are, by their very nature, imperfect. Therefore, governmental bodies are encouraged to run tests on sample data and to rely on the results of those tests in calculating future charges. However, even when a governmental body has taken steps to ensure that a charge is appropriate, a requestor may still believe that the charges are too high. Section 552.269 of the Government Code states that a requestor who believes he or she has been overcharged may lodge a complaint with the attorney general.[246] The attorney general reviews the complaint and any appropriate materials and makes determinations on complaints of overcharges.[247] Complaints must be received within ten business days after the requestor knows of the alleged overcharge, and must include a copy of the original request, and any amendments thereto, as well as a copy of any correspondence from the governmental body stating the charges.[248] If a complainant does not provide the required information within the established time frame, the complaint is dismissed.[249]

When a complaint is lodged against a governmental body, the attorney general will contact the governmental body by mail or e-mail, to ask questions related to how the charges were calculated, and the physical location and state of the records.[250] The governmental body may also be asked to provide copies of invoices, contracts, and any other relevant documents.[251] The attorney general may uphold the charges as presented to the requestor, require the issuance of an amended statement of estimated charges, or, if the requestor has already paid the charges, require the issuance of a refund for the difference between what was paid and the charges that are determined to be appropriate.[252] A governmental body may be required to pay three times the difference if it is

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241 Gov't Code §552.275(n).

242 Gov't Code §552.275(o).

243 Gov't Code §552.275(o).

244 Gov't Code §552.275(o).

245 Gov't Code §552.275(h).

246 Gov't Code § 552.269(a).

247 Gov't Code § 552.269(a); 1 T.A.C. § 70.8(c)-(g).

248 1 T.A.C. § 70.8(b).

249 1 T.A.C. § 70.8(b).

250 Gov't Code § 552.269(a); 1 T.A.C. § 70.8(c).

251 1 T.A.C. § 70.8(c), (d), (e).

252 1 T.A.C. § 70.8(f).

determined that a requestor overpaid because the governmental body refused or failed to follow the attorney general rules and the charges were not calculated in good faith.[253]

G. Cost Provisions Outside the Public Information Act

The provisions of section 552.262 of the Government Code do not apply if charges for copies are established by another statute for specific kinds of information.[254] For example, section 550.065 of the Transportation Code establishes a charge of $6.00 for an accident report maintained by a governmental entity.[255] Section 118.011 of the Local Government Code establishes the charge for a non-certified copy of information obtained from the county clerk.[256] Section 118.144 of the Local Government Code also establishes a charge for copies obtained from the county treasurer.[257] Additionally, the attorney general has determined that section 191.008 of the Local Government Code prevails over section 552.272, by giving a county commissioners court the right to set charges regarding access to certain information held by the county.[258]

VIII. PENALTIES AND REMEDIES

A. Informal Resolution of Complaints

The attorney general maintains an Open Government Hotline staffed by personnel trained to answer questions about the Public Information Act. In addition to answering substantive and procedural questions posed by governmental bodies and requestors, the Hotline staff handles written, informal complaints concerning requests for information. While not meant as a substitute for the remedies provided in sections 552.321 and 552.3215, the Hotline provides an informal alternative for complaint resolution. In most cases, Hotline staff are able to resolve complaints and misunderstandings informally. The Hotline can be reached toll-free at (877) 673-6839 (877-OPEN TEX) or in the Austin area at (512) 478-6736 (512-478-OPEN). Questions concerning charges for providing public information should be directed to the attorney general's toll-free Cost Hotline at (888) 672-6787 (888-ORCOSTS) or in the Austin area at (512) 475-2497.

B. Training Requirement



The 88th Legislature also added subsection 552.012(b-1), which allows the attorney general to require a course of training if it determines that a governmental body has failed to comply with the requirements of the Public Information Act. If training is required, the attorney general must notify each public official in writing of its determination and the requirement to complete training.[259] A

[253] Gov't Code § 552.269(b); 1 T.A.C. § 70.8(h).

[254] Gov't Code § 552.262(a).

[255] Transp. Code § 550.065(d).

[256] Local Gov't Code § 118.011(a)(4).

[257] Local Gov't Code § 118.144.

[258] Local Gov't Code § 191.008; Open Records Decision No. 668 at 9 (2000).

[259] Gov't Code § 552.012(b)(1).

public official who receives notice must complete the training within 60 days after receiving the notice.[260]

C. Criminal Penalties

The Public Information Act establishes criminal penalties for both the release of information that must not be disclosed and the withholding of information that must be released. Section 552.352(a) of the Government Code provides: "A person commits an offense if the person distributes information considered confidential under the terms of this chapter." This section applies to information made confidential by law.[261]

Section 552.353(a) of the Government Code provides:

> **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.**

Subsections (b) through (d) of section 552.353 set out various affirmative defenses to prosecution under subsection (a), including, for example, that a timely request for a decision from the attorney general is pending or that the officer for public information is pursuing judicial relief from compliance with a decision of the attorney general pursuant to section 552.324.[262] A violation of section 552.352 or section 552.353 constitutes official misconduct[263] and is a misdemeanor punishable by confinement in a county jail for not more than six months, a fine not to exceed $1,000, or both confinement and the fine.[264]

The Act also criminalizes the destruction, alteration or concealment of public records. Section 552.351 provides that the willful destruction, mutilation, removal without permission, or alteration of public records is a misdemeanor punishable by confinement in a county jail for a minimum of three days and a maximum of three months, a fine of a minimum of $25.00 and a maximum of $4,000, or both confinement and the fine.[265]

D. Civil Remedies

1. Writ of Mandamus

Section 552.321 of the Government Code provides for a suit for a writ of mandamus to compel a governmental body to release requested information. A requestor or the attorney general may seek a writ of mandamus to compel a governmental body to release requested information if the

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260 Gov't Code § 552.012(b)(1).

261 *See* Open Records Decision No. 490 (1988).

262 Gov't Code § 552.353(b)(2-3). *See generally Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 548-49 (Tex. App.—Austin 1983, writ ref'd n.r.e.).

263 Gov't Code §§ 552.352(c), .353(f).

264 Gov't Code §§ 552.352(b), .353(e).

265 Gov't Code §552.351(a); *see also* Penal Code § 37.10 (tampering with governmental record).

governmental body refuses to seek an attorney general decision, refuses to release public information or if the governmental body refuses to release information in accordance with an attorney general decision.[266] Section 552.321(b) provides that a mandamus action filed by a requestor under section 552.321 must be filed in a district court of the county in which the main offices of the governmental body are located. A mandamus suit filed by the attorney general under section 552.321 must be filed in a district court in Travis County, except if the suit is against a municipality with a population of 100,000 or less, in which case the suit must be filed in a district court of the county where the main offices of the municipality are located.[267]

Section 552.321 authorizes a mandamus suit to compel the release of information even if the attorney general has ruled such information is not subject to required public disclosure.[268] The courts have held a requestor may bring a mandamus action regardless of whether an attorney general decision has been requested.[269] Further, the Texas Supreme Court considered a requestor's mandamus action filed after the governmental body requested an attorney general decision, but prior to the attorney general's issuance of a decision.[270] The supreme court held a requestor is not required to defer a suit for mandamus until the attorney general issues a decision.[271] A requestor may counterclaim for mandamus as part of his or her intervention in a suit by a governmental body or third party over a ruling that orders information to be disclosed.[272]

Section 552.321(c) allows a requestor to file a writ of mandamus suit to compel a governmental body or an entity to comply with the requirements of Subchapter J of the Act. Subchapter J pertains to certain contracting information.

2. Violations of the Act: Declaratory Judgment or Injunctive Relief; Formal Complaints

Section 552.3215 of the Government Code provides for a suit for declaratory judgment or injunctive relief brought by a local prosecutor or the attorney general against a governmental body that violates the Act.

a. Venue and Proper Party to Bring Suit

An action against a governmental body located in only one county may be brought only in a district court in that county. The action may be brought either by the district or county attorney on behalf of that county, or by the attorney general on behalf of the state. If the governmental body is located in more than one county, such a suit must be brought in the county where the governmental body's

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266 Gov't Code § 552.321(a); *see Thomas v. Cornyn*, 71 S.W.3d 473, 482 (Tex. App.—Austin 2002, no pet.).

267 Gov't Code § 552.321(b).

268 *Thomas v. Cornyn*, 71 S.W.3d 473, 483 (Tex. App.—Austin 2002, no pet.); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

269 *Thomas v. Cornyn*, 71 S.W.3d 473, 483 (Tex. App.—Austin 2002, no pet.); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ); *see* Open Records Decision No. 687 (2011) (attorney general will rule on claimed exceptions to disclosure when, prior to issuance of open records decision, party brings action before Texas court posing same open records question).

270 *Kallinen v. City of Houston*, 462 S.W. 3d 25 (Tex. 2015).

271 *Kallinen v. City of Houston*, 462 S.W. 3d 25 (Tex. 2015).

272 *Thomas v. Cornyn*, 71 S.W.3d 473, 482 (Tex. App.—Austin 2002, no pet.).

administrative offices are located.[273] If the governmental body is a state agency, the Travis County district attorney or the attorney general may bring such suit only in a district court of Travis County.[274]

b. Suit Pursuant to Formal Complaint

Before suit may be filed under section 552.3215, a person must first file a complaint alleging a violation of the Act. The complaint must be filed with the district or county attorney of the county where the governmental body is located. If the governmental body is located in more than one county, the complaint must be filed with the district or county attorney of the county where the governmental body's administrative offices 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.[275]

c. Procedures for Formal Complaint

A complaint must be in writing and signed by the complainant and include the name of the governmental body complained of, the time and place of the alleged violation, and a general description of the violation.[276] The district or county attorney receiving a complaint must note on its face the date it was filed and must, before the 31st day after the complaint was filed, determine whether the alleged violation was committed, determine whether an action will be brought under the section, and notify the complainant in writing of those determinations.[277] If the district or county attorney determines not to bring suit under the section, or determines that a conflict of interest exists that precludes his bringing suit, then he or she must include a statement giving the basis for such determination and return the complaint to the complainant by the 31st day after receipt of the complaint.[278]

If the county or district attorney decides not to bring an action in response to a complaint filed with that office, the complainant may, before the 31st day after the complaint is returned, file the complaint with the attorney general. On receipt of the complaint, the attorney general within the same time frame must make the determinations and notification required of a district or county attorney. The 85th Legislature amended section 552.3215 of the Government Code to also allow the complainant to file a complaint under this section with the attorney general if on or after the 90th day after the complainant files a complaint with the district or county attorney, the district or county attorney has not brought an action.[279] If the attorney general decides to bring an action in response to a complaint against a governmental body located in only one county, the attorney general must file such action in a district court of that county.[280]

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[273] Gov't Code § 552.3215(c).

[274] Gov't Code § 552.3215(d).

[275] Gov't Code § 552.3215(e).

[276] Gov't Code § 552.3215(e).

[277] Gov't Code § 552.3215(f)-(g).

[278] Gov't Code § 552.3215(h).

[279] Gov't Code §552.3215(i).

[280] Gov't Code § 552.3215(i).

d. Governmental Body Must Be Given Opportunity to Cure Violation

Actions for declaratory judgment or injunctive relief under section 552.3215 may be brought only if the official proposing to bring the action notifies the governmental body in writing of the determination that the alleged violation was committed and the governmental body does not cure the violation before the fourth day after the date it receives the notice.[281]

e. Cumulative Remedy

Actions for declaratory judgment or injunctive relief authorized under section 552.3215 are in addition to any other civil, administrative, or criminal actions authorized by law.[282]

3. Suits Over an Open Records Ruling

The Act provides judicial remedies for a governmental body seeking to withhold requested information or a third party asserting a privacy or proprietary interest in requested information when the attorney general orders such information to be disclosed.[283] The venue for these suits against the attorney general is Travis County. The issue of whether the information is subject to disclosure is decided by the court anew. The court is not bound by the ruling of the attorney general. However, the only exceptions to disclosure a governmental body may raise before the court are exceptions that it properly raised in a request for an attorney general decision under section 552.301, unless the exception is one based on a requirement of federal law or one involving the property or privacy interests of another person.[284]

The court of appeals in *Morales v. Ellen* affirmed that the district court had jurisdiction to decide a declaratory judgment action brought against a governmental body by a third party which asserted privacy interests in documents the attorney general had ruled should be released.[285] The court held the statutory predecessor to section 552.305(b)—which permitted a third party whose privacy or property interests would be implicated by the disclosure of the requested information to "submit in writing to the attorney general the party's reasons why the information should be withheld or released"—is permissive and does not require a third party with a property or privacy interest to exhaust this remedy before seeking relief in the courts.[286] The legislature then enacted section 552.325 which recognizes the legal interests of third parties and their right to sue the attorney general to challenge a ruling that information must be released.

Sections 552.324 and 552.325 prohibit a governmental body, officer for public information, or other person or entity that wishes to withhold information from filing a lawsuit against a requestor. The only suit a governmental body or officer for public information may bring is one against the attorney general.[287] Section 552.324(b) requires that a suit by a governmental body be brought no

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281 Gov't Code § 552.3215(j).

282 Gov't Code § 552.3215(k).

283 Gov't Code §§ 552.324, .325.

284 Gov't Code § 552.326; *City of Dallas v. Abbott*, 304 S.W.3d 380, 392 (Tex. 2010); *Tex. Comptroller of Pub. Accounts v. Attorney General of Tex.*, 354 S.W.3d 336, 340 (Tex. 2010).

285 *Morales v. Ellen*, 840 S.W.2d 519, 523 (Tex. App.—El Paso 1992, writ denied).

286 *Morales v. Ellen*, 840 S.W.2d 519, 523 (Tex. App.—El Paso 1992, writ denied).

287 Gov't Code § 552.324(a).

later than the 30th calendar day after the governmental body receives the decision it seeks to challenge. If suit is not timely filed under the section, the governmental body must comply with the attorney general's decision. The deadline for filing suit under section 552.324 does not affect the earlier ten day deadline required of a governmental body to file suit in order to establish an affirmative defense to prosecution of a public information officer under section 552.353(b)(3).[288]

Section 552.325 provides that a requestor may intervene in a suit filed by a governmental body or another entity to prevent disclosure. The section includes procedures for notice to the requestor of the right to intervene and of any proposed settlement between the attorney general and a plaintiff by which the parties agree that the information should be withheld.

Sometimes during the pendency of a suit challenging a ruling, the requestor will voluntarily withdraw his or her request, or the requestor may no longer be found. Section 552.327 authorizes a court to dismiss a suit challenging an attorney general ruling 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.[289] In such cases, a governmental body will not be precluded from asking for another ruling on the same information at issue after the suit is dismissed by the court.[290]

4. Discovery and Court's In Camera Review of Information Under Protective Order

Section 552.322 of the Government Code authorizes a court to order that information at issue in a suit under the Act may be discovered only under a protective order until a final determination is made. When suit is filed challenging a ruling, the attorney general will seek access to the information at issue either informally or by way of this section, because the attorney general returns the information to the governmental body upon issuance of a ruling.

Section 552.3221 of the Government Code permits a party to file the information at issue with the court for in camera inspection as necessary for the adjudication of cases.[291] When the court receives the information for review, the court must enter an order that prevents access to the information by any person other than the court, a reviewing court of appeals or parties permitted to inspect the information pursuant to a protective order.[292] Information filed with the court under section 552.3221 does not constitute court records under Rule 76a of the Texas Rules of Civil Procedure and shall not be available by the clerk or any custodian of record for public disclosure.[293]

E. Assessment of Costs of Litigation and Reasonable Attorney's Fees

Section 552.323 of the Government Code provides that in a suit for mandamus under section 552.321 or for declaratory judgment or injunctive relief under section 552.3215, the court shall assess costs of litigation and reasonable attorney's fees incurred by a plaintiff who substantially

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[288] Gov't Code § 552.324(b).

[289] Gov't Code § 552.327.

[290] Gov't Code § 552.327.

[291] Gov't Code § 552.3221(a).

[292] Gov't Code § 552.3221(b).

[293] Gov't Code § 552.3221(d).

prevails.[294] However, a court may not assess such costs and attorney's fees against the governmental body if the court finds that the governmental body acted in reasonable reliance on a judgment or order of a court applicable to that governmental body, the published opinion of an appellate court, or a written decision of the attorney general.[295] In addition, a requestor who is an attorney representing himself in a suit to require a governmental body to disclose requested information under the Act is not entitled to attorney's fees because the requestor did not incur attorney's fees.[296]

The court may not assess attorney's fees and costs in a suit brought under section 552.324 by a governmental body against the attorney general challenging a ruling that ordered information to be disclosed unless the court finds the action or the defense of the action was groundless in fact or law.[297]

IX. PRESERVATION AND DESTRUCTION OF RECORDS

Subject to state laws governing the destruction of state and local government records, section 552.004 of the Government Code addresses the preservation period of noncurrent records. Section 552.004 requires that "A current or former officer or employee of a governmental body who maintains public information on a privately owned device shall: (1) forward or transfer the public information to the governmental body or a governmental body server to be preserved as provided by Subsection (a); or (2) preserve the public information in its original form in a backup or archive and on the privately owned device for the time described under Subsection (a)."[298] Sections 441.180 through 441.205 of the Government Code provide for the management, preservation, and destruction of state records under the guidance of the Texas State Library and Archives Commission.[299] Provisions for the preservation, retention, and destruction of local government records under the oversight of the Texas State Library and Archives Commission are set out in chapters 201 through 205 of the Local Government Code.

Section 552.0215 of the Government Code provides that with the exception of information subject to section 552.147 or a confidentiality provision, information that is not confidential but merely excepted from required disclosure under the Act is public information and is available to the public on or after the 75th anniversary of the date the information was originally created or received by the governmental body.[300] This section does not, however, limit the authority of a governmental body to establish retention periods for records under applicable law.[301]

Section 552.203 of the Government Code provides that the officer for public information, "subject to penalties provided in this chapter," has the duty to see that public records are protected from

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294 Gov't Code § 552.323(a).

295 Gov't Code § 552.323(a).

296 *Jackson v. State Office of Admin. Hearings*, 351 S.W.3d 290, 300 (Tex. 2011).

297 Gov't Code § 552.323(b).

298 Gov't Code § 552.004(b)(1), (2).

299 *See, e.g.*, Attorney General Opinions DM-181 at 3 (1992), JM-1013 at 2, 5-6 (1989), JM-229 at 5 (1984).

300 Gov't Code § 552.0215(a).

301 Gov't Code § 552.0215(b).

deterioration, alteration, mutilation, loss, or unlawful removal and that they are repaired as necessary.[302] Public records may be destroyed only as provided by statute.[303] A governmental body may not destroy records even pursuant to statutory authority while they are subject to an open records request.[304]

X. PUBLIC INFORMATION ACT DISTINGUISHED FROM CERTAIN OTHER STATUTES

A. Authority of the Attorney General to Issue Attorney General Opinions

The attorney general has authority pursuant to article IV, section 22, of the Texas Constitution and sections 402.041 through 402.045 of the Government Code to issue legal opinions to certain public officers. These officers are identified in sections 402.042 and 402.043 of the Government Code. The attorney general may not give legal advice or a written opinion to any other person.[305]

On the other hand, the Act requires a governmental body to request a ruling from the attorney general if it receives a written request for records that it believes to be within an exception set out in subchapter C of the Act, sections 552.101 through 552.163 and there has not been a previous determination about whether the information falls within the exception.[306] Thus, all governmental bodies have a duty to request a ruling from the attorney general under the circumstances set out in section 552.301. A much smaller group of public officers has discretionary authority to request attorney general opinions pursuant to chapter 402 of the Government Code. A school district, for example, is a governmental body that must request open records rulings as required by section 552.301 of the Act, but has no authority to seek legal advice on other matters from the attorney general.[307]

Additionally, the Act gives the attorney general the authority to issue written decisions and opinions in order to maintain uniformity in the application, operation, and interpretation of the Act.[308]

B. Texas Open Meetings Act

The Public Information Act and the Open Meetings Act, Government Code chapter 551, both serve the purpose of opening government to the people. However, they operate differently, and each has a different set of exceptions. The exceptions in the Public Information Act do not furnish a basis

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302 *See also* Gov't Code § 552.351 (penalty for willful destruction, mutilation, removal without permission or alteration of public records).

303 *See generally* Attorney General Opinions DM-40 (1991) (deleting records), JM-830 (1987) (sealing records), MW-327 (1981) (expunging or altering public records).

304 Local Gov't Code § 202.002(b); Open Records Decision No. 505 at 4 (1988).

305 Gov't Code § 402.045.

306 Gov't Code § 552.301(a); *see* Open Records Decision No. 673 (2001) (defining previous determination).

307 *See generally* Attorney General Opinion DM-20 at 3-6 (1991).

308 Gov't Code § 552.011.

for holding executive session meetings to discuss confidential records.[309] Furthermore, the mere fact that a document was discussed in an executive session does not make it confidential under the Public Information Act.[310] Since the Open Meetings Act has no provision comparable to section 552.301 of the Act, the attorney general may address questions about the Open Meetings Act only when such questions are submitted by a public officer with authority to request attorney general opinions pursuant to chapter 402 of the Government Code. (A companion volume to this *Handbook*, the *Open Meetings Act Handbook*, is also available from the Office of the Attorney General.) In Open Records Decision No. 684 (2009), the attorney general issued a previous determination to all governmental bodies authorizing them to withhold certified agendas and tapes of closed meetings under section 552.101 in conjunction with section 551.104 of the Government Code, without the necessity of requesting an attorney general decision.[311]

C. Discovery Proceedings

The Public Information Act differs in purpose from statutes and procedural rules providing for discovery of documents in administrative and judicial proceedings.[312] The Act's exceptions to required public disclosure do not create privileges from discovery of documents in administrative or judicial proceedings.[313] Furthermore, information that might be privileged from discovery is not necessarily protected from required public disclosure under the Act.[314]

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309 *See* Attorney General Opinion JM-595 at 4 (1986).

310 *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 367 (Tex. 2000); Open Records Decision No. 485 at 9-10 (1987); *see also* Open Records Decision No. 605 at 2-3 (1992).

311 Open Records Decision No. 684 at 5 (2009).

312 Attorney General Opinion JM-1048 at 2 (1989); Open Records Decision Nos. 551 at 4 (1990), 108 (1975).

313 Gov't Code § 552.005.

314 *See* Open Records Decision No. 575 at 2 (1990) (discovery privileges in Texas Rules of Evidence not confidentiality provisions for purpose of Gov't Code § 552.101). *But see* Open Records Decision Nos. 677 (2002) (analyzing work product privilege in context of Act), 676 (2002) (analyzing attorney-client privilege in context of Act).

PART TWO: EXCEPTIONS TO DISCLOSURE

I. INFORMATION GENERALLY CONSIDERED TO BE PUBLIC

A. Section 552.022 Categories of Information

Section 552.022 of the Government Code provides that "[w]ithout 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 unless made confidential under this chapter or other law . . .."[315] Section 552.022(a) then lists eighteen categories of information. Section 552.022(a) is not an exhaustive list of the types of information subject to the Act.[316] Rather, it is a list of information that generally may be withheld only if it is expressly confidential by law.[317] Thus, the Act's permissive exceptions to disclosure generally do not apply to the categories of information contained in section 552.022.[318]

1. Discovery Privileges

The laws under which information may be considered confidential for the purpose of section 552.022 are not limited simply to statutes and judicial decisions that expressly make information confidential.[319] The Texas Supreme Court has held that discovery privileges included in the Texas Rules of Civil Procedure and the Texas Rules of Evidence are also "other law" that may make information confidential for the purpose of section 552.022.[320] Therefore, even if information is included in one of the eighteen categories of information listed in section 552.022(a), and as a result the information cannot be withheld under an exception listed in the Act, the information is still protected from disclosure if a governmental body can demonstrate that the information is privileged under the Texas Rules of Evidence or the Texas Rules of Civil Procedure.[321]

Accordingly, a governmental body claiming the attorney-client privilege for a document that is subject to section 552.022 of the Government Code should raise Texas Rule of Evidence 503 in order to withhold the information. If the governmental body demonstrates that rule 503 applies to part of a communication, generally the entire communication will be protected.[322] However, a fee bill is not excepted in its entirety if a governmental body demonstrates that a portion of the fee bill

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315 Gov't Code § 552.022.

316 *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 359 (Tex. 2000).

317 Gov't Code § 552.022(a); *Thomas v. Cornyn*, 71 S.W.3d 473, 480 (Tex. App.—Austin 2002, no pet.).

318 *See In re City of Georgetown*, 53 S.W.3d 328, 331 (Tex. 2001). *But see* Gov't Code §§ 552.022(a)(1) (completed report, audit or evaluation may be withheld under Gov't Code § 552.108), .104(b) (except as provided by § 552.104(c), information subject to Gov't Code § 552.022 may be withheld under Gov't Code § 552.104(a)), .133(c) (information subject to Gov't Code § 552.022 may be withheld under Gov't Code § 552.133).

319 *See* Gov't Code § 552.022(a); *In re City of Georgetown*, 53 S.W.3d 328, 332-37 (Tex. 2001).

320 *In re City of Georgetown*, 53 S.W.3d 328, 337 (Tex. 2001); *see* Open Records Decision Nos. 677 at 9 (2002), 676 at 2 (2002); *see generally* TEX. R. EVID. 501-513; TEX. R. CIV. P. 192.5.

321 *In re City of Georgetown*, 53 S.W.3d 328, 333-34, 337 (Tex. 2001).

322 *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

contains or consists of an attorney-client communication.[323] Rather, information in an attorney fee bill may only be withheld to the extent the particular information in the fee bill is demonstrated to be subject to the attorney-client privilege.[324]

Similarly, a governmental body claiming the work product privilege for a document that is subject to section 552.022 of the Government Code should raise Rule 192.5 of the Texas Rules of Civil Procedure in order to withhold the information.[325]

2. Court Order

Section 552.022(b) prohibits a court in this state from ordering a governmental body to withhold from public disclosure information in the section 552.022 categories unless the information is confidential under the Act or other law.[326] Thus, although section 552.107(2) of the Act excepts from disclosure information that a court has ordered to be kept confidential, section 552.022 effectively limits the applicability of that subsection and the authority of a court to order confidentiality.[327]

B. Certain Contracting Information

Section 552.0222 of the Government Code provides that contracting information, as defined at section 552.003(7) of the Act, is public and must be released unless excepted from disclosure under the Act. Subsection (b) states that exceptions to disclosure provided by sections 552.110 and 552.1101 do not apply to certain types of contracting information, including information subject to sections 2261.253(a) of the Government Code and 322.020(c) of the Government Code, ten specified types of contract terms, and certain contract performance information. Section 552.0222 provides:

> **(a) Contracting information is public and must be released unless excepted from disclosure under this chapter.**
>
> **(b) The exceptions to disclosure provided by Sections 552.110 and 552.1101 do not apply to the following types of contracting information:**
>
> **(1) a contract described by Section 2261.253(a), excluding any information that was properly redacted under Subsection (e) of that section;**
>
> **(2) a contract described by Section 322.020(c), excluding any information that was properly redacted under Subsection (e) of that section;**
>
> **(3) the following contract or offer terms or their functional equivalent:**

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323 Open Records Decision No. 676 at 5 (2002).

324 Open Records Decision No. 676 at 5-6 (2002).

325 Open Records Decision No. 677 at 9 (2002).

326 Gov't Code § 552.022(b).

327 *See Ford v. City of Huntsville*, 242 F.3d 235, 241 (5th Cir. 2001).

(A) any term describing the overall or total price the governmental body will or could potentially pay, including overall or total value, maximum liability, and final price;

(B) a description of the items or services to be delivered with the total price for each if a total price is identified for the item or service in the contract;

(C) the delivery and service deadlines;

(D) the remedies for breach of contract;

(E) the identity of all parties to the contract;

(F) the identity of all subcontractors in a contract;

(G) the affiliate overall or total pricing for a vendor, contractor, potential vendor, or potential contractor;

(H) the execution dates;

(I) the effective dates; and

(J) the contract duration terms, including any extension options; or

(4) information indicating whether a vendor, contractor, potential vendor, or potential contractor performed its duties under a contract, including information regarding:

(A) a breach of contract;

(B) a contract variance or exception;

(C) a remedial action;

(D) an amendment to a contract;

(E) any assessed or paid liquidated damages;

(F) a key measures report;

(G) a progress report; and

(H) a final payment checklist.

(c) Notwithstanding Subsection (b), information described by Subdivisions (3)(A) and (B) of that subsection that relates to a retail electricity contract may not be disclosed until the delivery start date.

There are no cases or formal opinions interpreting this section.

C. Certain Investment Information

Section 552.0225 of the Government Code provides that certain investment information is public and not excepted from disclosure under the Act. The section provides:

(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.

There are no cases or formal opinions interpreting this section. Section 552.143 excepts certain investment information from disclosure that is not made public under section 552.0225.[328] The attorney general has determined in an informal letter ruling that section 552.143 is subject to the public disclosure requirements of section 552.0225.[329]

D. Other Kinds of Information that May Not Be Withheld

As a general rule, a governmental body may not use one of the exceptions in the Act to withhold information that a statute other than the Act expressly makes public.[330] For example, a governmental body may not withhold the minutes of an open meeting under the Act's exceptions since such minutes are made public by statute.[331]

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328 Gov't Code § 552.143.

329 Open Records Letter No. 2005-6095 (2005).

330 Open Records Decision No. 623 (1994); *see also* Open Records Decision Nos. 675 (2001) (federal statute requiring release of cost reports of nursing facilities prevails over claim that information is excepted from disclosure under Gov't Code § 552.110), 451 (1986) (specific statute that affirmatively requires release of information at issue prevails over litigation exception of Public Information Act); *cf. Houston Chronicle Publ'g Co. v. Woods*, 949 S.W.2d 492 (Tex. App.—Beaumont 1997, orig. proceeding) (concerning public disclosure of affidavits in support of executed search warrants).

331 Gov't Code § 551.022; *see* Open Records Decision No. 225 (1979).

II. EXCEPTIONS

A. Section 552.101: Confidential Information

Section 552.101 of the Government Code provides as follows:

> **Information is excepted from [required public disclosure] if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.**

This section makes clear that the Act does not mandate the disclosure of information that other law requires be kept confidential. Section 552.352(a) states: "A person commits an offense if the person distributes information considered confidential under the terms of this chapter."[332] A violation under section 552.352 is a misdemeanor constituting official misconduct.[333] In its discretion, a governmental body may release to the public information protected under the Act's exceptions to disclosure but not deemed confidential by law.[334] On the other hand, a governmental body has no discretion to release information deemed confidential by law.[335] Because the Act prohibits the release of confidential information and because its improper release constitutes a misdemeanor, the attorney general may raise section 552.101 on behalf of a governmental body, although the attorney general ordinarily will not raise other exceptions that a governmental body has failed to claim.[336]

By providing that all information a governmental body collects, assembles, or maintains is public unless expressly excepted from disclosure, the Act prevents a governmental body from making an enforceable promise to keep information confidential unless the governmental body is authorized by law to do so.[337] Thus, a governmental body may rely on its promise of confidentiality to withhold information from disclosure only if the governmental body has specific statutory authority to make such a promise. Unless a governmental body is explicitly authorized to make an enforceable promise to keep information confidential, it may not make such a promise in a confidentiality agreement such as a contract[338] or a settlement agreement.[339] In addition, a governmental body may not pass an ordinance or rule purporting to make certain information confidential unless the governmental body is statutorily authorized to do so.[340]

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332 Gov't Code § 552.352(a).

333 Gov't Code § 552.352(b), (c).

334 Gov't Code § 552.007; *see Dominguez v. Gilbert*, 48 S.W.3d 789, 793 (Tex. App.—Austin 2001, no pet.).

335 *See* Gov't Code § 552.007; *Dominguez v. Gilbert*, 48 S.W.3d 789, 793 (Tex. App.—Austin 2001, no pet.). *But see* discussion of informer's privilege in Part Two, Section II, Subsection A.2.g of this *Handbook*.

336 *See* Open Records Decision Nos. 455 at 3 (1987), 325 at 1 (1982).

337 Attorney General Opinion H-258 at 3 (1974); *see* Attorney General Opinions JM-672 at 1-2 (1987), JM-37 at 2 (1983); Open Records Decision Nos. 585 at 2 (1991), 514 at 1 (1988), 55A at 2 (1975).

338 *See* Attorney General Opinion JM-672 at 2 (1987); Open Records Decision No. 514 at 1 (1988).

339 *See* Open Records Decision No. 114 at 1 (1975).

340 *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *Envoy Med. Sys. v. State*, 108 S.W.3d 333, 337 (Tex. App.—Austin 2003, no pet.); Open Records Decision No. 594 at 3 (1991).

1. Information Confidential Under Specific Statutes

Section 552.101 incorporates specific statutes that protect information from public disclosure. The following points are important for the proper application of this aspect of section 552.101:

1) The language of the relevant confidentiality statute controls the scope of the protection.[341]

2) To fall within section 552.101, a statute must explicitly require confidentiality; a confidentiality requirement will not be inferred from the statutory structure.[342]

a. State Statutes

The attorney general must interpret numerous confidentiality statutes. Examples of information made confidential by statute include the following noteworthy examples:

- medical records that a physician creates or maintains regarding the identity, diagnosis, evaluation, or treatment of a patient;[343]
- reports, records, and working papers used or developed in an investigation of alleged child abuse or neglect under Family Code chapter 261;[344]
- certain information relating to the provision of emergency medical services;[345]
- communications between a patient and a mental health professional and records of the identity, diagnosis, or treatment of a mental health patient created or maintained by a mental health professional;[346] and
- certain personal information in a government-operated utility customer's account records unless the customer requested that the utility disclose the information.[347]

In the following examples, the attorney general has interpreted the scope of confidentiality provided by Texas statutes under section 552.101:

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341 *See* Open Records Decision No. 478 at 2 (1987).

342 *See, e.g.*, Open Records Decision No. 465 at 4-5 (1987).

343 Occ. Code § 159.002(b); *see Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253, 258 (Tex. App.—Austin 2012, no pet.) (Medical Practice Act does not provide patient general right of access to medical records from governmental body responding to request for information under Public Information Act); Open Records Decision No. 681 at 16-17 (2004).

344 Fam. Code § 261.201(a).

345 Health & Safety Code § 773.091; *see* Open Records Decision No. 681 at 17-18 (2004).

346 Health & Safety Code § 611.002.

347 Util. Code § 182.052(a).

Open Records Decision No. 658 (1998) — section 154.073 of the Civil Practice and Remedies Code does not make confidential a governmental body's mediated final settlement agreement;[348]

Open Records Decision No. 655 (1997) — concerning confidentiality of criminal history record information and permissible interagency transfer of such information;

Open Records Decision No. 649 (1996) — originating telephone numbers and addresses furnished on a call-by-call basis by a service supplier to a 9-1-1 emergency communication district established under subchapter D of chapter 772 of the Health and Safety Code are confidential under section 772.318 of the Health and Safety Code. Section 772.318 does not except from disclosure any other information contained on a computer-aided dispatch report that was obtained during a 9-1-1 call;

Open Records Decision No. 643 (1996) — section 21.355 of the Education Code makes confidential any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. The term "teacher," as used in section 21.355, means an individual who is required to hold and does hold a teaching certificate or school district teaching permit under subchapter B of chapter 21, and who is engaged in teaching at the time of the evaluation; an "administrator" is a person who is required to hold and does hold an administrator's certificate under subchapter B of chapter 21 and is performing the functions of an administrator at the time of the evaluation;

Open Records Decision No. 642 (1996) — section 143.1214(b) of the Local Government Code requires the City of Houston Police Department to withhold documents relating to an investigation of a City of Houston fire fighter conducted by the City of Houston Police Department's Public Integrity Review Group when the Public Integrity Review Group has concluded that the allegations were unfounded; and

Open Records Decision No. 640 (1996) (replacing Open Records Decision No. 637 (1996)) — the Texas Department of Insurance must withhold any information obtained from audit "work papers" that are "pertinent to the accountant's examination of the financial statements of an insurer" under former section 8 of article 1.15 of the Insurance Code; former section 9 of article 1.15 makes confidential the examination reports and related work papers obtained during the course of an examination of a carrier; section 9 of article 1.15 did not apply to examination reports and work papers of carriers under liquidation or receivership.

b. Federal Statutes

Section 552.101 also incorporates the confidentiality provisions of federal statutes and regulations. In Open Records Decision No. 641 (1996), the attorney general ruled that information collected under the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq*., from an applicant or

[348] The 76th Legislature amended section 154.073 of the Civil Practice and Remedies Code by adding subsection (d), which provides that a final written agreement to which a governmental body subject to the Act is a signatory and that was reached as a result of a dispute resolution procedure conducted under chapter 154 of that code is subject to or excepted from required disclosure in accordance with the Act. Act of May 30, 1999, 76th Leg., R.S., ch. 1352, § 6, 1999 Tex. Gen. Laws 4578, 4582; *see* Gov't Code § 552.022(a)(18) (settlement agreement to which governmental body is party may not be withheld unless it is confidential under the Act or other law).

employee concerning that individual's medical condition and medical history is confidential under section 552.101 of the Government Code, in conjunction with provisions of the Americans with Disabilities Act. This type of information must be collected and maintained separately from other information and may be released only as provided by the Americans with Disabilities Act.

In Open Records Decision No. 681 (2004), the attorney general addressed whether the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the related Privacy Rule[349] adopted by the United States Department of Health and Human Services make information confidential for the purpose of section 552.101. The attorney general determined that when a governmental body that is a "covered entity"[350] subject to the Privacy Rule, receives a request for "protected health information"[351] from a member of the public, it must evaluate the disclosure under the Act rather than the Privacy Rule. The decision also determined that the Privacy Rule does not make information confidential for purposes of section 552.101 of the Government Code. In *Abbott v. Tex. Dep't of Mental Health & Mental Retardation*, the Third Court of Appeals agreed with the attorney general's analysis of the interplay of the Act and the Privacy Rule.[352]

As a general rule, the mere fact that a governmental body in Texas holds certain information that is confidential under the federal Freedom of Information Act or the federal Privacy Act will not bring the information within the section 552.101 exception, as those acts govern disclosure only of information that federal agencies hold.[353] However, if an agency of the federal government shares its information with a Texas governmental entity, the Texas entity must withhold the information that the federal agency determined to be confidential under federal law.[354]

2. Information Confidential by Judicial Decision

a. Information Confidential Under Common Law

Section 552.101 also excepts from required public disclosure information held confidential under case law. Pursuant to the Texas Supreme Court decision in *Indus. Found. v. Tex. Indus. Accident Bd.*, [355] section 552.101 applies to information when its disclosure would constitute the common-law tort of invasion of privacy through the disclosure of private facts. To be within this common-law tort, the information must (1) contain highly intimate or embarrassing facts about a

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[349] The United States Department of Health and Human Services promulgated the Privacy Rule under HIPAA to implement HIPAA's privacy requirements for setting national privacy standards for health information. *See* 42 U.S.C. § 1320d-2; 45 C.F.R. pts. 160, 164.

[350] The Privacy Rule only applies to a covered entity, that is, one of the following three entities defined in the Privacy Rule: (1) a health plan; (2) a health care clearinghouse; and (3) a health care provider who transmits any health information in electronic form in connection with certain transactions covered by subchapter C, subtitle A of title 45 of the Code of Federal Regulations. *See* 42 U.S.C. § 1320d-1(a); 45 C.F.R. § 160.103.

[351] *See* 45 C.F.R. § 160.103 (defining "protected health information"); Open Records Decision No. 681 at 5-7 (2004) (determination of whether requested information is protected health information subject to Privacy Rule requires consideration of definitions of three terms in rule).

[352] *Abbott v. Tex. Dep't of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.).

[353] Attorney General Opinion MW-95 at 2 (1979); Open Records Decision No. 124 at 1 (1976).

[354] *See* Open Records Decision No. 561 at 6-7 (1990); *accord United States v. Napper*, 887 F.2d 1528, 1530 (11th Cir. 1989) (documents that Federal Bureau of Investigation lent to city police department remained property of Bureau and were subject to any restrictions on dissemination of Bureau-placed documents).

[355] *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

person's private affairs such that its release would be highly objectionable to a reasonable person and (2) be of no legitimate concern to the public.[356] Because much of the information that a governmental body holds is of legitimate concern to the public, the doctrine of common-law privacy frequently will not exempt information that might be considered "private." For example, information about public employees' conduct on the job is generally not protected from disclosure.[357] The attorney general has found that the doctrine of common-law privacy does not protect the specific information at issue in the following decisions:

Open Records Decision No. 625 (1994) — a company's address and telephone number;

Open Records Decision No. 620 (1993) — a corporation's financial information;

Open Records Decision No. 616 (1993) — a "mug shot," unrelated to any active criminal investigation, taken in connection with an arrest for which an arrestee subsequently was convicted and is serving time;

Open Records Decision No. 611 (1992) — records held by law enforcement agencies regarding violence between family members unless the information is highly intimate and embarrassing and of no legitimate public interest;

Open Records Decision No. 594 (1991) — certain information regarding a city's drug testing program for employees; and

Open Records Decision No. 441 (1986) — job-related examination scores of public employees or applicants for public employment.

The attorney general has concluded that, with the exception of victims of sexual assault,[358] section 552.101 does not categorically except from required public disclosure, on common-law privacy grounds, the names of crime victims.[359]

In addition to the seminal Public Information Act privacy case of *Industrial Foundation,* courts in other cases have considered the common-law right to privacy in the context of section 552.101 of the Act. In two cases involving the *Fort Worth Star-Telegram* newspaper, the Texas Supreme Court weighed an individual's right to privacy against the right of the press to publish certain embarrassing information concerning an individual. In *Star-Telegram, Inc. v. Doe*,[360] a rape victim sued the newspaper, which had published articles disclosing the age of the victim, the relative location of her residence, the fact that she owned a home security system, that she took

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356 *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *see* Open Records Decision No. 659 (1999).

357 *See* Open Records Decision No. 455 (1987).

358 *See* Open Records Decision No. 339 at 2 (1982).

359 Open Records Decision No. 409 at 2 (1984); *see also* Open Records Decision Nos. 628 (1994) (identities of juvenile victims of crime are not *per se* protected from disclosure by common-law privacy), 611 (1992) (determining whether records held by law-enforcement agency regarding violence between family members are confidential under doctrine of common-law privacy must be done on case-by-case basis). *But see* Gov't Code §§ 552.132 (excepting information about certain crime victims), .1325 (excepting information held by governmental body or files with court contained in victim impact statement or submitted for purpose of preparing such statement).

360 *Star-Telegram, Inc. v. Doe*, 915 S.W.2d 471 (Tex. 1995).

medication, that she owned a 1984 black Jaguar automobile, and that she owned a travel agency. The newspaper did not reveal her actual identity. The court held that the newspaper in this case could not be held liable for invasion of privacy for public disclosure of embarrassing private facts because, although the information disclosed by the articles made the victim identifiable by her acquaintances, it could not be said that the articles disclosed facts which were not of legitimate public concern.

In *Star-Telegram, Inc. v. Walker*,[361] the court addressed another case involving the identity of a rape victim. In this case, the victim's true identity could be gleaned from the criminal court records and testimony. The court found that because trial proceedings are public information, the order entered by the criminal court closing the files and expunging the victim's true identity from the criminal records (more than three months following the criminal trial) could not retroactively abrogate the press's right to publish public information properly obtained from open records. Once information is in the public domain, the court stated, the law cannot recall the information. Therefore, the court found that the newspaper could not be held liable for invasion of privacy for publication of information appearing in public court documents.

In *Morales v. Ellen*,[362] the court of appeals considered whether the statements and names of witnesses to and victims of sexual harassment in an employment context were public information under the Act. In Open Records Decision No. 579 (1990), the attorney general had concluded that an investigative file concerning a sexual harassment complaint was not protected by common-law privacy. The decision in *Ellen* modified that interpretation. The *Ellen* court found that the names of witnesses and their detailed affidavits were "highly intimate or embarrassing." Furthermore, the court found that, because information pertinent to the sexual harassment charges and investigation already had been released to the public in summary form, the legitimate public interest in the matter had been satisfied. Therefore, the court determined that, in this instance, the public did not possess a legitimate interest in the names of witnesses to or victims of the sexual harassment, in their statements, or in any other information that would tend to identify them. The *Ellen* court did not protect from public disclosure the identity of the alleged perpetrator of the sexual harassment.

In *Abbott v. Dallas Area Rapid Transit*,[363] the court of appeals considered a request for the investigation report pertaining to a claim of racial discrimination. The court concluded this information is in no way intimate or embarrassing and is not comparable to the information at issue in *Morales v. Ellen*. The court of appeals determined the report was not protected by common-law privacy and must be released without redaction.

Governmental bodies frequently claim that financial information pertaining to an individual is protected under the doctrine of common-law privacy as incorporated into section 552.101. Resolution of these claims hinges upon the role the information plays in the relationship between the individual and the governmental body.

Information regarding a financial transaction between an individual and a governmental body is a matter of legitimate public interest; thus, the doctrine of common-law privacy does not generally

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361 *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992).

362 *Morales v. Ellen*, 840 S.W.2d 519, 524-25 (Tex. App.—El Paso 1992, writ denied).

363 *Abbott v. Dallas Area Rapid Transit*, 410 S.W.3d 876 (Tex. App.—Austin 2013, no pet.).

protect from required public disclosure information regarding such a transaction.[364] An example of a financial transaction between a person and a governmental body is a public employee's participation in an insurance program funded wholly or partially by his or her employer.[365] In contrast, a public employee's participation in a voluntary investment program or deferred compensation plan that the employer offers but does not fund is not considered a financial transaction between the individual and the governmental body; information regarding such participation is considered intimate and of no legitimate public interest.[366] Consequently, the doctrine of common-law privacy generally excepts such financial information from required public disclosure.

The doctrine of common-law privacy does not except from disclosure the basic facts concerning a financial transaction between an individual and a governmental body.[367] On the other hand, common-law privacy generally protects the "background" financial information of the individual, that is, information about the individual's overall financial status and past financial history.[368] However, certain circumstances may justify the public disclosure of background financial information; therefore, a determination of the availability of background financial information under the Act must be made on a case-by-case basis.[369]

b. Information Confidential Under Constitutional Privacy

Section 552.101 also incorporates constitutional privacy.[370] The United States Constitution protects two kinds of individual privacy interests: (1) an individual's interest in independently making certain important personal decisions about matters that the United States Supreme Court has stated are within the "zones of privacy," as described in *Paul v. Davis*[371] and (2) an individual's interest in avoiding the disclosure of personal matters to the public or to the government.[372] The "zones of privacy" implicated in the individual's interest in independently making certain kinds of decisions include matters related to marriage, procreation, contraception, family relationships, and child rearing and education.[373]

The second individual privacy interest that implicates constitutional privacy involves matters outside the "zones of privacy." To determine whether the constitutional right of privacy protects particular information, the release of which implicates a person's interest in avoiding the disclosure

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364 *See* Open Records Decision Nos. 590 at 3 (1991), 523 at 3-4 (1989).

365 *See* Open Records Decision No. 600 at 9 (1992).

366 *See* Open Records Decision No. 545 at 3-5 (1990).

367 *See, e.g.*, Open Records Decision Nos. 523 at 3-4 (1989), 385 at 2 (1983) (hospital's accounts receivable showing patients' names and amounts they owed were subject to public disclosure).

368 *See* Open Records Decision Nos. 523 at 3-4 (1989) (credit reports and financial statements of individual veterans participating in Veterans Land Program are protected from disclosure as "background" financial information), 373 at 3 (1983) (sources of income, salary, mortgage payments, assets, and credit history of applicant for housing rehabilitation grant are protected by common-law privacy). *But see* Open Records Decision No. 620 at 4 (1993) (background financial information regarding corporation is not protected by privacy).

369 Open Records Decision No. 373 at 4 (1983).

370 *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 678 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

371 *Paul v. Davis*, 424 U.S. 693, 712-13 (1976).

372 Open Records Decision No. 600 at 4-5 (1992); *see also Whalen v. Roe*, 429 U.S. 589, 599-600 (1977).

373 *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 678, 679 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

of personal matters, the attorney general applies a balancing test that weighs the individual's interest in privacy against the public's right to know the information. Although such a test might appear more protective of privacy interests than the common-law test, the scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs."[374]

c. Privacy Rights Lapse upon Death of the Subject

Common-law and constitutional privacy rights lapse upon the death of the subject.[375] Thus, common-law and constitutional privacy can be asserted on behalf of family members of a deceased individual only on the basis of their own privacy interests, not on the basis of the deceased individual's privacy.[376] If a governmental body believes that the release of information will implicate the privacy interests of the family members of a deceased individual, the governmental body should notify the deceased's family of their right to submit comments to the attorney general explaining how release will affect their privacy interests.[377] In this regard, governmental bodies should also be aware of section 552.1085 of the Government Code, which pertains to the confidentiality and release of sensitive crime scene images from closed criminal cases, as discussed more fully in Part Two, Section II, Subsection J of this *Handbook*.

d. False-Light Privacy

The Texas Supreme Court has held false-light privacy is not an actionable tort in Texas.[378] In addition, in Open Records Decision No. 579 (1990), the attorney general determined the statutory predecessor to section 552.101 did not incorporate the common-law tort of false-light privacy, overruling prior decisions to the contrary.[379] Thus, the truth or falsity of information is not relevant under the Public Information Act.

e. Special Circumstances

Through formal decisions, the attorney general developed the "special circumstances" test under common-law privacy to withhold certain information from disclosure.[380] "Special circumstances"

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374 *See* Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985)).

375 *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) ("action for invasion of privacy can be maintained only by a living individual whose privacy is invaded") (quoting Restatement of Torts 2d); Attorney General Opinion H-917 at 3-4 (1976); Open Records Decision No. 272 at 1 (1981); *see United States v. Amalgamated Life Ins. Co.*, 534 F. Supp. 676, 679 (S.D.N.Y. 1982) (constitutional right to privacy terminates upon death and does not descend to heirs of deceased).

376 *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); *United States v. Amalgamated Life Ins. Co.*, 534 F. Supp. 676, 679 (S.D.N.Y. 1982).

377 *See* Gov't Code § 552.304 (any interested person may submit comments explaining why records should or should not be released).

378 *Cain v. Hearst Corp*., 878 S.W.2d 577, 579 (Tex. 1994).

379 Open Records Decision No. 579 at 3-8 (1990).

380 Open Records Decision Nos. 169 (1977), 123 (1976).

refers to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger."[381] Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution."[382] In *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.P.*, the Third Court of Appeals concluded it could not adopt the special circumstances analysis because it directly conflicts with the two-part test articulated in *Industrial Foundation*, which is the sole criteria for determining whether information is private under the common law.[383] The Texas Supreme Court, however, reversed the court of appeals' opinion.[384] The supreme court concluded freedom from physical harm is an independent interest protected under law, untethered to the right of privacy. Thus, the supreme court for the first time announced a common-law right of physical safety exception under the Act. The supreme court adopted the standard enunciated in section 552.152 requiring the withholding of information if disclosure would create a "substantial threat of physical harm."[385] As articulated by the court, "deference must be afforded" law enforcement experts regarding the probability of harm, but the new common-law exception requires more than vague assertions of potential harm.

In *Texas Department of Criminal Justice v. Levin*, the supreme court again addressed the common-law right of physical safety and determined that a substantial threat of physical harm can apply in cases even when the potential target is unknown.[386] Furthermore, the court emphasized that whether the requested information is protected by the common-law physical safety exception turns on whether the evidence provided establishes that disclosure would create a substantial threat of physical harm. The court also clarified that a "threat of physical harm" means physical harm to a person and does not contemplate physical harm to property. Potential loss of business or employment, harm to personal or real property, or other pecuniary considerations do not constitute a substantial threat of physical harm that would protect public information from disclosure.[387]

f. Dates of Birth of Members of the Public

Dates of birth of members of the public are contained in a wide variety of public records. The attorney general has historically concluded that dates of birth of members of the public are not protected under common-law privacy.[388] However, in *Paxton v. City of Dallas*,[389] the Third Court of Appeals concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101 of the Government Code. In its opinion, the court of appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of*

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381 Open Records Decision No. 169 at 6 (1977).

382 Open Records Decision No. 169 at 6 (1997).

383 *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.P.*, 287 S.W.3d 390, 394-95 (Tex. App.—Austin 2009), *rev'd*, 343 S.W.3d 112 (Tex. 2011).

384 *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.P.*, 343 S.W.3d 112 (Tex. 2011).

385 *See* Gov't Code § 552.152 (information in custody of governmental body that relates to employee or officer of governmental body is excepted from disclosure if, under circumstances pertaining to employee or officer, disclosure would subject employee or officer to substantial threat of physical harm).

386 *Texas Department of Criminal Justice v. Levin*, 572 S.W.3d 671, 679 (Tex. 2019).

387 *Texas Department of Criminal Justice v. Levin*, 572 S.W.3d 671, 679 (Tex. 2019).

388 *See* Open Records Decision No. 455 at 7 (1987).

389 *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.).

Texas,[390] where the supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.[391] Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy. Consequently, dates of birth of members of the public are generally protected under common-law privacy.

g. Informer's Privilege

As interpreted by the attorney general, section 552.101 of the Government Code incorporates the "informer's privilege." In *Roviaro v. United States*,[392] the United States Supreme Court explained the rationale underlying the informer's privilege:

> What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish *information of violations of law to officers charged with enforcement of that law.* The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.[393]

In accordance with this policy, the attorney general has construed the informer's privilege aspect of section 552.101 as protecting the identity only of a person who (1) reports a violation or possible violation of the law (2) to officials charged with the duty of enforcing the particular law. The informer's privilege facet of section 552.101 does not protect information about lawful conduct.[394] The privilege protects information reported to administrative agency officials having a duty to enforce statutes with civil or criminal penalties, as well as to law enforcement officers.[395]

The informer's privilege protects not only the informer's identity, but also any portion of the informer's statement that might tend to reveal the informer's identity.[396] Of course, protecting an informer's identity and any identifying information under the informer's privilege serves no purpose if the accused already knows the informer's identity. The attorney general has held that the informer's privilege does not apply in such a situation.[397]

The informer's privilege facet of section 552.101 of the Government Code serves to protect the flow of information to a governmental body; it does not serve to protect a third person.[398] Thus,

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390 *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010).

391 *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336, 347-348 (Tex. 2010).

392 *Roviaro v. United States*, 353 U.S. 53 (1957).

393 *Roviaro v. United States*, 353 U.S. 53, 59 (1957) (emphasis added) (citations omitted).

394 *See* Open Records Decision Nos. 515 at 4-5 (1988), 191 at 1 (1978).

395 *See* Open Records Decision No. 515 at 2 (1988).

396 Open Records Decision No. 515 at 2 (1988).

397 Open Records Decision No. 208 at 1-2 (1978).

398 Open Records Decision No. 549 at 5 (1990).

because it exists to protect the governmental body's interest, this privilege, unlike other section 552.101 claims, may be waived by the governmental body.[399]

B. Section 552.102: Confidentiality of Certain Personnel Information

Section 552.102 of the Government Code provides as follows:

> **(a) Information is excepted from [required public disclosure] 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 [required public disclosure] 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.**

1. Dates of Birth of Public Employees

In 1983, the Third Court of Appeals in *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*[400] ruled the test to be applied under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for applying the doctrine of common-law privacy as incorporated by section 552.101. However, the Texas Supreme Court has held section 552.102(a) excepts from disclosure only the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts.[401] In light of the court's determination, a governmental body should not raise section 552.102(a) if it seeks to withhold its employees' personnel information under common-law privacy. The appropriate exception a governmental body should raise to protect its employees' personnel information under common-law privacy is section 552.101. Section 552.102(a) only excepts from disclosure a public employee's birth date that is contained in records maintained by the governmental body in an employment context.

Section 552.102 applies to former as well as current public employees.[402] However, section 552.102 does not apply to applicants for employment.[403] In addition, section 552.102 applies only to the personnel records of public employees, not the records of private employees.

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399 Open Records Decision No. 549 at 6 (1990).

400 *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.—Austin 1983, writ ref'd n.r.e.).

401 *Tex. Comptroller of Pub. Accounts v. Attorney General of Tex*., 354 S.W. 3d 336 (Tex. 2010).

402 Attorney General Opinion JM-229 at 2 (1984).

403 Open Records Decision No. 455 at 8 (1987).

2. Transcripts of Professional Public School Employees

Section 552.102 also protects from required public disclosure most information on a transcript from an institution of higher education maintained in the personnel files of professional public school employees. Section 552.102(b) does not except from disclosure information on a transcript detailing the degree obtained and the curriculum pursued.[404] Moreover, the attorney general has interpreted section 552.102(b) to apply only to the transcripts of employees of public schools providing public education under title 2 of the Education Code, not to employees of colleges and universities providing higher education under title 3 of the Education Code.[405]

C. Section 552.103: Litigation or Settlement Negotiations Involving the State or a Political Subdivision

Section 552.103(a) of the Government Code, commonly referred to as the "litigation exception," excepts from required public disclosure:

> **[I]nformation 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.**

Section 552.103(a) was intended to prevent the use of the Act as a method of avoiding the rules of discovery used in litigation.[406] This exception enables a governmental body to protect its position in litigation "by forcing parties seeking information relating to that litigation to obtain it through discovery" procedures.[407] Section 552.103 is a discretionary exception to disclosure and does not make information confidential under the Act.[408] As such, section 552.103 does not make information confidential for the purposes of section 552.022. Further, a governmental body waives section 552.103 by failing to comply with the procedural requirements of section 552.301.[409]

1. Governmental Body's Burden

For information to be excepted from public disclosure by section 552.103(a), (1) litigation involving the governmental body must be pending or reasonably anticipated and (2) the information must relate to that litigation.[410] Therefore, a governmental body that seeks an attorney general decision has the burden of clearly establishing both prongs of this test.

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404 *See* Open Records Decision No. 526 (1989).

405 *See, e.g.*, Open Records Letter Nos. 2013-11312 (2013), 2009-18243 (2009), 2008-10363 (2008), 2008-08137 (2008).

406 *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); Attorney General Opinion JM-1048 at 4 (1989).

407 Open Records Decision No. 551 at 3 (1990).

408 *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.); Open Records Decision No. 665 at 2 n.5 (2000).

409 Open Records Decision Nos. 663 at 5 (1999), 542 at 4 (1990).

410 *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.).

For purposes of section 552.103(a), a contested case under the Administrative Procedure Act (APA), Government Code chapter 2001, constitutes "litigation."[411] Questions remain regarding whether administrative proceedings not subject to the APA may be considered litigation within the meaning of section 552.103(a).[412] In determining whether an administrative proceeding should be considered litigation for the purpose of section 552.103, the attorney general will consider the following factors: (1) whether the dispute is, for all practical purposes, litigated in an administrative proceeding where (a) discovery takes place, (b) evidence is heard, (c) factual questions are resolved, and (d) a record is made; and (2) whether the proceeding is an adjudicative forum of first jurisdiction.[413]

Whether litigation is reasonably anticipated must be determined on a case-by-case basis.[414] Section 552.103(a) requires concrete evidence that litigation is realistically contemplated; it must be more than conjecture.[415] The mere chance of litigation is not sufficient to trigger section 552.103(a).[416] The fact that a governmental body received a claim letter that it represents to the attorney general to be in compliance with the notice requirements of the Texas Tort Claims Act, Civil Practice and Remedies Code chapter 101, or applicable municipal ordinance, shows that litigation is reasonably anticipated.[417] If a governmental body does not make this representation, the claim letter is a factor the attorney general will consider in determining from the totality of the circumstances presented whether the governmental body has established that litigation is reasonably anticipated.

In previous open records decisions, the attorney general had concluded that a governmental body could claim the litigation exception only if it established that withholding the information was necessary to protect the governmental body's strategy or position in litigation.[418] However, Open Records Decision No. 551 (1990) significantly revised this test and concluded that the governmental body need only establish the relatedness of the information to the subject matter of the pending or anticipated litigation.[419] Therefore, to meet its burden under section 552.103(a) in requesting an attorney general decision under the Act, the governmental body must identify the issues in the litigation and explain how the information relates to those issues.[420] When the litigation is actually pending, the governmental body should also provide the attorney general a copy of the relevant pleadings.

2. Only Circumstances Existing at the Time of the Request

Subsection (c) of section 552.103 provides as follows:

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411 Open Records Decision No. 588 at 7 (1991) (construing statutory predecessor to APA).

412 Open Records Decision No. 588 at 6-7 (1991).

413 *See* Open Records Decision No. 588 (1991).

414 Open Records Decision No. 452 at 4 (1986).

415 Attorney General Opinion JM-266 at 4 (1984); Open Records Decision Nos. 677 at 3 (2002), 518 at 5 (1989), 328 at 2 (1982).

416 Open Records Decision Nos. 677 at 3 (2002), 518 at 5 (1989), 397 at 2 (1983), 361 at 2 (1983), 359 at 2 (1983).

417 Open Records Decision No. 638 at 4 (1996).

418 *See* Open Records Decision Nos. 518 at 5 (1989), 474 at 5 (1987).

419 Open Records Decision No. 551 at 5 (1990).

420 Open Records Decision No. 551 at 5 (1990).

> **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.**

Consequently, in determining whether a governmental body has met its burden under section 552.103, the attorney general or a court can only consider the circumstances that existed on the date the governmental body received the request for information, not information about occurrences after the date of the request for information.[421]

3. Temporal Nature of Section 552.103

Generally, when parties to litigation have inspected the records pursuant to court order, discovery, or through any other means, section 552.103(a) may no longer be invoked.[422] In addition, once litigation is neither reasonably anticipated nor pending, section 552.103(a) is no longer applicable.[423] Once a governmental body has disclosed information relating to litigation, the governmental body is ordinarily precluded from invoking section 552.103(a) to withhold the same information. This is not the case, however, when a governmental body has disclosed information to a co-defendant in litigation, where the governmental body believes in good faith that it has a constitutional obligation to disclose it.[424]

4. Scope of Section 552.103

Section 552.103 applies to information that relates to pending or reasonably anticipated litigation, which is a very broad category of information.[425] The protection of section 552.103 may overlap with that of other exceptions that encompass discovery privileges. However, the standard for proving that section 552.103 applies to information is the same regardless of whether the information is also subject to a discovery privilege.

For example, information excepted from disclosure under the litigation exception may also be subject to the work product privilege.[426] However, the standard for proving that the litigation exception applies is wholly distinct from the standard for proving that the work product privilege applies.[427] The work product privilege is incorporated into the Act by section 552.111 of the Government Code, not section 552.103.[428] If both section 552.103 and the work product privilege could apply to requested information, the governmental body has the discretion to choose to assert

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421 Open Records Decision No. 677 at 2-3 (2002).

422 Open Records Decision No. 597 (1991) (statutory predecessor to Gov't Code § 552.103 did not except basic information in offense report that was previously disclosed to defendant in criminal litigation); *see* Open Records Decision Nos. 551 at 4 (1990), 511 at 5 (1988), 493 at 2 (1988), 349 (1982), 320 (1982).

423 Open Records Decision Nos. 551 at 4 (1990), 350 (1982); *see Thomas v. El Paso County Cmty. Coll. Dist.*, 68 S.W.3d 722, 726 (Tex. App.—El Paso 2001, no pet.).

424 Open Records Decision No. 454 at 3 (1986).

425 *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 483 (Tex. App.—Austin 1997, orig. proceeding).

426 *See* Open Records Decision No. 677 at 2 (2002).

427 *See* Open Records Decision No. 677 at 2 (2002).

428 *See* Open Records Decision No. 677 at 4 (2002).

either or both of the exceptions.[429] However, the governmental body must meet distinct burdens depending on the exception it is asserting.[430] Under section 552.103, the governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation.[431] Under the work product privilege, the governmental body must demonstrate that the requested information was created for trial or in anticipation of civil litigation by or for a party or a party's representative.[432]



The 88th Legislature added subsection (d) to section 552.103. Pursuant to the newly enacted section 552.103(d), section 552.103 does not apply to requested information if the information relates to a general, primary, or special election, as those terms are defined by section 1.005 of the Election Code; the information is in the possession of certain governmental bodies that administer elections; and such governmental bodies are not a governmental body as described by section 552.003(1)(A)(I).

5. Duration of Section 552.103 for Criminal Litigation

Subsection (b) of section 552.103 provides as follows:

> **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.**

The attorney general has determined that section 552.103(b) is not a separate exception to disclosure; it merely provides a time frame within which the litigation exception excepts information from disclosure.[433]

D. Section 552.104: Information Relating to Competition or Bidding

Section 552.104 of the Government Code provides as follows:

> **(a) Information is excepted from the requirements of Section 552.021 if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.**

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429 *See* Open Records Decision No. 677 at 2 (2002); Open Records Decision No. 647 at 3 (1996).

430 Open Records Decision No. 677 at 2 (2002).

431 *See* Open Records Decision No. 677 at 2 (2002); Gov't Code § 552.103; *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co*., 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.).

432 Open Records Decision No. 677 at 5-8 (2002).

433 Open Records Decision No. 518 at 5 (1989).

(b) Except as provided by Subsection (c), 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.

(c) Subsection (b) does not apply to information described by Section 552.022(a) relating to the receipt or expenditure of public or other funds by a governmental body for a parade, concert, or other entertainment event paid for in whole or part with public funds. A person, including a governmental body, may not include a provision in a contract related to an event described by this subsection that prohibits or would otherwise prevent the disclosure of information described by this subsection. A contract provision that violates this subsection is void.

Until January 1, 2020, subsection (a) of section 552.104 of the Government Code excepted from disclosure information that, if released, would give advantage to a competitor or bidder. The Texas Supreme Court considered this version of section 552.104 and held the "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage."[434] The supreme court further held this version of section 552.104 protection is not limited to governmental bodies, and therefore a private third party may also invoke the exception.[435] However, the 86th Legislature amended subsection (a) which now specifies only governmental bodies will be permitted to raise subsection (a) and only for a particular ongoing competitive situation and a competitive situation where the governmental body can establish the situation is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.[436]

The 86th Legislature also amended subsection (b) of section 552.104 and added subsection (c) to section 552.104. Subsection (b) provides that, except as provided by subsection (c), information excepted from disclosure under section 552.104 may be withheld even if it falls within one of the categories of information listed in section 552.022(a) of the Government Code.[437] Subsection (c) provides that subsection (b) does not apply to information that falls within one of the categories of information listed in section 552.022(a) if the information relates to the receipt or expenditure of public or other funds by a governmental body for a parade, concert, or other entertainment event paid for in whole or part with public funds.[438] Subsection (c) also provides that a person or governmental body may not include a contract provision that would prohibit or otherwise prevent the disclosure of information described by this subsection, and a contract provision that violates this subsection is void.[439]

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434 *Boeing Co. v. Paxton*, 466 S.W. 3d 831, 841 (Tex. 2015).

435 *Boeing Co. v. Paxton,* 466 S.W. 3d 831, 841 (Tex. 2015).

436 Gov't Code § 552.104(a).

437 Gov't Code § 552.104(b).

438 Gov't Code § 552.104(c).

439 Gov't Code § 552.104(c).

E. Section 552.105: Information Related to Location or Price of Property

Section 552.105 of the Government Code excepts from required public disclosure 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.**

This exception protects a governmental body's planning and negotiating position with respect to particular real or personal property transactions,[440] and its protection is therefore limited in duration. The protection of section 552.105(1) expires upon the public announcement of the project for which the property is being acquired, while the protection of section 552.105(2) expires upon the governmental body's acquisition of the property in question.[441] Because section 552.105(2) extends to "information relating to" the appraisals and purchase price of property, it may protect more than just the purchase price or appraisal of a specific piece of property.[442] For example, the attorney general has held that appraisal information about parcels of land acquired in advance of others to be acquired for the same project could be withheld where this information would harm the governmental body's negotiating position with respect to the remaining parcels.[443] Similarly, the location of property to be purchased may be withheld under section 552.105(2) if releasing the location could affect the purchase price of the property. The exception for information pertaining to "purchase price" in section 552.105(2) also applies to information pertaining to a lease price.[444]

When a governmental body has made a good faith determination that the release of information would damage its negotiating position with respect to the acquisition of property, the attorney general in issuing a ruling under the Act will accept that determination, unless the records or other information show the contrary as a matter of law.[445]

F. Section 552.106: Certain Legislative Documents

Section 552.106 of the Government Code provides as follows:

> **(a) A draft or working paper involved in the preparation of proposed legislation is excepted from [required public disclosure].**

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440 Open Records Decision No. 357 at 3 (1982).

441 Gov't Code § 552.105; *see* Open Records Decision No. 222 at 1-2 (1979).

442 *See Heidenheimer v. Tex. Dep't of Transp.,* No. 03-02-00187-CV, 2003 WL 124248, at *2 (Tex. App.—Austin Jan. 16, 2003, pet. denied) (mem. op., not designated for publication); Open Records Decision No. 564 (1990) (construing statutory predecessor to Gov't Code § 552.105).

443 Open Records Decision No. 564 (1990).

444 Open Records Decision No. 348 (1982).

445 Open Records Decision No. 564 at 2 (1990).

(b) An internal bill analysis or working paper prepared by the governor's office for the purpose of evaluating proposed legislation is excepted from [required public disclosure].

Section 552.106(a) protects documents concerning the deliberative processes of a governmental body relevant to the enactment of legislation.[446] The purpose of this exception is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the legislative body.[447] However, section 552.106(a) does not protect purely factual material.[448] If a draft or working paper contains purely factual material that can be disclosed without revealing protected judgments or recommendations, such factual material must be disclosed unless another exception to disclosure applies.[449] Section 552.106(a) protects drafts of legislation that reflect policy judgments, recommendations, and proposals prepared by persons with some official responsibility to prepare them for the legislative body.[450] In addition to documents actually created by the legislature, the attorney general has construed the term "legislation" to include certain documents created by a city or a state agency.[451]

The following open records decisions have held certain information to be excepted from required public disclosure under the statutory predecessor to section 552.106(a):

Open Records Decision No. 460 (1987) — a city manager's proposed budget prior to its presentation to the city council, where the city charter directed the city manager to prepare such a proposal and the proposal was comprised of recommendations rather than facts;

Open Records Decision No. 367 (1983) — recommendations of the executive committee of the Texas State Board of Public Accountancy for amendments to the Public Accountancy Act; and

Open Records Decision No. 248 (1980) — drafts of a municipal ordinance and resolution that were prepared by a city staff study group for discussion purposes and that reflected policy judgments, recommendations, and proposals.

The following open records decisions have held information not to be excepted from required public disclosure under the statutory predecessor to section 552.106(a):

Open Records Decision No. 482 (1987) — drafts and working papers incorporated into materials that are disclosed to the public;

Open Records Decision No. 429 (1985) — documents relating to the Texas Turnpike Authority's efforts to persuade various cities to enact ordinances, as the agency had no official authority to do so and acted merely as an interested third party to the legislative process; and

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446 *See* Open Records Decision No. 429 at 5 (1985).

447 Open Records Decision No. 460 at 2 (1987).

448 Open Records Decision Nos. 460 at 2 (1987), 344 at 3-4 (1982), 197 at 3 (1978), 140 at 4 (1976).

449 Open Records Decision No. 460 at 2 (1987).

450 Open Records Decision No. 429 at 5 (1985).

451 *See* Open Records Decision Nos. 460 at 2-3 (1987), 367 (1983), 248 (1980).

Open Records Decision No. 344 (1982) — certain information relating to the State Property Tax Board's biennial study of taxable property in each school district, for the reason that the nature of the requested information compiled by the board was factual.

Section 552.106(b) excepts from disclosure "[a]n internal bill analysis or working paper prepared by the governor's office for the purpose of evaluating proposed legislation[.]"[452] The purpose of section 552.106(b) is also to encourage frank discussion on policy matters; however, this section applies to information created or used by employees of the governor's office for the purpose of evaluating proposed legislation. Furthermore, like section 552.106(a), section 552.106(b) only protects policy judgments, advice, opinions, and recommendations involved in the preparation or evaluation of proposed legislation; it does not except purely factual information from public disclosure.[453]

Sections 552.106 and 552.111 were designed to achieve the same goals in different contexts.[454] The purpose of section 552.111 is "to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes."[455] Because the policies and objectives of each exception are the same, some decisions applying section 552.111 may be helpful in determining how section 552.106 should be construed.[456] Although the provisions protect the same type of information, section 552.106 is narrower in scope because it applies specifically to the legislative process.[457]

G. Section 552.107: Certain Legal Matters

Section 552.107 of the Government Code states that information is excepted from required public disclosure 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.

This section has two distinct aspects: subsection (1) protects information within the attorney-client privilege, and subsection (2) protects information a court has ordered to be kept confidential.

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452 Gov't Code § 552.106(b).

453 *See* House Comm. on State Affairs, Public Hearing, May 6, 1997, H.B. 3157, 75th Leg. (1997) (protection given to legislative documents under Gov't Code § 552.106(a) is comparable with protection given to governor's legislative documents under Gov't Code § 552.106(b)).

454 Open Records Decision No. 482 at 9 (1987).

455 *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.); Open Records Decision No. 222 (1979).

456 Open Records Decision No. 482 at 9 (1987). *But see* Open Records Decision No. 615 at 5 (1993) (agency's policymaking functions protected by statutory predecessor to section 552.111 do not encompass routine internal administrative and personnel matters).

457 *See* Open Records Decision Nos. 460 at 3 (1987), 429 at 5 (1985).

1. Information Within the Attorney-Client Privilege

When seeking to withhold information not subject to section 552.022 of the Government Code based on the attorney-client privilege, a governmental body should assert section 552.107(1).[458] In Open Records Decision No. 676 (2002), the attorney general interpreted section 552.107 to protect the same information as protected under Texas Rule of Evidence 503.[459] Thus, the standard for demonstrating the attorney-client privilege under the Act is the same as the standard used in discovery under rule 503. In meeting this standard, a governmental body bears the burden of providing the necessary facts to demonstrate the elements of the attorney-client privilege.[460]

First, the governmental body must demonstrate that the information constitutes or documents a communication.[461] Second, the communication must have been made "to facilitate the rendition of professional legal services" to the client governmental body.[462] Third, the governmental body must demonstrate that the communication was between or among clients, client representatives, lawyers, and lawyer representatives.[463] Fourth, the governmental body must show that the communication was confidential; that is, the communication was "not intended to be disclosed to third persons other than those: to (A) whom disclosure is made to furtherance the rendition of professional legal services to the clients; or (B) reasonably necessary to transmit the communication."[464] Finally, because the client can waive the attorney-client privilege at any time, the governmental body must demonstrate that the communication has remained confidential.[465]

The privilege will not apply if the attorney or the attorney's representative was acting in a capacity "other than that of providing or facilitating professional legal services to the client."[466] In *Harlandale Indep. Sch. District v. Cornyn*,[467] the Third Court of Appeals addressed whether an attorney was working in her capacity as an attorney when she conducted a factual investigation, thus rendering factual information from the attorney's report excepted from public disclosure under section 552.107(1) of the Government Code. There, the Harlandale Independent School District hired an attorney to conduct an investigation into an alleged assault and render a legal analysis of the situation upon completion of the investigation.[468] The attorney produced a report that included a summary of the factual investigation as well as legal opinions.[469] While the court of appeals held the attorney-client privilege does not apply to communications between an attorney

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458 Open Records Decision Nos. 676 at 1-3 (2002), 574 at 2 (1990).

459 Open Records Decision No. 676 at 4 (2002).

460 Open Records Decision No. 676 at 6 (2002).

461 Open Records Decision No. 676 at 7 (2002).

462 Open Records Decision No. 676 at 7 (2002); TEX. R. EVID. 503(b)(1).

463 TEX. R. EVID. 503(b)(1)(A)-(E); Open Records Decision No. 676 at 8-10 (2002).

464 TEX. R. EVID. 503(a)(5); Open Records Decision No. 676 at 10 (2002); *see Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding) (whether communication was confidential depends on intent of parties involved at time information was communicated).

465 Open Records Decision No. 676 at 10-11 (2002).

466 Open Records Decision No. 676 at 7 (2002); *see also In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney).

467 *Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. denied).

468 *Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328, 330 (Tex. App.—Austin 2000, pet. denied).

469 *Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328, 330-331 (Tex. App.—Austin 2000, pet. denied).

and a client "when the attorney is employed in a non-legal capacity, for instance as an accountant, escrow agency, negotiator, or notary public," the court also held the attorney in that case was acting in a legal capacity in gathering the facts because the ultimate purpose of her investigation was the rendition of legal advice.[470] Thus, when an attorney is hired to conduct an investigation in his or her capacity as an attorney, a report produced by an attorney containing both factual information and legal advice is excepted from disclosure in its entirety under section 552.107(1).

If a governmental body demonstrates that any portion of a communication is protected under the attorney-client privilege, then the entire communication will be generally excepted from disclosure under section 552.107.[471] However, section 552.107 does not apply to a non-privileged communication within a privileged communication, if the non-privileged communication is maintained by the governmental body separate and apart from the otherwise privileged communication. For example, if an e-mail string includes an e-mail or attachment that was received from or sent to a non-privileged party, and the e-mail or attachment that was received from or sent to the non-privileged party is separately responsive to the request for information when it is removed from the e-mail string and stands alone, the governmental body may not withhold the non-privileged e-mail or attachment under section 552.107.[472]

The scope of the attorney-client privilege and the work product privilege, which is encompassed by section 552.111 of the Government Code, are often confused. The attorney-client privilege covers certain communications made in furtherance of the rendition of professional legal services, while the work product privilege covers work prepared for the client's lawsuit.[473] For materials to be covered by the attorney-client privilege, they need not be prepared for litigation.

a. Attorney Fee Bills

Attorney fee bills are subject to section 552.022(a)(16) and thus may not be withheld under section 552.107. Nonetheless, information contained in attorney fee bills may be withheld if it is protected under the attorney-client privilege as defined in rule 503 of the Texas Rules of Evidence, or is made confidential under the Act or other law for the purpose of section 552.022.[474] Because the express language of section 552.022(a)(16) provides "information that is *in* a bill for attorney's fees" is not excepted from disclosure unless it is confidential under the Act or other law, the entirety of an attorney fee bill cannot be withheld on the basis that it contains or is an attorney-client communication.[475]

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470 *Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328, 332-35 (Tex. App.—Austin 2000, pet. denied).

471 *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

472 *See*, *e.g.*, Open Records Letter Nos. 2013-12509 (2013), 2013-12111 (2013).

473 *See Nat'l Tank Co. v. Brotherton*, 851 S.W.2d 193, 200 (Tex. 1993); *Owens-Corning Fiberglas Corp. v. Caldwell*, 818 S.W.2d 749, 750 (Tex. 1991).

474 *See In re City of Georgetown*, 53 S.W.3d 328, 337 (Tex. 2001); Open Records Decision No. 676 at 5-6 (2002).

475 Gov't Code §552.022(a)(16) (emphasis added); *see also* Open Records Decision Nos. 676 at 5 (2002) (attorney fee bill cannot be withheld in entirety on basis it contains or is attorney-client communication pursuant to language in section 552.022(a)(16)), 589 (1991) (information in attorney fee bill excepted only to extent information reveals client confidences or attorney's legal advice).

b. Information a Private Attorney Holds for the Governmental Body

If a governmental body engages a private attorney to perform legal services, information in the attorney's possession relating to the legal services is subject to the Public Information Act.[476]

c. Waiver of the Attorney-Client Privilege

Texas Rule of Evidence 511 provides that, except where a disclosure is itself privileged, the attorney-client privilege is waived if a holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter.[477]

In *Paxton v. City of Dallas*, the Texas Supreme Court determined (1) the failure of a governmental body to timely seek a ruling from the OAG to withhold information subject to the attorney-client privilege does not constitute a waiver of the privilege, and (2) the attorney-client privilege constitutes a compelling reason to withhold information under section 552.302 of the Government Code.[478]

2. Information Protected by Court Order

Section 552.107(2) excepts from disclosure information a court has ordered a governmental body to keep confidential. Prior to the amendment of section 552.022 in 1999, governmental bodies often relied on section 552.107(2) to withhold from disclosure the terms of a settlement agreement if a court had issued an order expressly prohibiting the parties to the settlement agreement or their attorneys from disclosing the terms of the agreement.[479] Under the current version of section 552.022, however, a state court may not order a governmental body or an officer for public information to withhold from public disclosure any category of information listed in section 552.022 unless the information is confidential under the Act or other law.[480] A settlement agreement to which a governmental body is a party is one category of information listed in section 552.022.[481]

With the exception of information subject to section 552.022, section 552.107(2) excepts from disclosure information that is subject to a protective order during the pendency of the litigation.[482] As with any other exception to disclosure, a governmental body must request a ruling from the attorney general if it wishes to withhold information under section 552.107(2) and should submit a copy of the protective order for the attorney general's review. A governmental body may not

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476 Gov't Code § 552.002(a)(2), (a-1) (definition of public information includes information pertaining to official business of governmental body that was created by, transmitted to, received by, or is maintained by person or entity performing official business on behalf of governmental body); Open Records Decision Nos. 663 at 7-8 (1999), 499 at 5 (1988), 462 at 7 (1987).

477 TEX. R. EVID. 511(a)(1); *see also Jordan v. Court of Appeals for Fourth Supreme Judicial Dist.*, 701 S.W.2d 644, 649 (Tex. 1985) (if matter for which privilege is sought has been disclosed to third party, thus raising question of waiver of privilege, party asserting privilege has burden of proving no waiver has occurred).

478 *Paxton v. City of Dallas*, 509 S.W.3d 247, 262, 271 (Tex. 2017).

479 *See* Open Records Decision No. 415 at 2 (1984).

480 Gov't Code § 552.022(b).

481 Gov't Code § 552.022(a)(18).

482 Open Records Decision No. 143 at 1 (1976).

use a protective order as grounds for the exception once the court has dismissed the suit from which it arose.[483]

H. Section 552.108: Certain Law Enforcement, Corrections, and Prosecutorial Information

Section 552.108 of the Government Code, sometimes referred to as the "law enforcement" exception, provides as follows:

> **(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**

[483] Open Records Decision No. 309 at 5 (1982).

(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. A governmental body shall promptly release basic information responsive to a request made under this chapter unless the governmental body seeks to withhold the information as provided by another provision of this chapter, and regardless of whether the governmental body requests an attorney general under Subchapter G regarding other information subject to the request.



(d) Notwithstanding other law, a prosecutor may permit a person to view the following evidence of a crime that resulted in the death of a person and that occurred in the prosecutor's jurisdiction:

(1) a medical examiner's report, if the person viewing the report is a family member of the person who is the subject of the report and the person who is the subject of the report was a victim of the crime; and

(2) video evidence of the crime, if the person viewing the video is a victim of the crime or a family member of a victim of the crime.



(d) The exception to disclosure provided by Subsection (a)(2) does not apply to information, records, or notations if:

(1) a person who is described by or depicted in the information, record, or notation, other than a peace officer, is deceased or incapacitated; or

(2) each person who is described by or depicted in the information, record, or notation, other than a person who is deceased or incapacitated, consents to the release of the information, record, or notation.



(e) A person permitted to view a medical examiner's report or video evidence under Subsection (d) may not duplicate, record, capture, or otherwise memorialize the information. A prosecutor may require a person to sign a confidentiality agreement before permitting the person to view the information.



(f) A permitted viewing of a medical examiner's report or video evidence under Subsection (d) is not a voluntary disclosure of information for purposes of Section 552.007(b). A governmental body, by providing information under Subsection (d) 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.



(g) Subsection (d) does not affect:

(1) the right of a person to obtain a medical examiner's report or video evidence of a crime from a governmental body under other law;

(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.



(h) In this section:

(1) "Family member" means a person related to a victim of a crime within the first degree of consanguinity or affinity.

(2) "Medical examiner's report" means a report and the contents of such a report created by a medical examiner under Article 49.25, Code of Criminal Procedure, including an autopsy report and toxicology report. The term does not include a photograph or medical image contained in a report.

(3) "Victim" means an individual who suffered personal injury or death as a result of criminal conduct.

1. The Meaning of "Law Enforcement Agency" and the Applicability of Section 552.108 to Other Units of Government

Section 552.108 generally applies to the records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce the criminal laws.[484] It generally does not apply to the records created by an agency whose chief function is essentially regulatory in nature.[485] For example, an agency that employs peace officers to investigate crime and enforce criminal laws may claim that section 552.108 excepts portions of its records from required public disclosure. On the other hand, an agency involved primarily in licensing certain professionals or regulating a particular industry generally may not use section 552.108 to except its records from disclosure.[486] An agency that investigates both civil and criminal violations of law but lacks criminal enforcement authority is not a law enforcement agency for purposes of section 552.108.[487]

Entities that have been found to be law enforcement agencies for purposes of section 552.108 include: the Texas Department of Criminal Justice (formerly the Texas Department of Corrections);[488] the Texas National Guard;[489] the Attorney General's Organized Crime Task

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484 *See* Open Records Decision Nos. 493 at 2 (1988), 287 at 2 (1981).

485 Open Records Decision No. 199 (1978).

486 *See* Open Records Decision No. 199 (1978). *But see* Attorney General Opinion MW-575 at 1-2 (1982) (former Gov't Code § 552.108 may apply to information gathered by administrative agency when its release would unduly interfere with law enforcement); Open Records Decision No. 493 at 2 (1988).

487 Open Records Letter No. 99-1907 (1999) (Medicaid Program Integrity Division of Health and Human Services Commission investigates both civil and criminal violations of Medicaid fraud laws and refers criminal violations to attorney general for criminal enforcement).

488 Attorney General Opinion MW-381 at 3 (1981); Open Records Decision No. 413 at 1 (1984).

489 Open Records Decision No. 320 at 1 (1982).

Force;[490] a fire department's arson investigation division;[491] the El Paso Special Commission on Crime; [492] the Texas Lottery Commission; [493] the Texas Alcoholic Beverage Commission's Enforcement Division;[494] and the Texas Comptroller of Public Accounts for purposes of enforcing the Tax Code.[495]

The following entities are not law enforcement agencies for purposes of section 552.108: the Texas Department of Agriculture;[496] the Texas Board of Private Investigators and Private Security Agencies;[497] the Texas Board of Pharmacy;[498] and the Texas Real Estate Commission.[499]

An agency that does not qualify as a law enforcement agency may, under limited circumstances, claim that section 552.108 excepts records in its possession from required public disclosure. For example, records that otherwise qualify for the section 552.108 exception, such as documentary evidence in a police file on a pending case, do not necessarily lose that status while in the custody of an agency not directly involved with law enforcement.[500] Where a non-law enforcement agency has in its custody information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides the attorney general with a demonstration that the information relates to the pending case and a representation from the law enforcement entity that it wishes to withhold the information.[501]

Similarly, in construing the statutory predecessor to section 552.108, the attorney general concluded that if an investigation by an administrative agency reveals possible criminal conduct the agency intends to report to the appropriate law enforcement agency, then section 552.108 will apply to the information gathered by the administrative agency if the information relates to an open investigation or if the release would interfere with law enforcement.[502]

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490 Open Records Decision Nos. 211 at 3 (1978), 126 at 5 (1976).

491 Open Records Decision No. 127 at 8 (1976).

492 Open Records Decision No. 129 (1976).

493 *See* Gov't Code §§ 466.019(b) (Lottery Commission is authorized to enforce violations of lottery laws and rules), .020(a)-(b) (Lottery Commission is authorized to maintain department of security staffed by commissioned peace officers or investigators).

494 *See* Alco. Bev. Code §§ 5.14 (Texas Alcoholic Beverage Commission may commission inspectors with police powers to enforce Alcoholic Beverage Code), .31 (powers and duties of commission), .36 (commission shall investigate violations of Alcoholic Beverage Code and other laws relating to alcoholic beverages), .361 (commission shall develop risk-based approach to enforcement).

495 *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 679 (Tex. 1995) (section 552.108 excepts records generated by comptroller in process of enforcing tax laws).

496 Attorney General Opinion MW-575 at 1 (1982).

497 Open Records Decision No. 199 (1978).

498 Open Records Decision No. 493 (1988).

499 Open Records Decision No. 80 at 2 (1975).

500 Open Records Decision Nos. 272 at 1-2 (1981), 183 at 5 (1978).

501 Open Records Decision No. 474 at 4-5 (1987).

502 *See* Attorney General Opinion MW-575 at 1-2 (1982) (construing statutory predecessor); Open Records Decision No. 493 at 2 (1988) (same).

2. Application of Section 552.108

Section 552.108 excepts from required public disclosure four categories of information:

1) information the release of which would interfere with the detection, investigation, or prosecution of crime or law enforcement;

2) information relating to an investigation that did not result in a conviction or deferred adjudication;

3) information relating to a threat against a peace officer or detention officer collected or disseminated under section 411.048; and

4) information that is prepared by a prosecutor in anticipation or in preparation for criminal litigation or that reflects the prosecutor's mental impressions or legal reasoning.

a. Information Relating to the Detection, Investigation, or Prosecution of Crime

In order to establish the applicability of sections 552.108(a)(1) and 552.108(b)(1) to a requested criminal file, a law enforcement agency should inform the attorney general how and why release of the information would interfere with law enforcement or prosecution.[503] The law enforcement agency must inform our office of the status of the case the information concerns. Information relating to a pending criminal investigation or prosecution is one example of information that is excepted under sections 552.108(a)(1) and 552.108(b)(1) because release of such information would presumptively interfere with the detection, investigation, or prosecution of crime.[504]

Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement or crime prevention.[505] The attorney general has permitted the Department of Public Safety to withhold a list of stations that issue drivers' licenses and the corresponding code that designates each station on the drivers' licenses issued by that station.[506] Although the information did not on its face suggest that its release would interfere with law enforcement, the Department of Public Safety explained that the codes are used by officers to determine whether a license is forged and argued that releasing the list of stations and codes would reduce the value of the codes for detecting forged drivers' licenses.[507] The attorney general previously held that release of routine investigative procedures, techniques that are commonly known, and routine personnel information would not interfere with law enforcement and crime prevention.[508]

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503 *See Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977).

504 *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 184-85 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

505 *See* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)).

506 Open Records Decision No. 341 at 2 (1982).

507 Open Records Decision No. 341 at 1-2 (1982).

508 *See* Open Records Decision Nos. 216 at 4 (1978), 133 at 3 (1976).

The Texas Supreme Court has addressed the applicability of former section 552.108 to the internal records and notations of the comptroller's office. In *A & T Consultants, Inc. v. Sharp*,[509] the supreme court stated that former section 552.108 has the same scope as section 552(b)(7) of the federal Freedom of Information Act,[510] which prevents the disclosure of investigatory records that would reveal law enforcement methods, techniques, and strategies, including those the Internal Revenue Service uses to collect federal taxes.[511] Some information, such as the date a taxpayer's name appeared on a generation list and the assignment date and codes in audits, is excepted from disclosure by former section 552.108 because it reflects the internal deliberations within the comptroller's office and would interfere with the comptroller's office's law enforcement efforts.[512] For audits that have been concluded, there is little harm in releasing some of this information.[513] The audit method and audit group remain excepted from disclosure before, during, and after the comptroller undertakes a taxpayer audit under former section 552.108.[514]

The attorney general also addressed whether internal records and notations could be withheld under the statutory predecessor to section 552.108 in the following decisions:

Open Records Decision No. 531 (1989) — detailed guidelines regarding a police department's use of force policy may be withheld, but not those portions of the procedures that restate generally known common-law rules, constitutional limitations, or Penal Code provisions; the release of the detailed guidelines would impair an officer's ability to arrest a suspect and would place individuals at an advantage in confrontations with police;

Open Records Decision No. 508 (1988) — the dates on which specific prisoners are to be transferred from a county jail to the Texas Department of Criminal Justice (formerly the Texas Department of Corrections) may be withheld prior to the transfer because release of this information could impair security, but these dates may not be withheld after the prisoner is transferred because the public has a legitimate interest in the information;

Open Records Decision No. 506 (1988) — the cellular telephone numbers assigned to county officials and employees with specific law enforcement duties may be withheld;

Open Records Decision No. 413 (1984) — a sketch showing the security measures that the Texas Department of Criminal Justice plans to use for its next scheduled execution may be withheld because its release may make crowd control unreasonably difficult;

Open Records Decision No. 394 (1983) — except for information regarding juveniles, a jail roster may not be withheld; a jail roster is an internal record that reveals information specifically made public in other forms, such as the names of persons arrested;

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509 *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995).

510 5 U.S.C. § 552(b)(7).

511 *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 678 (Tex. 1995).

512 *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 679-81 (Tex. 1995).

513 *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 678 (Tex. 1995) (pre-audit generation and assignment dates not excepted under Gov't Code § 552.108 once audit completed).

514 *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 679 (Tex. 1995).

Open Records Decision No. 369 (1983) — notes recording a prosecutor's subjective comments about former jurors may be withheld; releasing these comments would tend to reveal future prosecutorial strategy; and

Open Records Decision Nos. 211 (1978), 143 (1976) — information that would reveal the identities of undercover agents or where employees travel on sensitive assignments may be withheld.

b. Information Relating to Concluded Cases

With regard to the second category of information, information relating to a criminal investigation or prosecution that ended in a result other than a conviction or deferred adjudication may be withheld under sections 552.108(a)(2) and 552.108(b)(2). Sections 552.108(a)(2) and 552.108(b)(2) cannot apply to an open criminal file because the investigation or prosecution for such a file has not concluded. If a case is still open and pending, either at the investigative or prosecution level, the sections that can apply are sections 552.108(a)(1) and 552.108(b)(1), not sections 552.108(a)(2) and 552.108(b)(2).



The 88th Legislature added subsection (d) to section 552.108. Pursuant to the newly enacted section 552.108(d), section 552.108(a)(2) is not applicable to information, records, or notations if a person described or depicted by such information, other than a peace officer, is deceased or incapacitated, or if each person who is described or depicted in such information, other than the deceased or incapicated, consents to disclosure of such information.

To establish the applicability of sections 552.108(a)(2) and 552.108(b)(2), a governmental body must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication.

c. Information Relating to a Threat Against a Peace Officer or Detention Officer

The third category of information protected under section 552.108(a)(3) consists of information relating to a threat against a peace officer or detention officer that is collected or disseminated under section 411.048 of the Government Code. Under section 411.048, the Department of Public Safety's Bureau of Identification and Records is required to create and maintain an index for the purpose of collecting and disseminating information regarding threats of serious bodily injury or death made against a peace officer.[515] The attorney general determined in an informal letter ruling that information provided to the Bureau of Identification and Records for potential inclusion in its database regarding threats made against a peace officer was excepted from disclosure under section 552.108(a)(3).[516]

d. Prosecutor Information

Under the fourth category of information, sections 552.108(a)(4) and 552.108(b)(3) protect information, including an internal record or notation, prepared by a prosecutor in anticipation of or in the course of preparing for criminal litigation *or* information that reflects the prosecutor's

[515] Gov't Code § 411.048(b).

[516] Open Records Letter No. 2003-3988 (2003).

mental impressions or legal reasoning. When a governmental body asserts that the information reflects the prosecutor's mental impressions or legal reasoning, the governmental body should, in its request for a ruling, explain how the information does so.

3. Limitations on Scope of Section 552.108

Section 552.108(c) provides that basic information about an arrested person, an arrest, or a crime may not be withheld under section 552.108.[517] Further, section 552.108(c) requires the prompt production of basic information unless the basic information is excepted from disclosure under another provision in the Act. The kinds of basic information not excepted from disclosure by section 552.108 are those that were deemed public in *Houston Chronicle Publ'g Co. v. City of Houston* and catalogued in Open Records Decision No. 127 (1976).[518] Basic information is information that ordinarily appears on the first page of an offense report, such as:

(a) the name, age, address, race, sex, occupation, alias, social security number, police department identification number, and physical condition of the arrested person;

(b) the date and time of the arrest;

(c) the place of the arrest;

(d) the offense charged and the court in which it is filed;

(e) the details of the arrest;

(f) booking information;

(g) the notation of any release or transfer;

(h) bonding information;

(i) the location of the crime;

(j) the identification and description of the complainant;

(k) the premises involved;

(l) the time of occurrence of the crime;

(m) the property involved, if any;

(n) the vehicles involved, if any;

(o) a description of the weather;

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[517] Gov't Code § 552.108(c).

[518] *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

(p) a detailed description of the offense; and

(q) the names of the arresting and investigating officers.[519]

Generally, the identity of the complainant may not be withheld from disclosure under section 552.108. However, the identity of the complainant may be withheld in certain instances under other provisions of the law. For example, where the complainant is also the victim of a serious sexual offense, the identity of the complainant must be withheld from public disclosure pursuant to section 552.101 in conjunction with common-law privacy.[520] The attorney general has also determined that, where the complainant is also an informer for purposes of the informer's privilege, the complainant's identity may be withheld under section 552.101 in conjunction with the common-law informer's privilege.[521]

Although basic information not excepted from disclosure by section 552.108 often is described by its location ("first-page offense report information"), the location of the information or the label placed on it is not determinative of its status under section 552.108. For example, basic information appearing in other records of law enforcement agencies, such as blotters, arrest sheets, and "show-up sheets," is not excepted from disclosure by section 552.108.[522]

Section 552.108 generally does not apply to information made public by statute or to information to which a statute grants certain individuals rights of access.[523] For example, even if an accident report completed pursuant to Chapter 550 of the Transportation Code relates to a pending criminal investigation, a law enforcement entity must release the accident report to a requestor given a statutory right of access to the report under section 550.065(c) of the Transportation Code.[524]

4. Application of Section 552.108 to Information Relating to Police Officers and Complaints Against Police Officers

Because of their role in protecting the safety of the general public, law enforcement officers generally can expect a lesser degree of personal privacy than other public employees.[525] General information about a police officer usually is not excepted from required public disclosure by section 552.108. For example, a police officer's age, law enforcement background, and previous experience and employment usually are not excepted from disclosure by section 552.108.[526]

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519 Open Records Decision No. 127 at 3-5 (1976).

520 *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

521 *See* Open Records Letter No. 2004-8297 (2004).

522 *See* Open Records Decision No. 127 at 3-4 (1976).

523 Open Records Decision Nos. 161 (1977), 146 at 2 (1976); *see also* Open Records Decision Nos. 613 at 4 (1993), 451 at 4 (1986).

524 Transp. Code § 550.065(c).

525 *See Tex. State Employees Union v. Tex. Dep't of Mental Health & Mental Retardation*, 746 S.W.2d 203, 206 (Tex. 1987); Open Records Decision No. 562 at 9 n.2 (1990).

526 *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 326-28 (Tex. App.—Austin 2002, no pet.); Open Records Decision Nos. 562 at 10 (1990), 329 at 1 (1982).

Similarly, information about administrative complaints against police officers generally may not be withheld under section 552.108. For example, the names of complainants, the names of the officers who are the subjects of complaints, an officer's written response to a complaint, and the final disposition of a complaint generally are not excepted from disclosure by section 552.108.[527] Information about complaints against public officers may be withheld under section 552.108 if the police department can demonstrate release of the information will interfere with the detection, investigation, or prosecution of crime. However, section 552.108 is inapplicable where an administrative complaint against a law enforcement officer does not result in a criminal investigation or prosecution.[528]

a. Personnel Files of Police Officers Serving in Civil Service Cities

The disclosure of information from the personnel files of police officers serving in cities that have adopted chapter 143 of the Local Government Code (the fire fighters' and police officers' civil service law) is governed by section 143.089 of the Local Government Code.[529] Section 143.089 contemplates two different types of personnel files: (1) a police officer's civil service file that the civil service director is required to maintain pursuant to section 143.089(a) and (2) an internal file that the police department may maintain for its own use pursuant to section 143.089(g).[530] A police officer's civil service file must contain specified items, including commendations, documents relating to misconduct that resulted in disciplinary action and periodic evaluations by the officer's supervisor.[531] In cases in which a police department investigates a police officer's misconduct and takes disciplinary action[532] against a police officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a).[533] Records maintained in the police officer's civil service file are subject to release under chapter 552 of the Government Code.[534] Furthermore, pursuant to section 143.089(e), the police officer has a right of access to the records maintained in his civil service file.[535] Information maintained in a police department's internal file pursuant to section 143.089(g) is confidential and generally must not be released.[536] However, a hiring law

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527 Open Records Decision Nos. 350 at 3 (1982), 342 at 2 (1982), 329 at 2 (1982).

528 *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. App.—El Paso 1992, writ denied) (construing statutory predecessor).

529 Local Gov't Code § 143.089; *see City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied).

530 Local Gov't Code § 143.089(a), (g).

531 Local Gov't Code § 143.089(a).

532 For the purpose of section 143.089 of the Local Government Code, the term "disciplinary action" includes removal, suspension, demotion, and uncompensated duty. Local Gov't Code §§ 143.051-.055. "Disciplinary action" does not include a written reprimand. *See* Attorney General Opinion JC-0257 at 5 (2000).

533 *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.).

534 *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

535 Local Gov't Code § 143.089(e).

536 *See* Local Gov't Code § 143.089(g); *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

enforcement agency is entitled to view an applicant officer's (g) file, in accordance with section 1701.451 of the Occupations Code.[537]

A city police department should refer a request for information in a police officer's personnel file to the civil service director or the director's designee.[538]

5. Other Related Law Enforcement Records

a. Criminal History Information

Where an individual's criminal history information has been compiled or summarized by a governmental entity, the information takes on a character that implicates the individual's right of privacy in a manner that the same individual's records in an uncompiled state do not.[539] Thus, when a requestor asks for unspecified law enforcement records concerning a named individual and that individual is a suspect, arrestee, or criminal defendant in the information at issue, a law enforcement agency must withhold this information under section 552.101 of the Government Code as that individual's privacy right has been implicated.[540]

Federal law also imposes limitations on the dissemination of criminal history information obtained from the federal National Crime Information Center (NCIC) and its Texas counterpart, the Texas Crime Information Center (TCIC).[541] In essence, federal law requires each state to observe its own laws regarding the dissemination of criminal history information it generates, but requires a state to maintain as confidential any information from other states or the federal government that the state obtains by access to the Interstate Identification Index, a component of the NCIC.[542]

Chapter 411, subchapter F, of the Government Code contains the Texas statutes that govern the confidentiality and release of TCIC information obtained from the Texas Department of Public Safety. However, subchapter F "does not prohibit a criminal justice agency from disclosing to the public criminal history record information that is related to the offense for which a person is involved in the criminal justice system."[543] Moreover, the protection in subchapter F does not extend to driving record information maintained by the Department of Public Safety pursuant to subchapter C of chapter 521 of the Transportation Code.[544] Any person is entitled to obtain from

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537 Local Gov't Code § 143.089(h); Occ. Code § 1701.454 (providing requirements for law enforcement agency to hire persons licensed under chapter 1701).

538 Local Gov't Code § 143.089(g).

539 *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted individual has significant privacy interest in compilation of one's criminal history).

540 *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989); *cf.* Gov't Code § 411.083.

541 *See* Open Records Decision No. 655 (1997).

542 *See* 28 C.F.R. pt. 20; Open Records Decision No. 565 at 10-12 (1990).

543 Gov't Code § 411.081(b).

544 Gov't Code § 411.082(2)(B).

the Department of Public Safety information regarding convictions and deferred adjudications and the person's own criminal history information.[545]

b. Juvenile Law Enforcement Records

The relevant language of Family Code section 58.008(b) provides as follows:

> **(b) Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:**
>
> **(1) if maintained on paper or microfilm, kept separate from adult records;**
>
> **(2) if maintained electronically in the same computer system as adult records accessible only under controls that are separate and distinct from controls to access electronic data concerning adults; and**
>
> **(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection C or Subchapters B, D, and E.[546]**

Section 58.008(b) applies only to the records of a child[547] who is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision.[548] Section 58.008 applies to records created before, on, or after September 1, 2017.[549] Section 58.008(b) does not apply where the information in question involves a juvenile as only a complainant, witness, or individual party and not a juvenile as a suspect or offender. Section 58.008(b) applies to entire law enforcement records; therefore, a law enforcement entity is generally prohibited from releasing even basic information from an investigation file when section 58.008(b) applies.

However, subsections 58.008(d) and 58.008(e) provide:

> **(d) Law enforcement records concerning a child may be inspected or copied by:**
>
> **(1) a juvenile justice agency, as defined by Section 58.101;**
>
> **(2) a criminal justice agency as defined by Section 411.082, Government Code;**
>
> **(3) the child;**

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[545] Gov't Code §§ 411.083(b)(3), .135(a)(2).

[546] Fam. Code § 58.008(b).

[547] Section 51.02 of the Family Code defines "child" as "a person who is: (A) ten years of age or older and under 17 years of age; or (B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age." Fam. Code § 51.02(2).

[548] Fam. Code § 51.03(b); *see* Open Records Decision No. 680 (2003) (construing statutory predecessor).

[549] *See* Act of May 28, 2017, 85th Leg. R.S., S.B. 1304, § 22.

(4) the child's parent or guardian; or

(5) the chief executive officer or the officer's designee of a primary or secondary school where the child is enrolled only the purpose of conducting a threat assessment or preparing a safety plan related to the child.

. . .

(e) Before a child or a child's parent or guardian may inspect or copy a record concerning the child under Subsection (d), the custodian of the record shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or any other law.[550]

Pursuant to section 58.008(d), a governmental body may not withhold under section 58.008(b) a child's law enforcement records from the child's parent, guardian, the child, or in certain instances, the chief executive officer or the officer's designee of a primary or secondary school where the child is enrolled. However, pursuant to section 58.008(e)(2), a governmental body may raise other exceptions to disclosure. Also, pursuant to section 58.008(e)(1), personally identifiable information of a juvenile suspect, offender, witness, or victim who is not the child must be withheld. For purposes of section 58.008(e)(1), a juvenile victim or witness is a person under eighteen years of age.

c. Child Abuse and Neglect Records

The relevant language of Family Code section 261.201(a) provides:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.[551]

[550] Fam. Code § 58.008(d), (e).

[551] Fam. Code § 261.201(a).

Section 261.201(a) applies to a report of and information used or developed in an investigation of suspected abuse or neglect[552] of a child[553] and the identity of the individual who made the report of abuse or neglect.[554] Section 261.201(h), however, states section 261.201 does not apply to investigations of abuse or neglect in a home or facility regulated under chapter 42 of the Human Resources Code, such as a childcare facility.[555]

Moreover, sections 261.201(k) and 261.201(l) provide:

> **(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.**
>
> **(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:**
>
> **(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:**
>
> **(A) the child who is the subject of the report; or**
>
> **(B) another child of the parent, managing conservator, or other legal representative requesting the information;**
>
> **(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law; and**
>
> **(3) the identity of the person who made the report.[556]**

Pursuant to section 261.201(k), a governmental body may not withhold child abuse or neglect records from the parent, managing conservator, or other legal representative of the child, if the parent, managing conservator, or other legal representative is not accused of committing the abuse or neglect, or from the child if the child is at least eighteen years of age. Pursuant to section 261.201(l)(2), a governmental body may raise other exceptions to disclosure for the child abuse or neglect records. Further, pursuant to sections 261.201(l)(1) and 261.201(l)(3), personally identifiable information of a victim or witness under eighteen years of age who is not the child or

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552 Fam. Code § 261.001(1), (4).

553 *See* Fam. Code § 101.003(a) (defining "child" for section 261.201 purposes).

554 Open Records Decision No. 440 (1986) (construing statutory predecessors).

555 Fam. Code § 261.201(h).

556 Fam. Code § 261.201(k)-(l).

another child of the parent, managing conservator, or other legal representative and the identity of the reporting party must be withheld.

d. Sex Offender Registration Information

Under article 62.005 of the Code of Criminal Procedure, all information contained in either an adult or juvenile sex offender registration form and subsequently entered into the Department of Public Safety database is public information and must be released upon written request, except for the registrant's social security number, driver's license number, home, work, or cellular telephone number, information described by article 62.051(c)(7) or required by the Department of Public Safety under article 62.051(c)(9), and any information that would reveal the victim's identity.[557]

Local law enforcement authorities are required under article 62.053(f) of the Code of Criminal Procedure to provide school officials with "any information the authority determines is necessary to protect the public" regarding sex offenders except the person's social security number, driver's license number, home, work, or cellular telephone number, and any information that would identify the victim of the offense.[558]

Neither a school district official nor the general public is authorized to receive from local law enforcement authorities sex offender registration information pertaining to individuals whose reportable convictions or adjudication occurred prior to September 1, 1970.[559]

e. Records of 9-1-1 Calls

Originating telephone numbers and addresses of 9-1-1 callers furnished on a call-by-call basis by a telephone service supplier to a 9-1-1 emergency communication district established under subchapter B, C, or D of chapter 772 of the Health and Safety Code are confidential under sections 772.118, 772.218, and 772.318 of the Health and Safety Code, respectively.[560] Chapter 772 does not except from disclosure any other information contained on a computer aided dispatch report that was obtained during a 9-1-1 call.[561] Subchapter E, which applies to counties with populations over 2 million, does not contain a similar confidentiality provision. Other exceptions to disclosure in the Public Information Act may apply to information not otherwise confidential under section 772.118, section 772.218, or section 772.318 of the Health and Safety Code.[562]

f. Certain Information Related to Terrorism and Homeland Security

Sections 418.176 through 418.182 of the Government Code, part of the Texas Homeland Security Act, make confidential certain information related to terrorism or related criminal activity. The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the Texas Homeland Security Act. As with any exception

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557 Crim. Proc. Code art. 62.005(b); Open Records Decision No. 645 at 3 (1996) (construing statutory predecessor).

558 Crim. Proc. Code art. 62.053(e), (f) (information must be released if restrictions under Crim. Proc. Code art. 62.054 are met).

559 *See* Crim. Proc. Code art. 62.002(a).

560 *See* Health and Safety Code §§ 772.118(c), .218(c), .318(c); Open Records Decision No. 649 at 2-3 (1996).

561 Open Records Decision No. 649 at 3 (1996).

562 Open Records Decision No. 649 at 4 (1996).

to disclosure, a governmental body asserting one of the confidentiality provisions of the Texas Homeland Security Act must explain how the responsive records fall within the scope of the claimed provision.[563]

In *Texas Department of Public Safety v. Abbott*, the Texas Department of Public Safety challenged the conclusion of the attorney general and the trial court that videos recorded by security cameras in a Texas Capitol hallway were not confidential under section 418.182 of the Government Code.[564] In reversing this conclusion, the Third Court of Appeals found the Texas Department of Public Safety demonstrated the videos relate to the specifications of the capitol security system used to protect public property from an act of terrorism or related criminal activity because the legislature's use of "relates to" is a plain legislative choice to broadly protect information regarding security systems designed to protect public property. Thus, the court concluded the recorded images necessarily relate to the specifications of the security system that recorded them.

Release of certain information about aviation and maritime security is governed by federal law.[565] The attorney general has determined in several informal letter rulings that the decision to withhold or release such information rests with the head of the federal Transportation Security Administration (the "TSA") or the Coast Guard and that requests for such information should be referred to the TSA or Coast Guard for their decision concerning disclosure of the information.[566]

g. Voucher Information

Section 660.2035 of the Government Code provides:

> **(a) A voucher or other expense reimbursement form, and any receipt or other document supporting that voucher or other expense reimbursement form, that is submitted or to be submitted under Section 660.027 is confidential under Chapter 552 for a period of 18 months following the date of travel if the voucher or other expense reimbursement form is submitted or is to be submitted for payment or reimbursement of a travel expense incurred by a peace officer while assigned to provide protection for an elected official or a member of the elected official's family.**[567]
>
> **(b) At the expiration of the period provided by Subsection (a), the voucher or other expense reimbursement form and any supporting documents become subject to disclosure under Chapter 552 and are not excepted from public disclosure or confidential under that chapter or other law, [except for certain provisions of law.]**[568]

Subsection 660.2035(b) specifically lists seven exceptions in the Act that can apply to withhold information within a voucher, expense reimbursement form, and any supporting document after

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563 *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

564 *Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.).

565 49 U.S.C. § 114(r); 49 C.F.R. pt. 1520.

566 Open Records Letter Nos. 2013-09028 (2013), 2009-11201 (2009), 2005-07525 (2005).

567 Gov't Code § 660.2035(a).

568 Gov't Code § 660.2035(b).

the 18 month period expires.[569] In an informal letter ruling, the attorney general considered the Texas Department of Public Safety's claims that, after the expiration of the 18-month confidentiality period, sections 552.101 and 552.152 of the Government Code protected travel vouchers and supporting documentation submitted by agents of the Executive Protection Bureau for reimbursement of travel expenses.[570] Because section 552.101 is not one of the enumerated exceptions in subsection 660.2035(b), the attorney general determined section 552.101 did not apply to travel vouchers and supporting documentation.[571] However, as section 552.152 is an exception listed in subsection 660.2035(b), the attorney general considered the claim to withhold the information under section 552.152, and finding the claim had merit, concluded the travel vouchers and supporting documentation were excepted from disclosure under section 552.152.[572]

h. Body Worn Camera Program

Subchapter N of chapter 1701 of the Occupations Code pertains to body worn cameras. Subchapter N revises the procedures associated with public information requests for body worn camera recordings. Generally, requestors need not use "magic words" when making requests to governmental bodies; however, when requestors seek access to body worn camera recordings, requestors must provide:

> (1) the date and approximate time of the recording;
> (2) the specific location where the recording occurred; and
> (3) the name of one or more persons known to be a subject of the recording.[573]

Failure to provide this information does not preclude a requestor from requesting the same information again.[574] When properly requested, chapter 1701 provides for the confidentiality of body worn camera recordings under certain circumstances. A body worn camera recording is confidential if it was not required to be made under a law or policy adopted by the relevant law enforcement agency.[575]

Section 1701.660 makes confidential any recording from a body-worn camera that documents the use of deadly force or that is related to an administrative or criminal investigation of an officer until all criminal matters are finally adjudicated and all administrative investigations completed.[576] However, a law enforcement agency may choose to release such information if doing so furthers a law enforcement interest.[577] Before a law enforcement agency releases a body-worn camera recording that was made in a private space or in connection with a fine-only misdemeanor, the agency must receive authorization from the person who is the subject of the recording, or if that

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569 Gov't Code § 660.2035(b).

570 Open Records Letter No. 2014-02048 (2014).

571 Open Records Letter No. 2014-02048 at 3 (2014).

572 Open Records Letter No. 2014-02048 at 3-4 (2014).

573 Occ. Code § 1701.661(a).

574 Occ. Code § 1701.661(b).

575 Occ. Code § 1701.661(h).

576 Occ. Code § 1701.660(a).

577 Occ. Code § 1701.660(b).

person is deceased, from the person's authorized representative.[578] A governmental body may continue to raise section 552.108 or any other applicable exception to disclosure or law for a body-worn camera recording.[579]

Section 1701.662 also extends the ten and fifteen business day deadlines associated with requesting a ruling from the attorney general to twenty and twenty-five business days, respectively.[580] Additionally, a governmental body that receives a "voluminous request" for body-worn camera recordings is considered to have complied with the request if it provides the information no later than twenty-one business days after it receives the request.[581]

i. Video Recordings of Arrests for Intoxication Offenses

Article 2.1396 of the Code of Criminal Procedure provides as follows:

> **A person stopped or arrested on suspicion of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code, is entitled to receive from a law enforcement agency employing the peace officer who made the stop or arrest a copy of any video made by or at the direction of the officer that contains footage of:**
>
> **(1) the stop;**
>
> **(2) the arrest;**
>
> **(3) the conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test; or**
>
> **(4) a procedure in which a specimen of the person's breath or blood is taken.**[582]

Article 2.1396 applies only to a recording of conduct that occurs on or after September 1, 2015.[583] A requestor's right of access to a video recording subject to article 2.1396 will generally prevail over the Act's general exceptions to disclosure.[584]

I. Section 552.1081: Confidentiality of Certain Information Regarding Execution of Convict

Section 552.1081 of the Government Code provides as follows:

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578 Occ. Code § 1701.661(f).

579 Occ. Code § 1701.661(e).

580 Occ. Code § 1701.662.

581 Occ. Code § 1701.663.

582 Crim. Proc. Code art. 2.1396.

583 Act of May 30, 2015, 84th Leg., R.S., H.B. 3791, § 2, 2015 Tex. Gen. Laws 3804, 3805 redesignated by Act of May 30, 2017, 85th Leg., R.S., H.B. 245, § 4.

584 *See* Open Records Decision Nos. 613 at 4 (1993), 451 (1986).

Information is excepted from the requirements of Section 552.021 if it contains identifying information under Article 43.14, Code of Criminal Procedure, including that of:

(1) any person who participates in an execution procedure, including a person who uses, supplies, or administers a substance during the execution; and

(2) any person or entity that manufactures, transports, tests, procures, compounds, prescribes, dispenses, or provides a substance or supplies used in an execution.

Section 552.1081 protects the name, address, and other identifying information of persons who participate in an execution procedure or of persons or entities that manufacture, transport, procure, compound, prescribe, dispense, or provide a substance used in an execution.[585]

J. Section 552.1085: Confidentiality of Sensitive Crime Scene Image

Section 552.1085 of the Government Code provides as follows:

(a) In this section:

(1) "Deceased person's next of kin" means:

(A) the surviving spouse of the deceased person;

(B) if there is no surviving spouse of the deceased, an adult child of the deceased person; or

(C) if there is no surviving spouse or adult child of the deceased, a parent of the deceased person.

(2) "Defendant" means a person being prosecuted for the death of the deceased person or a person convicted of an offense in relation to that death and appealing that conviction.

(3) "Expressive work" means:

(A) a fictional or nonfictional entertainment, dramatic, literary, or musical work that is a play, book, article, musical composition, audiovisual work, radio or television program, work of art, or work of political, educational, or newsworthy value;

(B) a work the primary function of which is the delivery of news, information, current events, or other matters of public interest or concern; or

(C) an advertisement or commercial announcement of a work described by Paragraph (A) or (B).

[585] Gov't Code § 552.1081; Crim. Proc. Code art 43.14.

(4) "Local governmental entity" means a county, municipality, school district, charter school, junior college district, or other political subdivision of this state.

(5) "Public or private institution of higher education" means:

(A) an institution of higher education, as defined by Section 61.003, Education Code; or

(B) a private or independent institution of higher education, as defined by Section 61.003, Education Code.

(6) "Sensitive crime scene image" means a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person's genitalia.

(7) "State agency" means a department, commission, board, office, or other agency that is a part of state government and that is created by the constitution or a statute of this state. The term includes an institution of higher education as defined by Section 61.003, Education Code.

(b) For purposes of this section, an Internet website, the primary function of which is not the delivery of news, information, current events, or other matters of public interest or concern, is not an expressive work.

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

(d) Notwithstanding Subsection (c) and subject to Subsection (e), the following persons may view or copy information that constitutes a sensitive crime scene image from a governmental body:

(1) the deceased person's next of kin;

(2) a person authorized in writing by the deceased person's next of kin;

(3) a defendant or the defendant's attorney;

(4) a person who establishes to the governmental body an interest in a sensitive crime scene image that is based on, connected with, or in support of the creation, in any medium, of an expressive work;

(5) a person performing bona fide research sponsored by a public or private institution of higher education with approval of a supervisor of the research or a supervising faculty member;

(6) a state agency;

(7) an agency of the federal government; or

(8) a local governmental entity.

(e) This section does not prohibit a governmental body from asserting an exception to disclosure of a sensitive crime scene image to a person identified in Subsection (d) on the grounds that the image is excepted from the requirements of Section 552.021 under another provision of this chapter or another law.

(f) Not later than the 10th business day after the date a governmental body receives a request for a sensitive crime scene image from a person described by Subsection (d)(4) or (5), the governmental body shall notify the deceased person's next of kin of the request in writing. The notice must be sent to the next of kin's last known address.

(g) A governmental body that receives a request for information that constitutes a sensitive crime scene image shall allow a person described in Subsection (d) to view or copy the image not later than the 10th business day after the date the governmental body receives the request unless the governmental body files a request for an attorney general decision under Subchapter G regarding whether an exception to public disclosure applies to the information.

There are no cases or formal opinions interpreting section 552.1085. However, in an informal letter ruling, the attorney general determined a governmental body failed to establish the applicability of section 552.1085 to the information at issue because the governmental body stated the information pertained to unresolved criminal cases that were ongoing.[586] In a separate letter ruling, the attorney general concluded the next of kin of the deceased person depicted in the photographs at issue would have a right to view or copy the photographs pursuant to section 552.1085(d)(1), because the governmental body may not use section 552.1085(c)(1) to withhold the photographs from the next of kin and raised no other exceptions to withhold the photographs.[587]

K. Section 552.109: Confidentiality of Certain Private Communications of an Elected Office Holder

Section 552.109 of the Government Code excepts from required public disclosure:

> **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.**

[586] Open Records Letter No. 2014-04454 at 13 (2014).

[587] Open Records Letter No. 2013-21155 at 4 (2013).

The test to be applied to information under section 552.109 is the same as the common-law privacy standard under section 552.101 and decisions under section 552.109 and its statutory predecessor rely on the same tests applicable under section 552.101.[588] The common-law privacy standard is laid out in *Indus. Found. v. Tex. Indus. Accident Bd.*, and protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionably to a reasonable person, and (2) is not of legitimate concern to the public.[589] Both prongs of this test must be established.[590] Section 552.109 only protects the privacy interests of elected office holders.[591] It does not protect the privacy interests of their correspondents.[592] Certain records of communications between citizens and members of the legislature or the lieutenant governor may not be subject to the Act.[593]

In the following open records decisions, the attorney general determined that certain information was not excepted from required public disclosure under the statutory predecessor to section 552.109:

> Open Records Decision No. 506 (1988) — cellular telephone numbers of county officials where county paid for installation of service and for telephone bills, and which service was intended to be used by officials in conducting official public business, because public has a legitimate interest in the performance of official public duties;
>
> Open Records Decision No. 473 (1987) — performance evaluations of city council appointees, because this section was intended to protect the privacy only of elected office holders; although city council members prepared the evaluations, the evaluations did not implicate their privacy interests;
>
> Open Records Decision No. 332 (1982) — letters concerning a teacher's performance written by parents to school trustees, because nothing in the letters constituted an invasion of privacy of the trustees;
>
> Open Records Decision No. 241 (1980) — correspondence of the governor regarding potential nominees for public office, because the material was not protected by a constitutional right of privacy; furthermore, the material was not protected by common-law right of privacy because it did not contain any highly embarrassing or intimate facts and there was a legitimate public interest in the appointment process;[594] and
>
> Open Records Decision No. 40 (1974) — itemized list of long distance calls made by legislators and charged to their contingent expense accounts, because such a list is not a "communication."

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588 Open Records Decision Nos. 506 at 3 (1988), 241 (1980), 212 (1978).

589 *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

590 *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 681-685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

591 Open Records Decision No. 473 at 3 (1987).

592 *See* Open Records Decision No. 332 at 2 (1982).

593 *See* Gov't Code §§ 306.003, .004; Open Records Decision No. 648 (1996); Open Records Letter Nos. 2012-14193 (2012), 2012-06238 (2012).

594 *See* Open Records Decision No. 212 at 4 (1978).

L. Section 552.110: Confidentiality of Trade Secrets and Confidentiality of Certain Commercial or Financial Information

Section 552.110 of the Government Code provides as follows:

> **(a) In this section, "trade secret" means all forms and types of information, including business, scientific, technical, economic, or engineering information, and any formula, design, prototype, pattern, plan, compilation, program device, program, code, device, method, technique, process, procedure, financial data, or list of actual or potential customers or suppliers, whether tangible or intangible and whether or however stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:**
>
> **(1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and**
>
> **(2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.**
>
> **(b) Except as provided by Section 552.0222, information is excepted from the requirements of Section 552.021 if it is demonstrated based on specific factual evidence that the information is a trade secret.**
>
> **(c) Except as provided by Section 552.0222, commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause a substantial competitive harm to the person from whom the information was obtained is excepted from the requirements of Section 552.021.**

Section 552.110 refers to two types of information: (1) trade secrets and (2) confidential commercial or financial information obtained from a person. The Act requires a governmental body to make a good faith attempt to notify in writing a person whose proprietary information may be subject to section 552.110 within ten business days after receiving the request for the information.[595] A person so notified bears the burden of establishing the applicability of section 552.110.[596] A copy of the form the Act requires the governmental body to send to a person whose information may be subject to section 552.110, as well as section 552.101, section 552.1101, section 552.113, or section 552.131, can be found in Part Seven of this *Handbook*.

1. Trade Secrets

Section 552.110(b) excepts from disclosure trade secrets. Prior decisions of the attorney general use the definition of "trade secret" from the Restatement of Torts, section 757 (1939). However,

[595] Gov't Code § 552.305.

[596] Gov't Code § 552.305.

"trade secret" is now defined within section 552.110(a). Accordingly, analyses of section 552.110 must use the definition within section 552.110(a). Further, the withholding of trade secrets is limited by section 552.0222. Section 552.0222 provides for the release of contracting information as defined in section 552.0222(b). "Contracting information" may not be withheld as trade secrets under section 552.110(b). Open Records Decision No. 552 (1990), discussing the predecessor statute, noted that the attorney general is unable to resolve disputes of fact regarding the status of information as "trade secrets" and must rely upon the facts alleged or upon those facts that are discernible from the documents submitted for inspection. For this reason, the attorney general will accept a claim for exception as a trade secret when a prima facie case is made that the information in question constitutes a trade secret and no argument is made that rebuts that assertion as a matter of law. In Open Records Decision No. 609 (1992), there was a factual dispute between the governmental body and the proponent of the trade secret protection as to certain elements of a prima facie case. Because the attorney general cannot resolve such factual disputes, the matter was referred back to the governmental body for fact-finding.

2. Commercial or Financial Information

Section 552.110(c) excepts from disclosure commercial and financial information and includes the standard for excepting such information. An interested person must demonstrate "based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." Like section 552.110(b), the withholding of commercial and financial information under section 552.110(c) is also limited by section 552.0222. Contracting information may not be withheld as commercial and financial information under section 552.110(c).

M. Section 552.1101: Confidentiality of Proprietary Information

Section 552.1101 of the Government Code provides as follows:

> **(a) Except as provided by Section 552.0222, information submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contract, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:**
>
> **(1) reveal an individual approach to:**
>
> **(A) work;**
>
> **(B) organizational structure;**
>
> **(C) staffing;**
>
> **(D) internal operations;**
>
> **(E) processes; or**

> **(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and**
>
> **(2) give advantage to a competitor.**
>
> **(b) The exception to disclosure provided by Subsection (a) does not apply to:**
>
> **(1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; or**
>
> **(2) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.**
>
> **(c) The exception to disclosure provided by Subsection (a) may be asserted only by a vendor, contractor, potential vendor, or potential contractor in the manner described by Section 552.305(b) for the purpose of protecting the interests of the vendor, contractor, potential vendor, or potential contractor. A governmental body shall decline to release information as provided by Section 552.305(a) to the extent necessary to allow a vendor, contractor, potential vendor, or potential contractor to assert the exception to disclosure provided by Subsection (a).**

N. Section 552.111: Agency Memoranda

Section 552.111 of the Government Code excepts from required public disclosure:

> **An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]**

To be protected under section 552.111, information must consist of interagency or intraagency communications. Although information protected by section 552.111 is most commonly generated by agency personnel, information created for an agency by outside consultants acting on behalf of the agency in an official capacity may be within section 552.111.[597] An agency's communications with other agencies and third parties, however, are not protected unless the agency demonstrates that the parties to the communications share a privity of interest.[598] For example, correspondence between a licensing agency and a licensee is not excepted under section 552.111.[599]

Also, to be protected under section 552.111, an interagency or intraagency communication must be privileged from discovery in civil litigation involving the agency.[600] The attorney general has

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[597] Open Records Decision No. 462 (1987) (construing statutory predecessor).

[598] *See* Open Records Decision No. 561 at 9 (1990) (correspondence from Federal Bureau of Investigation officer to city was not protected by statutory predecessor to Gov't Code § 552.111, where no privity of interest or common deliberative process existed between federal agency and city).

[599] Open Records Decision No. 474 at 5 (1987) (construing statutory predecessor).

[600] Open Records Decision Nos. 677 at 4 (2002), 615 at 2-3 (1993).

interpreted section 552.111 to incorporate both the deliberative process privilege and the work product privilege.[601]

1. Deliberative Process Privilege

Section 552.111 has been read to incorporate the deliberative process privilege into the Public Information Act for intraagency and interagency communications.[602] The deliberative process privilege, as incorporated into the Public Information Act, protects from disclosure intraagency and interagency communications consisting of advice, opinion, or recommendations on policymaking matters of the governmental body at issue.[603] The purpose of withholding advice, opinion, or recommendations under section 552.111 is "to encourage frank and open discussion within the agency in connection with its decision-making processes" pertaining to policy matters.[604] "An agency's policymaking functions do not encompass routine internal administrative and personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues."[605] An agency's policymaking functions do include, however, administrative and personnel matters of broad scope that affect the governmental body's policy mission.[606] For example, because the information at issue in Open Records Decision No. 615 (1993) concerned the evaluation of a university professor's job performance, the statutory predecessor to section 552.111 did not except this information from required public disclosure. On the other hand, the information at issue in Open Records Decision No. 631 (1995) was a report addressing allegations of systematic discrimination against African-American and Hispanic faculty members in the retention, tenure, and promotion process at a university. Rather than pertaining solely to the internal administration of the university, the scope of the report was much broader and involved the university's educational mission. Accordingly, section 552.111 excepted from required public disclosure the portions of the report that constituted advice, recommendations, or opinions.[607]

Even when an internal memorandum relates to a governmental body's policy functions, the deliberative process privilege excepts from disclosure only the advice, recommendations, and opinions found in that memorandum. The deliberative process privilege does not except from

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601 Open Records Decision Nos. 647 at 5-6 (1996), 615 at 5 (1993); *see City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000).

602 *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); *Lett v. Klein Indep. Sch. Dist.,* 917 S.W.2d 455, 456 (Tex. App.—Houston [14th Dist.] 1996, writ denied); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 412-13 (Tex. App.—Austin 1992, no writ); Open Records Decision No. 615 at 5 (1993).

603 *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 361, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152, 158 (Tex. App.—Austin 2001, no pet.); Open Records Decision No. 615 at 5 (1993).

604 *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.); *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 361 (Tex. 2000); *Lett v. Klein Indep. Sch. Dist.,* 917 S.W.2d 455, 456, 457 (Tex. App.—Houston [14th Dist.] 1996, writ denied); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 412 (Tex. App.—Austin 1992, no writ).

605 Open Records Decision No. 615 at 5 (1993); *see City of Garland v. Dallas Morning News*, 22 S.W.3d 364 (Tex. 2000); *Lett v. Klein Indep. Sch. Dist.,* 917 S.W.2d 455, 456 (Tex. App.—Houston [14th Dist.] 1996, writ denied).

606 Open Records Decision No. 631 at 3 (1995); *City of Garland v. Dallas Morning News*, 969 S.W.2d 548, 557 (Tex. App.—Dallas 1998), *aff'd*, 22 S.W.3d 351 (Tex. 2000).

607 Open Records Decision No. 631 at 3 (1995).

disclosure purely factual information that is severable from the opinion portions of the memorandum.[608]

Before June 29, 1993, the attorney general did not confine the application of the statutory predecessor to section 552.111 solely to communications relating to agencies' policymaking functions. Given the change in the interpretation of the scope of section 552.111, a governmental body that receives a request for information should exercise caution in relying on attorney general decisions regarding the applicability of this exception written before June 29, 1993. For example, in Open Records Decision No. 559 (1990), the attorney general held that the predecessor statute to section 552.111 also protects drafts of a document that has been or will be released in final form to the public and any comments or other notations on the drafts because they necessarily represent advice, opinion, and recommendations of the drafter as to the form and content of the final document. However, the rationale and scope of this open records decision have been modified implicitly to apply only to those records involving an agency's policy matters.

2. Work Product Privilege

The attorney general has also concluded that section 552.111 incorporates the privilege for work product found in Texas Rule of Civil Procedure 192.5.[609] Rule 192.5 defines work product as:

> **(1) material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or**
>
> **(2) a communication made in anticipation of litigation or for trial between a party and the party's representatives or among a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents.**[610]

A governmental body raising the work product privilege under section 552.111 bears the burden of providing the relevant facts in each case to demonstrate the elements of the privilege.[611] One element of the work product test is that the information must have been made or developed for trial or in anticipation of litigation.[612] In order for the attorney general to conclude that information was created for trial or in anticipation of litigation, the governmental body must demonstrate that at the time the information was created or acquired:

> a) a reasonable person would have concluded from the totality of the circumstances . . . that there was a substantial chance that litigation would ensue; and b) the party resisting discovery

608 *See* Open Records Decision No. 615 at 4-5 (1993); *City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000).

609 Open Records Decision No. 677 at 4-8 (2002).

610 TEX. R. CIV. P. 192.5(a).

611 *See* Open Records Decision No. 677 at 6 (2002).

612 TEX. R. CIV. P. 192.5(a); Open Records Decision No. 677 at 6 (2002).

> believed in good faith that there was a substantial chance that litigation would ensue and [created or obtained the information] for the purpose of preparing for such litigation.[613]

A "substantial chance" of litigation does not mean a statistical probability, but rather "that litigation is more than merely an abstract possibility or unwarranted fear."[614]

Also, as part of the work product test, material or a mental impression must have been prepared or developed by or for a party or a party's representatives.[615] Similarly, in the case of a communication, the communication must have been between a party and the party's representatives.[616] Thus, a governmental body claiming the work product privilege must identify the parties or potential parties to the litigation, the person or entity that prepared the information, and any individual with whom the information was shared.[617]

If a requestor seeks a governmental body's entire litigation file, the governmental body may assert the file is excepted from disclosure in its entirety because such a request implicates the attorney work product privilege.[618] In such an instance, if the governmental body demonstrates the file was created in anticipation of litigation or for trial, the attorney general will presume the entire file is within the scope of the privilege.[619]

O. Section 552.112: Certain Information Relating to Regulation of Financial Institutions or Securities

Section 552.112 of the Government Code provides as follows:

> **(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 (Title 12, Government Code).[620]**

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613 *Nat'l Tank Co. v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993); *In re Monsanto Co.*, 998 S.W.2d 917, 923-24 (Tex. App.—Waco 1999, orig. proceeding).

614 *Nat'l Tank Co. v. Brotherton*, 851 S.W.2d 193, 204, 207 (Tex. 1993); *see* Open Records Decision No. 677 at 7 (2002).

615 TEX. R. CIV. P. 192.5(a)(1); Open Records Decision No. 677 at 7 (2002).

616 TEX. R. CIV. P. 192.5(a)(2); Open Records Decision No. 677 at 7-8 (2002).

617 Open Records Decision No. 677 at 8 (2002).

618 Open Records Decision No. 677 at 5-6 (2002).

619 *See* Open Records Decision No. 647 at 5 (1996) (citing *Nat'l Union Fire Ins. Co. v. Valdez*, 863 S.W.2d 458, 461 (Tex. 1993)) (organization of attorney's litigation file necessarily reflects attorney's thought processes); *see also Curry v. Walker*, 873 S.W.2d 379, 380 (Tex. 1994) ("the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case").

620 The 86th Legislature amended the language of section 552.112(b), which took effect January 1, 2022. *See* Act of May 3, 2019, 86th Leg., R. S., H.B. 4171, § 2.19.

(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).

This section protects specific examination, operating, or condition reports prepared or obtained by agencies in regulating or supervising financial institutions or securities or information that indirectly reveals the contents of such reports.[621] Such reports typically disclose the financial status and dealings of the institutions that file them. Section 552.112 does not protect general information about the overall condition of an industry if the information does not identify particular institutions under investigation or supervision.[622] An entity must be a "financial institution" for its examination, operating, or condition reports to be excepted by section 552.112; it is not sufficient that the entity is regulated by an agency that regulates or supervises financial institutions.[623] The attorney general has stated that the term "financial institution" means "any banking corporation or trust company, building and loan association, governmental agency, insurance company, or related corporation, partnership, foundation, or the other institutions engaged primarily in lending or investing funds."[624] Notably, a Texas appeals court decision, *Birnbaum v. Alliance of Am. Insurers*,[625] held that insurance companies are not "financial institutions" under section 552.112, overruling the determination in Open Records Decision No. 158 (1977) that insurance companies were "financial institutions" under the statutory predecessor to the section. Section 552.112 is a permissive exception that a governmental body may waive at its discretion.[626] Thus, section 552.112 only protects the interests of a governmental body, rather than the interests of third parties.

The following open records decisions have considered whether information is excepted from required public disclosure under section 552.112:

Open Records Decision No. 483 (1987) — Texas Savings and Loan Department report containing a general discussion of the condition of the industry that does not identify particular institutions under investigation or supervision is not excepted from disclosure;

Open Records Decision No. 392 (1983) — material collected by the Consumer Credit Commissioner in an investigation of loan transactions was not protected by the statutory predecessor to section 552.112 when the requested information did not consist of a detailed description of the complete financial status of the company being investigated but rather

621 *See generally* Open Records Decision Nos. 261 (1980), 29 (1974).

622 Open Records Decision No. 483 at 9 (1987).

623 Open Records Decision No. 158 at 4-5 (1977).

624 Open Records Decision No. 158 at 5 (1977); *see also* Open Records Decision No. 392 at 3 (1983).

625 *Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. denied).

626 *Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. denied).

consisted of the records of the company's particular transactions with persons filing consumer complaints;

Open Records Decision No. 261 (1980) — form acknowledgment by bank board of directors that Department of Banking examination report had been received is excepted from disclosure where acknowledgment would reveal the conclusions reached by the department;

Open Records Decision No. 194 (1978) — pawn shop license application that includes information about applicant's net assets to assess compliance with Texas Pawnshop Act is not excepted from disclosure because such information does not qualify as an examination, operating, or condition report;

Open Records Decision No. 187 (1978) — property development plans submitted by a credit union to the Credit Union Department were excepted from disclosure by the statutory predecessor to section 552.112 because submission included detailed presentation of credit union's conditions and operations and the particular proposed investment; and

Open Records Decision No. 130 (1976) — investigative file of the enforcement division of the State Securities Board is excepted from disclosure.

P. Section 552.113: Confidentiality of Geological or Geophysical Information

Section 552.113 of the Government Code makes confidential electric logs under Subchapter M, Chapter 91, of the Natural Resources Code, and geological or geophysical information or data, including maps concerning wells, except when filed in connection with an application or proceeding before an agency. This exception also applies to geological, geophysical, and geochemical information, including electric logs, filed with the General Land Office, and includes provisions for the expiration of confidentiality of "confidential material," as that term is defined, and the use of such material in administrative proceedings before the General Land Office.

Section 552.113 of the Government Code provides as follows:

(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) "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 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) 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 an 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) electric logs filed in the General Land Office before September 1, 1985; and

(2) confidential material, except 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.

Open Records Decision No. 627 (1994) interpreted the predecessor to the current version of section 552.113 as follows:

> [S]ection 552.113 excepts from required public disclosure all "geological or geophysical information or data including maps concerning wells," unless the information is filed in connection with an application or proceeding before an agency . . .. We interpret "geological or geophysical information" as section 552.113(2) uses the term to refer only to geological and geophysical information regarding the exploration or development of natural resources. [Footnote omitted] Furthermore, we reaffirm our prior determination that section 552.113 protects only geological and geophysical information that is commercially valuable. *See* Open Records Decision Nos. 504 (1988) at 2; 479 (1987) at 2. Thus, we conclude that section 552.113(2) protects from public disclosure only (i) geological and geophysical information regarding the exploration or development of natural resources that is (ii) commercially valuable.[627]

The decision explained that the phrase "information regarding the exploration or development of natural resources" signifies "information indicating the presence or absence of natural resources in a particular location, as well as information indicating the extent of a particular deposit or accumulation."[628]

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627 Open Records Decision No. 627 at 3-4 (1994) (footnote omitted).

628 Open Records Decision No. 627 at 4 n.4 (1994).

Open Records Decision No. 627 (1994) overruled Open Records Decision No. 504 (1988) to the extent the two decisions are inconsistent. In Open Records Decision No. 504 (1988), the attorney general had interpreted the statutory predecessor to section 552.113 of the Government Code to require the application of a test similar to the test used at that time to determine whether the statutory predecessor to section 552.110 protected commercial information (including trade secrets) from required public disclosure. Under that test, commercial information was "confidential" for purposes of the exemption if disclosure of the information was likely to have either of the following effects: (1) to impair the government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.[629]

Following the issuance of Open Records Decision No. 504 (1988), the attorney general articulated new tests for determining whether section 552.110 of the Government Code protects trade secret information and commercial and financial information from required public disclosure.[630] Thus, Open Records Decision No. 627 (1994) re-examined the attorney general's reliance upon the former tests for section 552.110 to determine the applicability of section 552.113. That decision noted that section 552.113, as the legislature originally enacted it, differed from its federal counterpart[631] in that the statutory predecessor to section 552.113 excepted from its scope "information filed in connection with an application or proceeding before any agency."[632] Thus, the state exception to required public disclosure exempted a more limited class of information than did the federal exemption.[633] Consequently, the decision determined that grafting the balancing test used to limit the scope of the federal exemption to the plain language of section 552.113 was unnecessary.[634] Since the current version of section 552.113 took effect on September 1, 1995, there have been no published court decisions interpreting the amended statute or the validity of Open Records Decision No. 627 (1994) in light of the amendments to the statute.

The attorney general, however, has interpreted the term "commercially valuable" in a subsequent decision. In Open Records Decision No. 669 (2000), the attorney general applied section 552.113 to digital mapping information supplied to the General Land Office by a third party. The specific information at issue was information that the third party allowed to be disclosed to the public.[635] The attorney general held that the information was not protected under section 552.113 because the information was publicly available and thus was not commercially valuable.[636] Therefore, in order to be commercially valuable for purposes of Open Records Decision No. 627 (1994) and section 552.113, information must not be publicly available.[637]

When a governmental body believes requested information of a third party may be excepted under this exception, the governmental body must notify the third party in accordance with

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629 Open Records Decision No. 504 at 4 (1988).

630 *See* Open Records Decision Nos. 592 at 2-8 (1991), 552 at 2-5 (1990).

631 5 U.S.C. § 552(b)(9).

632 Open Records Decision No. 627 at 2-3 (1994).

633 Open Records Decision No. 627 at 2-3 (1994).

634 Open Records Decision No. 627 at 2-3 (1994).

635 Open Records Decision No. 669 at 6 (2000).

636 Open Records Decision No. 669 at 6 (2000).

637 Open Records Decision No. 627 at 2-3 (1994).

section 552.305. The notice the governmental body must send to the third party is found in Part Seven of this *Handbook*.

Q. Sections 552.026 and 552.114: Confidentiality of Student Records

The Public Information Act includes two provisions relating to student records, sections 552.026 and 552.114 of the Government Code.

1. Family Educational Rights and Privacy Act of 1974

Section 552.026 incorporates into the Texas Public Information Act the federal Family Educational Rights and Privacy Act of 1974,[638] also known as "FERPA" or the "Buckley Amendment."[639] FERPA governs the availability of student records held by educational institutions or agencies that receive federal funds under programs administered by the federal government. It prohibits, in most circumstances, the release of personally identifiable information contained in a student's education records without a parent's written consent.[640] It also gives parents a right to inspect the education records of their children.[641] If a student has reached age 18 or is attending an institution of post-secondary education, the rights established by FERPA attach to the student rather than to the student's parents.[642] "Education records" for purposes of FERPA are records that contain information directly related to a student and that are maintained by an educational institution or agency.[643]

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student."[644] Personally identifying information is defined as including, but not limited to, the following information:

(a) The student's name;

(b) The name of the student's parent or other family members;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number, student number, or biometric record;

(e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;

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638 20 U.S.C. § 1232g.

639 *See* Open Records Decision No. 72 (1975) (compliance with federal law was required before enactment of statutory predecessor to Gov't Code § 552.026).

640 20 U.S.C. § 1232g(b)(1).

641 20 U.S.C. § 1232g(a)(1).

642 20 U.S.C. § 1232g(d).

643 20 U.S.C. § 1232g(a)(4)(A).

644 Open Records Decision Nos. 332 (1982), 206 (1978).

(f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or

(g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.[645]

An educational institution or agency may, however, release "directory information" to the public if the educational institution or agency complies with certain procedures.[646] Directory information includes, but is not limited to, the following information: "the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (*e.g.*, undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors, and awards received; and the most recent educational agency or institution attended."[647] The attorney general has determined that marital status and expected date of graduation also constitute directory information.[648]

University police department records concerning students previously were held to be education records for the purposes of FERPA.[649] However, FERPA was amended, effective July 23, 1992, to provide that the term "education records" does not include "records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement."[650] On the basis of this provision, records created by a campus police department are not excepted from required public disclosure by section 552.026 of the Government Code.[651]

FERPA applies only to records at educational institutions or agencies receiving federal funds and does not govern access to records in the custody of governmental bodies that are not educational institutions or agencies.[652] An "educational agency or institution" is "any public or private agency or institution" that receives federal funds under an applicable program.[653] Thus, an agency or institution need not instruct students in order to qualify as an educational agency or institution under FERPA. If education records are transferred by a school district or state institution of higher education to a state administrative agency concerned with education, federal regulations provide that the education records in the administrative agency's possession are subject to FERPA.[654]

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645 34 C.F.R. § 99.3.

646 *See* 20 U.S.C. § 1232g(a)(5)(B).

647 34 C.F.R. § 99.3.

648 Open Records Decision No. 96 (1975); *see also* Open Records Decision Nos. 244 (1980) (student rosters public), 242 (1980) (student parking permit information public), 193 (1978) (report of accident insurance claims paid to identifiable students not public).

649 *See* Open Records Decision Nos. 342 at 2-3 (1982), 205 at 2 (1978).

650 20 U.S.C. § 1232g(a)(4)(B)(ii).

651 Open Records Decision No. 612 at 2 (1992) (campus police department records were not excepted by statutory predecessor to Gov't Code § 552.101, incorporating FERPA, or statutory predecessor to Gov't Code § 552.114).

652 *See* Open Records Decision No. 390 at 3 (1983) (City of Fort Worth is not "educational agency" within FERPA).

653 20 U.S.C. § 1232g(a)(3).

654 20 U.S.C. § 1232g(b)(1)(E), (b)(4)(B); 34 C.F.R. §§ 99.31, .33, .35.

If there is a conflict between the provisions of the state Public Information Act and FERPA, the federal statute prevails.[655] However, the attorney general has been informed by the Family Policy Compliance Office of the United States Department of Education that parents' rights to information about their children under FERPA do not prevail over school districts' rights to assert the attorney-client and work product privileges.[656] As a general rule, however, exceptions to disclosure under the Public Information Act do not apply to a request by a student or parent for the student's own education records pursuant to FERPA.[657]

In Open Records Decision No. 634 (1995), the attorney general stated that an educational agency or institution that seeks a ruling under the Public Information Act should, before submitting "education records" to the attorney general, either obtain parental consent to the disclosure of personally identifiable nondirectory information in the records or edit the records to make sure that they contain no personally identifiable nondirectory information. Subsequent correspondence from the United States Department of Education advised that educational agencies and institutions may submit personally identifiable information subject to FERPA to the attorney general for purposes of obtaining rulings as to whether information contained therein must be withheld under FERPA or state law.[658] In 2006, however, the United States Department of Education Family Policy Compliance Office informed the attorney general that FERPA does not permit state and local educational authorities to disclose to the attorney general, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Public Information Act.[659] Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Public Information Act must not submit education records to the attorney general in unredacted form, that is, in a form in which "personally identifiable information" is disclosed.[660] Because the attorney general is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, the attorney general will not address the applicability of FERPA to any records submitted as part of a request for decision. Such determinations under FERPA must be made by the educational authority in possession of the education records.[661] Questions about FERPA should be directed to the following agency:

> Family Policy Compliance Office
> U.S. Department of Education
> 400 Maryland Ave., S.W.
> Washington, D.C. 20202-5920
> 1-800-USA-LEARN (1-800-872-5327)

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655 Open Records Decision No. 431 (1985).

656 Letter from LeRoy S. Rooker, Director, Family Policy Compliance Office, United States Dep't of Educ., to Keith B. Kyle (July 1999) (on file with the Open Records Division, Office of the Attorney General).

657 Open Records Decision No. 431 at 3 (1985).

658 *See* Letter from LeRoy S. Rooker, Director, Family Policy Compliance Office, United States Dep't of Educ., to David Anderson, Chief Counsel, Tex. Educ. Agency (April 29, 1998) (on file with the Open Records Division, Office of the Attorney General).

659 This letter is available on the attorney general's website at https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf.

660 *See* 34 C.F.R. § 99.3 (defining "personally identifiable information").

661 In the future, if an educational authority does obtain parental consent to submit unredacted education records and the educational authority seeks a ruling from the attorney general on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

2. Section 552.114: Confidentiality of Student Records

(a) In this section, "student record" means:

(1) information that constitutes education records as that term is defined by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g(a)(4)); or

(2) information in a record of an applicant for admission to an educational institution, including a transfer applicant.

(b) Information is confidential and 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. This subsection does not prohibit the disclosure or provision of information included in an education record if the disclosure or provision is authorized by 20 U.S.C. Section 1232g or other federal law.

(c) A record covered by Subsection (b) 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.

(d) Except as provided by Subsection (e), an educational institution may redact information covered under Subsection (b) from information disclosed under Section 552.021 without requesting a decision from the attorney general.

(e) If an applicant for admission to an educational institution described by Subsection (b) or a parent or legal guardian of a minor applicant to an educational institution described by Subsection (b) requests information in the record of the applicant, the educational institution shall disclose any information that:

(1) is related to the applicant's application for admission; and

(2) was provided to the educational institution by the applicant.

"Student record" means both information that constitutes an education record under FERPA and information in the record of an applicant for admission to an educational institution, including a transfer applicant.[662] Section 552.114(b) deems information in a student record confidential and states subsection (b) does not prohibit the release of an education record authorized by FERPA or other federal law.[663] Section 552.114(c) recognizes a right of access to student records for certain

[662] Gov't Code § 552.114(a).

[663] Gov't Code § 552.114(b).

enumerated individuals.[664] Subsection (d) permits an educational institution to redact information in a student record without requesting an attorney general decision.[665] Subsection (e) gives an applicant for admission, or the parent or legal guardian of a minor applicant, a right of access to information that is related to the applicant's admission application and was provided to the educational institution by the applicant.[666]

R. Section 552.115: Confidentiality of Birth and Death Records

Section 552.115 of the Government Code provides as follows:

> **(a) A birth or death record maintained by the vital statistics unit of the Texas Department of State Health Services or a local registration official is excepted from [required public disclosure], 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 vital statistics unit 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 vital statistics unit or local registration official, except that if the decedent is unidentified, the death record is public information and available to the public on and after the first anniversary of the date of death;**
>
> **(3) a general birth index or a general death index established or maintained by the vital statistics unit 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 vital statistics unit 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**

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664 Gov't Code § 552.114(c).

665 Gov't Code § 552.114(d).

666 Gov't Code § 552.114(e).

(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.

Section 552.115 specifically applies to birth and death records of a local registration official as well as to those of the Texas Department of State Health Services.[667] This section does not apply to birth or death records maintained by other governmental bodies.[668] Until the time limits set out above have passed, a birth or death record may be obtained from the Vital Statistics Unit (the "Unit") of the Texas Department of State Health Services only in accordance with chapter 192 of the Health and Safety Code.[669] While birth records over seventy-five years old and death records over twenty-five years old are not excepted from disclosure under the Public Information Act, a

[667] Gov't Code § 552.115(a).

[668] *See* Open Records Decision No. 338 (1982).

[669] *See generally* Open Records Decision No. 596 (1991) (regarding availability of adoption records).

local registrar of the Unit[670] is required by title 3 of the Health and Safety Code and rules promulgated thereunder to deny physical access to these records and to provide copies of them for a certain fee.[671] These specific provisions prevail over the more general provisions in the Act regarding inspection and copying of public records.[672]

Section 552.115 specifically makes public a summary birth index and summary death index and also makes public a general birth index or general death index to the extent that it relates to birth or death records that would be public information under the section.[673] However, a general or summary birth index is not public information if it reveals the fact of an adoption or paternity determination or contains identifying information relating to the parents of a child who is the subject of an adoption placement.[674] Although the Act contains no language that defines the categories of information that comprise each type of index, the Texas Department of State Health Services has promulgated administrative rules that define each type of index.[675] In pertinent part, the current rule, which took effect August 11, 2013, provides as follows:

> **(b) Birth indexes.**
>
> **(1) General birth indexes maintained or established by the Vital Statistics Unit or a local registration official shall be prepared by event year, in alphabetical order by surname of the registrant, followed by any given names or initials, the date of the event, the county of occurrence, the state or local file number, the name of the father, the maiden name of the mother, and sex of the registrant.**
>
> **(2) A general birth index is public information and available to the public to the extent the index relates to a birth record that is public on or after the 75th anniversary of the date of birth as shown on the record unless the fact of an adoption or paternity determination can be revealed or broken or if the index contains specific identifying information relating to the parents of the child who is the subject of an adoption placement. The Vital Statistics Unit and local registration officials shall expunge or delete any state or local file numbers included in any general birth index made available to the public because such file numbers may be used to discover information concerning specific adoptions, paternity determinations, or the identity of the parents of children who are the subjects of adoption placements.**

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670 *See* Health & Safety Code § 191.022(c), (f).

671 *See* Attorney General Opinion DM-146 at 2 (1992); *see also* Attorney General Opinion MW-163 (1980).

672 Attorney General Opinion DM-146 at 5 (1992).

673 Gov't Code § 552.115(a).

674 Gov't Code § 552.115(b).

675 Absent specific authority, a governmental body may not generally promulgate a rule that makes information confidential so as to except the information from required public disclosure pursuant to section 552.101 of the Act. *See* Gov't Code § 552.101; *see also* Open Records Decision Nos. 484 (1987), 392 (1983), 216 (1978). In the instant case, however, the attorney general has found the predecessor agency to the Texas Department of State Health Services has been granted specific authority by the legislature to promulgate administrative rules that dictate the public availability of information contained in and derived from vital records. *See* Open Records Decision No. 596 (1991).

(3) A summary birth index maintained or established by the Vital Statistics Unit or a local registration official shall be prepared by event year, in alphabetical order by surname of the registrant, followed by any given names or initials, the date of the event, the county of occurrence, and sex of the registrant. A summary birth index or any listings of birth records are not available to the public for searching or inspection if the fact of adoption or paternity determination can be revealed from specific identifying information.

(c) Death indexes.

(1) A general death index maintained or established by the Vital Statistics Unit or a local registration official shall be prepared by event year, in alphabetical order by surname of the registrant, followed by any given names or initials; the date of the event; the county of occurrence; the registrant's social security number, sex, and marital status; the name of the registrant's spouse, if applicable; and the state or local file number.

(2) A general death index is public information and available to the public to the extent the index relates to a death record that is public on or after the 25th anniversary of the date of death as shown on the record.

(3) A summary death index maintained or established by the Vital Statistics Unit or a local registration official shall be prepared by event year, in alphabetical order by surname of the registrant, followed by any given names or initials, the date of the event, the county of occurrence, and sex of the registrant.[676]

Thus, the term "summary birth index" as used in section 552.115 refers to a list in alphabetical order by surname of the child, and its contents are limited to the child's name, date of birth, county of birth, and sex. Additionally, the term "general birth index" refers to a list containing only those categories of information that comprise a "summary birth index," with the additional categories of the file number and the parents' names. The term "summary death index" as used in section 552.115 refers to a list in alphabetical order by surname of the deceased, and its contents are limited to the deceased's name or initials, date of death, county of death, and sex. Furthermore, the term "general death index" refers to the same categories of information that comprise a "summary death index," with the additional categories of marital status, name of the deceased's spouse, if applicable, and file number.

Section 552.115 also provides that a birth or death record may be made available in certain circumstances to the chief executive officer of a home rule municipality to aid in the identification of a property owner.[677]

S. Section 552.116: Audit Working Papers

Section 552.116 of the Government Code provides as follows:

[676] 25 T.A.C. § 181.23(b)-(c).

[677] Gov't Code § 552.115(a).

(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, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, 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, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, 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.

"Audit working paper" is defined as including all information prepared or maintained in conducting an audit or preparing an audit report including intra-agency or interagency communications and drafts of audit reports.[678] A governmental body that invokes section 552.116 must demonstrate the audit working papers are from an audit authorized or required by an authority mentioned in section 552.116(b)(1) and must identify that authority. To the extent information in an audit working paper is also maintained in another record, such other record is not excepted by section 552.116, although such other record may be withheld from public disclosure under the Act's other exceptions.[679] There are no cases or formal opinions interpreting the current version of section 552.116.

T. Section 552.117: Confidentiality of Certain Addresses, Telephone Numbers, Social Security Numbers, and Personal Family Information

The 88th Legislature passed two bills, Senate Bill 870 and House Bill 4504, amending section 552.117 of the Government Code. Section 552.117 excepts from required public disclosure:

[678] Gov't Code § 552.116(b).

[679] Gov't Code § 552.116(a).

(a) [I]nformation that relates to the home address, home telephone number, emergency contact information, 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 current or honorably retired peace officer as defined by Article 2.12, Code of Criminal Procedure, or a current or honorably retired 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;

(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;

(6) an officer or employee of a community supervision and corrections department established under Chapter 76 who performs a duty described by Section 76.004(b), regardless of whether the officer or employee complies with Section 552.024 or 552.1175;



(7) a current or former employee of the office of the attorney general who is or was assigned to a division of that office the duties of which involve law enforcement or are performed under Chapter 231, Family Code, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

(8) a current or former employee of the Texas Juvenile Justice Department or of the predecessors in function of the department, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

(9) a current or former juvenile probation or supervision officer certified by the Texas Juvenile Justice Department, or the predecessors in function of the department, under Title 12, Human Resources Code, regardless of whether the current or former officer complies with Section 552.024 or 552.1175;

(10) a current or former employee of a juvenile justice program or facility, as those terms are defined by Section 261.405, Family Code, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

(11) a current or former member of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, an auxiliary service of one of those branches of the armed forces, or the Texas military forces, as that term is defined by Section 437.001;

(12) a current or former district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters, regardless of whether the current or former attorney complies with Section 552.024 or 552.1175;

(13) a current or former employee of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

(14) a current or former employee of the Texas Civil Commitment Office or of the predecessor in function of the office or a division of the office, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

(15) a current or former federal judge or state judge, as those terms are defined by Section 1.005, Election Code, a federal bankruptcy judge, a marshal of the United States Marshal Service, a United States attorney, or a family member of a current or former federal judge, including a federal bankruptcy judge, a marshal of the United States Marshal Service, a United States attorney, or a state judge;

(16) a current or former child protective services caseworker, adult protective services caseworker, or investigator for the Department of Family and Protective Services, regardless of whether the caseworker or investigator complies with Section 552.024 or 552.1175, a current or former employee of a department contractor performing child protective services caseworker, adult protective services caseworker, or investigator functions for the contractor on behalf of the department;

(17) an elected public officer, regardless of whether the officer complies with Section 552.024 or 552.1175;

(18) a current or former United States attorney, assistant United States attorney, federal public defender and the spouse or child of the current or former attorney or public defender, regardless of whether the person complies with Section 552.024 or 552.1175; or

> **(19) a firefighter or volunteer firefighter or emergency medical services personnel as defined by Section 773.003, Health and Safety Code, regardless of whether the firefighter or volunteer firefighter or emergency medical services personnel comply 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.**
>
> **(c) In this section, "family member" has the meaning assigned by Section 31.006, Finance Code.**



Additionally, the amendments to subsections 552.117(a)(2) and (a)(4) made by Senate Bill 4504 become effective January 1, 2025, and provide information of the following persons are excepted from disclosure under section 552.117:

> **(2) a current or honorably retired peace officer as defined by Article 2A.001, Code of Criminal Procedure, or a current or honorably retired security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable; [or]**
>
> **. . .**
>
> **(4) a peace officer as defined by Article 2A.001, 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[.]**

Section 552.117 excepts from public disclosure a listed person's home address, home telephone number, emergency contact information, social security number, and information that reveals whether the person has family members.[680] Generally, a governmental body may not invoke section 552.117 as a basis for withholding an official's or an employee's home address and telephone number if another law, such as a state statute expressly authorizing child support enforcement officials to obtain information to locate absent parents, requires the release of such information.[681] Because the subsections of section 552.117 deal with different categories of officials and employees and differ in their application, they are discussed separately below.

Subsection (a)(1): Public Officials and Employees

1. Section 552.117(a)(1) must be read together with section 552.024.

Section 552.024 of the Government Code provides as follows:

> **(a) Except as provided by Subsection (a-1), each employee or official of a governmental body and each former employee or official of a governmental body shall choose**

[680] *See* Gov't Code § 552.117(c) ("family member" has the meaning assigned by section 31.006 of the Finance Code).

[681] *See* Open Records Decision No. 516 at 3 (1989).

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, emergency contact information, or social security number, or that reveals whether the person has family members.

(a-1) A school district may not require an employee or former employee of the district to choose whether to allow public access to the employee's or former employee's social security number.

(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:

(1) the information is protected under Subchapter C; and

(2) the governmental body may redact the information 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.

(c-1) If, under Subsection (c)(2), a governmental body redacts or withholds information without requesting a decision from the attorney general about whether the information may be redacted or withheld, the requestor is entitled to seek a decision from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this subsection, determining whether the redacted or withheld information was excepted from required disclosure to the requestor, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court.

(c-2) A governmental body that redacts or withholds information under Subsection (c)(2) shall provide the following information to the requestor on a form prescribed by the attorney general:

(1) a description of the redacted or withheld information;

(2) a citation to this section; and

(3) instructions regarding how the requestor may seek a decision from the attorney general regarding whether the redacted or withheld information is excepted from required disclosure.

(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.

Subsection (a)(1) pertains to a current or former official or employee of a governmental body. To obtain the protection of section 552.117(a), an individual identified in subsection (a)(1) must comply with section 552.024(c). If such an individual elects to withhold the individual's home address, home telephone number, emergency contact information, social security number, and information that reveals whether the individual has family members, the governmental body may redact such information without the necessity of requesting an attorney general decision. If a governmental body chooses to redact this information without requesting an attorney general decision, it must notify the requestor as prescribed section 552.024(c-2) on the form created by the attorney general. The notice must include instructions regarding how the requestor may seek an attorney general's review of the governmental body's redactions. The form for notifying the requestor is published on the attorney general's website. The legislation enacting these provisions authorized the attorney general to promulgate rules establishing procedures for review under section 552.024(c-1). These rules were promulgated in Subchapter B of chapter 63 of title 1 of the Texas Administrative Code.[682] These rules are available on the attorney general's website and in Part Four of this *Handbook*.

In conjunction with section 552.024(a-1), section 552.147 of the Government Code makes social security numbers of school district employees confidential. Thus, the social security number of an employee of a school district is confidential in the custody of the school district even if the employee does not elect confidentiality under section 552.024.

Significant decisions of the attorney general regarding sections 552.024 and 552.117 prior to the recent amendments include the following:

[682] *See* 1 T.A.C. §§ 63.11-.16.

Open Records Decision No. 622 (1994) — statutory predecessor to section 552.117(a)(1) excepts employees' former home addresses and telephone numbers from required public disclosure;

Open Records Decision No. 530 (1989) — addressing the time at which an employee may exercise the options under the statutory predecessor to section 552.024;

Open Records Decision No. 506 (1988) — these provisions do not apply to telephone numbers of mobile telephones that are provided to employees by a governmental body for work purposes; and

Open Records Decision No. 455 (1987) — statutory predecessor to section 552.117(a)(1) continued to except an employee's home address and telephone number from required public disclosure after the employment relationship ends; it did not except, as a general rule, applicants' or other private citizens' home addresses and telephone numbers.

In addition, the attorney general has determined in informal rulings that section 552.117 can apply to personal cellular telephone numbers of government employees as well as telephone numbers that provide access to personal home facsimile machines of government employees.[683] The attorney general has also determined that section 552.117 does not protect a post office box number.[684]

2. Subsections (a)(2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), and (19): Other Categories of Officers and Employees

As noted above, to obtain the protection of section 552.117, subsection (a)(1), an individual identified in subsection (a)(1) must comply with the provisions of section 552.024. No action is necessary, however, on the part of the personnel listed in subsections (a)(2)[685], (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), and (19).

In Open Records Decision No. 670 (2001), the attorney general determined that all governmental bodies may withhold the home address, home telephone number, personal cellular phone number, personal pager number, social security number, and information that reveals whether the individual has family members, of any individual who is subject to section 552.117(a)(2), without the necessity of requesting an attorney general decision as to whether the exception under section 552.117(a)(2) applies. This decision may be relied on as a "previous determination" for the listed information.

Subsection (a)(11), in part, pertains to a current or former member of the Texas military forces, which are defined as the Texas National Guard, the Texas State Guard, and any other military forces organized under state law.[686] In addition, section 437.232 of the Government Code protects

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683 *See, e.g.*, Open Records Letter Nos. 2002-1488 (2002), 2001-0050 (2001).

684 *See* Open Records Decision No. 622 at 6 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at *home*) (citing House Comm. on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985) (emphasis added)).

685 *See* Gov't Code § 552.003(1-b) (defining "honorably retired" for purposes of the Act).

686 Gov't Code § 437.001(14).

certain information pertaining to service members.[687] The 88th Legislature passed House Bill 4615, which amended section 437.232 and provides as follows:

> **(a) In this section, "military personnel information" means a service member's name, Department of Defense identification number, home address, rank, official title, pay rate or grade, state active duty orders, deployment locations, military duty addresses, awards and decorations, length of military service, and medical records.**
>
> **(b) A service member's military personnel information is confidential and not subject to disclosure under Chapter 552.**

U. Section 552.1175: Confidentiality of Certain Personal Identifying Information of Peace Officers and Other Officials Performing Sensitive Governmental Functions

The 88th Legislature passed two bills, Senate Bill 870 and House Bill 4504, amending section 552.1175 of the Government Code. Section 552.1175 provides as follows:

> **(a) This section applies only to:**
>
> > **(1) current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure, or special investigators as described by Article 2.122, Code of Criminal Procedure;**
> >
> > **(2) current or honorably retired 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;**
> >
> > **(5) a current or former district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;**
> >
> > **(5-a) a current or former employee of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;**
> >
> > **(6) officers and employees of a community supervision and corrections department established under Chapter 76 who perform a duty described by Section 76.004(b);**

[687] *See* Gov't Code § 437.001(8) (defining "service member" for purposes of chapter 437 of the Government Code).

(7) criminal investigators of the United States as described by Article 2.122(a), Code of Criminal Procedure;

(8) current or honorably retired police officers and inspectors of the United States Federal Protective Service;

(9) current and former employees of the office of the attorney general who are or were assigned to a division of that office the duties of which involve law enforcement or are performed under Chapter 231, Family Code;



(10) current or former juvenile probation and detention officers certified by the Texas Juvenile Justice Department, or the predecessors in function of the department, under Title 12, Human Resources Code;

(11) current or former employees of a juvenile justice program or facility, as those terms are defined by Section 261.405, Family Code;

(12) current or former employees of the Texas Juvenile Justice Department or the predecessors in function of the department;

(13) federal judges and state judges as defined by Section 1.005, Election Code;

(14) current or former employees of the Texas Civil Commitment Office or of the predecessor in function of the office or a division of the office;

(15) a current or former member of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, an auxiliary service of one of those branches of the armed forces, or the Texas military forces, as that term is defined by Section 437.001;[688]

(16) a current or former child protective services caseworker, adult protective services caseworker, or investigator for the Department of Family and Protective Services or a current or former employee of a department contractor performing child protective services caseworker, adult protective services caseworker, or investigator functions for the contractor on behalf of the department;

(17) an elected public officer; and

(18) a firefighter or volunteer firefighter or emergency medical services personnel as defined by Section 773.003, Health and Safety Code.

(19) a current or former United States attorney, assistant United States attorney, federal public defender, deputy federal public defender, or assistant federal public defender.

[688] *See* Gov't Code § 437.001(14) (defining "Texas military forces" for purposes of chapter 437 of the Government Code).

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, 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.

(f) A governmental body may redact information that must be withheld under Subsection (b) 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.

(g) If, under Subsection (f), a governmental body redacts or withholds information without requesting a decision from the attorney general about whether the information may be redacted or withheld, the requestor is entitled to seek a decision from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this subsection, determining whether the redacted or withheld information was excepted from required disclosure to the requestor, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court.

(h) A governmental body that redacts or withholds information under Subsection (f) shall provide the following information to the requestor on a form prescribed by the attorney general:

(1) a description of the redacted or withheld information;

(2) a citation to this section; and

(3) instructions regarding how the requestor may seek a decision from the attorney general regarding whether the redacted or withheld information is excepted from required disclosure.



Additionally, the amendments to subsections 552.1175(a)(1) and (a)(7) made by Senate Bill 4504 become effective January 1, 2025, and provide section 552.1175 applies to:

(1) current or honorably retired peace officers as defined by Article 2A.001, Code of Criminal Procedure, or special investigators as described by Article 2A.002, Code of Criminal Procedure; [and]

. . .

(7) criminal investigators of the United States as described by Article 2A.002(a), Code of Criminal Procedure[.]

Section 552.1175 excepts from public disclosure a listed person's home address, home telephone number, emergency contact information, date of birth, social security number, and information that reveals whether the person has family members.[689] The attorney general has stated in numerous informal rulings that the protection of section 552.117 only applies to information a governmental body holds in its capacity as an employer.[690] On the other hand, section 552.1175 affords the listed persons the opportunity to withhold personal information contained in records maintained by any governmental body in any capacity.[691] However, these individuals may not elect under section 552.1175 to withhold personal information contained in records maintained by county and district clerks or tax appraisal records of an appraisal district subject to section 25.025 of the Tax Code.[692] With respect to subsections 552.1175(a)(1), (2), and (8), section 552.003(1-b) of the Government Codedefines the term "honorably retired" for purposes of the Act.

In Open Records Decision No. 678 (2003), the attorney general determined that notification provided to a governmental body under section 552.1175 "imparts confidentiality to information only in the possession of the notified governmental body."[693] If the information is transferred to another governmental body, the individual must provide a separate notification to the receiving governmental body in order for the information in its hands to remain confidential.[694]

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689 *Cf.* Gov't Code § 552.117(c) ("family member" has meaning assigned by section 31.006 of the Finance Code); *see* Fin. Code § 31.006(d) (defining "family member" as "a person's: (1) spouse; (2) minor child; or (3) adult child who resides in the person's home").

690 *See, e.g.*, Open Records Letter Nos. 99-3302 (1999), 96-2452 (1996).

691 *See, e.g.*, Open Records Letter No. 2002-6335 (2002).

692 Gov't Code § 552.1175(d)-(e).

693 Open Records Decision No. 678 at 4 (2003).

694 Open Records Decision No. 678 at 4-5 (2003).

Also, unlike the requirement under section 552.117(a)(1) that an election to keep information confidential be made before a governmental body receives the request for information,[695] an election under section 552.1175 can be made after a governmental body's receipt of the request for information.

Subsection (f) allows a governmental body to redact, without the necessity of requesting an attorney general decision, the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of a person described in section 552.1175(a). Subsection (h) states if a governmental body redacts in accordance with subsection (f), it must provide the requestor with certain information on the form prescribed by the attorney general, including instructions regarding how the requestor may seek an attorney general review of the governmental body's redactions. The form for notifying the requestor is located on the attorney general's website. The legislation enacting these provisions authorized the attorney general to promulgate rules establishing procedures for its review under section 552.1175(g). These rules are available on the attorney general's website and in Part Four of this *Handbook*.[696]

V. Section 552.1176: Confidentiality of Certain Information Maintained by State Bar



The 88th Legislature passed Senate Bill 510, amending section 552.1176(a) of the Government Code. Section 552.1176 provides as follows:

> **(a) Information maintained under Chapter 81 [of the Government Code] is confidential and may not be disclosed to the public under this chapter if the information:**
>
> **(1) is a license application; or**
>
> **(2) relates to the home address, home telephone number, electronic mail address, social security number, date of birth, driver's license number, state identification number, passport number, emergency contact information, or payment information of an individual licensed to practice law in this state.**
>
> **(b) repealed**
>
> **(c) All documents filed with a county clerk and all documents filed with a district clerk are exempt from this section.**
>
> **(d) Subsection (a) does not make confidential or except from required public disclosure the name, state bar identification number, membership class, or eligibility to practice law of an applicant for a license, a license holder, or an individual who previously held a license.**

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695 Open Records Decision No. 530 at 5 (1989).

696 *See* 1 T.A.C. §§ 63.11-.16.

(e) To the extent of any conflict, this section prevails over another law that authorizes or requires the release of information maintained by the State Bar of Texas.

The protections of section 552.1176 only apply to records maintained by the State Bar.[697]

W. Section 552.11765: Confidentiality of Certain Information Maintained by State Licensing Authority



The 88th Legislature passed Senate Bill 510, adding section 552.11765 of the Government Code, which provides as follows:

(a) In this section, "license" means a license, certificate, registration, permit, or other authorization that:

(1) is issued by a governmental body described by Section 552.003(1)(A)(i); and

(2) an individual must obtain to practice or engage in a particular business, occupation, or profession.

(b) Except as provided by Subsections (c) and (d), information maintained by a governmental body described by Section 552.003(1)(A)(i) is confidential and excepted from the requirements of Section 552.021 if the information:

(1) is a license application; or

(2) relates to the home address, home telephone number, electronic mail address, social security number, date of birth, driver's license number, state identification number, passport, emergency contact information, or payment information of:

(A) an applicant for a license issued by the governmental body;

(B) an individual who holds a license issued by the governmental body; or

(C) an individual who previously held a license issued by the governmental body.

(c) Subsection (b) does not make confidential or except from required public disclosure the name, license number, or license status of an applicant for a license, a license holder, or an individual who previously held a license.

(d) For a license issued under Chapter 42, 43, 103, or 161, Human Resources Code, or Chapter 142, 242, 247, 248A, 250, or 252, Health and Safety Code, Subsection (b) does not prohibit the disclosure of:

[697] Open Records Letter No. 2022-00464 (2022).

(1) the last four digits of the social security number of a license holder in connection with a verification of employability or an employee misconduct registry search provided by the Health and Human Services Commission;

(2) a home address where activity regulated by the licensing authority occurs; or

(3) an e-mail address or phone number associated with activity regulated by the licensing authority.

(e) To the extent of any conflict, this section prevails over another law that authorizes or requires the release of information maintained by a governmental body.

There are no cases or formal opinions interpreting this exception.

X. Section 552.1177: Confidentiality of Certain Information Related to Humane Disposition of Animal

Section 552.1177 of the Government Code provides as follows:

(a) Except as provided by Subsection (b), information is confidential and excepted from the requirements of Section 552.021 if the information relates to the name, address, telephone number, e-mail address, driver's license number, social security number, or other personally identifying information of a person who obtains ownership or control of an animal from a municipality or county making a humane disposition of the animal under a municipal ordinance or an order of the commissioners court.

(b) A governmental body may disclose information made confidential by Subsection (a) to a governmental entity, or to a person who under a contract with a governmental entity provides animal control services, animal registration services, or related services to the governmental entity, for purposes related to the protection of public health and safety.

(c) A governmental entity or other person that receives information under Subsection (b):

(1) must maintain the confidentiality of the information;

(2) may not disclose the information under this chapter; and

(3) may not use the information for a purpose that does not directly relate to the protection of public health and safety.

(d) A governmental body, by providing public information under Subsection (b) 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.

Section 552.1177 protects the identity of an individual who adopts an animal from a municipal or county animal shelter. There are no cases or formal opinions interpreting this exception.

Y. Section 552.118: Confidentiality of Official Prescription Program Information

Section 552.118 of the Government Code excepts from required public disclosure the following:

> **(1) information on or derived from an official prescription form filed with the Texas State Board of Pharmacy under section 481.0755, Health and Safety Code, or an electronic prescription record filed with the Texas State Board of Pharmacy under Section 481.075, Health and Safety Code; or**
>
> **(2) other information collected under Section 481.075 or 481.0755 of that code.**

Under the Official Prescription Program, health practitioners who prescribe certain controlled substances must record certain information about the prescription on the official prescription form.[698] The dispensing pharmacist is also required to provide certain information about the prescription to the Texas State Board of Pharmacy.[699] Section 481.076 of the Health and Safety Code provides the Texas State Board of Pharmacy may release this information only to certain parties. Section 552.118 excepts from public disclosure the following: (1) copies of the prescription forms or electronic prescription records filed with the Texas State Board of Pharmacy; (2) any information derived from the prescription forms or electronic prescription records; and (3) any other information collected under section 481.075 or 481.0755 of the Health and Safety Code. The confidentiality provided by section 552.118 is co-extensive with that provided by section 481.076 of the Health and Safety Code.[700]

Z. Section 552.119: Confidentiality of Certain Photographs of Peace Officers

Section 552.119 of the Government Code provides as follows:

> **(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.**

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698 Health & Safety Code §§ 481.075(a), (e), .0755(e).

699 Health & Safety Code §§ 481.075(i), .0755(n).

700 *See* Health & Safety Coden § 481.076(e).

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.



The 88th Legislature passed House Bill 4504, amending section 552.119 of the Government Code. The amendment to subsection 552.119(a) becomes effective January 1, 2025, and provides in part:

(a) A photograph that depicts a peace officer as defined by Article 2A.001, 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.

In Open Records Decision No. 502 (1988), the attorney general held the statutory predecessor to section 552.119(a) did not require a threshold determination that release of a photograph of an officer would endanger an officer to withhold the photograph under the former section 552.119(a).[701] However, in 2003, the attorney general re-evaluated its interpretation of this provision and determined in order to withhold an officer's photograph under section 552.119, a governmental body must demonstrate release of the photograph would endanger the life or physical safety of the officer.[702]

Under section 552.119, a photograph of a peace officer cannot be withheld if (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; (3) the photograph is introduced as evidence in a judicial proceeding; or (4) the officer gives written consent to the disclosure. Furthermore, in Open Records Decision No. 536 (1989), the attorney general concluded the statutory predecessor to section 552.119 did not apply to photographs of officers who are deceased.[703]

AA. Section 552.120: Confidentiality of Certain Rare Books and Original Manuscripts

Section 552.120 of the Government Code provides as follows:

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.

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[701] Open Records Decision No. 502 at 4-6 (1988).

[702] Open Records Letter Nos. 2003-8009 (2003), 2003-8002 (2003).

[703] Open Records Decision No. 536 at 2 (1989).

The attorney general has not issued an open records decision on this provision. A similar provision applicable to state institutions of higher education is found in section 51.910(b) of the Education Code.

BB. Section 552.121: Confidentiality of Certain Documents Held for Historical Research

Section 552.121 of the Government Code provides as follows:

> **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.**

The attorney general has not issued an open records decision on this provision. A similar provision applicable to state institutions of higher education is found in section 51.910(a) of the Education Code.

Attorney general opinion JM-37 (1983) states the Public Information Act prevents an institution of higher education from agreeing to keep oral history information confidential unless the institution has specific authority under law to make such agreements.[704]

CC. Section 552.122: Test Items

Section 552.122 of the Government Code provides as follows:

> **(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.**

The attorney general considered the scope of the phrase "test items" in Open Records Decision No. 626 (1994). "Test item" generally includes "any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated."[705] The opinion held the evaluations of an applicant for promotion and the answers to questions asked of the applicant by the promotion board in evaluating the applicant were not "test items" and such a determination under section 552.122 had to be made on a case-by-case basis.[706]

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[704] Attorney General Opinion JM-37 at 2 (1983).

[705] Open Records Decision No. 626 at 6 (1994).

[706] Open Records Decision No. 626 at 6-8 (1994).

DD. Section 552.123: Confidentiality of Name of Applicant for Chief Executive Officer of Institution of Higher Education

Section 552.123 of the Government Code provides as follows:

> **The name of an applicant for the position of chief executive officer of an institution of higher education, and other information that would tend to identify the applicant, 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.**

Section 552.123 is only applicable to applicants for the position of university president.[707] Section 552.123 expressly requires the withholding of any identifying information about candidates, not just their names.[708] The exception protects the identities of all applicants for the position of university president regardless of whether they apply on their own initiative or are nominated.[709] Section 552.123 does not protect the names of finalists for a university president position.

EE. Section 552.1235: Confidentiality of Identity of Private Donor to Institution of Higher Education

Section 552.1235 of the Government Code provides as follows:

> **(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 information 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.**

There are no cases or formal opinions interpreting this exception. However, in an informal ruling, the attorney general interpreted the term "person," as used in this exception, to include a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.[710]

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[707] *See generally* Open Records Decision No. 585 (1991) (names of applicants for position of city manager not excepted from release under statutory predecessor to Gov't Code § 552.123).

[708] *See, e.g.*, Gov't Code § 552.123; *see also* Open Records Decision No. 540 at 3-4 (1990) (construing statutory predecessor to Gov't Code § 552.123).

[709] *See* Open Records Decision No. 540 at 5 (1990).

[710] Open Records Letter No. 2003-8748 (2003) (citing to Gov't Code § 311.005(2)).

FF. Section 552.124: Confidentiality of Records of Library or Library System

Section 552.124 of the Government Code provides as follows:

> **(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:**
>
> **(1) disclosure of the record is necessary to protect the public safety; or**
>
> **(2) 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.**

In Open Records Decision No. 100 (1975), the attorney general determined the identities of libraries patrons were confidential under constitutional law if release of the library materials they were examining would reveal their identities.[711] The legislative history of section 552.124 suggests its purpose is to codify, clarify, and extend that prior decision of the attorney general.[712] This section protects the identity of the individual library user while allowing law enforcement officials access to such information by court order or subpoena. There are no cases or formal opinions interpreting this exception. However, in an informal ruling, the attorney general interpreted section 552.124 to except from disclosure any information that specifically identifies library patrons.[713] In a separate informal ruling, the attorney general determined section 552.124 does not except from disclosure information identifying library employees or other persons not requesting, obtaining, or using a library material or service.[714] In another informal ruling, the attorney general concluded section 552.124 is designed to protect individual privacy.[715] Thus, an individual has a special right of access under section 552.023 of the Government Code to library records that relate

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[711] Open Records Decision No. 100 (1975).

[712] *See* Senate Comm. on State Affairs, Bill Analysis, S.B. 360, 73rd Leg., R.S. (1993).

[713] Open Records Letter No. 99-1566 (1999).

[714] Open Records Letter No. 2000-3201 (2000).

[715] Open Records Letter No. 2014-13140 at 4 (2014).

to that individual. In addition, because the right to privacy lapses at death, identifying information that pertains solely to a deceased person may not be withheld under section 552.124.[716]

GG. Section 552.125: Certain Audits

Section 552.125 of the Government Code provides as follows:

> **Any documents or information privileged under Chapter 1101, Health and Safety Code, are excepted from the requirements of Section 552.021.**

Information considered privileged under chapter 1101 of the Health and Safety Code includes audit reports.[717] Section 1101.051(a) describes an audit report as "a report that includes each document and communication . . . produced from an environmental or health and safety audit."[718] Section 1101.003(a)(3) defines an environmental or health and safety audit as follows:

> **a systematic voluntary evaluation, review, or assessment of compliance with environmental or health and safety laws or with any permit issued under an environmental or health and safety law conducted by an owner or operator, an employee of an owner or operator, a person, including an employee or independent contractor of the person, that is considering the acquisition of a regulated facility or operation, or an independent contractor of:**
>
> **(A) a . . . facility or operation [regulated under an environmental or health and safety law]; or**
>
> **(B) an activity at a . . . facility or operation [regulated under an environmental or health and safety law].**[719]

HH. Section 552.126: Confidentiality of Name of Applicant for Superintendent of Public School District

Section 552.126 of the Government Code provides as follows:

> **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.**

There are no cases or formal opinions interpreting this exception. However, in an informal ruling, the attorney general determined section 552.126 protects all identifying information about

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716 Open Records Letter No. 2014-13140 at 4 (2014).

717 Health and Safety Code § 1101.101(a).

718 Health and Safety Code § 1101.051(a).

719 Health and Safety Code § 1101.003(a)(3).

superintendent applicants, and not just their names.[720] Section 552.126 does not protect the names of the finalists for a superintendent position.

II. Section 552.127: Confidentiality of Personal Information Relating to Participants in Neighborhood Crime Watch Organization

Section 552.127 of the Government Code provides as follows:

> **(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.**

There are no cases or formal opinions interpreting this exception. However, in an informal ruling, the attorney general found section 552.127 excepts from disclosure the name, home address, business address, home telephone number, or business telephone number of a participant in a neighborhood crime watch program.[721] The attorney general also found the name, address, or contact information of an organization participating in the neighborhood crime watch program is not protected under section 552.127 unless the information relates to or identifies an individual participant's name, home or business address, or home or business telephone number.[722]

JJ. Section 552.128: Confidentiality of Certain Information Submitted by Potential Vendor or Contractor

Section 552.128 of the Government Code provides as follows:

> **(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:**

[720] Open Records Letter No. 99-2495 (1999).

[721] Open Records Letter No. 99-2830 (1999).

[722] Open Records Letter No. 99-2830 (1999).

(A) for purposes related to verifying an applicant's status as a historically 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.

There are no cases or formal opinions interpreting this exception. However, in informal rulings, the attorney general has determined the exception does not apply to documents created by a governmental body.[723] Subsection (c) provides bid proposals are not confidential under section 552.128.[724]

KK. Section 552.129: Confidentiality of Certain Motor Vehicle Inspection Information

Section 552.129 of the Government Code provides as follows:

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.

There are no cases or formal opinions interpreting this exception.

LL. Section 552.130: Confidentiality of Certain Motor Vehicle Records

Section 552.130 of the Government Code provides as follows:

(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 or another state or country;

[723] Open Records Letter Nos. 99-0565 (1999), 98-0782 (1998).

[724] Open Records Letter No. 99-1511 (1999).

(2) a motor vehicle title or registration issued by an agency of this state or another state or country; or

(3) a personal identification document issued by an agency of this state or another state or country 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.

(c) Subject to Chapter 730, Transportation Code, a governmental body may redact information described by Subsection (a) 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.

(d) If, under Subsection (c), a governmental body redacts or withholds information without requesting a decision from the attorney general about whether the information may be redacted or withheld, the requestor is entitled to seek a decision from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this subsection, determining whether the redacted or withheld information was excepted from required disclosure to the requestor, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court.

(e) A governmental body that redacts or withholds information under Subsection (c) shall provide the following information to the requestor on a form prescribed by the attorney general:

(1) a description of the redacted or withheld information;

(2) a citation to this section; and

(3) instructions regarding how the requestor may seek a decision from the attorney general regarding whether the redacted or withheld information is excepted from required disclosure.

Section 552.130 protects information relating to a license, title, or registration issued by this state, a state other than Texas, or another country. Examples of information made confidential under section 552.130(a)(1) include the license number, issuing state, class, restrictions, and expiration

date of a driver's license.[725] Examples of information made confidential under section 552.130(a)(2) include a vehicle identification number and license plate number.[726]

Section 552.130 does not apply to motor vehicle record information found in a CR-3 collision report form. Access to a CR-3 collision report is specifically governed by section 550.065 of the Transportation Code, not section 552.130 of the Government Code.[727]

Because section 552.130 protects privacy interests, an individual or the individual's authorized representative has a special right of access to the individual's motor vehicle record information, and such information may not be withheld from that individual under section 552.130.[728] Furthermore, information protected under section 552.130 may be released if the governmental body is authorized to do so under chapter 730 of the Transportation Code. A deceased person's interest under section 552.130 lapses upon the person's death, but section 552.130 protects the interest of a living person who co-owns or inherits a deceased individual's vehicle.[729]

Section 552.130(c) provides a governmental body may redact information subject to section 552.130(a) without the necessity of requesting an attorney general decision. If a governmental body chooses to redact this information without requesting an attorney general decision, it must notify the requestor as prescribed by section 552.130(e) on the form created by the attorney general. The notice must include instructions regarding how the requestor may seek an attorney general's review of the governmental body's redactions. The form for notifying the requestor is located on the attorney general's website. Pursuant to section 552.130(d), the attorney general promulgated rules establishing procedures for review of a governmental body's redactions.[730] These rules are available on the attorney general's website and in Part Four of this *Handbook*.

If a governmental body lacks the technological capability to redact the motor vehicle record information from a requested video, it must seek a ruling from the attorney general if it wishes to withhold the video recording in its entirety under section 552.130.

MM. Section 552.131: Confidentiality of Certain Economic Development Information

Section 552.131 of the Government Code reads as follows:

(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

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725 *See, e.g.*, Open Records Letter Nos. 2002-7018 (2002), 2001-3659 (2001).

726 *See, e.g.*, Open Records Letter Nos. 2000-4847 (2000), 2000-1083 (2000).

727 *See* Trans. Code § 550.065.

728 *See* Gov't Code § 552.023; Open Records Decision Nos. 684 at 12-13 (2009), 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

729 Open Records Decision No. 684 at 13 (2009). *See generally Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broad. Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 at 3 (1984), H-917 at 2-3(1976); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death).

730 *See* 1 T.A.C. §§ 63.11 - .16.

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.

(b-1) An economic development entity whose mission or purpose is to develop and promote the economic growth of a state agency or political subdivision with which the entity contracts may assert the exceptions under this section in the manner described by Section 552.305(b) with respect to information that is in the economic development entity's custody or control.[731]

(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.

Section 552.131(a) applies to the same two types of information excepted from disclosure under section 552.110: (1) trade secrets; and (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. However, unlike section 552.110, section 552.131(a) applies only to information that relates to economic development negotiations between a governmental body and a business prospect. Section 552.131(b) excepts from public disclosure any information relating to a financial or other incentive that a governmental body or another person offers to a business prospect that seeks to have locate, stay, or expand in or near the territory of the governmental body. After the governmental body reaches an agreement with the business prospect, information about a financial or other incentive offered the business prospect is no longer excepted under section 552.131. Section 552.131(b-1) allows certain economic development entities to raise the exceptions in section 552.131 in the manner described by section 552.305(b) for information that is in the custody or control of the entities. There are no formal cases or opinions interpreting this exception.

[731] Gov't Code § 552.131(b-1).

When a governmental body believes requested information of a third party may be excepted under this exception, the governmental body must notify the third party in accordance with section 552.305. The notice the governmental body must send to the third party is found in Part Seven of this *Handbook*.

NN. Section 552.1315: Confidentiality of Certain Crime Victim Records

Section 552.1315 of the Government Code provides as follows:

(a) Information is confidential and excepted from the requirements of Section 552.021 if the information identifies an individual as:

(1) a victim of:

(A) an offense under Section 20A.02, 20A.03, 21.02, 21.11. 22.011, 22.021, 43.05, or 43.25, Penal Code; or

(B) an offense that is part of the same criminal episode, as defined by Section 3.01, Penal Code, as an offense described by Paragraph (A); or

(2) a victim of any criminal offense, if the victim was younger than 18 years of age when any element of the offense was committed.

(b) Notwithstanding Subsection (a), information under this section may be disclosed:

(1) to any victim identified by the information, or to the parent or guardian of a victim described by Subsection (a)(2) who is identified by the information;

(2) to a law enforcement agency for investigative purposes; or

(3) in accordance with a court order requiring the disclosure.

There are no cases or formal opinions interpreting this exception.

OO. Section 552.132: Confidentiality of Crime Victim or Claimant Information

Section 552.132 of the Government Code provides as follows:

(a) Except as provided by Subsection (d), in this section, "crime victim or claimant" means a victim or claimant under Chapter 56B, Code of Criminal Procedure, who has filed an application for compensation under that chapter.

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

(1) the name, social security number, address, or telephone number of a crime victim or claimant; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

(c) If the crime victim or claimant is awarded compensation under Article 56B.103 or 56B.104, Code of Crimimal Procedure, as of the date of the award of compensation, the name of the crime victim or claimant and the amount of compensation awarded to that crime victim or claimant are public information and are not excepted from the requirements of Section 552.021.

(d) An employee of a governmental body who is also a victim under Chapter 56B, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that chapter, 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 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.

(e) If the employee fails to make an election under Subsection (d), 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.

Section 552.132 makes both the victim's and claimant's identifying information confidential without either party having to submit an election for non-disclosure to the Crime Victims' Compensation Division of the Office of the Attorney General. The attorney general has found that crime victims have a special right of access to their own information under section 552.023 of the Government Code.[732] There are no cases or formal opinions interpreting this exception.

PP. Section 552.1325: Crime Victim Impact Statement: Certain Information Confidential

Section 552.1325 of the Government Code provides as follows:

[732] Open Records Letter No. 2001-0821 (2001).

(a) In this section:

(1) "Crime victim" means a person who is a victim as defined by Article 56B.003, Code of Criminal Procedure.

(2) "Victim impact statement" means a victim impact statement under Subchapter D, Chapter 56A, 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.

The attorney general has found that crime victims have a special right of access to their own crime victim impact statement information under section 552.023 of the Government Code. There are no cases or formal opinions interpreting this exception.



QQ. Section 552.133: Confidentiality of Public Power Utility Competitive Matters

Section 552.133 of the Government Code provides as follows:

(a) In this section:

(1) "Broadband service" has the meaning assigned by Section 181.048, Utilities Code.

(2) "Public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(a-1) For purposes of this section, "competitive matter" means a utility-related matter, including for an entity described by Subdivision(2) a cable, Internet, or broadband service matter, that is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. The term:

(1) means a matter that is reasonably related to the following categories of information:

(A) generation unit specific and portfolio fixed and variable costs, including forecasts of those costs, capital improvement plans for generation units, and generation unit operating characteristics and outage scheduling;

(B) bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies;

(C) effective fuel and purchased power agreements and fuel transportation arrangements and contracts;

(D) risk management information, contracts, and strategies, including fuel hedging and storage;

(E) plans, studies, proposals, and analyses for system improvements, additions, or sales, other than transmission and distribution system improvements inside the service area for which the public power utility is the sole certificated retail provider; and

(F) customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies;

(2) means a matter reasonably related to information involving the provision of cable, Internet, or broadband services by a municipally owned utility that provided electricity services and cable, Internet, or broadband services on or before January 1, 2003, including:

(A) a capital improvement plan;

(B) an expense related to the installation of a facility to provide those services;

(C) bidding and pricing information for installation of the facility;

(D) risk management information, contracts, and strategies;

(E) plans, studies, proposals, and analyses for:

(i) system improvements, additions, or sales; or

(ii) establishing pricing for providing those services; and

(F) customer billing, contract, and usage information; and

(3) does not 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 or tariff of general applicability regarding rates, 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;

(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;

(N) salaries and total compensation of all employees of a public power utility; or

(O) information publicly released by the Electric Reliability Council of Texas in accordance with a law, rule, or protocol generally applicable to similarly situated market participants;

(P) information related to a chilled water program, as defined by Section 11.003, Utilities Code; or

(Q) information included in the separate books and records required to be kept by an entity described by Subdivision (2) as required by Section 552.915, Local Government Code.

(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. 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.

(b-1) Notwithstanding any contrary provision of Subsection (b), information or records of a municipally owned utility or municipality that operates a chilled water program are subject to disclosure under this chapter if the information or records are reasonably related to:

(1) a municipally owned utility's rate review process;

(2) the method a municipality or municipally owned utility uses to set rates for retail electricity service; or

(3) the method a municipality or municipally owned utility uses to set rates for a chilled water program described by Subsection (a-1)(3)(P).

(c) 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.

Section 552.133 excepts from disclosure a public power utility's information related to a competitive matter. The exception defines "competitive matter" as a utility-related matter that is related to the public power utility's competitive activity. In order to be "utility-related," the matter must relate to the six enumerated categories of information. Section 552.133 lists seventeen categories of information that may not be deemed competitive matters. In Open Records Decision No. 666 (2000), the attorney general determined that a municipality may disclose information

pertaining to a municipally-owned power utility to a municipally-appointed citizen advisory board without waiving its right thereafter to assert an exception under the Act in response to a future public request for information.[733]

RR. Section 552.1331: Certain Government-Operated Utility Customer Information

Section 552.1331 of the Government Code provides as follows:

(a) In this section:

(1) "Advanced metering system" means a utility metering system that collects data at regular intervals through the use of an automated wireless radio network.

(2) "Government-operated utility" has the meaning assigned by Section 182.951, Utilities Code.

(b) Except as provided provided by Subsection (c) of this section and Section 182.052, Utilities Code, information maintained by a government-operated utility is excepted from the requirements of Section 552.021 if it is information that:

(1) is collected as part of an advanced metering system for usage, services, and billing, including amounts billed or collected for utility usage; or

(2) reveals whether:

(A) an account is delinquent or eligible for disconnection; or

(B) services has been discontinued by the government-operated utility.

(c) A government-operated utility must disclose information described by Subsection (b)(1) to a customer of the utility or a representative of the customer if the information directly relates to utility services provided to the customer and is not confidential under law.

The 87th Legislature added section 552.1331, which makes confidential information maintained by a government-operated utility that is collected as part of an advanced metering system for usage, services, and billing. Information that reveals whether an account is delinquent or eligible for disconnection or reveals services have been discontinued by the government-operated utility are confidential. Subsection (c) and section 182.052 of the Utilities Code provide that certain information must be released to a utility customer or a customer's representative.

SS. Section 552.134: Confidentiality of Certain Information Relating to Inmate of Department of Criminal Justice

[733] Open Records Decision No. 666 at 4 (2000).

Section 552.134 of the Government Code provides as follows:

> **(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.**

This section should be read with two other provisions concerning the required public disclosure of Texas Department of Criminal Justice information, sections 552.029 and 508.313 of the Government Code. Section 508.313 of the Government Code generally makes confidential all information the Texas Department of Criminal Justice obtains and maintains about certain classes of inmates, including an inmate of the institutional division subject to release on parole, release to mandatory supervision, or executive clemency. Section 508.313 also applies to information about a releasee and a person directly identified in any proposed plan of release for an inmate. Section 508.313 requires the release of the information it covers to the governor, a member of the Board of Pardons and Paroles, the Criminal Justice Policy Council, or an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose.[734] Thus, both sections 552.134 and 508.313 make certain information confidential.

On the other hand, section 552.029 of the Government Code provides that certain specified information cannot be withheld under sections 552.134 and 508.313.

Section 552.029 of the Government Code reads as follows:

> **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:**

[734] Gov't Code § 508.313(c).

(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.

The Texas Department of Criminal Justice has the discretion to release information otherwise protected under section 552.134 to voter registrars for the purpose of maintaining accurate voter registration lists.[735]



TT. Section 552.1345: Confidentiality of Certain Information Relating to Civilly Committed Sexually Violent Predators

Section 552.1345 of the Government Code provides as follows:

(a) Except as provided by Subsection (b), information obtained or maintained by the Texas Civil Commitment Office is excepted from the requirements of Section 552.021 if it is information about a person who is civilly committed as a sexually violent predator under Chapter 841, Health and Safety Code.

(b) Subsection (a) does not apply to statistical or other aggregated information relating to persons civilly committed to one or more facilities operated by or under a contract with the office.

UU. Section 552.135: Confidentiality of Certain Information Held by School District

Section 552.135 of the Government Code provides as follows:

[735] Open Records Decision No. 667 at 4 (2000).

(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.

A school district that seeks to withhold information under this exception must clearly identify to the attorney general's office the specific civil, criminal, or regulatory law that is alleged to have been violated. The school district must also identify the individual who reported the alleged violation of the law. There are no cases or formal opinions interpreting this exception.

VV. Section 552.136: Confidentiality of Credit Card, Debit Card, Charge Card, and Access Device Numbers

Section 552.136 of the Government Code provides as follows:

(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.

(c) A governmental body may redact information that must be withheld under Subsection (b) 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.

(d) If, under Subsection (c), a governmental body redacts or withholds information without requesting a decision from the attorney general about whether the information may be redacted or withheld, the requestor is entitled to seek a decision from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this subsection, determining whether the redacted or withheld information was excepted from required disclosure to the requestor, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court.

(e) A governmental body that redacts or withholds information under Subsection (c) shall provide the following information to the requestor on a form prescribed by the attorney general:

(1) a description of the redacted or withheld information;

(2) a citation to this section; and

(3) instructions regarding how the requestor may seek a decision from the attorney general regarding whether the redacted or withheld information is excepted from required disclosure.

A governmental body that raises section 552.136 must demonstrate how the "access device number" it seeks to withhold is used alone or in combination to obtain money, goods, services, or another thing of value or initiate a transfer of funds. The attorney general has interpreted this exception to include bank account and routing numbers, full and partial credit card numbers and their expiration dates, and insurance policy numbers.[736] Because section 552.136 protects privacy interests, a

[736] Open Records Decision No. 684 at 9 (2009).

governmental body may not invoke this exception to withhold an access device from the person to whom the device belongs or that person's authorized representative.[737]

Pursuant to section 552.136(c), a governmental body may redact without the necessity of requesting an attorney general decision information that is subject to section 552.136. If a governmental body chooses to redact this information without requesting an attorney general decision, it must notify the requestor as prescribed by section 552.136(e) on the form created by the attorney general. The notice must include instructions regarding how the requestor may seek an attorney general's review of the governmental body's redactions. The form for notifying the requestor is located on the attorney general's website. The legislation enacting this provision authorized the attorney general to promulgate rules establishing procedures for review under section 552.136(d). These rules were promulgated in subchapter B of chapter 63 of title 1 of the Texas Administrative Code.[738] These rules are available on the attorney general's website and in Part Four of this *Handbook*.

WW. Section 552.137: Confidentiality of Certain E-mail Addresses

Section 552.137 of the Government Code provides as follows:

(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;

(4) provided to a governmental body on a letterhead, cover sheet, printed document, or other document made available to the public; or

(5) provided to a governmental body for the purpose of providing public comment on or receiving notices related to an application for a license as defined by

[737] Open Records Decision No. 684 at 12 (2009); *see* Gov't Code § 552.023.

[738] *See* 1 T.A.C. §§ 63.11-.16

Section 2001.003(2) of this code, or receiving orders or decisions from a governmental body.

(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.

In addition to the exceptions found in amended section 552.137(c), the attorney general has determined that section 552.137 does not protect a government employee's work e-mail address or an institutional e-mail address or website address.[739] Further, this section does not apply to the private e-mail addresses of government officials who use their private e-mail addresses to conduct official government business.[740] Because a person may consent to the disclosure of his or her e-mail address under the statute, the person has a right to his or her own e-mail address.[741] The attorney general issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold an e-mail address of a member of the public without the necessity of requesting an attorney general decision.[742]

XX. Section 552.138: Confidentiality of Family Violence Shelter Center, Victims of Trafficking Shelter Center, and Sexual Assault Program Information

Section 552.138 of the Government Code provides as follows:

(a) In this section:

(1) "Family violence shelter center" has the meaning assigned by Section 51.002, Human Resources Code.

(1-a) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a governmental body; and

(B) a person must obtain to practice or engage in a particular business, occupation, or profession.

(2) "Sexual assault program" has the meaning assigned by Section 420.003.

(3) "Victims of trafficking shelter center" means:

(A) a program that:

(i) is operated by a public or private nonprofit organization; and

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739 Open Records Decision No. 684 at 10 (2009).

740 *Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.).

741 Open Records Decision No. 684 at 10 (2009).

742 Open Records Decision No. 684 at 10 (2009).

(ii) provides comprehensive residential and nonresidential services to persons who are victims of trafficking under Section 20A.02, Penal Code; or

(B) a child-placing agency, as defined by Section 42.002, Human Resources Code, that provides services to persons who are victims of trafficking under Section 20A.02, Penal Code.

(b) Information maintained by a family violence shelter center, victims of trafficking 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, victims of trafficking shelter center, or sexual assault program, regardless of whether the employee or worker complies with Section 552.024;

(2) the name, home address, home telephone number, or numeric identifier of a current or former client of a family violence shelter center, victims of trafficking shelter center, or sexual assault program;

(3) the provision of services, including counseling and sheltering, to a current or former client of a family violence shelter center, victims of trafficking shelter center, or sexual assault program;

(4) the name, home address, or home telephone number of a private donor to a family violence shelter center, victims of trafficking shelter center, or sexual assault program; or

(5) 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, victims of trafficking shelter center, or sexual assault program, regardless of whether the board member complies with Section 552.024.

(b-1) Information that relates to the location or physical layout of a family violence shelter center or victims of trafficking shelter center is confidential.

(c) A governmental body may redact information maintained by a family violence shelter center, victims of trafficking shelter center, or sexual assault program that may be withheld under Subsection (b)(1) or (5) or that is confidential under Subsection (b-1) 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.

(d) If, under Subsection (c), a governmental body redacts or withholds information without requesting a decision from the attorney general about whether the information may be redacted or withheld, the requestor is entitled to seek a decision

from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this subsection, determining whether the redacted or withheld information was excepted from required disclosure to the requestor, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court.

(e) A governmental body that redacts or withholds information under Subsection (c) shall provide the following information to the requestor on a form prescribed by the attorney general:

(1) a description of the redacted or withheld information;

(2) a citation to this section; and

(3) instructions regarding how the requestor may seek a decision from the attorney general regarding whether the redacted or withheld information is excepted from required disclosure.



(f) Notwithstanding any other law, a governmental body may not sell or otherwise release the name, home or business address, place of employment, telephone number, electronic mail address, social security number, date of birth, driver's license or state identification number, passport number, emergency contact information, or numeric identifier of a person who:

(1) holds, previously held, or is an applicant for a license issued by the governmental body; and

(2) notifies the governmental body on a form provided by the office of the attorney general or the governmental body that the person:

(A) is a current or former client of a family violence shelter center, victims of trafficking shelter center, or sexual assault program or is a survivor of family violence, domestic violence, or sexual assault; and

(B) chooses to restrict public access to the information.

(g) A governmental body may redact information described by Subsection (f) from a response to a request for a list or directory of license holders, former license holders, or license applicants without the necessity of requesting a decision from the attorney general under Subchapter G.

Section 552.138 allows a governmental body to redact the following information maintained by a family violence shelter center, victims of trafficking shelter center, or sexual assault program without the necessity of requesting an attorney general decision: the home address, home telephone number, or social security number of an employee or volunteer worker. Section 552.138 also allows the redaction of the home address or telephone number of a member of the board of directors or the board of trustees without the necessity of requesting an attorney general decision. Section 552.138 allows a governmental body to redact information that relates to the location or physical layout of a family violence shelter center or a victims of trafficking shelter center without requesting an attorney general decision. If a governmental body chooses to redact this information without requesting an attorney general decision, it must notify the requestor as prescribed section 552.138(e) on the form created by the attorney general. The notice must include instructions regarding how the requestor may seek an attorney general's review of the governmental body's redactions. The form for notifying the requestor is published on the attorney general's website. The legislation enacting these provisions authorized the attorney general to promulgate rules establishing procedures for review under section 552.138(d). These rules are available on the attorney general's website and in Part Four of this *Handbook*.[743] Section 552.138 also makes confidential the name, home or business address, place of employment, telephone number, electronic mail address, social security number, date of birth, driver's license or state identification number, passport number, emergency contact information, or numeric identifier of applicants for and former or current holders of licenses issued by the governmental body who received the request. The governmental body may withhold this information from a request for a list or directory of these individuals without requesting a decision from this office.

YY. Section 552.139: Confidentiality of Government Information Related to Security or Infrastructure Issues for Computers

Section 552.139 of the Government Code provides as follows:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security, to restricted information under Section 2059.055, or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report;

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, 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 containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use;

[743] *See* 1 T.A.C. §§ 63.11-.16.

(3) a photocopy or other copy of an identification badge issued to an official or employee of a governmental body; and

(4) information directly arising from a governmental body's routine efforts to prevent, detect, investigate, or mitigate a computer security incident, including information contained in or derived from an information security log.

(b-1) Subsection (b)(4) does not affect the notification requirements related to a breach of system security as defined by Section 521.053, Business & Commerce Code.

(c) Notwithstanding the confidential nature of the information described in this section, the information may be disclosed to a bidder if the governmental body determines that providing the information is necessary for the bidder to provide an accurate bid. A disclosure under this subsection is not a voluntary disclosure for purposes of Section 552.007.

(d) A state agency shall redact from a contract posted on the agency's Internet website under Section 2261.253 information that is made confidential by, or excepted from required public disclosure under, this section. The redaction of information under this subsection does not exempt the information from the requirements of Section 552.021 or 552.221.

ZZ. Section 552.140: Confidentiality of Military Discharge Records

Section 552.140 of the Government Code provides as follows:

(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 Subchapters A and B, Chapter 752, Estates 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.

In Open Records Decision No. 684 (2009), the attorney general issued a previous determination to all governmental bodies authorizing them to withhold, a Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of the governmental body on or after September 1, 2003, under section 552.140 of the Government Code, without the necessity of requesting an attorney general decision.[744]

AAA. Section 552.141: Confidentiality of Information in Application for Marriage License

Section 552.141 of the Government Code provides as follows:

(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.

This exception applies only to an application for a marriage license that is filed on or after September 1, 2003.[745]

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[744] Open Records Decision No. 684 at 11 (2009).

[745] *See* Act of May 21, 2003, 78th Leg., R.S., ch. 804, § 2, 2003 Tex. Gen. Laws 2356.

BBB. Section 552.142: Confidentiality of Records Subject to Order of Nondisclosure

Section 552.142 of the Government Code provides as follows:

(a) Information is excepted from the requirements of Section 552.021 if an order of nondisclosure of criminal history record information with respect to the information has been issued under Subchapter E-1, Chapter 411.

(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 criminal proceeding 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.

CCC. Section 552.1425: Civil Penalty: Dissemination of Certain Criminal History Information

Section 552.1425 of the Government Code provides as follows:

(a) A private entity that compiles and disseminates for compensation criminal history record information may not compile or disseminate information with respect to which the entity has received notice that:

(1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or

(2) an order of nondisclosure of criminal history record information has been issued under Subchapter E-1, Chapter 411.

(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 $1,000 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.



The 88th Legislature passed House Bill 4504, amending section 552.1425 of the Government Code . The amendment to subsection 552.1425(a) becomes effective January 1, 2025, and provides in part:

(a) A private entity that compiles and disseminates for compensation criminal history record information may not compile or disseminate information with respect to which the entity has received notice that:

(1) an order of expunction has been issued under Subchapter E or F, Chapter 55A, Code of Criminal Procedure; or

DDD. Section 552.143: Confidentiality of Certain Investment Information

Section 552.143 of the Government Code provides as follows:

(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) Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 17.05(1)

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

Section 552.0225 makes public certain investment information. The attorney general has determined in an informal letter ruling that section 552.143 is subject to the public disclosure requirements of section 552.0225.[746]

EEE. Section 552.144: Working Papers and Electronic Communications of Administrative Law Judges at State Office of Administrative Hearings

Section 552.144 of the Government Code provides as follows:

> **The following working papers and electronic communications of an administrative law judge at the State Office of Administrative Hearings are excepted from the requirements of Section 552.021:**
>
> **(1) notes and electronic communications recording the observations, thoughts, questions, deliberations, 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.**

FFF. Section 552.145: Confidentiality of Texas No-Call List

Section 552.145 of the Government Code provides as follows:

> **The Texas no-call list created under Subchapter B, Chapter 304, Business & Commerce Code, and any information provided to or received from the administrator of the national do-not-call registry maintained by the United States government, as provided by Sections 304.051 and 304.56, Business & Commerce Code, are excepted from the requirements of Section 552.021.**

Section 552.145 applies specifically to the no-call list and information provided to or removed from the administrator of the do-not-call registry.[747]

GGG. Section 552.146: Certain Communications with Assistant or Employee of Legislative Budget Board

Section 552.146 of the Government Code provides as follows:

> **(a) All written or otherwise recorded communications, including conversations, correspondence, and electronic communications, between a member of the**

[746] Open Records Letter No. 2005-6095 (2005).

[747] *See, e.g.*, Open Records Letter Nos. 2009-10649 (2009), 2009-07316 (2009).

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.

HHH. Section 552.147: Social Security Numbers

Section 552.147 of the Government Code provides as follows:

(a) Except as provided by Subsection (a-1), the social security number of a living person is excepted from the requirements of Section 552.021, but is not confidential under this section and this section does not make the social security number of a living person confidential under another provision of this chapter or other law.

(a-1) The social security number of an employee of a school district in the custody of the district is confidential.

(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.

(c) Notwithstanding any other law, a county or district clerk may disclose in the ordinary course of business a social security number that is contained in information held by the clerk's office, and that disclosure is not official misconduct and does not subject the clerk to civil or criminal liability of any kind under the law of this state, including any claim for damages in a lawsuit or the criminal penalty imposed by Section 552.352.

(d) Unless another law requires a social security number to be maintained in a government document, on written request from an individual or the individual's representative the clerk shall redact within a reasonable amount of time all but the last four digits of the individual's social security number from information maintained in the clerk's official public records, including electronically stored information maintained by or under the control of the clerk. The individual or the individual's representative must identify, using a form provided by the clerk, the specific document or documents from which the partial social security number shall be redacted.

In an informal letter ruling, the attorney general has determined section 552.147(a-1) makes confidential the social security numbers of both current and former school district employees.[748]

III. Section 552.148: Confidentiality of Certain Personal Information Maintained by Municipality Pertaining to a Minor

Section 552.148 of the Government Code provides as follows:

(a) In this section, "minor" means a person younger than 18 years of age.

(b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from the requirements of Section 552.021:

(1) the name, age, home address, home telephone number, or social security number of the minor;

(2) a photograph of the minor; and

(3) the name of the minor's parent or legal guardian.

JJJ. Section 552.149: Confidentiality of Records of Comptroller or Appraisal District Received from Private Entity

Section 552.149 of the Government Code provides as follows:

(a) 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.

(b) Notwithstanding Subsection (a), the property owner or the owner's agent may, on request, obtain from the chief appraiser of the applicable appraisal district a copy of each item of information described by Section 41.461(a)(2), Tax Code, and a copy of each item of information that the chief appraiser took into consideration but does not plan to introduce at the hearing on the protest. In addition, the property owner or agent may, on request, obtain from the chief appraiser comparable sales data from a reasonable number of sales that is relevant to any matter to be determined by the appraisal review board at the hearing on the property owner's protest or by the arbitrator at the hearing on the property owner's appeal under Chapter 41A, Tax Code, of the appraisal review board's order determining the protest. Information obtained under this subsection:

(1) remains confidential in the possession of the property owner or agent; and

[748] Open Records Letter No. 2013-18655 at 6 (2013).

(2) may not be disclosed or used for any purpose except as evidence or argument at the hearing on:

(A) the protest; or

(B) the appeal under Chapter 41A, Tax Code.

(c) Notwithstanding Subsection (a) or Section 403.304, so as to assist a property owner or an appraisal district in a protest filed under Section 403.303, the property owner, the district, or an agent of the property owner or district may, on request, obtain from the comptroller any information, including confidential information, obtained by the comptroller in connection with the comptroller's finding that is being protested. Confidential information obtained by a property owner, an appraisal district, or an agent of the property owner or district under this subsection:

(1) remains confidential in the possession of the property owner, district, or agent; and

(2) may not be disclosed to a person who is not authorized to receive or inspect the information.

(d) Notwithstanding Subsection (a) or Section 403.304, so as to assist a school district in the preparation of a protest filed or to be filed under Section 403.303, the school district or an agent of the school district may, on request, obtain from the comptroller or the appraisal district any information, including confidential information, obtained by the comptroller or the appraisal district that relates to the appraisal of property involved in the comptroller's finding that is being protested. Confidential information obtained by a school district or an agent of the school district under this subsection:

(1) remains confidential in the possession of the school district or agent; and

(2) may not be disclosed to a person who is not authorized to receive or inspect the information.

In *Harris County Appraisal Dist. v. Integrity Title Co., LLC*, the First Court of Appeals addressed, in relevant part, whether otherwise public information provided to a governmental body by a private entity is excepted from disclosure under section 552.149.[749] The Harris County Appraisal District sought to withhold deed document numbers and filing dates received from a private entity under section 552.149; however, the private entity had obtained this information from the Harris County Clerk.[750] The court found section 552.149 protects privately-generated information sold to a governmental body that is not otherwise publicly available and concluded section 552.149 did

[749] *Harris County Appraisal Dist. v. Integrity Title Co., LLC*, 483 S.W.3d 62, 71 (Tex. App.—Houston [1st Dist.] 2015, pet. denied).

[750] *Harris County Appraisal Dist. v. Integrity Title Co., LLC*, 483 S.W.3d 62, 70 (Tex. App.—Houston [1st Dist.] 2015, pet. denied).

not except from disclosure the otherwise public information the private entity received from the Harris County Clerk.[751]

KKK. Section 552.150: Confidentiality of Information That Could Compromise Safety of Officer or Employee of Hospital District

Section 552.150 of the Government Code provides as follows:

> **(a) Information in the custody of a hospital district that relates to an employee or officer of the hospital district is excepted from the requirements of Section 552.021 if:**
>
> **(1) it is information that, if disclosed under the specific circumstances pertaining to the individual, could reasonably be expected to compromise the safety of the individual, such as information that describes or depicts the likeness of the individual, information stating the times that the individual arrives at or departs from work, a description of the individual's automobile, or the location where the individual works or parks; and**
>
> **(2) the employee or officer applies in writing to the hospital district's officer for public information to have the information withheld from public disclosure under this section and includes in the application:**
>
> **(A) a description of the information; and**
>
> **(B) the specific circumstances pertaining to the individual that demonstrate why disclosure of the information could reasonably be expected to compromise the safety of the individual.**
>
> **(b) On receiving a written request for information described in an application submitted under Subsection (a)(2), the officer for public information shall:**
>
> **(1) request a decision from the attorney general in accordance with Section 552.301 regarding withholding the information; and**
>
> **(2) include a copy of the application submitted under Subsection (a)(2) with the request for the decision.**
>
> **(c) Repealed by Acts 2011, 82nd Leg., ch. 609 (S.B. 470), § 1.**

In an informal letter ruling, the attorney general has determined Section 552.150 does not apply to former employees of a hospital district.[752]

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[751] *Harris County Appraisal Dist. v. Integrity Title Co., LLC*, 483 S.W.3d 62, 71 (Tex. App.—Houston [1st Dist.] 2015, pet. denied).

[752] Open Records Letter No. 2014-15073A at 8 (2014).

LLL. Section 552.151: Confidentiality of Information Regarding Select Agents

Section 552.151 of the Government Code provides as follows:

> **(a) The following information that pertains to a biological agent or toxin identified or listed as a select agent under federal law, including under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. No. 107-188) and regulations adopted under that Act, is excepted from the requirements of Section 552.021:**
>
> **(1) the specific location of a select agent within an approved facility;**
>
> **(2) personal identifying information of an individual whose name appears in documentation relating to the chain of custody of select agents, including a materials transfer agreement; and**
>
> **(3) the identity of an individual authorized to possess, use, or access a select agent.**
>
> **(b) This section does not except from disclosure the identity of the select agents present at a facility.**
>
> **(c) This section does not except from disclosure the identity of an individual faculty member or employee whose name appears or will appear on published research.**
>
> **(d) This section does not except from disclosure otherwise public information relating to contracts of a governmental body.**
>
> **(e) If a resident of another state is present in Texas and is authorized to possess, use, or access a select agent in conducting research or other work at a Texas facility, information relating to the identity of that individual is subject to disclosure under this chapter only to the extent the information would be subject to disclosure under the laws of the state of which the person is a resident.**

MMM. Section 552.152: Confidentiality of Information Concerning Public Employee or Officer Personal Safety

Section 552.152 of the Government Code provides as follows:

> **Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.**

In an informal letter ruling, the attorney general considered a request to the Texas Department of Public Safety for information pertaining to travel expenses incurred by the Governor's security

detail.[753] The Texas Department of Public Safety claimed section 552.152 of the Government Code excepted from disclosure travel vouchers and supporting documentation submitted by agents of the Executive Protection Bureau for reimbursement of travel expenses.[754] Relying on representations the Texas Department of Public Safety made about protecting the Governor and his family from physical harm, the attorney general concluded release of the travel vouchers and supporting documentation would subject the Governor and the agents to a substantial threat of physical harm, and therefore, the information must be withheld from disclosure under section 552.152.[755]

NNN. Section 552.153: Proprietary Records and Trade Secrets Involved in Certain Partnerships

Section 552.153 of the Government Code provides as follows:

(a) In this section, "affected jurisdiction," "comprehensive agreement," "contracting person," "interim agreement," "qualifying project," and "responsible governmental entity" have the meanings assigned those terms by Section 2267.001.

(b) Information in the custody of a responsible governmental entity that relates to a proposal for a qualifying project authorized under Chapter 2267 is excepted from the requirements of Section 552.021 if:

(1) the information consists of memoranda, staff evaluations, or other records prepared by the responsible governmental entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under Chapter 2267 for which:

(A) disclosure to the public before or after the execution of an interim or comprehensive agreement would adversely affect the financial interest or bargaining position of the responsible governmental entity; and

(B) the basis for the determination under Paragraph (A) is documented in writing by the responsible governmental entity; or

(2) the records are provided by a proposer to a responsible governmental entity or affected jurisdiction under Chapter 2267 and contain:

(A) trade secrets of the proposer;

(B) financial records of the proposer, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or other means; or

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[753] Open Records Letter No. 2014-02048 (2014).

[754] Open Records Letter No. 2014-02048 at 1 (2014).

[755] Open Records Letter No. 2014-02048 at 3-4 (2014).

(C) work product related to a competitive bid or proposal submitted by the proposer that, if made public before the execution of an interim or comprehensive agreement, would provide a competing proposer an unjust advantage or adversely affect the financial interest or bargaining position of the responsible governmental entity or the proposer.

(c) Except as specifically provided by Subsection (b), this section does not authorize the withholding of information concerning:

(1) the terms of any interim or comprehensive agreement, service contract, lease, partnership, or agreement of any kind entered into by the responsible governmental entity and the contracting person or the terms of any financing arrangement that involves the use of any public money; or

(2) the performance of any person developing or operating a qualifying project under Chapter 2267.

(d) In this section, "proposer" has the meaning assigned by Section 2267.001.

OOO. Section 552.154: Name of Applicant for Executive Director, Chief Investment Officer, or Chief Audit Executive of Teacher Retirement System of Texas

Section 552.154 of the Government Code provides as follows:

The name of an applicant for the position of executive director, chief investment officer, or chief audit executive of the Teacher Retirement System of Texas is excepted from the requirements of Section 552.021, except that the board of trustees of the Teacher Retirement System of Texas must give public notice of the names of three finalists being considered for one of those positions at least 21 days before the date of the meeting at which the final action or vote is to be taken on choosing a finalist for employment.

PPP. Section 552.155: Confidentiality of Certain Property Tax Appraisal Photographs

Section 552.155 of the Government Code provides as follows:

(a) Except as provided by Subsection (b) or (c), a photograph that is taken by the chief appraiser of an appraisal district or the chief appraiser's authorized representative for property tax appraisal purposes and that shows the interior of an improvement to property is confidential and excepted from the requirements of Section 552.021.

(b) A governmental body shall disclose a photograph described by Subsection (a) to a requestor who had an ownership interest in the improvement to property shown in the photograph on the date the photograph was taken.

(c) A photograph described by Subsection (a) may be used as evidence in and provided to the parties to a protest under Chapter 41, Tax Code, or an appeal of a determination by the appraisal review board under Chapter 42, Tax Code, if it is relevant to the determination of a matter protested or appealed. A photograph that is used as evidence:

(1) remains confidential in the possession of the person to whom it is disclosed; and

(2) may not be disclosed or used for any other purpose.

(c-1) Notwithstanding any other law, a photograph described by Subsection (a) may be used to ascertain the location of equipment used to produce or transmit oil and gas for purposes of taxation if that equipment is located on January 1 in the appraisal district that appraises property for the equipment for the preceding 365 consecutive days.

QQQ. Section 552.156: Confidentiality of Continuity of Operations Plan

Section 552.156 of the Government Code provides as follows:

(a) Except as otherwise provided by this section, the following information is excepted from disclosure under this chapter:

(1) a continuity of operations plan developed under Section 412.054, Labor Code; and

(2) all records written, produced, collected, assembled, or maintained as part of the development or review of a continuity of operations plan developed under Section 412.054, Labor Code.

(b) Forms, standards, and other instructional, informational, or planning materials adopted by the office to provide guidance or assistance to a state agency in developing a continuity of operations plan under Section 412.054, Labor Code, are public information subject to disclosure under this chapter.

(c) A governmental body may disclose or make available information that is confidential under this section to another governmental body or a federal agency.

(d) Disclosing information to another governmental body or a federal agency under this section does not waive or affect the confidentiality of that information.

RRR. Section 552.158: Confidentiality of Personal Information Regarding Applicant for Appointment by Governor

Section 552.158 of the Government Code provides as follows:

The following information obtained by the governor or senate in connection with an applicant for an appointment by the governor is excepted from the requirements of Section 552.021:

(1) the applicant's home address;

(2) the applicant's home telephone number; and

(3) the applicant's social security number.

SSS. Section 552.159: Confidentiality of Certain Work Schedules

Section 552.159 of the Government Code provides as follows:

A work schedule or a time sheet of a firefighter or volunteer firefighter or emergency medical services personnel as defined by Section 773.003, Health and Safety Code, is confidential and excepted from the requirements of Section 552.021.

TTT. Section 552.160: Confidentiality of Personal Information of Applicant for Disaster Recovery Funds

Section 552.160 of the Government Code provides as follows:

(a) In this section, "disaster" has the meaning assigned by Section 418.004.

(b) Except as provided by Subsection (c), the following information maintained by a governmental body is confidential:

(1) the name, social security number, house number, street name, and telephone number of an individual or household that applies for state or federal disaster recovery funds;

(2) the name, tax identification number, address, and telephone number of a business entity or an owner of a business entity that applies for state or federal disaster recovery funds; and

(3) any other information the disclosure of which would identify or tend to identify a person or household that applies for state or federal disaster recovery funds.

(c) The street name and census block group of and the amount of disaster recovery funds awarded to a person or household are not confidential after the date on which disaster recovery funds are awarded to the person or household.

"Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contanmination, blight, drought, infestation, explosion, riot, hostile military or

paramilitary action, extreme heat, cybersecurity event, other public calamity requiring emergency action, or energy emergency.[756]

UUU. Section 552.161: Certain Personal Information Obtained by Flood Control District

Section 552.161 of the Government Code provides as follows:

> **The following information obtained by a flood control district located in a county with a population of 3.3 million or more in connection with operations related to a declared disaster or flooding is excepted from the requirements of Section 552.021:**
>
> **(1) a person's name**
>
> **(2) a home address;**
>
> **(3) a business address;**
>
> **(4) a home telephone number;**
>
> **(5) a mobile telephone number;**
>
> **(6) an electronic mail address;**
>
> **(7) social media account information; and**
>
> **(8) a social security number.**

VVV. Section 552.162: Confidentiality of Certain Information Provided by Out-of-State Health Care Provider

Section 552.162 of the Government Code provides as follows:

> **Information obtained by a governmental body that was provided by an out-of-state health care provider in connection with a quality management, peer review, or best practices program that the out-of-state health care provider pays for is confidential and excepted from the requirements of Section 552.021.**



WWW. Section 552.163: Confidentiality of Certain Attorney General Settlement Negotiations

Section 552.163 of the Government Code provides as follows:

[756] Gov't Code § 418.004

(a) In this section, "attorney general settlement communication" means documentary materials or information collected, assembled, drafted, developed, used, received, or maintained by or on behalf of the attorney general with respect to an investigation or litigation conducted under Subchapter E, Chapter 17, Business & Commerce Code, and that reflects or is regarding negotiations made for the purpose of achieving a resolution of a matter without the need for continuing with litigation or trial.

(b) An attorney general settlement communication is privileged and not subject to disclosure under this chapter from the date the attorney general's investigation begins, as indicated in the attorney general's case management records, until the earlier of:

(1) the 90th day after the date settlement discussions are terminated; or

(2) the earliest of the date:

(A) the case is reported closed in the attorney general's case management records;

(B) the final judgment, assurance of voluntary compliance, or other settlement agreement is entered by the court, and the period for filing a notice of appeal has passed;

(C) the settlement documents are executed by all parties, if the documents are not filed in court;

(D) the order of dismissal or nonsuit disposing of all parties is entered by the court; or

(E) all appeals are finalized.

(c) For the purpose of this section, a settlement communication does not include a document attached to or referenced in a delivered settlement proposal that is subject to disclosure under this chapter.

PART THREE: TEXT OF THE TEXAS PUBLIC INFORMATION ACT

GOVERNMENT CODE 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 written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

(a-1) Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

(a-2) The definition of "public information" provided by Subsection (a) applies to and includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.

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

(1) paper;

(2) film;

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

(4) tape;

(5) Mylar; and

(6) any physical material on which information may be recorded, including linen, silk, and vellum.

(c) The general forms in which the media containing public information exist include a book, paper, letter, document, e-mail, Internet posting, text message, instant message, other electronic communication, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory.

(d) "Protected health information" as defined by Section 181.006, Health and Safety Code, is not public information and is not subject to disclosure under this chapter.

§ 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;

(xii) a confinement facility operated under a contract with any division of the Texas Department of Criminal Justice;

(xiii) a civil commitment housing facility owned, leased, or operated by a vendor under contract with the state as provided by Chapter 841, Health and Safety Code;

(xiv) an entity that receives public funds in the current or preceding state fiscal year to manage the daily operations or restoration of the Alamo, or an entity that oversees such an entity; and

(xv) 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:

(i) the judiciary; or

(ii) an economic development entity whose mission or purpose is to develop and promote the economic growth of a state agency or political subdivision with which the entity contracts if:

(a) the entity does not receive $1 million or more in public funds from a single state agency or political subdivision in the current or preceding state fiscal year; or

(b) the entity:

(1) either:

(A) does not have the authority to make decisions or recommendations on behalf of a state agency or political subdivision regarding tax abatements or tax incentives; or

(B) does not require an officer of the state agency or political subdivision to hold office as a member of the board of directors of the entity;

(2) does not use staff or office space of the state agency or political subdivision for no or nominal consideration, unless the space is available to the public;

(3) to a reasonable degree, tracks the entity's receipt and expenditure of public funds separately from the entity's receipt and expenditure of private funds; and

(4) provides at least quarterly public reports to the state agency or political subdivision regarding work performed on behalf of the state agency or political subdivision.

(1-a) "Contracting information" means the following information maintained by a governmental body or sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor:

(A) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body;

(B) solicitation or bid documents relating to a contract with a governmental body;

(C) communications sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor during the solicitation, evaluation, or negotiation of a contract;

(D) documents, including bid tabulations, showing the criteria by which a governmental body evaluates each vendor, contractor, potential vendor, or potential contractor responding to a solicitation and, if applicable, an explanation of why the vendor or contractor was selected; and

(E) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

(1-b) "Honorably retired" means, with respect to a position, an individual who:

(A) previously served but is not currently serving in the position;

(B) did not retire in lieu of any disciplinary action;

(C) was eligible to retire from the position or was ineligible to retire only as a result of an injury received in the course o the individual's employment in the position; and

(D) is eligible to receive a pension or annuity for service in the position or is ineligible to receive a pension or annuity only because the entity that employed the individual does not offer a pension or annuity to its employees.

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

(2-a) "Official business" means any matter over which a governmental body has any authority, administrative duties, or advisory duties.

(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.

(7) "Temporary custodian" means an officer or employee of a governmental body who, in the transaction of official business, creates or receives public information that the officer or employee has not provided to the officer for public information of the governmental body or the officer's agent. The term includes a former officer or employee of a governmental body who created or received public information in the officer's or employee's official capacity that has not been provided to the officer for public information of the governmental body or the officer's agent.

§ 552.0031. Business Days

(a) Except as provided by this section, in this chapter "business day" means a day other than:

(1) a Saturday or Sunday;

(2) a national holiday under Section 662.003(a); or

(3) a state holiday under Section 662.003(b).

(b) The fact that an employee works from an alternative work site does not affect whether a day is considered a business day under this chapter.

(c) An optional holiday under Section 662.003(c) is not a business day of a governmental body if the officer for public information of the governmental body observes the optional holiday.

(d) A holiday established by the governing body of an institution of higher education under Section 662.011(a) is not a business day of the institution of higher education.

(e) The Friday before or Monday after a holiday described by Subsection (a)(2) or (3) is not a business day of a governmental body if the holiday occurs on a Saturday or Sunday and the governmental body observes the holiday on that Friday or Monday.

(f) Subject to the requirements of this subsection, a governmental body may designate a day on which the governmental body's administrative offices are closed or operating with minimum staffing as a nonbusiness day. The designation of a nonbusiness day for an independent school district must be made by the board of trustees. The designation of a nonbusiness day for a governmental body other than an independent school district must be made by the executive director or other chief administrative officer. A governmental body may designate not more than 10 nonbusiness days under this subsection each calendar year.

§ 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:

(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; or

(2) if the property owners' association:

(A) provides maintenance, preservation, and architectural control 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.

§ 552.0038. Public Retirement Systems Subject to Law

(a) In this section, "governing body of a public retirement system" and "public retirement system" have the meanings assigned those terms by Section 802.001.

(b) Except as provided by Subsections (c) through (i), the governing body of a public retirement system is subject to this chapter in the same manner as a governmental body.

(c) Records of individual members, annuitants, retirees, beneficiaries, alternate payees, program participants, or persons eligible for benefits from a retirement system under a retirement plan or program administered by the retirement system that are in the custody of the system or in the custody of an administering firm, a carrier, or another governmental agency, including the comptroller, acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure. The retirement system, administering firm, carrier, or governmental agency is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general because the records are exempt from the provisions of this chapter, except as otherwise provided by this section.

(d) Records may be released to a member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits from the retirement system or to an authorized attorney, family member, or representative acting on behalf of the member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits. The retirement system may release the records to:

(1) an administering firm, carrier, or agent or attorney acting on behalf of the retirement system;

(2) another governmental entity having a legitimate need for the information to perform the purposes of the retirement system; or

(3) a party in response to a subpoena issued under applicable law.

(e) A record released or received by the retirement system under this section may be transmitted electronically, including through the use of an electronic signature or certification in a form

acceptable to the retirement system. An unintentional disclosure to, or unauthorized access by, a third party related to the transmission or receipt of information under this section is not a violation by the retirement system of any law, including a law or rule relating to the protection of confidential information.

(f) The records of an individual member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits from the retirement system remain confidential after release to a person as authorized by this section. The records may become part of the public record of an administrative or judicial proceeding related to a contested case, and the member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits waives the confidentiality of the records, including medical records, unless the records are closed to public access by a protective order issued under applicable law.

(g) The retirement system may require a person to provide the person's social security number as the system considers necessary to ensure the proper administration of all services, benefits, plans, and programs under the retirement system's administration, oversight, or participation or as otherwise required by state or federal law.

(h) The retirement system has sole discretion in determining whether a record is subject to this section. For purposes of this section, a record includes any identifying information about a person, living or deceased, who is or was a member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits from the retirement system under any retirement plan or program administered by the retirement system.

(i) To the extent of a conflict between this section and any other law with respect to the confidential information held by a public retirement system or other entity described by Subsection (c) concerning an individual member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits from the retirement system, the prevailing provision is the provision that provides the greater substantive and procedural protection for the privacy of information concerning that individual member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits.

§ 552.004. Preservation of Information

(a) 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 Subsection (b) and to any applicable rule or law governing the destruction and other disposition of state and local government records or public information.

(b) A current or former officer or employee of a governmental body who maintains public information on a privately owned device shall:

(1) forward or transfer the public information to the governmental body or a governmental body server to be preserved as provided by Subsection (a); or

(2) preserve the public information in its original form in a backup or archive and on the privately owned device for the time described under Subsection (a).

(c) The provisions of Chapter 441 of this code and Title 6, Local Government Code, governing the preservation, destruction, or other disposition of records or public information apply to records and public information held by a temporary custodian.

§ 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.

(b-1) A member, committee, or agency of the legislature required by a governmental body to sign a confidentiality agreement under Subsection (b) may seek a decision as provided by Subsection (b-2) about whether the information covered by the confidentiality agreement is confidential under law. A confidentiality agreement signed under Subsection (b) is void to the extent that the agreement covers information that is finally determined under Subsection (b-2) to not be confidential under law.

(b-2) The member, committee, or agency of the legislature may seek a decision from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this subsection, determining whether the information covered by the confidentiality agreement is confidential under law, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court. A person may appeal a decision of the attorney general under this subsection to a Travis County district court if the person claims a proprietary interest in the information affected by the decision or a privacy interest in the information that a confidentiality law or judicial decision is designed to protect.

(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 Attorney General; 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 comptroller's office;

(B) the Department of Public Safety;

(C) the Department of Information Resources; and

(D) the Texas State Library and Archives 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.

(b-1) The attorney general may require each public official of a governmental body to complete the course of training if the attorney general determines that the governmental body has failed to comply with a requirement of this chapter. The attorney general must notify each public official in writing of the attorney general's determination and the requirement to complete the training. A public official who receives notice from the attorney general under this subsection must complete the training not later than the 60th day after the date the official receives the notice.

(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.

§ 552.0215. Right of Access to Certain Information After 75 Years

(a) Except as provided by Section 552.147, the confidentiality provisions of this chapter, or other law, information that is not confidential but is excepted from required disclosure under Subchapter C is public information and is available to the public on or after the 75th anniversary of the date the information was originally created or received by the governmental body.

(b) This section does not limit the authority of a governmental body to establish retention periods for records under applicable law.

§ 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 unless made confidential under this chapter or 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 confidential under this chapter or other law.

§ 552.0221. Employee or Trustee of Public Employee Pension System

(a) Information concerning the employment of an employee of a public employee pension system is public information under the terms of this chapter, including 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, and is not removed from the application of this chapter, made confidential, or otherwise excepted from the requirements of Section 552.021 by any statute intended to protect the records of persons as members, beneficiaries, or retirees of a public employee pension system in their capacity as such.

(b) Information concerning the service of a trustee of a public employee pension system is public information under the terms of this chapter, 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, and is not removed from the application of this chapter, made confidential, or otherwise excepted from the requirements of Section 552.021 by any statute intended to protect the records of persons as members, beneficiaries, or retirees of a public employee pension system in their capacity as such.

(c) Information subject to Subsections (a) and (b) must be released only to the extent the information is not excepted from required disclosure under this subchapter or Subchapter C.

(d) For purposes of this section, "benefits" does not include pension benefits provided to an individual by a pension system under the statutory plan covering the individual as a member, beneficiary, or retiree of the pension system.

§ 552.0222. Disclosure of Contracting Information

(a) Contracting information is public and must be released unless excepted from disclosure under this chapter.

(b) The exceptions to disclosure provided by Sections 552.110 and 552.1101 do not apply to the following types of contracting information:

(1) a contract described by Section 2261.253(a), excluding any information that was properly redacted under Subsection (e) of that section;

(2) a contract described by Section 322.020(c), excluding any information that was properly redacted under Subsection (d) of that section;

(3) the following contract or offer terms or their functional equivalent:

(A) any term describing the overall or total price the governmental body will or could potentially pay, including overall or total value, maximum liability, and final price;

(B) a description of the items or services to be delivered with the total price for each if a total price is identified for the item or service in the contract;

(C) the delivery and service deadlines;

(D) the remedies for breach of contract;

(E) the identity of all parties to the contract;

(F) the identity of all subcontractors in a contract;

(G) the affiliate overall or total pricing for a vendor, contractor potential vendor, or potential contractor;

(H) the execution dates;

(I) the effective dates; and

(J) the contract duration terms, including any extension options; or

(4) information indicating whether a vendor, contractor, potential vendor, or potential contractor performed its duties under a contract, including information regarding:

(A) a breach of contract;

(B) a contract variance or exception;

(C) a remedial action;

(D) an amendment to a contract;

(E) any assessed or paid liquidated damages;

(F) a key measures report;

(G) a progress report; and

(H) a final payment checklist.

(c) Notwithstanding Subsection (b), information described by Subdivisions (3)(A) and (B) of that subsection that relates to a retail electricity contract may not be disclosed until the delivery start date.

§ 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) Except as provided by Subsection (a-1), 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, emergency contact information, or social security number, or that reveals whether the person has family members.

(a-1) A school district may not require an employee or former employee of the district to choose whether to allow public access to the employee's or former employee's social security number.

(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:

(1) the information is protected under Subchapter C; and

(2) the governmental body may redact the information 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.

(c-1) If, under Subsection (c)(2), a governmental body redacts or withholds information without requesting a decision from the attorney general about whether the information may be redacted or withheld, the requestor is entitled to seek a decision from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this subsection, determining whether the redacted or withheld information was excepted from required disclosure to the requestor, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and

provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court.

(c-2) A governmental body that redacts or withholds information under Subsection (c)(2) shall provide the following information to the requestor on a form prescribed by the attorney general:

(1) a description of the redacted or withheld information;

(2) a citation to this section; and

(3) instructions regarding how the requestor may seek a decision from the attorney general regarding whether the redacted or withheld information is excepted from required disclosure.

(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: Confidentiality of Certain 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.

(d) The exception to disclosure provided by this section does not apply to information requested under this chapter if:

(1) the information relates to a general, primary, or special election, as those terms are defined by Section 1.005, Election Code;
(2) the information is in the possession of a governmental body that administers elections described by Subdivision (1); and
(3) the governmental body described by Subdivision (2) is not a governmental body described by Section 552.003(1)(A)(i).

§ 552.104. Exception: Information Related to Competition or Bidding

(a) Information is excepted from the requirements of Section 552.021 if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.

(b) Except as provided by Subsection (c), 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.

(c) Subsection (b) does not apply to information described by Section 552.022(a) relating to the receipt or expenditure of public or other funds by a governmental body for a parade, concert, or other entertainment event paid for in whole or part with public funds. A person, including a governmental body, may not include a provision in a contract related to an event described by this subsection that prohibits or would otherwise prevent the disclosure of information described by this subsection. A contract provision that violates this subsection is void.

§ 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. A governmental body shall promptly release basic information responsive to a request made under this chapter unless the governmental body seeks to withhold the information as provided by another provision of this chapter, and regardless of whether the governmental body requests an attorney general decision under Subchapter G regarding other information subject to the request.

(d) Notwithstanding other law, a prosecutor may permit a person to view the following evidence of a crime that resulted in the death of a person and that occurred in the prosecutor's jurisdiction:

(1) a medical examiner's report, if the person viewing the report is a family member of the person who is the subject of the report and the person who is the subject of the report was a victim of the crime; and

(2) video evidence of the crime, if the person viewing the video is a victim of the crime or a family member of a victim of the crime.

(d) The exception to disclosure provided by Subsection (a)(2) does not apply to information, records, or notations if:

(1) a person who is described by or depicted in the information, record, or notation, other than a peace officer, is deceased or incapacitated; or

(2) each person who is described by or depicted in the information, record, or notation, other than a person who is deceased or incapacitated, consents to the release of the information, record, or notation.

(e) A person permitted to view a medical examiner's report or video evidence under Subsection (d) may not duplicate, record, capture, or otherwise memorialize the information. A prosecutor may require a person to sign a confidentiality agreement before permitting the person to view the information.

(f) A permitted viewing of a medical examiner's report or video evidence under Subsection (d) is not a voluntary disclosure of information for purposes of Section 552.007(b). A governmental body, by providing information under Subsection (d) 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.

(g) Subsection (d) does not affect:

(1) the right of a person to obtain a medical examiner's report or video evidence of a crime from a governmental body under other law;

(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.

(h) In this section:

(1) "Family member" means a person related to a victim of a crime within the first degree of consanguinity or affinity.

(2) "Medical examiner's report" means a report and the contents of such a report created by a medical examiner under Article 49.25, Code of Criminal Procedure, including an autopsy report and toxicology report. The term does not include a photograph or medical image contained in a report.

(3) "Victim" means an individual who suffered personal injury or death as a result of criminal conduct.

§ 552.1081. Exception: Confidentiality of Certain Information Regarding Execution of Convict

Information is excepted from the requirements of Section 552.021 if it contains identifying information under Article 43.14, Code of Criminal Procedure, including that of:

(1) any person who participates in an execution procedure, including a person who uses, supplies, or administers a substance during the execution; and

(2) any person or entity that manufactures, transports, tests, procures, compounds, prescribes, dispenses, or provides a substance or supplies used in an execution.

§ 552.1085. Confidentiality of Sensitive Crime Scene Image

(a) In this section:

(1) "Deceased person's next of kin" means:

(A) the surviving spouse of the deceased person;

(B) if there is no surviving spouse of the deceased, an adult child of the deceased person; or

(C) if there is no surviving spouse or adult child of the deceased, a parent of the deceased person.

(2) "Defendant" means a person being prosecuted for the death of the deceased person or a person convicted of an offense in relation to that death and appealing that conviction.

(3) "Expressive work" means:

(A) a fictional or nonfictional entertainment, dramatic, literary, or musical work that is a play, book, article, musical composition, audiovisual work, radio or television program, work of art, or work of political, educational, or newsworthy value;

(B) a work the primary function of which is the delivery of news, information, current events, or other matters of public interest or concern; or

(C) an advertisement or commercial announcement of a work described by Paragraph (A) or (B).

(4) "Local governmental entity" means a county, municipality, school district, charter school, junior college district, or other political subdivision of this state.

(5) "Public or private institution of higher education" means:

(A) an institution of higher education, as defined by Section 61.003, Education Code; or

(B) a private or independent institution of higher education, as defined by Section 61.003, Education Code.

(6) "Sensitive crime scene image" means a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person's genitalia.

(7) "State agency" means a department, commission, board, office, or other agency that is a part of state government and that is created by the constitution or a statute of this state.

The term includes an institution of higher education as defined by Section 61.003, Education Code.

(b) For purposes of this section, an Internet website, the primary function of which is not the delivery of news, information, current events, or other matters of public interest or concern, is not an expressive work.

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

(d) Notwithstanding Subsection (c) and subject to Subsection (e), the following persons may view or copy information that constitutes a sensitive crime scene image from a governmental body:

(1) the deceased person's next of kin;

(2) a person authorized in writing by the deceased person's next of kin;

(3) a defendant or the defendant's attorney;

(4) a person who establishes to the governmental body an interest in a sensitive crime scene image that is based on, connected with, or in support of the creation, in any medium, of an expressive work;

(5) a person performing bona fide research sponsored by a public or private institution of higher education with approval of a supervisor of the research or a supervising faculty member;

(6) a state agency;

(7) an agency of the federal government; or

(8) a local governmental entity.

(e) This section does not prohibit a governmental body from asserting an exception to disclosure of a sensitive crime scene image to a person identified in Subsection (d) on the grounds that the image is excepted from the requirements of Section 552.021 under another provision of this chapter or another law.

(f) Not later than the 10th business day after the date a governmental body receives a request for a sensitive crime scene image from a person described by Subsection (d)(4) or (5), the governmental body shall notify the deceased person's next of kin of the request in writing. The notice must be sent to the next of kin's last known address.

(g) A governmental body that receives a request for information that constitutes a sensitive crime scene image shall allow a person described in Subsection (d) to view or copy the image not

later than the 10th business day after the date the governmental body receives the request unless the governmental body files a request for an attorney general decision under Subchapter G regarding whether an exception to public disclosure applies to the information.

§ 552.109. Exception: Confidentiality of 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: Confidentiality of Trade Secrets; Confidentiality of Certain Commercial or Financial Information

(a) In this section, "trade secret" means all forms and types of information, including business, scientific, technical, economic, or engineering information, and any formula, design, prototype, pattern, plan, compilation, program device, program, code, device, method, technique, process, procedure, financial data, or list of actual or potential customers or suppliers, whether tangible or intangible and whether or however stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

(1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and

(2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

(b) Except as provided by Section 552.0222, information is excepted from the requirements of Section 552.021 if it is demonstrated based on specific factual evidence that the information is a trade secret.

(c) Except as provided by Section 552.0222, 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.

§ 552.1101. Exception: Confidentiality of Proprietary Information

(a) Except as provided by Section 552.0222, information submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

(b) The exception to disclosure provided by Subsection (a) does not apply to:

(1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; or

(2) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

(c) The exception to disclosure provided by Subsection (a) may be asserted only by a vendor, contractor, potential vendor, or potential contractor in the manner described by Section 552.305(b) for the purpose of protecting the interests of the vendor, contractor, potential vendor, or potential contractor. A governmental body shall decline to release information as provided by Section 552.305(a) to the extent necessary to allow a vendor, contractor, potential vendor, or potential contractor to assert the exception to disclosure provided by Subsection (a).

§ 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 (Title 12, Government Code).

(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: Confidentiality of 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) "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 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) 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 an 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) electric logs filed in the General Land Office before September 1, 1985; and

(2) confidential material, except 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: Confidentiality of Student Records

(a) In this section, "student record" means:

(1) information that constitutes education records as that term is defined by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g(a)(4)); or

(2) information in a record of an applicant for admission to an educational institution, including a transfer applicant.

(b) Information is confidential and 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. This subsection does not prohibit the disclosure or provision of information included in an education record if the disclosure or provision is authorized by 20 U.S.C. Section 1232g or other federal law.

(c) A record covered by Subsection (b) 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.

(d) Except as provided by Subsection (e), an educational institution may redact information covered under Subsection (b) from information disclosed under Section 552.021 without requesting a decision from the attorney general.

(e) If an applicant for admission to an educational institution described by Subsection (b) or a parent or legal guardian of a minor applicant to an educational institution described by Subsection (b) requests information in the record of the applicant, the educational institution shall disclose any information that:

(1) is related to the applicant's application for admission; and

(2) was provided to the educational institution by the applicant.

§ 552.115. Exception: Confidentiality of Birth and Death Records

(a) A birth or death record maintained by the vital statistics unit of the Department of State Health Services 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 vital statistics unit 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 vital statistics unit or local registration official, except that if the decedent is unidentified, the death

record is public information and available to the public on and after the first anniversary of the date of death;

(3) a general birth index or a general death index established or maintained by the vital statistics unit 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 vital statistics unit 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, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, 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, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, 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: Confidentiality of Certain Addresses, Telephone Numbers, Social Security Numbers, and Personal Family Information

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, emergency contact information, 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 current or honorably retired peace officer as defined by Article 2.12, Code of Criminal Procedure, or a current or honorably retired 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;

(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;

(6) an officer or employee of a community supervision and corrections department established under Chapter 76 who performs a duty described by Section 76.004(b), regardless of whether the officer or employee complies with Section 552.024 or 552.1175;

(7) a current or former employee of the office of the attorney general who is or was assigned to a division of that office the duties of which involve law enforcement or are performed under Chapter 231, Family Code, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

(8) a current or former employee of the Texas Juvenile Justice Department or of the predecessors in function of the department, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

(9) a current or former juvenile probation or supervision officer certified by the Texas Juvenile Justice Department, or the predecessors in function of the department, under Title 12, Human Resources Code, regardless of whether the current or former officer complies with Section 552.024 or 552.1175;

(10) a current or former employee of a juvenile justice program or facility, as those terms are defined by Section 261.405, Family Code, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

(11) a current or former member of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, an auxiliary service of one of those branches of the armed forces, or the Texas military forces, as that term is defined by Section 437.001;

(12) a current or former district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protectice services matters, regardless of whether the current or former attorney complies with Section 552.024 or 552.1175;

(13) a current or former employee of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

(14) a current or former employee of the Texas Civil Commitment Office or of the predecessor in function of the office or a division of the office, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

(15) a current or former federal judge or state judge, as those terms are defined by Section 1.005, Election Code, a federal bankruptcy judge, a marshal of the United States Marshals Service, a United States attorney, or a family member of a current or former federal judge, including a federal bankruptcy judge, a marshal of the United States Marshals Service, a United States attorney, or a state judge;

(16 a current or former child protective services caseworker, adult protective services caseworker, or investigator for the Department of Family and Protectice Services, regardless of whether the caseworker or investigator complies with Section 552.024 or 552.1175, or a current or former employee of a department contractor performing child protective services caseworker, adult protective services caseworker, or investigator functions for the contractor on behalf of the department;

(17) an elected public officer, regardless of whether the officer complies with Section 552.024 or 552.1175;

(18) a current or former United States attorney, assistant United States attorney, federal public defender, deputy federal public defender, or assistant federal public defender and the spouse or child of the current or former attorney or public defender, regardless of whether the person complies with Section 552.024 or 552.1175; or

(19) a firefighter or volunteer firefighter or emergency medical services personnel as defined by Section 773.003, Health and Safety Code, regardless of whether the firefighter or volunteer firefighter or emergency medical services personnel comply 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.

(c) In this section, "family member" has the meaning assigned by Section 31.006, Finance Code.

<Amendment to section 552.117(a) effective January 1, 2025>

(2) a current or honorably retired peace officer as defined by Article 2A.001, Code of Criminal Procedure, or a current or honorably retired security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable; [or]

. . .

(4) a peace officer as defined by Article 2A.001, 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[.]

§ 552.1175. Exception: Confidentiality of Certain Personal Identifying Information of Peace Officers and Other Officials Performing Sensitive Governmental Functions

(a) This section applies only to:

(1) current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure, or special investigators as described by Article 2.122, Code of Criminal Procedure;

(2) current or honorably retired 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;

(5) a current or former district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;

(5-a) a current or former employee of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;

(6) officers and employees of a community supervision and corrections department established under Chapter 76 who perform a duty described by Section 76.004(b);

(7) criminal investigators of the United States as described by Article 2.122(a), Code of Criminal Procedure;

(8) current or honorably retired police officers and inspectors of the United States Federal Protective Service;

(9) current and former employees of the office of the attorney general who are or were assigned to a division of that office the duties of which involve law enforcement or are performed under Chapter 231, Family Code;

(10) current or former juvenile probation and detention officers certified by the Texas Juvenile Justice Department, or the predecessors in function of the department, under Title 12, Human Resources Code;

(11) current or former employees of a juvenile justice program or facility, as those terms are defined by Section 261.405, Family Code;

(12) current or former employees of the Texas Juvenile Justice Department or the predecessors in function of the department;

(13) federal judges and state judges as defined by Section 1.005, Election Code;

(14) current or former employees of the Texas Civil Commitment Office or of the predecessor in function of the office or a division of the office;

(15) a current or former member of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, an auxiliary service of one of those branches of the armed forces, or the Texas military forces, as that term is defined by Section 437.001;

(16) a current or former child protective services caseworker, adult protective services caseworker, or investigator for the Department of Family and Protective Services or a current or former employee of a department contractor performing child protective services caseworker, adult protective services caseworker, or investigator functions for the contractor on behalf of the department;

(17) an elected public officer;

(18) a firefighter or volunteer firefighter or emergency medical services personnel as defined by Section 773.003, Health and Safety Code; and

(19) a current or former United States attorney, assistant United States attorney, federal public defender, deputy federal public defender, or assistant federal public defender.

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, 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.

(f) A governmental body may redact information that must be withheld under Subsection (b) 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.

(g) If, under Subsection (f), a governmental body redacts or withholds information without requesting a decision from the attorney general about whether the information may be redacted or withheld, the requestor is entitled to seek a decision from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this subsection, determining whether the redacted or withheld information was excepted from required disclosure to the requestor, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court.

(h) A governmental body that redacts or withholds information under Subsection (f) shall provide the following information to the requestor on a form prescribed by the attorney general:

(1) a description of the redacted or withheld information;

(2) a citation to this section; and

(3) instructions regarding how the requestor may seek a decision from the attorney general regarding whether the redacted or withheld information is excepted from required disclosure.

<Amendment to section 552.1175(a) effective January 1, 2025>

(1) current or honorably retired peace officers as defined by Article 2A.001, Code of Criminal Procedure, or special investigators as described by Article 2A.002, Code of Criminal Procedure; [and]

. . .

(7) criminal investigators of the United States as described by Article 2A.002(a), Code of Criminal Procedure[.]

§ 552.1176. Confidentiality of Certain Information Maintained by State Bar

(a) Information maintained under Chapter 81 is confidential and may not be disclosed to the public under this chapter if the information:

(1) is a license application; or

(2) relates to the home address, home telephone number, electronic mail address, social security number, date of birth, driver's license number, state identification number, passport number, emergency contact information, or payment information of an individual licensed to practice law in this state.

(b) Repealed by Acts 2023, 88th Leg., ch. 73 (S.B. 510), § 4.

(c) All documents filed with a county clerk and all documents filed with a district clerk are exempt from this section.

(d) Subsection (a) does not make confidential or except from required public disclosure the name, state bar identification number, membership class, or eligibility to practice law of an applicant for a license, a license holder, or an individual who previously held a license.

(e) To the extent of any conflict, this section prevails over another law that authorizes or requires the release of information maintained by the State Bar of Texas.

§ 552.11765. Confidentiality of Certain Information Maintained by State Licensing Authority

(a) In this section, "license" means a license, certificate, registration, permit, or other authorization that:

(1) is issued by a governmental body described by Section 552.003(1)(A)(i); and

(2) an individual must obtain to practice or engage in a particular business, occupation, or profession.

(b) Except as provided by Subsections (c) and (d), information maintained by a governmental body described by Section 552.003(1)(A)(i) is confidential and excepted from the requirements of Section 552.021 if the information:

(1) is a license application; or

(2) Relates to the home address, home telephone number, electronic mail address, social security number, date of birth, driver's license number, state identification number, passport number, emergency contact information, or payment information of:

(A) an applicant for a license issued by the governmental body;

(B) an individual who holds a license issued by the governmental body; or

(C) an individual who previously held a license issued by a governmental body.

(c) Subsection (b) does not make confidential or except from required public disclosure the name, license number, or license status of an applicant for a license, a license holder, or an individual who previously held a license.

(d) For a license issued under Chapter 42, 43, 103, or 161, Human Resources Code, or Chapter 142, 242, 247, 248A, 250, or 252, Health and Safety Code, Subsection (b) does not prohibit the disclosure of:

(1) the last four digits of the social security number of a license holder in connection with a verification of employability or an employee misconduct registry search provided by the Health and Human Services Commission;

(2) a home address where activity regulated by the licensing authority occurs; or

(3) an e-mail address or phone number associated with activity regulated by the licensing authority.

(e) To the extent of any conflict, this section prevails over another law that authorizes or requires the release of information maintained by a governmental body.

§ 552.1177. Exception: Confidentiality of Certain Information Related to Humane Disposition of Animal

(a) Except as provided by Subsection (b), information is confidential and excepted from the requirements of Section 552.021 if the information relates to the name, address, telephone number, e-mail address, driver's license number, social security number, or other personally identifying information of a person who obtains ownership or control of an animal from a municipality or county making a humane disposition of the animal under a municipal ordinance or an order of the commissioners court.

(b) A governmental body may disclose information made confidential by Subsection (a) to a governmental entity, or to a person who under a contract with a governmental entity provides animal control services, animal registration services, or related services to the governmental entity, for purposes related to the protection of public health and safety.

(c) A governmental entity or other person that receives information under Subsection (b):

(1) must maintain the confidentiality of the information;

(2) may not disclose the information under this chapter; and

(3) may not use the information for a purpose that does not directly relate to the protection of public health and safety.

(d) A governmental body, by providing public information under Subsection (b) 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.

§ 552.118. Exception: Confidentiality of Official Prescription Program Information

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 Texas State Board of Pharmacy under Section 481.0755, Health and Safety Code, or an electronic prescription record filed with the Texas State Board of Pharmacy under Section 481.075, Health and Safety Code; or

(2) other information collected under Section 481.075 or 481.0755 of that code.

§ 552.119. Exception: Confidentiality of Certain Photographs of Peace Officers

(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.

<Amendment to section 552.119(a) effective January 1, 2025>

(a) A photograph that depicts a peace officer as defined by Article 2A.001, 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.

§ 552.120. Exception: Confidentiality of 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: Confidentiality of 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: Confidentiality of 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, and other information that would tend to identify the applicant, 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: Confidentiality of 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 information 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: Confidentiality of 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 Chapter 1101, Health and Safety Code, are excepted from the requirements of Section 552.021.

§ 552.126. Exception: Confidentiality of 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: Confidentiality of 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: Confidentiality of 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 historically 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. Confidentiality of Certain 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: Confidentiality of Certain 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 or another state or country;

(2) a motor vehicle title or registration issued by an agency of this state or another state or country; or

(3) a personal identification document issued by an agency of this state or another state or country 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.

(c) Subject to Chapter 730, Transportation Code, a governmental body may redact information described by Subsection (a) 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.

(d) If, under Subsection (c), a governmental body redacts or withholds information without requesting a decision from the attorney general about whether the information may be redacted or withheld, the requestor is entitled to seek a decision from the attorney general about the

matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this subsection, determining whether the redacted or withheld information was excepted from required disclosure to the requestor, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court.

(e) A governmental body that redacts or withholds information under Subsection (c) shall provide the following information to the requestor on a form prescribed by the attorney general:

(1) a description of the redacted or withheld information;

(2) a citation to this section; and

(3) instructions regarding how the requestor may seek a decision from the attorney general regarding whether the redacted or withheld information is excepted from required disclosure.

§ 552.131. Exception: Confidentiality of Certain 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.

(b-1) An economic development entity whose mission or purpose is to develop and promote the economic growth of a state agency or political subdivision with which the entity contracts may assert the exceptions under this section in the manner described by Section 552.305(b) with respect to information that is in the economic development entity's custody or control.

(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.

§ 552.1315. Exception: Confidentiality of Certain Crime Victim Records

(a) Information is confidential and excepted from the requirements of Section 552.021 if the information identifies an individual as:

(1) a victim of:

(A) an offense under Section 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.021, 43.05, or 43.25, Penal Code; or

(B) an offense that is part of the same criminal episode, as defined by Section 3.01, Penal Code, as an offense described by Paragraph (A); or

(2) a victim of any criminal offense, if the victim was younger than 18 years of age when any element of the offense was committed.

(b) Notwithstanding Subsection (a), information under this section may be disclosed:

(1) to any victim identified by the information, or to the parent or guardian of a victim described by Subsection (a)(2) who is identified by the information;

(2) to a law enforcement agency for investigative purposes; or

(3) in accordance with a court order requiring the disclosure.

§ 552.132. Confidentiality of Crime Victim or Claimant Information

(a) Except as provided by Subsection (d), in this section, "crime victim or claimant" means a victim or claimant under Chapter 56B, Code of Criminal Procedure, who has filed an application for compensation under that chapter.

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

(1) the name, social security number, address, or telephone number of a crime victim or claimant; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

(c) If the crime victim or claimant is awarded compensation under Article 56B.103 or 56B.104, Code of Criminal Procedure, as of the date of the award of compensation, the name of the crime victim or claimant and the amount of compensation awarded to that crime victim or claimant are public information and are not excepted from the requirements of Section 552.021.

(d) An employee of a governmental body who is also a victim under Chapter 56B, 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 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.

(e) If the employee fails to make an election under Subsection (d), 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 56B.003, Code of Criminal Procedure.

(2) "Victim impact statement" means a victim impact statement under Subchapter D, Chapter 56A, 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: Confidentiality of Public Power Utility Competitive Matters

(a) In this section:

(1) "Broadband service" has the meaning assigned by Section 181.048, Utilities Code.

(2) "Public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(a-1) For purposes of this section, "competitive matter" means a utility-related matter, including for an entity described by Subdivision(2) a cable, Internet, or broadband service matter, that is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. The term:

(1) means a matter that is reasonably related to the following categories of information:

(A) generation unit specific and portfolio fixed and variable costs, including forecasts of those costs, capital improvement plans for generation units, and generation unit operating characteristics and outage scheduling;

(B) bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies;

(C) effective fuel and purchased power agreements and fuel transportation arrangements and contracts;

(D) risk management information, contracts, and strategies, including fuel hedging and storage;

(E) plans, studies, proposals, and analyses for system improvements, additions, or sales, other than transmission and distribution system improvements inside the service area for which the public power utility is the sole certificated retail provider; and

(F) customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies;

(2) means a matter reasonably related to information involving the provision of cable, Internet, or broadband services by a municipally owned utility that provided electricity services and cable, Internet, or broadband services on or before January 1, 2003, including:

(A) a capital improvement plan;

(B) an expense related to the installation of a facility to provide those services;

(C) bidding and pricing information for installation of the facility;

(D) risk management information, contracts, and strategies;

(E) plans, studies, proposals, and analyses for:

(i) system improvements, additions, or sales; or

(ii) establishing pricing for providing those services; and

(F) customer billing, contract, and usage information; and

(3) does not 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 or tariff of general applicability regarding rates, 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;

(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;

(N) salaries and total compensation of all employees of a public power utility; or

(O) information publicly released by the Electric Reliability Council of Texas in accordance with a law, rule, or protocol generally applicable to similarly situated market participants;

(P) information related to a chilled water program, as defined by Section 11.003, Utilities Code; or

(Q) information included in the separate books and records required to be kept by an entity described by Subdivision (2) as required by Section 552.915, Local Government Code.

(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. 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.

(b-1) Notwithstanding any contrary provision of Subsection (b), information or records of a municipally owned utility or municipality that operates a chilled water program are subject to disclosure under this chapter if the information or records are reasonably related to:

(1) a municipally owned utility's rate review process;

(2) the method a municipality or municipally owned utility uses to set rates for retail electricity service; or

(3) the method a municipality or municipally owned utility uses to set rates for a chilled water program described by Subsection (a-1)(3)(P).

(c) 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.

§ 552.1331. Exception: Certain Government-Operated Utility Customer Information

(a) In this section:

(1) "Advanced metering system" means a utility metering system that collects data at regular intervals through the use of an automated wireless or radio network.

(2) "Government-operated utility" has the meaning assigned by Section 182.051, Utilities Code.

(b) Except as provided by Subsection (c) of this section and Section 182.052, Utilities Code, information maintained by a government-operated utility is excepted from the requirements of Section 552.021 if it is information that:

(1) is collected as part of an advanced metering system for usage, services, and billing, including amounts billed or collected for utility usage; or

(2) reveals whether:

(A) an account is delinquent or eligible for disconnection; or

(B) services have been discontinued by the government-operated utility.

(c) A government-operated utility must disclose information described by Subsection (b)(1) to a customer of the utility or a representative of the customer if the information directly relates to utility services provided to the customer and is not confidential under law.

§ 552.134. Exception: Confidentiality of 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.

§ 552.1345. Exception: Confidentiality of CertainInformation Relating to Civilly Committed Sexually Violent Predators

(a) Except as provided by Subsection (b), information obtained or maintained by the Texas Civil Commitment Office is excepted from the requirements of Section 552.021 if it is information about a person who is civilly committed as a sexually violent predator under Chapter 841, Health and Safety Code.

(b) Subsection (a) does not apply to statistical or other aggregated information relating to persons civilly committed to one or more facilities operated by or under a contract with the office.

§ 552.135. Exception: Confidentiality of 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.

(c) A governmental body may redact information that must be withheld under Subsection (b) 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.

(d) If, under Subsection (c), a governmental body redacts or withholds information without requesting a decision from the attorney general about whether the information may be redacted or withheld, the requestor is entitled to seek a decision from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this subsection, determining whether the redacted or withheld information was excepted from required disclosure to the requestor, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court.

(e) A governmental body that redacts or withholds information under Subsection (c) shall provide the following information to the requestor on a form prescribed by the attorney general:

(1) a description of the redacted or withheld information;

(2) a citation to this section; and

(3) instructions regarding how the requestor may seek a decision from the attorney general regarding whether the redacted or withheld information is excepted from required disclosure.

§ 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;

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public; or

(5) provided to a governmental body for the purpose of providing public comment on or receiving notices related to an application for a license as defined by Section 2001.003(2) of this code, or receiving orders or decisions from a governmental body.

(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: Confidentiality of Family Violence Shelter Center, Victims of Trafficking 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.

(1-a) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a governmental body; and

(B) a person must obtain to practice or engage in a particular business, occupation, or profession.

(2) "Sexual assault program" has the meaning assigned by Section 420.003.

(3) "Victims of trafficking shelter center" means:

(A) a program that:

(i) is operated by a public or private nonprofit organization; and

(ii) provides comprehensive residential and nonresidential services to persons who are victims of trafficking under Section 20A.02, Penal Code; or

(B) a child-placing agency, as defined by Section 42.002, Human Resources Code, that provides services to persons who are victims of trafficking under Section 20A.02, Penal Code.

(b) Information maintained by a family violence shelter center, victims of trafficking 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, victims of trafficking shelter center, or sexual assault program, regardless of whether the employee or worker complies with Section 552.024;

(2) the name, home address, home telephone number, or numeric identifier of a current or former client of a family violence shelter center, victims of trafficking shelter center, or sexual assault program;

(3) the provision of services, including counseling and sheltering, to a current or former client of a family violence shelter center, victims of trafficking shelter center, or sexual assault program;

(4) the name, home address, or home telephone number of a private donor to a family violence shelter center, victims of trafficking shelter center, or sexual assault program; or

(5) 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, victims of trafficking shelter center, or sexual assault program, regardless of whether the board member complies with Section 552.024.

(b-1) Information that relates to the location or physical layout of a family violence shelter center or victims of trafficking shelter center is confidential.

(c) A governmental body may redact information maintained by a family violence shelter center, victims of trafficking shelter center, or sexual assault program that may be withheld under Subsection (b)(1) or (5) or that is confidential under Subsection (b-1) 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.

(d) If, under Subsection (c), a governmental body redacts or withholds information without requesting a decision from the attorney general about whether the information may be redacted or withheld, the requestor is entitled to seek a decision from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this subsection, determining whether the redacted or withheld information was excepted from required disclosure to the requestor, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court.

(e) A governmental body that redacts or withholds information under Subsection (c) shall provide the following information to the requestor on a form prescribed by the attorney general:

(1) a description of the redacted or withheld information;

(2) a citation to this section; and

(3) instructions regarding how the requestor may seek a decision from the attorney general regarding whether the redacted or withheld information is excepted from required disclosure.

(f) Notwithstanding any other law, a governmental body may not sell or otherwise release the name, home or business address, place of employment, telephone number, electronic mail address, social security number, date of birth, driver's license or state identification number, passport number, emergency contact information, or numeric identifier of a person who:

(1) holds, previously held, or is an applicant for a license issued by the governmental body; and

(2) notifies the governmental body on a form provided by the office of the attorney general or the governmental body that the person:

(A) is a current or former client of a family violence shelter center, victims of trafficking shelter center, or sexual assault program or is a survivor of family violence, domestic violence, or sexual assault; and

(B) chooses to restrict public access to the information.

(g) A governmental body may redact information described by Subsection (f) from a response to a request for a list or directory of license holders, former license holders, or license applicants without the necessity of requesting a decision from the attorney general under Subchapter G.

§ 552.139. Exception: Confidentiality of Government Information Related to Security or Infrastructure Issues for Computers

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security, to restricted information under Section 2059.055, or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report;

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, 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 containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use;

(3) a photocopy or other copy of an identification badge issued to an official or employee of a governmental body; and

(4) information directly arising from a governmental body's routine efforts to prevent, detect, investigate, or mitigate a computer security incident, including information contained in or derived from an information security log.

(b-1) Subsection (b)(4) does not affect the notification requirements related to a breach of system security as defined by Section 521.053, Business & Commerce Code.

(c) Notwithstanding the confidential nature of the information described in this section, the information may be disclosed to a bidder if the governmental body determines that providing the information is necessary for the bidder to provide an accurate bid. A disclosure under this subsection is not a voluntary disclosure for purposes of Section 552.007.

(d) A state agency shall redact from a contract posted on the agency's Internet website under Section 2261.253 information that is made confidential by, or excepted from required public disclosure under, this section. The redaction of information under this subsection does not exempt the information from the requirements of Section 552.021 or 552.221.

§ 552.140. Exception: Confidentiality of 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 Subchapters A and B, Chapter 752, Estates 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: Confidentiality of Records Subject to Order of Nondisclosure

(a) Information is excepted from the requirements of Section 552.021 if an order of nondisclosure of criminal history record information with respect to the information has been issued under Subchapter E-1, Chapter 411.

(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 criminal proceeding 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: Dissemination of Certain Criminal History Information

(a) A private entity that compiles and disseminates for compensation criminal history record information may not compile or disseminate information with respect to which the entity has received notice that:

(1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or

(2) an order of nondisclosure of criminal history record information has been issued under Subchapter E-1, Chapter 411.

(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 $1,000 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.

<Amendment to section 552.1425(a) effective January 1, 2025>

(a) A private entity that compiles and disseminates for compensation criminal history record information may not compile or disseminate information with respect to which the entity has received notice that:

(1) an order of expunction has been issued under Subchapter E or F, Chapter 55A, Code of Criminal Procedure; or

(2) an order of nondisclosure of criminal history record information has been issued under Subchapter E-1, Chapter 411.

§ 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) Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 17.05(1).

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

§ 552.144. Exception: Working Papers and Electronic Communications of Administrative Law Judges at State Office of Administrative Hearings

The following working papers and electronic communications of an administrative law judge at the State Office of Administrative Hearings are excepted from the requirements of Section 552.021:

(1) notes and electronic communications recording the observations, thoughts, questions, deliberations, 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.

§ 552.145. Exception: Confidentiality of Texas No-Call List

The Texas no-call list created under Subchapter B, Chapter 304, Business & Commerce Code, and any information provided to or received from the administrator of the national do-not-call registry

maintained by the United States government, as provided by Sections 304.051 and 304.56, Business & Commerce Code, are excepted from the requirements of Section 552.021.

§ 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. Social Security Numbers

(a) Except as provided by Subsection (a-1), the social security number of a living person is excepted from the requirements of Section 552.021, but is not confidential under this section and this section does not make the social security number of a living person confidential under another provision of this chapter or other law.

(a-1) The social security number of an employee of a school district in the custody of the district is confidential.

(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.

(c) Notwithstanding any other law, a county or district clerk may disclose in the ordinary course of business a social security number that is contained in information held by the clerk's office, and that disclosure is not official misconduct and does not subject the clerk to civil or criminal liability of any kind under the law of this state, including any claim for damages in a lawsuit or the criminal penalty imposed by Section 552.352.

(d) Unless another law requires a social security number to be maintained in a government document, on written request from an individual or the individual's representative the clerk shall redact within a reasonable amount of time all but the last four digits of the individual's social security number from information maintained in the clerk's official public records, including electronically stored information maintained by or under the control of the clerk. The individual or the individual's representative must identify, using a form provided by the clerk, the specific document or documents from which the partial social security number shall be redacted.

§ 552.148. Exception: Confidentiality of Certain Personal Information Maintained by Municipality Pertaining to a Minor

(a) In this section, "minor" means a person younger than 18 years of age.

(b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from the requirements of Section 552.021:

(1) the name, age, home address, home telephone number, or social security number of the minor;

(2) a photograph of the minor; and

(3) the name of the minor's parent or legal guardian.

§ 552.149. Exception: Confidentiality of Records of Comptroller or Appraisal District Received from Private Entity

(a) 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.

(b) Notwithstanding Subsection (a), the property owner or the owner's agent may, on request, obtain from the chief appraiser of the applicable appraisal district a copy of each item of information described by Section 41.461(a)(2), Tax Code, and a copy of each item of information that the chief appraiser took into consideration but does not plan to introduce at the hearing on the protest. In addition, the property owner or agent may, on request, obtain from the chief appraiser comparable sales data from a reasonable number of sales that is relevant to any matter to be determined by the appraisal review board at the hearing on the property owner's protest or by the arbitrator at the hearing on the property owner's appeal under Chapter 41A, Tax Code, of the appraisal review board's order determining the protest. Information obtained under this subsection:

(1) remains confidential in the possession of the property owner or agent; and

(2) may not be disclosed or used for any purpose except as evidence or argument at the hearing on:

(A) the protest; or

(B) the appeal under Chapter 41A, Tax Code.

(c) Notwithstanding Subsection (a) or Section 403.304, so as to assist a property owner or an appraisal district in a protest filed under Section 403.303, the property owner, the district, or an agent of the property owner or district may, on request, obtain from the comptroller any

information, including confidential information, obtained by the comptroller in connection with the comptroller's finding that is being protested. Confidential information obtained by a property owner, an appraisal district, or an agent of the property owner or district under the subsection:

(1) remains confidential in the possession of the property owner, district, or agent; and

(2) may not be disclosed to a person who is not authorized to receive or inspect the information.

(d) Notwithstanding Subsection (a) or Section 403.304, so as to assist a school district in the preparation of a protest filed or to be filed under Section 403.303, the school district or an agent of the school district may, on request, obtain from the comptroller or the appraisal district any information, including confidential information, obtained by the comptroller or the appraisal district that relates to the appraisal of property involved in the comptroller's finding that is being protested. Confidential information obtained by a school district or an agent of the school district under this subsection:

(1) remains confidential in the possession of the school district or agent; and

(2) may not be disclosed to a person who is not authorized to receive or inspect the information.

(e) Repealed by Acts 2021, 87th Leg, ch. 557 (S.B.334), § 2.

§ 552.150. Exception: Confidentiality of Information That Could Compromise Safety of Officer or Employee of Hospital District

(a) Information in the custody of a hospital district that relates to an employee or officer of the hospital district is excepted from the requirements of Section 552.021 if:

(1) it is information that, if disclosed under the specific circumstances pertaining to the individual, could reasonably be expected to compromise the safety of the individual, such as information that describes or depicts the likeness of the individual, information stating the times that the individual arrives at or departs from work, a description of the individual's automobile, or the location where the individual works or parks; and

(2) the employee or officer applies in writing to the hospital district's officer for public information to have the information withheld from public disclosure under this section and includes in the application:

(C) a description of the information; and

(B) the specific circumstances pertaining to the individual that demonstrate why disclosure of the information could reasonably be expected to compromise the safety of the individual.

(b) On receiving a written request for information described in an application submitted under Subsection (a)(2), the officer for public information shall:

(1) request a decision from the attorney general in accordance with Section 552.301 regarding withholding the information; and

(2) include a copy of the application submitted under Subsection (a)(2) with the request for the decision.

(c) Repealed by Acts 2011, 82nd Leg., ch. 609 (S.B. 470), § 1.

§ 552.151. Exception: Confidentiality of Information Concerning Information Regarding Select Agents

(a) The following information that pertains to a biological agent or toxin identified or listed as a select agent under federal law, including under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. No. 107-188) and regulations adopted under that Act, is excepted from the requirements of Section 552.021:

(1) the specific location of a select agent within an approved facility;

(2) personal identifying information of an individual whose name appears in documentation relating to the chain of custody of select agents, including a materials transfer agreement; and

(3) the identity of an individual authorized to possess, use, or access a select agent.

(b) This section does not except from disclosure the identity of the select agents present at a facility.

(c) This section does not except from disclosure the identity of an individual faculty member or employee whose name appears or will appear on published research.

(d) This section does not except from disclosure otherwise public information relating to contracts of a governmental body.

(e) If a resident of another state is present in Texas and is authorized to possess, use, or access a select agent in conducting research or other work at a Texas facility, information relating to the identity of that individual is subject to disclosure under this chapter only to the extent the information would be subject to disclosure under the laws of the state of which the person is a resident.

§ 552.152. Exception: Confidentiality of Information Concerning Public Employee or Officer Personal Safety

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

§ 552.153. Proprietary Records and Trade Secrets Involved in Certain Partnerships

(a) In this section, "affected jurisdiction," "comprehensive agreement," "contracting person," "interim agreement," "qualifying project," and "responsible governmental entity" have the meanings assigned those terms by Section 2267.001.

(b) Information in the custody of a responsible governmental entity that relates to a proposal for a qualifying project authorized under Chapter 2267 is excepted from the requirements of Section 552.021 if:

(1) the information consists of memoranda, staff evaluations, or other records prepared by the responsible governmental entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under Chapter 2267 for which:

(A) disclosure to the public before or after the execution of an interim or comprehensive agreement would adversely affect the financial interest or bargaining position of the responsible governmental entity; and

(B) the basis for the determination under Paragraph (A) is documented in writing by the responsible governmental entity; or

(2) the records are provided by a proposer to a responsible governmental entity or affected jurisdiction under Chapter 2267 and contain:

(A) trade secrets of the proposer;

(B) financial records of the proposer, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or other means; or

(C) work product related to a competitive bid or proposal submitted by the proposer that, if made public before the execution of an interim or comprehensive agreement, would provide a competing proposer an unjust advantage or adversely affect the financial interest or bargaining position of the responsible governmental entity or the proposer.

(c) Except as specifically provided by Subsection (b), this section does not authorize the withholding of information concerning:

(1) the terms of any interim or comprehensive agreement, service contract, lease, partnership, or agreement of any kind entered into by the responsible governmental entity and the contracting person or the terms of any financing arrangement that involves the use of any public money; or

(2) the performance of any person developing or operating a qualifying project under Chapter 2267.

(d) In this section, "proposer" has the meaning assigned by Section 2267.001.

§ 552.154. Exception: Name of Applicant for Executive Director, Chief Investment Officer, or Chief Audit Executive of Teacher Retirement System of Texas

The name of an applicant for the position of executive director, chief investment officer, or chief audit executive of the Teacher Retirement System of Texas is excepted from the requirements of Section 552.021, except that the board of trustees of the Teacher Retirement System of Texas must give public notice of the names of three finalists being considered for one of those positions at least 21 days before the date of the meeting at which the final action or vote is to be taken on choosing a finalist for employment.

§ 552.155. Exception: Confidentiality of Certain Property Tax Appraisal Photographs

(a) Except as provided by Subsection (b) or (c), a photograph that is taken by the chief appraiser of an appraisal district or the chief appraiser's authorized representative for property tax appraisal purposes and that shows the interior of an improvement to property is confidential and excepted from the requirements of Section 552.021.

(b) A governmental body shall disclose a photograph described by Subsection (a) to a requestor who had an ownership interest in the improvement to property shown in the photograph on the date the photograph was taken.

(c) A photograph described by Subsection (a) may be used as evidence in and provided to the parties to a protest under Chapter 41, Tax Code, or an appeal of a determination by the appraisal review board under Chapter 42, Tax Code, if it is relevant to the determination of a matter protested or appealed. A photograph that is used as evidence:

(1) remains confidential in the possession of the person to whom it is disclosed; and

(2) may not be disclosed or used for any other purpose.

(c-1) Notwithstanding any other law, a photograph described by Subsection (a) may be used to ascertain the location of equipment used to produce or transmit oil and gas for purposes of taxation if that equipment is located on January 1 in the appraisal district that appraises property for the equipment for the preceding 365 consecutive days.

§ 552.156. Exception: Confidentiality of Continuity of Operations Plan

(a) Except as otherwise provided by this section, the following information is excepted from disclosure under this chapter:

(1) a continuity of operations plan developed under Section 412.054, Labor Code; and

(2) all records written, produced, collected, assembled, or maintained as part of the development or review of a continuity of operations plan developed under Section 412.054, Labor Code.

(b) Forms, standards, and other instructional, informational, or planning materials adopted by the office to provide guidance or assistance to a state agency in developing a continuity of operations plan under Section 412.054, Labor Code, are public information subject to disclosure under this chapter.

(c) A governmental body may disclose or make available information that is confidential under this section to another governmental body or a federal agency.

(d) Disclosing information to another governmental body or a federal agency under this section does not waive or affect the confidentiality of that information.

§ 552.158. Exception: Confidentiality of Personal Information Regarding Applicant for Appointment by Governor

The following information obtained by the governor or senate in connection with an applicant for an appointment by the governor is excepted from the requirements of Section 552.021:

(1) the applicant's home address;

(2) the applicant's home telephone number; and

(3) the applicant's social security number.

§ 552.159. Exception: Confidentiality of Certain Work Schedules

A work schedule or a time sheet of a firefighter or volunteer firefighter or emergency medical services personnel as defined by Section 773.003, Health and Safety Code, is confidential and excepted from the requirements of Section 552.021.

§ 552.160. Confidentiality of Personal Information of Applicant for Disaster Recovery Funds

(a) In this section, "disaster" has the meaning assigned by Section 418.004.

(b) Except as provided by Subsection (c), the following information maintained by a governmental body is confidential:

(1) the name, social security number, house number, street name, and telephone number of an individual or household that applies for state or federal disaster recovery funds;

(2) the name, tax identification number, address, and telephone number of a business entity or an owner of a business entity that applies for state or federal disaster recovery funds; and

(3) any other information the disclosure of which would identify or tend to identify a person or household that applies for state or federal disaster recovery funds.

(c) The street name and census block group of and the amount of disaster recovery funds awarded to a person or household are not confidential after the date on which disaster recovery funds are awarded to the person or household.

§ 552.161. Exception: Certain Personal Information Obtained by Flood Control District

The following information obtained by a flood control district located in a county with a population of 3.3 million or more in connection with operations related to a declared disaster or flooding is excepted from the requirements of Section 552.021:

(1) a person's name;

(2) a home address;

(3) a business address;

(4) a home telephone number;

(5) a mobile telephone number;

(6) an electronic mail address;

(7) social media account information; and

(8) a social security number.

§ 552.162. Exception: Confidentiality of Certain Information Provided by Out-of-State Health Care Provider

Information obtained by a governmental body that was provided by an out-of-state health care provider in connection with a quality management, peer review, or best practices program that the out-of-state health care provider pays for is confidential and excepted from the requirements of Section 552.021.

§ 552.163. Exception: Confidentiality of Certain Attorney General Settlement Negotiations

(a) In this section, "attorney general settlement communication" means documentary materials or information collected, assembled, drafted, developed, used, received, or maintained by or on behalf of the attorney general with respect to an investigation or litigation conducted under Subchapter E, Chapter 17, Business & Commerce Code, and that reflects or is regarding negotiations made for the purpose of achieving a resolution of a matter without the need for continuing with litigation or trial.

(b) An attorney general settlement communication is privileged and not subject to disclosure under this chapter from the date the attorney general's investigation begins, as indicated in the attorney general's case management records, until the earlier of:

(1) the 90th day after the date settlement discussions are terminated; or

(2) the earliest of the date:

(A) the case is reported closed in the attorney general's case management records;

(B) the final judgment, assurance of voluntary compliance, or other settlement agreement is entered by the court, and the period for filing a notice of appeal has passed;

(C) the settlement documents are executed by all parties, if the documents are not filed in court;

(D) the order of dismissal or nonsuit disposing of all parties is entered by the court; or

(E) all appeals are finalized.

(c) For the purpose of this section, a settlement communication does not include a document attached to or referenced in a delivered settlement proposal that is subject to disclosure under this chapter.

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;

(3) repair, renovate, or rebind public information as necessary to maintain it properly; and

(4) make reasonable efforts to obtain public information from a temporary custodian if:

(A) the information has been requested from the governmental body;

(B) the officer for public information is aware of facts sufficient to warrant a reasonable belief that the temporary custodian has possession, custody, or control of the information;

(C) the officer for public information is unable to comply with the duties imposed by this chapter without obtaining the information from the temporary custodian; and

(D) the temporary custodian has not provided the information to the officer for public information or the officer's agent.

§ 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.

(b-1) In addition to the methods of production described by Subsection (b), an officer for public information for a governmental body complies with Subsection (a) by referring a requestor to an exact Internet location or uniform resource locator (URL) address on a website maintained by the governmental body and accessible to the public if the requested information is identifiable and readily available on that website. If the person requesting the information prefers a manner other than access through the URL, the governmental body must supply the information in the manner required by Subsection (b).

(b-2) If an officer for public information for a governmental body provides by e-mail an Internet location or uniform resource locator (URL) address as permitted by Subsection (b-1), the e-mail must contain a statement in a conspicuous font clearly indicating that the requestor may nonetheless access the requested information by inspection or duplication or by receipt through United States mail, as provided by Subsection (b).

(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.

(e) A request is considered to have been withdrawn if the requestor fails to inspect or duplicate the public information in the offices of the governmental body on or before the 60th day after the date the information is made available or fails to pay the postage and any other applicable charges accrued under Subchapter F on or before the 60th day after the date the requestor is informed of the charges.

§ 552.2211. Production of Public Information When Administrative Offices Closed

(a) Except as provided by Section 552.233, if a governmental body closes its physical offices, but requires staff to work, including remotely, then the governmental body shall make a good faith effort to continue responding to applications for public information, to the extent staff have access to public information responsive to an application, pursuant to this chapter while its administrative offices are closed.

(b) Failure to respond to requests in accordance with Subsection (a) may constitute a refusal to request an attorney general's decision as provided by Subchapter G or a refusal to supply public information or information that the attorney general has determined is public information that is not excepted from disclosure under Subchapter C as described by Section 552.321(a).

§ 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), (c), or (c-1).

(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.

(c-1) If the information requested includes a photograph described by Section 552.155(a), the officer for public information or the officer's agent may require the requestor to provide additional information sufficient for the officer or the officer's agent to determine whether the requestor is eligible to receive the information under Section 552.155(b).

(d) If by the 61st day after the date a governmental body sends a written request for clarification or discussion under Subsection (b) or an officer for public information or agent sends a written request for additional information under Subsection (c) the governmental body, officer for public information, or agent, as applicable, does not receive a written response from the requestor, the underlying request for public information is considered to have been withdrawn by the requestor.

(e) A written request for clarification or discussion under Subsection (b) or a written request for additional information under Subsection (c) must include a statement as to the consequences of the failure by the requestor to timely respond to the request for clarification, discussion, or additional information.

(f) Except as provided by Subsection (g), if the requestor's request for public information included the requestor's physical or mailing address, the request may not be considered to have been withdrawn under Subsection (d) unless the governmental body, officer for public information, or agent, as applicable, sends the request for clarification or discussion under Subsection (b) or the written request for additional information under Subsection (c) to that address by certified mail.

(g) If the requestor's request for public information was sent by electronic mail, the request may be considered to have been withdrawn under Subsection (d) if:

(1) the governmental body, officer for public information, or agent, as applicable, sends the request for clarification or discussion under Subsection (b) or the written request for additional information under Subsection (c) by electronic mail to the same electronic mail address from which the original request was sent or to another electronic mail address provided by the requestor; and

(2) the governmental body, officer for public information, or agent, as applicable, does not receive from the requestor a written response or response by electronic mail within the period described by Subsection (d).

§ 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 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 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 payment 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.

§ 552.2325. Temporary Suspension of Requirements for Governmental Body Impacted by Catastrophe

(a) In this section:

(1) "Catastrophe" means a condition or occurrence that directly interferes with the ability of a governmental body to comply with the requirements of this chapter, including:

(A) fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;

(B) power failure, transportation failure, or interruption of communications facilities;

(C) epidemic; or

(D) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

(2) "Catastrophe" does not mean a period when staff is required to work remotely and can access information responsive to an application for information electronically, but the physical office of the governmental body is closed.

(3) "Suspension period" means the period of time during which a governmental body may suspend the applicability of the requirements of this chapter to the governmental body under this section.

(b) The requirements of this chapter do not apply to a governmental body during the suspension period determined by the governmental body under Subsections (d) and (e) if the governmental body:

(1) is currently significantly impacted by a catastrophe such that the catastrophe directly causes the inability of a governmental body to comply with the requirements of this chapter; and

(2) complies with the requirements of this section.

(c) A governmental body that elects to suspend the applicability of the requirements of this chapter to the governmental body must submit notice to the office of the attorney general that the governmental body is currently impacted by a catastrophe and has elected to suspend the applicability of those requirements during the initial suspension period determined under Subsection (d). The notice must be on the form prescribed by the office of the attorney general under Subsection (j).

(d) A governmental body may suspend the applicability of the requirements of this chapter to the governmental body for an initial suspension period. The governmental body may suspend the applicability of the requirements of this chapter under this subsection only once for each catastrophe. The initial suspension period may not exceed seven consecutive days and must occur during the period that:

(1) begins not earlier than the second day before the date the governmental body submits notice to the office of the attorney general under Subsection (c); and

(2) ends not later than the seventh day after the date the governmental body submits that notice.

(e) A governmental body may extend an initial suspension period if the governing body determines that the governing body is still impacted by the catastrophe on which the initial suspension period was based. The initial suspension period may be extended one time for not more than seven consecutive days that begin on the day following the day the initial suspension period ends. The governing body must submit notice of the extension to the office of the attorney general on the form prescribed by the office under Subsection (l).

(f) A governmental body that initiates a suspension period under Subsection (d) may not initiate another suspension period related to the same catastrophe, except for a single extension period as prescribed in Subsection (e).

(g) The combined suspension period for a governmental body filing under Subsections (d) and (e) may not exceed a total of 14 consecutive calendar days with respect to any single catastrophe.

(h) A governmental body that suspends the applicability of the requirements of this chapter to the governmental body under this section must provide notice to the public of the suspension in a place readily accessible to the public and in each other location the governmental body is required to post a notice under Subchapter C, Chapter 551. The governmental body must maintain the notice of the suspension during the suspension period.

(i) Notwithstanding another provision of this chapter, a request for public information received by a governmental body during a suspension period determined by the governmental body is considered to have been received by the governmental body on the first business day after the date the suspension period ends.

(j) The requirements of this chapter related to a request for public information received by a governmental body before the date an initial suspension period determined by the governmental body begins are tolled until the first business day after the date the suspension period ends.

(k) The office of the attorney general shall continuously post on the Internet website of the office each notice submitted to the office under this section from the date the office receives the notice until the first anniversary of that date.

(l) The office of the attorney general shall prescribe the form of the notice that a governmental body must submit to the office under Subsections (c) and (e). The notice must require the governmental body to:

(1) identify and describe the catastrophe that the governmental body is currently impacted by;

(2) state the date the initial suspension period determined by the governmental body under Subsection (d) begins and the date that period ends;

(3) if the governmental body has determined to extend the initial suspension period under Subsection (e):

(A) state that the governmental body continues to be impacted by the catastrophe identified in Subdivision (1); and

(B) state the date the extension to the initial suspension period begins and the date the period ends; and

(4) provide any other information the office of the attorney general determines necessary.

(m) Upon conclusion of any suspension period initiated pursuant to Subsections (d) or (e), the governmental body shall immediately resume compliance with all requirements of this chapter.

§ 552.233. Ownership of Public Information

(a) A current or former officer or employee of a governmental body does not have, by virtue of the officer's or employee's position or former position, a personal or property right to public information the officer or employee created or received while acting in an official capacity.

(b) A temporary custodian with possession, custody, or control of public information shall surrender or return the information to the governmental body not later than the 10th day after

the date the officer for public information of the governmental body or the officer's agent requests the temporary custodian to surrender or return the information.

(c) A temporary custodian's failure to surrender or return public information as required by Subsection (b) is grounds for disciplinary action by the governmental body that employs the temporary custodian or any other applicable penalties provided by this chapter or other law.

(d) For purposes of the application of Subchapter G to information surrendered or returned to a governmental body by a temporary custodian under Subsection (b), the governmental body is considered to receive the request for that information on the date the information is surrendered or returned to the governmental body.

§ 552.234. Method of Making Written Request for Public Information

(a) A person may make a written request for public information under this chapter only by delivering the request by one of the following methods to the applicable officer for public information or a person designated by that officer:

(1) United States mail;

(2) electronic mail;

(3) hand delivery; or

(4) any other appropriate method approved by the governmental body, including:

(A) facsimile transmission; and

(B) electronic submission through the governmental body's Internet website.

(b) For the purpose of Subsection (a)(4), a governmental body is considered to have approved a method described by that subdivision only if the governmental body includes a statement that a request for public information may be made by that method on:

(1) the sign required to be displayed by the governmental body under Section 552.205; or

(2) the governmental body's Internet website.

(c) A governmental body may designate one mailing address and one electronic mail address for receiving written requests for public information. The governmental body shall provide the designated mailing address and electronic mailing address to any person on request.

(d) A governmental body that posts the mailing address and electronic mail address designated by the governmental body under Subsection (c) on the governmental body's Internet website or that prints those addresses on the sign required to be displayed by the governmental body under Section 552.205 is not required to respond to a written request for public information unless the request is received:

(1) at one of those addresses;

(2) by hand delivery; or

(3) by a method described by Subsection (a)(4) that has been approved by the governmental body.

§ 552.235. Public Information Request Form

(a) The attorney general shall create a public information request form that provides a requestor the option of excluding from a request information that the governmental body determines is:

(1) confidential; or

(2) subject to an exception to disclosure that the governmental body would assert if the information were subject to the request.

(b) A governmental body that allows requestors to use the form described by Subsection (a) and maintains an Internet website shall post the form on its website.

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.

(e) Except as otherwise provided by this subsection, all requests received in one calendar day from an individual may be treated as a single request for purposes of calculating costs under this chapter. A governmental body may not combine multiple requests under this subsection from separate individuals who submit requests on behalf of an organization.

§ 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:

(1) the officer for public information or the officer's agent has provided the requestor with the written itemized statement required under Section 552.2615 detailing the estimated charge for providing the copy; and

(2) the charge for providing the copy of the public information specifically requested by the requestor is estimated by the governmental body to exceed:

(A) $100, if the governmental body has more than 15 full-time employees; or

(B) $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.

(e-1) If a requestor modifies the request in response to the requirement of a deposit or bond authorized by this section, the modified request is considered a separate request for the purposes of this chapter and is considered received on the date the governmental body receives the written modified request.

(f) A requestor who fails to make a deposit or post a bond required under Subsection (a) before the 10th business 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.

§ 552.2661. Charge for Copy of Public Information Provided by School District

A school district that receives a request to produce public information for inspection or publication or to produce copies of public information in response to a requestor who, within the preceding 180 days, has accepted but failed to pay written itemized statements of estimated charges from the district as provided under Section 552.261(b) may require the requestor to pay the estimated charges for the request before the request is fulfilled.

§ 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.

(e) A requestor who has exceeded a limit established by a governmental body under Section 552.275 may not inspect public information on behalf of another requestor unless the requestor who exceeded the limit has paid each statement issued by the governmental body under Section 552.275(e).

§ 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.

(f) A requestor who has exceeded a limit established by a governmental body under Section 552.275 may not inspect public information on behalf of another requestor unless the requestor

who exceeded the limit has paid each statement issued by the governmental body under Section 552.275(e).

§ 552.274. Report by Attorney General 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.

(b) Repealed by Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(62).

(c) In this section, "state agency" has the meaning assigned by Sections 2151.002(2)(A) and (C).

§ 552.275. Requests That Require Large Amounts of Employee or Personnel Time

(a) A governmental body may establish reasonable monthly and yearly limits on the amount of time that personnel of the governmental body are required to spend producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, without recovering its costs attributable to that personnel time.

(a-1) For the purposes of this section, all county officials who have designated the same officer for public information may calculate the amount of time that personnel are required to spend collectively for purposes of the monthly or yearly limit.

(b) A yearly time limit established under Subsection (a) may not be less than 36 hours for a requestor during the 12-month period that corresponds to the fiscal year of the governmental body. A monthly time limit established under Subsection (a) may not be less than 15 hours for a requestor for a one-month period.

(c) In determining whether a time limit established under Subsection (a) applies, any time spent complying with a request for public information submitted in the name of a minor, as defined by Section 101.003(a), Family Code, is to be included in the calculation of the cumulative amount of time spent complying with a request for public information by a parent, guardian, or other person who has control of the minor under a court order and with whom the minor resides, unless that parent, guardian, or other person establishes that another person submitted that request in the name of the minor.

(d) If a governmental body establishes a time limit under Subsection (a), each time the governmental body complies with a request for public information, the governmental body shall provide the requestor with a written statement of the amount of personnel time spent complying with that request and the cumulative amount of time spent complying with requests for public information from that requestor during the applicable monthly or yearly period. The amount of time spent preparing the written statement may not be included in the amount of

time included in the statement provided to the requestor under this subsection unless the requestor's time limit for the period has been exceeded.

(e) Subject to Subsection (e-1), if in connection with a request for public information, the cumulative amount of personnel time spent complying with requests for public information from the same requestor equals or exceeds the limit established by the governmental body under Subsection (a), the governmental body shall provide the requestor with a written estimate of the total cost, including materials, personnel time, and overhead expenses, necessary to comply with the request. The written estimate must be provided to the requestor on or before the 10th day after the date on which the public information was requested. The amount of this charge relating to the cost of locating, compiling, and producing the public information shall be established by rules prescribed by the attorney general under Sections 552.262(a) and (b).

(e-1) This subsection applies only to a request made by a requestor who has made a previous request to a governmental body that has not been withdrawn, for which the governmental body has located and compiled documents in response, and for which the governmental body has issued a statement under Subsection (e) that remains unpaid on the date the requestor submits the new request. A governmental body is not required to locate, compile, produce, or provide copies of documents or prepare a statement under Subsection (e) in response to a new request described by this subsection until the date the requestor pays each unpaid statement issued under Subsection (e) in connection with a previous request or withdraws the previous request to which the statement applies.

(f) If the governmental body determines that additional time is required to prepare the written estimate under Subsection (e) and provides the requestor with a written statement of that determination, the governmental body must provide the written statement under that subsection as soon as practicable, but on or before the 10th day after the date the governmental body provided the statement under this subsection.

(g) If a governmental body provides a requestor with a written statement under Subsection (e) or (o) and the time limits prescribed by Subsection (a) regarding the requestor have been exceeded, the governmental body is not required to produce public information for inspection or duplication or to provide copies of public information in response to the requestor's request unless on or before the 10th day after the date the governmental body provided the written statement under that subsection, the requestor submits a payment of the amount stated in the written statement provided under Subsection (e) or provides identification or submits payment as required by Subsection (o), as applicable.

(h) If the requestor fails or refuses to provide identification or submit payment under Subsection (g), the requestor is considered to have withdrawn the requestor's pending request for public information.

(i) This section does not prohibit a governmental body from providing a copy of public information without charge or at a reduced rate under Section 552.267 or from waiving a charge for providing a copy of public information under that section.

(j) This section does not apply if the requestor is and individual who, for a substantial portion of the individual's livelihood or for substantial financial gain, gathers, compiles, prepares,

collects, photographs, records, writes, edits, reports, investigates, processes, or publishes news or information for and is seeking the information for:

(1) dissemination by a new medium or communications service provider, including:

(A) an individual who supervises or assists in gathering, preparing, and disseminating the news or information; or

(B) an individual who is or was a journalist, scholar, or researcher employed by an institution of higher education at the time the person made the request for information; or

(2) creation or maintenance of an abstract plant as described by Section 2501.004, Insurance Code.

(k) This section does not apply if the requestor is an elected official of the United States, this state, or a political subdivision of this state.

(l) This section does not apply if the requestor is a representative of a publicly funded legal services organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt entity under Section 501(c)(3) of that code.

(m) In this section"

(1) "Communication service provider" has the meaning assigned by Section 22.021, Civil Practice and Remedies Code.

(2) "News Medium" means a newspaper, magazine or periodical, a book publisher, a news agency, a wire service, an FCC-licensed radio or television station or network of such stations, a cable, satellite, or other transmission system or carrier or channel, or a channel or programming service for a station, network, system, or carrier, or an audio or audiovisual production company or Internet company or provider, or the parent, subsidiary, division, or affiliate of that entity, that disseminates news or information to the public by any means, including:

(A) print;

(B) television;

(C) radio;

(D) photographic;

(E) mechanical;

(F) electronic; and

(G) other means, known or unknown, that are accessible to the public.

(n) A governmental body may request photo identification from a requestor for the sole purpose of establishing that the requestor has not:

(1) exceeded a limit established by the governmental body under Subsection (a); and

(2) concealed the requestor's identity.

(o) A request for photo identification under Subsection (n) must include a statement under Subsection (e) applicable to the requestor who has exceeded a limit established by the governmental body and a statement that describes each specific reason why Subsection (n) may apply to the requestor. The governmental body shall accept as proof of a requestor's identification physical presentment of photo identification or an image of the photo identification that is transmitted electronically or through the mail. A requestor from whom a governmental body has requested photo identification under Subsection (n) may decline to provide identification and obtain the requested information by paying the charge assessed in the statement.

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.

(a-1) For the purposes of this subchapter, if a governmental body receives a written request by United States mail and cannot adequately establish the actual date on which the governmental body received the request, the written request is considered to have been received by the governmental body on the third business day after the date of the postmark on a properly addressed request.

(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) Repealed by Acts 2019, 86th Leg., ch. 1340 (S.B. 944), § 7.

(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 general 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 not later than the 15th business day after the date of receiving the written request. 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.

(g) A governmental body may ask for another decision from the attorney general concerning the precise information that was at issue in a prior decision made by the attorney general under this subchapter if:

(1) a suit challenging the prior decision was timely filed against the attorney general in accordance with this chapter concerning the precise information at issue;

(2) the attorney general determines that the requestor has voluntarily withdrawn the request for the information in writing or has abandoned the request; and

(3) the parties agree to dismiss the lawsuit.

§ 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.

§ 552.3031. Electronic Submission of Request for Attorney General Decision

(a) This section does not apply to a request for an attorney general decision made under this subchapter if:

(1) the governmental body requesting the decision:

(A) has fewer than 16 full-time employees; or

(B) is located in a county with a population of less than 150,000;

(2) the amount or format of responsive information at issue in a particular request makes use of the attorney general's electronic filing system impractical or impossible; or

(3) the request is hand delivered to the office of the attorney general.

(b) A governmental body that requests an attorney general decision under this subchapter must submit the request through the attorney general's designated electronic filing system.

(c) The attorney general may adopt rules necessary to implement this section, including rules that define the amount or type of formatting of information described by Subsection (a)(2) that makes use of the electronic filing system impractical or impossible.

§ 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, 552.110, 552.1101, 552.114, 552.131. or 552.143, 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, 552.1101, 552.113, 552.131, or 552.143, 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 business 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 business 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.

(c) A governmental body shall as soon as practicable but within a reasonable period of time after the date the attorney general issues an opinion under Subsection (b) regarding information requested under this chapter:

(1) provide the requestor of the information an itemized estimate of charges for production of the information if the estimate is required by Section 552.2615;

(2) if the requested information is voluminous:

(A) take the following actions if the governmental body determines that it is able to disclose the information in a single batch:

(i) provide a written certified notice to the requestor and the attorney general that it is impractical or impossible for the governmental body to produce the information within a reasonable period of time;

(ii) include in the notice the date and hour that the governmental body will disclose the information to the requestor, which may not be later than the 15th business day after the date the governmental body provides the notice; and

(iii) produce the information at the date and time included in the notice; or

(B) take the following actions if the governmental body determines that it is unable to disclose the information in a single batch:

(i) provide a written certified notice to the requestor and the attorney general that it is impractical or impossible for the governmental body to produce the information within a reasonable period of time and in a single batch;

(ii) include in the notice the date and hour that the governmental body will disclose the first batch of information to the requestor, which may not be later than the 15th business day after the date the governmental body provides the notice;

(iii) provide a written certified notice to the requestor and the attorney general when each subsequent batch of information is disclosed to the requestor of the date and hour that the governmental body will disclose the next batch of information to the requestor, which may not be later than the 15th business day after the date the governmental body provides the notice; and

(iv) produce the requested information at each date and time included in a notice;

(3) produce the information if it is required to be produced;

(4) notify the requestor in writing that the governmental body is withholding the information as authorized by the opinion; or

(5) notify the requestor in writing that the governmental body has filed suit against the attorney general under Section 552.324 regarding the information.

(d) A governmental body is presumed to have complied with the requirements of Subsection (c) if the governmental body takes an action under that subsection regarding information that is

the subject of an opinion issued by the attorney general not later than the 30th day after the date the attorney general issues the opinion.

§ 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 business day after the date of receiving the request for information.

§ 552.308. Timeliness of Action by United States Mail, Interagency Mail, or Common Contract Carrier

(a) Except as provided by Section 552.3031, 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) Except as provided by Section 552.3031, 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.

§ 552.309. Timeliness of Action by Electronic Submission

(a) When this subchapter requires a request, notice, or other document to be submitted or otherwise given to the attorney general within a specified period, the requirement is met in a timely fashion if the document is submitted to the attorney general through the attorney general's designated electronic filing system within that period.

(b) The attorney general may electronically transmit a notice, decision, or other document. When this subchapter requires the attorney general to deliver a notice, decision, or other document within a specified period, the requirement is met in a timely fashion if the document is electronically transmitted by the attorney general within that period.

(c) This section does not affect the right of a person or governmental body to submit information to the attorney general under Section 552.308.

§ 552.310. Searchable Database

(a) The office of the attorney general shall make available on the office's Internet website an easily accessible and searchable database consisting of:

(1) information identifying each request for an attorney general decision made under this subchapter; and

(2) the attorney general's opinion issued for the request.

(b) The database at a minimum must allow a person to search for a request or opinion described by Subsection (a) by:

(1) the name of the governmental body making the request; and

(2) the exception under Subchapter C that a governmental body asserts in the request applies to its request to withhold information from public disclosure.

(c) The database must allow a person to view the current status of a request described by Subsection (a)(1) and an estimated timeline indicating the date each stage of review of the request will be started and completed.

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.

(c) A requestor may file suit for a writ of mandamus compelling a governmental body or an entity to comply with the requirements of Subchapter J.

§ 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; and

(2) notify the complainant in writing of those determinations.

(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. A complainant is entitled to file a complaint with the attorney general on or after the 90th day after the date the complainant files the complaint with the district or county attorney if the district or county attorney has not brought an action under this section. 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 response 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.

§ 552.3221. In Camera Inspection of Information

(a) In any suit filed under this chapter, the information at issue may be filed with the court for in camera inspection as is necessary for the adjudication of the case.

(b) Upon receipt of the information at issue for in camera inspection, the court shall enter an order that prevents release to or access by any person other than the court, a reviewing court of appeals, or parties permitted to inspect the information pursuant to a protective order. The order shall further note the filing date and time.

(c) The information at issue filed with the court for in camera inspection shall be:

(1) appended to the order and transmitted by the court to the clerk for filing as "information at issue";

(2) maintained in a sealed envelope or in a manner that precludes disclosure of the information; and

(3) transmitted by the clerk to any court of appeal as part of the clerk's record.

(d) Information filed with the court under this section does not constitute "court records" within the meaning of Rule 76a, Texas Rules of Civil Procedure, and shall not be made available by the clerk or any custodian of record for public inspection.

(e) For purposes of this section, "information at issue" is defined as information held by a governmental body that forms the basis of a suit under this chapter.

§ 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 552.324, the court may not assess costs of litigation or reasonable attorney's fees incurred by a plaintiff or defendant who substantially prevails unless the court finds the action or the defense of the action was groundless in fact or law. In exercising its discretion under this subsection, the court shall consider whether the conduct 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 may file seeking to withhold information from a requestor is a suit that:

(1) is filed in a Travis County district court against the attorney general in accordance with Section 552.325 and

(2) seeks declaratory relief from compliance with 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 determining that the requested information must be disclosed to the requestor. If the governmental body does not bring suit within that period, the governmental body shall comply with the decision of the attorney general. If a governmental body wishes to preserve an affirmative defense for its officer of public information as provided in Section 552.353(b)(3), a suit must be filed within the deadline provided in Section 552.353(b)(3).

§ 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 in Travis County district court; 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.

§ 552.327. Dismissal of Suit Due to Requestor's Withdrawal or Abandonment of Request

A court may dismiss a suit challenging a decision of the attorney general brought in accordance with this chapter if:

(1) all parties to the suit agree to the dismissal; and

(2) 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.

SUBCHAPTER I. CRIMINAL VIOLATIONS

§ 552.351. Destruction, Removal, or Alteration of Public Information

(a) A person commits an offense if the person willfully 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:

(1) the officer 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) the officer 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, the officer or the governmental body for whom the defendant is the officer for public information filed a petition for a declaratory judgment against the attorney general in a Travis County district court seeking relief from compliance with the decision of the attorney general, as provided by Section 552.324, and the cause 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, as provided by Section 552.325, 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.

SUBCHAPTER J. ADDITIONAL PROVISIONS RELATED TO CONTRACTING INFORMATION

§ 552.371. Certain Entities Required to Provide Contracting Information to Governmental Body in Connection with Request

(a) This section applies to an entity that is not a governmental body that executes a contract with a governmental body that:

(1) has a stated expenditure of at least $1 million in public funds for the purchase of goods or services by the governmental body; or

(2) results in the expenditure of at least $1 million in public funds for the purchase of goods or services by the governmental body in a fiscal year of the governmental body.

(b) This section applies to a written request for public information received by a governmental body that is a party to a contract described by Subsection (a) for contracting information related

to the contract that is in the custody or possession of the entity and not maintained by the governmental body.

(c) A governmental body that receives a written request for information described by Subsection (b) shall request that the entity provide the information to the governmental body. The governmental body must send the request in writing to the entity not later than the third business day after the date the governmental body receives the written request described by Subsection (b).

(d) Notwithstanding Section 552.301:

(1) a request for an attorney gens decision under Section 552.301(b) to determine whether contracting information subject to a written request described by Subsection (b) falls within an exception to disclosure under this chapter is considered timely if made not later than the 13th business day after the date the governmental body receives the written request described by Subsection (b);

(2) the statement and copy described by Section 552.301(d) is considered timely if provided to the requestor not later than the 13th business day after the date the governmental body receives the written request described by Subsection (b);

(3) a submission described by Section 552.301(e) is considered timely if submitted to the attorney general not later than the 18th business day after the date the governmental body receives the written request described by Subsection (b); and

(4) a copy described by Section 552.301(e–1) is considered timely if sent to the requestor not later than the 18th business day after the date the governmental body receives the written request described by Subsection (b).

(e) Section 552.302 does not apply to information described by Subsection (b) if the governmental body:

(1) complies with the requirements of Subsection (c) in a good faith effort to obtain the information from the contracting entity;

(2) is unable to meet a deadline described by Subsection (d) because the contracting entity failed to provide the information to the governmental body not later than the 13th business day after the date the governmental body received the written request for the information; and

(3) if applicable and notwithstanding the deadlines prescribed by Sections 552.301(b), (d), (e), and (e–1), complies with the requirements of those subsections not later than the eighth business day after the date the governmental body receives the information from the contracting entity.

(f) Nothing in this section affects the deadlines or duties of a governmental body under Section 552.301 regarding information the governmental body maintains, including contracting information.

§ 552.372. Bids and Contracts

(a) A contract described by Section 552.371 must require a contracting entity to:

(1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the governmental body for the duration of the contract;

(2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the governmental body; and

(3) on completion of the contract, either:

(A) provide at no cost to the governmental body all contracting information related to the contract that is in the custody or possession of the entity; or

(B) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the governmental body.

(b) Unless Section 552.374(c) applies, a bid for a contract described by Section 552.371 and the contract must include the following statement: "The requirements of Subchapter J, Chapter 552, Government Code, may apply to this (include "bid" or "contract" as applicable) and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter."

(c) A governmental body may not accept a bid for a contract described by Section 552.371 or award the contract to an entity that the governmental body has determined has knowingly or intentionally failed to comply with this subchapter in a previous bid or contract described by that section unless the governmental body determines and documents that the entity has taken adequate steps to ensure future compliance with the requirements of this subchapter.

§ 552.373. Noncompliance with Provision of Subchapter

A governmental body that is the party to a contract described by Section 552.371 shall provide notice to the entity that is a party to the contract if the entity fails to comply with a requirement of this subchapter applicable to the entity. The notice must:

(1) be in writing;

(2) state the requirement of this subchapter that the entity has violated; and

(3) unless Section 552.374(c) applies, advise the entity that the governmental body may terminate the contract without further obligation to the entity if the entity does not cure the violation on or before the 10th business day after the date the governmental body provides the notice.

§ 552.374. Termination of Contract for Noncompliance

(a) Subject to Subsection (c), a governmental body may terminate a contract described by Section 552.371 if:

(1) the governmental body provides notice under Section 552.373 to the entity that is party to the contract;

(2) the contracting entity does not cure the violation in the period prescribed by Section 552.373;

(3) the governmental body determines that the contracting entity has intentionally or knowingly failed to comply with a requirement of this subchapter; and

(4) the governmental body determines that the entity has not taken adequate steps to ensure future compliance with the requirements of this subchapter.

(b) For the purpose of Subsection (a), an entity has taken adequate steps to ensure future compliance with this subchapter if:

(1) the entity produces contracting information requested by the governmental body that is in the custody or possession of the entity not later than the 10th business day after the date the governmental body makes the request; and

(2) the entity establishes a records management program to enable the entity to comply with this subchapter.

(c) A governmental body may not terminate a contract under this section if the contract is related to the purchase or underwriting of a public security, the contract is or may be used as collateral on a loan, or the contract's proceeds are used to pay debt service of a public security or loan.

§ 552.375. Other Contract Provisions

Nothing in this subchapter prevents a governmental body from including and enforcing more stringent requirements in a contract to increase accountability or transparency.

§ 552.376. Cause of Action Not Created

This subchapter does not create a cause of action to contest a bid for or the award of a contract with a governmental body.

PART FOUR: RULES PROMULGATED BY THE ATTORNEY GENERAL

TEXAS ADMINISTRATIVE CODE, TITLE 1, CHAPTER 63

Subchapter A. Confidentiality of Information Requested for Legislative Purposes

§ 63.1. Definition, Purpose, and Application

(a) In this subchapter, "legislative requestor" means an individual member, agency, or committee of the legislature.

(b) This subchapter governs the procedures by which the attorney general shall render a decision sought by a legislative requestor under Texas Government Code § 552.008(b-2).

(c) Texas Government Code §§ 552.308 and 552.309 apply to all deadlines established in this subchapter.

§ 63.2. Request for Attorney General Decision Regarding Confidentiality

(a) If a governmental body that receives a written request for information from a legislative requestor under Texas Government Code § 552.008 determines the requested information is confidential and requires the legislative requestor to sign a confidentiality agreement, the legislative requestor may ask for an attorney general decision about whether the information covered by the confidentiality agreement is confidential under law.

(b) A request for an attorney general decision must:

(1) be in writing and signed by the legislative requestor;

(2) state the name of the governmental body to whom the original request for information was made; and

(3) state the date the original request was made.

(c) The legislative requestor must submit a copy of the original request with the request for a decision. If the legislative requestor is unable to do so, the legislative requestor must include a written description of the original request in the request for a decision.

(d) The legislative requestor may submit written comments to the attorney general stating reasons why the requested information should not be considered confidential by law. The written comments must be labeled to indicate whether any portion of the comments

discloses or contains the substance of the specific information deemed confidential by the governmental body. A legislative requestor who submits written comments to the attorney general shall send a copy of those comments to the governmental body.

(e) The deadlines in § 63.3 and § 63.6 of this subchapter commence on the date on which the attorney general receives from the legislative requestor all of the information required by subsections (b) and (c) of this section.

§ 63.3. Notice

(a) The attorney general shall notify the governmental body in writing of a request for a decision and provide the governmental body a copy of the request for a decision within a reasonable time but not later than the 5th business day after the date of receiving the request for a decision.

(b) The attorney general shall provide the legislative requestor a copy of the written notice to the governmental body, excluding a copy of the request for a decision, within a reasonable time but not later than the 5th business day after the date of receiving the request for a decision.

§ 63.4. Submission of Documents and Comments

(a) Within a reasonable time but not later than the 10th business day after the date of receiving the attorney general's written notice of the request for a decision, a governmental body shall:

(1) submit to the attorney general:

(A) written comments stating the law that deems the requested information confidential and the reasons why the stated law applies to the information;

(B) a copy of the written request for information; and

(C) a copy of the specific information deemed confidential by the governmental body, or representative samples of the information if a voluminous amount of information was requested; and

(2) label the copy of the specific information, or the representative samples, to indicate which laws apply to which parts of the copy; and

(3) label the written comments to indicate whether any portion of the comments discloses or contains the substance of the specific information deemed confidential by the governmental body.

(b) A governmental body that submits written comments to the attorney general shall send a copy of those comments to the legislative requestor within a reasonable time but not later than the 10th business day after the date of receiving the attorney general's written notice of the request for a decision.

(c) If a governmental body determines a person may have a property interest in the requested information, the governmental body shall notify that person in accordance with Texas Government Code § 552.305(d). The governmental body shall notify the affected person not later than the 10th business day after receiving written notice of the request for a decision.

(d) If a person notified in accordance with Texas Government Code § 552.305 decides to submit written comments to the attorney general, the person must do so not later than the 10th business day after receiving the notice. The written comments must be labeled to indicate whether any portion of the comments discloses or contains the substance of the specific information deemed confidential by the governmental body.

(e) Any interested person may submit written comments to the attorney general stating why the requested information is or is not confidential. The written comments must be labeled to indicate whether any portion of the comments discloses or contains the substance of the specific information deemed confidential by the governmental body.

(f) A person who submits written comments under subsection (d) or (e) of this section shall send a copy of those comments to both the legislative requestor and the governmental body.

§ 63.5. Additional Information

(a) The attorney general may determine whether a governmental body's submission of information under § 63.4(a) of this subchapter is sufficient to render a decision.

(b) If the attorney general determines that information in addition to that required by § 63.4(a) of this subchapter is necessary to render a decision, the attorney general shall give written notice of that fact to the governmental body and the legislative requestor.

(c) A governmental body notified under subsection (b) of this section shall submit the necessary additional information to the attorney general not later than the seventh calendar day after the date the notice is received.

§ 63.6. Rendition of Attorney General Decision; Issuance of Written Decision

(a) The attorney general shall promptly render a decision requested under this subchapter, not later than the 45th business day after the date of receiving the request for a decision.

(b) The attorney general shall issue a written decision and shall provide a copy of the decision to the legislative requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter.

Subchapter B. Review of Public Information Redactions

§ 63.11. Purpose and Application

(a) This subchapter governs the procedures by which the attorney general shall render a decision sought by a requestor under Texas Government Code §§ 552.024(c-1), 552.1175(g), 552.130(d), 552.136(d), or 552.138(d).

(b) Texas Government Code § 552.308 and § 552.309 apply to all deadlines established in this subchapter.

§ 63.12. Request for Review by the Attorney General

(a) If a governmental body redacts or withholds information under Texas Government Code §§ 552.024(c)(2), 552.1175(f), 552.130(c), 552.136(c), or 552.138(c) without requesting a decision from the attorney general about whether the information may be redacted or withheld, the requestor may ask the attorney general to review the governmental body's determination that the information at issue is excepted from required disclosure.

(b) A request for review by the attorney general must:

(1) be in writing and signed by the requestor;

(2) state the name of the governmental body to whom the original request for information was made; and

(3) state the date the original request was made.

(c) The requestor must submit a copy of the original request with the request for review. If the requestor is unable to do so, the requestor must include a written description of the original request in the request for review.

(d) The requestor may submit written comments to the attorney general stating reasons why the information at issue should be released.

(e) The deadlines in § 63.13 and § 63.16 of this subchapter commence on the date on which the attorney general receives from the requestor all of the information required by subsections (b) and (c) of this section.

§ 63.13. Notice

(a) The attorney general shall notify the governmental body in writing of a request for review and provide the governmental body a copy of the request for review not later than the 5th business day after the date of receiving the request for review.

(b) The attorney general shall provide the requestor a copy of the written notice to the governmental body, excluding a copy of the request for review, not later than the 5th business day after the date of receiving the request for review.

§ 63.14. Submission of Documents and Comments

(a) A governmental body shall provide to the attorney general within a reasonable time but not later than the 10th business day after the date of receiving the attorney general's written notice of the request for review:

(1) an unredacted copy of the specific information requested, or representative samples of the information if a voluminous amount of information was requested;

(2) a copy of the specific information requested, or representative samples of the information if a voluminous amount of information was requested, illustrating the information redacted or withheld;

(3) written comments stating the reasons why the information at issue was redacted or withheld;

(4) a copy of the written request for information; and

(5) a copy of the form letter the governmental body provided to the requestor as required by Texas Government Code §§ 552.024(c-2), 552.1175(h), 552.130(e), 552.136(e), and 552.138(e).

(b) A governmental body that submits written comments to the attorney general shall send a copy of those comments to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the attorney general's written notice of the request for review. If the written comments disclose or contain the substance of the information at issue, the copy of the comments provided to the requestor must be a redacted copy.

(c) A person may submit written comments to the attorney general stating why the information at issue in a request for review should or should not be released.

(d) A person who submits written comments under subsection (c) of this section shall send a copy of those comments to both the requestor and the governmental body. If the written comments disclose or contain the substance of the information at issue, the copy of the comments sent to the requestor must be a redacted copy.

§ 63.15. Additional Information

(a) The attorney general may determine whether a governmental body's submission of information under § 63.14(a) of this subchapter is sufficient to render a decision.

(b) If the attorney general determines that information in addition to that required by § 63.14(a) of this subchapter is necessary to render a decision, the attorney general shall give written notice of that fact to the governmental body and the requestor.

(c) A governmental body notified under subsection (b) of this section shall submit the necessary additional information to the attorney general not later than the 7th calendar day after the date the notice is received.

§ 63.16. Rendition of Attorney General Decision; Issuance of Written Decision

(a) The attorney general shall promptly render a decision requested under this subchapter, not later than the 45th business day after the date of receiving the request for review.

(b) The attorney general shall issue a written decision and shall provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter.

Subchapter C. Electronic Submission of Request for Attorney General Open Records Decision

§ 63.21. Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) "Governmental body" means a governmental body as defined in Texas Government Code § 552.003(1).

(2) "Request for decision" means a request for an attorney general open records decision made by a governmental body pursuant to Texas Government Code § 552.301 and § 552.309.

(3) "Requestor" means a requestor as defined in Texas Government Code § 552.003(6).

(4) "Interested Third Party" means any third party who wishes to submit comments, documents, or other materials for consideration in the attorney general's open records decision process under Texas Government Code § 552.304 or § 552.305.

(5) "Attorney General's Designated Electronic Filing System" means the online, electronic filing system designated by the attorney general as the system for submitting documents and other materials to the attorney general under Texas Government Code § 552.309.

§ 63.22. Electronic Submission of Request for Attorney General Decision

(a) A governmental body that requests a decision from the attorney general under Texas Government Code § 552.301 about whether requested public information is excepted from public disclosure may submit that request for decision to the attorney general through the attorney general's designated electronic filing system.

(b) The governmental body's request for decision must comply with the requirements of Texas Government Code § 552.301.

(c) The deadlines in Texas Government Code § 552.301 and § 552.303 are met if the governmental body timely submits the required documents and other materials through the attorney general's designated electronic filing system within the time prescribed.

(d) The governmental body must comply with the requirements of Texas Government Code § 552.301 (d) and (e-1), and § 552.305 regardless of whether the request for attorney general decision is submitted electronically or through another permissible method of submission.

(e) To use the attorney general's designated electronic filing system, the governmental body must agree to and comply with the terms and conditions of use as outlined on the attorney general's designated electronic filing system website.

(f) The confidentiality of Texas Government Code § 552.3035 applies to information submitted under Texas Government Code § 552.301(e)(1)(D) through the attorney general's designated electronic filing system.

§ 63.23. Electronic Submission of Documents or other Materials by Interested Third Party

(a) An interested third party may submit, through the attorney general's designated electronic filing system, the reasons why the requested public information should be withheld or released along with any necessary supporting documentation for consideration in the attorney general's open records decision process.

(b) The deadline in Texas Government Code § 552.305(d)(2)(B) is met if the interested third party timely submits the reasons why the requested public information should be withheld or released along with any necessary supporting documentation through the attorney general's designated electronic filing system within the time prescribed.

(c) The interested third party must comply with the requirements of Texas Government Code § 552.305(e) regardless of whether the interested third party submits materials electronically or through another permissible method of submission.

(d) To use the attorney general's designated electronic filing system, the interested third party must agree to and comply with the terms and conditions of use as outlined on the attorney general's designated electronic filing system website.

TEXAS ADMINISTRATIVE CODE, TITLE 1, CHAPTER 70

Chapter 70. Cost of Copies of Public Information

§ 70.1. Purpose

(a) The Office of the Attorney General (the "Attorney General") must:

(1) Adopt rules for use by each governmental body in determining charges under Texas Government Code, Chapter 552 (Public Information) Subchapter F (Charges for Providing Copies of Public Information);

(2) Prescribe the methods for computing the charges for copies of public information in paper, electronic, and other kinds of media; and

(3) Establish costs for various components of charges for public information that shall be used by each governmental body in providing copies of public information.

(b) Governmental bodies must use the charges established by these rules, unless:

(1) Other law provides for charges for specific kinds of public information;

(2) They are a governmental body other than a state agency, and their charges are within a 25 percent variance above the charges established by the Attorney General;

(3) They request and receive an exemption because their actual costs are higher; or

(4) In accordance with Chapter 552 of the Texas Government Code (also known as the Public Information Act), the governmental body may grant a waiver or reduction for charges for providing copies of public information pursuant to § 552.267 of the Texas Government Code.

(A) A governmental body shall furnish a copy of public information without charge or at a reduced charge if the governmental body determines that waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public; or

(B) If the cost to the governmental body of processing the collection of a charge for a copy of public information will exceed the amount of the charge, the governmental body may waive the charge.

§ 70.2. Definitions

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Actual cost—The sum of all direct costs plus a proportional share of overhead or indirect costs. Actual cost should be determined in accordance with generally accepted methodologies.

(2) Client/Server System—A combination of two or more computers that serve a particular application through sharing processing, data storage, and end-user interface presentation. PCs located in a LAN environment containing file servers fall into this category as do applications running in an X-window environment where the server is a UNIX based system.

(3) Attorney General—The Office of the Attorney General of Texas.

(4) Governmental Body—An entity as defined by § 552.003 of the Texas Government Code.

(5) Mainframe Computer—A computer located in a controlled environment and serving large applications and/or large numbers of users. These machines usually serve an entire organization or some group of organizations. These machines usually require an operating staff. IBM and UNISYS mainframes, and large Digital VAX 9000 and VAX Clusters fall into this category.

(6) Midsize Computer—A computer smaller than a Mainframe Computer that is not necessarily located in a controlled environment. It usually serves a smaller organization or a sub-unit of an organization. IBM AS/400 and Digital VAX/VMS multi-user single-processor systems fall into this category.

(7) Nonstandard copy—Under § 70.1 through § 70.11 of this title, a copy of public information that is made available to a requestor in any format other than a standard paper copy. Microfiche, microfilm, diskettes, magnetic tapes, CD-ROM are examples of nonstandard copies. Paper copies larger than 8 1/2 by 14 inches (legal size) are also considered nonstandard copies.

(8) PC—An IBM compatible PC, Macintosh or Power PC based computer system operated without a connection to a network.

(9) Standard paper copy—Under § 70.1 through § 70.11 of this title, a copy of public information that is a printed impression on one side of a piece of paper that measures up to 8 1/2 by 14 inches. Each side of a piece of paper on which information is recorded is counted as a single copy. A piece of paper that has information recorded on both sides is counted as two copies.

(10) Archival box—A carton box measuring approximately 12.5” width x 15.5” length x 10” height, or able to contain approximately 1.5 cubic feet in volume.

§ 70.3. Charges for Providing Copies of Public Information

(a) The charges in this section to recover costs associated with providing copies of public information are based on estimated average costs to governmental bodies across the state. When actual costs are 25% higher than those used in these rules, governmental bodies other than agencies of the state, may request an exemption in accordance with § 70.4 of this title (relating to Requesting an Exemption).

(b) Copy charge.

(1) Standard paper copy. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is $.10 per page or part of a page. Each side that has recorded information is considered a page.

(2) Nonstandard copy. The charges in this subsection are to cover the materials onto which information is copied and do not reflect any additional charges, including labor, that may be associated with a particular request. The charges for nonstandard copies are:

(A) Diskette—$1.00;

(B) Magnetic tape—actual cost

(C) Data cartridge—actual cost;

(D) Tape cartridge—actual cost;

(E) Rewritable CD (CD-RW)—$1.00;

(F) Non-rewritable CD (CD-R)—$1.00;

(G) Digital video disc (DVD)—$3.00;

(H) JAZ drive—actual cost;

(I) Other electronic media—actual cost;

(J) VHS video cassette—$2.50;

(K) Audio cassette—$1.00;

(L) Oversize paper copy (e.g.: 11 inches by 17 inches, greenbar, bluebar, not including maps and photographs using specialty paper—See also § 70.9 of this title)—$.50;

(M) Specialty paper (e.g.: Mylar, blueprint, blueline, map, photographic—actual cost).

(c) Labor charge for programming. If a particular request requires the services of a programmer in order to execute an existing program or to create a new program so that requested information may be accessed and copied, the governmental body may charge for the programmer's time.

(1) The hourly charge for a programmer is $28.50 an hour. Only programming services shall be charged at this hourly rate.

(2) Governmental bodies that do not have in-house programming capabilities shall comply with requests in accordance with § 552.231 of the Texas Government Code.

(3) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of § 552.261(b) of the Texas Government Code.

(d) Labor charge for locating, compiling, manipulating data, and reproducing public information.

(1) The charge for labor costs incurred in processing a request for public information is $15 an hour. The labor charge includes the actual time to locate, compile, manipulate data, and reproduce the requested information.

(2) A labor charge shall not be billed in connection with complying with requests that are for 50 or fewer pages of paper records, unless the documents to be copied are located in:

(A) Two or more separate buildings that are not physically connected with each other; or

(B) A remote storage facility.

(3) A labor charge shall not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information:

(A) To determine whether the governmental body will raise any exceptions to disclosure of the requested information under the Texas Government Code, Subchapter C, Chapter 552; or

(B) To research or prepare a request for a ruling by the attorney general's office pursuant to § 552.301 of the Texas Government Code.

(4) When confidential information pursuant to a mandatory exception of the Act is mixed with public information in the same page, a labor charge may be recovered for time spent to redact, blackout, or otherwise obscure confidential information in order to release the public information. A labor charge shall not be made for redacting confidential information for requests of 50 or fewer pages, unless the request also qualifies for a labor charge pursuant to Texas Government Code, § 552.261(a)(1) or (2).

(5) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of Texas Government Code, Chapter 552, § 552.261(b).

(6) For purposes of paragraph (2)(A) of this subsection, two buildings connected by a covered or open sidewalk, an elevated or underground passageway, or a similar facility, are not considered to be separate buildings.

(e) Overhead charge.

(1) Whenever any labor charge is applicable to a request, a governmental body may include in the charges direct and indirect costs, in addition to the specific labor charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead. If a governmental body chooses to recover such costs, a charge shall be made in accordance with the methodology described in paragraph (3) of this subsection. Although an exact calculation of costs will vary, the use of a standard charge will avoid complication in calculating such costs and will provide uniformity for charges made statewide.

(2) An overhead charge shall not be made for requests for copies of 50 or fewer pages of standard paper records unless the request also qualifies for a labor charge pursuant to Texas Government Code, § 552.261(a)(1) or (2).

(3) The overhead charge shall be computed at 20% of the charge made to cover any labor costs associated with a particular request. Example: if one hour of labor is used for a particular request, the formula would be as follows: Labor charge for locating, compiling, and reproducing, $15.00 x .20 = $3.00; or Programming labor charge, $28.50 x .20 = $5.70. If a request requires one hour of labor charge for locating, compiling, and reproducing information ($15.00 per hour); and one hour of programming labor charge ($28.50 per hour), the combined overhead would be: $15.00 + $28.50 = $43.50 x .20 = $8.70.

(f) Microfiche and microfilm charge.

(1) If a governmental body already has information that exists on microfiche or microfilm and has copies available for sale or distribution, the charge for a copy must not exceed the cost of its reproduction. If no copies of the requested microfiche or microfilm are available and the information on the microfiche or microfilm can be released in its entirety, the governmental body should make a copy of the microfiche or microfilm. The charge for a copy shall not exceed the cost of its reproduction. The Texas State Library and Archives Commission has the capacity to reproduce microfiche and microfilm for governmental bodies. Governmental bodies that do not have in-house capability to reproduce microfiche or microfilm are encouraged to contact the Texas State Library before having the reproduction made commercially.

(2) If only a master copy of information in microfilm is maintained, the charge is $.10 per page for standard size paper copies, plus any applicable labor and overhead charge for more than 50 copies.

(g) Remote document retrieval charge.

(1) Due to limited on-site capacity of storage documents, it is frequently necessary to store information that is not in current use in remote storage locations. Every effort should be made by governmental bodies to store current records on-site. State agencies are encouraged to store inactive or non-current records with the Texas State Library and Archives Commission. To the extent that the retrieval of documents results in a charge to comply with a request, it is permissible to recover costs of such services for requests that qualify for labor charges under current law.

(2) If a governmental body has a contract with a commercial records storage company, whereby the private company charges a fee to locate, retrieve, deliver, and return to storage the needed record(s), no additional labor charge shall be factored in for time spent locating documents at the storage location by the private company's personnel. If after delivery to the governmental body, the boxes must still be searched for records that are responsive to the request, a labor charge is allowed according to subsection (d)(1) of this section.

(h) Computer resource charge.

(1) The computer resource charge is a utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources, which might include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communications devices, software, and system utilities.

(2) These computer resource charges are not intended to substitute for cost recovery methodologies or charges made for purposes other than responding to public information requests.

(3) The charges in this subsection are averages based on a survey of governmental bodies with a broad range of computer capabilities. Each governmental body using this cost recovery charge shall determine which category(ies) of computer system(s) used to fulfill the public information request most closely fits its existing system(s), and set its charge accordingly. Type of System—Rate: mainframe—$10 per CPU minute; Midsize—$1.50 per CPU minute; Client/Server—$2.20 per clock hour; PC or LAN—$1.00 per clock hour.

(4) The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program times the applicable rate. The CPU charge is not meant to apply to programming or printing time; rather it is solely to recover costs associated with the actual time required by the computer to execute a program. This time, called CPU time, can be read directly from the CPU clock,

and most frequently will be a matter of seconds. If programming is required to comply with a particular request, the appropriate charge that may be recovered for programming time is set forth in subsection (d) of this section. No charge should be made for computer print-out time. Example: If a mainframe computer is used, and the processing time is 20 seconds, the charges would be as follows: $10 / 3 = $3.33; or $10 / 60 x 20 = $3.33.

(5) A governmental body that does not have in-house computer capabilities shall comply with requests in accordance with the § 552.231 of the Texas Government Code.

(i) Miscellaneous supplies. The actual cost of miscellaneous supplies, such as labels, boxes, and other supplies used to produce the requested information, may be added to the total charge for public information.

(j) Postal and shipping charges. Governmental bodies may add any related postal or shipping expenses which are necessary to transmit the reproduced information to the requesting party.

(k) Sales tax. Pursuant to Office of the Comptroller of Public Accounts' rules sales tax shall not be added on charges for public information (34 TAC, Part 1, Chapter 3, Subchapter O, § 3.341 and § 3.342).

(l) Miscellaneous charges: A governmental body that accepts payment by credit card for copies of public information and that is charged a "transaction fee" by the credit card company may recover that fee.

(m) These charges are subject to periodic reevaluation and update.

§ 70.4. Requesting an Exemption

(a) Pursuant to § 552.262(c) of the Public Information Act, a governmental body may request that it be exempt from part or all of these rules.

(b) State agencies must request an exemption if their charges to recover costs are higher than those established by these rules.

(c) Governmental bodies, other than agencies of the state, must request an exemption before seeking to recover costs that are more than 25% higher than the charges established by these rules.

(d) an exemption request must be made in writing, and must contain the following elements:

(1) A statement identifying the subsection(s) of these rules for which an exemption is sought;

(2) The reason(s) the exemption is requested;

(3) A copy of the proposed charges;

(4) The methodology and figures used to calculate/compute the proposed charges;

(5) Any supporting documentation, such as invoices, contracts, etc.; and

(6) The name, title, work address, and phone number of a contact person at the governmental body.

(e) The contact person shall provide sufficient information and answer in writing any questions necessary to process the request for exemption.

(f) If there is good cause to grant the exemption, because the request is duly documented, reasonable, and in accordance with generally accepted accounting principles, the exemption shall be granted. The name of the governmental body shall be added to a list to be published annually in the *Texas Register*.

(g) If the request is not duly documented and/or the charges are beyond cost recovery, the request for exemption shall be denied. The letter of denial shall:

(1) Explain the reason(s) the exemption cannot be granted; and

(2) Whenever possible, propose alternative charges.

(h) All determinations to grant or deny a request for exemption shall be completed promptly, but shall not exceed 90 days from receipt of the request by the Attorney General.

§ 70.5. Access to Information Where Copies Are Not Requested

(a) Access to information in standard paper form. A governmental body shall not charge for making available for inspection information maintained in standard paper form. Charges are permitted only where the governmental body is asked to provide, for inspection, information that contains mandatory confidential information and public information. When such is the case, the governmental body may charge to make a copy of the page from which information must be edited. No other charges are allowed except as follows:

(1) The governmental body has 16 or more employees and the information requested takes more than five hours to prepare the public information for inspection; and

(A) Is older than five years; or

(B) Completely fills, or when assembled will completely fill, six or more archival boxes.

(2) The governmental body has 15 or fewer full-time employees and the information requested takes more than two hours to prepare the public information for inspection; and

(A) Is older than three years; or

(B) Completely fills, or when assembled will completely fill, three or more archival boxes.

(3) A governmental body may charge pursuant to paragraphs (1)(A) and (2)(A) of this subsection only for the production of those documents that qualify under those paragraphs.

(b) Access to information in other than standard form. In response to requests for access, for purposes of inspection only, to information that is maintained in other than standard form, a governmental body may not charge the requesting party the cost of preparing and making available such information, unless complying with the request will require programming or manipulation of data.

§ 70.6. Format for Copies of Public Information

(a) If a requesting party asks that information be provided on computer-compatible media of a particular kind, and the requested information is electronically stored and the governmental body has the capability of providing it in that format and it is able to provide it at no greater expense or time, the governmental body shall provide the information in the requested format.

(b) The extent to which a requestor can be accommodated will depend largely on the technological capability of the governmental body to which the request is made.

(c) A governmental body is not required to purchase any hardware, software or programming capabilities that it does not already possess to accommodate a particular kind of request.

(d) Provision of a copy of public information in the requested medium shall not violate the terms of any copyright agreement between the governmental body and a third party.

(e) if the governmental body does not have the required technological capabilities to comply with the request in the format preferred by the requestor, the governmental body shall proceed in accordance with § 552.228(c) of the Public Information Act.

(f) If a governmental body receives a request requiring programming or manipulation of data, the governmental body should proceed in accordance with § 552.231 of the Public Information Act. Manipulation of data under § 552.231 applies only to information stored in electronic format.

§ 70.7. Estimates and Waivers of Public Information Charges

(a) A governmental body is required to provide a requestor with an itemized statement of estimated charges if charges for copies of public information will exceed $40, or if a charge in accordance with § 70.5 of this title (relating to Access to Information Where Copies Are Not Requested) will exceed $40 for making public information available for inspection. The itemized statement of estimated charges is to be provided before copies

are made to enable requestors to make the choices allowed by the Act. A governmental body that fails to provide the required statement may not collect more than $40. The itemized statement must be provided free of charge and shall contain the following information:

(1) The itemized estimated charges, including any allowable charges for labor, overhead, copies, etc.;

(2) Whether a less costly or no-cost way of viewing the information is available;

(3) A statement that the requestor must respond in writing by mail, in person, by facsimile if the governmental body is capable of receiving such transmissions, or by electronic mail, if the governmental body has an electronic mail address;

(4) A statement that the request will be considered to have been automatically withdrawn by the requestor if a written response from the requestor is not received within ten business days after the date the statement was sent, in which the requestor states that the requestor:

(A) Will accept the estimated charges;

(B) Is modifying the request in response to the itemized statement; or

(C) 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.

(b) If after starting the work, but before making the copies available, the governmental body determines that the initially accepted estimated statement will be exceeded by 20% or more, an updated statement must be sent. If the requestor does not respond to the updated statement, the request is considered to have been withdrawn by the requestor.

(c) If the actual charges exceed $40, the charges may not exceed:

(1) The amount estimated on the updated statement; or

(2) An amount that exceeds by more than 20% the amount in the initial statement, if an updated statement was not sent.

(d) A governmental body that provides a requestor with the statement mentioned in subsection (a) of this section, may require a deposit or bond as follows:

(1) The governmental body has 16 or more full-time employees and the estimated charges are $100 or more; or

(2) The governmental body has 15 or fewer full-time employees and the estimated charges are $50 or more.

(e) If a request for the inspection of paper records will qualify for a deposit or a bond as detailed in subsection (d) of this section, a governmental body may request:

(1) A bond for the entire estimated amount; or

(2) A deposit not to exceed 50 percent of the entire estimated amount.

(f) A governmental body may require payment of overdue and unpaid balances before preparing a copy in response to a new request if:

(1) The governmental body provided, and the requestor accepted, the required itemized statements for previous requests that remain unpaid; and

(2) The aggregated unpaid amount exceeds $100.

(g) A governmental body may not seek payment of said unpaid amounts through any other means.

(h) A governmental body that cannot produce the public information for inspection and/or duplication within 10 business days after the date the written response from the requestor has been received, shall certify to that fact in writing, and set a date and hour within a reasonable time when the information will be available.

§ 70.8. Processing Complaints of Overcharges

(a) Pursuant to § 552.269(a) of the Texas Government Code, requestors who believe they have been overcharged for a copy of public information may complain to the Attorney General.

(b) The complaint must be in writing, and must:

(1) Set forth the reason(s) the person believes the charges are excessive;

(2) Provide a copy of the original request and a copy of any correspondence from the governmental body stating the proposed charges; and

(3) Be received by the Attorney General within 10 business days after the person knows of the occurrence of the alleged overcharge.

(4) Failure to provide the information listed within the stated timeframe will result in the complaint being dismissed.

(c) The Attorney General shall address written questions to the governmental body, regarding the methodology and figures used in the calculation of the charges which are the subject of the complaint.

(d) The governmental body shall respond in writing to the questions within 10 business days from receipt of the questions.

(e) The Attorney General may use tests, consultations with records managers and technical personnel at the Attorney General and other agencies, and any other reasonable resources to determine appropriate charges.

(f) If the Attorney General determines that the governmental body overcharged for requested public information, the governmental body shall adjust its charges in accordance with the determination, and shall refund the difference between what was charged and what was determined to be appropriate charges.

(g) The Attorney General shall send a copy of the determination to the complainant and to the governmental body.

(h) Pursuant to § 552.269(b) of the Texas Government Code, a requestor who overpays because a governmental body refuses or fails to follow the charges established 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 charges.

§ 70.9. Examples of Charges for Copies of Public Information

The following tables present a few examples of the calculations of charges for information:

(1) TABLE 1 (Fewer than 50 pages of paper records): $.10 per copy x number of copies (standard-size paper copies); + Labor charge (if applicable); + Overhead charge (if applicable); + Document retrieval charge (if applicable); + Postage and shipping (if applicable) = $ TOTAL CHARGE.

(2) TABLE 2 (More than 50 pages of paper records or nonstandard copies): $.10 per copy x number of copies (standard-size paper copies), or cost of nonstandard copy (e.g., diskette, oversized paper, etc.); + Labor charge (if applicable); + Overhead charge (if applicable); + Document retrieval charge (if applicable); + Actual cost of miscellaneous supplies (if applicable); + Postage and shipping (if applicable) = $ TOTAL CHARGE.

(3) TABLE 3 (Information that Requires Programming or Manipulation of Data): Cost of copy (standard or nonstandard, whichever applies); + Labor charge; + Overhead charge; + Computer resource charge; + Programming time (if applicable); + Document retrieval charge (if applicable); + Actual cost of miscellaneous supplies (if applicable); + Postage and shipping (if applicable) = $ TOTAL CHARGE.

(4) TABLE 4 (Maps): Cost of paper (Cost of Roll/Avg. # of Maps); + Cost of Toner (Black or Color, # of Maps per Toner Cartridge); + Labor charge (if applicable); + Overhead charge (if applicable) + Plotter/Computer resource Charge; + Actual cost of miscellaneous supplies (if applicable); + Postage and shipping (if applicable) = $ TOTAL CHARGE.

(5) TABLE 5 (Photographs): Cost of Paper (Cost of Sheet of Photographic Paper/Avg. # of Photographs per Sheet); + Developing/Fixing Chemicals (if applicable); + Labor charge (if applicable); + Overhead charge (if applicable); + Postage and shipping (if applicable) = $ TOTAL CHARGE.

§ 70.10. The Attorney General Charge Schedule

The following is a summary of the charges for copies of public information that have been adopted by the Attorney General.

(1) Standard paper copy—$.10 per page.

(2) Nonstandard-size copy:

(A) Diskette: $1.00;

(B) Magnetic tape: actual cost;

(C) Data cartridge: actual cost;

(D) Tape cartridge: actual cost;

(E) Rewritable CD (CD-RW)—$1.00;

(F) Non-rewritable CD (CD-R)—$1.00;

(G) Digital video disc (DVD)—$3.00;

(H) JAZ drive—actual cost;

(I) Other electronic media—actual cost;

(J) VHS video cassette—$2.50;

(K) Audio cassette—$1.00;

(L) Oversize paper copy (e.g.: 11 inches by 17 inches, greenbar, bluebar, not including maps and photographs using specialty paper)—$.50;

(M) Specialty paper (e.g.: Mylar, blueprint, blueline, map, photographic)—actual cost.

(3) Labor charge:

(A) For programming—$28.50 per hour;

(B) For locating, compiling, and reproducing—$15 per hour.

(4) Overhead charge—20% of labor charge.

(5) Microfiche or microfilm charge:

(A) Paper copy—$.10 per page;

(B) Fiche or film copy—Actual cost.

(6) Remote document retrieval charge—Actual cost.

(7) Computer resource charge:

(A) mainframe—$10 per CPU minute;

(B) Midsize—$1.50 per CPU minute;

(C) Client/Server system—$2.20 per clock hour;

(D) PC or LAN—$1.00 per clock hour.

(8) Miscellaneous supplies—Actual cost.

(9) Postage and shipping charge—Actual cost.

(10) Photographs—Actual cost as calculated in accordance with § 70.9(5) of this title.

(11) Maps—Actual cost as calculated in accordance with § 70.9(4) of this title.

(12) Other costs—Actual cost.

(13) Outsourced/Contracted Services—Actual cost for the copy. May not include development costs.

(14) No Sales Tax—No Sales Tax shall be applied to copies of public information.

§ 70.11. Informing the Public of Basic Rights and Responsibilities Under the Public Information Act

(a) Pursuant to Texas Government Code, Chapter 552, Subchapter D, § 552.205, an officer for public information shall prominently display a sign in the form prescribed by the Attorney General.

(b) The sign shall contain basic information about the rights of requestors and responsibilities of governmental bodies that are subject to Chapter 552, as well as the procedures for inspecting or obtaining a copy of public information under said chapter.

(c) The sign shall have the minimum following characteristics:

(1) Be printed on plain paper.

(2) Be no less than 8 1/2 inches by 14 inches in total size, exclusive of framing.

(3) The sign may be laminated to prevent alterations.

(d) The sign will contain the following wording:

(1) The Public Information Act. Texas Government Code, Chapter 552, gives you the right to access government records; and an officer for public information and the officer's agent may not ask why you want them. All government information is presumed to be available to the public. Certain exceptions may apply to the disclosure of the information. Governmental bodies shall promptly release requested information that is not confidential by law, either constitutional, statutory, or by judicial decision, or information for which an exception to disclosure has not been sought.

(2) Rights of Requestors. You have the right to:

(A) Prompt access to information that is not confidential or otherwise protected;

(B) Receive treatment equal to all other requestors, including accommodation in accordance with the Americans with Disabilities Act (ADA) requirements;

(C) Receive certain kinds of information without exceptions, like the voting record of public officials, and other information;

(D) Receive a written itemized statement of estimated charges, when charges will exceed $40, in advance of work being started and opportunity to modify the request in response to the itemized statement;

(E) Choose whether to inspect the requested information (most often at no charge), receive copies of the information, or both;

(F) A waiver or reduction of charges if the governmental body determines that access to the information primarily benefits the general public;

(G) Receive a copy of the communication from the governmental body asking the Attorney General for a ruling on whether the information can be withheld under one of the accepted exceptions, or if the communication discloses the requested information, a redacted copy;

(H) Lodge a written complaint about overcharges for public information with the Attorney General. Complaints of other possible violations may be filed with the county or district attorney of the county where the governmental body, other than a state agency, is located. If the complaint is against the county or district attorney, the complaint must be filed with the Attorney General.

(3) Responsibilities of Governmental Bodies. All governmental bodies responding to information requests have the responsibility to:

(A) Establish reasonable procedures for inspecting or copying public information and inform requestors of these procedures;

(B) Treat all requestors uniformly and shall give to the requestor all reasonable comfort and facility, including accommodation in accordance with ADA requirement;

(C) Be informed about open records laws and educate employees on the requirements of those laws;

(D) Inform requestors of the estimated charges greater than $40 and any changes in the estimates above 20 percent of the original estimate, and confirm that the requestor accepts the charges, has amended the request, or has sent a complaint of overcharges to the Attorney General, in writing before finalizing the request;

(E) Inform the requestor if the information cannot be provided promptly and set a date and time to provide it within a reasonable time;

(F) Request a ruling from the Attorney General regarding any information the governmental body wishes to withhold, and send a copy of the request for ruling, or a redacted copy, to the requestor;

(G) Segregate public information from information that may be withheld and provide that public information promptly;

(H) Make a good faith attempt to inform third parties when their proprietary information is being requested from the governmental body;

(I) Respond in writing to all written communications from the Attorney General regarding complaints about the charges for the information and other alleged violations of the Act.

(4) Procedures to Obtain Information

(A) Submit a request by mail, fax, email or in person, according to a governmental body's reasonable procedures.

(B) Include enough description and detail about the information requested to enable the governmental body to accurately identify and locate the information requested.

(C) Cooperate with the governmental body's reasonable efforts to clarify the type or amount of information requested.

(5) Information to be released.

(A) You may review it promptly, and if it cannot be produced within 10 business days the public information officer will notify you in writing of the reasonable date and time when it will be available;

(B) Keep all appointments to inspect records and to pick up copies. Failure to keep appointments may result in losing the opportunity to inspect the information at the time requested;

(C) Cost of Records.

(i) You must respond to any written estimate of charges within 10 business days of the date the governmental body sent it or the request is considered automatically withdrawn;

(ii) If estimated costs exceed $100.00 (or $50.00 if a governmental body has fewer than 16 full time employees) the governmental body may require a bond, prepayment or deposit;

(iii) You may ask the governmental body to determine whether providing the information primarily benefits the general public, resulting in a waiver or reduction of charges;

(iv) Make timely payment for all mutually agreed charges. A governmental body can demand payment of overdue balances exceeding $100.00, or obtain a security deposit, before processing additional requests from you.

(6) Information that may be withheld due to an exception.

(A) By the 10th business day after a governmental body receives your written request, a governmental body must:

(i) Request an Attorney General Opinion and state which exception apply;

(ii) Notify the requestor of the referral to the Attorney General; and

(iii) Notify third parties if the request involves their proprietary information;

(B) Failure to request an Attorney General opinion and to notify the requestor within 10 business days will result in a presumption that the information is open unless there is a compelling reason to withhold it.

(C) Requestors may send a letter to the Attorney General arguing for release, and may review arguments made by the governmental body. If the arguments disclose the requested information, the requestor may obtain a redacted copy.

(D) The Attorney General must issue a decision no later than the 45th business day after the Attorney General received the request for a decision. The Attorney General may request an additional 10 business days extension.

(E) Governmental bodies may not ask the Attorney General to "reconsider" an opinion.

(7) Additional Information on Sign.

(A) The sign must contain information of the governmental body's officer for public information, or the officer's agent, as well as the mailing address, phone and fax numbers, and email address, if any, where requestors may send a request for information to the officer or the officer's agent. The sign must also contain the physical address at which requestors may request information in person.

(B) The sign must contain information of the local county attorney or district attorney where requestors may submit a complaint of alleged violations of the Act, as well as the contact information for the Attorney General.

(C) The sign must also contain contact information of the person or persons with whom a requestor may make special arrangements for accommodation pursuant to the American with Disabilities Act.

(e) A governmental body may comply with Texas Government Code, § 552.205 and this rule by posting the sign provided by the Attorney General.

§ 70.12. Allowable Charges Under Section 552.275 of the Texas Government Code

(a) A governmental body shall utilize the methods established in 1 TAC § 70.3(c) - (e) when calculating allowable charges under Section 552.275 of the Texas Government Code.

(b) When calculating the amount of time spent complying with an individual's public information request(s) pursuant to Section 552.275 of the Texas Government Code, a governmental body may not include time spent on:

(1) Determining the meaning and/or scope of the request(s);

(2) Requesting a clarification from the requestor;

(3) Comparing records gathered from different sources;

(4) Determining which exceptions to disclosure under Chapter 552 of the Texas Government Code, if any, may apply to information that is responsive to the request(s);

(5) Preparing the information and/or correspondence required under Sections 552.301, 552.303, and 552.305 of the Government Code;

(6) Reordering, reorganizing, or in any other way bringing information into compliance with well established and generally accepted information management practices; or

(7) Providing instruction to, or learning by, employees or agents of the governmental body of new practices, rules, and/or procedures, including the management of electronic records.

§ 70.13. Fee for Obtaining Copy of Body Worn Camera Recording

(a) This section provides the fee for obtaining a copy of body worn camera recording pursuant to § 1701.661 of the Government Code.

(1) Section 1701.661 of the Government Code is the sole authority under which a copy of a body worn camera recording may be obtained from a law enforcement agency under the Public Information Act, Chapter 552 of the Government Code, and no fee for obtaining a copy of a body worn camera recording from a law enforcement agency may be charged unless authorized by this section.

(2) This section does not apply to a request, or portions of a request, seeking to obtain information other than a copy of a body worn camera recording. Portions of a request seeking information other than a copy of a body worn camera recording are subject to the charges listed in § 70.3 of this chapter.

(b) The charge for obtaining a copy of a body worn camera recording shall be:

(1) $10.00 per recording responsive to the request for information; and

(2) $1.00 per full minute of body worn camera video or audio footage responsive to the request for information, if identical information has not already been obtained by a member of the public in response to a request for information.

(c) A law enforcement agency may provide a copy without charge, or at a reduced charge, if the agency determines waiver or reduction of the charge is in the public interest.

(d) If the requestor is not permitted to obtain a copy of a requested body worn camera recording under § 1701.661 of the Government Code or an exception in the Public Information Act, Chapter 552 of the Government Code, the law enforcement agency may not charge the requestor under this section.

PART FIVE: RULES OF JUDICIAL ADMINISTRATION

Rule 12. Public Access to Judicial Records

12.1 Policy. The purpose of this rule is to provide public access to information in the judiciary consistent with the mandates of the Texas Constitution that the public interests are best served by open courts and by an independent judiciary. The rule should be liberally construed to achieve its purpose.

12.2 Definitions. In this rule:

(a) *Judge* means a regularly appointed or elected judge or justice.

(b) *Judicial agency* means an office, board, commission, or other similar entity that is in the Judicial Department and that serves an administrative function for a court. A task force or committee created by a court or judge is a "judicial agency".

(c) *Judicial officer* means a judge, former or retired visiting judge, referee, commissioner, special master, court-appointed arbitrator, or other person exercising adjudicatory powers in the judiciary. A mediator or other provider of non-binding dispute resolution services is not a "judicial officer".

(d) *Judicial record* means a record made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function, regardless of whether that function relates to a specific case. A record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record. A record is a document, paper, letter, map, book, tape, photograph, film, recording, or other material, regardless of electronic or physical form, characteristics, or means of transmission.

(e) *Records custodian* means the person with custody of a judicial record determined as follows:

(1) The judicial records of a court with only one judge, such as any trial court, are in the custody of that judge. Judicial records pertaining to the joint administration of a number of those courts, such as the district courts in a particular county or region, are in the custody of the judge who presides over the joint administration, such as the local or regional administrative judge.

(2) The judicial records of a court with more than one judge, such as any appellate court, are in the custody of the chief justice or presiding judge, who must act under this rule in accordance with the vote of a majority of the judges of the court. But the judicial records relating specifically to the service of one such judge or that judge's own staff are in the custody of that judge.

(3) The judicial records of a judicial officer not covered by subparagraphs (1) and (2) are in the custody of that officer.

(4) The judicial records of a judicial agency are in the custody of its presiding officer, who must act under this rule in accordance with agency policy or the vote of a majority of the members of the agency.

12.3 Applicability. This rule does not apply to:

(a) records or information to which access is controlled by:

(1) a state or federal court rule, including:

(A) a rule of civil or criminal procedure, including Rule 76a, Texas Rules of Civil Procedure;

(B) a rule of appellate procedure;

(C) a rule of evidence;

(D) a rule of administration;

(2) a state or federal court order not issued merely to thwart the purpose of this rule;

(3) the Code of Judicial Conduct;

(4) Chapter 552, Government Code, or another statute or provision of law;

(b) records or information to which Chapter 552, Government Code, is made inapplicable by statute, rule, or other provision of law, other than Section 552.003(1)(B);

(c) records or information relating to an arrest or search warrant or a supporting affidavit, access to which is controlled by:

(1) a state or federal court rule, including a rule of civil or criminal procedure, appellate procedure, or evidence; or

(2) common law, court order, judicial decision, or another provision of law

(d) elected officials other than judges.

12.4 Access to Judicial Records.

(a) ***Generally.*** Judicial records other than those covered by Rules 12.3 and 12.5 are open to the general public for inspection and copying during regular business hours. But this rule does not require a court, judicial agency, or records custodian to:

(1) create a record, other than to print information stored in a computer;

(2) retain a judicial record for a specific period of time;

(3) allow the inspection of or provide a copy of information in a book or publication commercially available to the public; or

(4) respond to or comply with a request for a judicial record from or on behalf of an individual who is imprisoned or confined in a correctional facility as defined in Section 1.07(a), Penal Code, or in any other such facility in any state, federal, or foreign jurisdiction.

(b) ***Voluntary Disclosure***. A records custodian may voluntarily make part or all of the information in a judicial record available to the public, subject to Rules 12.2(e)(2) and 12.2(e)(4), unless the disclosure is expressly prohibited by law or exempt under this rule, or the information is confidential under law. Information voluntarily disclosed must be made available to any person who requests it.

12.5 Exemptions from Disclosure. The following records are exempt from disclosure under this rule:

(a) ***Judicial Work Product and Drafts***. Any record that relates to a judicial officer's adjudicative decision-making process prepared by that judicial officer, by another judicial officer, or by court staff, an intern, or any other person acting on behalf of or at the direction of the judicial officer.

(b) ***Security Plans.*** Any record, including a security plan or code, the release of which would jeopardize the security of an individual against physical injury or jeopardize information or property against theft, tampering, improper use, illegal disclosure, trespass, unauthorized access, or physical injury.

(c) ***Personnel Information.*** Any personnel record that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy.

(d) ***Home Address and Family Information.*** Any record reflecting any person's home address, home or personal telephone number, social security number, or family members.

(e) ***Applicants for Employment or Volunteer Services.*** Any records relating to an applicant for employment or volunteer services.

(f) ***Internal Deliberations on Court or Judicial Administration Matters***. Any record relating to internal deliberations of a court or judicial agency, or among judicial officers or members of a judicial agency, on matters of court or judicial administration.

(g) ***Court Law Library Information.*** Any record in a law library that links a patron's name with the materials requested or borrowed by that patron.

(h) ***Judicial Calendar Information.*** Any record that reflects a judicial officer's appointments or engagements that are in the future or that constitute an invasion of personal privacy.

(i) ***Information Confidential Under Other Law.*** Any record that is confidential or exempt from disclosure under a state or federal constitutional provision, statute or common law, including information that relates to:

(1) a complaint alleging misconduct against a judicial officer, if the complaint is exempt from disclosure under Chapter 33, Government Code, or other law;

(2) a complaint alleging misconduct against a person who is licensed or regulated by the courts, if the information is confidential under applicable law; or

(3) a trade secret or commercial or financial information made privileged or confidential by statute or judicial decision.

(j) ***Litigation or Settlement Negotiations.*** Any judicial record relating to civil or criminal litigation or settlement negotiations:

(1) in which a court or judicial agency is or may be a party; or

(2) in which a judicial officer or member of a judicial agency is or may be a party as a consequence of the person's office or employment.

(k) ***Investigations of Character or Conduct.*** Any record relating to an investigation of any person's character or conduct, unless:

(1) the record is requested by the person being investigated; and

(2) release of the record, in the judgment of the records custodian, would not impair the investigation.

(l) ***Examinations.*** Any record relating to an examination administered to any person, unless requested by the person after the examination is concluded.

12.6 Procedures for Obtaining Access to Judicial Records.

(a) ***Request.*** A request to inspect or copy a judicial record must be in writing and must include sufficient information to reasonably identify the record requested. The request must be sent to the records custodian and not to a court clerk or other agent for the records custodian. A requestor need not have detailed knowledge of the records custodian's filing system or procedures in order to obtain the information.

(b) ***Time for Inspection and Delivery of Copies.*** As soon as practicable—and not more than 14 days—after actual receipt of a request to inspect or copy a judicial record, if the record is available, the records custodian must either:

(1) allow the requestor to inspect the record and provide a copy if one is requested; or

(2) send written notice to the requestor stating that the record cannot within the prescribed period be produced or a copy provided, as applicable, and setting a reasonable date and time when the document will be produced or a copy provided, as applicable.

(c) ***Place for Inspection.*** A records custodian must produce a requested judicial record at a convenient, public area.

(d) ***Part of Record Subject to Disclosure.*** If part of a requested record is subject to disclosure under this rule and part is not, the records custodian must redact the portion of the record that is not subject to disclosure, permit the remainder of the record to be inspected, and provide a copy if requested.

(e) ***Copying; Mailing.*** The records custodian may deliver the record to a court clerk for copying. The records custodian may mail the copy to a requestor who has prepaid the postage.

(f) ***Recipient of Request not Custodian of Record.*** A judicial officer or a presiding officer of a judicial agency who receives a request for a judicial record not in his or her custody as defined by this rule must promptly attempt to ascertain who the custodian of the record is. If the recipient of the request can ascertain who the custodian of the requested record is, the recipient must promptly refer the request to that person and notify the requestor in writing of the referral. The time for response prescribed in Rule 12.6(b) does not begin to run until the referral is actually received by the records custodian. If the recipient cannot ascertain who the custodian of the requested record is, the recipient must promptly notify the requestor in writing that the recipient is not the custodian of the record and cannot ascertain who the custodian of the record is.

(g) ***Inquiry to Requestor.*** A person requesting a judicial record may not be asked to disclose the purpose of the request as a condition of obtaining the judicial record. But a records custodian may make inquiry to establish the proper identification of the requestor or to clarify the nature or scope of a request.

(h) ***Uniform Treatment of Requests.*** A records custodian must treat all requests for information uniformly without regard to the position or occupation of the requestor or the person on whose behalf a request is made, including whether the requestor or such person is a member of the media.

12.7 Costs for Copies of Judicial Records; Appeal of Assessment.

(a) ***Cost.*** The cost for a copy of a judicial record is either:

(1) the cost prescribed by statute, or

(2) if no statute prescribes the cost, the cost the Office of the Attorney General prescribes by rule in the Texas Administrative Code.

(b) ***Waiver or Reduction of Cost Assessment by Records Custodian***. A records custodian may reduce or waive the charge for a copy of a judicial record if:

(1) doing so is in the public interest because providing the copy of the record primarily benefits the general public, or

(2) the cost of processing collection of a charge will exceed the amount of the charge.

(c) ***Appeal of Cost Assessment.*** A person who believes that a charge for a copy of a judicial record is excessive may appeal the overcharge in the manner prescribed by Rule 12.9 for the appeal of the denial of access to a judicial record.

(d) ***Records Custodian Not Personally Responsible for Cost.*** A records custodian is not required to incur personal expense in furnishing a copy of a judicial record.

12.8 Denial of Access to a Judicial Record.

(a) ***When Request May be Denied.*** A records custodian may deny a request for a judicial record under this rule only if the records custodian:

(1) reasonably determines that the requested judicial record is exempt from required disclosure under this rule; or

(2) makes specific, non-conclusory findings that compliance with the request would substantially and unreasonably impede the routine operation of the court or judicial agency.

(b) ***Time to Deny.*** A records custodian who denies access to a judicial record must notifythe person requesting the record of the denial within a reasonable time—not to exceed 14 days—after receipt of the request, or before the deadline for responding to the request extended under Rule 12.6(b)(2).

(c) ***Contents of Notice of Denial.*** A notice of denial must be in writing and must:

(1) state the reason for the denial;

(2) inform the person of the right of appeal provided by Rule 12.9; and

(3) include the name and address of the Administrative Director of the Office of Court Administration.

12.9 Relief from Denial of Access to Judicial Records.

(a) ***Appeal***. A person who is denied access to a judicial record may appeal the denial by filing a petition for review with the Administrative Director of the Office of Court Administration.

(b) ***Contents of Petition for Review***. The petition for review:

(1) must include a copy of the request to the record custodian and the records custodian's notice of denial;

(2) may include any supporting facts, arguments, and authorities that the petitioner believes to be relevant; and

(3) may contain a request for expedited review, the grounds for which must be stated.

(c) ***Time for Filing.*** The petition must be filed not later than 30 days after the date that the petitioner receives notice of a denial of access to the judicial record.

(d) ***Notification of Records Custodian and Presiding Judges.*** Upon receipt of the petition for review, the Administrative Director must promptly notify the records custodian who denied access to the judicial record and the presiding judge of each administrative judicial region of the filing of the petition.

(e) ***Response.*** A records custodian who denies access to a judicial record and against whom relief is sought under this section may—within 14 days of receipt of notice from the Administrative Director—submit a written response to the petition for review and include supporting facts and authorities in the response. The records custodian must mail a copy of the response to the petitioner. The records custodian may also submit for in camera inspection any record, or a sample of records, to which access has been denied.

(f) ***Formation of Special Committee.*** Upon receiving notice under Rule 12.9(d), the presiding judges must refer the petition to a special committee of not less than five of the presiding judges for review. The presiding judges must notify the Administrative Director, the petitioner, and the records custodian of the names of the judges selected to serve on the committee.

(g) ***Procedure for Review.*** The special committee must review the petition and the records custodian's response and determine whether the requested judicial record should be made available under this rule to the petitioner. The special committee may request the records custodian to submit for in camera inspection a record, or a sample of records, to which access has been denied. The records custodian may respond to the request in whole or in part but it not required to do so.

(h) ***Considerations.*** When determining whether the requested judicial record should be made available under this rule to petition, the special committee must consider:

(1) the text and policy of this Rule;

(2) any supporting and controverting facts, arguments, and authorities in the petition and the response; and

(3) prior applications of this Rule by other special committees or by courts.

(i) ***Expedited Review.*** On request of the petitioner, and for good cause shown, the special committee may schedule an expedited review of the petition.

(j) ***Decision.*** The special committee's determination must be supported by a written decision that must:

(1) issue within 60 days of the date that the Administrative Director received the petition for review;

(2) either grant the petition in whole or in part or sustain the denial of access to the requested judicial record;

(3) state the reasons for the decision, including appropriate citations to this rule; and

(4) identify the record or portions of the record to which access is ordered or denied, but only if the description does not disclose confidential information.

(k) ***Notice of Decision***. The special committee must send the decision to the Administrative Director. On receipt of the decision from the special committee, the Administrative Director must:

(1) immediately notify the petitioner and the records custodian of the decision and include a copy of the decision with the notice; and

(2) maintain a copy of the special committee's decision in the Administrative Director's office for public inspection.

(l) ***Publication of Decisions.*** The Administrative Director must publish periodically to the judiciary and the general public the special committees' decisions.

(m) ***Final Decision.*** A decision of a special committee under this rule is not appealable but is subject to review by mandamus.

(n) ***Appeal to Special Committee Not Exclusive Remedy.*** The right of review provided under this subdivision is not exclusive and does not preclude relief by mandamus.

12.10 Sanctions. A records custodian who fails to comply with this rule, knowing that the failure to comply is in violation of the rule, is subject to sanctions under the Code of Judicial Conduct.

Comments

1. Although the definition of "judicial agency" in Rule 12.2(b) is comprehensive, applicability of the rule is restricted by Rule 12.3. The rule does not apply to judicial agencies whose records are expressly made subject to disclosure by statute, rule, or law. An example is the State Bar ("an administrative agency of the judicial department", Tex. Gov't Code § 81.011(a)), which is subject to the Public Information Act. Tex. Gov't Code § 81.033. Thus, no judicial agency must comply with both the Act and this rule; at most one can apply. Nor does the rule apply to judicial agencies expressly excepted from the Act by statute (other than by the general judiciary exception in section 552.003(b) of the Act), rule, or law. Examples are the Board of Legal Specialization, Tex. Gov't Code § 81.033, and the Board of Disciplinary Appeals, Tex. R.

Disciplinary App. 7.12. Because these boards are expressly excepted from the Act, their records are not subject to disclosure under this rule, even though no law affirmatively makes their records confidential. The Board of Law Examiners is partly subject to the Act and partly exempt, Tex. Gov't Code § 82.003, and therefore this rule is inapplicable to it. An example of a judicial agency subject to the rule is the Supreme Court Advisory Committee, which is neither subject to nor expressly excepted from the Act, and whose records are not made confidential by any law.

2. As stated in Rule 12.4, this rule does not require the creation or retention of records, but neither does it permit the destruction of records that are required to be maintained by statute or other law, such as Tex. Gov't Code §§ 441.158-.167, .180-.203; Tex. Local Gov't Code ch. 203; and 13 Tex. Admin. Code § 7.122.

3. Rule 12.8 allows a records custodian to deny a record request that would substantially and unreasonably impede the routine operation of the court or judicial agency. As an illustration, and not by way of limitation, a request for "all judicial records" that is submitted every day or even every few days by the same person or persons acting in concert could substantially and unreasonably impede the operations of a court or judicial agency that lacked the staff to respond to such repeated requests.

PART SIX: PUBLIC INFORMATION ACT DEADLINES FOR GOVERNMENTAL BODIES

Step	Action	Section	Deadline	Due	Done
1	Governmental body must either release requested public information promptly, or if not within ten days of receipt of request, its Public Information Officer ("PIO") must certify fact that governmental body cannot produce the information within ten days and state date and hour within reasonable time when the information will be available.	552.221(a)	Promptly; Within ten business days of receipt of request for information make public information available, **or**		
		552.221(d)	Certify to requestor date and hour when public information will be available.		
2	Governmental body seeking to withhold information based on one or more of the exceptions under Subchapter C must request an attorney general decision stating all exceptions that apply, if there has not been a previous determination.	552.301(b)	Within a reasonable time, but not later than the tenth business day after receipt of the request for information.		
3	Governmental body must provide notice to the requestor of the request for attorney general decision and a copy of the governmental body's request for an attorney general decision.	552.301(d)	Within a reasonable time, but not later than the tenth business day after receipt of the request for information.		
4	Governmental body must submit to the attorney general comments explaining why the exceptions raised in Step 2 apply.	552.301(e)	Within a reasonable time, but not later than the fifteenth business day after receipt of the request for information.		
5	Governmental body must submit to attorney general copy of written request for information.	552.301(e)	Within a reasonable time, but not later than the fifteenth business day after receipt of the request for information.		
6	Governmental body must submit to attorney general signed statement as to date on which written request for information was received.	552.301(e)	Within a reasonable time, but not later than the fifteenth business day after receipt of the request for information.		
7	Governmental body must submit to attorney general copy of information requested or representative sample if voluminous amount of information is requested.	552.301(e)	Within a reasonable time, but not later than the fifteenth business day after receipt of the request for information.		
8	Governmental body must copy the requestor on written comments submitted to the attorney general in Step 4.	552.301(e-1)	Within a reasonable time, but not later than the fifteenth business day after receipt of the request for information.		
9	a) Governmental body makes a good faith attempt to notify person whose proprietary information may be protected from disclosure under sections 552.101, 552.110, 552.1101, 552.113, 552.131, or 552.143. Notification includes: 1) copy of written request; 2) letter, in the form prescribed by the attorney general, stating that the third party may submit to the attorney general reasons requested information should be withheld.	552.305(d)	Within a reasonable time, but not later than the tenth business day after date governmental body receives request for information.		
	b) Third party may submit brief to attorney general.	552.305(d)	Within a reasonable time, but not later than the tenth business day of receiving notice from governmental body.		
10	Governmental body must submit to attorney general additional information if requested by attorney general.	552.303(d)	Not later than the seventh calendar day after date governmental body received written notice of attorney general's need for additional information.		

Step	Action	Section	Deadline	Due	Done
11	Governmental body desires attorney general reconsideration of attorney general decision.	552.301(f)	Public Information Act prohibits a governmental body from seeking the attorney general's reconsideration of an open records ruling.		
12	Governmental body complies with attorney general decision within a reasonable period.	552.306(c)	Within a reasonable time period after the attorney general decision is issued, governmental body must release information, provide cost estimate, or provide required notices.		
13	Governmental body files suit challenging the attorney general decision.	552.324	Within thirty calendar days after the date governmental body receives attorney general decision.		
14	Governmental body files suit against the attorney general challenging the attorney general decision to preserve an affirmative defense to prosecution for failing to produce requested information.	552.353(b)	Within ten calendar days after governmental body receives attorney general's decision that information is public.		

PART SEVEN: NOTICE STATEMENT TO PERSONS WHOSE PROPRIETARY INFORMATION IS REQUESTED

(A governmental body must provide this notice to a person whose proprietary interests may be affected by release of information within ten business days after receipt of the written request for information.)

[NOTE*:* This notice is updated periodically. Please check the OAG website http://www.texasattorneygeneral.gov/open-government for the latest version.]

Date

Third Party Address

Dear M:

We have received a formal request to inspect or copy some of our files. A copy of the request for information is enclosed. The requested files include records we received from you or from your company. The Office of the Attorney General is reviewing this matter, and they will issue a decision on whether Texas law requires us to release your records. Generally, the Public Information Act (the "Act") requires the release of requested information, but there are exceptions. As described below, you have the right to object to the release of your records by submitting written arguments to the attorney general that one or more exceptions apply to your records. You are not required to submit arguments to the attorney general, but if you decide not to submit arguments, the Office of the Attorney General will presume that you have no interest in withholding your records from disclosure. In other words, if you fail to take timely action, the attorney general will more than likely rule that your records must be released to the public. If you decide to submit arguments, **you must do so not later than the tenth business day after the date you receive this notice.**

If you submit arguments to the attorney general, you must:

a) identify the legal exceptions that apply,

b) identify the specific parts of each document that are covered by each exception, and

c) explain why each exception applies.

Gov't Code § 552.305(d). A claim that an exception applies without further explanation will not suffice. Attorney General Opinion H-436 (1974). You may contact this office to review the information at issue in order to make your arguments. We will provide the attorney general with a copy of the request for information and a copy of the requested information, along with other material required by the Act. The attorney general is generally required to issue a decision within 45 business days.

Please send your written comments to the Office of the Attorney General at the following address:

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

If you wish to submit your written comments electronically, you may only do so via the Office of the Attorney General's eFiling System. An administrative convenience charge will be assessed for use of the eFiling System. No other method of electronic submission is available. Please visit the attorney general's website at http://www.texasattorneygeneral.gov/open-government for more information.

In addition, you are required to provide the requestor with a copy of your communication to the Office of the Attorney General. Gov't Code § 552.305(e). You may redact the requestor's copy of your communication to the extent it contains the substance of the requested information. Gov't Code § 552.305(e). You may provide a copy of your communication to the governmental body who received the request and sent the notice.

Commonly Raised Exceptions

In order for a governmental body to withhold requested information, specific tests or factors for the applicability of a claimed exception must be met. Failure to meet these tests may result in the release of requested information. We have listed the most commonly claimed exceptions in the Government Code concerning proprietary information and the leading cases or decisions discussing them. This listing is not intended to limit any exceptions or statutes you may raise.

Section 552.101: Information Made Confidential by Law

Open Records Decision No. 652 (1997).

Section 552.110: Confidentiality of Trade Secrets and Commercial or Financial Information

Trade Secrets

Commercial or Financial Information:

Birnbaum v. Alliance of Am. Insurers, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. filed) (construing previous version of section 552.110), *abrogated by In re Bass*, 113 S.W.3d 735 (Tex. 2003).
Open Records Decision No. 639 (1996).
Open Records Decision No. 661 (1999).

Section 552.1101: Confidentiality of Proprietary Information

Section 552.113: Confidentiality of Geological or Geophysical Information

Open Records Decision No. 627 (1994).

Section 552.131: Confidentiality of Certain Economic Development Negotiation Information

If you have questions about this notice or release of information under the Act, please refer to the *Public Information Handbook* published by the Office of the Attorney General, or contact the attorney general's Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN TEX). To access the *Public Information Handbook* or Attorney General Opinions, including those listed above, please visit the attorney general's website at http://www.texasattorneygeneral.gov/open-government.

Sincerely,

Officer for Public Information or Designee
Name of Governmental Body

Enclosure: Copy of request for information

cc: Requestor
Address
(w/o enclosures)

Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
(w/o enclosures)

PART EIGHT: TEXAS GOVERNMENT CODE SECTION 552.024 PUBLIC ACCESS OPTION FORM

[Note: This form should be completed and signed by the employee no later than the 14th day after the date the employee begins employment, the public official is elected or appointed, or a former employee or official ends employment or service.]

_____
(Name)

The Public Information Act allows employees, public officials and former employees and officials to elect whether to keep certain information about them confidential. Unless you choose to keep it confidential, the following information about you may be subject to public release if requested under the Texas Public Information Act. Therefore, please indicate whether you wish to allow public release of the following information.

PUBLIC ACCESS?	**NO**	**YES**
Home Address		
Home Telephone Number		
Social Security Number		
Emergency Contact Information		
Information that reveals whether you have family members		

_____
(Signature)

_____
(Date)

PART NINE: TEXAS GOVERNMENT CODE SECTION 552.138 PUBLIC ACCESS NOTICE FORM

[Note: This form should be completed and signed by a person who seeks to restrict access to personal information under Government Code section 552.138(f). The person must then notify the licensing governmental body by providing a completed copy of this form to the governmental body.]

Name of Person Who Chooses to Restrict Access: _____
Governmental Body to be Notified: _____

The Public Information Act allows a person who holds, has previously held, or is an applicant for a license to restrict access to certain information about the person maintained by a licensing governmental body if the person meets certain criteria set forth at law. *See* Texas Government Code § 552.138(f). Such a person must notify the licensing governmental body, on a form provided by the Office of the Attorney General or the governmental body at issue, that the person meets the criteria set forth in Government Code section 552.138(f)(2)(A) and chooses to restrict public access to the information. The Office of the Attorney General has promulgated this form to satisfy this requirement.

Pursuant to the preceding authority, the above-named governmental body is notified that the above-named person holds, previously held, or is an applicant for a license; meets the criteria under Government Code section 552.138(f)(2)(A); and chooses to restrict access to the following information pursuant to Government Code section 552.138(f): (Note: Select 'YES' to prohibit release)

RESTRICT PUBLIC ACCESS?	**NO**	**YES**
Name		
Home Address		
Business Address		
Place of Employment		
Telephone Number		
Electronic Mail Address		
Social Security Number		
Date of Birth		
Driver's License		
State Identification Number		
Passport Number		
Emergency Contact Information		
Numeric Identifier		

_____
(Signature)

_____
(Date)

SECTION D.

ETHICS FOR OFFICIALS

Texas Ethics Commission Handbook to Ethics Laws for State Officers and Employees

TEXAS ETHICS COMMISSION

A GUIDE TO ETHICS LAWS
FOR STATE OFFICERS AND EMPLOYEES

Note: In many instances, rules governing RMAs may be stricter than those that apply statewide.

Revised January 1, 2022

Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711
www.ethics.state.tx.us
(512) 463-5800 • TDD (800) 735-2989
Promoting Public Confidence in Government

A GUIDE TO ETHICS LAWS
FOR STATE OFFICERS AND EMPLOYEES

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INTRODUCTION

As a public servant, you owe a responsibility to the people of Texas in the performance of your official duties. This guide sets out laws that govern your conduct as a public servant. As you read this guide, you should bear in mind that ethical conduct involves more than merely following these laws. As a public servant, you should act fairly and honestly and should avoid creating even the appearance of impropriety.

Laws Interpreted by the Texas Ethics Commission

The Texas Ethics Commission interprets various laws governing the conduct of state officers and employees: the provisions in chapter 572 of the Government Code; the restrictions on benefits, gifts, and honoraria in chapter 36 of the Penal Code and in the lobby law, chapter 305 of the Government Code; and the restrictions on the use of government resources in chapter 39 of the Penal Code.

Some laws governing public servants, such as the nepotism law, are not under the jurisdiction of the Ethics Commission. Also, officers and employees of particular state agencies may be subject to statutes, rules, or personnel guidelines specifically applicable to that agency. Your general counsel or the Office of the Attorney General are the appropriate sources for advice about such laws.

Advisory Opinions

If you are concerned about how any of the laws subject to interpretation by the Ethics Commission apply to you, you may request an advisory opinion. The request must be about the application of one or more of those laws to a specific factual situation, either existing or hypothetical. Gov't Code § 571.091. Unless you waive confidentiality in writing, the Ethics Commission must keep your name confidential.

The legal effect of an Ethics Commission advisory opinion is described in section 571.097 of the Government Code as follows:

> It is a defense to prosecution or to imposition of a civil penalty that the person reasonably relied on a written advisory opinion of the commission relating to the provision of the law the person is alleged to have violated or relating to a fact situation that is substantially similar to the fact situation in which the person is involved.

Copies of Ethics Advisory Opinions are available from the Ethics Commission at (512) 463-5800 or at *http://www.ethics.state.tx.us* on the Internet.

PART I. STANDARDS OF CONDUCT AND CONFLICT OF INTEREST

The "Should Nots"

The legislature has adopted the following standards of conduct for state employees:

A state officer or employee should not:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;

(2) accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;

(4) make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.

Gov't Code § 572.051. A state agency may not use appropriated funds to compensate a state employee who violates those standards. Gov't Code § 2113.014. Also, in some cases failure to follow the standards of conduct will violate one of the criminal statutes discussed in this guide.

Private Interest in Measure or Decision

If a board member has a private or personal interest in a measure, proposal, or decision pending before the board, the board member must disclose that fact to the rest of the board in an open meeting and must refrain from voting or otherwise participating in the matter. Gov't Code § 572.058. The law specifies that a person does not have a "private or personal interest" in a matter if the person is engaged in a profession, trade, or occupation, and the person's interest in the matter is the same as others similarly engaged.

Note: This guide addresses only the laws that the Ethics Commission interprets. Other laws may contain additional "conflict of interest" provisions. In particular, state agency counsels should be aware of the common-law rule restricting a contract between agencies and agency board members. *See* Attorney General Opinion JM-671 (1987).

PART II. ACCEPTANCE OF BENEFITS

Chapter 36 of the Penal Code prohibits public servants from accepting certain gifts or benefits. Violations of the laws in this chapter carry criminal penalties, and complaints alleging such violations are handled by local prosecutors, not by the Texas Ethics Commission.

Bribery

As a public servant, you commit the offense of bribery if you solicit, offer, or accept a "benefit" in exchange for your decision, opinion, recommendation, vote, or other exercise of official discretion. Penal Code § 36.02. Common sense should tell you if something is a bribe. If it is, don't take it.

Honoraria

You may not solicit, agree to accept, or accept an honorarium in consideration for services you would not have been asked to provide but for your official position. Penal Code § 36.07. Thus, for example, you may not take a speaker's fee for speaking if your position with the state is one of the reasons you were asked to speak. The honorarium law does not, however, prohibit acceptance of food, transportation, and lodging in connection with a speech that is more than merely perfunctory. If a state officer or the executive head of an agency accepts food, transportation, or lodging under these circumstances, the officer must report it on Part XIII of the annual personal financial statement. (A travel regulation provides that a state employee may not accept money for a travel expense reimbursement from a person that the employee's employing state agency intends to audit, examine, or investigate or is auditing, examining, or investigating. Gov't Code § 660.016.)

Prohibitions on Gifts

Most public servants are subject to one or more prohibitions on the acceptance of "benefits" from persons subject to their jurisdiction. Penal Code § 36.08. For example, a public servant in an agency performing regulatory functions or conducting inspections or investigations may not accept a benefit from a person the public servant "knows to be subject to regulation, inspection, or investigation by the public servant or his agency." *Id.* § 36.08(a). Similarly, a public servant who "exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions" of the agency may not accept a benefit from a person the public servant knows is interested in or likely to become interested in such a transaction. *Id.* § 36.08(d). (The Appendix contains the full text of section 36.08.) *These prohibitions apply regardless of whether the donor is asking for something in return.*

The statutory definition of "benefit" is "anything reasonably regarded as pecuniary gain or pecuniary advantage." Penal Code § 36.01(3). In advisory opinions, the Ethics Commission has stated that the following gifts are benefits: a $50 clock, a hotel room, a hunting trip, football tickets, a $160 rifle, and a $60 restaurant meal. Texas Ethics Comm'n Op. Nos. 97, 94, 90, 69, 60 (1992).

Exceptions to Gift Prohibitions

There are exceptions to the prohibitions set out in Penal Code section 36.08. These exceptions are exceptions to criminal liability under that section. You should also make sure that the laws and rules specifically applicable to your agency permit you to accept a benefit permitted under the Penal Code. Even if the acceptance of a gift is legally permissible, you should consider whether the gift raises the appearance of impropriety.

The following exceptions are most likely to be relevant to state officers or employees. (The Appendix contains the full text of section 36.10, which sets out the exceptions to section 36.08.)

- You may accept non-cash items of less than $50 in value. Penal Code § 36.10(a)(6). If a *lobbyist* provides you with food, beverages, entertainment, lodging, or transportation, however, the lobbyist must be present at the event.

- You may accept benefits in the form of food, lodging, transportation, or entertainment in any amount if you accept them as a "guest" and report them if there is an applicable reporting requirement. Penal Code § 36.10(b). In order for you to accept something as a "guest," the donor must be present.

  Lobbyists may provide you with transportation and lodging only in connection with a fact-finding trip related to your official duties or in connection with an event, such as a conference, at which you will be providing "more than perfunctory" services in your official capacity.

  State officers and agency heads: You will be required to report on your personal financial statement the acceptance of gifts worth more than $470, except for gifts from a member of your immediate family or from a lobbyist required to report the gift. You must also report on your personal financial statement your acceptance of meals, transportation, or lodging provided in connection with a speech or other services you provided in your official capacity. (*See* above discussion on "Honoraria.")

- You may accept a benefit from a person such as a friend, relative, or business associate with whom you have a relationship independent of your official status *if the benefit is given on account of that relationship rather than your official status*. Penal Code § 36.10(a)(2).

- You may accept a payment for which you give legitimate consideration *in a capacity other than as a public servant*. Penal Code § 36.10(a)(1). The use of the term "legitimate consideration" means that the payment you receive must reflect the actual value of the services or goods you provide in exchange for the payment. Texas Ethics Comm'n Op. No. 41 n.1 (1992).

- You may accept certain gifts, awards, and mementos from persons required to register as lobbyists. "Gift" in this context does not include food, entertainment, transportation, or lodging, which are discussed above. Penal Code § 36.10(a)(5). (*See* discussion of "Gifts Prohibited by the Lobby Statute" below.)

Gifts Prohibited by the Lobby Statute

The lobby law, chapter 305 of the Government Code, contains restrictions on gifts from a person required to register under that chapter. For the most part, the lobby statute is stricter than the Penal Code. For instance, you may not accept transportation and lodging in connection with a pleasure trip from a lobbyist. There is, however, one exception to the general rule that the lobby law is stricter than the Penal Code: Under section 36.10(a)(5) of the Penal Code, there is an exception from the Penal Code prohibition on the acceptance of benefits for a gift, award, or memento that is required to be reported by a lobbyist. Because of this exception, there are circumstances in which it is permissible for you to accept a gift from a lobbyist that you could not accept from a non-lobbyist. If you are thinking about relying on this exception, you should ask the Ethics Commission for advice before you do so.

Gifts to State Agencies

The Ethics Commission has issued several opinions in response to questions about the acceptance of gifts by a state agency. Texas Ethics Comm'n Op. Nos. 118 (1993), 63, 62, 51, 31 (1992). Chapter 305 of the Government Code, which regulates lobbying, and chapter 36 of the Penal Code, which regulates gifts to public officers and employees, do not apply to gifts given to a state agency. Texas Ethics Comm'n Op. Nos. 62, 31 (1992). The statutes applicable to a specific state agency determine whether the agency has authority to accept gifts. *Id*. Also, even if an agency has authority to accept gifts, it may do so only in accordance with the provisions of Government Code chapter 575.

Although questions about the specific authority of a state agency to accept gifts are outside the Ethics Commission's advisory opinion authority, previous ethics advisory opinions have set out some general guidelines about the acceptance of gifts by a state agency. First, the commission has noted that even if a state agency has authority to accept gifts generally, the agency may accept gifts on behalf of the agency only if the gifts can be used in carrying out the agency's powers and duties. A gift to a state agency becomes state property, and an officer or employee of the agency cannot be permitted to use it for private purposes. Consequently, acceptance of gifts by a state agency is not a permissible way of acquiring gifts for the personal enjoyment of individual state officers and employees.

Gifts to state agencies, even if legally permissible, may raise questions about impropriety. If the donor is subject to agency regulation or oversight, or engages in a business that can be affected by agency action, then it may be that the donor hopes or expects to gain favor with the agency. Even if that is not the case, it may appear to be so, especially to someone whose interests are different from those of the donor and who may feel at a disadvantage because of the donor's generosity.

Donation of Gifts to Charity

What should you do if someone sends you an unsolicited gift that you may not accept? Often public servants would prefer to donate such gifts to charity or to a governmental body, rather than returning them to the donor. A provision of the Penal Code allows such donations in specified circumstances:

> A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under [section 36.08] may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

Penal Code § 36.08(i).

PART III. ABUSE OF OFFICE

Chapter 39 of the Penal Code contains several provisions prohibiting a public servant from using his or her official position in various ways for non-governmental purposes.

Misuse of Government Property

As a public servant, you commit an offense if, with intent to obtain a benefit or harm another, you *misapply any thing of value belonging to the government* that has come into your custody or possession by virtue of your public office or employment. Penal Code § 39.02(a)(2). Simply stated, this means that you are to use government property for governmental purposes, not for personal or private purposes.

Frequent Flyer Miles: Penal Code section 39.02(d) specifically provides that travel discount awards such as "frequent flyer" miles, hotel or rental car discounts, or food coupons are not things of value belonging to the government for purposes of the criminal law prohibiting misapplication of a thing of value belonging to the government. This means that personal or private use of travel awards accrued on state business is not a crime. The law does not, however, prevent a particular agency from adopting a policy requiring that such travel awards be used for agency purposes.

Political Campaigns: Do not use state time or state equipment to work on an individual's political campaign. *See* Texas Ethics Comm'n Op. No. 172 (1993). Also, chapter 556 of the Government Code prohibits a state agency from using appropriated funds in connection with a political campaign. Further, it prohibits a state officer or employee from using official authority to interfere with or attempt to influence the result of an election. Gov't Code § 556.004. The Ethics Commission does not have authority to interpret chapter 556 of the Government Code.

Misuse of Official Information

As a public servant, you may have access to information that has not been made public. Chapter 39 of the Penal Code restricts your use of such information in the following ways:

- You may not use the information to acquire or help another person to acquire a pecuniary interest in any property, transaction, or enterprise affected by the information. Penal Code § 39.06(a)(1).

- You may not speculate or aid another to speculate on the basis of the information. Penal Code § 39.06(a)(2).

- You may not disclose or use the information with the intent to obtain a benefit or to harm another. Penal Code § 39.06(b).

PART IV. OTHER EMPLOYMENT

Concurrent Employment

Some of the laws under the jurisdiction of the Ethics Commission are relevant to questions about other employment by a state officer or employee. For example, under the bribery law, you may not solicit or accept a "benefit" in exchange for your decision, opinion, recommendation, vote, or other exercise of discretion as a public servant. Penal Code § 36.02. A salary is a benefit. *See generally* Texas Ethics Comm'n Op. No. 155 (1993). Therefore, the crime of bribery occurs if a state officer accepts other employment in exchange for official action or inaction. In addition, under the honorarium law a state officer may not accept an honorarium for performing services that he or she would not have been asked to provide but for his or her official status. Other laws outside the Ethics Commission's jurisdiction may also restrict your employment. For information about such laws, consult your general counsel or the Office of the Attorney General.

Future Employment

If you are about to leave your position with the state, you should be aware of laws that might restrict your future employment. Chapter 572 of the Government Code contains three "revolving door" provisions. Each provision applies to different groups of former officers and employees of state agencies.

Note: If other law restricts you from representing a person before an agency after you leave your position, that law prevails over the second and third Government Code provisions (in section 572.054) discussed below.

Revolving Door #1

The first revolving door provision will apply to you if you are a former state officer or employee of a state agency. For two years after you cease to be a state officer or employee of an agency, you may not accept employment from a person if you participated on behalf of the state agency in a procurement or contract negotiation involving that person.

Note: The first revolving door provision only applies to a state officer or employee whose service or employment with a state agency ceases on or after September 1, 2015.

Revolving Door #2

The second revolving door provision will apply to you if you are a former board member or executive director of a regulatory agency. For two years after you cease to be a member of the board, you may not make any communication to or appearance before an officer or employee of the board on behalf of any person with the intent to influence agency action in connection with any matter on which that person seeks official action. The restriction applies even if the agency initiates the contact and even if you are communicating on your own behalf (subject to your due process rights). It does not, however, prevent you from merely providing information to the agency, as long as you are not doing so with the intent to influence agency action on behalf of a person.

Revolving Door #3

The third revolving door provision applies to all former board members and executive directors of regulatory agencies. It also applies to former employees who, at the time of leaving the agency, were compensated at or above a certain salary level. The law applies to a former employee whose compensation at the time of leaving state employment was at or above the level prescribed by the general appropriations act for step 1, salary group A17, of the position classification salary schedule. (The 2022-2023 General Appropriations Act prescribed the minimum annual salary for that salary group (A17) as $36,976 for fiscal years 2022 and 2023.)

A former board member or employee covered by the third provision may *never* represent a person or receive compensation for services rendered on behalf of any person regarding a "particular matter" in which he or she "participated" while serving with the agency. A "particular matter" is a *specific* matter before the agency, such as an investigation, application, contract, rulemaking proceeding, administrative proceeding, request for a ruling, etc. This revolving door provision prohibits you from representing a person, or getting paid to help a person, regarding a *specific* matter in which you were either personally involved or that was a matter within your official responsibility while a state officer or employee. It does not prohibit you from working on the *type of matters* you worked on at the agency. *This restriction lasts forever.*

Note: For purposes of the Government Code revolving door statutes, a "person" is an individual or business entity. Gov't Code § 572.002(7). The statutes do not restrict former state officers or employees from representing or providing services on behalf of nonprofit or governmental entities. Texas Ethics Comm'n Op. No. 232 (1994).

Violation of either of the second or third revolving door provisions is a Class A misdemeanor. The Texas Ethics Commission may assess a civil penalty for a violation of any of the three revolving door laws.

PART V. PERSONAL FINANCIAL STATEMENTS

Board members and executive directors of most state agencies are required to file a personal financial statement with the commission on or before April 30 each year if they served at any time beginning on January 1 and continuing through April 30 of that year. Gov't Code § 572.026(a). If your term as a board member is ending or if you plan to resign from a board, you should be aware of the "holdover" provision of the Texas Constitution. Under this provision, a state officer "holds over" in office until replaced. A person who no longer attends meetings may nonetheless "holdover" as a board member. Thus, if you resign or your term expires before January 1 of a given year, you will still be required to file a financial statement for that year if your successor was not appointed before January 1.

However, if you are an appointed officer, as defined by section 572.002 of the Government Code, you are not required to file a personal financial statement if the following criteria are met before January 1 of the year the statement is due: (1) your term expired, you resigned, your agency was abolished, or your agency functions were transferred to another agency; and (2) you ceased to participate in the state agency's functions. If your term expired or if you resigned, you

are required to provide written notice of your intent to not participate in the agency's functions to the Office of the Governor and to the Texas Ethics Commission.

Anyone who asks for extra time to file by April 30 is entitled to a one-time, 60-day extension. Call the Ethics Commission legal staff at (512) 463-5800 if you have questions when completing the form.

Note: New state law requires a personal financial statement filed with the Ethics Commission to be filed electronically. Please visit the Ethics Commission website at *www.ethics.state.tx.us* for information regarding the filing application and instructions.

Note: The commission imposes a civil penalty of $500 for late filings. The commission has the authority to raise this penalty. There are criminal penalties for failing to file at all.

PART VI. LOBBYING BY STATE OFFICERS AND EMPLOYEES

The provisions of Government Code chapter 556 prohibit the use of appropriated funds to influence legislation. Those provisions are not under the Ethics Commission's jurisdiction. The lobby law, chapter 305 of the Government Code, is not applicable in this context. Note, however, that a *gift* from a state agency to a legislator may be prohibited under the Penal Code.

SUMMARY

This guide is intended to make you familiar with the laws interpreted by the Texas Ethics Commission that govern your conduct as a state officer. For further guidance, you should consult your agency's ethics advisor or general counsel. Also, feel free to call the Ethics Commission at (512) 463-5800 for advice or visit our Internet site at *http://www.ethics.state.tx.us.*

APPENDIX

Penal Code Provisions Regarding Gifts to a Public Servant

§ 36.08. Gift to Public Servant by Person Subject to His Jurisdiction

(a) A public servant in an agency performing regulatory functions or conducting inspections or investigations commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency.

(b) A public servant in an agency having custody of prisoners commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be in his custody or the custody of his agency.

(c) A public servant in an agency carrying on civil or criminal litigation on behalf of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person against whom the public servant knows litigation is pending or contemplated by the public servant or his agency.

(d) A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.

(e) A public servant who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any matter before the public servant or tribunal.

(f) A member of the legislature, the governor, the lieutenant governor, or a person employed by a member of the legislature, the governor, the lieutenant governor, or an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any benefit from any person.

(g) A public servant who is a hearing examiner employed by an agency performing regulatory functions and who conducts hearings in contested cases commits an offense if the public servant solicits, accepts, or agrees to accept any benefit from any person who is appearing before the agency in a contested case, who is doing business with the agency, or who the public servant knows is interested in any matter before the public servant. The exception provided by Section 36.10(b) does not apply to a benefit under this subsection.

(h) An offense under this section is a Class A misdemeanor.

(i) A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the

benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

§ 36.09. Offering Gift to Public Servant

(a) A person commits an offense if he offers, confers, or agrees to confer any benefit on a public servant that he knows the public servant is prohibited by law from accepting.

(b) An offense under this section is a Class A misdemeanor.

§ 36.10. Non-Applicable

(a) Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) do not apply to:

(1) a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant;

(2) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;

(3) a benefit to a public servant required to file a statement under Chapter 572, Government Code, or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:

(A) the benefit and the source of any benefit in excess of $50 is reported in the statement; and

(B) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

(4) a political contribution as defined by Title 15, Election Code;

(5) a gift, award, or memento to a member of the legislative or executive branch that is required to be reported under Chapter 305, Government Code;

(6) an item with a value less than $50, excluding cash or a negotiable instrument as described by Section 3.104, Business & Commerce Code;

(7) an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity;

(8) transportation, lodging, and meals described by Section 36.07(b); or

(9) complimentary legal advice or legal services relating to a will, power of attorney, advance directive, or other estate planning document rendered:

(A) to a public servant who is a first responder; and

(B) through a program or clinic that is:

(i) operated by a local bar association or the State Bar of Texas; and

(ii) approved by the head of the agency employing the public servant, if the public servant is employed by an agency.

(b) Section 36.08 (Gift to Public Servant) does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.

(c) Section 36.09 (Offering Gift to Public Servant) does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donor is required by law to report those items, reported by the donor in accordance with that law.

(d) Section 36.08 (Gift to Public Servant) does not apply to a gratuity accepted and reported in accordance with Section 11.0262, Parks and Wildlife Code. Section 36.09 (Offering Gift to Public Servant) does not apply to a gratuity that is offered in accordance with Section 11.0262, Parks and Wildlife Code.

(e) In this section, "first responder" means:

(1) a peace officer whose duties include responding rapidly to an emergency;

(2) fire protection personnel, as that term is defined by Section 419.021, Government Code;

(3) a volunteer firefighter who performs firefighting duties on behalf of a political subdivision and who is not serving as a member of the Texas Legislature or holding a statewide elected office;

(4) an ambulance driver; or

(5) an individual certified as emergency medical services personnel by the Department of State Health Services.

SECTION E.

HCRMA OPERATIONS

SECTION E.1

HCRMA Amended and Restated Bylaws

AMENDED AND RESTATED BYLAWS OF THE
HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY

The bylaws of the Hidalgo County Regional Mobility Authority (the "Authority"), initially adopted by the Authority on October 12, 2006, and amended by that First Amendment to the Bylaws on May 20, 2008, and Amended and Restated on March 26, 2015 is hereby amended and restated as provided below by the Board of Directors of the Authority on August 25, 2020.

§ 1. The Authority

These bylaws are made and adopted for the regulation of the affairs and the performance of the functions of the Hidalgo County Regional Mobility Authority (the "Authority"), a regional mobility authority authorized and existing pursuant to Chapter 370 of the Texas Transportation Code, as the same may be amended from time to time (the "RMA Act"), as well as rules adopted by the Texas Department of Transportation ("TxDOT"), as may be amended from time to time, concerning the operation of regional mobility authorities, located at Title 43 Texas Administrative Code, Rule 26.01, *et seq*. (the "RMA Rules").

a. The Authority was created pursuant to Texas Transportation Commission (the "Commission") Minute Order Number 110315 adopted by the Commission on November 17, 2005.

b. The Authority is a political subdivision of the State of Texas.

§ 2. Principal Office

The domicile and principal office of the Authority shall be in Hidalgo County.

§ 3. General Powers

The activities, property, and affairs of the Authority will be managed by its Board of Directors (the "Board"), which may exercise all powers and do all lawful acts permitted by the Constitution and statutes of the State of Texas (the "State"), the RMA Act, the RMA Rules, and these bylaws.

§ 4. Initial Board

a. The initial Board of the Authority shall be composed of seven (7) Directors, appointed as follows:

(1) The Governor shall appoint one (1) Director, who shall serve as the presiding officer of the Board. The Governor's Appointee must be a resident of Hidalgo County.

(2) The Commissioners Court of Hidalgo County shall appoint five (5) Directors, two (2) with terms of two (2) years and three (3) with terms of (1) year. Each Director must be a resident of Hidalgo County.

(3) The City of McAllen shall recommend one (1) Director with a term of two (2) years to the Commissioners Court of Hidalgo County for appointment to the Authority. Such Director may be a resident of the City of McAllen and must be a resident of Hidalgo County.

b. The terms of the initial Directors of the Authority shall begin on the date of their appointment by the office or entity which appointed them through February 1 of the year in which the term of each initial Director expires.

c. Directors may be reappointed at the discretion of the entity which appointed them.

d. Each initial Director shall serve until his or her successor has been duly appointed and qualified or until his or her death, resignation, or removal from office in accordance with these bylaws.

§ 5. Subsequent Directors

a. When the term of an initial Director of the Authority expires, and thereafter, when the term of each Director subsequently appointed Director expires, the entity that appointed or recommended the Director whose term is expiring shall appoint or recommend a successor to that Director.

b. Subject to Section 7 of these bylaws, each successor to an initial Director, and each Director thereafter appointed, shall be appointed for a two (2)-year term commencing on February 2 of the year of appointment and expiring on February 1 two (2) years later. Each Director shall serve until his or her successor has been duly appointed and qualified or until his or her death, resignation, or removal from office in accordance with these bylaws or provisions of state law.

c. Upon the admission of a new entity into the Authority, the number of Directors may be increased in accordance with any then-applicable laws and regulations.

d. In the event that the addition or withdrawal of a county from the Authority results in an even number of Directors on the Board, the governor shall appoint an additional Director.

e. Directors qualified to serve under applicable law and these bylaws may be reappointed following the expiration of their terms. Except as otherwise provided by applicable law, there is no limitation on the number of terms a Director may serve.

§ 6. Qualifications of Directors

a. All Directors will have and maintain the qualifications set forth in this Section 6 and in the RMA Act or RMA Rules.

b. All appointments to the Board shall be made without regard to disability, sex, religion, age, or national origin.

c. Each Director appointed by the Commissioners Court of Hidalgo County or recommended by a municipality located within Hidalgo County must be a resident of the County at the time of their appointment. All gubernatorial appointees must also be residents of Hidalgo County at the time of his or her respective appointments.

d. An elected official is not eligible to serve as a Director.

e. An employee of a city, county, or other governmental entity located wholly or partly within the boundaries of the Authority is not eligible to serve as a Director. An employee of TxDOT is not eligible to serve as a Director.

f. A person who is an officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation or aviation, or whose spouse is an officer, manager, or paid consultant of a Texas trade association in the aforementioned fields, is not eligible to serve as a Director or as the Authority's Executive Director.

g. A person who owns an interest in real property that will be acquired for an Authority project is not eligible to serve as a Director, if it is known at the time of the person's proposed appointment that the property will be so acquired.

h. A person is not eligible to serve as a Director or as the Authority's Executive Director if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization, other than a governmental entity, that is regulated by or receives money from TxDOT, the Authority, or Hidalgo County, unless the Commission approves an exception;

(2) owns or controls, directly or indirectly, more than a ten percent (10%) interest in a business entity or other organization that is regulated by or receives money from TxDOT, the Authority, or Hidalgo County, other than compensation for acquisition of highway right-of-way;

(3) uses or receives a substantial amount of tangible goods, services, or money from TxDOT, the Authority, or Hidalgo County;

(4) is an officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation, or aviation; or

(5) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of TxDOT, the Authority, or Hidalgo County.

i. A person is not ineligible to serve as a Director or Executive Director of the

Authority if the person has received funds from TxDOT for acquisition of highway right-of-way, unless the acquisition was for a project of the Authority.

j. All Directors shall annually certify that he or she is qualified to serve as a Director of the Authority, pursuant to and in accordance with these bylaws, the RMA Act, and the RMA Rules, as may be amended. Such certification shall be made in a form as provided by the Authority; provided, however, that the submission of those similar certifications required by the State of Texas shall satisfy this requirement.

§ 7. Vacancies

A vacancy on the Board shall be filled promptly by the entity that made the appointment that falls vacant. Each Director appointed to a vacant position shall be appointed for the unexpired term of the Director's predecessor in that position. Reappointment to a full term is permitted thereafter.

§ 8. Resignation and Removal

a. Resignation. A Director may resign at any time upon giving written notice to the Authority and the entity that appointed that Director.

b. Removal. A Director may be removed from the Board if the Director does not possess at the time the Director is appointed, or does not maintain, the qualifications required by the RMA Act, the RMA Rules, or these bylaws; or, if the Director violates any of the foregoing. In addition, a Director who cannot discharge the Director's duties for a substantial portion of the term for which he or she is appointed because of illness or disability, or a Director who is absent from more than half of the regularly scheduled Board meetings during a given calendar year, may be removed. If the Executive Director of the Authority knows that a potential ground for removal of a Director exists, the Executive Director shall notify the Chairman of the potential ground for removal. The Chairman then shall notify the entity that appointed such Director of potential ground for removal. Additionally, the Hidalgo County Commissioners Court or the City Council may respectively remove a Director appointed by that entity for cause. A Director shall be considered removed from the Board only after the Authority receives notice of removal from the entity that appointed such Director.

§ 9. Compensation of Directors

Directors shall serve without compensation, but will be reimbursed for their actual expenses of attending each meeting of the Board and for such other expenses as may be reasonably incurred in their carrying out the duties and functions as set forth herein.

§ 10. Conflicts of Interest; Ethics and Compliance

a. A Director or employee of the Authority shall not:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence that Director or employee in the discharge of official duties on behalf of the Authority or that the Director or employee knows or should know is being offered with the intent to influence the Director or employee's official conduct;

(2) accept other employment or engage in a business or professional activity that the Director or employee might reasonably expect would require or induce the Director or employee to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the Director's or employee's independence of judgment in the performance of the Director's or employee's official duties;

(4) make personal investments, including investments of a spouse, that could reasonably be expected to create a substantial conflict between the Director's or employee's private interest and the interest of the Authority or that could impair the ability of the Director or employee to make independent decisions;

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the Director's or employee's official powers or performed the Director's or employee's official duties in favor of another;

(6) have a personal interest in an agreement executed by the Authority; or

(7) contract with the Authority or be directly or indirectly interested in a contract with the Authority or the sale of property to the Authority.

b. Directors shall familiarize themselves and comply with all applicable laws regarding conflicts of interest, including Chapters 171 or 176 of the Texas Local Government Code and any conflict of interest policy adopted by the Board.

c. The Authority shall adopt a written internal compliance and ethics program within the first anniversary of its creation. The ethics and compliance program shall satisfy the requirements of Rule 10.51 of Title 43, Texas Administrative Code, and shall:

(1) be designed to detect and prevent violations of the law, including regulations, and ethical standards applicable to the entity or its officers or employees; and

(2) provide that:

(A) High-level personnel are responsible for oversight of compliance

with the program's standards and procedures;

(B) Appropriate care is being take to avoid the delegation of substantial discretionary authority to individuals whom the Authority knows, or should know have a propensity to engage in illegal activities;

(C) Compliance standards and procedures are effectively communicated to all of the Authority's employees and Board by requiring them to participate in periodic training in ethics and the requirements of the compliance program;

(D) Compliance standards and procedure are effectively communicated to all of the Authority's agents;

(E) Reasonable steps are being taken to achieve compliance by using monitoring and auditing systems reasonably designed to detect non-compliance and providing and publicizing a system for reporting noncompliance without fear of retaliation;

(F) Consistent enforcement of compliance standards and procedures is administered through appropriate disciplinary mechanisms;

(G) Reasonable steps are taken to respond appropriately to detected offenses and to prevent future offenses; and

(H) A written code of conduct is adopted to address record retention, fraud, equal opportunity employment, bullying, sexual harassment and misconduct, conflicts of interest, personal use of Authority property, and gifts and honoraria.

§ 11. Additional Obligations of Directors

Directors shall comply with additional requirements provided by the RMA Act and RMA Rules, including:

a. The requirement to file an annual personal financial statement with the Texas Ethics Commission as provided by §370.2521 of the RMA Act;

b. The requirement to complete training on the RMA's responsibilities under the Open Meetings Act and the Public Information Act as provided by §§551.005 and 552.012 of the Texas Government Code;

c. The nepotism laws under Chapter 573, Texas Government Code; and

d. The HCRMA Ethics and Compliance Program as adopted by the Board under

Title 43 of the Texas Administrative Code, Rule 10.51.

§ 12. Meetings

a. Regular Meetings. All regular meetings of the Board shall be held in Hidalgo County, at a specific site, date, and time to be determined by the Chairman. The Chairman may postpone any regular meeting if it is determined that such meeting is unnecessary or that a quorum will not be achieved, but no fewer than four (4) regular meetings shall be held during each calendar year.

b. Special Meetings. Special meetings and emergency meetings of the Board may be called, upon proper notice, at any time by the Chairman or at the request of any three (3) Directors. Special meetings and emergency meetings shall be held at such time and place as is specified by the Chairman, if the Chairman calls the meeting, or by the three (3) Directors, if they call the meeting.

c. Agendas. The Chairman shall set the agendas for meetings of the Board, except that the agendas of meetings called by three (3) Directors shall be set by those Directors.

d. Chairman-Pro Tem. In the event that neither the Chairman or Vice Chairman is available to preside over the called meeting of the Board at which a quorum is present, the Directors present at the meeting may elect a Chairman-ProTem to preside over the meeting.

§ 13. Voting; Quorum

a. Voting. Each Director, including the Chairman, has equal voting status and may vote on Authority matters.

b. Quorum. A majority of the Directors constitutes a quorum, and the vote of a majority of the Directors present at a meeting at which a quorum is present will be necessary for any action to be taken by the Board. No vacancy in the membership of the Board will impair the right of a quorum to exercise all of the rights and to perform all of the duties of the Board. Therefore, if a vacancy occurs, a majority of the Directors then serving in office will constitute a quorum.

§ 14. Meetings by Telephone

As authorized by §370.262 of the RMA Act, the Board, committees of the Board, staff, or any combination thereof, may participate in and hold open or closed meetings by means of teleconference or other electronic communications equipment by which all persons participating in the meeting can communicate with each other and at which public participation is permitted by a speaker telephone or other electronic communications equipment at a conference room of the Authority or other facility in a

county of the Authority that is accessible to the public. Such meetings are subject to the notice requirements set forth in §§551.125(c) – (f) of the Texas Open Meetings Act, however they are not subject to the additional requirements of §§551.125(b) of the Act. The notice must state the location where members of the public can attend to hear those portions of the meeting open to the public. Participation in a meeting pursuant to this Section 14 constitutes being present in person at such meeting, except that a Director will not be considered in attendance when the Director appears at such a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened as generally provided under Section 17 of these bylaws. Each part of a meeting conducted by telephone conference call or other electronic means that by law must be open to the public shall be accessible to the public at the location specified in the notice and shall be tape-recorded and documented by written minutes. On conclusion of the meeting, the tape recording and the written minutes of the meeting shall be made available to the public within a reasonable period of time.

§ 15. Procedure

All meetings of the Board and its committees shall be conducted generally in accordance with Robert's Rules of Order pursuant to statutorily proper notice of meeting posted as provided by law. The Chairman at any time may change the order of items to be considered from that set forth in the notice of meeting, provided that all agenda items that require a vote by the Board shall be considered at the meeting for which they have been posted. To the extent procedures prescribed by applicable statutes, the RMA Rules or these bylaws conflict with Robert's Rules of Order, the statutes, the RMA Rules, or these bylaws shall govern.

§ 16. Committees

a. Executive Committee. The Authority shall establish an Executive Committee, consisting of the officers of the Authority as identified in Section 21, and such other members as the Chairman may direct. Meetings of the Executive Committee shall be conducted on no less than three (3) days' notice to the Executive Committee members, unless such members agree to waive this notice requirement. A majority of the members of the Executive Committee constitutes a quorum of the Committee, and the vote of a majority of the members present at a meeting at which a quorum is present will be necessary for any action taken by the Executive Committee. Minutes shall be kept of all meetings of the Executive Committee. Consistent with this Section 16, the Executive Committee shall have and may exercise all of the authority of the Board, subject to the limitations imposed by applicable law; provided, however, that the Executive Committee shall not enter into or approve any contract, nor authorize the expenditure of funds on behalf of the Authority, except to the extent explicitly authorized in a resolution of the Board. Actions requiring Board approval shall be submitted to the Board as recommendations of the Executive Committee.

b. Ad Hoc and Standing Committees. The Chairman at any time may designate from among the Directors one or more ad hoc or standing committees, each of which shall be comprised of three (3) or more Directors, and may designate one (1) or more Directors as alternate members of such committees, who may, subject to any limitations imposed by the Chairman, replace absent or disqualified members at any meeting of that committee. The Chairman serves as an ex-officio member of each committee.

c. Authority of Committees. If approved by resolution and passed by a majority vote of the Board, a committee shall have and may exercise all of the authority of the Board, to the extent provided in such resolution and subject to the limitations imposed by applicable law; provided that no Committee shall be authorized to enter into or approve any contract, nor authorize the expenditure of funds on behalf of the Authority. All contracts and expenditures of the Authority shall be made by the Board of Directors.

d. Committee Members. The Chairman shall appoint the chairman of each committee, as well as Directors to fill any vacancies in the membership of the committees. At the next regular meeting of the Board following the Chairman's formation of a committee, the Chairman shall deliver to the Directors and the Secretary a description of the committee, including (a) the name of the committee, (b) whether it is an ad hoc or standing committee, (c) its assigned function(s) and/or task(s), (d) whether it is intended to have a continuing existence or to dissolve upon the completion of a specified task and/or the occurrence of certain events, (e) the Directors designated as members and alternate members to the committee, and its chairman, and (f) such other information as requested by any Director. The Secretary shall enter such written description into the official records of the Authority. The Chairman shall provide a written description of any subsequent changes to the name, function, task, term, or composition of any committee in accordance with the procedure described in the preceding two sentences. A committee also may be formed by a majority vote of the Board, which vote (and not independently the Chairman) also shall specify the committee's chairman and provide the descriptive information otherwise furnished by the Chairman in accordance with the preceding three sentences.

e. Committee Meetings. A meeting of any committee formed pursuant to this Section 16 may be called by the Chairman, the chairman of the applicable committee, or by any two members of the committee. All committees comprised of a quorum of the Board shall keep regular minutes of their proceedings and report to the Board as required. The designation of a committee of the Board and the delegation thereto of authority shall not operate to relieve the Board, or any Director, of any responsibility imposed upon the Board or the individual Director by law. To the extent applicable, the provisions of these bylaws relating to meetings, quorums, meetings by telephone, and procedure shall govern the meetings of the Board's committees.

§ 17. Notice of Meetings

Notice of each meeting of the Board shall be sent by mail, electronic mail, or facsimile to all Directors entitled to vote at such meeting. If sent by mail, such notice will be deemed delivered when it is deposited in the United States mail with sufficient postage prepaid. If sent by electronic mail or facsimile, the notice will be deemed delivered when transmitted properly to the correct email address or number, provided that an additional copy of such notice shall be sent by overnight delivery as confirmation of the notice sent by electronic mail or facsimile. Such notice of meetings also may be given by telephone, provided that any of the Chairman, Executive Director, Secretary, or their designee speaks personally to the applicable Director to give such notice.

§ 18. Waiver of Notice

Whenever any notice is required to be given to any Director by statute or by these bylaws, a written waiver of such notice signed by the person or persons entitled to such notice, whether before or after the time required for such notice, shall be deemed equivalent to the giving of such notice.

§ 19. Attendance as Waiver

Attendance of a Director at a meeting of the Board or a committee thereof will constitute a waiver of notice of such meeting, except that a Director will not be considered in attendance when the Director appears at such a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

§ 20. Officers

The officers of the Authority shall consist of a Chairman, a Vice-Chairman, a Secretary, and a Treasurer. The offices of Secretary and Treasurer may be held simultaneously by the same person. The individuals elected as officers shall not be compensated for their service as officers. However, officers shall be reimbursed for all expenses incurred in conducting proper Authority business and for travel expenses incurred in the performance of their duties. If desired, the Board may also designate an Assistant Secretary and Assistant Treasurer, who shall also be considered officers of the Authority.

§ 21. Election and Term of Office

Except for the office of Chairman, which is filled by the Governor's appointment, officers will be elected by the Board for a term of one (1) year, subject to Section 22 of these bylaws. The election of officers to succeed officers whose terms have expired shall be by a vote of the Directors of the Authority at the first meeting of the Authority held after February 1 of each year or at such other meeting as the Board determines.

§ 22. Removal and Vacancies of Officers

Each officer shall hold office until a successor is chosen and qualified, or until the officer's death, resignation, or removal, or, in the case of a Director serving as an officer, until such officer ceases to serve as a Director. Any officer, except the Chairman, may resign at any time upon giving written notice to the Board. The Chairman may resign at any time upon giving written notice to the Board and the Governor. Any officer except the Chairman may be removed from service as an officer at any time, with or without cause, by the affirmative vote of a majority of the Directors of the Authority. The Directors of the Authority may at any meeting vote to fill any vacated officer position except the Chairman position due to an event described in this Section 22 for the remainder of the unexpired term.

§ 23. Chairman

The Chairman is appointed by the Governor and is a Director of the Authority. The Chairman shall appoint all committees of the Board as specified in these bylaws (except as otherwise provided in Section 16 of these bylaws), call all regular meetings of the Board, and preside at and set the agendas for all meetings of the Board (except as provided in the concluding sentence of Section 12 of these bylaws). The Chairman shall review and approve all requests for reimbursement of expenses sought by the Executive Director.

§ 24. Vice Chairman

The Vice Chairman must be a Director of the Authority. During the absence or disability of the Chairman, upon the Chairman's death (and pending the Governor's appointment of a successor new Chairman), or upon the Chairman's request, the Vice Chairman shall perform the duties and exercise the authority and powers of the Chairman.

§ 25. Secretary

The Secretary need not be a Director of the Authority, The Secretary shall:

a. keep true and complete records of all proceedings of the Directors in books provided for that purpose and shall assemble, index, maintain, and keep up-to-date a book of all of the policies adopted by the Authority;

b. attend to the giving and serving of all notices of meetings of the Board and its committees and such other notices as are required by the office of Secretary and as may be directed by the RMA Act, any trust indenture binding on the Authority, Directors of the Authority, or the Executive Director;

c. seal with the official seal of the Authority (if any) and attest all documents, including trust agreements, bonds, and other obligations of the Authority that require the official seal of the Authority to be impressed thereon;

d. execute, attest, and verify signatures on all contracts in which the total consideration equals or exceeds an amount established in resolutions of the Board, contracts conveying property of the Authority, and other agreements binding on the Authority which by law or Board resolution require attestation;

e. certify resolutions of the Board and any committee thereof;

f. maintain custody of the corporate seal, minute books, accounts, and all other official documents and records, files and contracts that are not specifically entrusted to some other officer or depository; and

g. hold such administrative offices and perform such other duties as the Directors or the Executive Director shall require.

§ 26. Treasurer

The Treasurer need not be a Director of the Authority. The Treasurer shall:

a. execute all requisitions to the applicable bond trustee for withdrawals from the construction fund, unless the Board designates a different officer, Director, or employee of the Authority to execute any or all of such requisitions;

b. execute, and if necessary attest, any other documents or certificates required to be executed and attested by the Treasurer under the terms of any trust agreement or supplemental trust agreement entered into by the Authority;

c. maintain custody of the Authority's funds and securities and keep a full and accurate account of all receipts and disbursements, and endorse, or cause to be endorsed, in the name of the Authority and deposit, or cause to be deposited, all funds in such bank or banks as may be designated by the Authority as depositories;

d. render to the Directors at such times as may be required an account of all financial transactions coming under the scope of the Treasurer's authority;

e. give a good and sufficient bond, to be approved by the Authority, in such an amount as may be fixed by the Authority;

f. invest such of the Authority's funds as directed by resolution of the Board, subject to the restrictions of any trust agreement entered into by the Authority; and

g. hold such administrative offices and perform such other duties as the Directors of the Authority or the Executive Director shall require. If, and to the extent that, the duties or responsibilities of the Treasurer and those of any administrator conflict and are vested in different persons, the conflicting duties and responsibilities shall be deemed vested in the Treasurer.

§ 27. Administrators

The chief administrator of the Authority shall be the Executive Director. Other administrators may be appointed by the Executive Director with the consent of the Board. All such administrators, except for the Executive Director, shall perform such duties and have such powers as may be assigned to them by the Executive Director or as set forth in Board Resolutions. Any administrator may be removed, with or without cause, at any time by the Executive Director. All administrators will be reimbursed for expenses incurred in performance of their duties as approved by the Executive Director and the Executive Director's expense reimbursements shall be approved by the Executive Committee.

§ 28. Executive Director

a. The Executive Director will be selected by the Board and shall serve at the pleasure of the Board, performing all duties assigned by the Board and implementing all resolutions adopted by the Board.

b. In addition, the Executive Director:

(1) shall be responsible for general management, hiring and termination of employees, and day-to-day operations of the Authority;

(2) shall be responsible for preparing a draft of the Strategic Plan for the Authority's operations as described in Section 37 of these bylaws;

(3) shall be responsible for preparing a draft of the Authority's written Annual Report, as described in Section 37 of these bylaws;

(4) at the invitation of the Hidalgo County Commissioners Court or of the city council of a municipality located within the County, shall appear, with representatives of the Board, before the inviting body to present the Authority's Annual Report and respond to questions and receive comments regarding the Report or the Authority's operations;

(5) may execute inter-agency and interlocal contracts and service contracts approved by the Board;

(6) may execute contracts, contract supplements, contract change orders, and purchase orders not exceeding amounts established in Resolutions of the Board; and

(7) shall have such obligations and authority as may be described in one or more Resolutions enacted from time to time by the Board.

c. The Executive Director may delegate the foregoing duties and responsibilities as

the Executive Director deems appropriate; provided such delegation does not conflict with applicable law or any express direction of the Board.

§ 29. Interim or Outsourced Executive Director

The Board may designate an Interim Executive Director to perform the duties of the Executive Director during such times as the position of Executive Director is vacant. The Interim Executive Director need not be an employee of the Authority. Alternatively, the Board may contract with any municipality in Hidalgo County through an interlocal agreement to provide administrative and other professional services in lieu of or in addition to hiring an Executive Director.

§ 30. Indemnification by the Authority

a. Indemnification. Any person made a party to or involved in any litigation, including any civil, criminal or administrative action, suit or proceeding, by reason of the fact that such person is or was a Director, officer, administrator, or employee of the Authority or by reason of such person's alleged negligence or misconduct in the performance of his or her duties as such Director, officer, administrator, or employee shall be indemnified by the Authority, to the extent funds are lawfully available and subject to any other limitations that exist by law against liability and the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him or her in connection with any action therein, except in relation to matters as to which it is adjudged that such Director, officer, or administrator is liable for gross negligence or willful misconduct in the performance of his or her duties.

b. Exception. In the event of a conviction for an offense involving the conduct for which the Director, officer, administrator, or employee was indemnified, the officer, Director, administrator, or employee shall be liable to the Authority for the amount of indemnification paid, with interest at the legal rate for interest on a judgment from the date the indemnification was paid, as provided by §370.258 of the RMA Act. A conviction or judgment entered in connection with a compromise or settlement of any such litigation shall not by itself be deemed to constitute an adjudication of liability for such gross negligence or willful misconduct.

c. Right to be Paid. The right to indemnification will include the right to be paid by the Authority for expenses incurred in defending a proceeding in advance of its final disposition in the manner and to the extent permitted by the Board in its sole discretion. In addition to the indemnification described above that the Authority shall provide a Director, officer or administrator, the Authority may, upon approval of the Board in its sole discretion, indemnify a Director, officer, or administrator under such other circumstances, or may indemnify an employee, against liability and reasonable expenses, including attorneys' fees, incurred in connection with any claim asserted against him or her in said party's capacity as a Director, officer, administrator, or employee of the Authority, subject to any

limitations that exist by law. Any indemnification by the Authority pursuant to this Section 30 shall be evidenced by a resolution of the Board.

§ 31. Expenses Subject to Indemnification

As used herein, the term "expenses" includes fines or penalties imposed and amounts paid in compromise or settlement of any such litigation only if:

a. independent legal counsel designated by a majority of the Board, excluding those Directors who have incurred expenses in connection with such litigation for which indemnification has been or is to be sought, shall have advised the Board that, in the opinion of such counsel, such Director, officer, administrator, or other employee is not liable to the Authority for gross negligence or willful misconduct in the performance of his or her duties with respect to the subject of such litigation; and

b. a majority of the Directors shall have made a determination that such compromise or settlement was or will be in the best interest of the Authority.

§ 32. Procedure for Indemnification

Any amount payable by way of indemnity under these bylaws may be determined and paid pursuant to an order of or allowance by a court under the applicable provisions of the laws of the State of Texas in effect at the time and pursuant to a resolution of a majority of the Directors, other than those who have incurred expenses in connection with such litigation for which indemnification has been or is to be sought. In the event that all the Directors are made parties to such litigation, a majority of the Board shall be authorized to pass a resolution to provide for legal expenses for the entire Board.

§ 33. Additional Indemnification

The right of indemnification provided by these bylaws shall not be deemed exclusive of any right to which any Director, officer, administrator, or other employee may be entitled, as a matter of law, and shall extend and apply to the estates of deceased Directors, officers, administrators, and other employees.

§ 34. Contracts and Purchases

All contracts and purchases on behalf of the Authority shall be entered into and made in accordance with rules of procedure prescribed by the Board and applicable laws and rules of the State of Texas and its agencies.

§ 35. Sovereign Immunity

Unless otherwise required by law, the Authority will not by agreement or otherwise waive or impinge upon its sovereign immunity.

§ 36. Termination of Employees

Employees of the Authority shall be employees at will unless they are a party to an employment agreement with the Authority executed by the Chairman upon approval by the Board. Employees may be terminated at any time, with or without cause, by the Executive Director subject to applicable law and the policies in place at the time of termination.

§ 37. Reports

The Executive Director shall direct that all reports required under State law, the RMA Act, the RMA Rules or requested by TxDOT shall be prepared and delivered. At the time of the adoption of these bylaws, the required reports include:

a. Strategic Plan. Each even-numbered year, the Authority shall issue a Strategic Plan of its operations covering the next five (5) fiscal years, beginning with the next odd-numbered fiscal year. A draft of each Strategic Plan shall be submitted to the Board for review, approval, and, subject to revisions required by the Board, adoption. (Section 370.261(a), Texas Transportation Code)

b. Annual Report. Under the direction of the Executive Director (or in the absence of an Executive Director, the Chairman), the staff of the Authority shall prepare a draft of an Annual Report on the Authority's activities during the preceding year and describing all revenue bond issuances anticipated for the coming year, the financial condition of the Authority, all project schedules, and the status of the Authority's performance under the most recent Strategic Plan. The draft shall be submitted to the Board not later than January 30th for review, approval, and, subject to revisions required by the Board, adoption. Not later than March 31 following the conclusion of the preceding fiscal year, the Authority shall file with the Hidalgo County Commissioners Court the Authority's Annual Report, as adopted by the Board. (Section 370.261(b), Texas Transportation Code)

c. Financial Reports. The Authority shall submit to Hidalgo County and the City of McAllen (i) its annual operating and capital budgets for each fiscal year, along with any amended or supplemental operating or capital budget, within ninety (90) days of the beginning of the fiscal year; (ii) its annual financial information and notice of material events required to be disclosed under Rule 15c2-12 of the United States Securities and Exchange Commission, within thirty (30) days after disclosure; and (iii) a statement of any surplus revenue held by the Authority and a summary of how the Authority intends to use such surplus, within ninety (90) days of the of the beginning of the fiscal year. Such financial reports must be approved by the Board and certified as correct by the Executive Director of the Authority. (Rule 26.61, Title 43, Texas Administrative Code)

d. Annual Audit. The Authority shall submit annual audit, conducted by an independent certified public accountant in accordance with generally accepted

auditing standards (as modified by the governor's Uniform Grant Management Standards, or the standards of the Office of Management and Budget A-133, Audits of States, Local Governments, and Non-profit Organizations, as applicable) to Hidalgo County and the City of McAllen within one hundred twenty (120) days after the end of the fiscal year. (Section 370.182, Texas Transportation Code; Rule 26.62, Title 43, Texas Administrative Code)

e. Investment Reports. Within thirty (30) days' of acceptance of an independent auditor's report, the Authority shall submit to Hidalgo County and the City of McAllen an independent auditor's review of the annual reports of investment transactions prepared by the Authority's investment officers. Such investment reports must be approved by the Board and certified as correct by the Executive Director of the Authority. (Rule 26.61, Title 43, Texas Administrative Code)

f. Project Report. Not later than December 31 of year, the Authority shall submit to the Commission a written report that describes the progress made during that year on each transportation project or system of projects of the Authority, including the initial project for which the Authority was created. (Rule 26.65(b), Title 43, Texas Administrative Code)

g. Presentation of Reports. At the invitation of the Hidalgo County Commissioners Court or of the city council of a municipality located within Hidalgo County, representatives of the Board and the Executive Director shall appear before the inviting body to present the Annual Report, provide any other information requested, and respond to questions and receive comments. (Rule 26.63, Title 43, Texas Administrative Code)

h. Notice of Debt. The Authority shall give ninety (90) days' notice to the Hidalgo County Commissioners Court of the date of issuance of revenue bonds. (Section 3701.261(c), Texas Transportation Code.

i. Compliance Report. Within one hundred fifty (150) days after the end of the fiscal year, in the form required by TxDOT, the Authority shall submit to TxDOT's Executive Director a report that lists each duty the Authority is required to perform under Title 43 Texas Administrative Code Chapter 26(G) that indicates the Authority has performed the requirements for the fiscal year. The Compliance Report must be approved by the Board and certified as correct by the Executive Director of the Authority. (Rule 26.65(a), Title 43, Texas Administrative Code)

j. Overweight Permits. The Authority shall provide monthly and annual reports, in a format approved by TxDOT, to TxDOT's Finance Division regarding all permits issued and all fees collected during the during the period covered by the report. (Rule 28.102(j), Title 43, Texas Administrative Code)

§ 38. Rates and Regulations; Compliance with Law

The Board shall, in accordance with all applicable trust agreements, the RMA Act, the RMA Rules, or other law, establish toll rates and fees, weight restrictions, designate speed limits, establish fines for toll violators, and adopt rules and regulations for the use and occupancy of said project.

§ 39. Seal

The official seal of the Authority shall consist of the embossed impression of a circular disk with the words "Hidalgo County Regional Mobility Authority, 2006" on the outer rim, with a star in the center of the disk.

§ 40. Fiscal Year

The fiscal year for the Authority shall be from January 1 to December 31.

§ 41. Public Access Policy

The Authority shall maintain an access policy to be adopted by the Board that provides the public with a reasonable opportunity to appear before the Board to speak on any issue under the jurisdiction of the Authority.

§ 42. Appeals Procedure

The Authority shall maintain an appeals procedure to be adopted by the Board and amended from time to time that sets forth the process by which parties may bring to the attention of the Authority their questions, grievances, or concerns and may appeal any action taken by the Authority.

§ 43. Amendments to Bylaws

Except as may be otherwise provided by law, these bylaws may be amended, modified, altered, or repealed in whole or in part, at any regular meeting of the Board after ten (10) days' advance notice has been given by the Chairman to each Director of the proposed change. These bylaws may not be amended at any special or emergency meeting of the Board.

§ 44. Dissolution of the Authority

a. Voluntary Dissolution

(1) The Authority may not be dissolved unless the dissolution is approved by the Commission. The Board may submit a request to the Commission for approval to dissolve.

(2) The Commission may approve a request to dissolve only if:

(A) all debts, obligations, and liabilities of the Authority have been paid and discharged or adequate provision has been made for the payment of all debts, obligations and liabilities;

(B) there are no suits pending against the Authority, or adequate provision has been made for the satisfaction of any judgment, order or decree that may be entered against it in any pending suit; and

(C) the Authority has commitments from other governmental entities to assume jurisdiction of all Authority transportation facilities.

b. Involuntary Dissolution

(1) The Commission by order may require the Authority to dissolve if the Commission determines that the Authority has not substantially complied with the requirements of a Commission Rule or an agreement between the department and the Authority and the Commission has given the Board thirty (30) days' written notice of its intention to adopt such an order.

(2) The Commission may not require dissolution unless:

(A) The Conditions described in Section 44(a)(2)(A) and (B) have been met; and

(B) The holders of any indebtedness have evidenced their agreement to the dissolution.

* * * * *

Adopted October 2, 200
First Amendment approved May 20, 2008
Amended and Restated Bylaws approved September 24, 2014
Amended and Restated Bylaws approved March 26, 2015
[Amended and Restated Bylaws approved August 25, 2020]

SECTION E.2

Current Strategic Plan

HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY



HCRMA Board of Directors

Robert L. Lozano - Chairman
Ezequiel Reyna, JR., Vice Chairman
Juan Carlos Del Angel, Secretary/Treasurer
Francisco "Frank" Pardo, Director
Sergio Saenz, Director
Michael J. Williamson, Director
Roel "Roy" Rodriguez, P.E., Director

HCRMA Staff

Pilar Rodriguez, PE, Executive Director
Ramon Navarro IV, PE, CFM, Chief Constr. Engineer
Celia Gaona, CIA, Chief Auditor/Compliance Officer
Jose Castillo, Chief Financial Officer
Ruben Alfaro, PE, CFM, Development Engineer
Sergio Mandujano, Constr. Records Keeper
Maria Alaniz, Program Coordinator
Ivonne Rodriguez, Program Coordinator

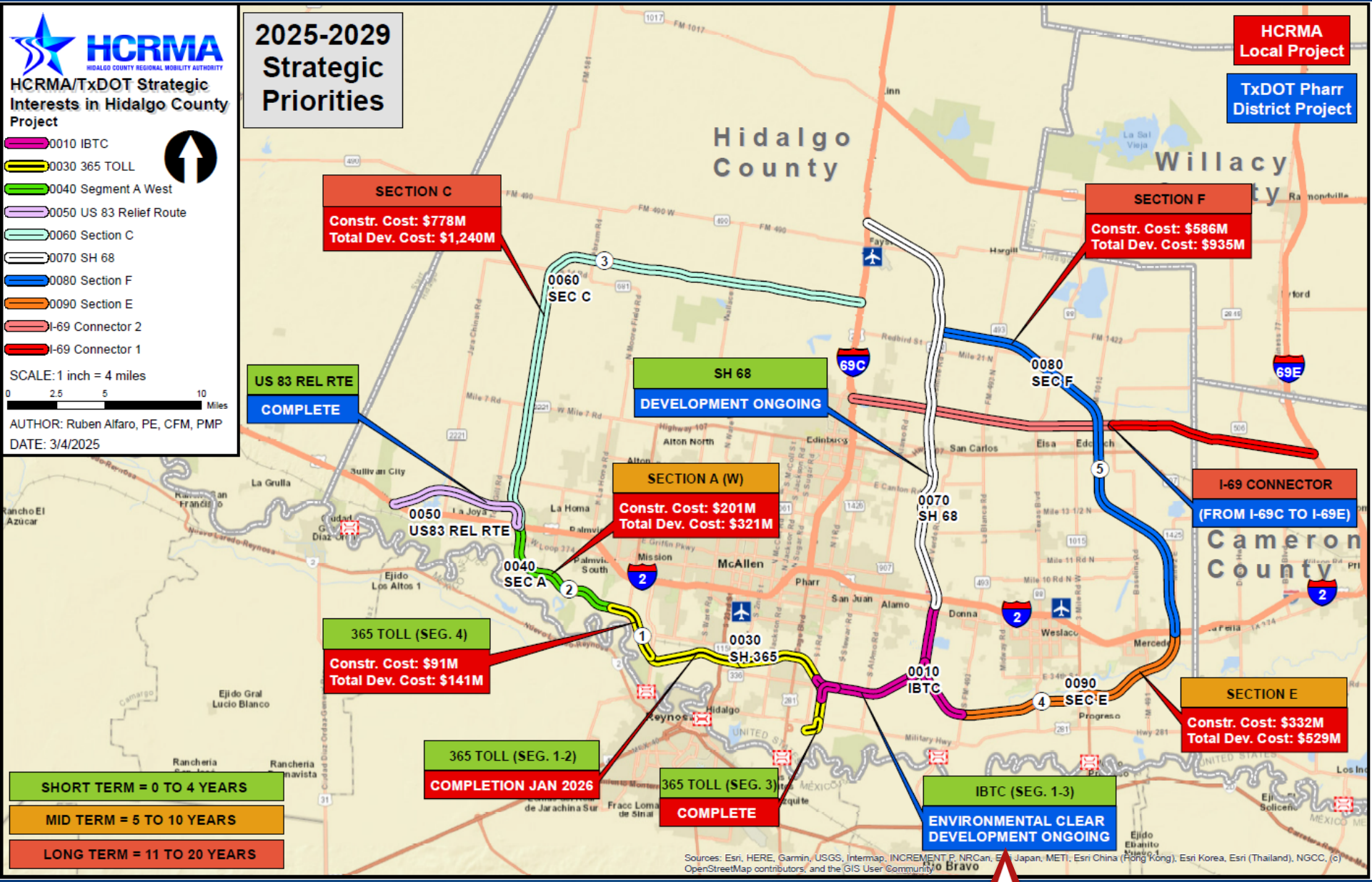
General Engineering Consultant

HDR ENGINEERING, INC.

Strategic Plan Update 2025-2029 Amendment 1

UPDATED MARCH 2025

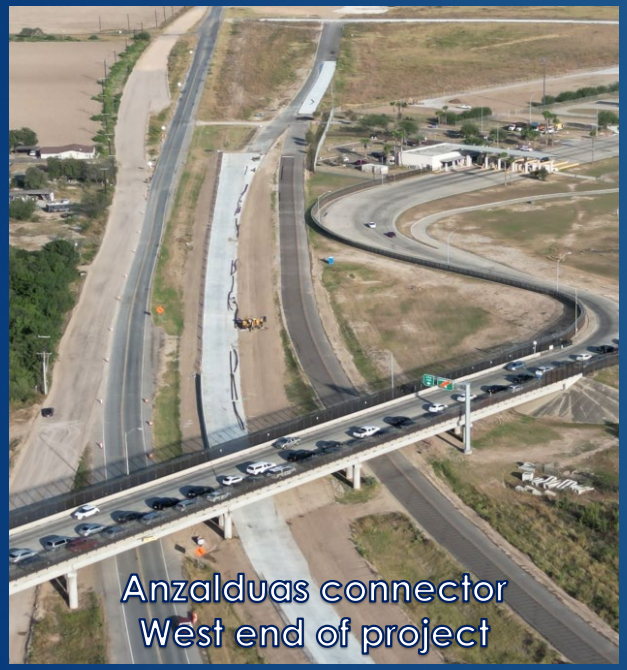
HCRMA
HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY



HCRMA
HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY

365 TOLL SEGMENTS 1&2

- Project construction completion expected November 2025.
- As of December 2024, project is 53% complete.
- Major floodway bridge and floodway levee relocation completed.


Anzalduas connector
West end of project


FM 494 to Bentsen Rd.
West end of project


FM 494 to Bentsen Rd.
West end of project

HCRMA
HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY

IBTC UPDATES

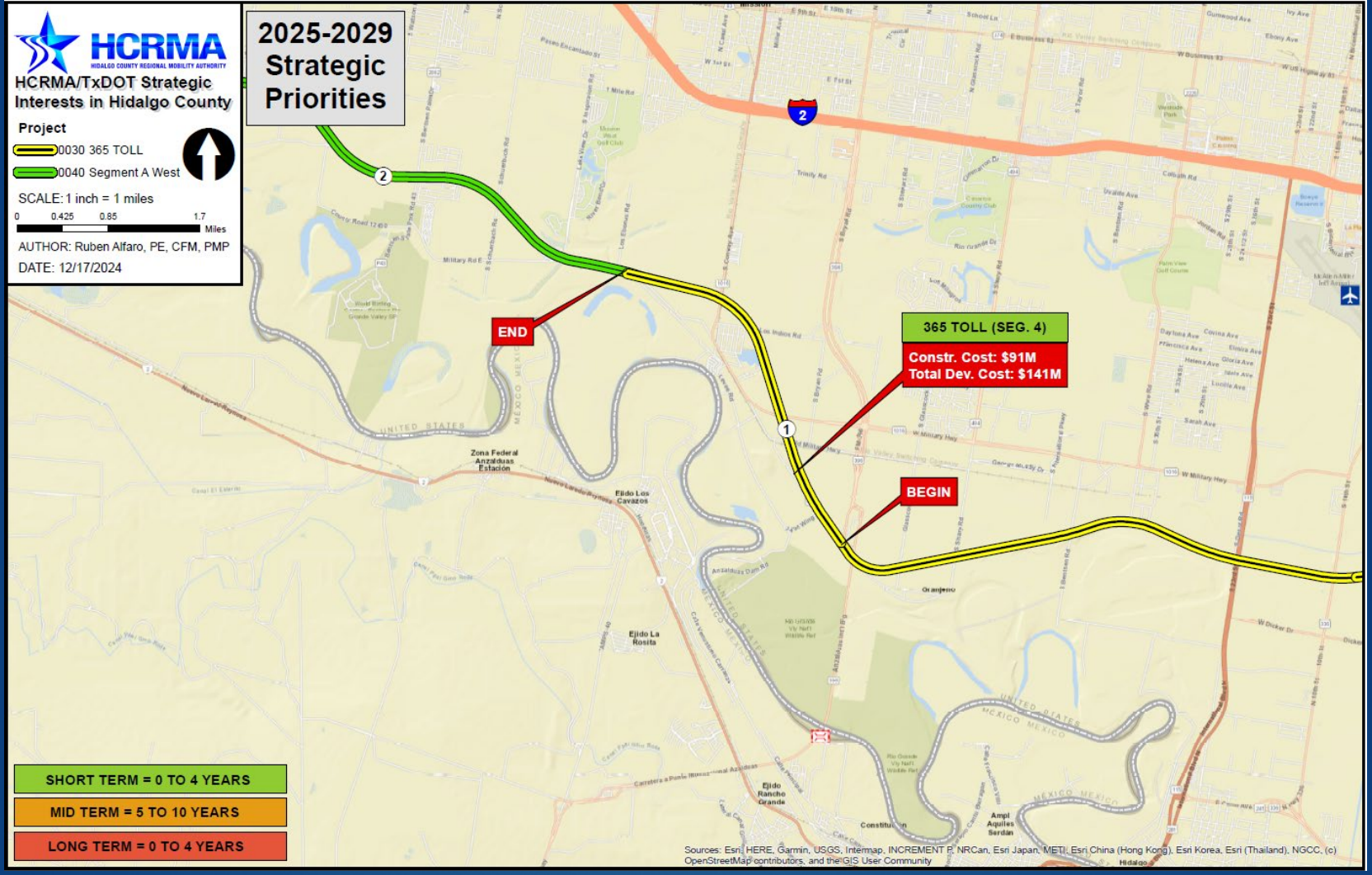
- Environmental Clearance achieved
- Schematic Approved
- Successfully transitioned project to TxDOT
- Fully funded for construction by TxDOT
- PS&E Contract to be executed December 2024

I-69 CONNECTOR UPDATES

- TxDOT Public Scoping meeting tentatively scheduled for January 2025.
- TxDOT funded schematic in progress.
- TxDOT funded environmental phase in progress.

SH 68 UPDATES

- TxDOT is in the final stages of environmental phase. Expected to be environmentally clear by summer 2025 (ROD).
- Schematic design in progress by TxDOT (95% complete).



365 TOLL SEGMENT 4

HCRMA
HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY

365 TOLL SEGMENT 4

PROJECT LIMITS:

FROM: FM 1016/CONWAY AVE.

TO: FM 396/ANZALDUAS HIGHWAY

LENGTH: 3.47 MILES

ESTIMATED COST: $140,681,600.00

PROPOSED LETTING DATE: FY 2029

NEXT STEPS:

- ENVIRONMENTAL REFRESHER
- ROW ACQUISITION
- PS&E DEVELOPMENT

CHALLENGES:

- FUNDING TBD

COST BREAKDOWN:

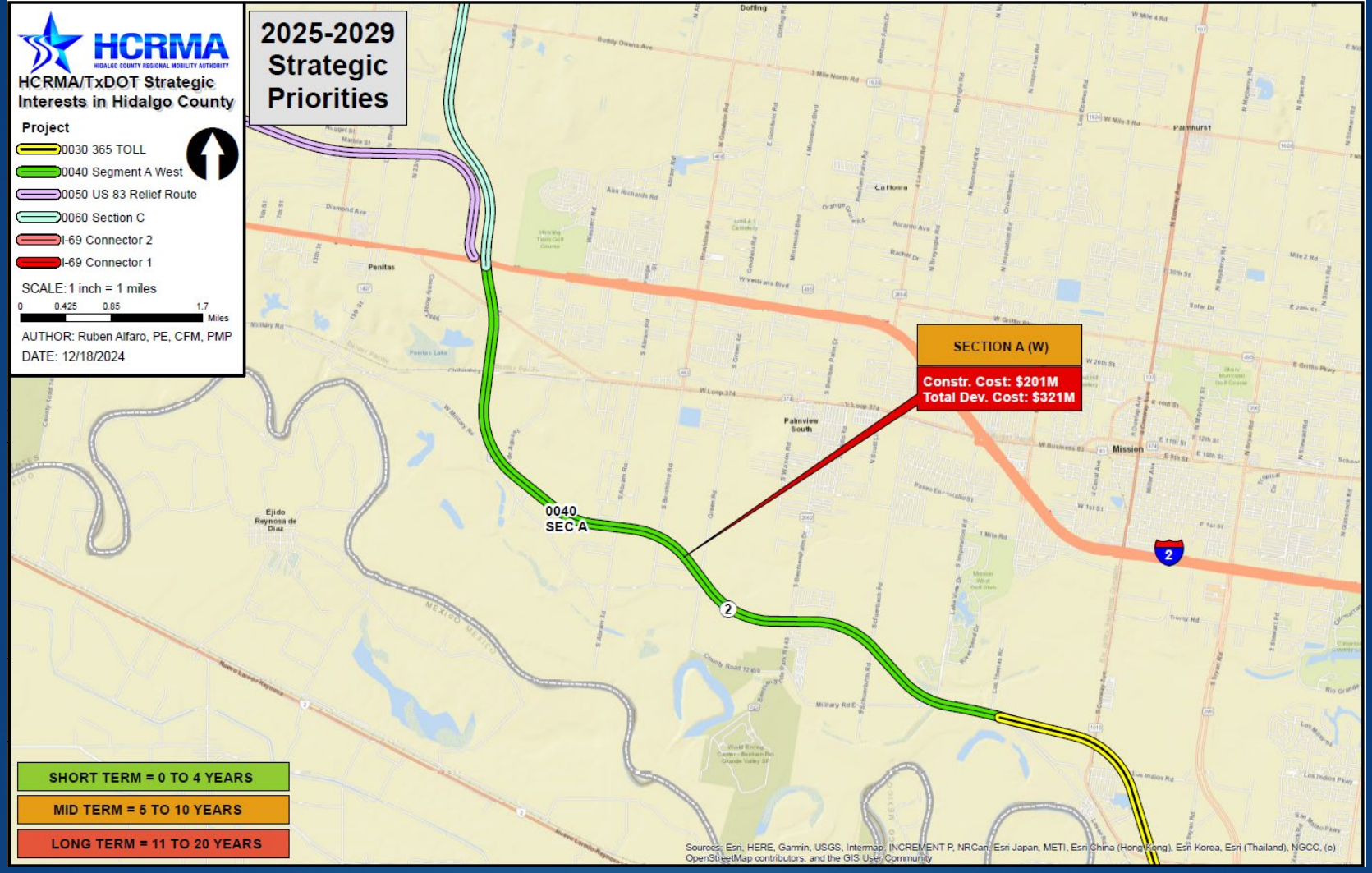
MANAGEMENT SUPPORT	$1,353,300.00
PRELIMINARY ENGINEERING	$1,353,300.00
FINAL DESIGN	$6,315,400.00
ROW ACQUISITION	$25,200,000.00
UTILITY RELOCATION	$4,511,000.00
CONSTRUCTION	$94,731,000.00
CONSTRUCTION MANAGEMENT	$7,217,600.00
TOTAL DEVELOPMENT COST	$140,681,600.00

PROPOSED FUNDING:

- TOLL REVENUE BONDS

PRIORITY

1



SECTION A (WEST)

HCRMA
HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY

SECTION A (WEST)

PROJECT LIMITS:

FROM: I-2, 0.8 MILES WEST OF SHOWERS RD.

TO: FM 1016/CONWAY AVE.

LENGTH: 7.73 MILES

ESTIMATED COST: $320,538,700.00

PROPOSED LETTING DATE: FY 2033

NEXT STEPS:

- EXECUTE ENVIRONMENTAL CLEARANCE CONTRACT AND BEGIN PROCESS
- DEFINE FINAL ROUTE AS PART OF PROCESS

CHALLENGES:

- CURRENT ROUTE PRESENTS SEVERAL RESIDENTIAL DISPLACEMENTS
- CURRENT ROUTE TRAVERSES FEDERALLY PROTECTED LAND

COST BREAKDOWN:

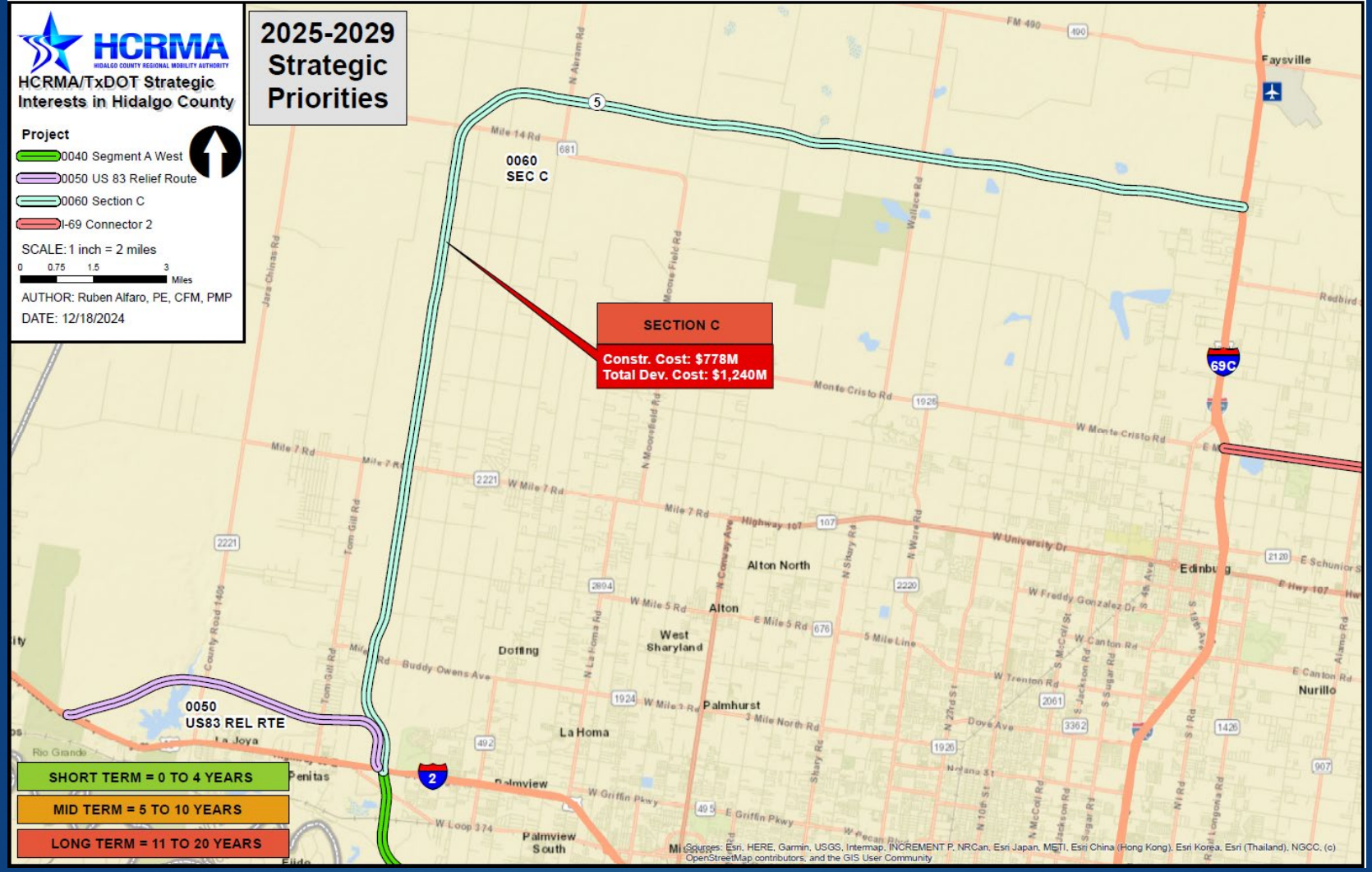
MANAGEMENT SUPPORT	$3,014,700.00
PRELIMINARY ENGINEERING	$10,049,000.00
FINAL DESIGN	$14,068,600.00
ROW ACQUISITION	$56,250,000.00
UTILITY RELOCATION	$10,049,000.00
CONSTRUCTION	$211,029,000.00
CONSTRUCTION MANAGEMENT	$16,078,400.00
TOTAL DEVELOPMENT COST	$320,538,700.00

PROPOSED FUNDING:

- TOLL REVENUE BONDS

PRIORITY

2



SECTION C

HCRMA
HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY

SECTION C

PROJECT LIMITS:

FROM: I-2, 0.8 MILES WEST OF SHOWERS RD.

TO: I-69C, 0.6 MILES SOUTH OF FM 162

LENGTH: 29.89 MILES

ESTIMATED COST: $1,239,289,100.00

PROPOSED LETTING DATE: FY 2039

NEXT STEPS:

- EXECUTE ENVIRONMENTAL CLEARANCE CONTRACT AND BEGIN PROCESS
- DEFINE FINAL ROUTE AS PART OF PROCESS

CHALLENGES:

- TO BE DETERMINED BASED ON FINAL ROUTE

COST BREAKDOWN:

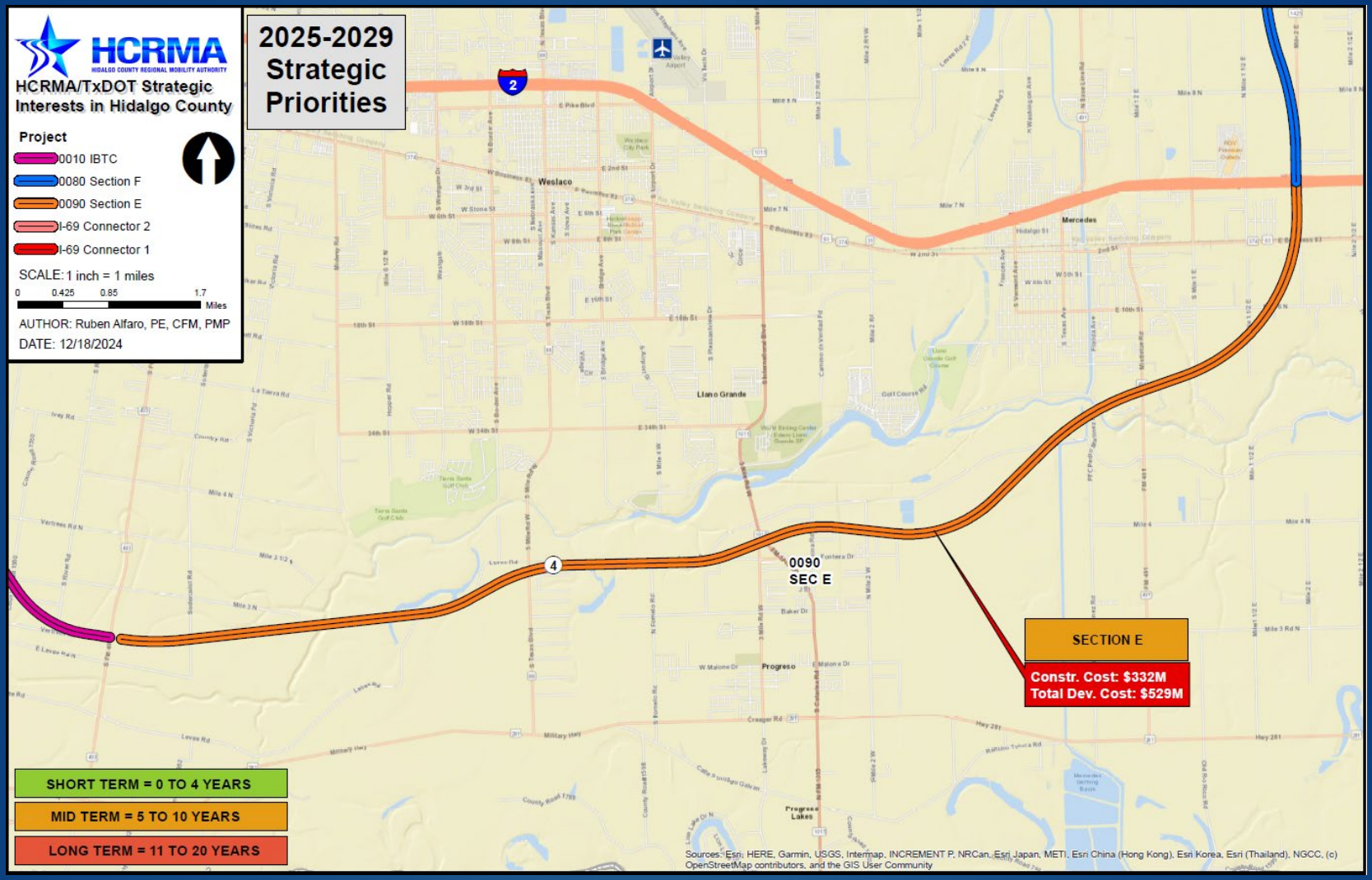
MANAGEMENT SUPPORT	$11,657,100.00
PRELIMINARY ENGINEERING	$37,857,000.00
FINAL DESIGN	$54,399,800.00
ROW ACQUISITION	$217,350,000.00
UTILITY RELOCATION	$38,857,000.00
CONSTRUCTION	$815,997,000.00
CONSTRUCTION MANAGEMENT	$62,171,200.00
TOTAL DEVELOPMENT COST	$1,239,289,100.00

PROPOSED FUNDING:

- TOLL REVENUE BONDS

PRIORITY

3



SECTION E

HCRMA
HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY

SECTION E

PROJECT LIMITS:

FROM: IBTC,EAST CONNECTOR

TO: 1-2, ~1 MILES EAST OF MILE 1 EAST

LENGTH: 12.75 MILES

ESTIMATED COST: $528,622,500.00

PROPOSED LETTING DATE: FY 2035

NEXT STEPS:

- EXECUTE ENVIRONMENTAL CLEARANCE CONTRACT AND BEGIN PROCESS
- DEFINE FINAL ROUTE AS PART OF PROCESS

CHALLENGES:

- TO BE DETERMINED BASED ON FINAL ROUTE

COST BREAKDOWN:

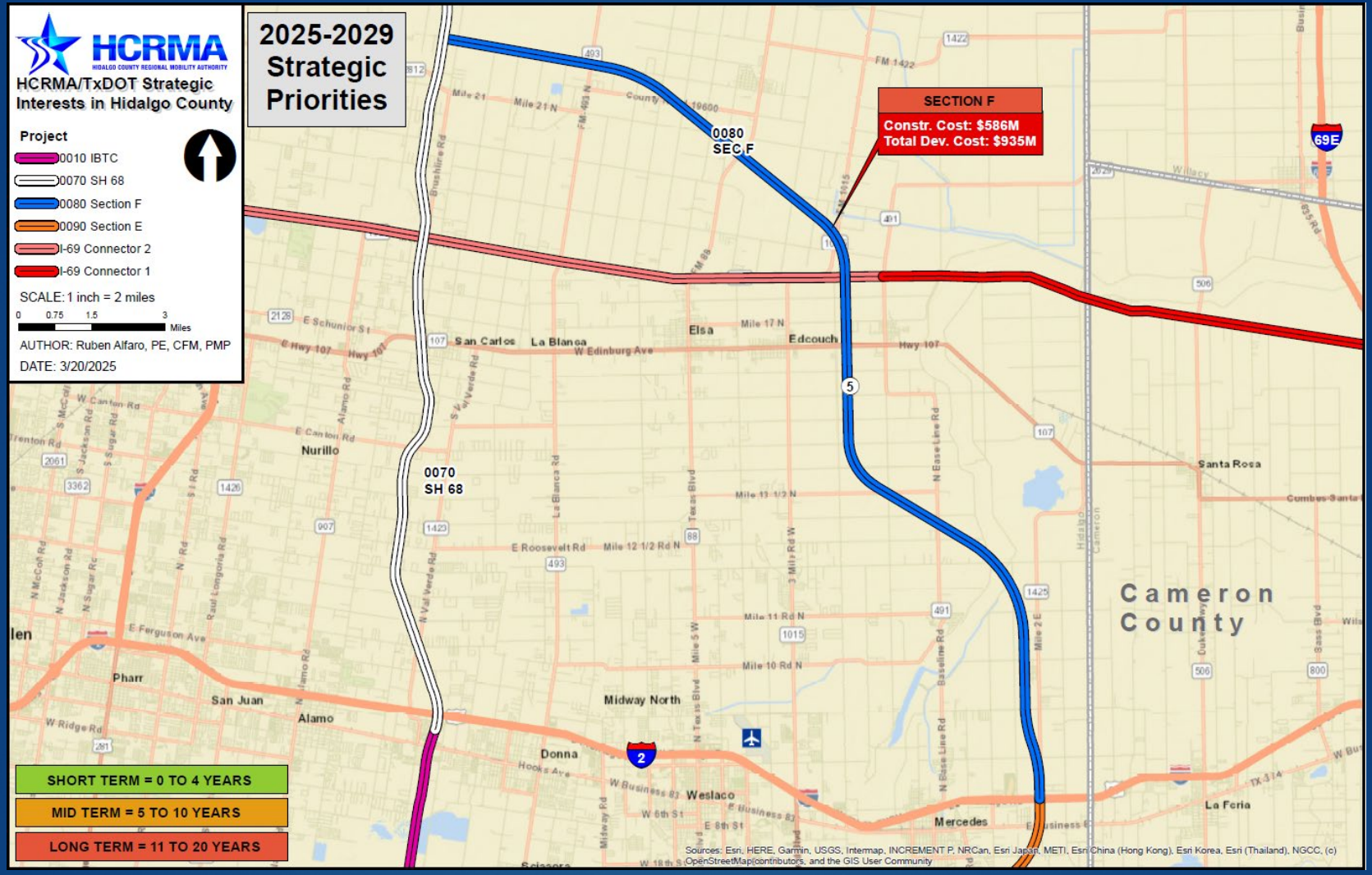
MANAGEMENT SUPPORT	$4,972,500.00
PRELIMINARY ENGINEERING	$16,575,000.00
FINAL DESIGN	$23,205,000.00
ROW ACQUISITION	$92,700,000.00
UTILITY RELOCATION	$16,575,000.00
CONSTRUCTION	$348,075,000.00
CONSTRUCTION MANAGEMENT	$26,520,000.00
TOTAL DEVELOPMENT COST	$528,622,500.00

PROPOSED FUNDING:

- TOLL REVENUE BONDS

PRIORITY

4



SECTION F

HCRMA
HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY

SECTION F

PROJECT LIMITS:

FROM: I-2, ~1 MILES EAST OF MILE 1 EAST

TO: SH 68, ~0.88 MILES NORTH OF FM 2812

LENGTH: 22.53 MILES

ESTIMATED COST: $934,100,700.00

PROPOSED LETTING DATE: FY 2037

NEXT STEPS:

- EXECUTE ENVIRONMENTAL CLEARANCE CONTRACT AND BEGIN PROCESS
- DEFINE FINAL ROUTE AS PART OF PROCESS

CHALLENGES:

- TO BE DETERMINED BASED ON FINAL ROUTE

COST BREAKDOWN:

MANAGEMENT SUPPORT	$8,786,700.00
PRELIMINARY ENGINEERING	$29,289,000.00
FINAL DESIGN	$41,004,600.00
ROW ACQUISITION	$163,800,000.00
UTILITY RELOCATION	$29,289,000.00
CONSTRUCTION	$615,069,000.00
CONSTRUCTION MANAGEMENT	$46,862,400.00
TOTAL DEVELOPMENT COST	$934,100,700.00

PROPOSED FUNDING:

- TOLL REVENUE BONDS

PRIORITY

5

HCRMA PRIORITY LIST

PRIORITY	PROJECT	ESTIMATED LETTING YEAR
1	365 TOLL SEGMENT 4	2029
2	365 TOLL SECTION A (WEST)	2033
3	SECTION C	2037
4	SECTION E	2037
5	SECTION F	2039

SECTION E.3

Current Operating and Capital Budget

HIDALGO COUNTY
REGIONAL MOBILITY AUTHORITY



OPERATING & CAPITAL BUDGET

2025

HCRMA
HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY

OPERATING & CAPITAL BUDGET
FOR 2025



AS ADOPTED BY THE
HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY
BOARD OF DIRECTORS


HIDALGO COUNTY
REGIONAL MOBILITY AUTHORITY

HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY
BOARD OF DIRECTORS



Robert L. Lozano
Chairman



Ezequiel Reyna Jr.
Vice-Chairman



Juan Carlos Del Ángel
Secretary/Treasurer



Francisco "Frank " Pardo
Director



Gabriel Kamel
Director



Sergio Saenz
Director



Michael J. Williamson
Director


HIDALGO COUNTY
REGIONAL MOBILITY AUTHORITY

Hidalgo County Regional Mobility Authority
Operating Budget
2025

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HIDALGO COUNTY
REGIONAL MOBILITY AUTHORITY

INTRODUCTORY SECTION


HIDALGO COUNTY
REGIONAL MOBILITY AUTHORITY

HCRMA
HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY

Board of Directors
Robert L. Lozano, Chairman
Ezequiel Reyna, Jr., Vice-Chairman
Juan Carlos Del Ángel, Secretary/Treasurer
Gabriel Kamel, Director
Francisco "Frank" Pardo, Director
Sergio Saenz, Director
Michael J. Williamson, Director

November 27, 2024

Chairman Lozano
Members of the Board of Directors
Hidalgo County Regional Mobility Authority
Citizens of Hidalgo County
Pharr, Texas 78577

We are pleased to present the Budget for the Hidalgo County Regional Mobility Authority for the year ending December 31, 2025. Copies are available for inspection at the Executive Director's Office and the Authority's website, www.hcrma.net.

GUIDELINES FOR DEVELOPING THIS YEAR'S BUDGET

The Budget has been developed consistent with the Authority's mission statement, *"To provide our customers with a rapid and reliable alternative for the safe and efficient movement of people, goods and services"*, complementing the Strategic Plan, a summary of which is included in this document, and will be implemented by staff according to the Authority's Vision—*Enhance the quality of life and economic vitality of the region.* We believe that it is realistic, attainable and cost-effectively meets the level of effort, envisioned in the mission statement, which you have directed the Authority's staff to provide within the constraints of the Authority's budgetary and financial policies.

OVERVIEW OF THIS YEAR'S BUDGET

The year begins with estimated working capital, debt service funds, and construction project balances at $159M. Total resources are expected to add to that almost $68.9M. Of that amount: $7.5M is expected to be received through vehicle registration fees, $2.0M in permit fees, 56.0M in federal grant and 3.4M from estimated interest earnings. Total appropriations amount to $129.8M--$3.9M of which is dedicated to operations, $8.7M to debt service, and $116.0M in capital construction of the 365 Tollway Project and $1.0M in environmental clearances of section A and section E. At this level of activity, we anticipate that ending working capital, debt service funds, capital construction, and capital improvement will approximate $98.1M.

CURRENT YEAR ISSUES

Revenues

A conservative approach was taken regarding the Vehicle Registration Revenues and were budgeted at $7.5M same as last year. Permit fees were budgeted at $2.0M.

Operating Budget

The estimated operating budget is $3.9M. This represents an increase of $300.8K or 8.21% as compared to last year. The increase is primarily due to the inclusion of $300K for outreach and marketing the 365 Toll Road Project.

Capital Outlay and Non-Capital Outlay

Amount budgeted this year is $31K, which consists of: $20K administration; $8K construction management; and $3K for project management. This represents a net decrease of $1.0M as compared to last year. The net decrease was essentially not purchasing the land from Texas Department of Transportation.

SUMMARY

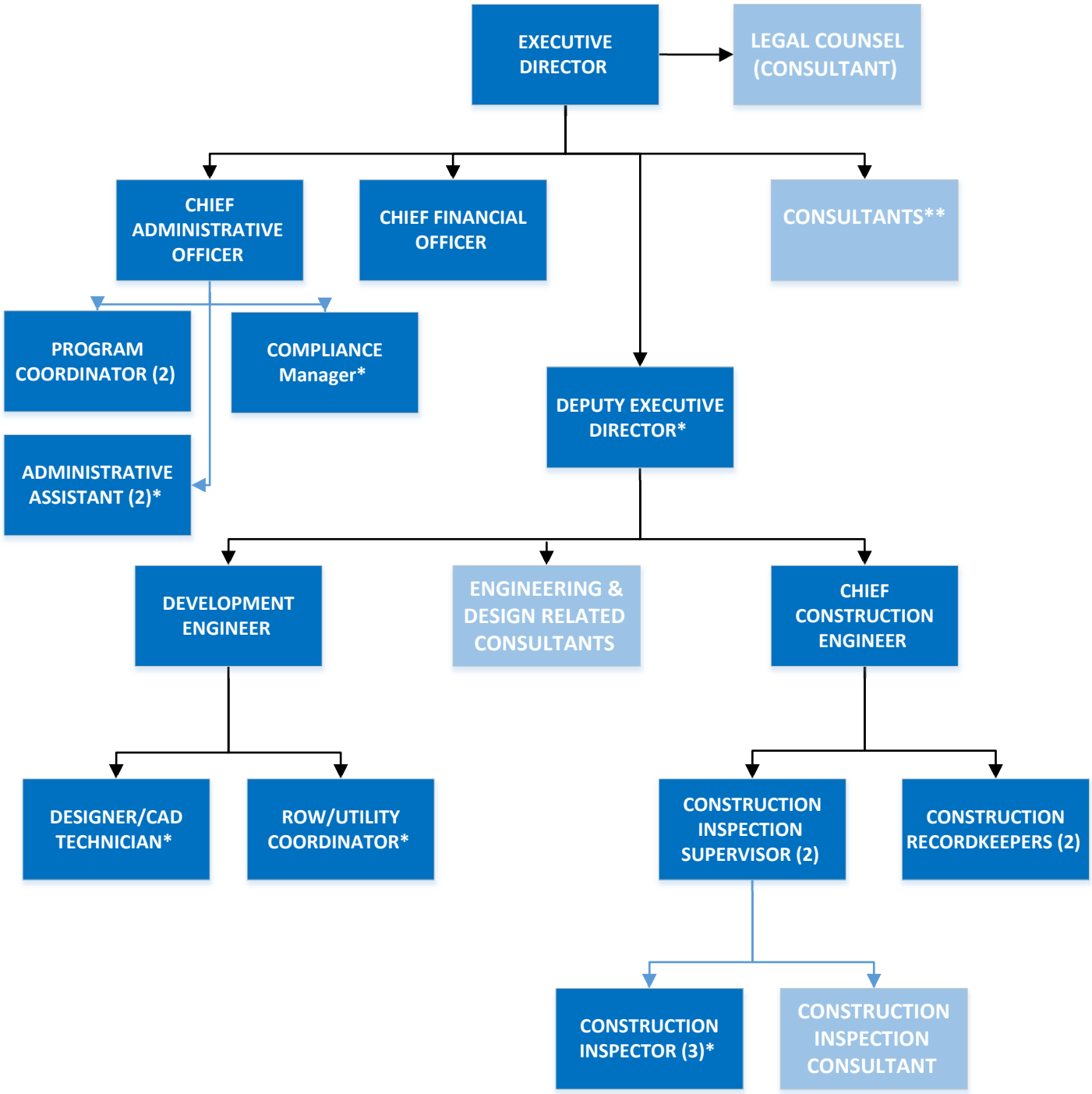
We believe that this budget is realistic, attainable and cost-effectively meets not only the existing advance project development pace, which you have directed Authority staff to follow. It also addresses the issues that arose during the budget process. It will be closely monitored as to the performance of revenues and compliance with appropriations limits, with periodic reports provided to the Board of Directors.

In closing, I want to thank Celia Gaona, Chief Auditor/Compliance Officer Manager and Jose Castillo, Chief Financial Officer for each's contribution and efforts during the budget process and preparation of this document. Additionally, I would like to thank the Chairman and the Board of Directors for their direction and continued support of management and staff.

Respectfully Submitted,
HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY

Pilar Rodriguez, PE
Executive Director

HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY
ORGANIZATIONAL CHART



*Budgeted position(s) but may have vacancies
**Non-Engineering & Design Related Consultants


HIDALGO COUNTY
REGIONAL MOBILITY AUTHORITY

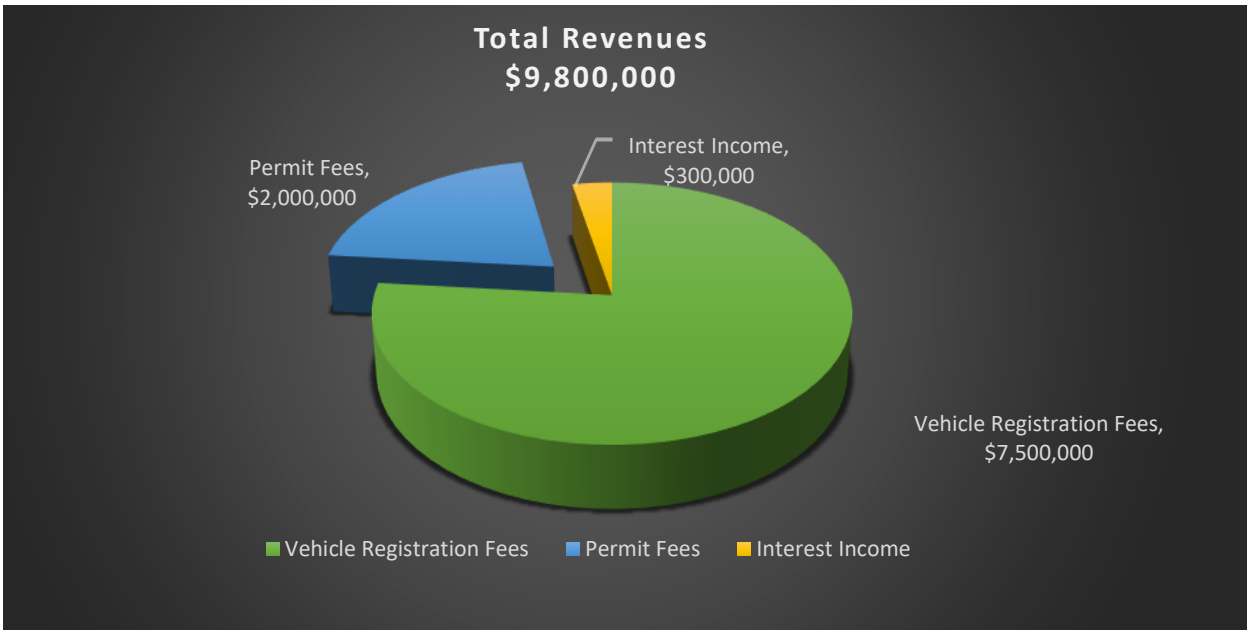
COMBINED FINACIAL SECTION

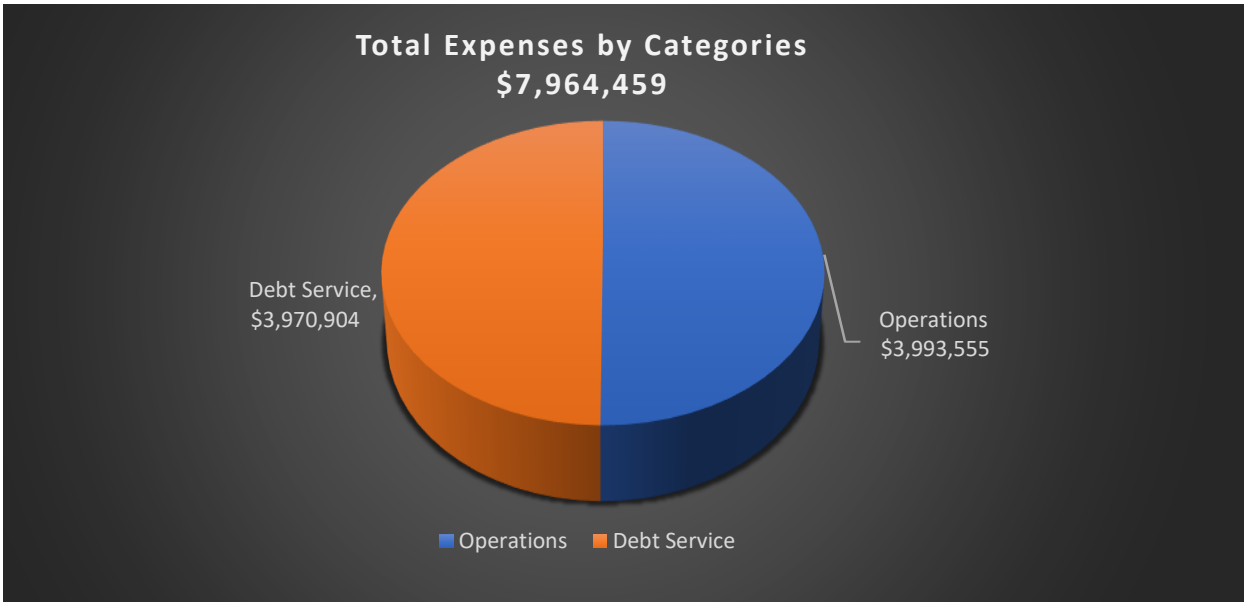
Hidalgo County Regional Mobility Authority
2025 Combined Budget Summary
All Funds

	Beginning Net Position	Projected Revenues	Transfers In	Transfers Out
General Fund:				
General Fund-Operations	$ 9,786,626	$ 9,800,000	$ -	$ (3,970,904)
Sr Lien General FD(Reserved)	$ 6,465,958	$ 2,000,000	$ -	$ (1,765,444)
Total General Fund	**$ 16,252,584**	**$ 11,800,000**	**$ -**	**$ (5,736,348)**
Debt Service Funds:				
Senior Lien Vehicle Registration Fee Series 2020				
Revenue and Refunding Bonds	$ 395,827	$ 50,000	$ 3,970,904	$ -
Senior Lien Revenue Bond, Taxable Series 2022A	$ 4,064,391	$ 100,000	$ -	$ -
Junior Lien Revenue Bond, Taxable Series 2022B	$ (297,094)	$ 10,000	$ 1,765,444	$ -
				-
Tota Debt Service Funds	**$ 4,163,124**	**$ 160,000**	**$ 5,736,348**	**$ -**
Capital Project Funds:				
365 Toll Road	$ 19,590,688	$ 1,000,000	$ 95,459,312	$ -
Capital Immprovements	$ 119,000,000	$ 56,000,000	$ -	$ (95,459,312)
Tota Capital Project Funds	**$ 138,590,688**	**$ 57,000,000**	**$ 95,459,312**	**$ (95,459,312)**
TOTALS	**$ 159,006,396**	**$ 68,960,000**	**$ 101,195,660**	**$ (101,195,660)**

Operations	Capital Assets	Debt Service	Total Appropriations	Revenue Over/Under Expenses	Estimated Ending Net Position
$ 3,978,555	$ 15,000	$ -	$ 3,993,555	$ 1,835,541	**$ 11,622,167**
$ -	$ -	$ -	$ -	$ 234,556	**$ 6,700,514**
$ 3,978,555	**$ 15,000**	**$ -**	**$ 3,993,555**	**$ 2,070,097**	**$ 18,322,681**
$ -	$ -	$ 3,970,904	$ 3,970,904	$ 50,000	$ 445,827
$ -	$ -	$ 3,295,900	$ 3,295,900	$ (3,195,900)	$ 868,491
$ -	$ -	$ 1,478,350	$ 1,478,350	$ 297,094	**$ -**
$ -	**$ -**	**$ 8,745,154**	**$ 8,745,154**	**$ (2,848,806)**	**$ 1,314,318**
$ -	$ 116,050,000	$ -	$ 116,050,000	$ (19,590,688)	$ -
$ -	$ 1,000,000	$ -	$ 1,000,000	$ (40,459,312)	$ 78,540,688
$ -	**$ 117,050,000**	**$ -**	**$ 117,050,000**	**$ (60,050,000)**	**$ 78,540,688**
$ 3,978,555	**$ 117,065,000**	**$ 8,745,154**	**$ 129,788,709**	**$ (60,828,709)**	**$ 98,177,687**


HIDALGO COUNTY
REGIONAL MOBILITY AUTHORITY


Total Revenues
$9,800,000
Permit Fees,
$2,000,000
Interest Income,
$300,000
Vehicle Registration Fees,
$7,500,000
Vehicle Registration Fees
Permit Fees
Interest Income


Total Expenses by Categories
$7,964,459
Debt Service,
$3,970,904
Operations
$3,993,555
Operations
Debt Service


HIDALGO COUNTY
REGIONAL MOBILITY AUTHORITY

BUDGET FOR CALENDAR YEAR 2025


HIDALGO COUNTY
REGIONAL MOBILITY AUTHORITY

GENERAL FUND

The **General Fund** is a major fund used to account for resources associated with Authority which are not required to be accounted for in another fund.


HIDALGO COUNTY
REGIONAL MOBILITY AUTHORITY

Hidalgo County Regional Mobility Authority
General Fund Budget Summary
For Year Ending December 31, 2025

	Actual 2023	Budget 2024	Estimated 2024	Budget 2025
Beginning Working Capital	$ 3,421,686	$ 5,212,503	$ 6,834,698	$ 9,786,626
Revenues				
Vehicle Registration Fees	7,042,180	7,500,000	7,400,000	7,500,000
Permit fees oversize	1,346,636	1,300,000	1,800,000	2,000,000
Interest Income	264,483	200,000	300,000	300,000
Total Revenues	8,653,299	9,000,000	9,500,000	9,800,000
Expenditures				
Summary				
Personnel Services	1,640,941	2,906,501	1,671,972	2,856,805
Supplies	15,459	29,500	9,250	16,750
Other Services and Charges	508,195	692,700	569,200	981,000
Maintenance	4,492	33,000	5,500	108,000
Non-capital Outlay	6,490	23,000	8,000	16,000
Capital Outlay	-	1,103,000	-	15,000
Total Expenditures	2,175,577	4,787,701	2,263,922	3,993,555
Net Increase Before Other Financing Sources (Uses)	6,477,722	5,686,295	7,236,078	5,806,445
Other Financing Sources (Uses):				
Transfers-Out				
Debt Service Fund - 2020A/2020B Bonds	(1,732,608)	(3,973,317)	(3,973,317)	(3,970,904)
Debt Service Fund - 2023 Bonds	(1,331,352)	-	-	-
Debt Service Fund - 2022B Bonds	-	-	(310,833)	-
2020 Project	(750)	-	-	-
Total Other Financing Uses	(3,064,710)	(3,973,317)	(4,284,150)	(3,970,904)
Net Increase (Decrease) After Other Financing Sources (Uses)	3,413,012	1,720,191	2,951,928	1,835,541
Ending Working Capital	$ 6,834,698	$ 6,932,694	$ 9,786,626	$ 11,622,167
Operating Expenditures per Day	$ 5,960	$ 8,722	$ 6,203	$ 10,941
No. of Days of Operating Expenditures in Working Capital	1,147	795	1,578	1,062
Bond Coverage Ratio: 2020A and 2020B Bonds	2.30	1.89	1.86	1.89


HIDALGO COUNTY
REGIONAL MOBILITY AUTHORITY

Departments Summary				
	Actual	Budget	Estimated	Budget
Expenditure Detail:	2023	2024	2024	2025
Personnel Services				
Salaries and Wages	$ 1,299,039	$ 2,225,091	$ 1,316,515	$ 2,173,984
Employee Benefits	315,652	640,460	329,607	643,821
Adminstrative Cost	26,250	40,950	25,850	39,000
Supplies	15,458	29,500	9,250	16,750
Other Services and Charges	500,571	692,700	569,200	981,000
Maintenance	4,492	33,000	5,500	108,000
Operations Subtotal	2,161,462	3,661,701	2,255,922	3,962,555
Capital and Non-capital Outlay	14,113	1,126,000	8,000	31,000
Total Expenditures	**$ 2,175,575**	**$ 4,787,701**	**$ 2,263,922**	**$ 3,993,555**
PERSONNEL				
Exempt	4	8	5	6
Non-Exempt	3	13	10	14
Part-Time	-	-	-	-
Total Positions Authorized	**7**	**21**	**15**	**20**

MAJOR FY 2025 GOALS

1.) Continue construction of the 365 Toll Project
2.) Releasing International Border Trade Crossing capital assets to Texas Department of Transportation
3.) Begin enviornmental clearance document for Section A and Section E.
4.) Outreach and marketing the 365 Toll Project.

Department Summary

Expenditure Detail:	Actual 2023	Budget 2024	Estimated 2024	Budget 2025
COMPENSATION				
Salaries	$ 591,170	$ 770,700	$ 563,821	$ 844,500
Contingency	-	38,538	-	42,225
Total Salaries	591,170	809,238	563,821	886,725
Other				
Overtime	1,300	500	2,217	1,000
Vehicle Allowance	16,823	26,400	16,800	26,400
Phone Allowance	5,128	7,500	5,100	7,500
Total Other	23,251	34,400	24,117	34,900
Sub-Total	614,421	843,638	587,938	921,625
Benefits/Other:				
Social Security	33,088	61,945	39,500	67,911
Health Insurance	31,350	51,965	22,700	59,040
Retirement	63,383	96,763	67,532	123,838
EAP-Assistance	-	122	-	348
Retirement-Usct	-	90,000	-	90,000
Administrative Fee	9,825	13,650	10,100	15,600
Total Compensation and Adm. Fees	752,067	1,158,083	727,770	1,278,362
SUPPLIES				
Office Supplies	9,096	12,000	3,800	6,000
Total Supplies	9,096	12,000	3,800	6,000
OTHER SERVICES & CHARGES				
Janitorial	47	1,000	-	1,000
Utilities	2,846	2,800	2,800	3,000
Contractual Services		-	5,200	8,000
Contractual Adm/IT Services	10,606	12,000	12,000	12,000
Dues & Subscriptions	18,129	18,000	15,000	18,000
Subscriptions-software	863	1,200	100	500
Postage/FedEx/Courier Services	2,693	2,500	1,500	2,000
General Liability	4,010	5,000	5,000	5,000
Insurance - E&O	1,747	2,000	2,000	2,000
Insurance - Surety	-	800	800	800
Insurance - LOC	458	500	500	500
Insurance - Other	4,765	4,000	4,000	7,000
Insurance - Cybersecurity	7,123	10,000	10,000	12,000
Business Meals	1,423	2,000	1,500	2,500
Advertising	-	2,000	2,000	2,200
Marketing	-	-	-	250,000
Outreach	-	-	-	50,000
Training	7,808	8,000	5,000	8,000
Travel	2,786	8,000	1,000	6,000
Printing	436	10,000	1,000	10,000
Bank service charges	-	100	100	100
Accounting & Auditing	34,460	40,000	34,000	40,000

Expenditure Detail (Continued):	Actual 2023	Budget 2024	Estimated 2024	Budget 2025
Legal services	$ 16,705	$ 50,000	$ 30,000	$ 50,000
Legal services-gov. affairs	130,000	120,000	120,000	120,000
Financial consulting fees	32,747	55,000	23,000	20,000
Insurance consultant	-	10,000	10,000	15,000
Rental - Office	236	54,000	54,000	54,000
Rental - Office Equipment	7,099	8,500	8,500	9,000
Rental- Other	1,852	3,000	2,500	3,500
Contractual Website Services	2,400	2,400	2,400	25,000
Miscellaneous	-	500	6,000	500
Penalties & Interest	9,886	100	-	100
Total Other Services & Charges	301,125	433,400	359,900	737,700
MAINTENANCE				
Building Remodel	-	20,000	-	100,000
Maintenance and Repairs	2,167	10,000	3,500	5,000
Total Maintenance	2,167	30,000	3,500	105,000
CAPITAL OUTLAY				
Capital outlay	-	10,000	-	10,000
Acquisition-Land	-	1,085,000	-	-
Non-capital	6,490	10,000	5,000	10,000
Total Capital Outlay	6,490	1,105,000	5,000	20,000
Total Expenditures	$ 1,070,945	$ 2,738,483	$ 1,099,970	$ 2,147,062

Department Summary

Expenditure Detail:	Actual 2023	Budget 2024	Estimated 2024	Budget 2025
COMPENSATION				
Salaries	$ 576,014	$ 727,860	$ 574,100	$ 621,485
Contingency	-	36,393	-	31,074
Total Salaries	576,014	764,253	574,100	652,559
Other				
Overtime	79,743	50,000	82,815	50,000
Vehicle Allowance	7,193	7,200	7,200	7,200
Phone Allowance	14,889	12,000	7,200	9,600
Total Other	101,825	69,200	97,215	66,800
Sub-Total	677,839	833,453	671,315	719,359
Benefits/Other:				
Social Security	49,235	62,290	50,065	53,746
Health Insurance	58,352	74,234	48,300	59,040
Retirement	79,725	97,303	86,610	83,956
EAP-Assistance	-	174	-	348
Administrative Fee	15,675	19,500	15,000	15,600
Total Compensation and Adm. Fees	880,826	1,086,954	871,290	932,049
SUPPLIES				
Office Supplies	2,896	5,000	2,700	5,000
Small Tools	3,466	10,000	2,500	5,000
Total Supplies	6,362	15,000	5,200	10,000
OTHER SERVICES & CHARGES				
Janitorial	-	300	-	300
Utilities	637	750	600	750
Uniforms	2,116	6,000	1,500	4,000
Dues & Subscriptions	2,938	2,000	750	1,000
Subscriptions-software	20,416	25,000	22,000	25,000
Postage	-	250	-	250
Advertising	4,705	4,000	33,000	7,000
Training	4,075	10,000	500	5,000
Travel	9,729	20,000	1,700	5,000
Printing & Publications	-	100	-	100
Rental-Office Equipment	2,414	3,500	2,400	2,800
Rental-Other	-	2,800	-	2,000
Vehicle Rental	65,922	70,000	70,000	70,000
Vehicle Insurance	4,368	6,000	3,200	4,000
Vehicle Maintenance	1,470	2,500	2,300	2,500
Vehicle Fuel	12,988	10,000	10,000	10,000
Total Other Services & Charges	131,778	163,200	147,950	139,700
CAPITAL OUTLAY				
Capital Outlay	-	8,000	-	5,000
Non-Capitalized	7,623	3,000	3,000	3,000
	7,623	11,000	3,000	8,000
Total Expenditures	$ 1,026,589	$ 1,276,154	$ 1,027,440	$ 1,089,749

Department Summary Expenditure Detail:	Actual 2023	Budget 2024	Estimated 2024	Budget 2025
COMPENSATION				
Salaries	$ 6,779	$ 500,000	$ 54,000	$ 485,000
Contingency	-	21,600	-	21,600
Total Salaries	6,779	521,600	54,000	506,600
Other				
Vehicle Allowance	-	21,600	2,800	21,600
Phone Allowance	-	4,800	462	4,800
Total Other	-	26,400	3,262	26,400
Sub-Total	6,779	548,000	57,262	533,000
Benefits/Other:				
Social Security	519	38,300	4,400	38,300
Health Insurance	-	29,694	3,100	29,520
Retirement	-	37,600	7,400	37,600
EAP-Assistance	-	70	-	174
Administrative Fee	750	7,800	750	7,800
Total Compensation and Adm. Fees	8,048	661,464	72,912	646,394
SUPPLIES				
Office Supplies	-	2,500	250	750
Total Supplies	-	2,500	250	750
OTHER SERVICES & CHARGES				
Dues & Subscriptions	965	3,000	-	1,500
Subscriptions-Software	63,509	75,000	60,000	75,000
Postage	-	100	-	100
Advertising	2,416	3,500	-	5,000
Training	-	5,000	600	3,000
Travel	-	8,000	-	3,000
Total Other Services & Charges	66,890	94,600	60,600	87,600
CAPITAL OUTLAY				
Non-capitalized	-	10,000	-	3,000
Total Capital Outlay	-	10,000	-	3,000
Total Expenditures	$ 74,938	$ 768,564	$ 133,762	$ 737,744

Department Summary

Expenditure Detail:	Actual 2023	Budget 2024	Estimated 2024	Budget 2025
MAINTENANCE				
Maintenance and Repairs-BSIF	$ 2,325	$ 3,000	$ 2,000	$ 3,000
Total Maintenance	2,325	3,000	2,000	3,000
OTHER SERVICES & CHARGES				
Insurance		-	-	15,000
Utilities-BSIF	778	1,500	750	1,000
Total Other Services & Charges	778	1,500	750	16,000
Total Expenditures	$ 3,103	$ 4,500	$ 2,750	$ 19,000

DEBT SERVICE FUNDS

The **DEBT SERVICE FUNDS** are established by Resolution, authorizing the issuance of revenue bonds. The fund provides for payment of bond principal, interest, paying agent fees, and a debt service reserve as a sinking fund each year. The only issue currently outstanding, pledges the Authority's portion of the County's Vehicle Registration Fee, which is sufficient to produce the money required to pay principal and interest as it comes due and provide the interest and sinking fund reserve. A Fund Balance Summary is presented for:

Senior Lien Vehicle Registration Fee Series 2020A and 2020B Revenue and Refunding Bonds

Senior Lien Toll and Vehicle Registration Fee Series 2022A Revenue Bonds

Junior Lien Toll and Vehicle Registration Fee Series 2022B Revenue Bonds

Hidalgo County Regional Mobility Authority
DEBT SERVICE FUND
Senior Lien Vehicle Registration Fee Revenue Bonds Series 2020A and 2020B
Fund Balance Summary
For Year Ending December 31, 2025

www.hcrma.net

	Actual 2023	Budget 2024	Estimated 2024	Budget 2025
Beginning Fund Balance	$ 225,506	$ 258,006	$ 336,827	$ 395,827
Revenues:				
Interest	37,567	25,000	59,000	50,000
Total Revenues	37,567	25,000	59,000	50,000
Expenditures:				
Principal	815,000	2,325,000	2,325,000	2,345,000
Interest and Fee Expenses	1,654,854	1,648,317	1,648,317	1,625,904
Total Debt Service Expenditures	2,469,854	3,973,317	3,973,317	3,970,904
Total Expenditures	2,469,854	3,973,317	3,973,317	3,970,904
Other Financing Sources:				
Transfer-in General Fund	2,543,608	3,973,317	3,973,317	3,970,904
Total Other Financing Sources	2,543,608	3,973,317	3,973,317	3,970,904
Ending Fund Balance	$ 336,827	$ 283,006	$ 395,827	$ 445,827

Hidalgo County Regional Mobility Authority
DEBT SERVICE FUND
Senior Lien Revenue Bond, Taxable Series 2022A
Fund Balance Summary
For Year Ending December 31, 2025

www.hcrma.net

	Actual 2023	Budget 2024	Estimated 2024	Budget 2025
Beginning Fund Balance	$ 7,463,310	$ 4,164,391	$ 7,170,291	$ 4,064,391
Revenues:				
Interest	273,168	200,000	190,000	100,000
Total Revenues	273,168	200,000	190,000	100,000
Expenditures:				
Interest Expense	3,270,869	3,295,900	3,295,900	3,295,900
Total Debt Service Expenditures	3,270,869	3,295,900	3,295,900	3,295,900
Ending Fund Balance	$ 4,465,609	$ 1,068,491	$ 4,064,391	$ 868,491

Hidalgo County Regional Mobility Authority
DEBT SERVICE FUND
Junior Lien Revenue Bond, Taxable Series 2022B (1)
Fund Balance Summary
For Year Ending December 31, 2025

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	Actual 2023	Budget 2024	Estimated 2024	Budget 2025
Beginning Fund Balance	$ 1,545,922	$ 1,539,439	$ 119,248	$ (297,094)
Revenues:				
Interest	51,676	50,000	12,000	10,000
Total Revenues	51,676	204,000	12,000	10,000
Expenditures:				
Interest Expense	1,478,350	1,478,350	1,478,350	1,478,350
Total Debt Service Expenditures	1,478,350	1,478,350	1,478,350	1,478,350
Other Financing Sources:				
Transfer-in General Fund	-	-	310,833	-
Interfund transfer-Other		-	739,175	1,765,444
Total Other Financing Sources	-	-	1,050,008	1,765,444
Ending Fund Balance	$ 119,248	$ 265,089	$ (297,094)	$ -

(1) Source of Funds:
Debt Service Account and Jr. Lien Bonds Account

CAPITAL PROJECT FUND

The **Construction Tollway 365 Project** is used to account for all financial resources used for the acquisition, development and/or construction of major capital infrastructure and facilities and/or assets.

The **Capital Improvement Fund** is used to account for the continuation of the 365 toll road construction and other related construction activities.

Hidalgo County Regional Mobility Authority
CAPITAL PROJECT FUND BUDGET
Constuction Tollway 365 Project
Fund Balance Summary
For Year Ending December 31, 2025

www.hcrma.net

	Actual 2023	Budget 2024	Estimated 2024	Budget 2025
Beginning Fund Balance	$ 111,906,865	$ 105,169,704	$ 66,347,688	$ 19,590,688
Revenues:				
TxDOT Grant (1)	-	82,000,000	-	-
Interest	3,581,795	2,000,000	2,000,000	1,000,000
Total Revenues	3,581,795	84,000,000	2,000,000	1,000,000
Expenditures:				
CONSULTING AND ENGINEERING	2,428,903	1,900,000	3,200,000	1,600,000
SH 365-ENVIROMENTAL	47,560	28,000	225,000	-
SH365-ROW	69,648	100,000	40,000	250,000
PROFESSIONAL SERVICES	176,563	180,000	220,000	200,000
ACQUISITIONS	27,300	-	-	-
365 PROJECT CONSTRUCTION A	42,958,964	120,000,000	44,000,000	107,000,000
365 PROJECT CONSTRUCTION B	1,954,262	-	-	-
365 TOLLWAY SYSTEM	1,477,772	7,200,000	1,072,000	7,000,000
Total Expenditures	49,140,972	129,408,000	48,757,000	116,050,000
Interfund transfer-Other	-	-	-	95,459,312
Ending Fund Balance	$ 66,347,688	$ 59,761,704	$ 19,590,688	$ -

(1) Grant reimbursements are deposited in a different fund.
(2) From capital imprv. fund

Hidalgo County Regional Mobility Authority
CAPITAL IMPROVEMENT FUND BUDGET
Fund Balance Summary
For Year Ending December 31, 2025

	Budget 2025
Beginning Fund Balance	$ 119,000,000
Revenues:	
TxDOT Grant	55,000,000
Interest	1,000,000
Total Revenues	56,000,000
Expenditures:	
Enviornmental Clearance-Section A	500,000
Enviornmental Clearance-Section E	500,000
Total Expenditures	1,000,000
Other Financing Sources (Uses):	
Transfer-out capital projects(365)	95,459,312
Total Other Financing Uses	95,459,312
Ending Fund Balance	$ 78,540,688


HIDALGO COUNTY
REGIONAL MOBILITY AUTHORITY

SUPPLEMENTAL INFORMATION


HIDALGO COUNTY
REGIONAL MOBILITY AUTHORITY

BUDGET, FINANCIAL, & DEBT MANAGEMENT PRACTICES

Hidalgo County Regional Mobility Authority
Budget-Related, Financial and Debt Management Practices

The Authority's budget-related, financial and debt management practices have been developed to provide a sound financial management foundation upon which decisions shall be made that result in the effective management of its resources and provide reasonable assurance as to its long-term financial stability.

Budget-Related Practices

Annual Budget
An annual budget is prepared in accordance with State law and prudent business practice.

Designated Budget Officer
The Executive Director is primarily responsible for the development of the annual budget to be submitted to the Board of Directors for approval and adoption. The Chief Financial Officer assists in its preparation.

Funds Included in the Annual Budget
The budget includes all the Authority's funds, including its General Fund, Debt Service Fund(s) and Capital Project(s) Funds.

Balanced Budget Required
The Executive Director submits a balanced budget. A balanced budget is one in which total financial resources available, including prior year's ending financial resources plus projected resources, are equal to or greater than the budgeted expenditures/expenses. The Authority avoids budgetary practices that raise the level of current expenses to the point that future years' operations are placed in jeopardy.

Basis of Accounting
The basis of budgeting (e.g., modified accrual, cash, accrual) for the funds represented. The term "basis of accounting" is used to describe the timing of recognition, that is, when the effects of the transactions or events are to be recognized. The basis of accounting used for purposes of financial reporting in accordance with generally accepted accounting principles (GAAP) is not necessarily the same as the basis used in preparing the budget document. For example, governmental funds are required to use the modified accrual basis of accounting in GAAP financial statements whereas the cash basis of accounting or the "cash plus encumbrances" basis of accounting may be used in those same funds for budgetary purpose.

Estimating Revenues and Factors Affecting Budgeted Expenditures/Expenses
The budget is developed on a conservative basis. Budgeted revenues are estimated, using a reasonable and objective basis, deferring to conservatism. In the development of budgeted expenditures/expenses, estimating the factors that determine their outcome will be estimated with conservative overtones.

The Budget Process – Original Budget
The budget process for developing, adopting, and implementing the budget includes the following:

During November and December of each year, under the direction of the Executive Director, the Chief Financial Officer prepares fund budgets. Following the budget discussions, the Executive Director makes any changes to the preliminary budget, which he deems appropriate. The result is the Executive Director's recommended budget. During the month of December, the Executive Director presents his recommended budget to the Authority's Board of Directors in a budget workshop. As a result of the Board of Directors' comments during this workshop, any changes are made to the Executive Director's recommended budget. The budget reflecting these changes, if any, is the proposed budget.

Prior to January 1st of each year, or as soon thereafter as possible the Executive Director submits to the Board of Directors a recommended budget for the calendar year beginning on the following January 1st.

Prior to January 1st, the budget is legally enacted by the Board of Directors through passage of a resolution.

The budget is implemented on January 1st. The Resolution, approving and adopting the budget, appropriates spending limits at the fund level.

Availability of Proposed Budget to the Public
The Executive Director files his recommended, adjusted, and final proposed budgets with the Program Administrator on the same dates that each is targeted or required to be submitted to the Board of Directors. The proposed budget shall be available for public inspection.

The Budget Process – Amended Budget
Any change to the original budget, which will exceed the appropriated amount at the fund level, requires Board approval and a supplemental appropriation resolution, which amends the original budget. Supplemental appropriations are called budget adjustments.

The Executive Director is authorized to approve budget adjustments between line items in a department within the same fund.

Monitoring Compliance with Budget
Reports comparing actual revenues and expenditures/expenses to budgeted amounts will be prepared and carefully monitored monthly in order to determine whether estimated revenues are performing at or above levels budgeted and to ascertain that expenditures/expenses follow the legally adopted budget appropriation.

Financial Practices

Use of Unpredictable Revenues
Revenues, which are considered to be unpredictable, shall not be used to finance current operations or for budget balancing purposes, but rather for non-recurring expenditures, such as capital projects except in circumstances in which revenues for a given year under perform budgeted estimates and/or the working capital balance is insufficient to meet the Minimum Fund Balance policy. In such a case, this policy can be suspended for only one year at a time by a majority vote of the Board of Directors. This sunset provision for the exception will expire at the end of each fiscal year affected.

Minimum Working Capital
The General Fund should maintain at least a minimum balance of 90 days working capital, at this level of spending.

Priority in Applying Restricted vs Unrestricted Resources
When an expense is incurred for purposes for which both restricted and unrestricted net assets are available, the Authority typically first applies restricted resources, as appropriate opportunities arise, but reserves the right to selectively defer the use thereof to a future project or replacement equipment acquisition.

Debt Management Practices

Financing Capital Projects
The Authority limits long-term debt to only those capital projects that cannot be financed from current revenues.

Debt Term Limitation
The Authority does not issue long-term debt for a period longer than the estimated useful life of the capital project.

Use of Long-Term Debt for Maintenance & Operating Costs Prohibited
The Authority does not use long-term debt to finance recurring maintenance and operating cost.

Compliance with Bond Indentures
The Authority strictly complies with all bond resolution requirements, including the following:

Revenue Bond Reserve Fund
The Authority strictly complies with the requirements of any bond resolution that calls for a reserve fund.

Revenue Bond Sinking Fund
The Authority strictly complies with the requirements of bond resolutions that call for the establishment and maintenance of a bond sinking fund. Monthly payments shall be made to this account, in the manner prescribed, in order to have enough balances in such fund to meet semi-annual principal and/or interest payments.


HIDALGO COUNTY
REGIONAL MOBILITY AUTHORITY

HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY CALENDAR YEAR 2025 OPERATING & CAPITAL BUDGET EXHIBIT

Exhibit-Resolution 2024-48 Adoption of Calendar Year 2025 Operating & Capital Budget

HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY
BOARD RESOLUTION NO. 2024-48

ADOPTION OF HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY
FISCAL YEAR 2025 OPERATING AND CAPITAL BUDGET

THIS RESOLUTION is adopted this 17th day of December, 2024 by the Board of Director of the Hidalgo County Regional Mobility Authority.

WHEREAS, the Hidalgo County Regional Mobility Authority (the "Authority"), acting through its Board of Directors (the "Board"); is a regional mobility authority created pursuant to Chapter 370, Texas Transportation Code, as amended (the "Act"); and

WHEREAS, the Authority was created by Order of Hidalgo County (the "County") dated October 26, 2004; Petition of the County dated April 21, 2005; and a Minute Order of the Texas Transportation Commission (the "Commission") dated November 17, 2005, pursuant to provisions under the Act the Authority; and

WHEREAS, the Authority is required to report to the Texas Department of Transportation the annual operating and capital budget adopted pursuant to the Texas Administrative Code, Title 43, Part 1, Chapter 26, Subchapter G (Regional Mobility Authority Reports and Audits), as amended; and

WHEREAS, the Authority's fiscal year commences on January 1, 2025, and ends on December 31, 2025; and

WHEREAS, the Authority has reviewed the proposed Fiscal Year 2025 Budget for the necessary operating and capital expenses;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTOR OF THE HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY THAT:

Section 1. The recital clauses are incorporated in the text of this Resolution as if fully restated.

Section 2. The Board adopts the Fiscal Year 2025 Operating and Capital Budget, hereto attached as Exhibit A.

Section 3. The Board of Directors authorize the Executive Director to manage and administer the Fiscal Year 2025 Operating and Capital Budget.

*****

Passed and Approved as to be effective immediately this 17th day of December 2024, at a regular meeting of the Board of Directors of the Hidalgo County Regional Mobility Authority at which a quorum was present and which was held in accordance with the provisions of Chapter 551, Texas Government Code.

Robert L. Lozano, Chairman

Attest:

Juan Carlos Del Ángel, Secretary/Treasurer


HIDALGO COUNTY
REGIONAL MOBILITY AUTHORITY

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HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY

203 W. Newcombe Ave., Pharr, Texas 78577, (956) 402-4762

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SECTION E.4

Financial Audit and Independent Auditor's Report

AUDITED ANNUAL FINANCIAL REPORT



FOR THE YEAR ENDED
DECEMBER 31, 2024

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HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY



Hidalgo County Regional Mobility Authority

BOARD OF DIRECTORS

Robert L. Lozano. - Chairman

Ezequiel Reyna, Jr.

Juan Carlos Del Angel

Francisco “Frank” Pardo

Sergio Saenz

Michael J. Williamson

EXECUTIVE DIRECTOR

Pilar Rodriguez, P.E.

CHIEF FINANCIAL OFFICER

Jose H. Castillo

Audited Annual Financial Report

For the Year Ended
December 31, 2024

Hidalgo County Regional Mobility Authority

AUDITED ANNUAL FINANCIAL REPORT
YEAR ENDED DECEMBER 31, 2024

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FINANCIAL SECTION

INDEPENDENT AUDITOR'S REPORT

INDEPENDENT AUDITOR'S REPORT

To the Board of Directors
Hidalgo County Regional Mobility Authority

Report on the Audit of the Financial Statements

Opinions

We have audited the accompanying financial statements of Hidalgo County Regional Mobility Authority (the Authority), as of and for the year ended December 31, 2024, and the related notes to the financial statements, which collectively comprise the Authority's basic financial statements as listed in the table of contents.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Authority, as of December 31, 2024, and the respective changes in financial position, and cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinions

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Authority and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Emphasis of Matter

Change in Accounting Principle

As described in Note I,O and Note II,H to the financial statements, in 2024, the Authority adopted new accounting guidance, GASB Statement No. 101, Compensated Absences. Our opinion is not modified with respect to this matter.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

BML y Fragoso, S.C.
Matamoros, MX

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In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Authority's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards and *Government Auditing Standards* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards and *Government Auditing Standards*, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Authority's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 5–8 be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Supplementary Information

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the Authority's basic financial statements. The accompanying schedule of expenditures of federal awards, as required by Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, are presented for purposes of additional analysis and are not a required part of the basic financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. The information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the schedule of expenditures of federal awards is fairly stated, in all material respects, in relation to the basic financial statements as a whole.

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our report dated April 15, 2025, on our consideration of the Authority's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Authority's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Authority's internal control over financial reporting and compliance.

Burton McCumber & Longoria LLP

McAllen, Texas
April 15, 2025

As management of the Hidalgo County Regional Mobility Authority (the Authority), we offer readers of the Authority's financial statements this narrative overview and analysis of the financial activities of the Authority for the year ended December 31, 2024.

FINANCIAL HIGHLIGHTS

- The Authority's net position grew by nearly $34.1 million or 26.9%. This growth is mainly due to grant revenue earned for which the related grant expenses are capitalized as construction in progress. Other factors included a slight increase in operating revenues, decrease in investment earnings, conservative administrative operational costs and a decrease in debt service interest.

- Capital assets (net of depreciation) increased by $64.1 million primarily due to the 365 Toll Road construction.

- Capital grant revenue from the federal government totaled $28.8 million.

OVERVIEW OF THE FINANCIAL STATEMENTS

The financial section of this annual report consists of three parts: management discussion and analysis (this section), the basic financial statements, and the notes to the financial statements.

The financial statements provide both long-term and short-term information about the Authority's overall financial status. The financial statements also include notes that explain some of the information in the financial statements and provide more detailed data.

The Authority's financial statements are prepared in conformity with accounting principles generally accepted in the United States of America (GAAP) as applied to governmental units on an accrual basis. Under this basis, revenues are recognized in the period in which they are earned, expenses are recognized in the period in which they are incurred, and depreciation of assets is recognized in the statements of revenues, expenses, and changes in net position. All assets and liabilities associated with the operation of the Authority are included in the statement of net position.

FINANCIAL ANALYSIS OF THE AUTHORITY

Net position may serve over time as a useful indicator of the Authority's financial position. In the case of the Authority, total assets resources exceeded liabilities by roughly $160.5 million at the close of the year ended December 31, 2024.

The Authority's condensed Statement of Net Position along with last year's balances are presented for comparison in the following table:

Authority's Net Position

Table 1 - Dollars in Millions

	2024	2023
Assets		
Current and other assets	$ 159.7	$ 185.6
Capital assets	322.7	258.6
Total assets	482.4	444.2
Liabilities		
Other liabilities	16.2	13.7
Long-term liabilities	305.7	303.6
Total liabilities	321.9	317.3
Net Position		
Net invested in capital assets, net of related debt	15.1	12.6
Restricted	123.8	157.8
Unrestricted	21.6	(43.5)
Total net position	$ 160.5	$ 126.9

The Authority's net position in its net investment in capital assets includes mainly in construction in progress, less any related debt used to acquire those assets that are still outstanding. The Authority will use these capital assets to provide services to users; consequently, these assets are not available for future spending. Although the Authority's investments in its capital assets are reported net of related debt, it should be noted that the resources needed to repay this debt must be provided by other sources, since the capital assets themselves cannot be used to liquidate these liabilities.

Restricted net position represents resources for debt service that are subject to bond covenants totaling $20,798,997 and bond proceeds restricted to be used for projects totaling $103,016,722. Unrestricted net position totaled $21,548,655.

The Authority's condensed Changes in Net Position along with last year's numbers are presented for comparison in the table below.

Authority's Changes in Net Position

Table 2 - Dollars in Millions

	2024	2023
Operating revenues		
Charges for services	$ 9.1	$ 8.4
	9.1	8.4
Operating expenses	1.9	1.6
Operating income	7.2	6.8
Non-operating revenues (expenses)	26.7	33.0
Change in net position	33.9	39.8
Net position - beginning	126.9	87.1
Restatement	(0.3)	-
Net position - ending	$ 160.5	$ 126.9

The authority's net position increased by nearly $33.9 million mainly due to grant revenues earned for which costs are capitalized as construction in progress and due to operating revenues and less debt service expenses.

CAPITAL ASSET AND DEBT ADMINISTRATION

Capital Assets

The Authority's capital assets (net of accumulated depreciation) amount to $322.7 million. This investment in capital assets includes construction in progress as well as land, leasehold improvements, infrastructure, office equipment, and the right to use building. The total increase in the Authority's capital assets for the current year was $64.0 million or 24.8%. The details of the change in capital assets from last year are reflected in the table below.

Authority's Capital Assets

(Net of Depreciation)

Table 3- Dollars in Thousands

	2024	2023
Leasehold improvements	$ 178	$ 225
Office equipment	11	17
Land	1,356	1,356
Right to use-Building	142	186
Infrastructure	2,605	2,707
Construction in progress	318,426	254,192
	$ 322,718	$ 258,683

Additional information on the Authority's capital assets can be found in the Notes to the Financial Statements in this report under section II. C,-Capital Assets.

Long-Term Obligations

At the end of the current year, the Authority had total contractually obligated long-term debt of $291.4 million (not including unamortized premium activity) excluding compensated absences. The details of the change in debt from last year are as indicated:

Authority's Long-Term Obligations
Table 4 - Dollars in thousands
(not including unamortized activity)

	2024	2023	
Bonds	$ 291,460	$ 289,197	
Compensated absenses	382	330	*
	$ 291,842	$ 289,527	

**Net position restated in compliance with GASB 101.*

The net increase in long-term debt was $2.3 million. This was the net result of additional principal accretion of $4.5 million and principal reduction of ($2.2 million) current amounts due for the year. Compensated absences increased by $52 thousand.

ECONOMIC FACTORS AND NEXT YEAR

- Continued growth of vehicle registration fees is expected.
- The continued growth of overweight permit fees usage is expected.
- Continued partnership with Texas Department of Transportation is expected.

All these factors were considered in preparing the Authority's budget for the year 2025.

REQUESTS FOR INFORMATION

This financial report is designed to provide a general overview of the Authority's finances for all those with an interest in the Authority's finances. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to Hidalgo County Regional Mobility Authority, 203 W. Newcombe Ave., Pharr, TX 78577.

BASIC FINANCIAL STATEMENTS

HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY
STATEMENT OF NET POSITION
DECEMBER 31, 2024

ASSETS		
Current assets:		
Cash and cash equivalents	$	15,570,746
Cash with fiscal agent		55,527
Investments		4,186,806
Receivables (net of allowance for uncollectible):		
Vehicle registration fees receivable		506,830
Overweight permit fee receivable		51,450
Prepaid expense		40,125
Advance		2,513,637
Restricted assets:		
Cash and cash equivalents		120,719,522
Investments		11,109,178
Due from governmental agencies		4,669,940
Accrued interest		62,137
Total current assets		159,485,898
Noncurrent assets:		
Prepaid bond insurance		264,132
Capital assets:		
Land		1,356,039
Leasehold improvements		388,932
Office equipment		40,946
Right-to-use asset - building		437,340
Infrastructure roads		3,010,637
Construction in progress (non-depreciable)		318,426,254
Accumulated depreciation		(646,183)
Accumulated amortization		(295,205)
Total capital assets		322,718,760
Total noncurrent assets		322,982,892
Total assets	$	482,468,790
LIABILITIES		
Current liabilities payable not from restricted assets:		
Accounts payable	$	235,038
Arbitrage payable		75,000
Lease payable		162,922
O/W off system corridor		45,005
Unearned revenue		55,527
Current portion of long-term debt		2,878,690
Current portion of compensated absences		98,935
Current liabilities payable from restricted assets:		
Accounts payable		12,211,710
Accrued interest payable		533,346
Total current liabilities payable		16,296,173
Noncurrent liabilities:		
Long-term debt (net of current portion)		305,335,958
Compensated absences (net of current portion		283,058
Total noncurrent liabilities		305,619,016
Total liabilities		321,915,189
NET POSITION		
Net invested in capital assets		15,189,227
Restricted for:		
Debt service		20,798,997
Capital projects		103,016,722
Unrestricted		21,548,655
Total net position		160,553,601
Total liabilities and net position	$	482,468,790

The notes to the financial statements are an integral part of this financial statement.

HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
FOR THE YEAR ENDED DECEMBER 31, 2024

Operating revenues:		
Charges for sales and services:		
Vehicle registration fees	$	7,118,810
Overweight permit fees		2,001,105
Total operating revenues		9,119,915
Operating expenses:		
Personnel services		1,061,416
Supplies		10,746
Other services and charges		623,228
Depreciation and amortization expense		198,640
Total operating expenses		1,894,030
Operating income		7,225,885
Non-operating revenues (expenses):		
Miscellaneous		11
Investment earnings - unrestricted		824,764
Investment earnings - restricted		7,690,755
Intergovernmental - grant		28,764,609
Bond interest expense		(6,420,698)
Principal bond accretion on 2022A and B		(4,588,207)
Interest expense/fees - bonds		(31,699)
Interest expense - amortization bond premiums/deferred charges on refunding		522,325
Total non-operating revenues (expenses)		26,761,860
Change in net position		33,987,745
Total net position - beginning, as previously reported		126,895,559
Restatement (see Note II, H)		(329,703)
Total net position - beginning, as restated		126,565,856
Total net position - ending	$	160,553,601

The notes to the financial statements are an integral part of this financial statement.

HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY
STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED DECEMBER 31, 2024

CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from vehicle registrations, overweight permit fees, and other	$	9,117,359
Payments to employees		(1,086,071)
Payments to suppliers		(10,746)
Payments for contractual services		(565,815)
Net cash provided by operating activities		7,454,727
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES		
Payments related to acquisition and construction of capital		(55,714,848)
Principal paid on long-term debt		(2,325,000)
Interest paid on long-term debt		(6,454,266)
Proceeds from capital grant		34,631,946
Principal payments on lease payable		(43,874)
Interest paid on lease payable		(9,886)
Net cash used by capital and related financing activities		(29,915,928)
CASH FLOWS FROM INVESTING ACTIVITIES		
Net sale (purchase) of investments		81,946,627
Interest income		9,400,256
Net cash provided by investing activities		91,346,883
Net increase in cash and cash equivalents and restricted cash and cash equivalents		68,885,682
Cash and cash equivalents and restricted cash and cash equivalents, beginning of fiscal year		67,404,584
Cash and cash equivalents and restricted cash and cash equivalents, end of fiscal year	$	136,290,266
Reconciliation of operating income to net cash provided by operating activities:		
Operating income	$	7,225,885
Adjustments to reconcile operating income to net cash provided by operating activities:		
Depreciation and amortization expense		198,640
(Increase) decrease in vehicle registration fees receivable		(32,500)
(Increase) decrease in overweight permit fee receivable		(21,696)
(Increase) decrease in prepaid expense		(8,007)
Increase (decrease) in accounts payable		(88,129)
Increase (decrease) in accrued wages		1,614
Increase (decrease) in other payables		120,005
Increase (decrease) in compensated absences		52,290
Increase (decrease) in unearned revenue		6,625
Total adjustments		228,842
Net cash provided by operating activities	$	7,454,727

The notes to the financial statements are an integral part of this financial statement.

NOTE I - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. Reporting Entity

The Hidalgo County Regional Mobility Authority (Authority) is an independent governmental agency created in November 2005 pursuant with Chapter 370 of the Transportation Code. The Authority is governed by a seven-member Board of Directors (the Board) appointed by the Governor of the State of Texas and the Hidalgo County Commissioners' Court. The Board is responsible for setting policies, identifying priorities and ensuring the Authority is operated effectively. Board members, appointed to serve two-year terms, are volunteers and are not compensated for their service.

The Authority was created to be a proactive partner empowering the community to address congestion and mobility concerns through local means with local leadership. It was created to plan, develop, fund and maintain a transportation system to serve the estimated 1.5 million residents living in Hidalgo County by 2025. The Authority's mission is to develop a publicly owned transportation system that creates jobs through increased mobility and access, is locally funded for reliable delivery, pays for itself in terms of future maintenance and also funds new projects to meet the future transportation needs of Hidalgo County. In its petition to create the Hidalgo County Regional Mobility Authority, Hidalgo County identified the Hidalgo Loop System (the Loop System) as the initial set of projects to be developed under the guidance of the Authority. The planning for the Loop System was started in 2000 by Hidalgo County and the Hidalgo County Metropolitan Planning Organization. The Authority concluded its additional planning effort for the Loop System around the urban part of Hidalgo County in 2010. Based on this effort, the Authority identified 2 independent projects, the Trade Corridor Connector (TCC) and the International Bridge Trade Corridor (IBTC), that provide utility to County residents and together begin building the Loop System. Additional state aid through the Texas Department of Transportation and the addition of a potential third project, the La Joya Relief Route, has required the Authority to re-examine the initial projects. A five-year Strategic Plan approved in March 2012 emphasizes the Authority's efforts to begin development of the Loop System projects, which prioritize 365 Tollway (formerly TCC), the International Border Trade Corridor, and State Highway 68 (formerly Segment D).

The Authority is not included in any other governmental "reporting entity" as defined by GASB Statement No. 14, "*The Reporting Entity.*" There are no component units included within the reporting entity.

B. Basis of Accounting

The financial statements of the Authority have been prepared in conformity with accounting principles generally accepted in the United States of America (GAAP) as applied to government units. The Governmental Accounting Standards Board (GASB) is the accepted standard-setting body for establishing governmental accounting and financial reporting principles.

The operations of the Authority are accounted for within a single proprietary (enterprise) fund on an accrual basis. The accounting and financial reporting treatment applied is determined by measurement focus. The financial statements of the Authority measure and report all assets, liabilities, revenues, expenditures, and gains and losses using the economic resources measurement focus and accrual basis of accounting. Under this basis, revenues are recognized in the period in which they are earned, expenses are recognized in the period in which they are incurred, depreciation of assets is recognized and all assets and liabilities associated with the operation of the Authority are included in the Statement of Net Position. Operating expenses include the cost of administrative expenses. All revenues and expenses not meeting this definition are reported as non-operating revenues and expenses.

NOTE I - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - *(Continued)*

C. Cash and Cash Equivalents, Cash with Fiscal Agent, and Investments

Cash and cash equivalents include demand deposits held with financial entities and short-term highly liquid investments that are readily convertible and have original maturities of three months or less.

Cash with fiscal agent includes cash held by a third party for prepaid overweight permit fees (ProMiles Software Development Corp.). These deposits are fully collateralized or covered by federal deposit insurance.

Investments are reported at fair value. The net change in fair value of investments is recorded on the statements of revenues, expenses and changes in net position and includes the unrealized and realized gains and losses on investments. The Authority's major investments are held by a third party, Wilmington Trust, per bond covenants. The Authority's local government investment pools are recorded at amortized cost as permitted by GASB Statement No. 79, *"Certain Investment Pools and Pool Participants."*

D. Capital Assets

Capital assets are defined by the Authority as assets with an initial, individual cost of more than $5,000 and an estimated useful life in excess of one year. As the Authority constructs or acquires capital assets each year, including infrastructure assets, they are capitalized and reported at historical cost. The reported value excludes normal maintenance and repairs, which are amounts spent in relation to capital assets that do not increase the asset's capacity or efficiency or increase its estimated useful life.

Land and construction in progress, which include capitalized costs for legal, consulting and engineering relating to the planning on the loop projects, are not depreciated. Depreciation on construction in progress will not begin until the projects are operational. Leasehold improvements, equipment and infrastructure assets are depreciated using the straight-line method over the following estimated useful lives:

Capital asset classes	Lives
Leasehold improvements	10
Office equipment	5
Infrastructure - roads	30

E. Restricted Assets

Proceeds from the Authority's bonds are restricted for projects. Certain resources that are set aside for debt service are classified as restricted assets on the Statement of Net Position because their use is limited by applicable bonds covenants. These restricted assets are held and disbursed by Wilmington Trust, fiscal agent.

F. Receivables

All receivables are shown net of allowance for uncollectible balances, which are estimated based on historical activity. As of December 31, 2024, all receivables are expected to be collected, therefore, no allowance for uncollectible balances was deemed necessary.

NOTE I - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - *(Continued)*

G. Net Position

The difference between assets and deferred outflows of resources less liabilities is reported as net position. Net position is comprised of the following components:

- *Net investment in capital assets* consists of capital assets, net of accumulated depreciation and reduced by outstanding balances of bonds and other debt that are attributable to the acquisition, construction, or improvement of those assets. Deferred outflows of resources that are attributable to the acquisition, construction and improvement of those assets or related debt are included in this component of net position.
- *Restricted* net position consists of restricted assets reduced by liabilities related to those assets. Assets are reported as restricted when constraints are placed on asset use either by external parties or by law through constitutional provision or enabling legislation.
- *Unrestricted* net position is the net amount of the assets, deferred outflows of resources and liabilities that does not meet the definition of the two preceding categories.

When both restricted and unrestricted resources are available, a flow assumption must be made about the order in which the resources are considered to be applied. The Authority's policy is to consider restricted net position as having been used first before unrestricted net position is applied.

H. Classification of Operating and Non-Operating Revenues and Expenses

The Authority defines operating revenues and expenses as those revenues and expenses generated by a specified program offering either a good or service. This definition is consistent with GASB Statement No. 9 which defines operating receipts as cash receipts from customers and other cash receipts that do not result from transactions defined as capital and related financing, non-capital financing or investing activities.

As previously noted, when an expense is incurred that can be paid using either restricted or unrestricted resources, the Authority's policy is to first apply the expense toward restricted resources, and then towards unrestricted resources available for use.

I. Estimates

The preparation of financial statements in conformity with Generally Accepted Accounting Principles (GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

J. Personnel Liabilities

The Authority does not have any employees nor any personnel liabilities; the employees who perform operating activities for the Authority are loaned to the Authority by the City of Pharr, TX. All personnel are employees of the City of Pharr. The actual costs incurred by the City of Pharr are reimbursed by the Authority.

NOTE I - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - *(Continued)*

K. Income Taxes

Authority is an instrumentality of the State of Texas. As such, income earned in the exercise of its essential government functions is exempt from state or federal income taxes. Bond obligations issued by state and local governments are tax-exempt only if the issuers pay rebate to the federal government of the earnings on the investment of the proceeds of a tax-exempt issue more than the yield on such obligations and any income earned on such excess.

L. Bond Premiums, Discounts, Issuance Costs, and Deferred Outflows

The Authority amortizes premiums and discounts over the estimated useful life of the bonds as an adjustment to interest expense using the straight-line method. Bond issuance cost is expensed as incurred, in accordance with Governmental Accounting Standards Board ("GASB") Statement No. 65 *"Items Previously Reported as Assets and Liabilities."* Deferred gains/losses on refunding (the difference between the reacquisition price and the carrying value of existing (debt) are recorded as deferred outflows of resources and amortized over the shorter of the life of the original bonds or the life of the refunding bonds.

M. Reclassifications

Certain amounts in prior year's presentation have been reclassified to conform to the current year's presentation. These reclassifications have no effect on previously reported changes in net position.

N. Rounding Adjustments

Throughout this annual financial report, dollar amounts are rounded, thereby creating differences between the details and the totals.

O. New Accounting Pronouncements

The Governmental Accounting Standards Board has issued the following pronouncement:

GASB Statement No. 101, Compensated Absences.

This objective of this Statement is to better meet the information needs of financial statement users by updating the recognition and measurement guidance for compensated absences. That objective is achieved by aligning the recognition and measurement guidance under a unified model and by amending certain previously required disclosures. This Statement requires that liabilities for compensated absences be recognized for (1) leave that has not been used and (2) leave that has been used but not yet paid in cash or settled through noncash means. A liability should be recognized for leave that has not been used if (a) the leave is attributable to services already rendered, (b) the leave accumulates, and (c) the leave is more likely than not to be used for time off or otherwise paid in cash or settled through non-cash means.

The Authority is complying with the above Statement by restating and reducing its 2023 net position by $329,703 and reflecting its 2024 compensated absences as a net change by $52,290. These changes are reflected in its long-term obligations outstanding schedule.

NOTE II - DETAILED NOTES ON THE AUTHORITY'S ACTIVITY

A. Cash and Investments

PlainsCapital Bank maintains the Authority's deposits for safekeeping and secures the funds with pledged securities in an amount sufficient to protect the Authority's funds, currently at 105% of unsecured deposits. The pledge of securities is provided in excess of the deposits above the Federal Deposit Insurance Corporation ("FDIC") insurance. At December 31, 2024, the Authority's deposits were entirely covered by federal deposit insurance or were secured by collateral held by the Authority's agent in the Authority pursuant to the Authority's Depository Agreement with PlainsCapital Bank. At December 31, 2024, the carrying amount of the Authority's deposits was $32,544 and the bank balance was $32,544.

The Authority invests in Local Government Investment Cooperative ("LOGIC"). LOGIC is a local government investment pool organized in conformity with the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, and the Public Funds Investment Act, Chapter 2256 of the Texas Government Code (the "PFIA"). These two acts provide for the creation of public funds investment pools (including LOGIC) and authorize eligible government entities to invest their public funds under their control through the investment pools. As permitted by GASB Statement No. 79, *"Certain External Investment Pools and Pool Participants,"* the Authority's investments in LOGIC are stated at cost, which approximates fair value.

The Authority classifies its investments with LOGIC as cash and cash equivalents for financial reporting purposes as balances may be withdrawn at any time without penalty. On December 31, 2024, investments in LOGIC totaled $136,257,723 of which $19,862,355 was restricted by bond covenants, $99,445,239 was for construction and $16,950,129 was unrestricted.

The Authority has investments that are unrestricted and restricted. The unrestricted investments are the funds not legally restricted for a specific purpose and are invested in government securities, which are held by Wilmington Trust. The Authority's restricted investments are from funds received from the issuance of debt and restricted by bond covenants for a specific purpose. Wilmington Trust is the fiscal agent for the Authority who is authorized to invest the restricted funds; they are currently investing in government securities.

The Authority categorizes its fair value measurements with the fair value hierarchy established by generally accepted accounting principles. The three levels of fair value hierarchy are as follows:

- Level 1: Quoted prices (unadjusted) in active markets for identical assets or liabilities.

- Level 2: Inputs (other than quoted prices included within Level 1) that are observable for the asset or liability either directly or indirectly.

- Level 3: Unobservable inputs—market data are not available and are developed using the best information available about the assumptions that market participants would use when pricing asset or liability.

NOTE II - DETAILED NOTES ON AUTHORITY'S ACTIVITY - *(Continued)*

A. Cash and Investments – *(Continued)*

The Authority has the following fair value measurement as of December 31, 2024:

		Fair Value Measurement Using		
	Fair Value	Level 1 Inputs	Level 2 Inputs	Level 3 Inputs
Government Securities - Unrestricted	$ 4,186,806	$ 4,186,806	$ -	$ -
Government Securities - Restricted	11,109,178	11,109,178	-	-
	$ 15,295,984	$ 15,295,984	$ -	$ -

Interest Rate Risk

Interest rate risk is the risk that the changes in interest rates will adversely affect the fair value of an investment. Interest rate risk may be mitigated by investing operating funds primarily in shorter term securities, money market funds or similar investment pools and limiting the average maturity of the portfolio. At year end, the Authority was not exposed to interest rate risk. All investments held by the Authority are short term in nature as follows:

		Investment Maturities (in Years) at December 31, 2024		
	Fair Value	Less Than 1	1-2	2-3
Government Securities - Unrestricted	$ 4,186,806	$ 4,186,806	$ -	$ -
Government Securities - Restricted	11,109,178	11,109,178	-	-
	$ 15,295,984	$ 15,295,984	$ -	$ -

Credit Risk

Credit risk is the risk that an issuer or other counter party to an investment will not fulfill its obligation. As of December 31, 2024, the investments in the State's investment pools were rated AAAm by Standards and Poor's. Investments in Government securities consisted of Federal Home Loan Banks rated A-1+, Federal Home Loan Mortgage Corp rated AAA, Federal National Mortgage Association rated AAA, Federal Home Loan Banks rated AAA, Federal Farm Credit Banks Funding Corp rated AAA and United States Treasury rated AAA.

Custodial Credit Risk

Deposits and investments are exposed to custodial credit risk if they are not covered by depository insurance and the deposits and investments are uncollateralized, collateralized with securities held by the pledging financial institution, or collateralized with securities held by the pledging financial institution's trust department or agent but not in the Authority's name.

The Authority has a process of maintaining contact with the trust department of its depository bank to eliminate all custodial credit risk once a need for an increase in collateral is identified the trust department adjusts the collateral amount accordingly. As of December 31, 2024, the Authority's bank balance was not exposed to custodial credit risk and was over-insured and over-collateralized via PlainsCapital investment in federal securities held by a third party in the name of the Authority to cover the amount of deposits over the FDIC collateral.

NOTE II - DETAILED NOTES ON AUTHORITY'S ACTIVITY - (*Continued*)

A. Cash and Investments – (*Continued)*

Concentration of Credit Risk
The Authority's investment holdings on December 31, 2024 were strictly confined in government securities. The investment policy is silent in the concentration of holdings in the various types of securities and investments.

B. Unearned Revenue

The Authority reports unearned revenue in connection with resources that have been received, but not yet earned. As of December 31, 2024, the Authority's unearned revenues totaling $55,527 were due to prepayments by customers who purchase commercial truck overweight permits. The third party who is acting as the Authority's Fiscal Agent is Promiles, the company that owns the software that is used for online overweight permit purchases.

C. Capital Assets

Capital asset activity for the year ended December 31, 2024 was as follows:

	Balance 12/31/2023	Increases	Disposals/ Transfers	Balance 12/31/2024
Capital Assets, not being depreciated:				
Land	$ 1,356,039	$ -	$ -	$ 1,356,039
Construction in progress	254,192,172	64,234,082	-	318,426,254
Total Capital Assets not being depreciated	255,548,211	64,234,082	-	319,782,293
Capital Assets, being depreciated:				
Leasehold improvements	388,932	-	-	388,932
Office equipment	40,946	-	-	40,946
Right-to-use asset - building	437,340	-	-	437,340
Infrastructure - roads	3,010,637	-	-	3,010,637
Total Capital Assets being depreciated	3,877,855	-	-	3,877,855
Less accumulated depreciation and amortization for:				
Leasehold improvements	(163,461)	(47,497)	-	(210,958)
Office equipment	(23,752)	(6,054)	-	(29,806)
Right-to-use asset - building	(251,471)	(43,734)	-	(295,205)
Infrastructure - roads	(304,064)	(101,355)	-	(405,419)
Total accumulated depreciation and amortization	(742,748)	(198,640)	-	(941,388)
Total Capital Assets being depreciated (net)	3,135,107	(198,640)	-	2,936,467
Total Capital Assets, Net	$ 258,683,318	$ 64,035,442	$ -	$ 322,718,760

NOTE II - DETAILED NOTES ON AUTHORITY'S ACTIVITY - (*Continued*)

C. Capital Assets - *(Continued)*

Increase in construction in progress consists of the following:

Consulting and engineering	$	3,971,077
Legal and professional		265,137
Loop project: 365 Tollway/IBTC		59,260,411
Capitalized wages		737,457
	$	64,234,082

The Authority reviews the carrying values of assets for impairment whenever events and circumstances indicate the carrying value of an asset may not be recoverable from the estimated future cash flows expected to result from its use the eventual disposition. In cases where undiscounted expected cash flows are less than the carrying value, an impairment loss is recognized equal to an amount by which the carrying values exceed the fair value of assets. The factors considered by management in performing this assessment include current operating results, trends, and other economic factors. The Authority recorded no impairments for the year ended December 31, 2024.

D. Non-capitalized Construction Costs

Non-capitalized construction costs include costs associated with projects which will not be owned or maintained by the Authority once the project is completed. Costs associated with these projects are expensed as incurred. For the year ended December 31, 2024, the Authority did not have any non-capitalized construction costs.

E. Other Payables

At December 31, 2024, other payables consisted of the following:

Arbitrage payable	$	75,000
Overweight off system corridor fees		45,005
	$	120,005

F. Long-Term Obligations

1. Revenue Bonds and Compensated Absences

On February 10, 2022, the Authority issued and received proceeds amounting to $151,650,345 from the issuance of the Series 2022A Senior Lien Bonds issued in part as Current Interest Bonds (the "Series 2022A Senior Lien CIBs") and Capital Appreciation Bonds (the "Series 2022A Senior Lien CABs"). It also issued the Series 2022B Junior Lien Bonds in the amount of $63,884,707 in part as Current Interest Bonds (the "Series 2022B Junior Lien CIBs") and Capital Appreciation Bonds (the "Series 2022B Junior Lien CABs"). The purpose of these two bond issues is to finance costs of phase II project, which consists of Segments 1 and 2 for the construction of the 365 Toll Project and to retire the Jr. Lien Bond Series 2016 in the amount of $23,534,334.

F. Long-Term Obligations (*Continued*)

1. Revenue Bonds and Compensated Absences (*Continued*)

At December 31, 2024, the Authority had the following long-term bonds outstanding:

$9,870,000 refunding bonds, Series 2020A due in various installments through 2050 with interest of 3.00% to 4.00%.		$ 9,870,000
$58,015,000 refunding bonds, Series 2020B due in various installments through 2043 with interest of 2.91% to 2.97%.		53,260,000
$151,650,345 Senior Lien Toll and Vehicle Registration Fee Revenue Bond, Series 2022A due in various installments through 2056 with interest of 3.50% to 5.00%. Bonds are secured with a pledge of dedicated Vehicle Registration Fees and Toll revenues.	151,650,345	
Principal accretion on Senior Lien Toll and Vehicle Registration Fee Revenue Bonds, Series 2022A.	8,870,374	
Total outstanding balance on Senior Lien Series 2022A Bonds		160,520,719
$63,884,707 Junior Lien Toll and Vehicle Registration Fee Revenue and Refunding Bond, Series 2022B due in various installments through 2056 with interest of 3.50% to 5.00%. Bonds are secured with a pledge of dedicated Vehicle Registration Fees and Toll revenues.	63,884,707	
Principal accretion on Junior Lien Toll and Vehicle Registration Fee Revenue and Refunding Bond, Series 2022B.	3,924,677	
Total outstanding balance on Junior Lien Series 2022B Bonds		67,809,384
Total principal outstanding		291,460,103
Bond premium		16,754,545
Total long-term bonds payable		$ 308,214,648

NOTE II - DETAILED NOTES ON AUTHORITY'S ACTIVITY - (*Continued*)

F. Long-Term Obligations (*Continued*)

1. Revenue Bonds and Compensated Absences (*Continued*)

Debt service requirements on long-term obligations at December 31, 2024 including principal accretion are as follows:

Year Ended December 31,	Principal	Interest	Total
2025	$ 2,345,000	$ 6,400,154	$ 8,745,154
2026	2,365,000	6,375,204	8,740,204
2027	2,400,000	6,342,945	8,742,945
2028	3,475,000	6,307,809	9,782,809
2029	4,550,000	6,214,852	10,764,852
2030-2034	40,765,000	27,493,992	68,258,992
2035-2039	64,450,000	17,106,392	81,556,392
2040-2044	63,566,492	31,580,974	95,147,466
2045-2049	43,851,676	64,009,024	107,860,700
2050-2054	50,128,810	85,544,243	135,673,053
2055-2056	13,563,125	40,461,872	54,024,997
	$ 291,460,103	$ 297,837,461	$ 589,297,564

The Authority and Hidalgo County authorized the pledge of the vehicle registration fees to secure payment of the Hidalgo County Regional Mobility Authority debt in a term not exceeding 40 years. The current net debt service position was $20,798,997 for the year ended December 31, 2024. These funds are required by the bond ordinance to be set aside to pay the bond debt. These funds are managed by a Trustee, Wilmington Trust, and are currently held in the Logic Investment Pool and government securities.

Long-term obligations activity for the year ended December 31, 2024 was as follows:

	Balance 12/31/2023	Increases	Decreases	Balance 12/31/2024	Due Within One Year
Bonds Payable:					
Revenue Bond Series 2020A	$ 9,870,000	$ -	$ -	$ 9,870,000	$ -
Revenue Bond Series 2020B	55,585,000	-	2,325,000	53,260,000	2,345,000
Revenue Bond Series 2022A	157,343,753	3,176,966	-	160,520,719	-
Revenue Bond Series 2022B	66,398,144	1,411,240	-	67,809,384	-
Premium on Bonds-2020A	1,210,596	-	45,256	1,165,340	45,256
Premium on Bonds-2022A	11,722,472	-	356,126	11,366,346	356,126
Premium on Bonds-2022B	4,355,167	-	132,308	4,222,859	132,308
Total Bonds Payable	306,485,132	4,588,206	2,858,690	308,214,648	2,878,690
Compensated absences	329,703 **(1)**	52,290	-	381,993	98,935
Total Long-Term Liabilities	$ 306,814,835	$ 4,640,496	$ 2,858,690	$ 308,596,641	$ 2,977,625

(1) Balance was restated as part of the implementation of GASB Statement No. 101, Compensated Absences.

NOTE II - DETAILED NOTES ON AUTHORITY'S ACTIVITY - (*Continued*)

F. Long-Term Obligations (*Continued*)

1. Revenue Bonds and Compensated Absences (*Continued*)

Compensated absences are offered to full-time employees for vacation and sick leave, and are based on certain criteria.

Vacation Leave Accrual is based on the number of years of full-time employment with the Authority in accordance with the following chart:

Years of Employment	Pro-Rata Accrual Rate per Month
0-19	10.00 hours
20 and over	13.33 hours

The maximum amount of accumulated vacation leave is 240 hours.

Sick Leave Accrual is earned at a rate of 10 hours per month and may be accumulated without limitation. If the employee retires after 10 years of consecutive employment, the employee will be paid for accrued sick leave up to ninety (90) workdays, plus one hour for every two hours in excess of 90 days.

2. Arbitrage

In 2020 and 2022, the Authority issued long-term debt for capital construction projects. These bonds are subject to arbitrage regulations. Arbitrage regulations call for the return of the difference in interest revenue against interest expense. On December 31, 2024, there was an anticipated liability of arbitrage in the amount of $75,000 that would be owed to the federal government at the end of November 28, 2025. This amount is included on the statement of net position as other payables.

G. Lease Payable

Effective March 1, 2018, the Authority entered into a building lease agreement with a 60-month term and monthly installments of $4,480. The agreement includes a renewal option for an additional 60 months. Management uses the Authority's incremental borrowing rate 4.25% to discount the lease payments. On December 31, 2024, the Authority recognized a right-to-use asset as follows:

Right-to-use asset	$	437,340
Amortization		(295,205)
Right-to-use asset, net	$	142,135

NOTE II - DETAILED NOTES ON AUTHORITY'S ACTIVITY - (*Continued*)

G. Lease Payable (*Continued*)

On December 31, 2024, the Authority recognized a lease liability totaling $162,922. Future payments on this lease are as follows:

December 31,	Principal	Interest	Total Payment
2025	$ 47,759	$ 6,001	$ 53,760
2026	49,829	3,931	53,760
2027	51,988	1,772	53,760
2028	13,346	95	13,441
	$ 162,922	$ 11,799	$ 174,721

Additionally, the Authority leases certain office equipment and vehicles. The total costs of the Authority's leases were $73,843 for the year ended December 31, 2024.

H. Restatement of Beginning Balances

The Authority implemented GASB Statement No. 100, Compensated Absences, in 2024. The implementation of this new accounting pronouncement resulted in the recognition of a liability for compensated absences not previously recognized. As the implementation requires retroactive application, beginning net position has been adjusted as outlined below.

Additionally, upon review of the flow of underlying transactions, funding sources and the relationship between the grant and bond funds related to construction activities, it was determined that a portion of net position previously presented as unrestricted should be classified as restricted.

	(As previously Reported) 12/31/2023	Implementation of GASB Statement No. 101	Correction of Prior Year Classification	(As restated) 12/31/2023
Net investment in capital assets	$ 12,595,219	$ -	$ -	$ 12,595,219
Restricted				
Debt service	23,256,071	-	-	23,256,071
Capital projects	60,862,607	-	73,404,077	134,266,684
Unrestricted	30,181,662	(329,703)	(73,404,077)	(43,552,118)
Total net position	$ 126,895,559	$ (329,703)	$ -	$ 126,565,856

NOTE III - OTHER INFORMATION

A. Litigation

The Authority is currently a defendant in a lawsuit. The lawsuit remains pending, and it is the opinion of management and its outside attorneys that the possible outcome of the lawsuit and an estimate of the loss, if any, cannot presently be determined.

B. Federally Assisted Program

The Authority participates in a federally assisted grant program from the U.S. Department of Transportation passed through the Texas Department of Transportation. Although this program has been audited in accordance with the Uniform Guidance through December 31, 2024, this program is still subject to financial and compliance audits and monitoring reviews from federal and state agencies. The amount, if any, of expenditures which may be disallowed by the grantor agencies cannot be determined at this time, although management expect such amounts, if any, to be immaterial to the financial position of the Authority.

C. Project Commitments

On December 31, 2024, the Authority had the following remaining project commitments:

Project	Authorization	Expended	Remaining
Program management	$ 6,500,810	$ 5,178,468	$ 1,322,342
Engineering/surveying	2,944,377	2,782,298	162,079
Environmental	1,585,189	1,058,865	526,324
Material testing	7,952,058	3,565,567	4,386,491
Toll system	14,625,840	1,923,881	12,701,959
Construction	293,186,643	156,842,446	136,344,197
	$ 326,794,917	$ 171,351,525	$ 155,443,392

This table is not meant to reconcile to the balance of construction in progress. This table consists of current project commitments authorized by the Board.

D. Letter of Credit

On November 8, 2024, the Authority acquired an unsecured Irrevocable Standby Letter of Credit from PlainsCapital Bank that will expire on November 8, 2025. As of December 31, 2024, the authority has not drawn upon the letter of credit, which has been issued in the of $50,000 with an annual cost of $500.

E. Major Vendors

One vendor was paid $50,341,169, which accounted for 79% of vendor payments for the year ending December 31, 2024.

NOTE III - OTHER INFORMATION- (*Continued*)

F. Subsequent Events

Management has evaluated subsequent events through April 15, 2025, the date these financials statements were available to be issued. No subsequent events were noted.

SINGLE AUDIT

INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*

To the Board of Directors
Hidalgo County Regional Mobility Authority

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of Hidalgo County Regional Mobility Authority (the Authority), as of and for the year ended December 31, 2024, and the related notes to the financial statements, which collectively comprise the Authority's basic financial statements as listed in the table of contents, and have issued our report thereon dated April 15, 2025.

Report on Internal Control over Financial Reporting

In planning and performing our audit of the financial statements, we considered the Authority's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. Accordingly, we do not express an opinion on the effectiveness of the Authority's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements, on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or, significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that were not identified.

Report on Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Authority's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

BML y Fragoso, S.C.
Matamoros, MX

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956-618-2300 • www.bmltexas.com

Purpose of This Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Burton McCumber & Longoria LLP

McAllen, Texas
April 15, 2024

INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE FOR EACH MAJOR PROGRAM
AND ON INTERNAL CONTROL OVER COMPLIANCE REQUIRED BY THE UNIFORM GUIDANCE

To the Board of Directors
Hidalgo County Regional Mobility Authority

Report on Compliance for Each Major Federal Program

Opinion on Each Major Federal Program

We have audited Hidalgo County Regional Mobility Authority's (the Authority) compliance with the types of compliance requirements identified as subject to audit in the OMB *Compliance Supplement* that could have a direct and material effect on each of the Authority's major federal program for the year ended December 31, 2024. The Authority's major federal program is identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs.

In our opinion, the Authority complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on its major federal program for the year ended December 31, 2024.

Basis for Opinion on Each Major Federal Program

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Our responsibilities under those standards and the Uniform Guidance are further described in the Auditor's Responsibilities for the Audit of Compliance section of our report.

We are required to be independent of the Authority and to meet our other ethical responsibilities, in accordance with relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion on compliance for the major federal program. Our audit does not provide a legal determination of the Authority's compliance with the compliance requirements referred to above.

Responsibilities of Management for Compliance

Management is responsible for compliance with the requirements referred to above and for the design, implementation, and maintenance of effective internal control over compliance with the requirements of laws, statutes, regulations, rules, and provisions of contracts or grant agreements applicable to the Authority's federal program.

Auditor's Responsibilities for the Audit of Compliance

Our objectives are to obtain reasonable assurance about whether material noncompliance with the compliance requirements referred to above occurred, whether due to fraud or error, and express an opinion on the Authority's compliance based on our audit. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards, *Government Auditing Standards*, and the Uniform Guidance will always detect material noncompliance when it exists. The risk of not detecting material noncompliance resulting from fraud is higher than that resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Noncompliance with the compliance requirements referred to above is considered material if there is a substantial likelihood that, individually or in the aggregate, it would influence the judgment made by a reasonable user of the report on compliance about the Authority's compliance with the requirements of the major federal program as a whole.

In performing an audit in accordance with generally accepted auditing standards, *Government Auditing Standards*, and the Uniform Guidance, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material noncompliance, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the Authority's compliance with the compliance requirements referred to above and performing such other procedures as we considered necessary in the circumstances.
- Obtain an understanding of the Authority's internal control over compliance relevant to the audit in order to design audit procedures that are appropriate in the circumstances and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control over compliance. Accordingly, no such opinion is expressed.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and any significant deficiencies and material weaknesses in internal control over compliance that we identified during the audit.

Report on Internal Control over Compliance

A *deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. A *material weakness in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the Auditor's Responsibilities for the Audit of Compliance section above and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies in internal control over compliance. Given these limitations, during our audit we did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses, as defined above. However, material weaknesses or significant deficiencies in internal control over compliance may exist that were not identified.

Our audit was not designed for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, no such opinion is expressed.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Accordingly, this report is not suitable for any other purpose.



McAllen, Texas
April 15, 2025

HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY
SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
FOR THE YEAR ENDED DECEMBER 31, 2024

Federal Grantor/ Pass-Through Grantor/ State Grantor/ Program Title	ALN	Grant/Contract Identifying Award Number	Expenditures
FEDERAL AWARDS			
HIGHWAY PLANNING AND CONSTRUCTION CLUSTER			
U.S. DEPARTMENT OF TRANSPORTATION			
Passed through Texas Department of Transportation:			
Highway Planning and Construction	20.205	CSJ # 0921-02-368	$ 28,764,609
			28,764,609
Total passed through Texas Department of Transportation			28,764,609
Total U.S. Department of Transportation			$ 28,764,609
TOTAL EXPENDITURES OF FEDERAL AWARDS			$ 28,764,609

The accompanying notes to the schedule of expenditures of federal awards are an integral part of this schedule.

HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY
NOTES TO THE SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
FOR THE YEAR ENDED DECEMBER 31, 2024

General

The accompanying Schedule of Expenditures of Federal Awards (SEFA) present the federal grant activity for the Hidalgo County Regional Mobility Authority (the Authority) for the year ended December 31, 2024. The reporting entity is defined in Note I.A to the Authority's financial statements. The information in this Schedule is presented in accordance with the requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Because the SEFA presents only a selected portion of the operations of the Authority, it is not intended and does not present the financial position, changes in net assets, or cash flows of the Authority.

Basis of Presentation

The accompanying Schedule of Expenditures of Federal Awards is presented using the flow of economic resources measurement focus and use the accrual basis of accounting, which is described in Note I.B of the Authority's notes to the financial statements. Under this method, revenues are recorded when earned and expenses are recorded at the time a liability is incurred. Federal grant funds are generally considered earned to the extent expenditures made under the provisions of the grant are made and, accordingly, when such funds are received, they are recorded as unearned revenues until earned. The Authority has elected not to use the 10 percent de minimis indirect cost rate allowed under the Uniform Guidance.

Relationship to Federal Financial Reports

Amounts reported in the accompanying schedule may not agree with the amounts reported in the related Federal financial reports filed with the grantor agencies because of accruals made in the schedule which will be included in future reports filed with agencies.

Reconciliation of Schedule of Federal Awards to Comprehensive Annual Financial Report

The following is a reconciliation of the Schedule of Expenditures of Federal Awards (SEFA) to the Statement of Revenues, Expenses, and Changes in Net Position within the Hidalgo County Regional Mobility Authority's Annual Financial Report:

	Federal Expenditures per SEFA
Non-operating revenue: Intergovernmental - grant	$ 28,764,609

HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
FOR THE YEAR ENDED DECEMBER 31, 2024

Section I – Summary of Auditor's Results

Financial Statements

Type of auditor's report issued:	Unmodified		
Internal Control over financial reporting:			
• Material weakness(es) identified?	_____ yes	X no	
• Significant deficiencies identified that are not considered to be material weaknesses?	_____ yes	X	none reported
Noncompliance material to financial statements noted?	_____ yes	X no	

Federal awards

Internal control over major programs:			
• Material weakness(es) identified?	_____ yes	X no	
• Significant deficiencies identified that are not considered to be material weaknesses?	_____ yes	X	none reported
Type of auditor's report issued on compliance for major programs:	Unmodified		
Any audit findings disclosed that are required to be reported in accordance with 2 CFR 200.516(a)?	_____ yes	X no	

Identification of major programs:

Assistance Listing Number (ALN)	*Name of Federal Program or Cluster*
20.205	Highway Planning and Construction Program

Dollar threshold used to distinguish between Type A and Type B programs:	$862,938		
Auditee qualifies as a low-risk auditee?	X yes	_____ no	

Section II – Financial Statement Findings

None noted.

Section III – Federal Award Findings

None noted.

Board of Directors
Robert L. Lozano, Chairman
Ezequiel Reyna, Jr., Vice-Chairman
Juan Carlos Del Ángel, Secretary/Treasurer
Jose Maria "Joe" Ochoa, Director
Roel "Roy" Rodriguez, P.E., Director
Sergio Saenz, Director
Michael J. Williamson, Director

Hidalgo County Regional Mobility Authority
Status of Prior Year Findings
December 31, 2024

Federal Award Findings

Reference Number 2023-001 Quality Assurance Program Verification Activities

Finding:
The provisions of 23 CFR Part 637 require that the quality of materials be validated by verification sampling and testing. The sampling and testing should be performed by qualified sampling and testing personnel.

We selected a sample of 40 sampling and testing activities and verified whether technicians testing were certified by Texas Department of Transportation (TxDOT). In the sample tested, we noted one technician, who performed 4 of the 40 tests selected in our sample, was not certified.

Status of Finding: Corrected.

SECTION E.5

Ethics and Compliance Manual



INTERNAL ETHICS & COMPLIANCE MANUAL

Adopted December 10, 2009
Revised January 16, 2013
Revised February 28, 2017
Revised April 25, 2017
Revised September 24, 2019

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I. General Statement of Policy

The Hidalgo County Regional Mobility Authority (HCRMA) is committed to conducting its business in an ethical, honest, and open manner and to maintaining high ethical standards among its officers and employees. In furtherance of that commitment, the HCRMA adopts the Ethics & Compliance Policy set forth herein.

In addition to complying with the requirements of this Ethics & Compliance Policy, HCRMA Officers and employees must at all times abide by applicable federal and state laws and regulations, the HCRMA bylaws and policies.

II. Employee Code of Conduct

Employees of the HCRMA are expected to conduct the business of the authority in an open, honest, and ethical manner. Employees must adhere to the highest standards of ethical conduct in the performance of their responsibilities and must refrain from engaging in any activity that could raise questions as to the honesty or integrity of the HCRMA or damage the HCRMA's reputation or credibility. Additionally, employees must at all times comply with the Employee Code of Conduct set forth in this Section.

A. Equal Employment Opportunity – The HCRMA is an equal opportunity employer and is committed to the principles of equal employment opportunity. The HCRMA will not tolerate discrimination based on race, ethnicity, color, creed, religion, ancestry, national origin, sex, gender, sexual orientation, age, disability, or any other status protected by law.

All employment decisions, including but not limited to decisions regarding recruitment, selection, hiring, transfers, compensation, benefits, training, promotion, demotion, discipline, discharge, termination, leave of absence, and other terms, conditions, and privileges of employment, shall be based on individual qualifications without regard to an employee's status as a member of a protected class. The HCRMA will make reasonable efforts to ensure that all protected classes have equal access to employment with the HCRMA, and all personnel responsible for hiring, managing, and promoting employees are charged to support the HCRMA's commitment to equal employment opportunity.

The HCRMA will make reasonable accommodations for applicants or employees with disabilities, provided that the individual is otherwise qualified to perform the duties and responsibilities of the position and that an accommodation is not detrimental to the business operations of the HCRMA.

B. Workplace Harassment – The HCRMA is committed to ensuring a respectful work environment free from sexual harassment or any type of unlawful discrimination or harassment based on race, ethnicity, color, creed, religion, ancestry, national origin, sex, gender, sexual orientation, age, disability, or any other status protected by law.

Harassment based on any of the above is considered a form of illegal discrimination. The HCRMA will not tolerate any form of harassment in the workplace.

Prohibited sexual harassment includes any unwelcome sexual advances, requests for sexual favors, or other unwelcomed verbal or physical conduct of sexual nature where submissions to such conduct affects an individual's employment; such conduct has the purpose or effect of unreasonably interfering with an individual's work performance; or such conduct creates an intimidating, hostile, or offensive work environment. Other forms of prohibited harassment include unwelcome verbal or physical conduct that belittles, shows hostility, or ridicules an individual because of race, ethnicity, color, creed, religion, ancestry, national origin, sex, gender, sexual orientation, age, disability, or any other characteristic protected by law.

If an employee believes that he or she is or has been subjected to harassment, including but not limited to any of the conduct listed herein, by any manager, other employee, consultant, customer, vendor, or any other person in connection with employment at the HCRMA, the employee should report the incident to the Executive Director of the HCRMA or the HCRMA Board Chairman.

Similarly, an employee who witnesses harassment directed at another employee should immediately report the matter to the Executive Director or Board Chairman with or without the permission of the employee involved. All complaints of workplace harassment will be investigated promptly and thoroughly and with as much confidentiality as possible. Retaliation against an employee who reports workplace harassment will not be tolerated.

The HCRMA will take complaints or reports of harassment very seriously and will take appropriate remedial action if an investigation reveals that prohibited harassment, discrimination, or retaliation in violation of this Code of Conduct has occurred. Employees who engage in prohibited harassment will be subject to corrective action, up to and including termination of employment.

C. Conflicts of Interest - Employees are prohibited from engaging in any activity that could create a conflict of interest or even the appearance of a conflict of interest with the employee's duties and responsibilities to the HCRMA. Activities that could create a conflict of interest include, but are not limited to:

1. Transaction of HCRMA business with any entity in which the employee is an officer, agent, member, or owner of a controlling interest;
2. Participation in a HCRMA project in which the employee has a direct or indirect monetary interest;
3. Outside business or professional activities that could interfere with the employee's performance of duties on behalf of the HCRMA or impair the employee's independence of judgment with respect to the employee's performance of HCRMA duties;

4. Personal investments that are likely to create a substantial conflict between the employee's private interest and the interest of the HCRMA; and
5. Any activity that could result in the disclosure of confidential or sensitive information that the employee has access to as a result of the employee's position with the HCRMA.

If an employee is uncertain as to whether a particular activity could create a conflict of interest, the employee should consult the HCRMA's General Counsel prior to engaging in the activity.

D. Gifts and Honoraria –Employees may not accept a benefit from an entity doing business with the HCRMA. For the purposes of this provision, a benefit is anything that is reasonably regarded as financial gain or financial advantage, including a benefit to another person in whose welfare the beneficiary has a direct and substantial interest, regardless of whether the donor is reimbursed. Examples are cash, loans, meals, lodging, services, tickets, door prizes, free entry to entertainment or sporting events, transportation, hunting or fishing trips, or discounts on goods or services.

The following are not benefits for the purposes of this chapter: (1) a token item, other than cash, a check, stock, bond, or similar item, that is distributed generally as a normal means of advertising and that does not exceed an estimated value of $25; (2) an honorarium in the form of a meal served at an official, mobility-related event such as a conference, workshop, seminar, or symposium; or (3) reimbursement for food, travel, or lodging to an event described by paragraph (2) of this subsection in an amount allowable if the recipient were to seek reimbursement from the HCRMA, or a greater amount if preapproved.

Pursuant to Texas Transportation Commission Minute Order 114559 governing the Texas Department of Transportation and adopted as the policy for the HCRMA, employees may no longer accept ordinary working meals from entities doing business with the Authority. Employees may accept promotional items that do not exceed an estimated $25 in value and are distributed as a normal means of advertising.

If an employee is uncertain as to whether he or she may accept a gift, favor, or benefit, the employee should consult the HCRMA's General Counsel prior to acceptance.

E. Use of HCRMA Property – Computers, including all software, hardware, internet, and email systems, modems, printers, telephones, cellular phones, fax machines, and other electronic and communications equipment owned or leased by the HCRMA may be used for official HCRMA purposes only. Employees may; however, make brief personal telephone calls for which the HCRMA does not incur any additional charges. Employees do not have an expectation of privacy when using the HCRMA electronic and communications equipment, and all emails, computer files, and telephone records are the property of the HCRMA and are subject to disclosure under the Texas Public Information Act, discovery in litigation, and/or examination by management.

Employees must immediately report lost or stolen HCRMA property to the Executive Director, or designee. Misuse or theft of HCRMA property may result in disciplinary action, including criminal prosecution.

F. Criminal Activity – The HCRMA will perform criminal background checks on all final applicants for any position involving the disbursement of HCRMA funds or the handling of cash, checks or credit cards; negotiable documents and materials; or highly confidential or sensitive information. All applicants admitting a felony conviction on their application materials will also be subject to a criminal background check. Additionally, the HCRMA may at its discretion perform criminal background checks on applicants for any other position.

If an employee is charged with a felony or a misdemeanor other than a traffic violation, the employee is required to immediately inform the Executive Director, or designee. The HCRMA may take steps to respond to criminal violations consistent with Section V below, up to and including termination of employment.

G. Maintenance of Agency Records: Fraud & Public Information – Employees must maintain all HCRMA records for at least the minimum amount of time prescribed by the records retention schedules applicable to local governmental entities adopted by the Texas State Library and Archives Commission. In the event that litigation is filed against the HCRMA or is reasonably anticipated to be filed, the HCRMA's General Counsel may determine that it is necessary to implement a litigation hold in order to ensure the preservation of all records related to the lawsuit. Employees must refrain from destroying any records that are the subject of a litigation hold. Additionally, employees must comply with the HCRMA's Policies and Procedures for retention of records.

Given the need for accurate and honest business records, any false or misleading report or record (including but not limited to financial documents; resumes, employment applications; contracts; and reports) will be taken very seriously. Employees who become aware of any suspected fraudulent act or falsification of the HCRMA records must immediately report the concern to the Executive Director, or designee, who shall respond to the evidence by taking appropriate remedial action. Discovery of a fraudulent act related to a person's employment or job responsibilities may result in corrective action, up to and including termination of employment.

Members of the public may make written requests for records maintained by the HCRMA. Employees must comply with the HCRMA's process for Responding to Public Information Act Requests and applicable law and regulations when responding to a request for records. Employees must refrain from destroying any records that are subject of a pending public information request.

H. Fraud - The HCRMA is committed to protecting its revenue, property, information, and other assets from any attempt to gain, by deceit, financial or other benefits at the

expense of taxpayers. Fraud and misuse of HCRMA revenue, property, information, or other assets is prohibited.

The HCRMA has developed Fraud Reporting policies and procedures to identify fraud and/or misuse of HCRMA's revenue, property, information, or other assets, and to set forth specific guidelines and responsibilities regarding appropriate actions to prevent and/or respond to such incidents.

I. **Employee Acknowledgement** – All employees must sign an acknowledgment, in the form attached as "Attachment A", acknowledging that they have received, read, and understand this Employee Code of Conduct and that they will comply with the requirements set forth herein.

III. Training Regarding Ethics & Compliance Standards

Upon beginning service or employment with the HCRMA, all officers and employees shall be provided with a copy of this Ethics and Compliance Policy and shall receive orientation on ethics laws and policies. Additionally, officers and employees of the HCRMA shall receive periodic training on the requirements of this Ethics and Compliance Policy and on ethics issues generally.

IV. Oversight & Monitoring

The Executive Director and/or designee are responsible for monitoring and enforcing employee compliance with this Ethics and Compliance Policy. The HCRMA will also take reasonable steps to achieve compliance to this Policy by having annual audits performed by an external Independent Auditor. In addition, internal compliance reviews may be performed periodically.

V. Reporting of Suspected Violations

If an officer or employee becomes aware of a suspected violation of this Ethics and Compliance Policy, a violation of law, or a breach of fiduciary duty by any officer, employee, or agent of the HCRMA, he or she must immediately report the suspected violation to the Executive Director, or designee. The Executive Director, or designee, shall respond to evidence of any suspected violation or breach by taking appropriate action, including adopting or enforcing appropriate remedial measures or sanctions. Retaliation against those who come forward to raise concerns or report suspected violations will not be tolerated by the HCRMA.

VI. Enforcement & Responses to Offense

The HCRMA will not tolerate unethical or illegal conduct or conduct that discredits or interferes with the operations of the HCRMA. The HCRMA may discipline employees for any conduct that violates state or federal laws or regulations or the terms of this Ethics and Compliance Policy, up to and including immediate dismissal.

Examples of behavior that may result in an employee's immediate dismissal include, but are not limited to:

- Gross negligence of job duties
- Theft or misuse of HCRMA properties
- Fraud, dishonesty, or falsification of HCRMA records
- Unlawful use, sale, manufacture, distribution, dispensation, or possession of narcotics, drugs, or controlled substances while on HCRMA premises.
- Prohibited sexual harassment or offensive or degrading remarks about another person's race, ethnicity, color, creed, religion, ancestry, national origin, sex, gender, sexual orientation, age, disability, or any other characteristic protected by law in violation of the Employee Code of Conduct set forth in Section II.
- Assault of or verbal threat to a fellow employee, officer, agent, or customer
- Criminal conduct
- Failure to address a recurring problem for which the employee has already been disciplined
- Unprofessional conduct or behavior that negatively impacts the HCRMA's public image, credibility, or integrity.

The HCRMA may, but is not required to, take corrective action to make an employee aware of a problem related to the employee's conduct and to provide an opportunity for the employee to remedy the problem. Such corrective action may include an oral conference, a written warning, and/or suspension. However, nothing herein shall limit the HCRMA's right to terminate an at will employee at any time, for any reason, with or without cause or notice.

Attachment A - Internal Ethics & Compliance

ACKNOWLEGEMENT FORM

I have received a copy of the HCRMA's Internal Ethics and Compliance Manual.

I understand that I am responsible for reading and understanding this Code of Conduct.

I acknowledge that on _____I received training on the HCRMA's Internal Ethics and Compliance Manual.

I understand that the policy is effective immediately and that compliance with it is a condition of my employment.

I agree to comply with the requirements set forth and understand that failure to do so is a violation of the HCRMA's Internal Ethics and Compliance Program and will be subject to disciplinary action up to and including termination of employment.

Employee #_____

_____ _____
Employee Name (Signature) Date

_____ _____
Employee Name (Print) Title

_____ _____
Executive Director (Signature) Date

Signed Acknowledgment Form will be maintained in the employee's personnel file.

Attachment B – TXDOT PROGRAM REQUIREMENTS

TITLE 43	TRANSPORTATION
PART 1	TEXAS DEPARTMENT OF TRANSPORTATION
CHAPTER 10	ETHICAL CONDUCT BY ENTITIES DOING BUSINESS WITH THE DEPARTMENT
SUBCHAPTER B	OTHER ENTITIES' INTERNAL ETHICS AND COMPLIANCE PROCEDURES
RULE §10.51	Internal Ethics and Compliance Program

(a) Various sections of this title require an entity to adopt and enforce an internal ethics and compliance program. To comply with that requirement, the entity must certify to the department that the entity:
  (1) has adopted an internal ethics and compliance program that:
    (A) is designed to detect and prevent violations of the law, including regulations, and ethical standards applicable to the entity or its officers or employees; and
    (B) satisfies all requirements of this section; and
  (2) enforces compliance with its internal ethics and compliance program.

(b) An entity's internal ethics and compliance program must be in writing and must provide compliance standards and procedures that the entity's employees and agents are expected to follow. At a minimum, the program must provide that:
  (1) high-level personnel are responsible for oversight of compliance with the standards and procedures;
  (2) appropriate care is being taken to avoid the delegation of substantial discretionary authority to individuals whom the entity knows, or should know, have a propensity to engage in illegal activities;
  (3) compliance standards and procedures are effectively communicated to all of the entity's employees, including members of the governing board if the entity has a governing board, by requiring them to participate in periodic training in ethics and in the requirements of the program;
  (4) compliance standards and procedures are effectively communicated to all of the entity's agents;
  (5) reasonable steps are being taken to achieve compliance with the compliance standards and procedures by:
    (A) using monitoring and auditing systems that are designed to reasonably detect noncompliance; and
    (B) providing and publicizing a system for the entity's employees and agents to report suspected noncompliance without fear of retaliation;
  (6) consistent enforcement of compliance standards and procedures is administered through appropriate disciplinary mechanisms;
  (7) reasonable steps are being taken to respond appropriately to detected offenses and to prevent future similar offenses; and
  (8) the entity has a written employee code of conduct that, at a minimum, addresses:
    (A) record retention;
    (B) fraud;
    (C) equal opportunity employment;
    (D) sexual harassment and sexual misconduct;
    (E) conflicts of interest;
    (F) personal use of the entity's property; and
    (G) gifts and honoraria.

(c) The department may, at its discretion, request that the entity provide the department with written evidence of the entity's internal ethics and compliance program.

Source Note: The provisions of this §10.51 adopted to be effective January 6, 2011, 35 TexReg 11951;

Attachment C – HCRMA'S ANTI-BULLYING IN WORKPLACE POLICY

HCRMA
HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY

Policies and Procedures

Anti-Bullying in Workplace

I. POLICY STATEMENT

The Hidalgo County Regional Mobility Authority ("HCRMA") is committed to providing all employees a healthy and safe work environment by eliminating bullying in and related to the workplace. This policy applies to all employees of the HCRMA.

II. DEFINITION

For the purpose of this policy, **bullying** is defined as repeated and habitual behavior of force, threat, or coercion to abuse, intimidate or aggressively dominate another person or persons. Workplace bullying is a pattern of mistreatment in or related to the workplace that causes either physical or emotional harm. It can include such tactics as humiliation and verbal, nonverbal, psychological, and physical abuse.

Some forms of workplace bullying may also be unlawful harassment, which is prohibited by HCRMA's Workplace Harassment Policy. The Workplace Harassment Policy is in the HCRMA Ethics and Compliance Manual. Employees are not expected to determine whether conduct is bullying or harassment. Both bullying and harassment should be promptly reported under the Complaint Procedures in this policy or the Workplace Harassment Policy.

III. PROHIBITED ACTS

A. The following are some examples[1] of behaviors that may be considered bullying in the workplace:
- Intimidation, such as using insults or put downs;
- Making offensive jokes or comments verbally or in writing;
- Sharing offensive images, videos, text, etc.;
- Excluding or isolating certain employees;
- Undermining responsibility;
- Withholding information essential to do a task properly;
- Disciplining or threatening job loss without reason;
- Spreading rumors or gossiping;
- Blaming, scolding, criticizing, or belittling colleagues;
- Cyber bullying (bullying through electronic communication i.e. SMS, texts, apps, or online social media sites or forums); or
- Physical or emotional abuse.

B. The following **do not** constitute bullying:
- Enforcement of compliance with HCRMA rules, policies and procedures that is consistent across employees in similar circumstances;
- Performance and attendance management;

[1] Bullying behavior is not limited to the examples provided.

- Taking disciplinary action towards an employee with just cause; or
- Denying training or leave requests with justification.

IV. RESPONSIBILITY

Supervisors are responsible for actively intervening to prevent and stop any bullying behavior that is occurring in the workplace, whether or not a complaint is received. Supervisors who witness bullying and encourage the behavior or do not address the behavior may be subject to disciplinary action.

The Executive Director, or designee, is responsible for investigating any complaints or reports of bullying. The Executive Director may discuss allegations of bullying with HCRMA Counsel.

V. COMPLAINT / REPORTING PROCEDURES

A. Employees should first make a complaint or report of bullying to their immediate Supervisor, if appropriate.
   1) The Supervisor shall attempt to resolve the complaint or report informally.
   2) The Supervisor will document the complaint or report along with resolution or action taken. A copy of the documentation will be provided to the Executive Director to be filed in the employee's personnel file and, if applicable, the file of the employee about whom the complaint or report was made.

B. Where the attempt to resolve the matter fails or it was not appropriate to discuss with immediate Supervisor, employees may make a complaint or report to the Executive Director.
   1) The Executive Director will investigate and address the bullying complaints or reports sensitively and promptly.
   2) The investigation may include interviews with parties involved and/or witnesses and reviewing any relevant documentation.
   3) Reasonable steps will be taken to respect the confidentiality of the people involved in a complaint or report.
   4) Once the investigation is complete, the Executive Director will inform the employee who made the complaint or report and the employee(s) about whom the complaint or report was made of the results of the investigation.
   5) A copy of the investigation report will be included in the employee's personnel file and, if applicable, the file of the employee(s) about whom the complaint or report was made.

C. If it is not appropriate for employees to make a complaint or report of bullying to their immediate Supervisor or the Executive Director, employees may make their complaint or report to the General Legal Counsel.

Employees are expected to report instances of bullying under this policy even if they are not the target of the bullying. Employees who make a complaint or report of bullying are expected to continue to complain or report until the conduct stops.

VI. RETALIATION AND REPRISAL

A. There will be no retaliation against anyone who in good faith makes a complaint or report of bullying or participates in an investigation. Employees who believe they have been retaliated against or further bullied for making a complaint or report about bullying or participating in an investigation should promptly report this retaliation. This protection does not apply to an

employee making a complaint or report of bullying with the intention to harass, annoy, or embarrass another employee.

B. An employee who retaliates against another employee for making a complaint or report of bullying or providing information during an investigation may be subject to disciplinary action.

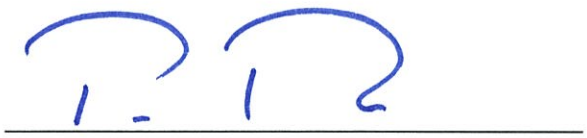
VII. CONFIDENTIALITY

Complaints or reports of bullying will be investigated promptly by the Executive Director, or designee. Investigations will be kept confidential to the extent possible consistent with conducting a thorough and impartial investigation.

VIII. CONSEQUENCES FOR VIOLATIONS OF THIS POLICY

If an employee is found to be non-compliant with this policy, the Executive Director shall take corrective or disciplinary action up to and including termination of employment.

Questions concerning this policy may be directed to the Executive Director at (956) 402-4762.



Pilar Rodriguez, Executive Director

Created: 11/08/18

SECTION E.6

Ethics and Compliance Training Presentation

Hidalgo County Regional Mobility Authority

Annual Ethics & Compliance Training

June 24, 2025

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INTERNAL ETHICS & COMPLIANCE PROGRAM

RMAs required to **adopt** and **enforce** an internal ethics and compliance program

- Detect and prevent violations of the law, regulations and ethical standards
- Enforce compliance with program
- Institute monitoring and auditing systems
- Provide periodic training for Board Members and employees

- High level personnel responsible for oversight of compliance
- Care taken to avoid delegation of compliance to irresponsible parties
- Communicate compliance standards to employees
- Periodic ethics training

Texas Administrative Code, Title 43, Rule 26.56 and Title 43, Rule 10.51; Title 43, Rule 31.39

INTERNAL ETHICS AND COMPLIANCE PROGRAM

ETHICS

- Conduct & behavior
- Public trust
- Avoid the appearance of impropriety

COMPLIANCE

- Evidence
- Enforcement
- Consult Directly with Executive Director or General Counsel

OVERVIEW OF DISCUSSION

7 KEY AREAS

1. Conflict of Interest
2. Bribery & Gifts / Honoraria
3. Use of Government Property
4. Nepotism
5. Open Government
6. Public Information & Records Retention
7. Compliance Requirements

STATE LAW

TXDOT RULES

HCRMA POLICIES

1. Conflict of Interest

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1. CONFLICT OF INTEREST

Under State law:

No participation in a vote on a matter involving a **business entity** or **property** in which an official has a **substantial business or property interest** and would receive **economic benefit**

Thresholds are low:

Substantial Business Interest =
10% voting shares / 10% of total income / $15,000 in FMV

Substantial Property Interest =
value of $2,500 or more

Responsibility of Official:

1. Don't vote or deliberate
2. Disclose

Who is an Official?

Authority to vote or make a decision on a proposed agreement

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Local Government Code, Chapter 171

1. CONFLICT OF INTEREST (Directors and Employees)

RMA RULES

- No acceptance or solicitation of any gift, favor or service that ***MIGHT*** influence official duties
- No employment, business or professional activity that ***MIGHT*** require/induce the disclosure of RMA's confidential information
- No employment or compensation that ***COULD*** impair independence of judgement
- No personal investments (including spouse) that ***COULD*** create a conflict with the RMA
- No solicitation or acceptance of any benefit for the exercise of official duties
- No performance of official duties in favor of another
- No personal interest in RMA agreement

RESPONSIBILITY OF OFFICIAL

- No lunches, dinners, trips that would be ***perceived*** to influence decisions
- No sharing HCRMA confidential information – information not yet public
- No purchase of land in or near projected ROW
- No interest in RMA contracts

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Texas Administrative Code, Title 43, Rule 26.51 and Section 370.252 Texas Transportation Code

1. CONFLICT OF INTEREST

RMA RULES

CONSEQUENCE FOR CONFLICTS IS INELIGIBILITY FOR SERVICE

- A person is ineligible to serve on the RMA Board or as Executive Director if that person or his spouse:
  - Is employed by or manages an entity or organization (other than a political subdivision) that is regulated or receives funds from TxDOT, the RMA or the County
  - Directly or indirectly owns or controls more than 10% a business entity or other organization that is regulated by or receives funds from TxDOT, the RMA, or the County
  - Uses or receives a substantial amount of tangible goods, services, or funds from TxDOT, the RMA, or the County; or
  - Is required to register as a lobbyist under Government Code, Chapter 305, because of the person's activities for compensation on behalf of a profession related to the operation of TxDOT, the RMA, or the County

Responsibility of the Official

- Disclose potential conflicts
- If a conflict exists, resign from position

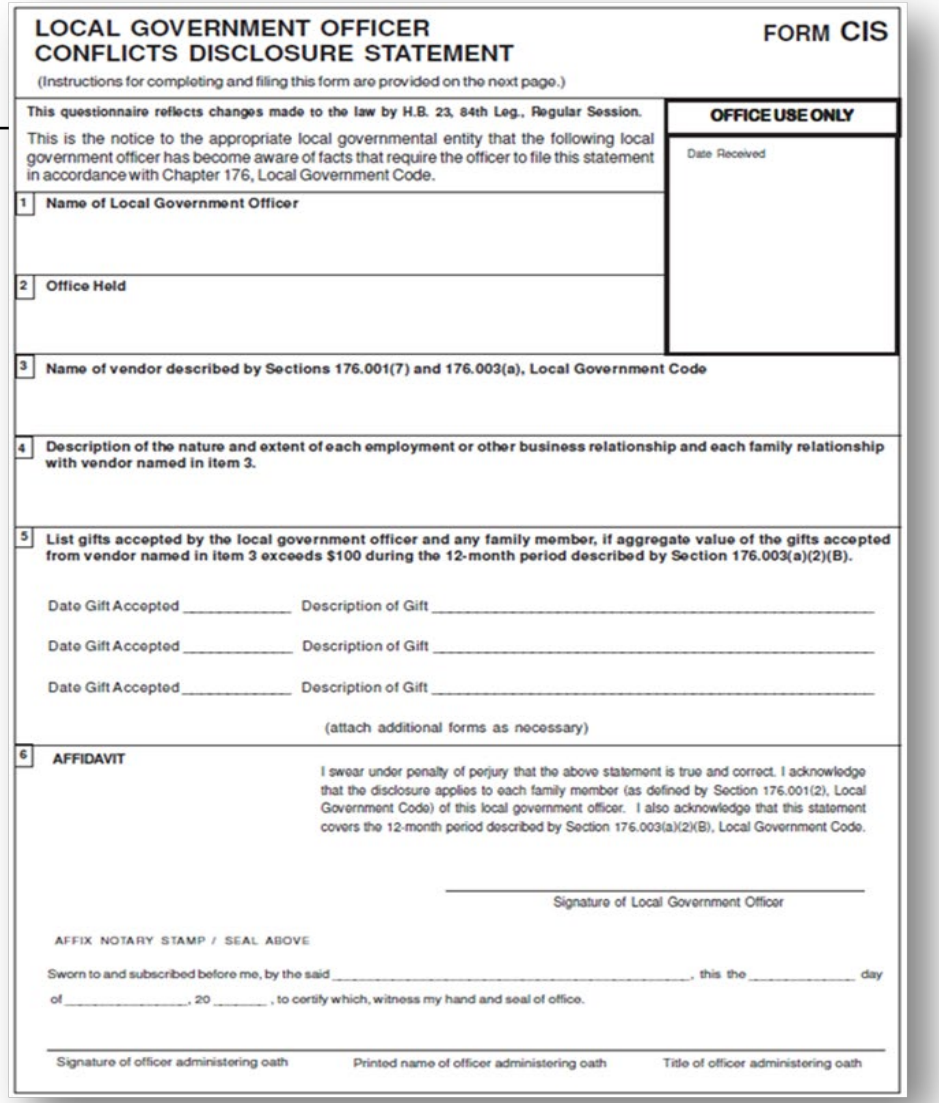
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Texas Administrative Code, Title 43, Rule 26.51 and Section 370.252 Texas Transportation Code

1. CONFLICT OF INTEREST

HCRMA Disclosure Requirements

- Board Ethics and Compliance Certificate
  - Annually
- Conflicts Disclosure Statement - Contracting
  - File within 7 days of becoming aware of interest
  - Applies to immediate family
  - Interest includes employment or business relations with an HCRMA vendor resulting in taxable income
  - Triggered by a contract



LOCAL GOVERNMENT OFFICER
CONFLICTS DISCLOSURE STATEMENT

FORM CIS

(Instructions for completing and filing this form are provided on the next page.)

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.

OFFICE USE ONLY

Date Received

1 **Name of Local Government Officer**

2 **Office Held**

3 **Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code**

4 **Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in item 3.**

5 **List gifts accepted by the local government officer and any family member, if aggregate value of the gifts accepted from vendor named in item 3 exceeds $100 during the 12-month period described by Section 176.003(a)(2)(B).**

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

(attach additional forms as necessary)

6 **AFFIDAVIT**

I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to each family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a)(2)(B), Local Government Code.

_____
Signature of Local Government Officer

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20 _____, to certify which, witness my hand and seal of office.

_____
Signature of officer administering oath | Printed name of officer administering oath | Title of officer administering oath

Similar certificate for consultants and contractors

2. Bribery & Gifts

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2. BRIBERY & GIFTS

Under State law:

Bribery is intentionally or knowingly soliciting, offering, or accepting a **benefit** in exchange **for a decision, opinion, recommendation, vote, or other exercise of official discretion** (2nd degree felony)

Benefit	Acceptance	Timing	Influence
• Any financial gain or advantage • Under TxDOT conflict rules, includes working meal	• In exchange for vote or action • From a party interested in a business opportunity or subject to HCRMA jurisdiction	• An item accepted *after* the exercise of official action may still be considered bribery	• Bribery may occur even if the item was not solicited and had no influence over the decision

Bribery statute applies to "public servants"

A person selected or employed as an officer, employee or agent of the government

Texas Penal Code, Section 36.02

2. Bribery & Gifts

Exceptions to the Bribery Statute

with TxDOT clarifications

Non Cash Items	Food, Lodging & Transportation	Gift from a Friend, Relative or Business Associate	Payment for Legitimate Consideration
• *Token item distributed generally as anormal means of advertising and that does not exceed an estimated value of $25*	• *Reimbursement for food, travel, or lodging to an official event* • *Honorarium in the form of a meal served at an official, transportation-related event , such as a conference*	• *[no TxDOT clarification]*	• *[no TxDOT clarification]*

Note:

State law exceptions are to criminal liability. Consider other applicable rules and appearance of impropriety.

Texas Penal Code, Section 36.02; Texas Administrative Code Title 43, Rule 26.51

3. Use of Government Property

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3. USE OF GOVERNMENT PROPERTY

- Computers and software (including **email systems**, phones, fax and copy machines, and other equipment owned or leased by HCRMA or provided for HCRMA use should be used only for official HCRMA business)
- Lost or stolen property must be reported immediately

Note:

Abuse of Office includes Misuse of Information

- Using official information to acquire or assist another acquire a pecuniary interest in any property, transaction, or enterprise.
- Speculating or aiding another to speculate on the basis of official information.
- Disclosing or using the information to obtain a benefit or to harm another.

If with intent to obtain a benefit or with intent to harm or defraud another, a public servant commits intentionally or knowingly misuses government property, he commits an offense (misdemeanor / felony)

Texas Penal Code, Section 39.02(a)(2) and 36.06

4. Nepotism

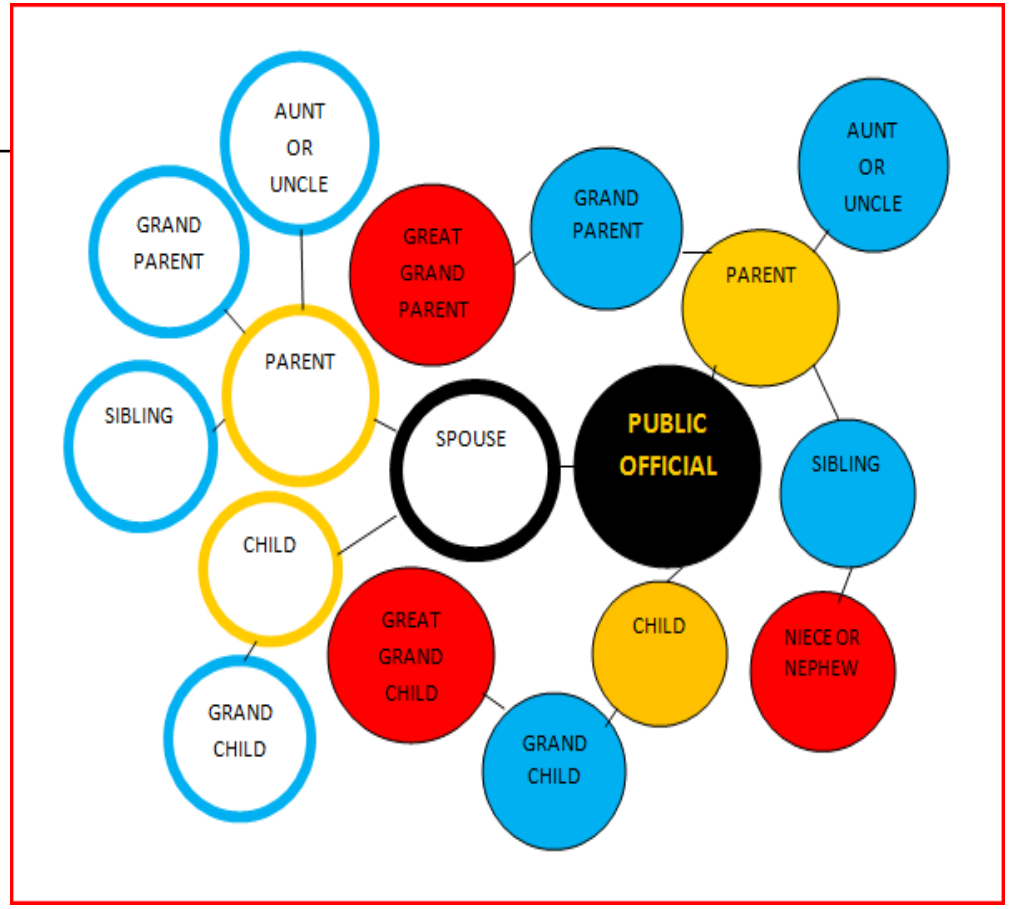
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4. NEPOTISM

State Law

- May not appoint or vote for the appointment of an individual to a paid position if the individual is related to the public official within the:
  - 3rd degree of consanguinity (filled circles)
  - 2nd degree of affinity (outlined circles)
- Prohibition applies to <u>all members of the board</u> (unlike conflict of interest where the affected member abstains)



<u>RESPONSIBILITY OF OFFICIAL</u>

- Do not hire a relative as Executive Director

CIRCLES:

- Solid = by blood/consanguinity;
- Open = by marriage/affinity

COLOR:

- Yellow = 1st; Blue = 2nd; Red = 3rd

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Texas Government Code, Chapter 573

5. Open Government

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Training required for all elected or appointed officials who participate in meetings subject to the Open Records Act.

Training must be completed within 90 days of taking office.

Video Training is available on-line and a course certificate can be printed upon completion.

89R:

Attorneys who assist with Open Meetings must complete the on-line training within 10 days of their engagement

Attorneys may not charge for the time required to take and complete the training

TEXAS ATTORNEY GENERAL

Open Meetings Act Training

https://www.texasattorneygeneral.gov/open-government/governmental-bodies/pia-and-oma-training-resources/open-meetings-act-training

Texas Government Code, Chapter 551.005

5. OPEN GOVERNMENT

OPEN MEETINGS ACT

- Applicability of the Act
- Notice Requirements
- How to Conduct Open Meetings
- When Closed Sessions are Permissible
- Conducting Meetings by Teleconference or Video Conference
- Penalties and Remedies under the Act

Texas Government Code, Chapter 551

5. OPEN GOVERNMENT – NOTICE REQUIREMENTS

OPEN MEETINGS

- All meetings of **governmental bodies** are open
  - Unless the law provides an exception (Executive Session)
  - Meetings may be regular, special, or called meetings
  - Open = Accessible to the Public
    - Within the boundaries of Hidalgo County
    - Accessible to individuals with disabilities
    - Provide for public comment
    - Internet broadcasting of meetings

- All meetings **require public notice**
  - Date, time, place, and subject posting
  - Note: Subject requires enough specificity to be actual notice to the public
  - ~~72 hours notice required~~ 3 BUSINESS DAYS (89R)
    - Emergency situations require 1 hour notice (notify media directly)
  - Notice and agenda provided on website and physically

- Records of meetings must be maintained

- **It is the Board Members' duty to comply with the Open Meetings Act and failure may be a criminal offense**

What if there is a failure to provide proper meeting notice or other violation of the Act?

- Actions taken are voidable (any such actions must be ratified at a subsequent meeting)
- Individuals may sue to prevent threatened actions in violation of the Act

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Texas Government Code, Chapter 551

5. OPEN GOVERNMENT - NOTICE REQUIREMENTS

NEW POSTING REQUIREMENTS (89R)

Posting Time:

- 3 Business Days
- On the website

Budget:

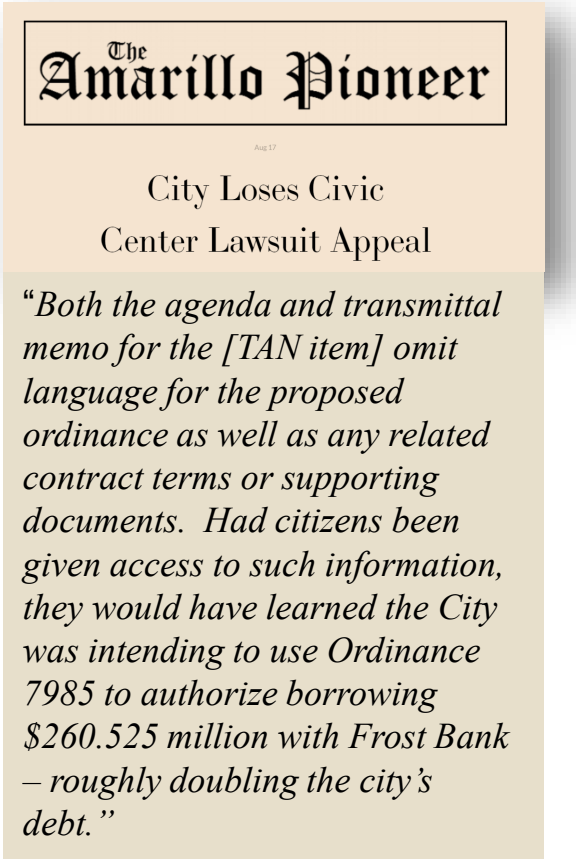
- A physical copy of the proposed budget on the homepage of the website

Texas Government Code, Chapter 551.041

5. OPEN GOVERNMENT - NOTICE REQUIREMENTS

Amarillo Case (2023)

- Texas Open Meetings Act requires every regular, special or called meeting to be open to the public
- Certain matters of "special interest to the public" require the agenda to include more detail than a generalized description of a topic
- With regard to debt,
  - Include purpose and amount
  - Include enough detail to make the structure transparent



The Amarillo Pioneer

City Loses Civic Center Lawsuit Appeal

"Both the agenda and transmittal memo for the [TAN item] omit language for the proposed ordinance as well as any related contract terms or supporting documents. Had citizens been given access to such information, they would have learned the City was intending to use Ordinance 7985 to authorize borrowing $260.525 million with Frost Bank – roughly doubling the city's debt."

89R:

MEETING NOTICE must include an agenda for the meeting that

- Is sufficiently specific to inform the public of each subject to be considered in the open portion of the meeting, including any matter:
  - That is special or unusual, or
  - In which the public may have a particular interest, and
- Describes the subject to be considered in the closed portion of the meeting, if applicable

Texas Government Code, Chapter 551.041

5. OPEN GOVERNMENT – PUBLIC MEETING

PUBLIC MEETING

- Quorum (4 board members) + Discussion of HCRMA Business
  - Public Hearing
  - County Workshop
  - Emails / Text Messages
  - Walking Quorums
    - Multiple conversations
    - "Polling" Board Members
- Violation = action is voidable
  - In some circumstances, criminal fine and or jail time

NOT A PUBLIC MEETING

- Social Setting / Holiday Event / Dinner
- Convention / Symposium
- Ceremonial event
- Press Conference
- Committee Meetings of less than a quorum (and no final action)
- Candidates Forum or Debate

PROVIDED:

No Discussion of RMA Business

No formal action is taken

Texas Government Code, Chapter 551

5. OPEN GOVERNMENT

WALKING QUORUMS

- Open Meetings Act makes it illegal for members of government body to "**knowingly conspire to circumvent [the Act] by meeting in numbers less than a quorum for purposes of secret deliberations in violation of [the Act]**."

A Board Member commits an offense if he:

(a) **Knowingly** engages in at least one communication among a series of communications that each occur outside of a meeting and that concern an issue within the jurisdiction of the Authority in which the Members engaging in the individual communications constitute fewer than a quorum of the Members, but the sum of all the Members engaging in the series of communications constitute a quorum of the Members, and

(b) **Knew at the time** the Member engaged in the communication that the series of communications (i) i**nvolved or would involve a quorum**; and (ii) **would constitute a "deliberation"** once a quorum of members engaged in the series of communications.

Texas Government Code, Chapter 551

5. OPEN GOVERNMENT

Exceptions to Open Meetings: Closed Session

Exceptions to the Open Meetings Requirement

- Consultation with attorney
  - Seek advice on legal matters, like pending litigation or settlement matters or contract negotiations, or in compliance with the Texas Disciplinary Rules of Professional Conduct
  - No discussion of non-legal issues
    - No discussion of policy matters
    - No discussion of merits of a contract
- Real Property
  - 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 party
- Security Devices
- Personnel
  - 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
- Security Devices or Audits (network security information)
- Cybersecurity (89R)

Who attends a Closed Meeting?

- All members of the RMA board are permitted
- Attorney, if attorney consultation is exception
- Board's discretion
  - Officers, employees/consultants if necessary to further discussion
  - NOT arm's length parties
- Do not begin until quorum is present

Must give public notice of Exception

- Post on Agenda
- Identify in the Open Meeting the legal provision authorizing the Closed Session

Must keep a Record

- **Certified Agenda**
  - Record of presiding officer announcing date and time at both beginning and end of Closed Meeting
  - Includes subjects of all deliberations
  - Certification that the agenda is a true correct record of the Closed meeting
  - Confidential document that must be retained for 2 years
- If closed for Attorney Client Privilege, attorney maintains meeting notes.

FINAL ACTION must take place in an open meeting

5. OPEN GOVERNMENT

Responsibility of Official

- It is misdemeanor offense to:
  - Knowingly conspire to circumvent the Act by deliberately meeting with less than a quorum for the purpose of a secret meeting;
  - Participate in a closed session knowing there is no agenda of topics or record taken of the meeting;
  - Knowingly make public the certified agenda or recording of a closed meeting

LUFKIN, Texas (KTRE) - A former Angelina County Judge has been found guilty of violating the open meetings act following his trial.

Don Lymbery, the former Angelina County Judge, was indicted in March 2022 along with two other county authorities in connection with violating the open meeting act. The charge stems from an Aug. 9, 2021, meeting of the three men in Lymbery's office. Lymbery denied any wrongdoing, claiming the conversation between the three did not include county business and added that he had to leave his office for an interview shortly after the two commissioners joined him.

On Tuesday, Lymbery was found guilty of the charge by Judge Travis Kitchens in a bench trial and was sentenced to 35 days in the Angelina County jail and a $350 fine. The jail time and fine were suspended and Lymbery was placed on 90 days probation and required to report monthly and do 35 hours of community service restitution, according to DA Janet Cassels.

Lymbery was acquitted of his 21 other indictments involving class C charges for allegedly participating in executive sessions knowing that a certified agenda or recording was not being kept.

6. Public information

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Training Required for:

- Board Member of a Governmental Body
- The Officer for Public Information of a Governmental Body

Training must be completed with 90 days of taking office.

89R:

Attorneys who assist with Public Information must complete the on-line training within 10 days of their engagement

Attorneys may not charge for the time required to take and complete the training

TEXAS ATTORNEY GENERAL

Public Information Act Training

https://www.texasattorneygeneral.gov/open-government/governmental-bodies/pia-and-oma-training-resources/public-information-act-training

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Texas Government Code, Chapter 552.012

6. PUBLIC INFORMATION

- Public Information
  - Information collected, assembled, maintained by or for the HCRMA (any format; any device)
    - Information on HCRMA business belongs to the HCRMA, regardless of whether it's on a personal device
  - Certain exceptions apply
    - Agency Memoranda
    - Drafts
    - Attorney Client Communication
    - Real Estate
    - Third Party Proprietary Information
    - Security / Technology / Network Information
    - Fraud detection information (89R)

The PIA does not distinguish between personal or government issued devices, rather, focuses on the nature of the communication or document.

Texas Government Code, Chapter 552

6. PUBLIC INFORMATION - EXCEPTION

89R

Fraud Detection Information may be protected

- **Information that may reveal the methods or means by which a governmental body prevents, investigates or evaluates fraud)**

- **Risk Assessments**
- **Reports, Data, Protocols**
- **Technology Specifications**
- **Manuals, Instructions**
- **Communications, Notes**

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Texas Government Code, Chapter 552.164

6. PUBLIC INFORMATION - SUSPENSION

Suspension during Catastrophe

- Fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm
- Power failure, transportation failure, or interruption of communication facilities
- Epidemic
- Riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence

NOT a period when staff is required to work remotely

RULES
- One suspension per catastrophe
- 14 days total
- Must notify the Attorney General
- Must provide posted public notice

2023 Legislation

- Greater flexibility in calculating days around holidays
- Provision for "non-business days"
- Government Entities may establish yearly "time limits" per requestor to avoid abuse

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Texas Government Code, Section 552.233 , Section 552.2211 , Section 552.2325, and Section 552.275

6. PUBLIC INFORMATION

TEMPORARY CUSTODIAN RESPONSIBILITY

- Any employee who, in the transaction of official business, creates or receives public information
  - Public information maintained on a personal device must be forwarded to the HCRMA's server for preservation

Public Information Act Inquiries and Requests should be directed to the HCRMA Public Information Act Officer or General Counsel

6. PUBLIC INFORMATION – RESPONSE (89R)

- No Responsive Information
  - Written notice within 10 business days from receipt of request to Requestor
- Responsive Information subject to previous determinations
  - Written notice within 10 business days from receipt of request to Requestor re information to be withheld and provisions instructing withholding the information
- Responsive Information requiring AG determination
  - 10 business days to request determination (with copy to Requestor)

- No Charge for Information Copied
  - Clarification to the request is submitted after the 10th business day from receipt of request
  - Attorney General Determination requested without notifying Requestor within the 10-business day period
  - Attorney General directs release of information

Texas Government Code, Sec. 552.221, 552.261

6. PUBLIC INFORMATION – BOARD MEMBERS (89R)

- Board Members, acting in their official capacity, may inspect and/or duplicate public information maintained by the Authority
  - Public Information provided without charge
  - Confidential information may be redacted
    - Attorney-client information may be confidential (unless the privilege applies to the member)
    - Board member may be requested to sign a confidentiality agreement
      - AG may determine validity of confidentiality agreement
      - Determination may be appealed

- Failure to provide requested information
  - Member may file Writ of Mandamus
  - Court may award attorneys fees and expenses

Texas Government Code, Sec. 552.403

6. PUBLIC INFORMATION – FAILURE TO RESPOND (89R)

- Written complaint by Requestor to Attorney General
- If Attorney General determines that the governmental body failed to comply with the law
  - Open Records Training Required within 6 months
  - No cost to Requestor for producing information
  - 5 business days to request AG determination on protected information

- No Charge for Information Copied
  - Clarification to the request is submitted after the 10th business day from receipt of request
  - Attorney General Determination requested without notifying Requestor within the 10-business day period
  - Attorney General directs release of information

Texas Government Code, Sec. 552.328

6. PUBLIC INFORMATION

Director's Responsibility

- Complete Open Records Training
- Avoid using personal devices and email accounts when conducting HCRMA business
- Forward communications received on a personal account to HCRMA server
- Assume any communication regarding the HCRMA is public
- Notify HCRMA staff immediately of requests for public information
- Do not delete or destroy records
  - Pending PIA request
  - Litigation hold

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Public Information Act Inquiries and Requests should be directed to the HCRMA Public Information Act Officer or General Counsel

7. Compliance Program

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7. COMPLIANCE PROGRAM

INTERNAL ETHICS & COMPLIANCE PROGRAM

RMAs required to **adopt** and **enforce** an internal ethics and compliance program

- High level personnel responsible for oversight of program
- Avoid delegation of substantial discretionary authority to individuals who have a propensity to engage in illegal activities
- Effectively communicate to employees and governing board, including periodic training
- Effectively communicate with entity's agents

7. COMPLIANCE PROGRAM

REASONABLE STEPS TO ACHIEVE COMPLIANCE WITH STANDARDS AND PROCEDURES:

- Using monitoring and auditing systems designed to reasonably detect noncompliance
- Providing and publicizing a systems for the HCRMA's employees and agents to report suspected non-compliance without retaliation

CONSISTENT ENFORCEMENT OF COMPLIANCE STANDARDS AND PROCEDURES

EFFORTS TO RESPOND APPROPRIATELY TO DETECTED AND PREVENT OFFENSES

A suspected violation of HCRMA policies, a violation of law, or a breach of fiduciary duty must be immediately reported to the Executive Director or Chairman

Anonymous website reporting:



7. COMPLIANCE PROGRAM

Written Code of Conduct to Address:

- Record retention
- Fraud
- Equal Opportunity Employment
- Sexual Harassment and Sexual Misconduct
- Conflicts of Interest
- Personal use of HCRMA property
- Gifts and Honoraria

Texas Administrative Code, Title 43, Rule 26.56 and Rule 10.51

7. Compliance Program

HCRMA Annual Certifications to TxDOT

- Ethics and Compliance Program adopted
  - Program is designed to detect and prevent violations of law, regulations, and ethic standards
  - HCRMA enforces compliance
- Program satisfies these requirements:
  - Written manual and employee code of conduct
    - Record retention, fraud, equal opportunity employment, sexual harassment and sexual misconduct, conflicts of interest, personal use of HCRMA property, and gifts and honoraria.
  - High-level personnel are responsible for oversight
  - Compliance standards are communicated to employees and board
  - Compliance standards are communicated to HCRMA's agents
  - Compliance standards are achieved through
    - Monitoring and auditing systems to detect noncompliance
    - Providing and publicizing a mechanism for reporting without fear of retaliation
  - Consistent enforcement through appropriate disciplinary mechanisms
  - Reasonable measures to respond to offenses and prevent future offenses

Texas Administrative Code, Title 43, Rule 26.56 and Rule 10.51

7. COMPLIANCE PROGRAM

Training Evidence:

- Open Meetings Training Certificates
- Public Information Act Training Certificates
- **HCRMA Compliance Certificates**
- Public Investment Act Training Certificates
- Staff Project / Billing Training Evidence

Reports:

- Strategic Plan
- Annual Report
- Financial Reports/Audit
- Investment Reports
- Project Reports
- Toll Entity Financial Report
- Notice of Debt
- Compliance Report
- Disclosure / Gift / Interests
- Post-Issue Compliance Records
- Comptroller Tax / Fee / Debt Report
- Board: Annual Personal Financial Statement
- Notice of Mailing Address (AG by October 1)

ETHICS AND COMPLIANCE HANDBOOK

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ELECTRONIC ETHICS & COMPLIANCE HANDBOOK

Section A.	**Law Governing Regional Mobility Authorities**
1.	Chapter 370, Texas Transportation Code
2.	Title 43, Chapter 26, Texas Administrative Code
Section B.	**Conflict of Interest**
1.	Texas Municipal League Conflict of Interest/Disclosure Laws Applicable to City Officials, Employees and Vendors (2017)
2.	See above, Title 43, Chapter 26, Rule 26.51 (Section A-2)
Section C.	**Open Government**
1.	Texas Attorney General Handbook – Open Meetings (2024)
2.	Texas Attorney General Handbook – Public Information Act (2024)
Section D.	**Ethics for Officials**
1.	Texas Ethics Commission Guide to Ethics Laws for State Officers and Employees (2022)
Section E.	**HCRMA Operations**
1.	Bylaws
2.	Current Strategic Plan
3.	Current Budget (2025)
4.	2024 Audit
5.	TxDOT Audit Results – Prior Years
6.	Travel and Reimbursement Policy
7.	Ethics and Compliance Manual (2020)
8.	Ethics and Compliance Training Presentation (2025)
9.	Board Certificate (2025)
Section F.	**TxDOT Employee Conduct Handbook - Example**
	TxDOT Employee Conduct Handbook

SECTION E.7

HCRMA Board of Directors Certification

HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY
BOARD OF DIRECTORS
2025 CERTIFICATE

Chapter 370, Texas Transportation Code and Title 43, Rule 26.51 of the Texas Administrative Code establish certain requirements for Hidalgo County Regional Mobility Authority Board Members. Accordingly, I, the undersigned, hereby certify as follows:

1. At the time of my appointment, I did not own an interest in any real property that was known to be necessary for any project included in the Hidalgo County Loop System, or other project included the Authority's strategic plan, and subject to potential acquisition by the Authority.

2. Neither my spouse, if any, nor I:

   (a) is employed by or participates in the management of a business entity or other organization, other than a political subdivision, that is regulated by or receives funds from the Texas Department of Transportation ("TxDOT"), the Hidalgo County Regional Mobility Authority (the "Authority"), or Hidalgo County;

   (b) directly or indirectly owns or controls more than a 10% interest in a business or other organization that is regulated by or receives funds from TxDOT, the Authority, or Hidalgo County;

   (c) uses or receives a substantial amount of tangible goods, services, or funds from TxDOT, the Authority, or Hidalgo County; or

   (d) is required to register as a lobbyist under Government Code, Chapter 305, because of any activities for compensation on behalf of a profession related to the operation of TxDOT, the Authority, or Hidalgo County.

3. I am not an officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation, rail, or aviation, and my spouse, if any, is not an officer, manager, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation, rail, or aviation.

4. I have not received funds from TxDOT, the Authority, or Hidalgo County for acquisition of highway right-of-way, except as previously disclosed in writing to the Authority.

5. While serving as a Board Member of the Authority, I agree that I will not:

   (a) accept or solicit any gift, favor, or service that might reasonably tend to influence me in the discharge of official duties or that I know or should know is being offered with the intent to influence my official conduct;

   (b) accept employment or engage in a business or professional activity that I might reasonably expect would require or induce me to disclose confidential information acquired by reason of my official position;

   (c) accept employment or compensation that could reasonably be expected to impair my independence of judgment in the performance of my official duties;

(d) make personal investments, including any investments of my spouse, if any, that could reasonably be expected to create a conflict between my private interest and the interest of the Authority or that could impair my ability to make independent decisions;

(e) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised my official powers or performed my official duties in favor of another; or

(f) have a personal interest in an agreement executed by the Authority.

6. If I should ever have a substantial interest in (either own 10% of, or receive 10% of my income from) a business interest or in real property coming before the Authority, I will file an affidavit with the Authority stating the nature and extent of the interest; and, I shall abstain from further participation in the matter if (a) the matter will have special economic on my business entity, distinguishable from the effect on the public; or, (b) it is reasonable to foresee that an action on the matter will have special economic effect on the value of the real property, distinguishable from its effect on the public.

7. I am qualified to serve as Board Member of the Authority, to wit:

(a) I am a resident of Texas and Hidalgo County.

(b) I am not an elected official, TxDOT employee, or employee of any governmental entity located in Hidalgo County.

8. For each year that I serve as a Board Member of the Authority, I agree to file a personal financial statement required of state officers under Subchapter B, Chapter 572, Government Code, with the Texas Ethics Commission.

9. I received the 2025 Hidalgo County Regional Mobility Authority Board of Directors Ethics and Compliance Manual electronically. I acknowledge that a complete copy of the Authority's Ethics & Compliance Handbook is available from the Authority's website and that a hard copy will be provided to me upon request.

10. The Authority's annual ethics and compliance training was provided on June 24, 2025.

_____

Signature

Name: _____

Date: _____