

**Art. 6243a-1. PENSION SYSTEM FOR POLICE OFFICERS AND
FIREFIGHTERS IN CERTAIN CITIES.**

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**Art. 6243a-1. PENSION SYSTEM FOR POLICE OFFICERS AND
FIREFIGHTERS IN CERTAIN CITIES.**

PART 1. PURPOSE

Sec. 1.01. AMENDMENT, RESTATEMENT, AND CONSOLIDATION.

(a) The purpose of this article is to restate and amend the provisions of a former law governing the pension funds for police officers and fire fighters in certain municipalities (Chapter 4, Acts of the 43rd Legislature, 1st Called Session, 1933, also known as Article 6243a) having previously been amended and restated to permit the consolidation of the terms of certain pension plans created under Sections 1, 11A, and 11B of that Act for the purpose of simply and accurately reflecting the joint administration of the plans.

(b) This article does not take away or reduce any accrued benefit contained in the plans created under former Article 6243a or under this article as it existed on or before August 31, 2017.

PART 2. GENERAL PROVISIONS

Sec. 2.01. DEFINITIONS. In this article:

(1) "415 compensation" means a member's wages, salary, and other amounts received for personal services rendered in the course of employment with the city during a limitation year and permitted to be treated as compensation for purposes of Section 415(c) of the code, including differential wage payments described in Section 414(u)(12) of the code. The term does not include amounts picked up under Section 4.03(i) of this article.

(2) "Active service" means any period that a member receives compensation as a police officer or fire fighter from either department for services rendered.

(3) "Actuarial equivalent" means a form of benefit differing in time, duration, or manner of payment from a standard benefit payable under this article but having the same value when computed using the assumptions set forth in this article.

(4) "Alternate payee" has the meaning given the term by Section 414(p) of the code or any successor provision.

(5) "Alternative investment" means an investment in an asset other than a traditional asset. The term includes an investment in private equity funds, private real estate transactions, hedge funds, and infrastructure.

(6) "Annual additions" means the sum of the following amounts credited to a member's account under any defined contribution plan maintained by the city for the limitation year:

(A) city contributions;

(B) member contributions, other than rollover contributions from a plan maintained by any employer other than the city;

(C) forfeitures; and

(D) amounts allocated after March 31, 1984, to an individual medical benefit account, as defined in Section 415(1)(2) of the code, that is part of a pension or annuity plan maintained by the city.

For any limitation year beginning before January 1, 1987, only that portion of member contributions equal to the lesser of member contributions in excess of six percent of 415 compensation or one-half of member contributions to the combined pension plan or any qualified defined contribution plan maintained by the city is treated as annual additions.

(7) "Annual benefit" means the aggregate benefit attributable to city and member contributions payable annually under the combined pension plan, or any plan maintained by the city, exclusive of any benefit not required to be considered for purposes of applying the limitations of Section 415 of the code to the combined pension plan, payable in the form of a straight life annuity beginning at age 62 with no ancillary benefits. Solely for purposes of computing the limitations under the combined pension plan, benefits actually payable to a pensioner are adjusted to the actuarial equivalent of a straight life annuity pursuant to Section 415(b) of the code even though no member may actually receive a benefit in the form of a straight life annuity.

(8) "Article 6243a" means Chapter 4, Acts of the 43rd Legislature, 1st Called Session, 1933 (former Article 6243a, Vernon's Texas Civil Statutes), pertaining to a pension system for police officers, fire fighters, and fire alarm operators in certain cities.

(9) "Assignment pay" means monthly pay, in addition to salary, granted to a Group B member and authorized by the city council for the performance of certain enumerated duty assignments.

(10) "Base pay" means the maximum monthly civil service pay from time to time established by the city for a person who holds the rank of "police officer" in the city's police department or the rank of "fire and rescue officer" in the city's fire department, exclusive of any other form of compensation. The term does not include compensation paid by the city to a person for prior periods of service or compensation that otherwise constitutes back pay unless the compensation is eligible back pay. The board may adopt rules and procedures necessary to include eligible back pay as base pay for purposes of this definition, including rules regarding how increases in benefits will be determined and administered.

(11) "Base pension" means the amount of retirement, death, or disability benefits as determined at the earliest of the time a Group B member and, solely for the purposes of Section 6.12 of this article, a Group A member:

- (A) begins participation in DROP;
- (B) leaves or left active service;
- (C) dies; or
- (D) becomes entitled to a disability pension

under the combined pension plan.

Solely for purposes of this definition, when a member becomes entitled to a disability pension, the base pension shall be determined as of the date on which the disability pension begins.

(12) "Board" means the board of trustees created under Section 3.01 of this article for the purpose of administering the pension system.

(13) "Child" means a person whose parent, as recognized under the laws of this state, is a primary party.

(14) "City" means each municipality having a population of more than 1.18 million and located predominantly in a county that has a total area of less than 1,000 square miles.

(15) "City attorney" means the chief legal officer of a city.

(16) "City council" means the governing body of the city.

(17) "City manager" means the city manager of a city or the city manager's designee and includes, to the extent of any designation, an interim or acting city manager, chief financial officer, budget director, or assistant city manager. If a city does not have an individual serving in a position otherwise described by this subdivision, "city manager" means the mayor of that city.

(18) "City service incentive pay" means annual incentive pay, adjusted by the city from time to time, in addition to the salary of a member granted to the member under the authority of the city charter and received by the member during active service.

(19) "Code" means the United States Internal Revenue Code of 1986, as amended.

(20) "Combined pension plan" means any pension plan created pursuant to this article before September 1, 2017.

(21) "Computation pay" shall be used in determining the amount of the city's contribution under Section 4.02(d) of this article and a Group B member's contribution under Section 4.03(d) of this article and in determining the base pension to be paid to a Group B member or the benefits to be paid to the member's qualified survivors and means the sum of the following:

(A) the biweekly rate of pay of a member for the highest civil service rank the person holds, from time to time, as a result of a competitive examination; plus

(B) the educational incentive pay of a member, computed on a biweekly basis; plus

(C) the longevity pay of a member, as authorized by the legislature, computed on a biweekly basis; plus

(D) the city service incentive pay, computed on a biweekly basis, of a member.

The term includes only amounts actually paid in salary or payments made instead of salary to the member and member contributions picked up by the city, and does not include any imputed pay. Furthermore, any compensation received by a member, other than that noted in Paragraphs (A)-(D) of this subdivision (for example, compensation for overtime work, certification pay, and the pay a member would receive from the city in the form of assignment pay), will not be considered in determining the computation pay of a member. Any lump-sum payments for compensatory time, unused sick leave, unused vacation time, or city service incentive pay payable after a member leaves active service, dies, becomes disabled, or resigns, or after any other type of termination may not be considered in determining the computation pay of any member. Computation pay for a member for any given period is determined on the biweekly rates of pay due the member for the entire period. The term does not include compensation paid by the city to a person for prior periods of service or compensation that otherwise constitutes back pay unless the compensation is eligible back pay. The board may adopt rules and procedures necessary to include eligible back pay as computation pay for purposes of this definition, including rules regarding how increases in benefits will be determined and administered.

(22) "Department" means either the police department of the city, the fire department of the city, or both the police and fire departments of the city together.

(23) "Dependent parent" means a natural parent or parent who adopted a primary party and who immediately before the death of a primary party received over half of the parent's financial support from the primary party.

(24) "Disability retirement" means any period that a pensioner receives periodic disability compensation or a disability pension.

(25) "DROP" means the deferred retirement option plan established in accordance with Section 6.14 of this article.

(26) "Educational incentive pay" means incentive pay designed to reward completion of certain hours of college credit, adjusted by the city from time to time, that is paid to a member in addition to the member's salary.

(27) "Eligible back pay," except as otherwise provided by this definition, means additional compensation paid by the city to a member or pensioner:

(A) that constitutes back pay to the member's or pensioner's prior period of service and is otherwise considered taxable wages paid by the city to the member or pensioner for federal income tax purposes; and

(B) for which the pension system receives:

(i) an amount equal to the aggregate member and city contributions that the pension system would have collected with respect to the compensation for all time periods relating to the back pay compensation; and

(ii) interest, calculated using the pension system's actuarial rate of return assumptions in effect for the periods relating to the back pay, compounded annually, on the contribution amounts for the period from the date that the contributions would have been received if the back pay compensation had been paid during the relevant periods of prior service through the date the amount relating to the contributions for back pay is actually received by the pension system.

The term does not include any additional compensation paid by the city to a member or pensioner wholly or partly or directly or indirectly as the result of litigation instituted to recover back pay.

The pension system is not obligated to collect the additional contributions or interest described in Paragraph (B) of this subdivision from the member, pensioner, or city. The pension system may not recognize back pay as eligible back pay until the contributions and interest described in Paragraph (B) of this subdivision have been received.

(28) "Executive director" means the person designated by the board to supervise the operation of the pension system.

(29) "Fund" means all funds and property held to provide benefits to all persons who are or who may become entitled to any benefits under any plan within the pension system, together with all income, profits, or other increments.

(30) "Group A member" means any police officer or fire fighter included in Group A membership under Section 5.01(a)(1) of this article.

(31) "Group B member" means any police officer or fire fighter included in Group B membership under Section 5.01(a)(2) of this article.

(32) "Health director" means any qualified physician designated from time to time by the board.

(33) "Limitation year" means the plan year of the combined pension plan and any defined benefit plan or defined contribution plan of the city in which a member participates.

(34) "Longevity pay" means pay in addition to the salary of a member granted under Section 141.032, Local Government Code, for each year of active service completed by a member in either department.

(35) "Member" means both Group A and Group B members.

(36) "Member's account" means an account established and maintained for a member with respect to the member's total interest in one or more defined contribution plans under this article or maintained by the city resulting in annual additions.

(37) "Nominations committee" means the nominations committee established under Section 3.011 of this article.

(38) "Old plan" means any pension plan created pursuant to Section 1 of Article 6243a.

(39) "Pensioner," "Group A pensioner," or "Group B pensioner" means a former member of the pension system who is on either a service or disability retirement.

(40) "Pension service" means the time, in years, and prorated for fractional years, that a member has contributed to the fund under the terms of the combined pension plan or any plan within the pension system, reduced to reflect refunds that have been received and not fully repaid.

(41) "Pension system" means the fund and any plans created pursuant to this article or Article 6243a and that are intended to be qualified under Section 401(a) of the code.

(42) "Plan A" means any plan created pursuant to Section 11A of Article 6243a.

(43) "Plan B" means any plan created pursuant to Section 11B of Article 6243a.

(44) "Police officer" or "fire fighter" means, as appropriate, a police officer, fire fighter, fire and rescue officer, fire alarm operator, fire inspector, apprentice police officer, apprentice fire fighter, or similar employee of either department as defined in the classifications of the human resources department of the city.

(45) "Primary party," "Group B primary party," or "Group A primary party" means a member or pensioner.

(46) "Qualified actuary" means either:

(A) an individual who is a Fellow of the Society of Actuaries, a Fellow of the Conference of Consulting Actuaries, or a member of the American Academy of Actuaries; or

(B) a firm that employs one or more persons who are Fellows of the Society of Actuaries, Fellows of the Conference of Consulting Actuaries, or members of the American Academy of Actuaries and are providing services to the pension system.

(47) "Qualified domestic relations order" has the meaning provided by Section 414(p) of the code.

(48) "Qualified survivor" means a person who is eligible to receive death benefits after the death of a primary party and includes only:

(A) a surviving spouse, if the spouse was continuously married to the primary party from the date when the primary party either voluntarily or involuntarily left active service as a member through the date of the primary party's death;

(B) all surviving, unmarried children who are either under 19 years of age or have a disability, as determined by the board under Section 6.06(o-2) of this article, and who were:

(i) born or adopted before the primary party either voluntarily or involuntarily left active service; or

(ii) born after the primary party left active service if the mother was pregnant with the child before the primary party left active service; and

(C) a surviving dependent parent of a primary party if the primary party is not survived by a spouse or child eligible for benefits.

(49) "Service retirement" means any period that a pensioner receives a retirement pension but does not include any period of disability retirement.

(50) "Spouse" means the person to whom a primary party is legally married under the laws of this state or any other state.

(51) "Traditional asset" includes stocks, bonds, and cash.

(52) "Trustee" means a member of the board.

(53) "Two-thirds vote," in reference to a vote of all the trustees, means a vote of 8 of the 11 trustees of the board.

Sec. 2.02. ACTUARIAL ASSUMPTIONS. (a) If the amount of any benefit or contribution is to be determined on the basis of actuarial assumptions that are not otherwise specifically set forth for that purpose in this article, the actuarial assumptions to be used are those earnings and mortality assumptions being used on the date of the determination by the pension system's qualified actuary and approved by the board.

(b) The actuarial assumptions being used at any particular time shall be attached by the executive director as an addendum to this article and treated for all purposes as a part of any plan created by this article. The executive director shall promptly update any addendum to conform to any changed actuarial assumptions approved by the board.

(c) The actuarial assumptions may be changed by the pension system's qualified actuary at any time if approved by the board, but no such change in actuarial assumptions may result in any decrease in benefits accrued as of the effective date of the change.

For expiration of this section, see Subsection (e).

Sec. 2.025. INDEPENDENT ACTUARIAL ANALYSIS AND LEGISLATIVE RECOMMENDATIONS.

(a) Before July 1, 2024, the State Pension Review Board shall select an independent actuary who the board shall hire to perform an actuarial analysis of the most recently completed actuarial valuation of the pension system. The independent actuary shall submit the analysis to the State Pension Review Board and the board not later than October 1, 2024. The analysis must include the independent actuary's:

- (1) conclusion regarding whether the pension system meets State Pension Review Board pension funding guidelines; and
- (2) recommendations regarding changes to benefits or to member or city contribution rates.

(b) Subject to Subsection (d) of this section, not later than November 1, 2024, the board shall by rule adopt a plan that:

- (1) complies with funding and amortization period requirements applicable to the pension system under Subchapter C, Chapter 802, Government Code; and
- (2) takes into consideration the independent actuary's recommendations under Subsection (a)(2) of this section.

(b-1) The board shall provide a copy of the analysis prepared under Subsection (a) of this section and a summary of any rules adopted by the board under Subsection (b) of this section to the State Pension Review Board.

(c) Not later than December 1, 2024, the State Pension Review Board shall submit a report to the legislature regarding actions taken under this section. The report required under this section must include a copy of the analysis prepared under Subsection (a) of this section and a summary of rules adopted by the board under Subsection (b) of this section.

(d) Notwithstanding any other provision of this article, a rule adopted by the board under Subsection (b) of this section that conflicts with a provision of this article remains in effect until:

(1) a law that is enacted by the legislature and becomes law preempts the rule; or

(2) the board amends the rule and the amendment takes effect, provided the board may only amend the rule if the pension system complies with the funding and amortization period requirements applicable to the pension system under Subchapter C, Chapter 802, Government Code.

(e) This section expires September 1, 2025.

Sec. 2.03. REFERENCES TO CERTAIN LAW. A reference to a statute made in this article includes a reference to any regulation, rule, order, or notice made by a governmental entity with the authority under law to adopt the regulation, rule, order, or notice, and on which the governmental entity intends persons to rely, as appropriate.

PART 3. ADMINISTRATION

Sec. 3.01. BOARD OF TRUSTEES.

(a) The pension system shall be administered by the board. The board shall execute its fiduciary duty to hold and administer the assets of the fund for the exclusive benefit of members and their beneficiaries under Section 802.203, Government Code, Section 67(f), Article XVI, Texas Constitution, and any other applicable law, in a manner that ensures the sustainability of the pension system for purposes of providing current and future benefits to members and their beneficiaries.

(b) Subject to Subsections (b-1) and (b-2) of this section, the board consists of 11 trustees who shall be selected and shall serve as follows:

(1) six trustees appointed by the mayor, in consultation with the city council;

(2) three trustees elected under rules adopted by the board by the members and pensioners of the pension system from a slate of nominees, in a number determined under the rules, selected and vetted by the nominations committee;

(3) subject to Subsection (b-3) of this section, one trustee who is a current or former police officer of the city

nominated and elected by members of the pension system under rules adopted by the board; and

(4) subject to Subsection (b-3) of this section, one trustee who is a current or former fire fighter of the city nominated and elected by members of the pension system under rules adopted by the board.

(b-1) To be appointed or elected a trustee under this section, a person:

(1) must have demonstrated financial, accounting, business, investment, budgeting, real estate, or actuarial expertise; and

(2) may not be an elected official of the city.

(b-2) To be appointed or elected a trustee under Subsection (b)(1) or (2) of this section a person may not be an active member or pensioner.

(b-3) If the board determines that it is not possible to nominate or elect a trustee under Subsection (b)(3) or (4) of this section who meets the requirements of Subsection (b-1) of this section, the board shall notify the nominations committee and the nominations committee shall select, vet, and nominate a slate of persons, the number of which is determined by board rule, who meet the requirements of Subsection (b-1) of this section, and the members of the pension system shall elect a trustee from the slate of nominees to represent the interests of police officers or fire fighters, as appropriate, of the city on the board. The nomination and election of a trustee under this subsection may be made without regard to whether the trustee is qualified under Subsection (b)(3) or (4), as applicable, of this section.

(b-4) A trustee is not required to reside in a particular city or county of this state.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 318 (H.B. 3158), Sec. 1.52(1), eff. September 1, 2017.

(d) A vacancy on the board in a trustee position under Subsection (b)(1) or (2) of this section shall be filled in the same manner as the original appointment, or election. The board by rule shall determine the manner by which a vacancy in a trustee position under Subsection (b)(3) or (4) of this section is filled.

(e) The mayor shall determine whether all trustees appointed under Subsection (b)(1) of this section hold office for staggered two-year terms or staggered three-year terms. The nominations committee shall determine whether all trustees elected under Subsection (b)(2), (3), or (4) of this section hold office for staggered two-year terms or staggered three-year terms. A trustee appointed or elected, as applicable, under Subsection (b)(1) or (2) of this section may not serve for more than six consecutive years on the board.

(f) The election of the trustees under Subsection (b)(2), (3), or (4) of this section, including an election under Subsection (b-3) of this section to fill a trustee position under Subsection (b)(3) or (4) of this section, shall be held under the supervision of the board, and the board shall adopt such rules governing the election procedure as it considers appropriate, as long as the rules are consistent with generally accepted principles of secret ballot and majority rule. The rules adopted by the board shall be recorded in the minutes of the board and made available to the members of any pension plan within the pension system.

(g) The board shall, in June of each odd-numbered year, elect from among its trustees a chairman, vice chairman, and a deputy vice chairman, each to serve for two-year terms. In addition, the board may elect, if it so chooses, a second deputy vice chairman to serve during the term of the incumbent chairman. The vice chairman shall be authorized to act in the place of the chairman in all matters pertaining to the board. In the absence of both the chairman and the vice chairman, the deputy vice chairman shall be authorized to act. In the absence of the chairman, vice chairman, and deputy vice chairman, the duties shall fall to the second deputy vice chairman.

(h) The executive director, or in the executive director's absence a member of the administrative staff designated by the board, shall serve as the secretary of the board.

(i) The board shall serve without separate compensation from the fund, but a trustee is entitled to reimbursement for travel expenses and, if applicable, to any appropriate

compensation from the city as if the trustee were performing the trustee's regular functions for the police or fire department or for the city. The board shall meet not less than once each month and may meet at any time on the call of its chairman.

(j) The board has full power to make rules pertaining to the conduct of its meetings and to the operation of the pension system as long as its rules are not, subject to Subsections (j-1) and (j-2) of this section, inconsistent with the terms of this article, any pension plan within the pension system, or the laws of this state or the United States to the extent applicable. A board meeting may be held by telephone conference call or by videoconference call in accordance with Sections 551.125 and 551.127, Government Code, except that Section 551.125(b), Government Code, does not apply.

(j-1) Subject to Subsection (o)(2) of this section, the board may adopt a rule that conflicts with this article:

(1) to ensure compliance with the code, including Section 415 of the code, and other applicable federal law;

(2) subject to Subsections (j-5) through (j-8) of this section, to amortize the unfunded actuarial accrued liability of the pension system within a period that does not exceed 35 years, if the board determines the rule is appropriate based on the evaluations required under Subsection (j-5) of this section; or

(3) subject to Subsections (j-6) and (j-7) of this section and notwithstanding any other law, to increase the benefits provided under this article in any manner the board determines appropriate if the increase will not cause the amortization period of the unfunded actuarial accrued liability of the pension system to exceed 25 years, after taking into account the impact of the increase.

(j-2) Except as provided by Subsection (j-1) of this section or Section 4.02(b) of this article, a provision of any plan provided by the pension system may only be amended if approved by the board. An amendment described by this subsection:

(1) may not cause the amortization period of the unfunded actuarial accrued liability of the pension system to exceed 35 years, after taking into account the impact of the

amendment, as determined by the board and reviewed by the State Pension Review Board; and

(2) is not required to be ratified by the legislature.

(j-3) The board may correct any defect, supply any omission, and reconcile any inconsistency that may appear in this article in a manner and to the extent that the board believes would:

(1) be expedient for the administration of the pension system;

(2) be for the greatest benefit of all members, pensioners, and qualified survivors; and

(3) not adversely affect the benefits of a member, pensioner, or qualified survivor.

(j-4) The board has full discretion and authority to construe and interpret the combined pension plan and to do all acts necessary to carry out the purpose of the combined pension plan. A decision of the board is final and binding on all affected parties.

(j-5) Not later than January 1, 2018, the board shall conduct an evaluation of:

(1) how benefits are computed under this article to identify potential means of abusing the computation of benefits to inflate pension benefits received by pensioners; and

(2) the impact, including the impact on the combined pension plan, of establishing one or more alternative benefit plans, including a defined contribution plan or a hybrid retirement plan that combines elements of both a defined benefit plan and a defined contribution plan, for newly hired employees of the city and for members who voluntarily elect to transfer to an alternative benefit plan.

(j-6) The board may not adopt a rule under Subsection (j-1)(2) or (3) of this section unless the rule has first been reviewed by the State Pension Review Board and the State Pension Review Board finds that implementation of a rule under:

(1) Subsection (j-1)(2) of this section complies with the amortization period prescribed by that subdivision and Subsection (j-8) of this section; or

(2) Subsection (j-1)(3) of this section complies with the amortization period prescribed by that subdivision.

(j-7) The board shall provide the State Pension Review Board with a copy of a proposed rule for purposes of Subsection (j-6) of this section at least 90 days before the date the board intends to implement the rule.

(j-8) The board may not adopt a rule under Subsection (j-1)(2) of this section based on an evaluation under Subsection (j-5)(2) of this section if the board determines implementation of the rule would cause the amortization period of the unfunded actuarial accrued liability of the combined pension plan or any plan established under this article by the pension system to exceed 35 years, after taking into account implementation of the rule.

(j-9) At least twice each year, the board shall have a meeting to receive public input regarding the pension system and to inform the public about the health and performance of the pension system. The State Pension Review Board is entitled to all documents and other information provided to the public or that are the basis for information provided to the public, as determined by the State Pension Review Board, for purposes of this subsection and shall independently review the information to ensure its validity.

(j-10) An employee or other agent acting on behalf of the pension system or the city must certify to the State Pension Review Board that any information provided by the pension system or city, as appropriate, under this article or other law is accurate and based on realistic assumptions.

(k) The board has full power, through the chairman, to issue process for witnesses and to administer oaths to witnesses and examine witnesses as to any matter affecting retirement, disability, or death benefits under any pension plan within the pension system, and to compel witnesses to testify. In addition, the board may request investigative services from either department in connection with any matter before the board.

(l) The board has the responsibility for the administration of the pension system and shall order payment from the fund in accordance with the terms of the appropriate plans within the pension system. Money from the fund may not be paid except on order of the board.

(m) The board has full power to invest the assets of the fund in accordance with Section 4.07 of this article.

(n) Six trustees of the board constitute a quorum at any meeting.

(o) No action may be taken by the board except at a meeting. Except as otherwise specifically provided by this article or other law:

(1) no action shall be taken during a board meeting without the approval of a majority of the trustees of the board; and

(2) no action otherwise authorized by this article or other law may be taken that establishes an alternative benefit plan, reduces the city contribution rate, increases the member contribution rate, or reduces benefits, including accrued benefits, without the approval of at least a two-thirds vote of all the trustees of the board.

(o-1) Only actions of the board taken or approved of during a meeting are binding on the board, and no other written or oral statement or representation made by any person is binding on the board or the pension system.

(p) The board may file suit on behalf of the pension system in a court of competent jurisdiction regardless of the court's location. The board has sole authority to litigate matters on behalf of the pension system. Notwithstanding Chapter 15, Civil Practice and Remedies Code, or any other law, an action against the pension system or the board shall be brought in a court of competent jurisdiction located in the city or county in which the pension system is located.

(q) The board may purchase from one or more insurers one or more insurance policies that provide for the reimbursement of a trustee or employee of the pension system for liability imposed as damages caused by, and for costs and expenses

incurred by the individual in defense of, an alleged act, error, or omission committed by the individual in the individual's capacity as a fiduciary or employee of the pension system. The board may not purchase an insurance policy that provides for the reimbursement of a trustee or employee of the pension system due to the trustee's or employee's dishonesty, fraudulent breach of trust, lack of good faith, intentional fraud or deception, or intentional failure to act prudently.

(r) The board shall adopt a code or codes of ethics consistent with Section 825.212, Government Code. In adopting or amending a code or codes of ethics, the board may consider comments on the policy from the city attorney of the city. The board shall:

(1) review the code or codes of ethics on an annual basis and amend the code or codes as the board considers necessary;

(2) file a copy of the code or codes of ethics adopted or amended in accordance with this subsection with the State Pension Review Board; and

(3) provide a copy of the code or codes of ethics adopted or amended in accordance with this subsection to the city attorney.

(s) The board shall develop an Internet website designed to give active members and pensioners access to the information concerning the pension system and the individual's participation in the pension system required by Section 802.106, Government Code, as well as information concerning the financial health of the pension system.

Sec. 3.011. NOMINATIONS COMMITTEE. (a) Subject to Subsection (b) of this section, the nominations committee consists of:

(1) the executive director, who is a nonvoting member; and

(2) the president, chair, or other executive head of the following organizations or their successor organizations, or that person's designee:

(A) the Dallas Black Firefighters Association;

(B) the Black Police Association of Greater

Dallas;

(C) the National Latino Law Enforcement Organization;

(D) the Dallas Fraternal Order Police Lodge 588;

(E) the Dallas Police Association;

(F) the Dallas Fire Fighters Association, International Association of Fire Fighters Local No. 58;

(G) the Dallas Hispanic Firefighters Association, Inc.;

(H) the Dallas Police Retired Officers Association;

(I) the Dallas Retired Firefighters Association;

(J) the Retired Black Firefighters Association of Dallas; and

(K) the Dallas Hispanic Retired Fire Fighters Association.

(b) If an organization described by Subsection (a)(2) of this section elects not to participate on the nominations committee, is prohibited from participating on the nominations committee under Subsection (g) of this section, or ceases to exist, the nominations committee members appointed under that subsection consist only of representatives of the remaining organizations, if any.

(c) The executive director shall serve as presiding officer of the nominations committee.

(d) The nominations committee shall meet at the call of the presiding officer.

(e) The nominations committee shall nominate trustees to the board in accordance with Sections 3.01(b)(2) and (b-3) of this article.

(f) A person serving on the nominations committee under Subsection (a)(2) of this section serves without compensation and may not be reimbursed for travel or other expenses incurred while conducting the business of the nominations committee. The executive director may not receive additional compensation for service on the nominations committee.

(g) An organization described by Subsection (a)(2) of this section may not participate on the nominations committee unless the organization is in good standing with the secretary of state, if applicable.

(h) Chapter 2110, Government Code, does not apply to the nominations committee.

(i) The nominations committee may establish policies and procedures governing its operations.

Sec. 3.012. REMOVAL OF TRUSTEES. (a) In accordance with procedures adopted by board rule, a trustee:

(1) appointed under Section 3.01(b)(1) of this article may be removed by the mayor for cause; and

(2) elected under Section 3.01(b)(2), (3), or (4) of this article may be removed by the nominations committee for cause.

(b) It is a cause for removal of a trustee from the board that the trustee:

(1) does not have at the time of taking office the qualifications required by Section 3.01(b) or (b-1)(1) of this article, subject to Subsection (b-3) of that section;

(2) does not maintain during service on the board the qualifications required by Section 3.01(b) or (b-1)(1) of this article, subject to Subsection (b-3) of that section;

(3) is ineligible for membership under Section 3.01(b-1)(2) or (b-2) of this article; or

(4) is absent from more than 40 percent of the meetings that the trustee is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(c) The validity of an action of the board is not affected by the fact that it is taken when a cause for removal of a trustee exists.

(d) If the executive director has knowledge that a potential cause for removal exists, the executive director shall notify the chairman of the board of the potential cause. The chairman shall then notify the mayor or nominations committee, as appropriate, that a potential cause for removal exists. If

the potential cause for removal involves the chairman, the executive director shall notify the vice chairman or next highest ranking officer of the board, who shall then notify the mayor or nominations committee, as appropriate, that a potential cause for removal exists.

Sec. 3.013. TRUSTEE TRAINING. (a) A person who is appointed or elected to the board and qualifies for office as a trustee shall complete a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the law governing the pension system's operations;
- (2) the programs, functions, rules, and budget of the pension system;
- (3) the scope of and limitations on the rulemaking authority of the board;
- (4) the results of the most recent formal audit of the pension system;
- (5) the requirements of:
 - (A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and
 - (B) other laws applicable to a trustee in performing the trustee's duties, including the board's fiduciary duties described under Section 3.01(a) of this article;
- (6) the code or codes of ethics adopted under Section 3.01(r) of this article and any applicable ethics policies adopted by the Texas Ethics Commission; and
- (7) financial training regarding the risks of investing in alternative investments.

(c) The executive director shall create a training manual that includes the information required by Subsection (b) of this section. The executive director shall distribute a copy of the training manual annually to each trustee. On receipt of the training manual, each trustee shall sign and submit to the executive director a statement acknowledging receipt of the training manual.

Sec. 3.02. PROFESSIONAL CONSULTANTS. In addition to the authority of the board to employ the services of certain consultants set forth in this article, the board has the authority to employ the services of any professional consultant recommended by the executive director, including investment advisors and investment managers, whenever the services of the consultants are considered necessary or desirable and in the best interests of the pension system, as determined by the board in consultation with the executive director. A professional consultant shall receive such compensation as may be determined by the board in accordance with Section 4.01 of this article.

Sec. 3.025. CHIEF INVESTMENT OFFICER. The executive director may hire a chief investment officer, subject to confirmation by the board, to assist the pension system regarding the investment of assets of the fund. Compensation for a chief investment officer hired under this section shall be made in accordance with Section 4.01 of this article.

Sec. 3.03. LEGAL ADVISOR. (a) The city attorney of the city may ex officio be the legal advisor to the board.

(b) Subject to Subsection (b-1) of this section, the city attorney or an assistant city attorney may attend board meetings and may advise the board on any matter on which the pension system requests a legal opinion from the city attorney.

(b-1) The city attorney or an assistant city attorney is not required to provide an opinion under Subsection (b) of this section unless the opinion is requested by the city council on behalf of the pension system. The city attorney or assistant city attorney may decline to provide the opinion if the subject matter of the request is too dependent on disputed facts to permit a generalized opinion, as determined by the city attorney or assistant city attorney.

(c) The board may retain other attorneys to serve as legal advisors to the board. The executive director may hire a chief legal officer, subject to confirmation by the board, or other attorneys if necessary to carry out the business of the pension

system. Compensation for a chief legal officer or other attorneys hired under this subsection shall be made in accordance with Section 4.01 of this article.

Sec. 3.04. APPOINTMENT OF EXECUTIVE DIRECTOR.

(a) The board has the authority to appoint an executive director to assist the board with administering the pension system and ensure that records are kept of the proceedings of the board. Subject to Subsection (a-1) of this section, a person appointed executive director under this section:

- (1) must have, to the extent possible, relevant experience in managing a similarly situated business entity; and
- (2) may not be a current or former trustee.

(a-1) During any period in which the most recent actuarial valuation of the pension system indicates that the period needed to amortize the unfunded actuarial accrued liability of the pension system exceeds 35 years, the board shall, to the extent lapsed investments are a significant portion of the pension system's assets, ensure that the executive director appointed under Subsection (a) of this section has, or hires staff that has, appropriate experience in managing a business entity with lapsed investments in a manner that resulted in the improved liquidity or profitability of the business entity.

(b) Subject to Subsections (b-1) and (b-3) of this section, the executive director may select any number of persons the executive director determines appropriate to assist the executive director in carrying out the executive director's duties under this section. Subject to Section 4.01 of this article, the titles and salaries of persons selected to assist the executive director shall be determined by the executive director.

(b-1) The executive director may not select a person to assist the executive director who is an active, former, or retired police officer or fire fighter of the city.

(b-2) The executive director shall establish the organizational structure of pension system employees to optimize administration of the pension system.

(b-3) A former or retired employee of the city may not before the second anniversary of the first day of the month following the date the person terminated employment with the city serve the pension system in any capacity other than as a trustee. Except as specifically provided by this article, including Section 3.01(b)(3) or (4) of this article, or other law, an employee of the city may not serve the pension system in any capacity.

(c) The executive director and those persons selected to assist the executive director may be considered employees of the city. Unless otherwise delegated to the executive director, the board shall have the ultimate authority to retain, discipline, or terminate the engagement of the executive director.

(d) If acting in the executive director's own discretion, the executive director owes a fiduciary duty to the pension system and shall ensure the sustainability of the pension system for the purpose of providing current and future benefits to members of the pension system and their beneficiaries. If the executive director is acting at the direction of the board and not exercising the executive director's own discretion, the executive director does not owe a fiduciary duty under this subsection.

PART 4. FINANCES

Sec. 4.01. PAYMENT OF ADMINISTRATIVE AND PROFESSIONAL SERVICES FEES.

(a) The board shall pay for all costs of administration out of the income from the fund when in the judgment of the board the costs are necessary, including the cost of:

- (1) salaries and benefits for the executive director and administrative staff;
- (2) office expenses;
- (3) expenses associated with securing adequate office space and associated utilities;
- (4) compensation for professional consultants, professional investment managers, or other persons providing professional services; and

(5) any other expenses approved by the board.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 318 (H.B. 3158), Sec. 1.52(2), eff. September 1, 2017.

(c) No expenditure for the costs of administration, including the payment of any fee for professional consultants, professional investment management services, or any other person providing professional services, may be made from the fund without the approval of the board.

(d) After the board has developed an annual budget for the pension system, the budget shall be presented to the city manager for comment. The city manager may request the board to reconsider the appropriation for any expenditure at a board meeting, but the board shall make the final determination concerning any appropriation.

Sec. 4.02. USE OF PUBLIC FUNDS.

(a) The financial share of the cost of the pension system to be paid out of the public treasury shall be as provided by this section.

(b) Funds contributed by the city as its share of the amount required to finance the payment of benefits under the pension system may be used for no other purpose. The city is not responsible for the payment of any administrative or professional service fees of the pension system. Any change to the contributions required to be made to the pension system by the city may only be made:

- (1) by the legislature;
- (2) by a majority vote of the voters of the city; or
- (3) in accordance with a written agreement entered into between the pension system, by at least a two-thirds vote of all trustees of the board, and the city, provided that a change made in accordance with this subdivision may not increase the period required to amortize the unfunded actuarial accrued liability of the fund.

(c) Funds shall be appropriated by the city to carry out various other provisions contained in this article that authorize expenditures in connection with the administration of the pension system.

(d) Subject to Section 4.025 of this article, the city shall make contributions to the pension system biweekly in an amount equal to the sum of:

(1) the greater of:

(A) 34.5 percent of the aggregate computation pay paid to members during the period for which the contribution is made; or

(B) the applicable amount set forth below:

(i) \$5,173,000 for the biweekly pay periods beginning with the first biweekly pay period that begins after September 1, 2017, and ends on the last day of the first biweekly pay period that ends after December 31, 2017;

(ii) \$5,344,000 for the 26 biweekly pay periods immediately following the last biweekly pay period described by Subparagraph (i) of this paragraph;

(iii) \$5,571,000 for the 26 biweekly pay periods immediately following the last biweekly pay period described by Subparagraph (ii) of this paragraph;

(iv) \$5,724,000 for the 26 biweekly pay periods immediately following the last biweekly pay period described by Subparagraph (iii) of this paragraph;

(v) \$5,882,000 for the 26 biweekly pay periods immediately following the last biweekly pay period described by Subparagraph (iv) of this paragraph;

(vi) \$6,043,000 for the 26 biweekly pay periods immediately following the last biweekly pay period described by Subparagraph (v) of this paragraph;

(vii) \$5,812,000 for the 26 biweekly pay periods immediately following the last biweekly pay period described by Subparagraph (vi) of this paragraph;

(viii) \$6,024,000 for the 26 biweekly pay periods immediately following the last biweekly pay period described by Subparagraph (vii) of this paragraph through the biweekly pay period that ends after December 31, 2024; and

(ix) \$0 for each subsequent biweekly pay period beginning with the first biweekly pay period following the last biweekly pay period described by Subparagraph (viii) of this paragraph; and

(2) except as provided by Subsection (e) of this section, an amount equal to 1/26th of \$13 million.

(e) The city is required to pay the contribution amount described by Subsection (d)(2) of this section only through the last biweekly pay period that ends after December 31, 2024.

(f) Repealed by Acts 2017, 85th Leg., R.S., Ch. 318 (H.B. 3158), Sec. 1.52(3), eff. September 1, 2017.

Sec. 4.025. CITY OR MEMBER CONTRIBUTIONS IF NO UNFUNDED ACTUARIAL LIABILITIES.

Notwithstanding Section 4.02 or 4.03 of this article, if the pension system has no unfunded actuarial liability according to the most recent actuarial valuation, the annual normal costs must be equally divided between the city and the members unless equally dividing the costs would increase the member contribution rates beyond the rates prescribed by Section 4.03 of this article. The board shall adjust the city contribution rates under Section 4.02 of this article and the member contribution rates under Section 4.03 of this article accordingly, and certify the adjusted rates. After the completion of a subsequent actuarial valuation showing unfunded actuarial liabilities, the contribution rates applicable under Sections 4.02 and 4.03 of this article apply.

Sec. 4.03. MEMBER CONTRIBUTIONS.

(a) Subject to Subsection (a-1) of this section and except as provided by Section 4.025 of this article, each Group A member of the combined pension plan shall have 13.5 percent of base pay deducted from the member's wages on a biweekly basis, and the contributions shall be promptly remitted to the fund by the city.

(a-1) If a Group A member is assigned, for any period, to a job-sharing program or any similar work schedule that is considered by the member's department to be less than a full-time work schedule, the member's contributions are determined by multiplying the applicable contribution rate by a fraction, the numerator of which is the number of hours the member actually worked during the period and the denominator of which is the

number of hours the member would have worked during the period if the member had been working a full-time work schedule.

(b) Each member shall contribute to the fund under the applicable terms of this article until the member leaves active service with either department. If a member leaves active service with a department, the member shall cease making contributions.

(c) Each Group B member shall authorize the city to deduct from the member's salary a percentage of the member's computation pay. The authorization shall be in writing and filed with the executive director.

(d) Subject to Subsection (d-1) of this section and except as provided by Section 4.025 of this article, for pay periods starting on or after September 1, 2017, each Group B member shall have 13.5 percent of the member's computation pay deducted from the member's wages on a biweekly basis and the contributions shall be promptly remitted to the fund by the city.

(d-1) If a Group B member is assigned, for any period, to a job-sharing program or any similar work schedule that is considered by the member's department to be less than a full-time work schedule, the member's contributions are determined by multiplying the applicable contribution rate by a fraction, the numerator of which is the number of hours the member actually worked during the period and the denominator of which is the number of hours the member would have worked during the period if the member had been working a full-time work schedule.

(d-2) For purposes of Subsection (d) of this section, "computation pay" includes computation pay paid to a Group B member during any period the member is receiving workers' compensation.

(e) The city shall determine the frequency of deductions for member contributions, as long as there is at least one deduction each month.

(f) Each Group B member shall contribute to the fund beginning on the effective date of the member's Group B membership.

(g) The percentage of base pay contributed by Group A members or computation pay contributed by Group B members may not be altered except by an adjustment under Section 4.025 of this article.

(h) The only purposes for which member contributions to the fund and the investment income derived from member contributions may be applied are:

(1) to the payment of benefits prescribed by this article;

(2) to the payment of such administrative and professional service costs of the pension system as are provided for under Section 4.01 of this article or as may be within the discretion of the board to incur; and

(3) to invest any surplus in accordance with Section 4.07 of this article.

(i) Member contributions under this article or any payments a member is entitled to make under this article to receive additional pension service may be picked up by the city under the terms of an appropriate resolution of the city council.

Sec. 4.04. REFUND OF GROUP B MEMBER CONTRIBUTIONS.

(a) Except as provided by Subsection (d) or (e) of this section, a Group B member who, either voluntarily or involuntarily, leaves active service is entitled to a refund from the fund of the total amount of the member's Plan B and Group B contributions, without interest, that were paid beginning with the effective date of the member's Group B membership or membership in Plan B. A refund under this subsection results in a total cancellation of pension service credit and the member and any person who would otherwise take by, through, or under the member is not entitled to any benefits from the pension system.

(b) Old plan or Plan A contributions paid to the fund by a Group B member may not be refunded from the fund.

(c) A Group B member who desires a refund of the Plan B or Group B contributions under Subsection (a) of this section must

make written application for the refund with the executive director. In no case may any refund be made to a Group B member before the expiration of 30 days after the date the person leaves active service.

(d) Subject to Subsection (k) of this section, if a Group B member with less than five years of pension service either voluntarily or involuntarily leaves active service and fails to make written application for a refund of contributions within three years after the date of the notice described by Subsection (j) of this section made by the board, the person forfeits the right to withdraw any portion of the contribution, and the total amount of Plan B and Group B contributions the person made will remain in the fund. If the Group B member described by this subsection dies after leaving active service, the deceased member's designee may apply for the refund of the person's contributions, resulting in an appropriate loss of pension service if the application is filed with the executive director within three years after the date of the notice described by Subsection (j) of this section made by the board. Subject to Subsection (k) of this section, if a Group B member's designee fails to apply for a refund of the Group B member's contributions within the three-year period described by this subsection, the designee forfeits any right to the contributions, and the total amount of the Plan B and Group B contributions made by the Group B member will remain in the fund.

(e) Subject to Subsection (k) of this section, if a Group B member with five or more years of pension service either voluntarily or involuntarily leaves active service and fails to make written application for a refund of the person's Plan B and Group B contributions within three years after the date of the notice described by Subsection (j) of this section made by the board, the person forfeits the right to withdraw any portion of the contributions, and the total amount of the contributions will remain in the fund. A Group B member described by this subsection may, however, apply for a Group B retirement pension under Section 6.02 of this article or, if the Group B member

dies before the member is eligible to apply for a Group B retirement pension, the member's qualified survivors may apply for Group B death benefits under Sections 6.06, 6.061, 6.062, and 6.063 of this article. If the Group B member dies before the member is eligible to apply for a Group B retirement pension and the member has no qualified survivors, the Group B member's designee may apply for a refund of the Group B member's Plan B and Group B contributions, resulting in a total cancellation of pension service. Subject to Subsection (k) of this section, if a Group B member's designee fails to apply for a refund of the Group B and Plan B member's contributions within the three-year period described by this subsection, the designee forfeits any right to the contributions, and the total amount of the Plan B and Group B contributions made by the Group B member will remain in the fund.

(f) Subject to Subsections (g) and (h) of this section, a Group B member, other than a Group B member who elects or has elected to receive a Group A benefit or a benefit determined under the old plan or Plan A, who either voluntarily or involuntarily leaves active service with five or more years of pension service is entitled to:

(1) subject to Subsection (f-1) of this section, have the total amount of the person's Plan B and Group B contributions to the fund refunded in accordance with Subsection (a) of this section, which results in a loss of all of the person's accrued pension service; or

(2) if the Group B member first entered active service before January 1, 1999, elect to take a refund of less than the total amount of the person's Plan B and Group B contributions while leaving a sufficient amount to retain pension service amounting to five or more years.

(f-1) A Group B member who elects to receive a refund under Subsection (f)(1) of this section and any person who would otherwise take by, through, or under the member is not entitled to any benefits from the pension system.

(g) If a Group B member elects a refund of a portion of the person's contributions under Subsection (f)(2) of this section, the amount of the refund shall equal the total amount

of the person's Plan B and Group B annual contributions, without interest, for each full year of pension service canceled, computed based on the earliest contributions made.

(h) A Group B member who first entered active service on or after January 1, 1999, is entitled to have the total amount of the person's Group B contributions refunded under Subsection (a) of this section in accordance with Subsection (f)(1) of this section, but may not receive a refund of less than the total amount in accordance with Subsection (f)(2) of this section.

(h-1) A Group B member who leaves active service and later returns to active service is permitted to repay to the fund any previously withdrawn employee contributions and receive pension service in accordance with Section 5.07(d) of this article as a Group B member to the extent that before again leaving active service, the Group B member repays to the fund the previously withdrawn contributions with interest, calculated at the interest rate from time to time used in the pension system's actuarial rate of return assumptions, compounded annually, on the previously withdrawn contributions.

(i) If a person becomes a Group B member under Section 5.01(b) of this article and again, either voluntarily or involuntarily, leaves active service and makes application for a refund of contributions under this section, the person is entitled to a refund from the fund of the following:

(1) the amount of Group B contributions to the fund, without interest, that were paid from the date the person returned to active service following service or disability retirement; plus

(2) the excess, if any, of:

(A) the person's Plan B and Group B contributions to the fund, without interest, that were paid from the effective date of the person's original Group B or Plan B membership in Plan B until the time the person originally left active service because of the service or disability retirement; less

(B) the total amount of benefits the person received during service or disability retirement.

(j) On the 58th anniversary of the birth of a Group B member described by Subsection (d) or (e) of this section, or on the board's receipt of notice of the death of the Group B member, the board shall, by registered or certified mail, return receipt requested, attempt to notify the Group B member or designee, as applicable, of the status of the person's entitlement to a refund of contributions from the fund.

(k) A Group B member or designee described by Subsection (d) or (e) of this section shall have the person's right, title, interest, or claim to a refund of the Group B member's contributions reinstated only on the board's grant of their written request for a reinstatement and refund. The board's decision shall be based on a uniform and nondiscriminatory basis.

Sec. 4.05. INVESTMENT COUNSELOR; QUALIFICATIONS.

(a) The board may employ from time to time an investment counselor to advise the board in the investment and reinvestment of the assets of the fund. Only the following are eligible for employment as an investment counselor:

(1) any organization whose regular business functions include rendering investment advisory services to pension and retirement funds and that is registered as an "investment adviser" under the Investment Advisers Act of 1940; and

(2) any bank, as defined in the Investment Advisers Act of 1940, that maintains a trust department and offers investment services to pension and retirement funds.

(b) The investment counselor shall receive such compensation as may be determined by the board and as authorized by Section 4.01 of this article.

Sec. 4.06. INVESTMENT CUSTODY ACCOUNT OR MASTER TRUST AGREEMENTS.

(a) If the board contracts for investment management services as authorized by Section 4.07 of this article, it may, with respect to every such contract, also enter into an investment custody account agreement, designating one or more banks as custodian or master trustee for any assets of the fund.

(b) Under a custody account or master trust agreement, the board shall require the designated bank to perform the duties and assume the responsibilities of a custodian in relation to the investment contract to which the custody account or master trust agreement is established.

(c) The authority of the board to make a custody account or master trust agreement is supplementary to its authority to make an investment management contract. Allocation of assets to a custody account or master trust shall be coordinated by the executive director, as authorized by the board, and the bank designated as custodian or master trustee for the assets.

(d) Any custody account or master trust agreement made by the board shall establish such compensation for the custodian or master trustee as may be determined by the board and as authorized by Section 4.01 of this article.

Sec. 4.07. INVESTMENT OF SURPLUS.

(a) Subject to Section 4.071 of this article, if the board determines that there is in the fund a surplus exceeding a reasonably safe amount to take care of current demands on the pension system, the board may invest or direct the investment of the surplus for the sole benefit of the pension system.

(b) In making investments and supervising investments, trustees shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to probable income from the assets as well as the probable safety of their capital.

(c) The board has the ultimate responsibility for the investment of funds. The board may exercise this responsibility directly by purchasing or selling securities or other investments, or it may exercise discretion in determining the procedure that it deems most efficient and beneficial for the pension system in carrying out the responsibility. The board may contract for professional advisory services regarding the purchase or sale of securities or other investments pursuant to

Section 3.02 of this article. A professional advisory service shall receive such compensation as may be determined by the board in accordance with Section 4.01 of this article.

(d) The board also has the authority to contract for professional investment management services. Any contract that the board makes with an investment manager shall set forth the board's investment policies and guidelines. A professional investment management service shall receive such compensation as may be determined by the board in accordance with Section 4.01 of this article.

(e) The board, in exercising its control, may at any time, and shall at frequent intervals, monitor the investments made by any investment manager and shall enforce full compliance with the requirements of the board.

(f) If the board contracts for and receives professional advisory services or professional investment management services, the board has no greater liability under the terms of this section than otherwise provided for under the Government Code or the Texas Trust Code.

(g) A bank or trust company that has custody and trustee powers and a contract with the board to provide assistance in making investments shall be the custodian or master trustee of any of the securities or other assets of the fund. Pursuant to Section 4.06 of this article, the board may designate a bank to serve as custodian or master trustee, or subcustodian or submaster trustee, to perform the customary duty of safekeeping as well as duties incident to the execution of transactions. As the demands of the pension system require, the board shall withdraw from the custodian or master trustee money previously considered surplus in excess of current cash and proceeds from the sale of investments. The money may without distinction be used for the payment of benefits pursuant to each of the plans within the pension system and for other uses authorized by this article and approved by the board.

(h) The board through policy shall establish an investment advisory committee composed of trustees and outside investment professionals to review investment related matters as prescribed

by the board and make recommendations to the board. A majority of the members of the committee established under this subsection must be outside investment professionals.

Sec. 4.071. BOARD APPROVAL OF CERTAIN ALTERNATIVE INVESTMENTS.

(a) The executive director, an investment manager, a provider of professional investment management services or professional advisory services, or any other person delegated authority to invest or reinvest pension system assets under this article may not invest pension system assets in a single alternative investment unless the board votes to approve the investment by at least a two-thirds vote of all the trustees.

(b) The board may adopt rules necessary to implement this section.

Sec. 4.08. ACTUARIAL VALUATION.

(a) The board has the authority to employ a qualified actuary to provide a continuing observation of the operation of the pension system and to make recommendations and give advice to the board about the condition of the assets of the fund and the administration of the pension system. A qualified actuary shall receive such compensation as is determined by the board in accordance with Section 4.01 of this article.

(b) A qualified actuary shall perform continuing actuarial observation of the assets of the fund not less than once every two years and make a report of the condition of the assets of the fund to the board. The board may require more frequent reports.

(c) On written request by the city, the executive director shall make available to the city's actuary or auditor the information and documents provided to or used by the pension system's actuary or auditor in conducting an actuarial valuation under this article or preparing any other document prepared under this article.

Sec. 4.09. REWARDS, DONATIONS, AND CONTRIBUTIONS.

Any reward, donation, or contribution given to any member as payment or gratuity for service performed in the line of duty shall be turned over to the chief of the member's department, who shall, in turn, forward the reward, donation, or contribution to the executive director of the pension system for deposit in the fund.

PART 5. MEMBERSHIP

Sec. 5.01. MEMBERSHIP IN COMBINED PENSION PLAN.

(a) Except as provided by Subsection (a-1) of this section, the membership of the combined pension plan is composed of the following persons:

(1) Group A members:

(A) police officers or fire fighters who are on active service and who as of February 28, 1973, had filed a written statement with the pension system of their desire to participate in either the old plan or Plan A;

(B) police officers and fire fighters who are on active service and who were employed and receiving compensation from the city as a police officer or a fire fighter before March 1, 1973, and who made contributions to either the old plan or Plan A attributable to any period of employment before March 1, 1973; and

(C) except as provided by Subsection (b) of this section, persons who elect to become Group A members under that subsection; and

(2) Group B members:

(A) police officers and fire fighters who are on active service and who were formerly members of either the old plan or Plan A and who, as of April 30, 1973, had filed a written statement with the pension system of their desire to participate in Plan B;

(B) police officers and fire fighters who are on active service and who on or after March 1, 1973, and before January 1, 1993, became members of Plan B;

(C) as a condition of employment, any police officer or fire fighter who is initially employed as a police officer or a fire fighter by the city on or after January 1, 1993;

(D) as a condition of return to active service and except as provided by Subsection (b) of this section, former members of the old plan or Plan A who left active service before March 1, 1973;

(E) as a condition of return to active service and except as provided by Subsection (c) of this section, former Group B members who are no longer on active service, whether or not the persons were ever a member of the old plan, Plan A, or the combined pension plan;

(F) Group A members who are on active service and meet the requirements and make an election under Subsection (d) of this section; and

(G) persons who are on active service and make an election under Subsection (e) of this section.

(a-1) Group A or Group B members do not include any employee of the city who is:

(1) required by ordinance or who elects, in accordance with an ordinance, to participate in an alternative benefit plan established under Section 3.01(j-1)(2) of this article based on an evaluation under Section 3.01(j-5)(2) of this article; or

(2) required by ordinance to participate in an alternative benefit plan established under Section 810.002, Government Code.

(b) A person who has received an old plan, Plan A, or combined pension plan retirement or disability pension on or after March 1, 1973, may, if the person returns to active service, elect to participate as a Group A or Group B member by filing a written application for membership with the executive director not later than 60 days after the date of return to active service. If the person described by this subsection does not elect to become a Group A or Group B member, the person

shall on leaving active service receive a retirement pension in an amount that is unadjusted for the period of return to active service if the person meets all of the requirements of Group A membership.

(c) A Group B pensioner who was never a member of the old plan, Plan A, or the combined pension plan before January 1, 1993, may, if the person returns to active service, elect to become a Group B member by filing a written application for membership with the executive director not later than 60 days after the date of return to active service. If the person described by this subsection does not elect to again become a Group B member, on leaving active service, if the person meets all applicable requirements of this article, the person shall receive benefits in an amount equal to the amount the person was receiving as of the day before the day the person returned to active service, and the person's base pension shall be the same as the base pension originally computed before the return to active service.

(d) A person who is on active service and is a Group A member may, before the person participates in DROP, irrevocably elect to become a Group B member by filing a written application with the executive director. On and after the filing of the application, the Group A member shall make contributions to the fund at the rate applicable to Group B members. However, the contributions do not, by themselves, establish Group B membership. Group B membership is contingent on the satisfaction of the following conditions:

(1) the person must, before the person elects to participate in DROP, pay an amount to the fund equal to the difference between the contributions the person would have made to the fund had the person been a Group B member for the entire period the person could otherwise have been a Group B member before making application for membership and the contributions the person actually made during that period, plus interest calculated in accordance with procedures adopted by the board from time to time; and

(2) the payments described by this subsection must be completed before the earlier of the date on which the person begins participation in DROP or leaves active service in accordance with procedures adopted by the board from time to time.

(d-1) If the fund does not receive payment under Subsection (d)(1) of this section by the date prescribed by Subsection (d)(2) of this section, all payments made under Subsection (d)(1) of this section, as well as those contribution amounts paid by the person after the person's application for Group B membership that are in excess of the Group A member contribution rate, shall be returned without accrued interest to the person, or in the event of the person's death to the person's designee, as applicable.

(e) A person who is on active service and has never been a member of any plan within the pension system may elect to become a Group B member on a prospective basis by filing a written application for membership with the executive director.

Sec. 5.02. EFFECTIVE DATE OF GROUP B MEMBERSHIP.

(a) The effective date of Group B membership for a person who becomes a Group B member under Section 5.01(a)(2)(A) or (B) of this article is the date the Group B member first became a member of Plan B.

(b) The effective date of Group B membership for a person who becomes a Group B member pursuant to Section 5.01(a)(2)(C) of this article is the day the person begins active service.

(c) The effective date of Group B membership for a person who becomes a Group B member and is described by Section 5.01(a)(2)(D) of this article is the date of the person's return to active service.

(d) The effective date of Group B membership for a person who again becomes a Group B member and is described by Section 5.01(a)(2)(E) of this article is the person's original effective date of Group B membership, adjusted for any period for which the person was not on active service or has withdrawn some, but not all, contributions to the fund pursuant to Section 4.04 of

this article. If, however, the person withdraws all contributions to the fund in accordance with Section 4.04 of this article, and the person does not replace the previously withdrawn contributions together with interest as provided by Section 4.04(h-1) of this article, the effective date of the person's membership is the date of return to active service.

(e) The effective date of membership for a person who becomes a Group B member pursuant to Section 5.01(b) of this article is the date on which written application for the membership is filed with the executive director. The effective date of membership for a person who becomes a Group A member pursuant to Section 5.01(b) of this article is the person's original effective date of membership in the old plan, Plan A, or the combined pension plan, whichever is applicable.

(f) The effective date of Group B membership for a Group B pensioner who again becomes a Group B member pursuant to Section 5.01(c) of this article is the pensioner's original effective date of membership, adjusted for any period the person was not on active service.

(g) The effective date of Group B membership for a person who joins this plan pursuant to Section 5.01(d) of this article is March 1, 1973.

(h) A person described by Subsection (a), (c), (d), (e), (f), or (g) of this section shall be given full pension service for the time the person was a contributing member of the old plan, Plan A, the combined pension plan, and Plan B, and the pension service shall be counted as if it had been earned while a Group B member. Neither the length of time persons described by Subsection (a), (c), (d), (e), (f), or (g) of this section received a retirement or disability pension, whether under the old plan, Plan A, the combined pension plan or Plan B, nor the amount of any benefits paid to the person shall have any effect on the pension service earned by the person. No pension service may be earned while on service retirement or disability retirement, or when the person was not on active service. Except as provided by Sections 5.08 and 5.09 of this article, a person described by Subsection (a), (c), (d), (e), (f), or (g)

of this section may not be allowed to contribute to the fund in order to receive pension service for the time the person was not on active service, regardless of whether the person was actually receiving a pension.

(i) The effective date of Group B membership for a person who becomes a Group B member pursuant to Section 5.01(e) of this article is the date on which written application for Group B membership is filed with the executive director.

Sec. 5.03. TERMINATION OF GROUP B MEMBERSHIP.

(a) Group B membership, whether by voluntary application or as a condition of employment, may be terminated by the Group B member only when the person ceases to be on active service.

(b) Once a police officer or fire fighter becomes a Group B member, whether by voluntary application or as a condition of employment, the person may never transfer the membership to become a Group A member and may never transfer the membership to any pension plan for police officers and fire fighters that may be created in the future unless the terms of that plan allow the transfer.

(c) A Group B member who is on active service and was a former contributing member of either the old plan or Plan A may elect, when applying for either a retirement or disability pension if applicable, to terminate membership and receive a Group A retirement or disability pension under the applicable provisions of this article, if the Group B member's application for retirement or disability pension is granted by the board.

(c-1) A Group B member who is not on active service and was a former contributing member of either the old plan or Plan A may elect, when applying for a retirement pension, to terminate membership and receive a Group A retirement pension under the applicable provisions of this article, if the Group B member's application for retirement pension is granted by the board.

(d) If a Group B member described by Subsection (c) or (c-1) of this section has elected and been granted a Group A retirement or disability pension under the applicable provisions of this article, the person is entitled to a reimbursement from the fund. The reimbursement shall be equal to that portion of the person's contributions to the fund, without interest, from the person's effective date of Group B membership until the time the person left active service that is in excess of the total amount the person would have contributed as a Group A member or as a member of the old plan or Plan A for the same period. A Group B member desiring a refund of excess contributions must make written application for the refund with the executive director within three years after the date the person's Group A retirement or disability pension, whichever is applicable, begins, otherwise, the person will lose all right, title, interest, or claim to the refund until such time as the board grants the refund in response to the person's written request. The refund shall be made as soon as practicable after written application is filed with the executive director.

Sec. 5.04. GROUP B MEMBERSHIP MAY BE DECLARED INACTIVE.

(a) Except as provided by Subsection (d)(1) of this section, if a Group B member with less than five years of pension service either voluntarily or involuntarily leaves active service, the person's Group B membership remains active as long as the person has not withdrawn the person's contributions pursuant to Section 4.04 of this article.

(b) Except as provided by Subsection (d)(2) of this section, if a Group B member with five or more years of pension service either voluntarily or involuntarily leaves active service, the person's Group B membership remains active as long as the person has not withdrawn the person's entire contributions pursuant to Section 4.04 of this article.

(c) Except as provided by Subsection (d)(3) of this section, if the board receives valid information that a Group B primary party has died, the board shall, by registered or

certified mail, return receipt requested, attempt to notify:

(1) the qualified survivors of the primary party of the procedures for applying and qualifying for death benefits under Section 6.06, 6.061, 6.062, or 6.063 of this article; or

(2) if the primary party does not have any qualified survivors, the primary party's designee of the procedures for applying for a refund of the primary party's contributions, if applicable, in accordance with Section 4.04 of this article.

(d)(1) Subject to the provisions of Subdivision (5)(A) of this subsection, the membership of a Group B member described by Subsection (a) of this section shall be declared inactive and all of the person's accrued pension service voided if the person does not return to active service within three years after the date of the notice described by Subdivision (4) of this subsection.

(2) Subject to the provisions of Subdivision (5)(B) of this subsection, the membership of a Group B member described by Subsection (b) of this section shall be declared inactive and all of the person's accrued pension service voided if the person does not file an application for a Group B retirement pension with the board within three years after the date of the notice described by Subdivision (4) of this subsection.

(3) Subject to the provisions of Subdivision (5)(C) of this subsection, if a primary party described by Subsection (c) of this section:

(A) does not have any qualified survivors, the designee has no right, title, interest, or claim for a refund of the primary party's contributions to the fund if the designee does not file an application for the primary party's contributions within three years after the date of the notice described in Subsection (c) of this section; or

(B) has qualified survivors, the qualified survivors have no right, title, interest, or claim to the primary party's death benefits if the qualified survivor does not file an application for the benefits within three years after the date of the notice described in Subsection (c) of this section.

(4) On the 58th anniversary of the birth of a Group B member described by Subsection (a) or (b) of this section, the board shall, by registered or certified mail, return receipt requested, attempt to notify:

(A) the member of the status of the member's entitlement to benefits or contributions from the fund; or

(B) if the board receives valid information that the member has died, the qualified survivors of the deceased person or, if none exists, the designee of the deceased person.

(5)(A) A Group B member described by Subdivision (1) of this subsection shall have the person's Group B membership and pension service reinstated on the person's return to active service.

(B) A Group B member described by Subdivision (2) of this subsection shall have the person's Group B membership and pension service reinstated on the person's return to active service or on the grant of the person's written request to the board of the person's desire to apply for a Group B retirement pension under Section 6.02 of this article.

(C) A primary party's qualified survivors or designee, as appropriate, described by Subdivision (3) of this subsection shall have their right, title, interest, or claim to the primary party's refund of the party's contributions reinstated on the board's grant of their written request.

Sec. 5.05. PENSION SERVICE.

(a) Subject to Subsection (d) of this section and except as provided by Subsection (e) of this section, a member shall receive pension service for the time, computed in years and fractional years for months and days, completed as a member of the combined pension plan, the old plan, Plan A, or Plan B.

(b) A member who elects to pay contributions for time spent on military leave, authorized non-uniformed leave of absence, or for an apprenticeship or probationary period, or for any other reason provided for by this article may receive pension service for the time for which the member is

contributing only to the extent provided under Section 5.07(d), 5.08, or 5.09 of this article.

(c) If a member, either voluntarily or involuntarily, leaves active service and later returns to active service, the person shall receive full pension service for the period of the person's original membership, if the person did not withdraw the person's contributions pursuant to Section 4.04 of this article. If, however, the member had withdrawn the person's contributions and did not replace the previously withdrawn contributions as required by Section 4.04 of this article, the member forfeits any pension service attributable to any period of time for which the respective contributions were not repaid.

(d) If a member is assigned, for any period, to a job-sharing program or any similar work schedule that is considered by the member's department to be less than a full-time work schedule, the member's pension service is determined by multiplying the pension service that could have been earned for full-time work during the period by a fraction, the numerator of which is the number of hours the member actually worked during the period and the denominator of which is the number of hours the member would have worked during the period if the member had been working a full-time work schedule. This proration may not affect the computation of pension service for a member during any period the member is on leave:

- (1) because of an illness or injury; or
- (2) receiving periodic payments of workers'

compensation.

(e) Notwithstanding any other provision in this section, a member may not receive pension service attributable to nonqualified service to the extent the pension service would result in either more than five years of permissive service attributable to nonqualified service being taken into account, or any permissive service being taken into account before the member has completed at least five years of active service. In this subsection, "permissive service" and "nonqualified service" have the meanings described by Section 415(n)(3) of the code.

Sec. 5.06. VESTED RIGHTS OF GROUP B MEMBERS.

(a) If a Group B member accrues five years of pension service, whether the pension service is accrued while a Group B member or while a member of the old plan, Plan B, Plan A, the combined pension plan, or a combination of the plans, the Group B member has vested rights and is eligible to apply for a retirement pension in accordance with Section 6.02 of this article.

(b) If a Group B member has vested rights as determined under Subsection (a) of this section, and the Group B member either voluntarily or involuntarily leaves active service before becoming eligible to receive any benefits under Section 6.02 of this article, the person shall be provided with a letter approved by the board and signed by the executive director that, barring unrepaid refunds, clerical error, miscalculation, or other error, is incontestable and shall state:

(1) the total amount of pension service the Group B member had accrued until the date the person left active service;

(2) the total amount of contributions the Group B member made under the terms of Plan B and the combined pension plan; and

(3) the monthly retirement pension due the Group B member at age 58.

Sec. 5.07. PURCHASE OF PENSION SERVICE BY GROUP B MEMBERS.

(a) A Group B member who is on active service and has previously elected not to become a contributing member of the old plan or Plan A may purchase pension service from the fund for that period during which the member performed active service with either department until the effective date of the member's Group B membership. No pension service may be given to the Group B member except to the extent that payment is made for the pension service in accordance with Subsection (d) of this section.

(b) Payment for the purchase of pension service under Subsection (a) of this section shall be equal to the amount of contributions the Group B member would have made to the old plan and Plan A had the member been a contributing member of either of the plans during the period for which the pension service is being purchased, plus interest calculated in accordance with procedures adopted by the board from time to time.

(c) Subject to Subsection (d) of this section, a Group B member who is on active service may repay the fund all or a portion of the employee contributions withdrawn by an alternate payee pursuant to the terms of a qualified domestic relations order with interest, calculated at the interest rate from time to time used in the pension system's actuarial rate of return assumptions, compounded annually, on the contributions for the period from the date the contributions were withdrawn until the date the principal and accrued interest are repaid, and receive pension service as a Group B member, in accordance with Subsection (d) of this section, for the period for which the contributions and interest were paid.

(d) If payment of the entire amount of pension service a member is entitled to under Subsection (a) or (c) of this section or under Section 4.04(h-1) of this article is not completed by the earlier of the date the Group B member begins participation in DROP or the date the member leaves active service, pension service will be provided only for the number of full years of pension service that the contributions and interest paid under those provisions will purchase, computed based on the most recent years for which the member was entitled to purchase pension service. Except for pension service that is picked up by the city under the authority of Section 414(h)(2) of the code, a fractional year of pension service may be purchased only if less than a full year of pension service is available for purchase.

(e) The amounts paid but insufficient to purchase one or more whole years of pension service that remain available for purchase, including any interest paid by the Group B member,

must be returned to the Group B member or, if the Group B member has died, to the Group B member's designee, without any accrued interest on the returned money.

(f) Notwithstanding any other provision of this section, any amounts that have been picked up and paid by the city may not be paid to a member or designee, and the member shall be given credit for all years, and fractions of years, of pension service that can be purchased with the picked-up contributions.

Sec. 5.08. MEMBERS IN UNIFORMED SERVICES.

(a) In this section, "service in the uniformed services" has the meaning assigned by the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section 4301 et seq.), as amended.

(a-1) A member who is reemployed by the city after an absence due to service in the uniformed services shall receive contributions, benefits, and pension service that are no less favorable than those required by Section 414(u) of the code in accordance with the procedure described by Subsection (c) of this section.

(b) To the extent a provision of this section that was in effect before November 25, 1996, would provide a member who was on active service with the pension system before November 25, 1996, with greater rights, the prior provision of this section applies.

(c) Payment for credit for pension service under this section shall be made in accordance with Section 5.07 of this article and a uniform and nondiscriminatory procedure adopted by the board.

Sec. 5.09. NON-UNIFORMED LEAVE OF ABSENCE.

(a) An "authorized non-uniformed leave of absence" means any leave of absence that meets one of the following requirements:

(1) the leave of absence was unpaid and granted by the member's department in accordance with the federal Family and Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.); or

(2) the leave of absence was unpaid and was an official leave authorized and certified by the chief of the member's department as being beneficial to the department.

(b) Subject to the requirements of this section and any procedures adopted by the board, a member may receive pension service for time spent away from the member's department on an authorized non-uniformed leave of absence. To receive pension service under this section, the member must file with the executive director a written application to pay to the fund both:

(1) the member contributions the member would have made to the fund had the member remained on active service and had there been no change in the member's position or hours of work during the period of the authorized non-uniformed leave of absence; and

(2) the contributions the city would have made to the fund on the member's behalf had the member remained on active service and had there been no change in the member's position or hours of work during the period of the authorized non-uniformed leave of absence.

(b-1) Contributions made under Subsection (b)(2) of this section may not be refunded to the member.

(b-2) The written application described by Subsection (b) of this section must be filed before the member's authorized non-uniformed leave of absence begins, unless the pension system determines that it would not be reasonable to expect the member to file the application before the authorized non-uniformed leave of absence begins, in which case the application must be filed as soon as circumstances permit, as determined by the pension system.

(b-3) To receive pension service under this section, the following additional conditions must also be met:

(1) if the member's contribution rate, the city's contribution rate, or both the member's and city's contribution rates change before the end of the member's authorized non-uniformed leave of absence, the percentage required to be paid by the member also changes, so that the amount paid by the member in accordance with this section always equals the amount that would have been contributed by the member, and by the city on the member's behalf had the member remained on active service;

(2) payment of contributions as set forth in Subsection (b) of this section shall begin coincident with the beginning of the applicable authorized non-uniformed leave of absence and shall be made monthly to the executive director for deposit in the fund, unless the board authorizes the deferment of the payments, in which case the payments must include interest calculated in accordance with Subsection (b-4) of this section;

(3) no pension service will be granted to the member until the member returns to active service, and if the member does not return to active service, the contributions paid, including any interest paid, will be returned to the member except as provided by Subsection (c) of this section;

(4) if the board authorizes the deferment of the payments under Subdivision (2) of this subsection, the payment must be made either by authorizing the deduction of pro rata portions of the total amount due from the member's salary over a one-year period, or by cash payment made to the executive director within one year after the date of the member's return to active service, except that the board may approve a longer period for making the payment if it finds that the one-year limit would work a financial hardship on the member;

(5) the member must return to active service within 90 days after the date the member's authorized non-uniformed leave of absence expires, or if the member's authorized non-uniformed leave of absence does not have a fixed expiration date, within a reasonable time to be determined by the board, or

the member forfeits the right to pay for the leave time; and

(6) no member may ever be allowed to pay leave of absence contributions under this section for any time in excess of the time actually spent on an authorized non-uniformed leave of absence.

(b-4) For purposes of Subsection (b-3)(2) of this section, interest is calculated from the date the member's payment was first due, at the interest rate from time to time used in the pension system's actuarial rate of return assumptions, compounded annually until the date the principal and accrued interest are repaid in full.

(c)(1) If a member of the combined pension plan is disabled or dies while on an authorized non-uniformed leave of absence, the member or the member's designee is entitled to a refund of contributions pursuant to Section 4.04 of this article or the member or the member's qualified survivors are entitled to benefits under the provisions of this article, to the extent applicable.

(2) A member who is disabled or dies while on an authorized non-uniformed leave of absence pursuant to this section may receive no pension service for any portion of the period of the leave, except that if the member had, before the member's disability or death, paid for contributions while on an authorized non-uniformed leave of absence in accordance with this section, the member shall receive pension service for the leave time actually paid for at the time of the member's disability or death. The member may receive no pension service for any portion of the period of leave for which contributions were not paid to the executive director for deposit in the fund.

PART 6. BENEFITS

Sec. 6.01. GROUP A RETIREMENT PENSION.

(a) A Group A member must have 20 years of pension service to be eligible for a Group A retirement pension under this section. A member's benefit election under this section, once approved, is irrevocable.

(a-1) If a Group A pensioner returns to active service as a police officer or fire fighter with the city, the person's Group A retirement pension ceases until that person again leaves active service with the city.

(a-2) If a Group A pensioner resumes employment with the city in a capacity other than as a police officer or fire fighter, the pensioner's Group A retirement pension continues during the period of employment, except the pensioner may not accrue additional credit for pension service during this period. Additional credit for pension service does not accrue during any period in which a Group A pensioner becomes employed by the city unless the additional credit is attributable to active service as a police officer or fire fighter with the city.

(b) At age 50 a Group A member is eligible to begin drawing a monthly Group A retirement pension. A monthly Group A retirement pension equals 50 percent of the base pay per month, plus 50 percent of any longevity pay the Group A member was receiving at the time the member left active service. Although the number of years used in the computation of longevity pay remains fixed at the earlier of the time a Group A member leaves active service or begins participation in DROP, the monthly rate of longevity pay used in this computation is subject to change in the event of an amendment to the state law governing longevity pay. The monthly Group A retirement pension benefits of Group A pensioners shall be adjusted from time to time in a like manner.

(c) In addition to the amount computed under Subsection (b) of this section, at age 50, a Group A member is eligible to begin drawing an annual Group A retirement pension. An annual retirement pension equals 50 percent of the difference between the annualized amount of city service incentive pay and longevity pay. In determining city service incentive pay and longevity pay for purposes of this element of the annual Group A retirement pension only the following apply:

(1) City service incentive pay is calculated in the same manner as the city service incentive pay is calculated for members currently on active service except:

(A) the annual salary of a Group A pensioner used in calculating city service incentive pay is determined on the basis of the last city civil service rank held by the Group A pensioner when the person was on active service; however, if the rank no longer exists, its closest equivalent shall be determined by the board and applied; and

(B) the annual salary of a Group A pensioner as determined under Paragraph (A) of this subdivision shall be that amount in effect on the last day of September of each year the Group A pensioner's annual retirement pension is calculated.

(2) Longevity pay shall be calculated as 12 times the amount of monthly longevity pay the Group A pensioner was receiving at the time such person left active service, except that the monthly rate of longevity pay used in this computation is subject to change if an amendment to state law governing longevity pay is enacted.

(d) The element of annual retirement pension computed under Subsection (c)(1) of this section is subject to the following limitations:

(1) it shall be prorated for the year in which the pensioner begins receiving a retirement pension;

(2) it shall be payable only to those Group A pensioners who, as Group A members on active service, received city service incentive pay and who receive a monthly Group A retirement pension as determined under Subsection (b) of this section on the last day of September of each year; and

(3) it shall be paid to Group A pensioners as long as the city continues to pay city service incentive pay to Group A members on active service.

(4) Notwithstanding Subsections (b) and (c) of this section, a Group A member with a minimum of 20 years of pension service may apply for an actuarially reduced retirement pension to begin no earlier than when the member attains age 45 but before the member attains age 50. The Group A member who has made an application may receive a retirement pension calculated under Subsections (b) and (c) of this section reduced by two-thirds of one percent per month for each whole calendar month

the benefit is payable before the month in which the Group A member attains age 50.

(e) At age 55 a Group A member is eligible to begin drawing a monthly retirement pension computed as follows:

(1)(A) at the rate of three percent of base pay for each year, prorated for fractional years, of pension service, with a maximum of 32 years of pension service, or 96 percent of base pay; or

(B) if the Group A member had 34 or more years of pension service as of April 30, 1990, then the member's retirement pension is calculated at the rate calculated under the terms of the combined pension plan in effect on April 30, 1990, if the resulting amount would be greater than the amount calculated under Paragraph (A) of this subdivision; plus

(2) one-half of the longevity pay the Group A member was receiving at the time the person left active service; plus

(3) 1/24th, without subsequent adjustment, of the annualized amount of the city service incentive pay the Group A member received at the time the person left active service.

(f) For purposes of Subsection (e) of this section, base pay and longevity pay are the amounts in effect on the earlier of the date the member begins participation in DROP or the date benefits are to begin, without subsequent adjustment.

(g) Notwithstanding Subsection (e) of this section, a Group A member with 20 or more years of pension service may apply for an actuarially reduced Group A retirement pension beginning on or after the date the Group A member attains age 50 but before the person attains age 55. The Group A member may receive a retirement pension calculated under Subsection (e) of this section reduced by two-thirds of one percent per month for each whole calendar month the benefit is payable before the month in which the Group A member attains age 55.

(h) Entitlement to the Group A retirement pension described by this section is subject to the following conditions:

(1) a written application must be filed with the executive director;

(2) the grant of a Group A retirement pension by the board must be made at a meeting of the board held during the month the retirement pension is to become effective, or as soon after that as administratively possible; and

(3) the Group A member must no longer be on active service.

Sec. 6.02. GROUP B RETIREMENT PENSION.

(a) If a Group B member has accrued five or more years of pension service, is no longer on active service with the department, has not withdrawn the member's contributions, and otherwise meets the age and pension service requirements under the applicable provision of this section, the member may apply for a Group B retirement pension under this section. A member's benefit election application under a provision of this section, once approved, is irrevocable.

(a-1) If a Group B pensioner returns to active service as a police officer or fire fighter with the city, the person's Group B retirement pension ceases until that person again leaves active service with the city.

(a-2) If a Group B pensioner resumes employment with the city in a capacity other than as a police officer or fire fighter, the pensioner's Group B retirement pension continues during the period of employment except the pensioner may not accrue additional credit for pension service during this period. Additional credit for pension service does not accrue during any period in which a Group B pensioner becomes employed by the city unless the additional credit is attributable to active service as a police officer or fire fighter with the city.

(b) A Group B member who began active service before March 1, 2011, and who has attained at least 50 years of age, or who began active service on or after March 1, 2011, and has attained

at least 58 years of age, and who otherwise meets the requirements of Subsection (a) of this section may elect to receive a Group B retirement pension that shall be calculated as follows:

(1) for a member who began active service before March 1, 2011, the member's retirement pension shall be the sum of:

(A) the number of years of pension service before September 1, 2017, prorated for fractional years, times three percent of the average computation pay determined over the 36 consecutive months of pension service in which the Group B member received the highest computation pay; plus

(B) the number of years of pension service on or after September 1, 2017, prorated for fractional years, times the applicable percentage prescribed by Subsection (b-1) of this section of the average computation pay determined over the 60 consecutive months of pension service in which the Group B member received the highest computation pay; or

(2) for a member who began active service on or after March 1, 2011, the member's retirement pension shall be the number of years of pension service, prorated for fractional years, times 2.5 percent of the average computation pay determined over the 60 consecutive months of pension service in which the member received the highest computation pay.

(b-1) For purposes of Subsection (b)(1)(B) of this section, the applicable percentage is based on the age of the Group B member when the member's retirement pension begins as set forth below:

Age of Member When Retirement Pension Begins	Percent
58 and older	2.5%
57	2.4%
56	2.3%
55	2.2%
54	2.1%
53 and younger	2.0%

(b-2) Days during which the member earned no pension service due to a termination of active service or otherwise must be disregarded in determining the 36 or 60 consecutive months of

highest computation pay under Subsection (b)(1) or (2) of this section, as appropriate. The pension benefit calculated under Subsection (b) of this section may not exceed the greater of:

- (1) 90 percent of the member's average computation pay determined under the applicable subsection; or
- (2) the vested and accrued benefit of a member as determined on August 31, 2017.

(c) Except as provided by Subsection (c-2) of this section, a Group B member who has either attained at least 45 years of age on September 1, 2017, or who attains at least 53 years of age after September 1, 2017, and who otherwise meets the requirements of Subsection (a) of this section may elect to receive an actuarially reduced Group B retirement pension calculated in accordance with Subsection (c-1) of this section:

- (1) not earlier than the member's 45th or 53rd birthday, as applicable; and
- (2) not later than the member's 50th or 58th birthday, as applicable.

(c-1) Except as provided by Subsection (c-2) of this section and subject to Section 6.021 of this article, a Group B member who applies for an actuarially reduced Group B retirement pension under Subsection (c) of this section shall receive a pension calculated under Subsection (b) of this section, reduced by two-thirds of one percent per month, for each whole calendar month the benefit is payable before the month in which the member attains:

- (1) for members who attained at least 45 years of age on September 1, 2017, 50 years of age; or
- (2) for members not described by Subdivision (1) of this subsection who attain at least 53 years of age after September 1, 2017, 58 years of age.

(c-2) Subject to Subsection (d-3) of this section and for purposes of Subsection (c-1) of this section, if a Group B member's pension benefit calculated under Subsection (b) of this section is equal to 90 percent of the member's average computation pay, the member is entitled to a Group B retirement pension under Subsection (c) of this section at 45 or 53 years of age, as applicable, that is not actuarially reduced as provided under Subsection (c-1) of this section.

(d) Except as provided by Subsection (d-2) of this section, a Group B member who has accrued 20 or more years of pension service and has been on active service at any time on or after January 1, 1999, may elect to apply for a Group B retirement pension beginning at any time after the Group B member leaves active service, regardless of age. A Group B member may elect a Group B retirement pension under this subsection as follows:

(1) if the member accrued 20 or more years of pension service on or before September 1, 2017, the member may elect a pension under this subsection that is computed in the same manner as the Group B retirement pension under Subsection (b)(1) of this section except that the percentage set forth below must be used instead of the three percent multiplier prescribed by Subsection (b)(1)(A) of this section:

Age of Member When Retirement Pension Begins	Percent
48 and 49	2.75%
47	2.5%
46	2.25%
45 and younger	2%; and

(2) except as provided by Subsection (d-2) of this section and subject to Section 6.021 of this article, if the member accrued 20 or more years of pension service after September 1, 2017, the member may elect a pension under this subsection computed in the same manner as the Group B retirement pension under Subsection (b)(2) of this section except that the percentage set forth below must be used instead of the 2.5 percent multiplier prescribed by Subsection (b)(2) of this section:

Age of Member When Retirement Pension Begins	Percent
57	2.4%
56	2.3%
55	2.2%
54	2.1%
53 and younger	2.0%

(d-1) A member who elects a pension under Subsection (d) of this section is not entitled to:

(1) minimum benefits under either Section 6.10A or 6.11 of this article; or

(2) benefits under Subsection (g) of this section.

(d-2) Subject to Subsection (d-3) of this section and for purposes of Subsection (d) of this section, if a Group B member's pension benefit calculated under Subsection (b) of this section is equal to 90 percent of the member's average computation pay, the member is entitled to a Group B retirement pension under Subsection (d) of this section that is not reduced as provided under Subsection (d)(1) or (2) of this section.

(d-3) For purposes of Subsections (c-2) and (d-2) of this section, a Group B member's pension benefit calculated under Subsection (b) of this section shall be calculated without application of any reduction under Subsection (b-1) of this section.

(e) A Group B member or former Group B member with 34 or more years of pension service as of April 30, 1990, is entitled to receive the greater of a Group B retirement pension calculated under the terms of Plan B as in effect on that date or a Group B retirement pension calculated pursuant to Subsection (b) of this section.

(f) Deleted.

(g) In no event may any Group B member who was at any time a Group A member or a contributing member of the old plan or Plan A, and who satisfied the applicable age and length-of-service requirements of the applicable plan at the time the person left active service, receive a retirement pension in an amount less than the amount the person would be entitled to receive as a Group A member.

(h) Notwithstanding any other provision of this section, a Group B member who was not a Group B member on or after January 1, 1993, shall receive a retirement pension calculated under the applicable provisions of Plan B as that plan existed on the date the member terminated active service.

(i) Entitlement to a Group B retirement pension under Subsection (b), (c), (d), or (e) of this section is subject to the following conditions:

(1) a written application must be filed with the executive director;

(2) the grant of the Group B retirement pension by the board must be made at a meeting of the board held during the month the retirement pension is to become effective, or as soon after as administratively possible; and

(3) the Group B member may no longer be on active service.

Sec. 6.021. AUTHORITY TO ADOPT ALTERNATIVE MULTIPLIERS FOR COMPUTATION OF CERTAIN GROUP B BENEFITS.

(a) For purposes of Section 6.02(c-1) or (d)(2) of this article, the board by rule may adopt alternative multipliers, including an alternative table prescribing actuarially appropriate multipliers. In adopting rules under this subsection, the board shall designate the date on which the alternative multiplier shall take effect.

(b) Copies of any alternative multipliers adopted under this section must be maintained at the principal office of the pension system and published on the pension system's publicly available Internet website.

Sec. 6.022. AUTHORITY TO REDUCE RETIREMENT AGE.

Notwithstanding any other law, the board may reduce the age at which a Group B member is eligible to begin receiving a retirement pension, including an actuarially reduced retirement pension, under Section 6.02 of this article if the board determines that the reduction will not cause the amortization period of the unfunded actuarial accrued liability of the pension system to exceed 25 years, after taking into account the impact of the reduction. A board action under this section may not take effect until the State Pension Review Board reviews the board's determination described by this section.

Sec. 6.03. DISABILITY BENEFITS.

(a) If a member who is on active service, other than a member participating in DROP, becomes disabled to the extent that the member cannot perform the member's duties with the member's department, the member may apply for a disability pension, subject to any uniform and nondiscriminatory disability application procedure and recall and review procedure adopted by the board and in effect from time to time.

(b) No disability pension may be paid until a member has been prevented, by a disability, from performing the member's duties with the member's department for a period of at least 90 consecutive calendar days, and no disability benefits may be paid for any portion of the 90-day period. The board may waive the waiting period on request by the member, if the request is supported by credible evidence acceptable to the board that the disability is wholly and immediately incapacitating. The board may request from the city such information, including any employment application and any related physical test and medical examination records, as may be desirable in evaluating the disability application.

(c) No disability pension may be paid for any disability if the disability was a result of the member's commission of a felony, except that this restriction may be waived by the board if it believes that facts exist that would mitigate the denial of the member's application for a disability pension.

(d) No disability pension may be paid to a member for any disability if the disability was a result of an intentionally self-inflicted injury or a chronic illness resulting from an addiction by the member through a protracted course of indulgence in alcohol, narcotics, or other substance abuse that was not coerced.

(e) No disability pension may be paid until the health director has either examined the member or reviewed reports of the member's physical or mental condition submitted to the health director by competent outside medical practitioners.

(f) No disability pension may be paid if the chief of the member's department is able to provide the member with duties that are within the member's physical or mental capabilities, even though the duties are different from the duties the member performed before the disability.

(g) Written application for a disability pension must be filed with the executive director not later than the 180th day after the date the member leaves active service. The application must be accompanied by a recommendation from the health director. This recommendation shall contain a statement indicating whether the member became disabled while the member was on duty or off duty and whether the disability was service-connected or was not service-connected.

(h) The recommendation from the health director shall also contain a statement indicating the date the member became disabled or indicating that the disability prevented the member from performing the member's duties for a period of not less than 90 days.

(i) An application for disability retirement will be considered at the meeting of the board held during the month the disability pension is to become effective or as soon after the effective date of the disability pension as possible. No disability pension may be paid, however, until the board has approved the application.

(j) If a person who became a Group B member pursuant to Section 5.01(a)(2)(E) of this article withdraws the person's contributions pursuant to Section 4.04 of this article and leaves active service with vested rights in the old plan, Plan A, or the combined pension plan in existence before January 1, 1993, the Group B member must, on return to active service, earn five years of pension service after the date of return to receive a Group B disability pension. If the Group B member is disabled before earning five years of pension service following a return to active service, the person may receive only a Group A disability pension.

(k) For purposes of Sections 6.04 and 6.05 of this article and this section:

(1) longevity pay and incentive pay are the amounts in effect on the date the benefits are to begin, without subsequent adjustment; and

(2) except as provided by Section 6.05(b-1) of this article, base pay is the amount in effect on the date benefits are to begin, without subsequent adjustment.

(1) Notwithstanding any other law, Subchapter B, Chapter 607, Government Code, applies to all members without regard to the employing department or job assignment.

Sec. 6.035. DISABILITY BENEFITS FOR CERTAIN PERSONS IN UNIFORMED SERVICES.

(a) In this section, "uniformed services" has the meaning assigned by the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section 4301 et seq.).

(b) This section applies to a person who was released from the uniformed services after December 17, 2001, under conditions that would have made the person eligible for benefits under Section 414(u) of the code if the person could have returned to active service.

(c) If a person subject to this section was unable to return to active service by reason of disability incurred while on a leave of absence due to service in the uniformed services, that person is entitled to a regular disability pension in accordance with Section 6.03 of this article, calculated in accordance with Section 6.04 of this article.

(d) Notwithstanding Section 6.03(g) of this article, a written application for a disability pension must be filed not later than the 180th day after the date of the person's release from the uniformed services.

(e) A person subject to this section is entitled to receive pension service for the period of service with the uniformed services only to the extent that contributions are made for that period in accordance with this article.

Sec. 6.04. CALCULATION OF REGULAR DISABILITY BENEFITS.

(a) Subject to Subsection (g) of this section, if a Group A member's application for a Group A disability pension has been approved by the board pursuant to Section 6.03 of this article, including any procedures adopted under that section, the Group A member may elect to receive a Group A disability pension calculated:

- (1) in the same manner as the benefit under Sections 6.01(b) and (c) of this article; or
- (2) under Subsection (c) of this section.

(b) An election under Subsection (a) of this section, once approved by the board, is irrevocable.

(c) Subject to Subsection (g) of this section, a Group A member who elects to have benefits determined under this subsection is entitled to a monthly disability pension calculated as follows:

(1) at a rate of three percent of base pay for each year, prorated for fractional years, of pension service, with a maximum of 32 years of pension service being credited, or 96 percent of base pay, except that if the Group A member had 34 or more years of pension service as of April 30, 1990, the member is entitled to receive the greater of a disability pension calculated under the terms of the combined pension plan in effect on that date or as calculated under this subdivision; plus

(2) one-half of the longevity pay the Group A member was receiving at the time the member left active service; plus

(3) subject to Subsection (d) of this section, 1/24th of the annualized amount of city service incentive pay the Group A member received at the time the member left active service.

(c-1) The disability pension calculated under Subsection (c) of this section may not exceed the greater of:

(1) 90 percent of the member's average base pay determined under the applicable subsection; or

(2) the vested and accrued disability pension of the member as determined on August 31, 2017.

(d) Payments of the amounts described by Subsection (c)(3) of this section are contingent on the city's continuing payment of city service incentive pay to Group A members on active service.

(e) If a Group B member's application for a Group B disability pension has been approved by the board under Section 6.03 of this article, including any procedures adopted under that section, the Group B member may elect to receive a Group B disability pension calculated in the manner described by Subsection (f) or (f-1) of this section, subject to Subsection (g) of this section.

(f) Subject to Subsections (f-1), (f-3), and (g) of this section, the disability pension of a Group B member shall be calculated as follows:

(1) for a member who began active service before March 1, 2011, the member's disability pension shall be the sum of:

(A) the member's number of years of pension service earned before September 1, 2017, prorated for fractional years, times three percent of the average computation pay determined over the 36 consecutive months of pension service in which the member received the highest computation pay; plus

(B) the number of years of pension service, including pension service credit imputed under Section 6.05(c) of this article, earned on or after September 1, 2017, prorated for fractional years, times the applicable percentage prescribed by Section 6.02(b-1) of this article of the average computation pay determined over the 60 consecutive months of pension service in which the member received the highest computation pay; or

(2) for a member who began active service on or after March 1, 2011, the member's disability pension shall be the number of years of pension service, including pension service credit imputed under Section 6.05(c) of this article, prorated for fractional years, times 2.5 percent of the average computation pay determined over the 60 consecutive months of pension service in which the member received the highest computation pay.

(f-1) Notwithstanding Subsection (f) of this section, for a Group B member who had 34 or more years of pension service as of April 30, 1990, the member is entitled to receive the greater of a disability pension calculated under the terms of Plan B in effect on April 30, 1990, or calculated under Subsection (f) of this section.

(f-2) For purposes of Subsections (f) and (f-1) of this section:

(1) any partial year of pension service for a Group B member's first 20 years of pension service is counted as a full year of pension service, if the member was considered by the member's department to have worked a normal full-time schedule at the time of the disability;

(2) if the member has less than 36 or 60 consecutive months of pension service, as applicable, the member's average computation pay will be computed based on the member's entire pension service; and

(3) days during which the member earned no pension service due to a termination of active service or otherwise must be disregarded in determining the 36 or 60 consecutive months of highest computation pay.

(f-3) The disability pension calculated under Subsection (f) or (f-1) of this section may not exceed the greater of:

(1) 90 percent of the member's average computation pay determined under the applicable subsection; or

(2) the vested and accrued disability pension of the member as determined on August 31, 2017.

(g) The disability pension calculated in accordance with this section, including both a Group A benefit described by Subsection (a) of this section and a Group B benefit described by Subsection (f) of this section, shall be reduced dollar-for-dollar by any monthly disability compensation benefit received under Section 6.05 of this article. If the monthly disability compensation benefit provided to a member under Section 6.05 of this article equals or exceeds any benefit the member is entitled to under this section or Section 6.01(b) or (c) of this article, the member may not receive the benefit under this section.

Sec. 6.05. COMPENSATION BENEFITS FOR SERVICE-CONNECTED DISABILITY.

(a) If a member leaves active service at any time due to disability and the board determines that the member with the disability became unable to perform the member's duties with the member's department due to an injury or sickness incurred in the performance of the member's duties, the member is entitled to periodic disability compensation benefits in accordance with this section.

(b) Subject to Subsection (b-1), a Group A member whose disability, as determined by the board, was caused by an injury or sickness incurred in the performance of the member's duty shall receive a monthly benefit equal to 60 percent of the member's base pay. For purposes of this subsection, "base pay" is the amount in effect on the date compensation benefits under this section are to begin, without subsequent adjustment.

(b-1) Instead of receiving a periodic disability compensation benefit under Subsection (b) of this section, a Group A member who is entitled to periodic disability compensation benefits under this section may elect, before the benefits begin, to receive those benefits as a monthly benefit equal to 50 percent of the member's base pay adjusted from time to time to reflect changes in base pay that occur after the member began receiving a monthly compensation benefit under this section.

(c) A Group B member whose disability, as determined by the board, was caused by an injury or sickness incurred in the performance of the member's duty shall receive a monthly benefit equal to the disability pension under Sections 6.04(f), (f-1), (f-2), and (f-3) of this article except that if the member:

(1) does not have 20 years of pension service, the member is considered to have 20 years of pension service for the purposes of calculating the disability pension under that section; and

(2) has less than 36 or 60 consecutive months, as applicable, of employment with the department, the member's average computation pay will be computed based on all the

member's computation pay, and days during which the member earned no pension service due to a termination of active service or otherwise must be disregarded in determining either the 36 or 60 consecutive months of highest computation pay.

(d) Redesignated as Sec. 6.055 by Acts 2017, 85th Leg., R.S., Ch. 318 (H.B. 3158), Sec. 1.35, eff. September 1, 2017.

(e) For purposes of Subsection (d) of this section, the phrase "earned income" means income earned by a Group B pensioner in the form of wages, salaries, commissions, fees, tips, unemployment benefits, and other amounts received by virtue of employment or self-employment but paid before any deduction for taxes or insurance. In addition, earned income also includes those amounts contributed on a before-tax basis to any retirement plan or employee health and welfare benefit plan.

Sec. 6.055. REDUCTION IN DISABILITY OR COMPENSATION BENEFITS FOR CERTAIN PERSONS.

(a) In this section, "earned income" means income earned by a Group B pensioner in the form of wages, salaries, commissions, fees, tips, unemployment benefits, and other amounts received by virtue of employment or self-employment but paid before any deduction for taxes or insurance. In addition, earned income also includes those amounts contributed on a before-tax basis to any retirement plan or employee health and welfare benefit plan.

(b) The board shall require any Group B pensioner who became a member of Plan B or the combined pension plan on or after May 1, 1990, and who is receiving a Group B disability pension under Section 6.04 of this article or a periodic disability compensation under Section 6.05 of this article to provide the board annually, on or before July 1 of each year, with a true and complete copy of those portions of the person's federal and, if applicable, state tax return, including appropriate schedules, for the previous calendar year that indicate the person's occupations, if any, and earned income for the previous calendar year. If the pensioner did not file a tax

return for the previous calendar year, the board may require other documentation reflecting the pensioner's occupation or earned income that the board determines appropriate.

(c) The pension system may waive the July 1 date under Subsection (b) of this section in lieu of one later in the same calendar year if the Group B pensioner provides the board with a true and complete copy of a grant of an extension of time for the filing of the person's tax return from the appropriate governmental agency or a true and complete copy of an extension request that results in any automatic extension.

(d) If, after evaluating the information received under Subsection (b) of this section, the board finds the Group B pensioner is or has been receiving earned income from one or more employments, including self-employment, during the preceding year, the board shall reduce future disability retirement payments to the Group B pensioner in accordance with the following formula: \$1 for each \$1 that the sum of "a" + "b" is greater than "c," where "a" is the earned income of the Group B pensioner attributable to the previous calendar year from the person's employments, "b" is the total amount of Group B disability retirement payments received by the Group B pensioner the previous calendar year, and "c" is the annualized amount of the average computation pay the Group B pensioner received as of the date the person left active service.

(e) For purposes of the computation under Subsection (d) of this section, the average computation pay shall be deemed increased at a rate of 2.75 percent, without compounding during the year, as of each January 1 that the Group B pensioner receives a Group B disability retirement payment.

Sec. 6.06. GENERAL RULES GOVERNING DEATH BENEFITS.

(a) Any award of a death benefit is subject to the conditions required by this section.

(b) A written application for benefits must be filed with the executive director.

(c) The application will be considered at the meeting of the board held during the month death benefits are to become effective, or as soon as possible after the date the benefits become effective. No benefits may be paid, however, until the board has approved the application.

(d) The board may require the applicant to provide proof of eligibility, such as marriage licenses, birth certificates, adoption papers, or sworn statements. The board may withhold any death benefit until the eligibility of the applicant has been confirmed.

(e) If surviving children of a primary party are not qualified survivors entitled to death benefits, the spouse of the primary party who is a qualified survivor is entitled only to receive a share of the death benefits in the amount calculated under Section 6.07(a) or Section 6.08(b)(1), (c)(1), (d)(1), or (e)(1) of this article, whichever is applicable, and is not entitled to what otherwise would be the surviving children's share.

(e-1) If a primary party had no surviving spouse, any surviving child who is a qualified survivor shall receive only the amount calculated under Section 6.07(a) or Section 6.08(b)(2), (c)(2), (d)(2), or (e)(2) of this article, whichever is applicable, and is not entitled to what otherwise would be the surviving spouse's share.

(e-2) If a primary party does not have a spouse or children who are qualified survivors, any dependent parent of the primary party who is a qualified survivor shall receive only the amount calculated under Section 6.07(c) or Section 6.08(b)(3), (d)(3), or (e)(3) of this article, whichever is applicable, and is not entitled to what otherwise would be the surviving spouse's or surviving children's share.

(f) The total monthly death benefits received by the qualified survivors of a primary party under this article, including the primary party's spouse, children, or dependent parents, may not exceed the pension to which the deceased primary party was entitled per month.

(g) If there is no surviving spouse or legal guardian for the surviving children of a primary party who are qualified survivors and if the board determines that the surviving children lack the discretion to handle money, or in other appropriate circumstances, notwithstanding any other provision of this section, the board may request a court of competent jurisdiction to appoint a suitable person to receive and administer the surviving children's money or in those circumstances described in Subsection (n) of this section, appoint a new trustee to administer the surviving children's trust.

(h) With the exception of a trust described in Subsection (n) of this section, no death benefits awarded to surviving children may be used for any purpose other than to benefit the surviving children.

(i) Repealed by Acts 2017, 85th Leg., R.S., Ch. 318 (H.B. 3158), Sec. 1.52(4), eff. September 1, 2017.

(j) With the exception of those circumstances described in Subsection (n) of this section, death benefits payable to surviving children shall be delivered to the legal guardian of the estate of the surviving children if one has been appointed and the pension system has been provided proof of the appointment. If no legal guardian has been appointed, death benefits shall be delivered to one of the following persons, provided there is evidence that the person is a suitable person to receive and administer the benefits:

(1) the surviving spouse with whom the child resides;
or

(2) the adult head of the household with whom the child resides, if the child does not reside with the surviving spouse.

(j-1) In accordance with Subsection (h) of this section, the recipient of a surviving child's death benefits under Subsection (j) of this section must use the death benefits to benefit the child. The board may withhold payment of benefits to anyone, if presented with evidence that the death benefits are not being used to benefit the surviving child.

(k) Dependent parents of a primary party who are entitled to receive death benefits provided by this article may only receive the benefits for the remainder of the dependent parents' lives.

(l) The pension system may require all qualified survivors receiving death benefits to file a sworn statement with the executive director concerning the qualified survivor's eligibility to continue to receive death benefits at least once every two years, or at any other time the executive director considers a sworn statement to be appropriate to evidence the continued eligibility of the qualified survivor. The board may withhold death benefits from any person who fails or refuses to file a statement when requested to do so.

(m) When the last qualified survivor of any primary party becomes ineligible to continue to receive death benefits, an amount equal to the excess, if any, of the total amount of all contributions made to the fund by the primary party while a member over the sum of all benefits paid to the primary party and all of the primary party's qualified survivors shall be paid in a lump sum to the last person to receive benefits as a qualified survivor or, if none exists, to the member's designee. The total amount to be paid in benefits to the primary party and all qualified survivors shall never be less than the total amount of contributions the primary party made to the fund while a member.

(n) Notwithstanding any other provision of this section:

(1) death benefits awarded to an unmarried child who is a qualified survivor who is determined by the board to be disabled under the terms of Subsection (o-2) of this section may be paid to the trustee of a management trust, supplemental needs or special needs trust, or comparable trust established for the benefit of the child, if the trust meets the requirements set forth in a procedure adopted from time to time by the board; and

(2) as soon as practicable after the pension system has knowledge of an event listed in this subdivision, the pension system shall terminate payment of death benefits to a trust described by Subdivision (1) of this subsection effective

on the earlier occurrence of the following events:

(A) the date as of which the child is determined by the board to no longer be disabled under the terms of this section;

(B) the date on which the child is lawfully married;

(C) the date on which the child is deceased;

(D) the date on which the pension system becomes aware that the assets of the trust are deemed to be the resources of the child under applicable federal or state laws or regulations; or

(E) if the trustee of the child's trust fails to provide a court of competent jurisdiction with an annual accounting of the child's trust, the date occurring six months after the date of the close of the trust's fiscal year.

(o) When a child who, as a qualified survivor, is entitled to receive death benefits under this article reaches the age of 19, the child may no longer participate in the division of the benefits, but the same undiminished child's share as determined by this section shall be paid to any remaining children who are qualified survivors who remain eligible to continue to receive death benefits.

(o-1) If benefits are no longer payable to the trust described in Subsection (n)(1) of this section in accordance with Subsection (n)(2) of this section, the benefits are divisible and payable to any remaining children who are qualified survivors who remain eligible to receive death benefits.

(o-2) If an unmarried child, after cessation of entitlement to death benefits because of attainment of age 19, becomes disabled before age 23, the child is entitled to participate in the division of death benefits under this article. Notwithstanding the preceding, all death benefits granted under this subsection are conditioned on the board finding that:

(1) the child is so physically or mentally disabled, either congenitally or through injury suffered or disease contracted, as to be unable to be self-supporting or to secure and hold gainful employment or pursue an occupation;

(2) the child is not married;

(3) the disability was not the result of an occupational injury for which the child received compensation equal to or greater than that provided under this article;

(4) the disability was not the result of an intentional self-inflicted injury or a chronic illness itself resulting from an addiction of the child through a protracted course of indulgence in alcohol, narcotics, or other substance abuse that was not coerced; and

(5) the disability did not occur as a result of the child's participation in the commission of a felony.

(p) If a child with a disability received or is receiving workers' compensation resulting from an occupational injury equal to an amount less than the death benefit to be provided under this section, the difference shall be paid out of the assets of the fund in the form otherwise payable as monthly benefits. For purposes of Subsections (o), (o-1), and (o-2) of this section, if a lump sum is awarded for an injury, the fund's actuary may compute a corresponding monthly equivalent. A finding relating to a child's disability is subject to periodic review and modification by the board.

(q) On the death or marriage of a child granted death benefits under this article, the death benefits shall cease being paid to that child; however, the same undiminished child's share as determined by this section shall be uniformly distributed among any remaining unmarried children who are:

(1) under 19 years of age; or

(2) disabled as described by Subsection (o-2) of this section and entitled to death benefits as qualified survivors.

(r) A spouse of a primary party who married the primary party after the date the primary party terminated active service is not a qualified survivor and is entitled only to those death

benefits, if applicable, provided under Section 6.063 of this article.

(s) Repealed by Acts 2017, 85th Leg., R.S., Ch. 318 (H.B. 3158), Sec. 1.52(4), eff. September 1, 2017.

(t) A surviving spouse who first remarried on or after April 21, 1988, is eligible to receive death benefits for the remainder of the spouse's life provided the surviving spouse is a qualified survivor. This subsection may not be applied retroactively.

(u) The eligibility of a surviving spouse who first remarried before April 21, 1988, is governed by Section 6.061 of this article.

(v) The qualified survivors of a member who dies while performing qualified military service are entitled to any additional benefits, other than benefits relating to the qualified military service, that qualified survivors would have received if the member had returned from qualified military service the day before death, resumed employment, and then died.

Sec. 6.061. PROSPECTIVE REINSTATEMENT OF CERTAIN DEATH BENEFITS.

(a) Subject to Subsection (c) of this section, the surviving spouse of a primary party who was a member of the old plan, Plan A, or Plan B whose death benefits, also referred to as "survivor benefits" or "widow benefits," terminated because of a remarriage of the surviving spouse that occurred before April 21, 1988, is entitled to receive death benefits, on a prospective basis only, as of the first day of the month following the month in which the executive director receives the application.

(b) The board shall make reasonable efforts to notify all known living surviving spouses who may be entitled to a reinstatement of benefits under this section.

(c) A surviving spouse's properly completed, board-approved application for reinstatement of death benefits under

this section must be received by the executive director not later than the 180th day after the date the board completes, as determined by the board, the reasonable efforts required by Subsection (b) of this section.

(d) A surviving spouse's application for reinstatement of death benefits under this section constitutes the spouse's waiver of any claims against the pension system, the board, the executive director, or any other employee of the board or the pension system arising out of any claim for death benefits.

(e) This section may not be applied retroactively. A surviving spouse may not receive death benefits attributable to periods before the executive director's receipt of a properly completed and board-approved application, and any benefit provided to a surviving spouse described in this section must be calculated as if the benefits had not terminated on the surviving spouse's remarriage notwithstanding the fact the reinstatement of benefits is not retroactive.

Sec. 6.062. LUMP-SUM PAYMENT ON DEATH OF CERTAIN MEMBERS.

(a) If an unmarried member dies while on active service and before beginning participation in DROP, the last person to receive benefits as the member's qualified survivor or, if the member does not have a qualified survivor living, the member's designee, shall be paid a lump-sum payment determined in accordance with this section if, at the time of the member's death, the member:

(1) had no qualified survivors; or

(2) only had qualified survivors who are children who become ineligible to receive death benefits before the benefits were paid for at least 120 consecutive months.

(b) The amount of the lump-sum payment under this section is the greater of:

(1) the payment that could have been provided under Section 6.06(m) of this article; or

(2) an amount equal to the actuarial equivalent of the remainder of the monthly benefits that would have been paid for the period from the last monthly benefit payment to the end of the 120 months, starting with the date of the first monthly benefit payment, if any.

(c) If no death benefit payments have been made with respect to the member, the amount of a monthly death benefit payment shall be considered to be the monthly death benefit that would have been paid if the member had died leaving only one dependent parent who was a qualified survivor.

(d) If a qualified survivor or designee is entitled to payment under both this section and Section 6.06(m) of this article, payments shall be made only under this section.

(e) The payment required under this section shall be made as soon as practicable after the later of the date:

(1) of the death of the member; or

(2) the last qualified survivor becomes ineligible to receive monthly death benefit payments.

Sec. 6.063. AUTHORITY TO ELECT CERTAIN ACTUARIALLY REDUCED BENEFITS. (a) The board shall adopt policies under which a member who is leaving active service or a pensioner may elect to accept actuarially reduced benefits to provide the following optional benefits:

(1) a 100 percent joint and survivor annuity with the member's or pensioner's spouse;

(2) a 50 percent joint and survivor annuity with a spouse who is not a qualified survivor because the marriage to the pensioner occurred after the pensioner terminated active service, provided the election is made not later than one year after the date of the marriage; or

(3) a death benefit for a child who is not a qualified survivor because the child was born or adopted after the member left active service, but only if the child:

(A) is a dependent of the pensioner, within the meaning of Section 152(a)(1) of the code; and

(B) has not attained 18 years of age at the time of the election.

(b) An election under this section may not be revoked by the member or pensioner after it is filed with the pension system.

(c) Notwithstanding any other provision of this article, an election under this section shall result in benefits being paid as prescribed by this section instead of as prescribed by Section 6.01, 6.02, 6.04, 6.05, 6.07, or 6.08 of this article, as applicable.

(d) A pensioner who desires to make an election under Subsection (a)(1) of this section after having made an election under Subsection (a)(2) of this section shall incur a second actuarial reduction in benefits to pay for the increased survivor annuity.

(e) Except as provided by Subsection (f) of this section, a person is not entitled to the payment of benefits under this section with respect to a pensioner who makes an election after termination of active service and dies within one year after making the election, except the amount by which the pensioner's benefits were reduced are paid to the person who is entitled to receive payments under Section 6.064 of this article.

(f) Subsection (e) of this section does not apply to a person who makes an election under Subsection (a)(1) of this section to receive a 100 percent joint and survivor annuity with a spouse who is a qualified survivor at the time:

- (1) the board grants a retirement pension; or
- (2) a retirement pension would have been granted but for the fact that the person elected to participate in DROP after retirement.

(g) The actuarially reduced benefits being paid to the pensioner under this section will not be increased if the spouse dies before the pensioner, or if the child attains 19 years of age before the pensioner dies.

(h) The joint and survivor annuity or the pensioner's pension and child's death benefit payable under this section is the actuarial equivalent of the pension and death benefits, if

any, that would have been payable, at the time of the election, if the election had not been made. On the death of the pensioner:

(1) the surviving spouse of a pensioner who made an election under Subsection (a)(1) of this section receives a pension that is equal to the reduced pension being received by the pensioner at the time of death; and

(2) a surviving spouse who is not a qualified survivor of a pensioner who made an election under Subsection (a)(2) of this section receives a pension that is 50 percent of the reduced pension being received by the pensioner at the time of death.

(i) A pensioner and surviving spouse receiving a death benefit payable under this section are eligible for adjustments under Sections 6.12 and 6.13 of this article, if the pensioner or surviving spouse, as applicable, is otherwise entitled to those adjustments, except that in each case the adjustment shall be calculated so that the total pension or death benefit paid is reduced by the same percentage the pensioner's pension is otherwise reduced under this section.

(j) A pensioner and surviving spouse receiving a death benefit payable under this section are not entitled to the minimum benefits provided under Section 6.10A, 6.10B, or 6.11 of this article.

(k) A surviving spouse receiving a death benefit payable under this section is not entitled to the special death benefit provided under Section 6.09 of this article.

(l) During a period in which there are two or more qualified survivors of a member who has made a joint and survivor annuity election under this section, the spousal benefit will be divided among the eligible survivors under Section 6.07 or 6.08 of this article, as applicable.

(m) A child's death benefit elected under Subsection (a)(3) of this section is treated the same way as a death benefit to a child who is a qualified survivor, except that it is based on the actuarially reduced pension.

Sec. 6.064. DESIGNEES.

(a) A member, pensioner, or qualified survivor may at any time designate, in writing, one or more persons as a designee to receive any lump-sum payment due from the pension system on the death of the member, pensioner, or qualified survivor, as applicable.

(b) A designation under this section of a person other than the spouse of the member, pensioner, or qualified survivor, as appropriate, must be made with the written consent of the spouse, if the individual has a spouse.

(c) A designation made under this section:

- (1) may be revoked or changed at any time; and
- (2) is void if the person designated dies or goes out of existence before the payment is made.

(d) If a member, pensioner, or qualified survivor designates a spouse to receive a payment and the parties are later divorced, the designation is void at the time of the divorce unless ratified in writing at the time of the divorce or after that time.

(e) A designation by a member under this section is void at the time the member becomes a pensioner unless ratified in writing at the time the member becomes a pensioner or after that time.

(f) If a member, pensioner, or qualified survivor does not have a valid designee on file with the pension system at the time of death, the designee is:

- (1) the spouse;
- (2) the qualified survivors, if any, if there is no spouse;
- (3) the estate of the person, if there is no spouse or qualified survivors; or
- (4) the heirs of the person, if there is no spouse, qualified survivors, or estate.

Sec. 6.07. GROUP A DEATH BENEFITS.

(a)(1) If a Group A member dies before leaving active service and before the Group A member had 20 years of pension service, the Group A member's spouse and children who are qualified survivors shall, in the aggregate, receive a Group A death benefit equal to a Group A retirement pension computed under the terms of Section 6.01 of this article as if the Group A member had completed 20 years of pension service.

(2) If a Group A member dies before service retirement and after the Group A member has 20 years of pension service, the Group A member's spouse and children who are qualified survivors shall, in the aggregate, receive a Group A death benefit calculated under Section 6.01 of this article as if the Group A member had left active service on the date of the Group A member's death.

(3) If a Group A pensioner dies during service retirement, the Group A pensioner's spouse and children who are qualified survivors shall, in the aggregate, receive a Group A death benefit in an amount equal to the Group A retirement pension being received by the Group A pensioner on the date of the pensioner's death.

(4) If a Group A pensioner dies after November 25, 1996, while receiving periodic disability compensation under Section 6.05 of this article or a disability pension under Section 6.04 of this article, and before the Group A pensioner has 20 years of pension service, the Group A pensioner's spouse and children who are qualified survivors shall, in the aggregate, receive a Group A death benefit calculated under Section 6.04 or 6.05 of this article, as applicable, in the same manner as the Group A pensioner's periodic disability compensation or disability pension, but as if the Group A pensioner had completed 20 years of pension service.

(5) If a Group A pensioner who has 20 or more years of pension service dies during disability retirement, the Group A pensioner's spouse and children who are qualified survivors shall, in the aggregate, receive a Group A death benefit in an

amount equal to the Group A disability pension being received by the Group A pensioner on the date of the pensioner's death.

(b) Group A death benefits under Subsection (a) of this section shall:

(1) be divided one-half to the spouse and one-half to the children who are qualified survivors; and

(2) subject to the terms of Sections 6.06(n), (o), (o-1), and (o-2) of this article, be distributed in an equal and uniform manner to the children described by Subdivision (1) of this subsection.

(c) If a Group A member or pensioner dies leaving no spouse or children who are qualified survivors, the dependent parents who are qualified survivors shall receive a Group A death benefit equal to the death benefit otherwise payable under Subsection (a) of this section. The death benefit payable to the dependent parents under this subsection shall be divided equally between the parents regardless of whether the parents are married or living at the same residence. If there is only one dependent parent, that parent is entitled to one-half of the death benefit described in this subsection.

Sec. 6.08. GROUP B DEATH BENEFITS.

(a) If a Group B member dies while on active service, a Group B member who left active service and is vested under Section 5.06 of this article dies, or a Group B pensioner dies while receiving service or disability retirement or while receiving periodic disability compensation under Section 6.05 of this article, the person's qualified survivors, or the person described in Section 6.06(g) or (j) of this article as the recipient of the children's benefits, may make application for Group B death benefits. If the deceased Group B member was previously eligible to elect whether to receive either a Group A or Group B retirement pension, the option to elect whether Group A or Group B death benefits are received shall be exercised by one of the following:

(1) a qualified survivor who is the spouse of the deceased Group B member described by this subsection;

(2) the person described in Section 6.06(g) or (j) of this article as the recipient of benefits on behalf of the deceased member's children who are qualified survivors, if no spouse is a qualified survivor; or

(3) the qualified survivors who are dependent parents of the deceased member, if there is neither a spouse nor children who are qualified survivors.

(a-1) A qualified survivor who receives Group A death benefits under Subsection (a) of this section is entitled to a ratable portion of a reimbursement from the fund in the same amount and manner determined under Section 5.03(d) of this article. A qualified survivor or guardian desiring a refund of excess contributions must make application for the refund with the executive director within three years after the date the qualified survivor or guardian makes application for Group A death benefits. The option contained in this subsection is not available to qualified survivors of a Group B member who had, at the time of death, already applied for a retirement pension and selected a Group A retirement pension as provided by Section 5.03(c) or (c-1) of this article, but the qualified survivors are entitled to receive a Group A death benefit.

(b) Subject to Subsection (b-2) of this section, death benefits shall be computed as follows for the qualified survivors of Group B members who die while on active service:

(1) the death benefit of a qualified survivor who is the spouse of a member who began active service:

(A) before March 1, 2011, shall be the sum of:

(i) the number of years of pension service earned before September 1, 2017, prorated for fractional years, times 1.5 percent of the average computation pay determined over the 36 consecutive months of pension service in which the Group B member received the highest computation pay; plus

(ii) the number of years of pension service, including pension service credit imputed under Section 6.05(c) of this article, after September 1, 2017, prorated for fractional years, times the applicable percentage rate set forth

below of the average computation pay determined over the 60 consecutive months of pension service in which the Group B member received the highest computation pay:

Age of Member When Retirement Pension Begins	Percent
58 and older	1.25%
57	1.2%
56	1.15%
55	1.10%
54	1.05%
53 and younger	1.0%; or

(B) on or after March 1, 2011, shall be the number of years of pension service, including pension service imputed under Section 6.05(c) of this article, prorated for fractional years, times 1.25 percent of the average computation pay determined over the 60 consecutive months of pension service in which the Group B member received the highest computation pay;

(2) the death benefit of qualified survivors who are a member's children shall be computed in the same manner as a spouse's benefit is computed under Subdivision (1)(A) or (B) of this subsection, as applicable, and shall be divided equally among all of the children who are qualified survivors; and

(3) the death benefit of each qualified survivor who is a member's dependent parent shall be computed in the same manner as a spouse's Group B benefit is computed under Subdivision (1)(A) or (B) of this subsection, as applicable.

(b-1) Pension service for purposes of the calculation under Subsection (b) of this section may not be less than 20 years. Any partial year of pension service for the first 20 years of pension service is counted as a full year of pension service, if the member was considered by the member's department to have worked a normal full-time schedule at the time of the member's death.

(b-2) The death benefit calculated under Subsection (b) of this section may not exceed the greater of:

(1) 45 percent of the member's average computation pay determined over the 36 or 60 consecutive months, as

applicable, in which the Group B member received the highest computation pay; or

(2) the vested and accrued death benefit as determined on August 31, 2017.

(b-3) For purposes of Subsections (b) through (b-2) of this section:

(1) if the Group B member had less than 36 or 60 consecutive months, as applicable, of pension service, the average computation pay will be computed based on the person's entire pension service; and

(2) days during which the member earned no pension service due to a termination of active service or otherwise must be disregarded in determining the 36 or 60 consecutive months of highest computation pay.

(c) Group B death benefits shall be computed as follows for the qualified survivors of any Group B member who died after leaving active service and who had vested rights under Section 5.06 of this article but who had not received retirement benefits at the time of death:

(1) the death benefit of a qualified survivor who is the member's spouse is equal to 50 percent of any retirement pension the member would have been entitled to as of the date the member left active service;

(2) the death benefits of qualified survivors who are the member's children are calculated in the same manner as the spouse's benefit is computed under Subdivision (1) of this subsection, to be divided equally between the children; and

(3) the death benefit of each qualified survivor who is the member's dependent parent is equal to 50 percent of any retirement pension the member would have been entitled to as of the date the member left active service.

(d) Group B death benefits shall be computed as follows for the qualified survivors of any Group B pensioner who dies while receiving service retirement:

(1) the death benefit of a qualified survivor who is the pensioner's spouse is equal to 50 percent of any retirement pension the Group B pensioner was receiving at the time of death;

(2) the death benefits of qualified survivors who are the pensioner's children are calculated in the same manner as the spouse's benefit is computed under Subdivision (1) of this subsection, to be divided equally between the children; and

(3) the death benefit of each qualified survivor who is the pensioner's dependent parent is equal to 50 percent of any retirement pension the Group B pensioner was receiving at the time of death.

(e) Group B death benefits shall be computed as follows for the qualified survivors of any Group B pensioner who dies while receiving disability retirement or while receiving periodic disability compensation under Section 6.05 of this article:

(1) the death benefit of a qualified survivor who is the pensioner's spouse is equal to 50 percent of any Group B periodic disability compensation or disability pension the Group B pensioner would have been entitled to as of the date the Group B pensioner left active service because of disability, or a Group B death benefit equal to 50 percent of any periodic disability compensation or disability pension the Group B pensioner was receiving at the time of death;

(2) the death benefits of qualified survivors who are the pensioner's children are calculated in the same manner as the spouse's benefit is computed under Subdivision (1) of this subsection, to be divided equally between the children; and

(3) the death benefit of each qualified survivor who is the pensioner's dependent parent is equal to 50 percent of any periodic disability compensation or disability pension the Group B pensioner would have been entitled to as of the date the Group B pensioner left active service because of disability, or a Group B death benefit equal to 50 percent of any periodic disability compensation or disability pension the Group B pensioner was receiving at the time of death.

Sec. 6.09. QUALIFIED SURVIVING SPOUSE SPECIAL DEATH BENEFIT.

(a) A person who is the spouse of a Group A primary party, who is a qualified survivor, and who is entitled to death benefits under Sections 6.06, 6.061, 6.062, 6.063, and 6.07 of this article is also entitled to a special death benefit under this section if:

(1) the Group A primary party:

(A) had at least 20 years of pension service, left active service after October 1, 1985, and was at least 55 years of age on the earlier of the date the primary party:

(i) left active service; or

(ii) began participation in DROP; or

(B) had at least 20 years of pension service, left active service on or after May 31, 2000, and on the earlier of the date the primary party left active service or began participation in DROP, had a total of at least 78 credits, with each year of pension service, prorated for fractional years, equal to one credit and with each year of age, prorated for fractional years, equal to one credit; or

(2) the spouse has attained 55 years of age and there are no children who are qualified survivors eligible for death benefits.

(b) Until the requirements of Subsection (a) of this section are satisfied, a qualified survivor who is the spouse of a Group A primary party shall receive a Group A death benefit in accordance with Section 6.07 of this article.

(c) The special Group A death benefit under Subsection (a) of this section is calculated based on the following formula:

$$(P \times P \times A) + (P \times C) + D, \text{ where}$$

A = base pay at the time the Group A primary party began participation in DROP, begins service retirement, dies, or becomes disabled, plus longevity pay, plus one-twelfth of last-received city service incentive pay;

B = Group A primary party's benefit calculated at the time the Group A primary party began participation in DROP, begins service retirement, dies, or becomes disabled;

P = B/A (expressed as a percentage or a decimal);

C = the number of adjustments made to a Group A primary party's retirement pension, disability pension, or periodic disability compensation, multiplied by the amount of the adjustments; and

D = the number of adjustments made under this article to the Group A death benefit of a spouse who is a qualified survivor under Section 6.07 of this article, multiplied by the amount of the adjustments.

(d) A person who is the spouse of a Group B primary party, who is a qualified survivor, and who is entitled to any death benefits under Sections 6.06, 6.061, 6.062, 6.063, and 6.08 of this article is also entitled to a special benefit under this section if:

(1) the Group B primary party:

(A) had at least 20 years of pension service, left active service after October 1, 1985, and was at least 55 years of age at the earlier of the date the primary party left active service or began participation in DROP; or

(B) on or after May 31, 2000, left active service or began participation in DROP, whichever was earlier, having a total of at least 78 credits, with each year of pension service, prorated for fractional years, equal to one credit and with each year of age, determined at the time the Group B primary party left active service or began participation in DROP, prorated for fractional years, equal to one credit; or

(2) the spouse has attained 55 years of age, and there are no children of the primary party who are qualified survivors.

(d-1) Until the requirements of Subsection (d) of this section are satisfied, a spouse who is a qualified survivor may only receive a Group B death benefit in accordance with Sections 6.06, 6.061, 6.062, 6.063, and 6.08 of this article.

(e) The special Group B death benefit under Subsection (d) of this section is calculated based on the following formula:

$$(P \times P \times A) + (P \times C) + D, \text{ where}$$

A = average monthly computation pay at the time the Group B primary party begins service retirement, dies, becomes disabled, or begins participation in DROP;

B = the Group B primary party's benefit calculated at the time the Group B primary party begins participation in DROP, begins to receive service retirement, dies, or becomes disabled;

P = B/A (expressed as a percentage or a decimal);

C = the number of post-retirement adjustments made to a Group B primary party's retirement pension, disability pension, or periodic disability compensation multiplied by the amount of the adjustments; and

D = the number of adjustments made to the Group B death benefit of a qualified survivor who is the primary party's spouse under Section 6.08 of this article multiplied by the amount of the adjustments.

Sec. 6.10A. MINIMUM BENEFITS TO CERTAIN GROUP A PRIMARY PARTIES WHO WERE GROUP A, OLD PLAN, OR COMBINED PENSION PLAN MEMBERS AND THEIR QUALIFIED SURVIVORS.

(a) Except as provided by Section 6.063 of this article or Subsections (b) and (h) of this section and notwithstanding any benefit computation and determination to the contrary contained in this article, the minimum Group A benefits provided by this section shall be paid to any Group A primary party who elects to receive a Group A retirement pension under Sections 6.01(b) and (c) of this article, the old plan, or former Section 14(a) of this article, or to the primary party's qualified survivors, except that a Group A primary party who elects to receive an actuarially reduced retirement pension before 50 years of age and the primary party's qualified survivors are not entitled to the minimum benefits specified under this section. An alternate payee is not entitled to the Group A minimum benefits specified in this section.

(b) A Group A primary party who elects to receive a Group A retirement pension under Sections 6.01(b) and (c) of this article, the old plan, or former Section 14(a) of this article and who left active service with 20 or more years of pension service is entitled to receive a minimum Group A retirement pension of \$2,200 a month.

(c) In the absence of children who are qualified survivors, a spouse who is a qualified survivor of a Group A primary party who elected to receive a Group A retirement pension under Sections 6.01(b) and (c) of this article, the old plan, or former Section 14(a) of this article will receive a minimum monthly Group A death benefit of \$1,200.

(d) A spouse who is a qualified survivor of a Group A primary party who elected to receive a Group A retirement pension under Sections 6.01(b) and (c) of this article, the old plan, or former Section 14(a) of this article will receive, if there are children who are qualified survivors, a minimum Group A death benefit of \$1,100 a month.

(e) In the absence of a spouse who is a qualified survivor of a Group A primary party who elected to receive a Group A retirement pension under Section 6.01(b), (c), or (e) of this article, the old plan, or former Section 14(a) of this article, the primary party's children who are qualified survivors, as a group, will receive a minimum Group A death benefit of \$1,100 a month, to be divided equally among them.

(f) If there is neither a spouse nor a child who is a qualified survivor of a Group A primary party who elected to receive a Group A retirement pension under Sections 6.01(b) and (c) of this article, the old plan, or former Section 14(a) of this article, each dependent parent who is a qualified survivor will receive a minimum Group A death benefit of \$1,100 a month. If only one of them is surviving, that dependent parent will receive a minimum Group A death benefit equal to \$1,100 a month.

(g) Notwithstanding the minimum monthly benefit described in other subsections of this section, a Group A primary party who receives periodic disability compensation under Section 6.05(b) of this article or a Group A disability pension under

Section 6.04(a) of this article, the old plan, or former Section 17(a) of this article, shall receive a minimum Group A disability pension equal to \$2,200 a month.

(h) If a Group A pensioner who received a monthly benefit under Section 6.05(b-1) of this article or a disability pension under Section 6.04(a) of this article, calculated in the same manner as a Group A retirement pension under Sections 6.01(b) and (c) of this article, the old plan, or former Section 17(a) of this article before the completion of 20 years of pension service dies, the qualified survivors will receive a minimum Group A death benefit as provided under Subsection (c), (d), (e), or (f) of this section, as applicable, whichever is greatest.

Sec. 6.10B MINIMUM BENEFITS TO CERTAIN GROUP A PRIMARY PARTIES WHO WERE GROUP A, PLAN A, OR COMBINED PLAN MEMBERS AND THEIR QUALIFIED SURVIVORS.

(a) Except as provided by Section 6.063 of this article and Subsection (b) of this section and notwithstanding any benefit computation and determination to the contrary contained in this article, the minimum Group A benefits provided by this section shall be paid to any Group A primary party who elects to receive a Group A retirement pension under Section 6.01(e) of this article, Plan A, or former Section 14(b) of this article or to the primary party's qualified survivors, except that a Group A primary party who elects to receive an actuarially reduced Group A retirement pension before 55 years of age and the primary party's qualified survivors are not entitled to the minimum benefits specified in this section. An alternate payee is not entitled to the Group A minimum benefits specified in this section.

(b) A Group A primary party who elects to receive a Group A retirement pension under Section 6.01(e) of this article, Plan A, or former Section 14(b) of this article and who left active service with 20 or more years of pension service is entitled to receive a minimum retirement pension equal to the greater of \$2,200 a month or \$1,000 a month adjusted, if applicable, in the manner described by Section 6.12 of this article.

(c) In the absence of children who are qualified survivors, a spouse who is a qualified survivor of a Group A primary party who elects to receive a Group A retirement pension under Section 6.01(e) of this article, Plan A, or former Section 14(b) of this article will receive a minimum monthly death benefit equal to the greater of \$1,200 a month or \$500 a month adjusted, if applicable, in the manner described by Section 6.12 of this article.

(d) A spouse who is a qualified survivor of a Group A primary party who elects to receive a Group A retirement pension under Section 6.01(e) of this article, Plan A, or former Section 14(b) of this article will receive, if there are children who are qualified survivors, a minimum Group A death benefit equal to the greater of \$1,100 a month or \$500 a month adjusted, if applicable, in the manner described by Section 6.12 of this article. The children who are qualified survivors, as a group, will receive a minimum death benefit equal to the greater of \$1,100 a month or \$500 a month adjusted, if applicable, in the manner described by Section 6.12 of this article, to be divided equally among them.

(e) In the absence of a spouse who is a qualified survivor of a Group A primary party who elected to receive a Group A retirement pension under Section 6.01(e) of this article, Plan A, or former Section 14(b) of this article, the primary party's children who are qualified survivors, as a group, will receive a minimum Group A death benefit equal to the greater of \$1,100 a month or \$500 a month adjusted, if applicable, in the manner described by Section 6.12 of this article, to be divided equally among them.

(f) If there is neither a spouse nor child who is a qualified survivor of a Group A primary party who elected to receive a Group A retirement pension under Section 6.01(e) of this article, Plan A, or the former Section 14(b) of this article, each dependent parent who is a qualified survivor will receive a minimum Group A death benefit equal to the greater of \$1,100 a month or \$500 a month adjusted, if applicable, in the manner described by Section 6.12 of this article. If only one of them is surviving, that dependent parent will receive a

minimum Group A death benefit equal to the greater of \$1,100 a month or \$500 a month adjusted, if applicable, in the manner described by Section 6.12 of this article.

(g) Notwithstanding the minimum monthly benefit as described in other subsections of this section, a Group A primary party who leaves active service on a non-service-connected disability under Section 6.04(a) of this article, Plan A, or former Section 17(b)(2) of this article with less than 20 years of pension service shall receive a minimum monthly Group A disability pension equal to the greater of \$110 multiplied by the number of years of the primary party's pension service or \$50 multiplied by the number of years of the primary party's pension service, the product adjusted, if applicable, in the manner described by Section 6.12 of this article.

(h) Repealed by Acts 2017, 85th Leg., R.S., Ch. 318 (H.B. 3158), Sec. 1.52(5), eff. September 1, 2017.

(i) If a Group A pensioner who received a non-service-connected disability pension under Section 6.04(a) of this article, Plan A, or former Section 17(b)(2) of this article before the completion of 20 years of pension service dies, the qualified survivors will each receive the amount specified in Section 6.07 of this article or the minimum Group A death benefit as provided under Subsection (c), (d), (e), or (f) of this section, as applicable, whichever is greatest.

Sec. 6.11. MINIMUM BENEFITS TO GROUP B PRIMARY PARTIES AND THEIR QUALIFIED SURVIVORS.

(a) Except as provided by Section 6.063 of this article or Subsections (b), (c), and (h) of this section and notwithstanding any benefit computation and determination to the contrary contained in this article, the minimum Group B benefits provided by this section shall be paid to any Group B primary party or the primary party's qualified survivors, except further that a Group B primary party who elects to receive an actuarially reduced retirement pension, including a request for a benefit under Sections 6.02(c) and (d) of this article, and

the primary party's qualified survivors or alternate payee, are not entitled to the Group B minimum benefits specified by this section.

(b) If a Group B primary party leaves active service with 20 or more years of pension service, the Group B primary party is entitled to receive a Group B minimum retirement pension equal to the greater of \$2,200 a month or \$925 a month, which sum may (A) increase at the rate of \$5 a month for each year of pension service beyond 20 years, but the increase may not exceed \$75 and (B) be adjusted, if applicable, in the manner described by Section 6.12 of this article.

(c) If a Group B primary party leaves active service with less than 20 years of pension service, the primary party is entitled to receive a minimum monthly Group B retirement pension equal to the greater of:

(1) \$2,200 a month divided by 20 and multiplied by the Group B primary party's number of years of pension service; or

(2) \$925 a month divided by 20 and multiplied by the Group B primary party's number of years of pension service, which amount is then adjusted, if applicable, in the manner described by Section 6.12 of this article.

(d) In the absence of children who are qualified survivors, a spouse who is a qualified survivor of a Group B primary party will receive a minimum Group B death benefit equal to the greater of:

(1) \$1,200 a month; or

(2) \$600 a month adjusted, if applicable, in the manner described by Section 6.12 of this article.

(e) A spouse who is a qualified survivor of a Group B primary party, if there are children who are qualified survivors, will receive a minimum Group B death benefit of \$1,100 a month.

(f) The children who are qualified survivors of a Group B primary party, as a group, will receive a minimum Group B death benefit equal to the greater of \$1,100 a month or \$600 a month adjusted, if applicable, in the manner described by Section 6.12 of this article, to be divided equally between them.

(g) If there is neither a spouse nor a child who is a qualified survivor, each dependent parent who is a qualified survivor of the deceased Group B primary party will receive a minimum death benefit of \$1,100 a month.

(h) Notwithstanding the minimum monthly retirement pension otherwise described by this section, a Group B primary party who left active service on a non-service-connected disability with less than 20 years of pension service will receive a minimum monthly disability pension equal to the greater of \$110 multiplied by the number of years of the primary party's pension service or \$46.25 multiplied by the number of years of the primary party's pension service, the product adjusted in the manner, if applicable, described by Section 6.12 of this article. If a Group B primary party who was receiving a non-service-connected disability pension before the completion of 20 years pension service dies, the qualified survivors will receive the amount specified in Section 6.08 of this article, or the minimum monthly death benefits granted to qualified survivors as provided by Subsections (d), (e), (f), and (g) of this section, as applicable, whichever is greater.

Sec. 6.12. ADJUSTMENTS TO RETIREMENT AND DISABILITY PENSION BENEFITS.

(a) This section applies to the following benefits provided under this article:

(1) a retirement pension calculated under Section 6.01(e) or 6.02 of this article;

(2) a disability pension calculated under Section 6.04 of this article, other than under Section 6.04(a) of this article;

(3) periodic disability compensation benefit under Section 6.05 of this article, other than Section 6.05(b-1) of this article; or

(4) a death benefit calculated under:

(A) Section 6.07 of this article, if calculated in the manner of a retirement pension under Section 6.01(e) of this article or in the manner of a disability compensation benefit under Section 6.05(b) of this article; or

(B) Section 6.08 of this article currently in pay status, or pending board approval on the last day of September.

(b) Except as provided by Subsection (d) of this section, annually on the first day of October, the pension system may increase the base pension of a benefit described by Subsection (a) of this section by a percentage equal to the average annual rate of actual investment return of the pension system for the five-year period ending on the December 31 preceding the effective date of the adjustment less five percent.

(c) An adjustment under this section may not be less than zero percent or exceed four percent of the applicable base pension benefit.

(d) The pension system may only make an adjustment to benefits under this section if the ratio of the amount of the pension system's market value of assets divided by the amount of the pension system's actuarial accrued liabilities, after giving effect to the adjustment, is not less than .70.

(e) For purposes of Subsection (d) of this section, the amount of the pension system's market value of assets and the amount of the pension system's actuarial accrued liabilities shall be based on and determined as of the date of the most recently completed actuarial valuation.

(f) The following persons may not receive an adjustment under this section:

(1) a member on active service, including a DROP participant;

(2) a pensioner until the first October 1 occurring after both the pensioner's retirement and the earlier of:

(A) the date the pensioner reaches 62 years of age; or

(B) the third anniversary of the date the pensioner retired; or

(3) a qualified survivor until the first October 1 occurring after the earlier of:

(A) the date the qualified survivor reaches 62 years of age;

(B) the third anniversary of the date the primary party retired; or

(C) the third anniversary of the date of the member's or pensioner's death.

(g) A retirement or disability pension or periodic disability compensation paid to any Group B pensioner may not be less than the Group B pensioner's base pension.

(h) The death benefit of the qualified survivors who are the spouse, dependent parent, or child of a Group B pensioner, as a group, may not be less than 50 percent of the pensioner's base pension.

Sec. 6.13. SUPPLEMENT TO CERTAIN RECIPIENTS 55 YEARS OF AGE OR OLDER.

(a) Except as provided by Subsection (b) of this section, if a pensioner had at least 20 years of pension service under any plan adopted pursuant to Article 6243a or this article, or if a pensioner is receiving the periodic disability compensation benefit under Section 6.05 of this article, the pensioner, the pensioner's spouse who is a qualified survivor eligible to receive benefits under this article, or the pensioner's children who are qualified survivors, as a group, under Section 6.06 of this article are entitled to receive, when the pensioner or spouse who is a qualified survivor attains 55 years of age, provided the pensioner or spouse attains 55 years of age before September 1, 2017, a monthly supplement equal to the greater of \$50 or three percent of their total monthly benefit and for months beginning on and after January 1, 1991, a monthly supplement equal to the greater of \$75 or three percent of their total monthly benefit. For purposes only of calculating this supplement, the phrase "their total monthly benefit" means the amount payable to a pensioner or qualified survivors under the terms of the plans described by this section under which the pensioner or qualified survivor elected to receive benefits but

does not include the supplement authorized by this section or any adjustments under Section 6.12 of this article made after September 1, 2017.

(b) A person described by Subsection (a) of this section who, on September 1, 2017, is not receiving or has not received a supplemental benefit under this section is not entitled to receive a supplemental benefit under this section.

Sec. 6.14. DEFERRED RETIREMENT OPTION PLAN.

(a) A member who remains on active service after becoming eligible to receive a retirement pension under either Section 6.01 or 6.02 of this article may become a participant in the deferred retirement option plan in accordance with Subsections (b) and (c) of this section, and defer the beginning of the person's retirement pension. Once an election to participate in the DROP has been made, the election continues in effect at least as long as the member remains in active service. On leaving active service, the member may:

(1) apply for a retirement pension under Sections 6.01(b) and (c), Section 6.01(e), or Section 6.02(b), (c), (d), or (e) of this article, whichever is applicable, together with any DROP benefit provided under this section; or

(2) continue to participate in DROP except the member is ineligible for disability benefits described by Subsection (g-1) of this section.

(b) The election to participate in the DROP shall be made in accordance with procedures set forth in any uniform and nondiscriminatory election form adopted by the board and in effect from time to time. To determine the proper amount to be credited to a member's DROP account, the election shall indicate whether the member desires to receive a retirement pension under Sections 6.01(b) and (c), Section 6.01(e), or Section 6.02(b), (c), (d), or (e) of this article, whichever is applicable. The election may be made at any time on or after the date the member becomes eligible for a retirement pension as provided by this subsection. The election becomes effective on the first day of the first month on or after the date on which the member makes

the election, except that an election that would otherwise have been effective on October 1, 1993, and every October 1 after that date, is considered, for purposes of this section and Section 6.12 of this article, to be effective on September 30 of the year in which it would otherwise have been effective. On and after the effective date of the election, the member will no longer be eligible for any refund of contributions. The election by one or more members to participate in the DROP has no effect on the amount of city contributions to the fund under Section 4.02 of this article.

(c) Each month after a member has made an election to participate in the DROP and indicated a desire to receive a retirement pension under Sections 6.01(b) and (c), Section 6.01(e), or Section 6.02(b), (c), (d), or (e) of this article, whichever is applicable, and through the month before the month in which the member leaves active service, an amount equal to the retirement pension the member would have received under the applicable subsection for that month if the member had left active service and been granted a retirement pension by the board on the effective date of DROP participation shall be credited to a separate DROP account maintained within the fund for the benefit of the member. Amounts held in the DROP account of a member shall be credited at the end of each calendar month. Notwithstanding this section, effective January 1, 2018, a member on active service who has 10 years or more of participation in DROP shall no longer have the amount of the member's retirement pension credited to the member's DROP account while the member is on active service.

(d) A member may not receive a distribution from the member's DROP account while the member is on active service.

(e) Except as provided by Subsections (e-1) and (1) of this section, the balance in the DROP account of a member who terminated from active service on or before September 1, 2017, or who terminates from active service shall be distributed to the member in the form of an annuity, payable either monthly or annually at the election of the member, by annuitizing the amount credited to the DROP account over the life expectancy of

the member as of the date of the annuitization using mortality tables recommended by the pension system's qualified actuary. The annuity shall be distributed beginning as promptly as administratively feasible after the later of, as applicable:

(1) the date the member retires and is granted a retirement pension; or

(2) September 1, 2017.

(e-1) The board may adopt a shorter period for annuitizing DROP account balances under Subsection (e) of this section if the pension system's qualified actuary determines that the shorter period will not cause the pension system's amortization period to exceed 25 years.

(e-2) The annuitization of a DROP account under Subsection (e) of this section must reflect the accrual of interest on the amount in the DROP account as of September 1, 2017, over the annuitization period applied to the account under this section. The interest rate applied under this subsection must be a rate as reasonably equivalent as practicable to the interest rate on a note issued by the United States Department of the Treasury or other federal treasury note with a duration that is reasonably comparable to the annuitization period applied to the account, as determined by the board. The portion of an annuity attributable to amounts credited to a member's DROP account on or after September 1, 2017, may not reflect the accrual of this interest on annuitization.

(e-3) The board may by rule allow a DROP participant who has terminated active service and who is eligible for a retirement pension to:

(1) assign the distribution from the participant's annuitized DROP account to a third party provided the pension system receives a favorable private letter ruling from the Internal Revenue Service ruling that such an assignment will not negatively impact the pension system's qualified plan status; and

(2) subject to Subsection (e-4) of this section, in the event of a financial hardship that was not reasonably

foreseeable obtain a lump-sum distribution from the participant's DROP account resulting in a corresponding reduction in the total number or in the amount of annuity payments.

(e-4) The board shall adopt rules necessary to implement Subsection (e-3)(2) of this section, including rules regarding what constitutes a financial hardship for purposes of that subdivision. In adopting the rules, the board shall provide flexibility to members.

(f) The board may adopt rules and policies relating to the administration of Subsections (e), (e-1), and (e-2) of this section if the rules and policies are:

(1) consistent with the qualification of the plan under Section 401 of the code; and

(2) in the best interest of the pension system.

(f-1) The DROP account of a member who begins participating in DROP on or after September 1, 2017, does not accrue interest.

(g) The provisions of Sections 6.06, 6.061, 6.062, 6.063, 6.07, and 6.08 of this article pertaining to death benefits of a qualified survivor do not apply to amounts held in a member's or pensioner's DROP account. Instead, a member or pensioner who participates in DROP may designate a beneficiary to receive the annuity payments under this section over the remaining annuitization period in the event of the member's or pensioner's death subject to any rights provided under Subsection (e-3) of this section and in the manner allowed by Section 401(a)(9) of the code and any policy adopted by the board. A member or pensioner who is or becomes married is considered to have designated the member's or pensioner's spouse as the member's or pensioner's beneficiary, notwithstanding any prior beneficiary designation, unless the member or pensioner has made a different designation in accordance with a policy adopted by the board. If a member or pensioner does not have a spouse or the spouse predeceases the member or pensioner, the member's or pensioner's, as applicable, DROP account will be distributed to the member's or pensioner's, as applicable, designee.

Notwithstanding anything in this section to the contrary, if a member or pensioner has previously designated the member's or pensioner's spouse as the beneficiary or co-beneficiary of the DROP account and the member or pensioner and spouse are subsequently divorced, the divorce automatically results in the invalidation of the designation of the spouse as a beneficiary and, if there is no additional beneficiary designated, the member's or pensioner's DROP account shall be distributed as provided by Subsection (e) of this section. If there are beneficiaries who survive the deceased member or pensioner, the surviving beneficiaries share equally in that portion that would have otherwise been payable to the former spouse.

(g-1) A member who becomes a DROP participant is ineligible for any disability benefits described by Section 6.03, 6.04, or 6.05 of this article, but is entitled to a retirement pension in accordance with Sections 6.01(b) and (c), Section 6.01(e), or Section 6.02 of this article, whichever is applicable, on termination from active service, and is also entitled to receive annuity payments in accordance with Subsection (e) of this section.

(h) The base pay or computation pay, whichever is applicable, in effect as of the effective date of a member's participation in DROP shall be used in calculating the member's retirement pension under Section 6.01 or 6.02 of this article. A member who elects to participate in DROP does not accrue additional pension service for purposes of computing a retirement pension for any period after the effective date of the election.

(i) Repealed by Acts 2017, 85th Leg., R.S., Ch. 318 (H.B. 3158), Sec. 1.52(6), eff. September 1, 2017.

(j) Except as provided by Subsection (l) of this section, if a pensioner who has been a DROP participant returns to active service, the person must become a participant in DROP under the terms and conditions in effect at the time of return to active service.

(k) Repealed by Acts 2017, 85th Leg., R.S., Ch. 318 (H.B. 3158), Sec. 1.52(6), eff. September 1, 2017.

(l) Notwithstanding any other provision of this section and except as provided by Subsection (o) of this section, a member who has entered DROP before June 1, 2017, may revoke the DROP election at any time on or after September 1, 2017, and before the earlier of:

- (1) February 28, 2018; or
- (2) the member's termination of active service.

(m) If a member revokes participation in DROP under Subsection (l) of this section:

(1) the member's DROP account balance is eliminated;
and

(2) the member shall receive pension service credited for all or a portion of the period of the revoked DROP participation on payment of the required contributions for the period of the revoked DROP participation in accordance with a uniform and nondiscriminatory procedure adopted by the board that results in the payment of the amount of member contributions that would have been made if the member had never participated in DROP.

(n) A member who revokes the member's DROP election under Subsection (l) of this section is entitled to only a monthly pension computed on the basis of the member's pension service, including pension service purchased under Subsection (m) of this section:

(1) that is based on the member's average computation pay at the time of leaving active service, if the member is a Group B member; or

(2) as provided by Section 6.01(b) of this article, if the member is a Group A member.

(o) A member may not revoke DROP participation under Subsection (l) of this section if any money has been transferred out of the member's DROP account.

Sec. 6.141. DEFERRED ANNUITIZATION OF CERTAIN DROP ACCOUNTS.

- (a) This section applies only to a pensioner who:
 - (1) before attaining 50 years of age:
 - (A) left active service; and
 - (B) was granted a service retirement pension under Section 6.01 or 6.02 of this article;
 - (2) since the pensioner's retirement has continued to receive substantially equal periodic payments, as determined under Section 72(t) of the code; and
 - (3) on September 1, 2017:
 - (A) is a DROP participant; and
 - (B) has not attained 59-1/2 years of age.
- (b) Notwithstanding Section 6.14 of this article and solely to avoid the possibility of an early distribution tax penalty under Section 72(t)(4) of the code:
 - (1) a pensioner subject to this section may until the pensioner attains 59-1/2 years of age:
 - (A) subject to Subsection (c) of this section, continue to participate in DROP;
 - (B) have the same amount of the pensioner's service retirement pension credited to the pensioner's DROP account as has been credited since the pensioner's service retirement pension was initially granted; and
 - (C) defer annuitization of the pensioner's DROP account under Section 6.14(e) of this article; and
 - (2) once a pensioner subject to this section attains 59-1/2 years of age:
 - (A) the pensioner may not have any portion of the pensioner's service retirement pension credited to the pensioner's DROP account; and
 - (B) as soon as administratively feasible, the balance in the pensioner's DROP account shall be annuitized and distributed to the pensioner in accordance with Section 6.14(e) of this article.

(c) The DROP account of a pensioner who continues participation in DROP under Subsection (b)(1)(A) of this section does not accrue interest on and after September 1, 2017.

Sec. 6.15. MEDICAL EXAMINATION.

(a) The board may require the following pensioners receiving a disability pension or a periodic disability compensation benefit to appear and undergo a medical examination by the health director or, if the health director approves, by any licensed medical practitioner, to determine if the pensioner's disability continues or has been removed to the extent that the pensioner is able to resume duties with the department:

(1) any Group A pensioner who has served less than 20 years;

(2) any Group A pensioner who elected a Group A disability pension under Section 6.04 of this article, periodic disability compensation under Section 6.05 of this article, or a non-service-connected disability pension under Plan A or former Section 17(b)(2) of this article, and who had more than 20 years of pension service, but is less than 55 years of age; and

(3) any Group B pensioner who was granted a Group B disability pension under Section 6.04 of this article or periodic disability compensation under Section 6.05 of this article or a disability pension under the terms of Plan B and is less than 50 years of age.

(b) Any medical examination under this section is subject to the following conditions:

(1) Except as otherwise provided by this section, the board has complete discretion to require a pensioner to appear and undergo a medical examination as well as the time that may pass between examinations. When it becomes clear to the board from reliable medical evidence that the disability is unequivocally permanent and is not expected to diminish, the board may waive subsequent examinations.

(2) A pensioner may not be required to undergo a medical examination more often than once in a six-month period, except that the board may order the pensioner to undergo an examination at any time if the board has reason to believe the pensioner's disability has been removed and that the pensioner may be able to resume duties with the pensioner's former department or if the pensioner requests to be allowed to return to duty.

(3) If a pensioner fails to undergo an examination after being notified by the board that the examination is required, the board may discontinue disability benefits until the pensioner has undergone the examination and the results of the examination have been sent to the board.

(4) If the pensioner is examined by an approved outside medical practitioner other than the health director, the reasonable and customary cost of the examination, if any, is payable from the assets of the fund.

(c) After a pensioner has undergone a medical examination, the health director shall provide the board with a report of the pensioner's present medical condition together with the doctor's opinion as to whether the pensioner continues to be disabled or whether the pensioner is no longer disabled to the extent that the pensioner could resume duties with the pensioner's former department. The report and opinion may be divulged only to persons who have a legitimate need for them.

(d) If, in the opinion of the health director, the pensioner continues to be disabled, the board must continue payment of benefits. If, in the opinion of the health director, the pensioner is no longer disabled, or is not so disabled that the pensioner could not perform some duties for the pensioner's former department, the board shall notify the department to determine if a position is available. If a position is available, the board shall notify the pensioner to return to duty. Disability benefits shall continue to be paid, however, until the pensioner returns to active service. However, if the

pensioner refuses to return to duty or is refused employment by either department for reasons other than disability, the board shall order disability payments stopped. If a position is not available, the board must continue payments of the pensioner's disability pension.

(e) Pursuant to its authority under Section 6.06(o-2) of this article to review and modify any funding relating to the disability of a child who is a qualified survivor, the board may require the qualified survivor with a disability receiving death benefits to appear and undergo medical examination by the health director or, if the health director approves, by any licensed medical practitioner, to determine if the disability continues or if the disability has been removed.

Sec. 6.16. WAIVER OF BENEFITS.

(a) A primary party, qualified survivor, or beneficiary of a member's DROP account may, on a form prescribed by the board and filed with the executive director, waive all or a portion of the benefits to which the person is or may be entitled. The waiver may state whether it is revocable or irrevocable, and is irrevocable unless the waiver clearly states it is revocable.

(b) The waiver described by Subsection (a) of this section applies only to benefits that become payable on or after the date the waiver is filed.

(b-1) Benefits waived by a revocable waiver are forfeited and the person making the waiver has no right, title, claim, or interest in the benefits.

(c) If two or more persons are or may be entitled to benefits under this article, the waiver described by Subsection (a) of this section must be executed by each person to become effective. The living parent or parents or legal guardian or guardians of a child must sign the waiver described by Subsection (a) of this section on behalf of the child.

Sec. 6.17. DENIAL OF BENEFITS: DEATH CAUSED BY SURVIVOR.

A qualified survivor or beneficiary of a member's DROP account is not eligible for, or entitled to, benefits if the person is the principal or an accomplice in wilfully bringing about the death of a primary party or another qualified survivor or beneficiary of a member's DROP account whose death would otherwise have resulted in a benefit or benefit increase to the person. The determination of the board that a person wilfully brought about the death must be made during a meeting of the board from a preponderance of the evidence presented and is not controlled by any other finding in any other forum, whether considered under the same or another degree of proof.

Sec. 6.18. INVESTIGATION.

(a) The board shall consider all applications for retirement and disability pensions, all applications for death benefits, and all elections to participate in DROP. The board shall give notice to persons applying for benefits, advising them of their right to appear before the board and offer such sworn evidence as they may desire. Any person claiming retirement, disability, or DROP benefits may appear before the board and offer testimony that is relevant to a contested application for a retirement pension, a disability pension, death benefits, or DROP benefits. The chairman of the board may issue process for witnesses, administer oaths to witnesses, and examine any witness as to any matter affecting benefits under any plan within the pension system. Process for witnesses shall be served by any method of serving process permitted by the state law in any civil judicial proceeding. A witness who fails or refuses to attend and testify may be compelled to attend and testify, as in any judicial proceeding. The board may seek assistance from any court of competent jurisdiction to further compel or sanction a witness who fails or refuses to attend and testify.

(b) Any person who is aggrieved by a determination of the board regarding a retirement pension, a disability pension, death benefits, or DROP benefits may appeal the board

determination to a state district court in the city where the pension system is located by giving written notice of appeal. The notice shall contain a statement of the grounds and reasons why the party feels aggrieved. The notice shall be served personally on the executive director within 20 days after the date of the board's determination. After service of the notice, the party appealing shall file with the state district court a copy of the notice of intention to appeal, together with an affidavit of the party making service showing how, when, and on whom the notice was served.

(c) Within 30 days after the date of service of the notice of appeal on the board, the executive director shall make up and file with the state district court a transcript of all nonprivileged papers and proceedings in the case before the board. When the copy of the notice of appeal and the transcript has been filed with the court, the appeal is perfected, and the court shall docket the appeal, assign the appeal a number, fix a date for hearing the appeal, and notify both the appellant and the board of the date fixed for the hearing.

(d) At any time before the rendering of its decision on appeal, the court may require further or additional proof or information, either documentary or under oath. On rendition of a decision on appeal, the court shall give to each party to the appeal a copy of the decision of the case. The decision of the court is appealable in the same manner as are civil cases generally.

(e) As provided by Section 4.01 of this article, the board shall approve all money used for investigations. The board may request the investigative services of either the police or fire departments in connection with any matter arising under this section.

Sec. 6.19. CERTIFICATE OF MEMBER PENSION BENEFIT ELIGIBILITY.

When a member has earned five years of pension service, the member shall be issued an incontestable five-year certificate indicating that the member is entitled to pension benefits subject to the effect of any withdrawals as permitted under Article 6243a or this article. The certificate shall state that the calculation of the retirement pension to which the member is entitled, or any disability benefits to which the member may become entitled, shall be determined solely under the actual terms of the combined pension plan as in effect at the time the member leaves active service. The certificate shall further state that in the case of the member's death, the member's qualified survivors, if any, may become entitled to death benefits as determined solely under the actual terms of the combined pension plan as in effect at the time of the member's death. The certificate shall bear a seal and be signed by the executive director and chairman of the board.

Sec. 6.20. ERRONEOUS PAYMENTS OR OVERPAYMENTS.

(a) If the pension system pays money to any person not entitled to the payment, whether by reason of an error of the pension system as to entitlement to or the amount of a benefit or otherwise, or an act or error of some other person, including the recipient of the payment, the recipient of the payment holds the funds to which the recipient was not entitled in constructive trust for the pension system and those funds are subject to demand by the pension system at any time.

(b) The recipient of an erroneous payment from the pension system shall repay to the pension system all funds associated with the erroneous payment.

(c) Subject to Subsection (e) of this section, the board may by rule adopt a procedure to enable the pension system to offset the future benefit or other payments of a recipient described by this section. In addition, the board may take any additional action, including the bringing of a lawsuit, the

board considers necessary to recover an erroneous payment the pension system is entitled to under this section.

(d) If the pension system determines that a person is entitled to additional benefits as a result of an error made by the pension system, the pension system shall promptly pay the additional benefits owed.

(e) The board's correction procedures must comply with the Internal Revenue Service's Employee Plans Compliance Resolution System and Revenue Procedure 2016-51, including subsequent guidance.

PART 6A. EQUITABLE ADJUSTMENTS

Sec. 6A.01. EQUITABLE ADJUSTMENTS TO BENEFITS.

(a) Subject to this section and notwithstanding any other provision of this article, the board by at least a two-thirds vote of all trustees may consider and adopt rules requiring the equitable return of funds paid to or credited to the benefit of a member or pensioner under this article before September 1, 2017, to the extent the funds exceeded reasonable amounts that should be paid or credited given the circumstances of the pension system at the time the payment or credit was made, including the return of excessive interest credited to a member's DROP account and excessive adjustments made under Section 6.12 of this article.

(b) For purposes of Subsection (a) of this section, "reasonable amounts" includes the amounts that would have been paid or credited:

(1) if the interest rate applied in determining a benefit, including the interest rate applied to a DROP account, equaled the actual, audited rate of return of the plan at the time the interest was credited to the account; or

(2) if the percentage increase applied under Section 6.12 of this article equaled the percentage increase, if any, in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) most recently published by the Bureau of Labor Statistics of the United States Department of Labor and used by

the United States Social Security Administration to provide a cost-of-living adjustment for social security benefit payments payable beginning in January of the next year.

Sec. 6A.02. ADJUDICATION OF CERTAIN CHALLENGES.

(a) The Texas Supreme Court has exclusive and original jurisdiction over a challenge to the constitutionality under the Texas Constitution of Section 6A.01 of this article. An action under this section is authorized to the full extent permitted by Section 3, Article V, Texas Constitution. The Texas Supreme Court may issue any injunctive, declaratory, or equitable relief the court deems appropriate or necessary to effectuate the court's mandamus jurisdiction in connection with a challenge under this section.

(b) Any action brought under this section must be filed not later than the 90th day after the date the board adopts a rule under Section 6A.01 of this article.

(c) If an action brought under this section is timely filed, the board may not enforce or otherwise administer any rules adopted pursuant to Section 6A.01 of this article during the pendency of the action.

PART 8. TREATMENT UNDER FEDERAL AND STATE LAW

Sec. 8.01. QUALIFICATION UNDER FEDERAL TAX LAW.

(a) The plans within the pension system and the assets of the fund are intended to qualify as a governmental plan under Sections 401 and 414(d) of the code, be exempt from federal income taxes under Section 501(a) of the code, and conform at all times to applicable requirements of law, regulations, and orders of duly constituted federal governmental authorities. Accordingly, if any provision of this article is subject to more than one construction, one of which will permit the qualification of a plan that is within the pension system, that construction that will permit the plan to qualify and conform will prevail.

(b) The plans within the pension system as well as the assets of the fund shall be maintained for the exclusive benefit of members and their beneficiaries. At no time before the termination of all the plans within the pension system and the satisfaction of all liabilities with respect to members and their beneficiaries under all plans shall any part of the principal or interest from the assets of the fund be used for or diverted to purposes other than the exclusive benefit of the members and beneficiaries.

(c) Notwithstanding any other provisions of this article, the annual benefit provided with respect to any member in any limitation year may not exceed the amount permitted by Section 415(b) of the code for the limitation year, and the sum of the member contributions and all other annual additions for any limitation year may not exceed the amount permitted under Section 415(c) of the code for the limitation year. If the aggregated annual benefit or aggregated annual additions under any qualified plans created under this article and any other defined benefit plan or plans maintained by the city would otherwise exceed the limitations of Section 415 of the code, the required reductions in benefits or contributions shall first be made to the extent possible from the other plan or plans. The limitations referenced in this subsection shall be adjusted annually in accordance with Section 415(d) of the code and any adjustment to benefits applies to the benefits of active and terminated members and applies without regard to whether a terminated member is a pensioner.

(c-1) Notwithstanding anything contained in this section to the contrary, the limitations, adjustments, and other requirements prescribed by this section shall at all times be computed in the manner most favorable to the affected members, to the extent permitted by guidelines issued by the Internal Revenue Service. If any provision of Section 415 of the code is repealed or is not enforced by the Internal Revenue Service, that provision may not reduce the benefits of any member after the effective date of the repeal of the provision or during the period in which the provision is not enforced.

(c-2) Any benefit reductions that are required to be made under this section shall be applied to reduce the monthly benefit that would otherwise have been payable to the member, unless the value of the member's DROP account accrued under Section 6.14 of this article exceeds the amount that may be paid under this section. If the value of the DROP account exceeds the value of the payments that may be made under this section, the member shall receive a lump-sum payment from the account of the maximum amount that may be paid under this section and the payment shall permanently reduce the benefits the member would otherwise have been entitled to receive under the combined pension plan.

(d) A member's retirement pension may not begin later than April 1 of the year after the later of the year in which the member leaves active service or the year in which the member attains age 70-1/2 and must at all times comply with the requirements of Section 401(a)(9) of the code.

(e) Any person who receives any distribution from any plan within the pension system that is an eligible rollover distribution as defined by Section 402(f)(2)(A) of the code is entitled to have that distribution transferred directly to another eligible retirement plan as defined by Section 402(c)(8)(B) of the code of the person's choice on providing direction regarding that transfer to the executive director in accordance with procedures established by the executive director.

(e-1) If an eligible rollover distribution described by Subsection (e) of this section is to a designated beneficiary who is not the spouse or former spouse of the member, the transfer may only be to an individual retirement account or an individual retirement annuity.

(f) For the 2017 calendar year, the annual compensation taken into account for any purpose under the combined pension plan may not exceed \$400,000 for an eligible participant or \$270,000 for an ineligible participant. For a Group A member the term "annual compensation" means the aggregate of the

member's base pay. For a Group B member the term "annual compensation" means the aggregate of the member's computation pay for any given plan year. These dollar limits shall be adjusted from time to time in accordance with guidelines provided by the secretary of the treasury. For purposes of this subsection, an:

(1) "eligible participant" means any person who first became a member of the pension system before January 1, 1996; and

(2) "ineligible participant" means any member who is not an eligible participant.

(g) For purposes of Subsection (h) of this section, "normal retirement age" means the earlier of:

(1) the attainment of 50 years of age on or before September 1, 2017, and completion of at least five years of pension service;

(2) the attainment of 58 years of age after September 1, 2017, and completion of at least five years of pension service; or

(3) completion of 20 years of pension service.

(h) The retirement benefit earned by a member is nonforfeitable:

(1) on attainment of normal retirement age, if not already nonforfeitable; or

(2) to the extent the benefit is funded, if not already nonforfeitable, on the termination or partial termination of the combined pension plan or the complete discontinuance of city contributions to the fund.

(i) In accordance with Section 401(a)(8) of the code, forfeitures arising under the combined pension plan may not be used to increase the benefits any member would otherwise receive under the terms of the plan. Forfeitures may be used first to reduce administrative expenses, then to reduce required city contributions.

(j) Subject to procedures adopted by the board, the pension system shall accept an eligible rollover distribution from another eligible retirement plan as defined by Section 402(f)(2)(B) of the code as payment of all or a portion of any

payment a member is permitted to make to the pension system for past pension service credit. The pension system shall separately account for any after-tax contributions transferred from any plan under this subsection.

Sec. 8.02. EXCESS BENEFIT PLAN FOR POLICE OFFICERS AND FIRE FIGHTERS.

The board may by rule establish and administer a separate qualified governmental excess benefit arrangement and associated trust for the arrangement in accordance with Section 415(m) of the code.

Sec. 8.03. EXEMPTION OF BENEFITS FROM JUDICIAL PROCESS OR ALIENATION.

(a) A portion of the fund or benefit or amount awarded to any primary party, qualified survivor, beneficiary of a member's DROP account, excess benefit participant, or survivor of an excess benefit participant under this article may not be held, seized, taken, subjected to, or detained or levied on by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process or proceedings issued from or by any court for the payment or satisfaction, in whole or in part, of any debt, damage, claim, demands, or judgment against any person entitled to benefits from any plan within the pension system or from the excess benefit plan. The fund and the excess benefit plan or any claim against the fund or the excess benefit plan may not be directly or indirectly assigned or transferred, and any attempt to transfer or assign the fund or the excess benefit plan or a claim against the fund or the excess benefit plan is void.

(b) A benefit under any plan created or existing pursuant to this article or Article 6243a is subject to division pursuant to the terms of a qualified domestic relations order. The executive director shall determine the qualifications of a domestic relations order according to a uniform, consistent procedure approved by the board. The total benefit payable to a

primary party or to an alternate payee under a qualified domestic relations order may not actuarially exceed the benefits to which a primary party would be entitled in the absence of the qualified domestic relations order. In calculating the alternate payee's benefits under a qualified domestic relations order, the interest rate is the rate used by the pension system's actuary in the actuarial evaluation for that year, except that the minimum interest rate for this purpose is the minimum required by Section 414 of the code.

(c) This section does not preclude:

(1) the payment of death benefits to a trust for certain children of a primary party pursuant to Section 6.06(n) of this article;

(2) the withholding of federal taxes from pension benefits;

(3) the recovery by the board of overpayments of benefits previously made to any person;

(4) the direct deposit of benefit payments to an account in a bank, savings and loan association, credit union, or other financial institution, provided the arrangement is not an alienation;

(5) under any policy adopted by the board and uniformly applied to voluntary arrangements entered into by a primary party or qualified survivor, any voluntary and revocable arrangement entered into by a pensioner or a qualified survivor that permits the withholding and direct payment of health care or life insurance premiums or similar payments from the monthly benefit payments; or

(6) an assignment of the distribution from an annuitized DROP account to a third party under Section 6.14(e-3)(1) of this article.

(d) For purposes of Subsection (c) of this section, an attachment, garnishment, levy, execution, or other legal process is not considered a voluntary arrangement.

**SUPPLEMENTAL PENSION PLAN
FOR
THE POLICE AND FIRE DEPARTMENTS
OF THE
CITY OF DALLAS, TEXAS**

AMENDED AND RESTATED
1999

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FOR
THE POLICE AND FIRE DEPARTMENTS
OF THE
CITY OF DALLAS, TEXAS

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SUPPLEMENTAL PENSION PLAN

An ordinance amending and restating the Supplemental Police and Fire Pension Plan of the City of Dallas; restating intervening benefit modifications; updating or deleting obsolete language; conforming with the requirements of the Internal Revenue Code; making technical corrections providing for the maintenance of tax qualification of the Plan; providing a severability clause; and providing an effective date.

WHEREAS, changes to Articles 6243a and 6243a-1, Vernon’s Texas Civil Statutes, and changes to the tax qualification requirements in the Internal Revenue Code, as well as the need to provide clarification of certain benefits under the Supplemental Police and Fire Pension Plan of the City of Dallas necessitate that such Plan be amended and restated; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the Supplemental Police and Fire Pension Plan of the City of Dallas adopted by Ordinance 14084 on September 30, 1973, as amended, is hereby replaced in its entirety with the following language:

PART 1 - CREATION AND PURPOSE

SECTION 1.01 PURPOSE

By virtue of the authority vested in the City under Section 1, Subsection (35) of Chapter II of the Charter of the City of Dallas, Texas, and in accordance with Section 7 of the Supplemental Police and Fire Pension Plan of the City of Dallas (“Supplemental Pension Plan”), the Supplemental Pension Plan, as originally effective March 1, 1973, is hereby amended and restated to:

(a) Continue to provide benefits to police officers and firefighters who are Members of this Plan, their Qualified Survivors and, in the case of Members who have elected the DROP feature, such Members' beneficiaries;

(b) Make certain technical changes to conform the administration of the Supplemental Plan to the Combined Pension Plan in order to reduce complexity and for ease of administration; as well as

(c) Make such changes as are necessary to conform to the requirements of the IRC, as amended through the date of this amendment and restatement.

SECTION 1.02 CONSTRUCTION

Solely for purposes of determining the benefits of Members of this Plan, construction of any provision of this Plan shall favor an interpretation that Members of this Plan obtain aggregate benefits from both the Combined Pension Plan and this Plan that are no greater or lesser than they would receive if the Combined Pension Plan alone existed and if the Combined Pension Plan existing alone also provided benefits based on Supplemental Computation Pay as herein defined. Thus, Members of this Plan shall receive only those benefits that otherwise would have been or would be payable to Group B members of the Combined Pension Plan, but for certain definitionally imposed limitations under said Combined Pension Plan, and shall not receive any benefits under this Plan that duplicate benefits provided under the Combined Pension Plan.

PART 2 - GENERAL PROVISIONS

SECTION 2.01 DEFINITIONS

(a) "Active Service" means any period for which a Member receives compensation as a Police Officer or Fire Fighter from either Department for services rendered.

(b) "Administrator" means the person designated by the Board to supervise the operations of the Pension System and coincident thereto this Plan.

(c) "Alternate Payee" has the meaning given the term by Section 2.01 of the Combined Pension Plan.

(d) "Article 6243a-1" means Article 6243a-1 of the Revised Civil Statutes of the State of Texas and, unless the context dictates otherwise, the Combined Pension Plan established pursuant to Article 6243a-1 of the Revised Civil Statutes of the State of Texas, as the same may be amended from time to time, or any successor statute or plan thereto.

(e) "Assignment Pay" means monthly pay, in addition to salary, granted to a Group B Member and authorized by the City Council for the performance of certain enumerated duty assignments.

(f) "Base Pension" means the amount of retirement, death, or disability benefits under this Plan as determined at the earliest of the time a Member enters DROP, leaves or left Active Service, dies, or becomes entitled to a disability pension or periodic disability compensation under the Combined Pension Plan. Solely for purposes of this definition, when a Member becomes entitled to a disability pension or periodic disability compensation, Base Pension shall be determined as of the date on which the disability pension or periodic disability compensation commences.

(g) "Board" means the Board of Trustees of this Supplemental Pension Plan.

(h) "Child" or "Children" means a person whose parent is a Primary Party, as recognized under the laws of this state.

(i) "City" means the City of Dallas, Dallas County, Texas.

(j) "City Council" means the governing body of the City.

(k) "City Service Incentive Pay" means annual incentive pay, adjusted by the City from time to time, in addition to the salary of a Member granted to the Member under the authority of the City charter and received by the Member during Active Service.

(l) "Combined Pension Plan" means any qualified pension plan created pursuant to Article 6243a-1 or any successor statute thereto.

(m) "Department" means either the Police Department of the City or the Fire Department of the City, and "Departments" means both the Police and Fire Departments of the City together.

(n) "Dependent Parent" means a natural parent or parent who adopted a Primary Party and who immediately before the death of that Primary Party received over half of the parent's financial support from the Primary Party.

(o) "Disability Retirement" means any period that a Pensioner receives a disability pension or periodic disability compensation from the Combined Pension Plan.

(p) "Educational Incentive Pay" means incentive pay designed to reward completion of certain hours of college credit, adjusted by the City from time to time, that is paid to a Member in addition to the Member's salary.

(q) "Fund" means all funds and property contributed solely to this Plan together with all income, profits, or other increments thereon, and held to provide for those benefits of all persons who are or who may become entitled to any such benefits under this Plan.

(r) "Group A Member" means any Police Officer or Fire Fighter described by Paragraph 5.01(a)(1) of the Combined Pension Plan.

(s) "Group B Member" means any Police Officer or Fire Fighter described by Paragraph 5.01(a)(2) of the Combined Pension Plan.

(t) "IRC" means the United States Internal Revenue Code of 1986, as amended from time to time.

(u) "Limitation Year" means the plan year of the Combined Pension Plan.

(v) "Member" means a person who has become a Member of this Plan as set forth below in Section 5.01 of this Plan.

(w) "Old Plan" means the pension plan created pursuant to Section 1 of former Article 6243a of the Civil Statutes of Texas, the predecessor to Article 6243a-1.

(x) "Pensioner," means a former Member of this Plan who is on either a Service or Disability Retirement.

(y) "Pension Service" means the time, in years, and prorated for fractional years, for which a Member has made all required contributions under the terms of the Combined Pension Plan or any other plan within the Pension System, reduced to reflect any refunds that have been received under the terms of either the Combined Pension Plan or this Plan and not fully repaid under the terms of the applicable plan.

(z) "Pension System" means the plan(s) created pursuant to Article 6243a-1, or its successor, and intended to be qualified under Section 401(a) of the IRC., and the related fund, which is intended to be exempt from Federal income taxes under Subsection 501(a) of the IRC.

(aa) "Police Officer" or "Fire Fighter" means a Police Officer, Fire Fighter, Fire and Rescue Officer, Fire Alarm Operator, Fire Inspector, apprentice Police Officer, apprentice Fire Fighter, or similar employee of either Department as defined in the classifications of the personnel department of the City.

(bb) "Primary Party" means a Member or Pensioner.

(cc) "Qualified Actuary" means either:

(1) an individual who is a Fellow of the Society of Actuaries, a Fellow of the Conference of Actuaries in Public Practice, or a member of the American Academy of Actuaries; or

(2) a firm that employs one or more persons who are Fellows of the Society of Actuaries, Fellows of the Conference of Actuaries in Public Practice, or members of the American Academy of Actuaries and is providing services to the Pension System.

(dd) "Qualified Domestic Relations Order" has the same meaning provided by Section 2.01 of the Combined Pension Plan or any successor provision.

(ee) "Qualified Survivor" means a person who is eligible to receive survivor benefits after the death of a Primary Party and includes only:

(1) a surviving Spouse, if the Spouse was continuously married to the Primary Party from the date when the Primary Party either voluntarily or involuntarily left Active Service as a Member through the date of the Primary Party's death;

(2) all surviving, unmarried Children who are either under age 19 or handicapped, as determined by the Board of Trustees of the Combined Pension Plan, pursuant to Section 6.06 of that plan and who were born or adopted before the Primary Party either voluntarily or involuntarily left Active Service, or who were born after the Primary Party left Active Service if their mother was pregnant with such child before the Primary Party left Active Service; and

(3) a surviving Dependent Parent of a Primary Party if the Primary Party is not survived by a Spouse or Child eligible for benefits.

(ff) "Spouse" means the person to whom a Primary Party is legally married under the laws of this state.

(gg) "Supplemental Computation Pay", which shall be used in determining the amount of the Member's contribution under Section 4.03 of this Plan and in determining the Base Pension of any benefits to be paid to a Member or the Member's Qualified Survivors, means:

(1) the rate of pay currently received by the Member; less

(2) the rate of pay the Member would receive for the highest City civil service rank the Member held (inclusive of any Educational Incentive Pay, Longevity Pay and City Service Incentive Pay as those terms are defined in Article 6243a-1 and as used in determining benefits as a Group B member under the Combined Pension Plan).

For purposes of determining the "rate of pay" of a Member at Paragraph 2.01 (gg)(1), of this Plan, such rate of pay shall take into account any lump-sum payment or bonus received by the Member except for those lump sum payments for: compensatory time, unused sick leave, unused vacation time or any lump sum payable after a Member leaves Active Service,

dies, becomes disabled, resigns or otherwise terminates employment. Supplemental Computation Pay for a Member for any given period is determined on the rates of pay due the Member for the entire period. If a Member works less than such Member's assigned schedule for any given period, the Supplemental Computation Pay for such Member shall be prorated for the portion of the period that the Member worked. Any compensation received by a Member that is in addition to their rate of pay and that is not paid in the form of a lump sum that is considered in determining Rate of Pay as set forth above will not be considered in determining the Supplemental Computation Pay of a Member, (for example, compensation for overtime work or the pay that a Member may receive from the City in the form of Assignment Pay).

(hh) "Supplemental Pension Plan" or "Plan" shall mean this Supplemental Police and Fire Pension Plan of the City of Dallas as created by this document.

(ii) "Trustee" means a member of the Board.

SECTION 2.02 ACTUARIAL ASSUMPTIONS

Each of those actuarial assumptions used to determine the amount of any benefit under the Combined Pension Plan from time to time (but not necessarily other assumptions that may relate to investment return, years to fund, or other funding assumptions) shall be used in the same manner to determine the same type of benefit and during the same time period under this Plan.

PART 3 - ADMINISTRATION

SECTION 3.01 ADMINISTRATION BY BOARD OF TRUSTEES

This Plan shall be administered by a Board of Trustees comprised of the same number and the same individuals who make up the board of trustees of the Combined Pension Plan. The Board shall apply the same procedures, and shall have the same powers, rights, duties, and obligations with regard to this Plan as the board of trustees of the Combined Pension Plan has with regard to that plan. The Administrator appointed to carry out the business of the Board with respect to this Plan shall be the same person and, unless the Board provides to the contrary, shall have the same duties with regard to this Plan that the Administrator of the Combined Pension

Plan has with regard to that plan. In carrying out the business of the Board, the Administrator and other staff employees shall not be considered fiduciaries with respect to this Plan.

SECTION 3.02 PROFESSIONAL CONSULTANTS

The Board shall have the same authority to employ or contract and pay for the services of actuaries, attorneys and other professional consultants including investment advisors and investment managers as the board of trustees of the Combined Pension Plan has with regard to that Plan.

SECTION 3.03 LEGAL ADVISORS AND RIGHT TO CONTROL LITIGATION

(a) The Board shall have the right to sue on behalf of this Plan in any court with proper subject matter jurisdiction regardless of location and the Board shall have sole authority to litigate matters on behalf of this Plan. The Board or this Plan may be sued only in the courts in the City of Dallas, Dallas County, Texas, with proper subject matter jurisdiction.

(b) At the request of the Board, the city attorney or an assistant city attorney shall attend meetings of the Board and advise the Board on any matter on which the Board requests a legal opinion from the city attorney and, if also requested, shall provide legal services in connection with any lawsuit.

(c) The Board may retain other attorneys to represent the Board or to give advice. Compensation for other attorneys shall be made in accordance with Section 4.01 of this Plan.

SECTION 3.04 RIGHT TO CONSTRUE PLAN

The Board shall have full discretion and authority to determine any fact, to construe and interpret the terms of this Plan and to do all acts necessary to carry out the purpose of this Plan. All decisions of the Board shall be final and binding on all parties affected thereby.

PART 4 - FINANCES

SECTION 4.01 PAYMENT OF ADMINISTRATIVE AND PROFESSIONAL SERVICES FEES.

The Board shall pay all necessary costs of administration of this Plan. Special allocations of both material and measurable expense that relate only to this Plan shall be paid for only out of this Plan's Fund. Expenses that are not clearly the separate expenses of this Plan or the Combined Pension Plan shall be allocated between the two Plans based upon the ratio of the market values of the assets in this Plan and the Combined Pension Plan as of the last day of this Plans' preceding fiscal year or such other date as is uniformly determined by the Board. Costs of administration include the cost of salaries and benefits for the Administrator and administrative staff, office expenses, adequate office space and associated utilities, fees for professional consultants, professional investment managers, or other professional services and other expenses as approved by the Board. This Plan's share of costs determined as set forth above shall be paid out of income from or contributions to the Fund when it is actuarially determined that such payments will not have an adverse effect on the payment of benefits from this Plan and when in the judgment of the Board the costs are necessary. The City shall pay the costs of administration of this Plan if the Board determines that payment of such costs by the Fund will have an adverse effect on the payment of benefits from this Plan.

SECTION 4.02 CITY CONTRIBUTIONS

(a) The City shall make all contributions necessary to ensure the payment of benefits under this Plan that are not provided by Member contributions described in Section 4.03 of this Plan. The City's contributions shall be made in accordance with actuarial requirements as established by the Qualified Actuary and by the Board for such purpose. In the event any benefit cannot be paid on account of the limitations imposed under Section 415 of the IRC, the City shall direct an amount necessary to pay such excess benefits into the Excess Benefit Plan established pursuant to Sec. 8.02 of Article 6243a-1 for payment by said Excess Benefit Plan at the appropriate time.

(b) The only purposes for which the City's contributions to the Fund, and the investment income derived therefrom, may be applied are:

(1) To the payment of benefits provided under this Plan, and refunds of contributions;

(2) To the payment of such administrative and professional service costs of this Plan as are provided for in Section 4.01 of this Plan; and

(3) To invest any surplus in accordance with Section 4.07 of this Plan, and, to the extent not inconsistent herewith, Section 4.06 of Article 6243a-1.

SECTION 4.03 MEMBER CONTRIBUTIONS

(a) A Member shall contribute to this Plan, during the period that the Member is required to contribute to the Combined Pension Plan, the same percentage of the Member's Supplemental Computation Pay as the percentage of the Member's Computation Pay that the Member is required to contribute to the Combined Pension Plan. These contributions shall be subject to the same conditions and procedures as Member contributions to the Combined Pension Plan.

(b) The only purposes for which Member contributions to the Fund, and the investment income derived therefrom, may be applied are:

(1) To the payment of benefits provided under this Plan, and refunds of contributions;

(2) To the payment of such administrative and professional service costs of this Plan as are provided for in Section 4.01 of this Plan or as the Board has the discretion to incur; and

(3) To invest any surplus in accordance with Section 4.07 of this Plan and, to the extent not inconsistent herewith, Section 4.06 of the Combined Pension Plan.

(c) Member contributions required by this Section may be picked up by the City pursuant to the terms of an appropriate resolution of the City Council.

SECTION 4.04 REFUND OF MEMBER CONTRIBUTIONS

Subject to the same rights, restrictions, and consequences that apply to Group B Members' rights to refund in the Combined Pension Plan, a Member is entitled to a refund of Member contributions from this Plan as follows;

(a) Total Refund. A Member who:

(i) either voluntarily or involuntarily leaves Active Service, and

(ii) applies for and is granted a refund of all of the contributions the Member made to the Combined Pension Plan,

shall receive a refund from the Fund created pursuant to this Plan of the total amount of the Member's contributions to this Plan, without interest.

A refund under this Subsection 4.04(a) of this Plan results in a total cancellation of all years of Pension Service credit and thereafter such Member and any person who would otherwise be entitled to any benefits by reason of such Member's prior participation in this Plan shall have no right to any benefits from this Plan.

An application for a total refund under the Combined Pension Plan shall constitute an application for a total refund of all Member contributions under this Plan and no additional application need be filed. Similarly, failure to apply for a total refund under the Combined Pension Plan shall constitute a failure to apply for a refund under this Subsection 4.04(a) of this Plan.

(b) Partial Refund.

An application for a partial refund under the Combined Pension Plan shall constitute an application for a partial refund of Member contributions under this Plan, without interest, for the same calendar days under this Plan and no additional application need be filed. The years of Pension Service remaining under this Plan after a partial refund is made are equal to the years of Pension Service credit the Member has remaining under the Combined Pension Plan after the reduction is applied as a result of the requested partial refund. Failure to apply for a

partial refund under the Combined Pension Plan shall constitute a failure to apply for a partial refund under this Subsection 4.04(b) of this Plan.

(c) Repayments.

A Member who left Active Service and is later reemployed shall have the same right under this Plan as under the Combined Pension Plan to repay previously withdrawn Member contributions with interest determined in the same manner as determined under the Combined Pension Plan and any written procedures thereunder. The restoration of forfeited Pension Service under the Combined Pension Plan by reason of repayment to and in accordance with the provisions of the Combined Pension Plan, coupled with repayment of previously withdrawn Member contributions with interest to this Plan shall result in the restoration of any similar forfeited Pension Service under this Plan.

If the entire repayment has not been made before the Member enters DROP or again leaves Active Service for whatever reason, such partial repayment shall be of no force or affect and all moneys repaid (including any interest amounts paid by such person), shall promptly be returned without interest thereupon and without such repayment there shall be no reinstatement of previously canceled years of Pension Service nor of any otherwise associated death benefits.

(d) Subject to Subsection 4.04 (f) of this Plan, if a Member either voluntarily or involuntarily leaves Active Service and such Member, or such Member's estate or heirs, as applicable, fail(s) to make written application for a refund of the total Member contributions within three years after the date the Board's notice to such person(s) of their right to a refund as described by Subsection 4.04(k) of the Combined Pension Plan is made, such person(s) forfeit(s) the right to withdraw any such contribution, and the total amount of contributions the Member made will remain in the Fund.

(e) A Member who has five or more years of Pension Service may apply for a retirement pension or, if such Member dies before becoming eligible to apply for a retirement pension, the Member's Qualified Survivors may apply for death benefits, pursuant to Part 6 of this Plan. In the event there are no Qualified Survivors, the Member's estate or, if none, the Member's heirs may apply for a refund of the Member's contributions, resulting in an appropriate loss of Pension Service. Subject to Subsection 4.04 (f) of this Plan, if a Member's estate or, if

none, the Member's heirs fail to apply for a refund of the Member's contributions within the three-year period described by this Subsection, the estate and heirs forfeit any right to the Member's contributions, and the total amount of such contributions made by the Member will remain in the Fund.

(f) The Member, or the Member's estate, or if none, the Member's heirs, shall have the right, upon the Board's grant of their written request for a reinstatement of previously forfeited Member's contributions under Subsection 4.04(d) or (e) of this Plan, and to a refund of such previously forfeited Member's contributions and interest paid. The Board's decisions shall be made on a uniform and nondiscriminatory basis.

SECTION 4.05 – SECTION 4.06 (Reserved)

SECTION 4.07 INVESTMENT OF SURPLUS

(a) If the Board determines that there is in the Fund a surplus exceeding a reasonably safe amount to take care of current demands on this Plan, the Board may invest or direct the investment of the surplus for the sole benefit of the Members, Pensioners, Qualified Survivors and beneficiaries of this Plan.

(b) In making and supervising investments, and in engaging and evaluating investment advisors, investment managers, custodians and master trustees, the Trustees shall have the same rights, powers, duties, and obligations under this Plan as the board of trustees of the Combined Pension Plan has under that plan. Persons who are eligible to serve as investment managers, investment advisors, custodians, or master trustees under the Combined Pension Plan shall also be eligible to serve as investment managers, investment advisors, custodians, or master trustees, respectively, of this Plan.

(c) Any arrangement authorized by Section 4.07 of this Plan:

(i) may, but need not be made in coordination and conjunction with a comparable arrangement made by the board of the Combined Pension Plan if the Board, believing such coordination to be advantageous to this Plan and the Fund, authorizes same at a meeting of the Board; and

(ii) need not be evidenced by a separate contract executed by this Board, but rather upon such authorization as described at Paragraph 4.07(c)(i) of this Plan, this Plan shall be deemed a party to any such contract, with all the rights, remedies and obligations as the Combined Pension Plan may have thereunder, but solely with regard to the assets of the Fund associated with this Plan which may, from time to time, be invested under any such contract(s). In the event the Board does not choose to consolidate certain investments with the Combined Pension Plan, the Board shall be fully empowered to use the same or different investment managers and investment opportunities as the Combined Pension Plan, when the Board, in its sole discretion, shall deem such action appropriate.

PART 5 - MEMBERSHIP

SECTION 5.01 ELIGIBILITY

Only Police Officers or Fire Fighters who are Group B Members of the Combined Pension Plan and who hold a permanent rank or position above the highest civil service rank that can be held shall be eligible to participate in this Plan, and those who are eligible to participate shall have sixty (60) days from the time they first become eligible to elect to become Members of this Plan. The membership of those who make a timely election shall be effective the date such higher rank or position is or was attained.

SECTION 5.02 (Reserved)

SECTION 5.03 TERMINATION OF MEMBERSHIP

(a) If a Member of this Plan who also was a former contributing member of the Old Plan or Plan A, or a Group A Member of the Combined Pension Plan elects, when applying for either a retirement pension, disability pension or periodic disability compensation, to terminate the Member's Group B membership and receive a Group A retirement pension, disability pension or periodic disability compensation under the provisions of the Combined Pension Plan, the Member shall, by such election, also terminate the Member's membership in this Plan and any rights to any benefits under this Plan other than a right to the refund of Member contributions set forth at Subsection 5.03(b) of this Plan.

(b) If the Member described in Subsection 5.03(a) of this Plan has elected and been granted a Group A retirement pension, disability pension, or periodic disability compensation benefits under Subsection 6.05(b) of the Combined Pension Plan, the Member shall be entitled to a reimbursement from the Fund. Such reimbursement shall be equal to the entire amount of the Member's Plan contributions to the Fund, without interest. A Member desiring a refund of such contributions must make written application for the refund with the Administrator or a member of the Administrator's staff.

SECTION 5.04 MEMBERSHIP MAY BE DECLARED INACTIVE

If a Member's membership in the Combined Pension Plan is declared inactive for any reason, the Member's membership under this Plan shall also be declared inactive, with the same consequences under this Plan as the Member's inactive membership status has under the Combined Pension Plan.

SECTION 5.05 PENSION SERVICE AND VESTING

(a) A Member's right to purchase Pension Service under this Plan shall be the same, subject to the same conditions and limitations, as for a Group B Member under the Combined Pension Plan. The Member's right to a retirement pension shall be vested under this Plan if the Member's right to a retirement pension is vested under the Combined Pension Plan. A Member who has a right to pay contributions to purchase credit for Pension Service, shall not receive any Pension Service for any part of the time for which the Member is so contributing until the entire amount due under this Plan, and the entire amount due pursuant to the Combined Pension Plan, have been paid.

(b) If a Member, either voluntarily or involuntarily, leaves Active Service and then later returns to Active Service, the Member shall receive full Pension Service for the period of the Member's original membership, provided the Member did not withdraw the Member's contributions pursuant to Section 4.04 of this Plan. If, however, such Member had previously withdrawn Member contributions, and the Member does not replace the entire amount of previously withdrawn contributions (both to this Plan and to the Combined Pension Plan) together with all required interest, the Member shall not be entitled to, and shall forfeit, any Pension Service previously cancelled by reason of the previous withdrawal while a Member prior to the date of the Member's return to Active Service.

(c) If a Member is assigned, for any period, to a job-sharing program or any similar work schedule that is considered by the Member's Department to be less than a full-time work schedule, the Member's Pension Service shall be determined by multiplying the Pension Service that could have been earned for full-time work during such period by a fraction, the numerator of which is the number of hours the Member actually worked during such period and the denominator of which is the number of hours the Member would have worked during such period if the Member had been on a full-time work schedule. This proration shall not apply to the computation of Pension Service for a Member during any period the Member is on leave because of an illness or injury or receiving periodic payments of workers' compensation.

SECTION 5.06 (Reserved)

SECTION 5.07 PURCHASE OF PENSION SERVICE BY MEMBERS

(a) A Member who is on Active Service may receive Pension Service attributable to Member contributions withdrawn by an Alternate Payee pursuant to the terms of a Qualified Domestic Relations Order, if the Member completely repays to the Fund the withdrawn Member contributions with interest determined in the same manner as determined under the Combined Pension Plan and any written procedures thereunder, and also repays the entire amount to be repaid pursuant to Subsection 5.07(c) of the Combined Pension Plan.

(b) If payment of the entire amount withdrawn from both this Plan and the Combined Pension Plan, with interest, is not completed by the date the Member leaves Active Service or enters DROP, all partial payments (including any interest payments made by the Member) hereunder shall be returned to the Member or, if the Member has died, to the Member's estate, or if none, the heirs, without any interest on such returned monies.

SECTION 5.08 MEMBERS IN ARMED SERVICES

(a) Any Member who is reemployed by the City after an absence due to "service in the uniform services," as that term is defined in the Uniform Services Employment and Reemployment Rights Act of 1994, as the same may be amended, and, thereby, has rights under that act, may receive credit for Pension Service in accordance with the procedure described in Subsection 5.08(c) of this Plan.

(b) To the extent the provisions of the Combined Pension Plan in effect prior to November 25, 1996 would provide a Member who was on Active Service prior to November 25, 1996 with greater rights than are required by Subsection 5.08(a) of this Plan, the Member shall have the same greater rights under this Plan.

(c) Payment for credit for Pension Service under this Section shall be made in accordance with a uniform and nondiscriminatory procedure adopted by the Board to conform to the Uniformed Services Employment and Reemployment Rights Act of 1994.

SECTION 5.09 NONMILITARY LEAVE OF ABSENCE

A Member may receive Pension Service for time spent away from either Department on an authorized nonmilitary leave of absence but only if Pension Service for the same period is purchased under the Combined Pension Plan and the Member satisfies the same conditions with respect to the Pension Service under this Plan that are required of members under Section 5.09 of the Combined Pension Plan, including the timely payment of Member and City contributions with interest, if required. Member contributions are refundable, or benefits are payable, to the Member, or the Member's Qualified Survivors, estate or heirs subject to the same rules that apply to payments under Section 5.09 of the Combined Pension Plan.

PART 6 - BENEFITS

SECTION 6.01 RETIREMENT, DISABILITY AND DEATH BENEFITS

(a) This Plan provides Members and their Qualified Survivors with retirement, disability, and death benefits based on the difference between:

(i) the benefit that is paid under the Combined Pension Plan, and

(ii) the benefit that would be paid under the Combined Pension Plan if Computation Pay, as therein defined, included Supplemental Computation Pay as herein defined. Accordingly, the computation of any benefit under this Plan shall be made in the same manner as the computation of a similar benefit under the relevant terms of the Combined Pension Plan

except that such computation shall be based upon the Member's Supplemental Computation Pay rather than upon the Member's Computation Pay.

(b) An application for benefits under the Combined Pension Plan shall also be an application for benefits under this Plan so that no additional application need be filed. Failure to apply for benefits under the Combined Pension Plan shall likewise be a failure to apply for benefits under this Plan. If any such failure to file for benefits under the Combined Pension Plan causes an adjustment, suspension, cessation or cancellation of benefits under the relevant terms of that plan, the failure to file shall, subject to the same rules that apply to the Combined Pension Plan, result in a similar adjustment, suspension, cessation or cancellation of benefits under this Plan.

(c) Retirement, disability, and death benefits shall be paid to Members and their Qualified Survivors under this Plan during the same period that such benefits are paid to such Members and Qualified Survivors under the relevant terms of the Combined Pension Plan and shall be subject to the same rules, including, but not limited to, cost of living increases, medical examinations and recall from disability retirement, loss of benefits for causing the death of a Primary Party or Qualified Survivor and recovery of benefits erroneously paid, that apply to any entitlement to computation of Qualified Survivors share(s) and the timing of the payment of benefits and the character of the benefits under the relevant terms of the Combined Pension Plan.

Benefits under this Plan also may be waived subject to the same procedures that apply to any waiver of benefits under the Combined Pension Plan.

Any Member or person claiming to be a Qualified Survivor who is aggrieved by a determination of the Board on the person's application for, or continuation of, a retirement pension, disability pension, periodic disability compensation, or death benefit, or an election for DROP benefits shall be entitled to an appeal which appeal must be made pursuant to the same procedures as are used for appeals under the Combined Pension Plan.

SECTION 6.02 - SECTION 6.08 (Reserved)

SECTION 6.09 QUALIFIED SURVIVING SPOUSE SPECIAL DEATH BENEFIT

A Spouse who is a Qualified Survivor of a Primary Party who is entitled to any special death benefits under Section 6.09 of the Combined Pension Plan is also entitled to a special

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death benefit under this Section. The special Spouse Qualified Survivor death benefit under this Section is calculated based on the same formula set out in Section 6.09 of the Combined Pension Plan except that Supplemental Computation Pay is used instead of Computation Pay; the retirement, disability pension or periodic disability compensation is the retirement, disability pension or periodic disability compensation computed under this Plan; and the number and amount of adjustments is the number and amount of adjustments under this Plan.

SECTION 6.10 (Reserved)

SECTION 6.11 NO MINIMUM BENEFITS

No minimum benefits are provided under this Plan.

SECTION 6.12 (Reserved)

SECTION 6.13 SUPPLEMENT TO CERTAIN RECIPIENTS 55 YEARS OF AGE OR OLDER- COORDINATED WITH THE COMBINED PENSION PLAN SUPPLEMENT

If a Pensioner has at least 20 years of Pension Service, or is receiving the periodic disability compensation benefits under Section 6.05 of the Combined Pension Plan, the Pensioner, the Pensioner's Spouse who is a Qualified Survivor or the Pensioner's Children who are Qualified Survivors, as a group, who are entitled to a monthly supplement under Section 6.13 of the Combined Pension Plan, shall be entitled to a monthly supplement under this Plan equal to three percent of their total monthly benefit. For purposes only of calculating this supplement, the phrase "their total monthly benefit" means the amount payable to a Pensioner or Qualified Survivors under the terms of this Plan but does not include the supplement authorized by this Section.

SECTION 6.14 DEFERRED RETIREMENT OPTION PLAN

A Member's eligibility to participate in the Deferred Retirement Option Plan ("DROP") feature of this Plan is the same as set forth in the Combined Pension Plan and any election to participate in DROP under the Combined Pension Plan shall constitute an election to participate in an identical DROP feature with respect to this Plan. Thus, upon the approval of such an election, a separate DROP account shall be created under this Plan and an amount equal to the

retirement pension the Member would have received under this Plan, if the Member had retired instead of electing to participate in the DROP, will be credited to the Member's DROP account during the period the Member is participating in the DROP feature under the Combined Pension Plan.

SECTION 6.15 – SECTION 6.19 (Reserved)

SECTION 6.20 ERRONEOUS PAYMENTS OR OVERPAYMENTS

(a) In the event this Plan pays monies to any person not entitled to the receipt of such funds, whether by reason of any error of this Plan as to entitlement, amount or otherwise, or the act of the recipient or some other person or persons, the recipient of such funds holds such funds in constructive trust for this Plan and upon demand by this Plan at any time, shall repay to the Fund all such funds which the recipient was not entitled to have received under the terms of this Plan.

(b) If such funds were retained by the recipient with or after the recipient's knowledge that such person was not entitled to keep such monies, whether the recipient knew so at the time of receipt or thereafter, from the time such knowledge is reasonably established, which knowledge can be established by the receipt of a demand from this Plan for the repayment of such funds, as well as by any other reasonable means, the recipient shall be obligated to repay to this Plan interest from the date of such knowledge until the date of the funds repayment, compounded annually, at the interest rate from time to time that may be levied on final judgments in state court proceedings under the laws of the State of Texas.

(c) The Board may adopt a procedure to enable this Plan to offset any future payments which may otherwise be due to any person in order to recover any erroneous payments previously made by this Plan and the Board shall have the right to take any and all additional action, including the bringing of a lawsuit, the Board deems necessary to gain restitution of funds described in this Section.

(d) In the event this Plan determines that a person is entitled to additional benefits, this Plan shall promptly pay the amounts then due.

PART 7 - AMENDMENT OF PLAN

SECTION 7.01 AMENDMENT

This Supplemental Pension Plan may be amended by the City Council in accordance with provisions of the Charter of the City of Dallas pertaining to ordinances; provided, further, however, that any amendment to the Combined Pension Plan of the Police and Fire Pension System shall constitute a comparable amendment to this Plan unless specifically rejected by an act of the City Council of Dallas. The Board through its staff shall have the duty to timely notify the City Council of any amendment to the Combined Pension Plan which would cause a comparable amendment to this Plan.

PART 8 - PLAN QUALIFICATION

SECTION 8.01 QUALIFICATION

It is the intent of the City that this Supplemental Pension Plan, as set forth in the first eight (8) Parts of this ordinance, be at all times qualified under Section 401(a) of the IRC and the Fund forming a part thereof be exempt from Federal income taxes under Section 501(a) of the IRC. Accordingly, except as provided below, all provisions of the Combined Pension Plan that are intended to satisfy the requirements for qualification, including but not limited to Section 8.01, are hereby incorporated by reference into this Plan. Notwithstanding the preceding sentence, if the benefits to be provided to any Member under this Plan and any other defined benefit plan maintained by the City would otherwise exceed the limits imposed by Section 415 of the IRC, any reduction in benefits needed to satisfy those limits shall be made first from the benefits otherwise payable under this Plan.

PART 9 - EXCESS BENEFIT PLAN

The separate "Qualified Governmental Excess Benefit Arrangement" established pursuant to Section 8.02 of the Combined Pension Plan and effective on and after August 20, 1996 shall apply to Members of this Plan in order that they receive benefits that would otherwise

have been provided under this Plan but for the limits imposed under Section 8.01(c) of Art. 6243a-1 and Section 415 of the IRC.

PART 10 - NONALIENATION OF BENEFITS

Contributions and benefits payable under the Plan are exempt from attachment, execution, garnishment, judgments, and all other suits or claims, with the exception of a qualified domestic relations order, and are not assignable, alienable, or transferable. Nevertheless, the preceding sentence shall not preclude the withholding of Federal taxes from pension benefits, the recovery by the Trustees of overpayments of benefits previously made to any person, any voluntary arrangement by a Primary Party or Qualified Survivor for the direct deposit of benefit payments to an account in a bank, savings and loan association or credit union (provided such arrangement is not an alienation), or pursuant to any policy adopted by the Board and uniformly applied to any voluntary and revocable arrangements by a Pensioner or Qualified Survivor for the withholding and direct payment of health care or life insurance premiums or similar payments, from his or her monthly benefit payments. An attachment, garnishment, levy, execution or other legal process is not considered a voluntary arrangement.

PART 11 - SAVINGS CLAUSE

If any provision of the Combined Pension Plan is amended or renumbered, any reference to the prior provision of the Combined Pension Plan shall be deemed a reference to such successor provision.

SECTION 2 That all preexisting versions of the Supplemental Police and Fire Pension Plan of the City of Dallas are hereby repealed.

SECTION 3 If any provision of this Plan or ordinance is determined by final court order, decision, or decree to be invalid or unenforceable, such invalid or unenforceable provision will be considered severed from the Plan or ordinance, and the remaining provisions of the Plan or ordinance will be administered to carry out the purpose of the Plan as set forth in Section 1.02 of the Plan.

SECTION 4 That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

ANGELA K. WASHINGTON, Interim City Attorney

By _____
Assistant City Attorney

Passed _____

Dallas Police & Fire Pension System Operating Budget Calendar Year 2018							
Description	2017 Budget	2017 Projected Actual	2018 Budget	\$ Change vs Prior Yr Budget	% Change vs Prior Yr Budget	\$ Change vs Prior Yr Proj. Actual	% Change vs Prior Yr Proj. Actual
Administrative Expenses							
1 Salaries and benefits	4,199,476	4,190,000	3,728,000	(471,476)	(11.2%)	(462,000)	(11.0%)
2 Employment expenses	3,009	450	151,125	148,116	4922.4%	150,675	33483.3%
3 Memberships and dues	17,600	17,600	17,040	(560)	(3.2%)	(560)	(3.2%)
4 Staff meetings	1,000	-	1,000	-	0.0%	1,000	N/A
5 Employee service recognition	1,960	1,200	-	(1,960)	(100.0%)	(1,200)	(100.0%)
6 Member educational programs	2,500	1,500	2,500	-	0.0%	1,000	66.7%
7 Member outreach programs	720	-	-	(720)	(100.0%)	-	N/A
8 Board meetings	13,360	7,000	10,100	(3,260)	(24.4%)	3,100	44.3%
9 Conference registration/materials - Board	51,615	10,000	14,400	(37,215)	(72.1%)	4,400	44.0%
10 Travel - Board	128,335	15,000	25,000	(103,335)	(80.5%)	10,000	66.7%
11 Mileage - Board	5,000	3,100	5,000	-	0.0%	1,900	61.3%
12 Conference/training registration/materials - Staff	32,450	6,800	27,050	(5,400)	(16.6%)	20,250	297.8%
13 Travel - Staff	60,550	32,000	47,000	(13,550)	(22.4%)	15,000	46.9%
14 Liability insurance	447,667	440,000	510,000	62,333	13.9%	70,000	15.9%
15 Communications (phone/internet)	64,312	57,000	49,100	(15,212)	(23.7%)	(7,900)	(13.9%)
16 Information technology projects	20,000	3,000	75,000	55,000	275.0%	72,000	2400.0%
17 IT subscriptions/services/licenses	122,950	84,000	147,100	24,150	19.6%	63,100	75.1%
18 IT software/hardware	39,800	9,400	17,000	(22,800)	(57.3%)	7,600	80.9%
19 Building expenses, incl capitalizable fixed assets	599,266	450,000	337,337	(261,929)	(43.7%)	(112,663)	(25.0%)
20 Repairs and maintenance	97,508	120,000	110,092	12,584	12.9%	(9,908)	(8.3%)
21 Office supplies	31,800	32,000	30,500	(1,300)	(4.1%)	(1,500)	(4.7%)
22 Leased equipment	20,500	24,000	24,500	4,000	19.5%	500	2.1%
23 Postage	27,700	30,000	25,800	(1,900)	(6.9%)	(4,200)	(14.0%)
24 Printing	5,635	5,000	6,370	735	13.0%	1,370	27.4%
25 Subscriptions	2,510	1,200	2,020	(490)	(19.5%)	820	68.3%
26 Records storage	1,200	1,200	1,560	360	30.0%	360	30.0%
27 Administrative contingency reserve	-	150	-	-	N/A	(150)	(100.0%)

Dallas Police & Fire Pension System Operating Budget Calendar Year 2018							
Description	2017 Budget	2017 Projected Actual	2018 Budget	\$ Change vs Prior Yr Budget	% Change vs Prior Yr Budget	\$ Change vs Prior Yr Proj. Actual	% Change vs Prior Yr Proj. Actual
Investment Expenses							
28 Investment management fees	N/A	17,416,000	17,522,000	N/A	N/A	N/A	N/A
29 Investment consultant and reporting	575,000	489,000	505,000	(70,000)	(12.2%)	16,000	3.3%
30 Bank/security custodian services	328,600	262,000	260,000	(68,600)	(20.9%)	(2,000)	(0.8%)
31 Other portfolio operating expenses (legal, valuation, tax)	N/A	2,187,000	860,000	N/A	N/A	N/A	N/A
Professional Services Expenses							
32 Actuarial services	600,000	550,000	150,000	(450,000)	(75.0%)	(400,000)	(72.7%)
33 Accounting services	59,000	59,000	59,000	-	0.0%	-	0.0%
34 Independent audit	149,500	149,500	152,500	3,000	2.0%	3,000	2.0%
35 Legal fees	2,514,800	1,610,000	2,000,000	(514,800)	(20.5%)	390,000	24.2%
36 Legislative consultants	324,000	307,000	271,000	(53,000)	(16.4%)	(36,000)	(11.7%)
37 Public relations	290,000	245,000	-	(290,000)	(100.0%)	(245,000)	(100.0%)
38 Pension administration software & WMS	271,000	250,000	291,000	20,000	7.4%	41,000	16.4%
39 Business continuity	13,500	15,000	13,500	-	0.0%	(1,500)	(10.0%)
40 Network security	35,000	15,000	33,000	(2,000)	(5.7%)	18,000	120.0%
41 Disability medical evaluations	12,500	7,000	30,000	17,500	140.0%	23,000	328.6%
42 Elections	10,000	32,000	-	(10,000)	(100.0%)	(32,000)	(100.0%)
43 Miscellaneous professional services	122,000	108,000	18,300	(103,700)	(85.0%)	(89,700)	(83.1%)
Total without Investment Expenses not previously budgeted for	11,303,323	9,640,100	9,147,894	(2,155,429)	(19.1%)	(492,206)	(5.1%)
Gross Total	11,303,323	29,243,100	27,529,894	N/A	N/A	(1,713,206)	(5.9%)
Less: Allocation to Supplemental Plan Budget*	75,246	251,608	236,867	N/A	N/A	(14,740)	(5.9%)
Total Combined Pension Plan Budget	11,228,077	28,991,492	27,293,027	N/A	N/A	(1,698,466)	(5.9%)

The Scope of and Limitations on the Rule Making Scope of the Board

The following is an excerpt of Article 6243a-1, Section 3.01 (J). This information should be read in conjunction with 6243a-1 in its entirety and other applicable laws, regulations and policies

Sec. 3.01. BOARD OF TRUSTEES

(j) The board has full power to make rules pertaining to the conduct of its meetings and to the operation of the pension system as long as its rules are not, subject to Subsections (j-1) and (j-2) of this section, inconsistent with the terms of this article, any pension plan within the pension system, or the laws of this state or the United States to the extent applicable. A board meeting may be held by telephone conference call or by videoconference call in accordance with Sections 551.125 and 551.127, Government Code, except that Section 551.125(b), Government Code, does not apply.

(j-1) Subject to Subsection (o)(2) of this section, the board may adopt a rule that conflicts with this article:

(1) to ensure compliance with the code, including Section 415 of the code, and other applicable federal law;

(2) subject to Subsections (j-5) through (j-8) of this section, to amortize the unfunded actuarial accrued liability of the pension system within a period that does not exceed 35 years, if the board determines the rule is appropriate based on the evaluations required under Subsection (j-5) of this section; or

(3) subject to Subsections (j-6) and (j-7) of this section and notwithstanding any other law, to increase the benefits provided under this article in any manner the board determines appropriate if the increase will not cause the amortization period of the unfunded actuarial accrued liability of the pension system to exceed 25 years, after taking into account the impact of the increase.

(j-2) Except as provided by Subsection (j-1) of this section or Section 4.02(b) of this article, a provision of any plan provided by the pension system may only be amended if approved by the board. An amendment described by this subsection:

(1) may not cause the amortization period of the unfunded actuarial accrued liability of the pension system to exceed 35 years, after taking into account the impact of the amendment, as determined by the board and reviewed by the State Pension Review Board; and

(2) is not required to be ratified by the legislature.

(j-3) The board may correct any defect, supply any omission, and reconcile any inconsistency that may appear in this article in a manner and to the extent that the board believes would:

(1) be expedient for the administration of the pension system;

(2) be for the greatest benefit of all members, pensioners, and qualified survivors; and

(3) not adversely affect the benefits of a member, pensioner, or qualified survivor.

(j-4) The board has full discretion and authority to construe and interpret the combined pension plan and to do all acts necessary to carry out the purpose of the combined pension plan. A decision of the board is final and binding on all affected parties.

(j-5) Not later than January 1, 2018, the board shall conduct an evaluation of:

(1) how benefits are computed under this article to identify potential means of abusing the computation of benefits to inflate pension benefits received by pensioners; and

(2) the impact, including the impact on the combined pension plan, of establishing one or more alternative benefit plans, including a defined contribution plan or a hybrid retirement plan that combines elements of both a defined benefit plan and a defined contribution plan, for newly hired employees of the city and for members who voluntarily elect to transfer to an alternative benefit plan.

(j-6) The board may not adopt a rule under Subsection (j-1) (2) or (3) of this section unless the rule has first been reviewed by the State Pension Review Board and the State Pension Review Board finds that implementation of a rule under:

(1) Subsection (j-1)(2) of this section complies with the amortization period prescribed by that subdivision and Subsection (j-8) of this section; or

(2) Subsection (j-1)(3) of this section complies with the amortization period prescribed by that subdivision.

(j-7) The board shall provide the State Pension Review Board with a copy of a proposed rule for purposes of Subsection (j-6) of this section at least 90 days before the date the board intends to implement the rule.

(j-8) The board may not adopt a rule under Subsection (j-1)(2) of this section based on an evaluation under Subsection (j-5)(2) of this section if the board determines implementation of the rule would cause the amortization period of the unfunded actuarial accrued liability of the combined pension plan or any plan established under this article by the pension system to exceed 35 years, after taking into account implementation of the rule.

The following is an excerpt of Article 6243a-1, Section 3.01 (o)(2). This information should be read in conjunction with 6243a-1 in its entirety and other applicable laws, regulations and policies

Sec. 3.01. BOARD OF TRUSTEES

(o) No action may be taken by the board except at a meeting. Except as otherwise specifically provided by this article or other law:

(2) no action otherwise authorized by this article or other law may be taken that establishes an alternative benefit plan, reduces the city contribution rate, increases the member contribution rate, or reduces benefits, including accrued benefits, without the approval of at least a two-thirds vote of all the trustees of the board.

The following is an excerpt of Article 6243a-1, Section 4.02 (b). This information should be read in conjunction with 6243a-1 in its entirety and other applicable laws, regulations and policies

Sec. 4.02. USE OF PUBLIC FUNDS

(b) Funds contributed by the city as its share of the amount required to finance the payment of benefits under the pension system may be used for no other purpose. The city is not responsible for the payment of any administrative or professional service fees of the pension system. Any change to the contributions required to be made to the pension system by the city may only be made:

- (1) by the legislature;
- (2) by a majority vote of the voters of the city; or
- (3) in accordance with a written agreement entered into between the pension system, by at least a two-thirds vote of all trustees of the board, and the city, provided that a change made in accordance with this subdivision may not increase the period required to amortize the unfunded actuarial accrued liability of the fund.

Dallas Police and Fire Pension System

(An Independently Governed Component Unit of the City of Dallas, Texas)

Combining Financial Statements, Required Supplementary Information and Supplementary Schedule

December 31, 2017 and 2016

(With Independent Auditor's Reports Thereon)

Dallas Police and Fire Pension System

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Independent Auditor's Report

To the Board of Trustees
Dallas Police and Fire Pension System

Report on the Financial Statements

We have audited the accompanying financial statements of the Dallas Police and Fire Pension System (DPFP), including the Combined Pension Plan and the Supplemental Police and Fire Pension Plan of the City of Dallas (Supplemental Plan), collectively referred to as the "Plans", for the fiscal years ended December 31, 2017 and 2016, which comprise the combining statements of fiduciary net position, and the related combining statements of changes in fiduciary net position for the years then ended, and the related notes to the combining financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes 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.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits 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. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements 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 entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

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Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the fiduciary net position of DFPF as of December 31, 2017 and 2016, and the changes in fiduciary net position for the years then ended, in accordance with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis (MD&A) and the required supplementary information, as listed in the table of contents, be presented to supplement the basic financial statements. Such information 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 MD&A and 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.

Other Information

Our audits were conducted for the purpose of forming an opinion on the basic financial statements as a whole. The accompanying supplementary schedule of Administrative, Investment and Professional Services Expenses is presented for the purpose of additional analysis and is not a required part of the basic financial statements. Such information is the responsibility of DFPF management and was derived from and related 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 audits 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 information 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 October 10, 2018 on our consideration of DFPF's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts and other matters. The purpose of that report is 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 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 DPFP's internal control over financial reporting and compliance.

BDO USA, LLP

Dallas, Texas
October 10, 2018



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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 Trustees
Dallas Police and Fire Pension System

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 the Dallas Police and Fire Pension System (DPFP), including the Combined Pension Plan and the Supplemental Police and Fire Pension Plan of the City of Dallas (Supplemental Plan), collectively referred to as the "Plans", for the fiscal years ended December 31, 2017 and 2016, which comprise the combining statements of fiduciary net position, and the related combining statements of changes in fiduciary net position for the years then ended, and the related notes to the combining financial statements, and have issued our report thereon dated October 10, 2018.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered DPFP's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of DPFP's internal control. Accordingly, we do not express an opinion on the effectiveness of DPFP'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 DPFP'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 may exist that have not been identified.



Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Dallas Police and Fire Pension System's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, and contracts, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. 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*.

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 DFPF's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering DFPF's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

BDO USA, LLP

Dallas, Texas
October 10, 2018

Dallas Police and Fire Pension System
Management's Discussion and Analysis (Unaudited)
December 31, 2017 and 2016

Overview

Management's Discussion and Analysis (MD&A) provides an overall review of the financial activities of the Dallas Police and Fire Pension System (DPFP), including the Combined Pension Plan and the Supplemental Police and Fire Pension Plan of the City of Dallas (Supplemental Plan), collectively referred to as the Plans, for the fiscal years ended December 31, 2017 and 2016. This discussion and analysis is intended to serve as an introduction to the financial statements which reflect the Plans' resources available for payment of benefits and other related expenses. MD&A should be read in conjunction with the combining financial statements, notes to the combining financial statements, required supplementary information, and additional supplementary information provided in this report.

Financial Statements

The combining financial statements consist of the following:

Combining Statements of Fiduciary Net Position which reflect a snapshot of the Plans' financial position and reflect resources available for the payment of benefits and related expenses at year end. The resulting Net Position (Assets - Liabilities = Net Position) represents the value of the assets held in trust for pension benefits net of liabilities owed as of the financial statement date.

Combining Statements of Changes in Fiduciary Net Position which reflect the results of all transactions that occurred during the fiscal year and present the additions to and deductions from the net position. Effectively, these statements present the changes in plan net position during the fiscal year. If change in net position increased, additions were more than deductions. If change in net position decreased, additions were less than deductions.

Notes to Combining Financial Statements which are an integral part of the combining financial statements and include additional information that may be needed to obtain an adequate understanding of the overall financial status of the Plans.

Required Supplementary Information (Unaudited) and additional Supplementary Information provide historical and additional information considered useful in obtaining an overall understanding of the financial positions and activities of the Plans.

Financial Highlights

The combining financial statements are presented solely on the accounts of the Plans. The accrual basis of accounting is utilized, whereby revenues are recognized when they are earned and collection is reasonably assured, and expenses are recognized when the related liability has been incurred. Investments are reported at fair value.

Dallas Police and Fire Pension System
Management's Discussion and Analysis (Unaudited)
December 31, 2017 and 2016

A summary of the Combining Statements of Fiduciary Net Position of the Plans is as follows (in thousands):

December 31:	2017	2016	2015
Assets			
Investments, at fair value	\$ 1,990,602	\$ 1,960,057	\$ 2,827,859
Invested securities lending collateral	12,153	21,671	94,246
Receivables	34,629	29,378	58,568
Cash and cash equivalents	118,587	326,785	77,072
Prepaid expenses	436	460	202
Capital assets, net	12,715	12,041	12,192
Total assets	2,169,122	2,350,392	3,070,139
Liabilities			
Notes payable	-	130,000	235,315
Securities purchased	31,411	24,353	37,341
Securities lending obligations	12,153	21,671	94,246
Accounts payable and accrued liabilities	4,407	6,036	3,656
Total liabilities	47,971	182,060	370,558
Net position held in trust - restricted for pension benefits	\$ 2,121,151	\$ 2,168,332	\$ 2,699,581

The assets of the Combined Pension Plan and the Supplemental Plan are co-invested through a Group Master Trust (Group Trust). The rate of return on Group Trust investments during 2017 was 5.1% net of fees, compared to a rate of return of 3.2% for 2016 and (12.6%) for 2015. The rate of return is provided by NEPC, LLC (NEPC), DPF's investment consultant at December 31, 2017. The rate of return calculation is prepared using a time-weighted rate of return in accordance with the CFA Institute's Global Investment Performance Standards and, as such, cannot be recalculated from the information provided herein. The methodology used by NEPC to calculate the rate of return incorporates a one quarter lag on market value adjustments for private equity, private debt, and real assets investments. This "lagged with cash flow adjustments" methodology is consistent with standard industry practice and allows for timely reporting to the Board of Trustees (Board). Gains and losses on lagged investments which occur in the fourth quarter of any year are recognized in the following year's rate of return.

The Plans' net position decreased by \$47 million in 2017 primarily the result of benefit payments exceeding total contribution payments. The net benefit outflow was partially offset by investment gains. The net position was relatively stable for the first time since 2013 due to passage of House Bill 3158 (HB 3158 or the bill) by the Texas legislature during the 85th legislative session. HB 3158 was passed unanimously by both the House of Representatives and the Senate and signed by Governor Abbott on May 31, 2017. HB 3158 was effective September 1, 2017 and made significant changes to governance, contributions and benefits, including the structure of the Deferred Retirement Option Plan (DROP). Additional information about HB 3158 is included in Notes 1, 5, 6, 12 and the Required Supplementary Information accompanying the financial statements.

Dallas Police and Fire Pension System
Management's Discussion and Analysis (Unaudited)
December 31, 2017 and 2016

The Plans' net position decreased by \$531 million in 2016 primarily as the result of payments of lump sum amounts from DROP balances in the latter half of the year. With uncertainty surrounding the impact of potential plan amendments, fueled by lack of assurance of the City of Dallas's commitment to participate in a solvency resolution, and fed by negative attention in the press, members withdrew over \$600 million in lump sum payments from their DROP balances during 2016 compared to only \$81 million and \$56 million in 2015 and 2014, respectively. The culmination of the volume of withdrawal requests and the resulting impact on liquidity led to the temporary halt of DROP lump sum disbursements until the DROP Policy was amended by the Board in January 2017, allowing for lesser amounts of withdrawals from that point forward which would be limited based on liquidity. The vast increase in DROP distributions created substantial liquidity strains for the portfolio and caused debt compliance issues. In order to meet the liquidity demands created by DROP withdrawals, equity and fixed income sales ensued, resulting in significant reductions of those asset classes. To provide an additional source of liquidity and progress toward the revised asset allocation adopted by the Board in March 2016, exposure to private investments was reduced through the initiation of a secondary sales process in the fourth quarter. In December, the Board approved a sale of 26 fund investments across the private equity, private debt and real assets portfolios resulting in proceeds of \$133 million and reducing unfunded commitments by \$53 million prior to year end, with additional proceeds of \$113 million and reduction of commitments of \$54 million occurring in 2017. The completion of these sales as a whole resulted in a substantial increase in cash and cash equivalents of \$250 million over the previous year even after the distribution of over \$600 million in DROP lump sum withdrawals.

Securities lending collateral and obligations decreased in 2017 due to the decline in volume of lending activity resulting from asset sales to meet liquidity needs in 2016 and the delay in redeploying excess cash during the legislative process in 2017. Changes in receivables are primarily a result of the timing of settlement of pending investment trades, as well as the timing of the last payroll of the year for the City of Dallas as such timing impacts the collection of benefit contributions. Notes payable decreased significantly in 2017 and 2016 as a result of the pay down of amounts drawn on agreements with Bank of America, N.A. For further discussion regarding debt transactions see Note 7 of the accompanying financial statements.

Dallas Police and Fire Pension System
Management's Discussion and Analysis (Unaudited)
December 31, 2017 and 2016

A summary of the Combining Statements of Changes in Fiduciary Net Position of the Plans is as follows (in thousands):

Years ended December 31:	2017	2016	2015
Additions (Reductions):			
Contributions			
City	\$ 128,395	\$ 122,409	\$ 117,328
Members	33,044	25,553	25,720
Total contributions	161,439	147,962	143,048
Net income (loss) from investing activities	97,456	165,326	(237,572)
Net income from securities lending activities	101	402	544
Other income	2,094	204	132
Total additions (reductions)	261,090	313,894	(93,848)
Deductions:			
Benefits paid to members	295,245	827,649	285,857
Refunds to members	3,578	3,354	1,786
Interest expense	1,290	4,569	6,049
Professional and administrative expenses	8,158	9,571	8,479
Total deductions	308,271	845,143	302,171
Net decrease in net position	(47,181)	(531,249)	(396,019)
Net position held in trust - restricted for pension benefits			
Beginning of period	2,168,332	2,699,581	3,095,600
End of period	\$ 2,121,151	\$ 2,168,332	\$ 2,699,581

The passage of HB 3158 increased the contribution rates for active members and the City effective the first bi-weekly pay period beginning after September 1, 2017, which was September 6, 2017.

Contributions for active members not participating in DROP were 8.5% of base pay plus education and longevity pay (Computation Pay) while contributions for active members participating in DROP were 4% of Computation Pay prior to the effective date of HB 3158. As of September 6, 2017 the contribution rate for all active members is 13.5% of Computation Pay regardless of the member's DROP participation status. The 29% increase in employee contribution revenue is primarily a result of the higher employee contribution rate for the last four months of 2017 plus \$600 thousand of additional contributions received in 2017 for pension buy-backs related to DROP revocations and military service purchases. See Note 6 for information on DROP revocations. The City did not meet the Hiring Plan Computation Pay represented during the legislative process which resulted in lower employee contributions than expected for 2017. Compensation increases granted as a result of the 2016 Meet and Confer agreement were offset by total compensation declines due to high employee vacancies.

Dallas Police and Fire Pension System
Management's Discussion and Analysis (Unaudited)
December 31, 2017 and 2016

The City contribution rate for the Combined Pension Plan is statutorily defined and was 27.5% of total salary and wages, including overtime, for all members in active service prior to the effective date of HB 3158. HB 3158 required that effective September 6, 2017, the City contribute the greater of (i) 34.5% of Computation Pay and (ii) a bi-weekly minimum amount (floor) defined in the bill plus \$13 million annually until December 31, 2024. After 2024 the bi-weekly floor and the additional \$13 million annual contribution are eliminated. After 2024, the bill requires an independent analysis to be performed to determine if the plan is adequately funded based on standards established by the Texas Pension Review Board and changes are required if the funding level is below the amortization period requirements under Section 802 of the Texas Government Code. See Note 1 for additional information on City contribution rates.

Total City contribution revenue to the Plans increased 5% (\$6 million) over 2016 contributions. City contribution revenue in the Combined Pension increased by \$7 million while City Contribution revenue in the Supplemental Plan decreased by \$1 million.

In the Combined Pension Plan, 60% (\$4 million) of the increased City contribution revenue in 2017 was due to the HB 3158 required additional \$13 million annual contribution which is paid \$500 thousand with each bi-weekly payroll. The remainder of the increase in contributions is due to the contribution floor. Although the City contribution rate increased from 27.5% to 34.5%, the resulting contributions did not increase significantly due to the change in the rate because overtime was eliminated from the City's contribution formula. The floor has been greater than the 34.5% of Computation Pay for all pay periods. The City's Computation Pay has not met the Hiring Plan Computation Pay represented by the City during the legislative process.

The City is required by ordinance to contribute amounts necessary to maintain the Supplemental Plan as determined by an actuary. The City contribution to the Supplemental Plan decreased by \$987 thousand or 32% because of the reduction in the Plan liability due to the passage of HB 3158.

The slight decrease in member contributions in 2016 was the result of a reduction in the number of active members compared to 2015 which was not fully offset by pay increases, while the increase in city contributions was the result of increased overtime pay which more than offset reductions from the decline in headcount.

The increase in other revenue of \$1.9 million is primarily due to the settlement of an investment related litigation matter and a property tax refund.

The Group Trust was over-allocated to cash for the majority of 2017 due to the uncertainty about what type of legislation would ultimately be passed and pending litigation as well as the transition to a new board which would then be tasked with deciding how to allocate excess cash. After the bill was signed, cash was redeployed into assets. The overallocation to cash resulted in lower income from investing activities in 2017. Also, the income from investing activities in 2016 included a \$92 million gain from the sale of two infrastructure assets which were under contract for sale at

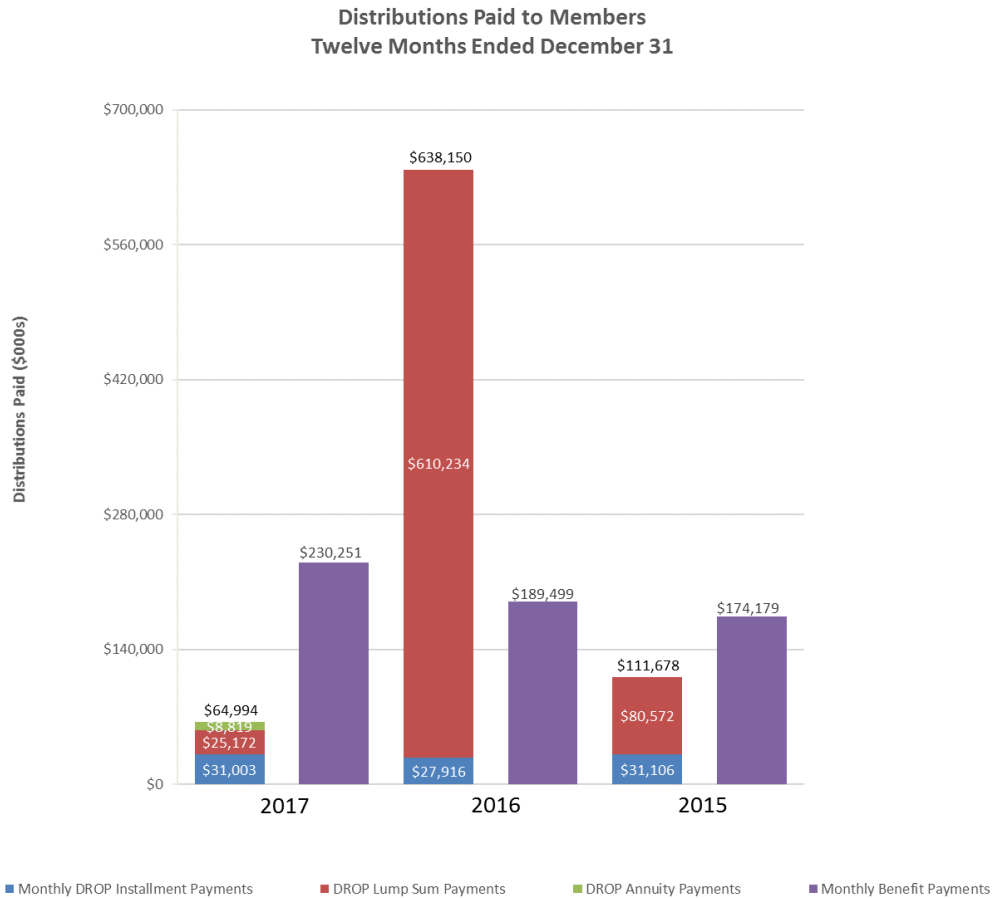
Dallas Police and Fire Pension System

Management’s Discussion and Analysis (Unaudited)

December 31, 2017 and 2016

December 31, 2016 and closed in 2017. This gain was partially offset by losses on private equity sales that were sold or under contract at December 31, 2016.

Distributions to members consist of monthly payments of retirement, disability, and survivor benefits, as well as monthly installment payments and lump sum payments of DROP balances and monthly DROP annuity payments. The chart below compares the components of distributions paid to members for the years ended December 31, 2017, 2016, and 2015.



Benefits paid in 2017 decreased \$532 million or 64% over 2016 as the result of the significant decrease (\$573 million) in DROP payments partially offset by a \$41 million increase in monthly benefit payments. DROP payments declined as a result of the Board’s action in December 2016 to stop honoring DROP lump sum payment requests due to liquidity constraints. DROP distributions remained constrained in 2017 to comply with debt agreements, litigation matters and the provisions of HB 3158. Distributions from DROP balances in 2017 totaled \$65 million including monthly installments for two months for certain members, a \$6.6 million pro-rata lump sum distribution for those members with DROP lump sum requests submitted prior to the December 2016 DROP policy

Dallas Police and Fire Pension System
Management's Discussion and Analysis (Unaudited)
December 31, 2017 and 2016

change, the Internal Revenue Code Required Minimum Distributions for certain members and distributions in accordance with the January 2017 amended DROP policy which allowed each DROP account holder to receive \$3,000 per month and the ability to request distributions for unforeseeable emergencies. The \$3,000 payment provision stopped once the DROP accounts were annuitized in November 2017 in accordance with HB 3158. DROP annuity payments for November and December totaled \$8.8 million. See Note 6 for additional information on DROP. Monthly benefits increased by \$41 million due to the cost of living adjustment granted in October 2016 and an additional 304 retirees and beneficiaries receiving monthly benefits in 2017.

Interest expense decreased by \$3.3 million in 2017 from the 2016 level which was \$1.5 million lower than the prior year. The reduced interest is a result of the reduction of the debt outstanding, the modification of the terms in 2016 and the pay-off of outstanding debt in 2017. See Note 7 for the discussion of Notes Payable.

Refund expense includes \$460 thousand of additional expense due to a change in the interpretation of the calculation of the liability accrual. The cost of administering the benefit programs of the Plans, including administrative costs and professional fees, decreased approximately \$1.4 million in 2017 compared to an increase of \$1.1 million in 2016. The decrease in 2017 is primarily related to a \$1.4 million reimbursement from insurance for legal expenses. Excluding the insurance reimbursement, legal expenses incurred in 2017 were \$2.4 million, approximately \$200 thousand lower than 2016. The increased legal costs in 2016 and continued high legal costs in 2017 are associated with a number of legal filings in connection with the proposed 2016 plan amendments, DROP distributions, and existing litigation related to the 2014 plan amendments. Although remaining higher than normal due to the work related to HB 3158, actuarial expenses were \$89 thousand lower than 2016. Increased expenses of \$69 thousand and \$220 thousand in the legislative and communications categories, respectively, related to the pension crisis and legislative process. A pro rata share of the total expenses of the Plans is allocated to the Combined Pension Plan and the Supplemental Plan according to the ratio of Combined Pension Plan and Supplemental Plan investment assets to the total investment assets of the Group Trust. Any expenses specific to either the Combined Pension Plan or the Supplemental Plan are charged directly as a reduction of such plan's net position.

Funding Overview

As reported in the past three years, beginning as of January 1, 2015, due to the decline in portfolio value and the reduction of the assumed rate of return to 7.25%, the Combined Pension Plan's funding period significantly increased from 26 years to an infinite period. The infinite funding period remained as of January 1, 2016 and at that time, the Combined Pension Plan was projected to become insolvent within 15 years if no changes to plan provisions were made. A sub-committee of the Board was formed in 2015 to examine alternatives to improve funding over the long term while continuing to provide benefits to members. Representatives of the City of Dallas were included in meetings of the sub-committee to provide input. The work of this sub-committee led to a 2016 plan amendment election which put forth a vote to allow for raising member contributions from 8.5% to 12% over a period of two years, lower base benefit calculations, reduce future cost of living adjustments, shorten the time allowed to participate in DROP as an active member, and reduce interest paid on DROP balances. Under Article 6243a-1, an increase in member contributions would have triggered an increase of City contributions from 27.5% to 28.5%. These amendments were expected to provide over 10 years of additional life to the Combined Pension Plan before projected insolvency, however additional funding from the City would have been required to avoid insolvency. The plan amendment election was completed in December 2016, however the proposed

Dallas Police and Fire Pension System

Management's Discussion and Analysis (Unaudited)

December 31, 2017 and 2016

amendments impacting solvency did not pass a vote of the members. This led to legislative efforts in which DFPF and the City of Dallas worked diligently with the Texas legislature during the 85th legislative session on plan changes. Such efforts resulted in the ultimate passage of House Bill 3158 which required extensive contribution and benefit changes.

DFPF's actuarial firm, Segal Consulting (Segal), conducts the annual actuarial valuations to determine if the assets and contributions are sufficient to provide the prescribed benefits (funding positions) of the Plans. Although the effective date of HB 3158 was September 1, 2017, the January 1, 2017 actuarial valuation considered the results of the changes due to the timing of the bill passage and the significance of the plan changes. The January 1, 2018 valuation considers the impact of the 183 members that elected to revoke their prior DROP election, 145 of the DROP revocations were completed in 2018.

The January 1, 2018 actuarial valuation reports a funded ratio of 47.7%, an unfunded actuarial accrued liability of \$2.4 billion and an expected fully funded date of 2063 for the Combined Pension Plan compared to a funded ratio of 49.4%, an unfunded actuarial accrued liability of \$2.2 billion and an expected fully funded date of 2061 for the Combined Pension Plan as reported in the January 1, 2017 actuarial valuation. The January 1, 2017 funding results reflected improvement over 2016 due to the passage of HB 3158. The January 1, 2016 actuarial valuation reported a funded ratio of 45.1%, and an unfunded actuarial accrued liability of \$3.3 billion and the Combined Pension Plan was projected to be insolvent in 15 years.

The January 1, 2018 actuarial valuation reports a funded ratio of 51.5% and an unfunded actuarial accrued liability of \$16.7 million for the Supplemental Plan compared to a funded ratio of 52.9%, and an unfunded actuarial accrued liability of \$15.7 million for the Supplemental Plan as reported in the January 1, 2017 actuarial valuation. The January 1, 2017 funding results reflect improvement due to the passage of HB 3158. The January 1, 2016 actuarial valuation reported a funded ratio of 45.8%, an unfunded actuarial accrued liability of \$23 million.

These projections may vary on an annual basis due to actual experience and demographics which may vary from the current actuarial assumptions. Beginning in 2025, once the City is contributing based solely on Computation Pay with no floor as discussed below, differences between actual payroll and the City's current projections may have a significant impact on the projected funding period.

The total Actuarially Determined Contribution (ADC) rate required to pay the normal cost and to amortize the unfunded actuarial accrued liability over a 30-year period is currently 58.9% of Computation Pay compared to 57% and 79% as of January 1, 2017 and 2016, respectively. The decrease in the ADC in the January 1, 2017 actuarial valuation from the January 1, 2016 actuarial valuation reflects the impact of the significant changes resulting from the passage of HB 3158. The ADC rate compares to the City's actual contribution rate of 34.5% of Computation Pay as of the first pay period that begins after September 1, 2017 which is subject to a minimum floor per the bill for the next seven years, plus the member contribution of 13.5% beginning September 6, 2017, plus an additional \$13 million per year from the City until December 31, 2024.

Governmental Accounting Standards Board Statement No. 67, *Financial Reporting for Pension Plans - An Amendment of GASB Statement No. 25*, (GASB No. 67) requires disclosure of the Net Pension Liability (NPL). The GASB No. 67 valuation is prepared by Segal and is a calculation for accounting purposes as opposed to the actuarial valuation which is completed to determine the funding adequacy of the Plans. The NPL is the difference between the Total Pension Liability (TPL) and the

Dallas Police and Fire Pension System
Management's Discussion and Analysis (Unaudited)
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market value of assets. GASB No. 67 requires the determination of the TPL using the individual entry age method, level percent of pay actuarial cost method, and a discount rate. The GASB No. 67 calculation is based on the benefit structure in place at year end, therefore the GASB No. 67 calculation completed for December 31, 2016 did not consider the impacts of HB 3158, while the actuarial valuation included the impacts.

The GASB No. 67 for December 31, 2017 includes the impacts of HB 3158 and reports a NPL of \$2.4 billion which is a decrease of \$3.9 billion from the NPL reported at December 31, 2016 for the Combined Pension Plan. The Fiduciary Net Position as a Percentage of Total Pension Liabilities (FNP) is 46.8% at December 31, 2017 compared to 25.5% at December 31, 2016 for the Combined Pension Plan. The Supplemental Plan had a NPL of \$16 million and \$23 million at December 31, 2017 and 2016, respectively. The Supplemental Plan had a FNP of 52.9% and 43.5% at December 31, 2017 and 2016, respectively.

Information about whether the Plans' net positions are increasing or decreasing over time relative to the TPL is provided in the accompanying Schedule of Changes in the Net Pension Liability and Related Ratios.

Contacting DFPF's Financial Management

This financial report is designed to provide members and other users with a general overview of DFPF's finances and present the Plans' accountability for the funding received. If you have questions about this report, you may contact the Executive Director of the Dallas Police and Fire Pension System at 4100 Harry Hines Boulevard, Suite 100, Dallas, Texas 75219, by phone at 214-638-3863, or by email at info@dpfp.org.

Dallas Police and Fire Pension System

Combining Statements of Fiduciary Net Position

December 31,	2017			2016		
	Combined Pension Plan	Supplemental Police and Fire Pension Plan of the City of Dallas	Total	Combined Pension Plan	Supplemental Police and Fire Pension Plan of the City of Dallas	Total
Assets						
Investments, at fair value						
Short-term investments	\$ 23,929,959	\$ 202,714	\$ 24,132,673	\$ 7,095,453	\$ 58,339	\$ 7,153,792
Fixed income securities	325,258,334	2,755,315	328,013,649	267,687,478	2,200,932	269,888,410
Equity securities	466,132,328	3,948,680	470,081,008	153,397,855	1,261,240	154,659,095
Real assets	794,476,173	6,730,133	801,206,306	1,119,758,392	9,206,677	1,128,965,069
Private equity	220,240,515	1,865,692	222,106,207	262,620,347	2,159,270	264,779,617
Alternative investments	143,709,605	1,217,387	144,926,992	133,798,219	1,100,092	134,898,311
Forward currency contracts	134,137	1,136	135,273	(284,449)	(2,339)	(286,788)
Total investments	1,973,881,051	16,721,057	1,990,602,108	1,944,073,295	15,984,211	1,960,057,506
Invested securities lending collateral	12,050,625	102,083	12,152,708	21,494,665	176,730	21,671,395
Receivables						
City	2,026,827	-	2,026,827	1,288,353	-	1,288,353
Members	641,998	1,147	643,145	279,043	427	279,470
Interest and dividends	2,924,484	24,774	2,949,258	2,920,613	24,013	2,944,626
Investment sales proceeds	28,155,275	238,508	28,393,783	24,509,363	201,516	24,710,879
Other receivables	610,876	5,175	616,051	153,268	1,260	154,528
Total receivables	34,359,460	269,604	34,629,064	29,150,640	227,216	29,377,856
Cash and cash equivalents	117,590,839	996,131	118,586,970	324,119,633	2,664,919	326,784,552
Prepaid expenses	431,773	3,658	435,431	456,034	3,750	459,784
Capital assets, net	12,608,396	106,808	12,715,204	11,943,266	98,198	12,041,464
Total assets	2,150,922,144	18,199,341	2,169,121,485	2,331,237,533	19,155,024	2,350,392,557
Liabilities						
Notes payable	-	-	-	128,939,854	1,060,146	130,000,000
Other payables						
Securities purchased	31,147,075	263,852	31,410,927	24,153,956	198,594	24,352,550
Securities lending obligations	12,050,625	102,083	12,152,708	21,494,665	176,730	21,671,395
Accounts payable and other accrued liabilities	4,378,973	28,253	4,407,226	5,987,255	49,227	6,036,482
Total liabilities	47,576,673	394,188	47,970,861	180,575,730	1,484,697	182,060,427
Net position						
Net investment in capital assets	12,608,396	106,808	12,715,204	11,943,266	98,198	12,041,464
Unrestricted	2,090,737,075	17,698,345	2,108,435,420	2,138,718,537	17,572,129	2,156,290,666
Net position held in trust - restricted for pension benefits	\$ 2,103,345,471	\$ 17,805,153	\$ 2,121,150,624	\$ 2,150,661,803	\$ 17,670,327	\$ 2,168,332,130

See accompanying independent auditor's report and notes to combining financial statements.

Dallas Police and Fire Pension System
Combining Statements of Changes in Fiduciary Net Position

Years ended December 31,	2017			2016		
	Combined Pension Plan	Supplemental Police and Fire Pension Plan of the City of Dallas	Total	Combined Pension Plan	Supplemental Police and Fire Pension Plan of the City of Dallas	Total
Additions (Reductions)						
Contributions						
City	\$ 126,318,005	\$ 2,077,059	\$ 128,395,064	\$ 119,345,000	\$ 3,063,584	\$ 122,408,584
Members	32,977,425	66,095	33,043,520	25,518,317	34,612	25,552,929
Total contributions	159,295,430	2,143,154	161,438,584	144,863,317	3,098,196	147,961,513
Investment income (loss)						
Net appreciation (depreciation) in fair value of investments	74,836,102	535,674	75,371,776	121,518,053	786,478	122,304,531
Interest and dividends	30,923,115	261,955	31,185,070	54,354,246	446,902	54,801,148
Total gross investment income (loss)	105,759,217	797,629	106,556,846	175,872,299	1,233,380	177,105,679
Less: Investment expense	(9,024,584)	(76,449)	(9,101,033)	(11,683,217)	(96,060)	(11,779,277)
Net investment income (loss)	96,734,633	721,180	97,455,813	164,189,082	1,137,320	165,326,402
Securities lending income						
Securities lending income	185,159	1,569	186,728	656,928	5,401	662,329
Securities lending expense	(84,612)	(717)	(85,329)	(258,130)	(2,122)	(260,252)
Net securities lending income	100,547	852	101,399	398,798	3,279	402,077
Other income	2,075,970	17,586	2,093,556	203,076	1,670	204,746
Total additions (reductions)	258,206,580	2,882,772	261,089,352	309,654,273	4,240,465	313,894,738
Deductions						
Benefits paid to members	292,576,281	2,668,579	295,244,860	821,737,799	5,911,533	827,649,332
Refunds to members	3,577,530	-	3,577,530	3,354,333	-	3,354,333
Interest expense	1,279,517	10,839	1,290,356	4,532,196	37,264	4,569,460
Professional and administrative expenses	8,089,584	68,528	8,158,112	9,492,445	78,047	9,570,492
Total deductions	305,522,912	2,747,946	308,270,858	839,116,773	6,026,844	845,143,617
Net increase/(decrease) in net position	(47,316,332)	134,826	(47,181,506)	(529,462,500)	(1,786,379)	(531,248,879)
Net position held in trust - restricted for pension benefits						
Beginning of period	2,150,661,803	17,670,327	2,168,332,130	2,680,124,303	19,456,706	2,699,581,009
End of period	\$ 2,103,345,471	\$ 17,805,153	\$ 2,121,150,624	\$ 2,150,661,803	\$ 17,670,327	\$ 2,168,332,130

See accompanying independent auditor's report and notes to combining financial statements.

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

1. Organization

General

The Dallas Police and Fire Pension System (DPFP) is an independently governed component unit of the City of Dallas (City, or Employer) and serves as a single-employer pension and retirement fund for police officers and firefighters employed by the City. The general terms "police officers" and "firefighters" also include fire and rescue operators, fire alarm operators, fire inspectors, apprentice police officers, and apprentice firefighters. DPFP is comprised of a single defined benefit pension plan (Combined Pension Plan) designed to provide retirement, death, and disability benefits for police officers and firefighters (collectively, members). DPFP was originally established under former Article 6243a of the Revised Civil Statutes of Texas and, since 1989, derives its authority to continue in operation under the provisions of Article 6243a-1 of the Revised Civil Statutes of Texas (the Governing Statute). All active police officers and firefighters employed by the City are required to participate in the Combined Pension Plan.

The Supplemental Police and Fire Pension Plan of the City of Dallas (Supplemental Plan) was created in 1973 to supplement DPFP's Plan B Defined Benefit Pension Plan (Plan B). The Combined Pension Plan and Supplemental Plan are collectively referred to as the Plans. Former Plan B members are now denominated as Group B members of the Combined Pension Plan. The intent of the Supplemental Plan is to provide additional retirement benefits to those members of the Supplemental Plan holding a rank higher than the highest corresponding civil service rank as provided in the Combined Pension Plan. Members receive a supplemental pension based upon the difference between compensation for the civil service position held before entrance into the Supplemental Plan and compensation while in the Supplemental Plan. The Supplemental Plan was established and derives its authority from a non-codified City ordinance.

As of December 31, 2017 and 2016, the Combined Pension Plan's membership consisted of:

	2017	2016
Retirees and beneficiaries	4,748	4,456
Non-active vested members not yet receiving benefits	226	215
Non-active non-vested members not yet refunded	399	295
Total non-active members	5,373	4,966
Vested active members	3,757	3,978
Non-vested active members	1,195	1,126
Total active members	4,952	5,104

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

As of December 31, 2017, and 2016, the Supplemental Plan's membership consisted of:

	2017	2016
Total non-active members	141	128
Vested active members	42	47
Non-vested active members	2	-
Total active members	44	47

The benefit, contribution and administration plan provisions discussed below are as of December 31, 2017.

Benefits

Members hired by the City before March 1, 1973 are Group A members of the Combined Pension Plan. Members hired on or after March 1, 1973 are Group B members of the Combined Pension Plan.

Group A members of the Combined Pension Plan have elected to receive one of two benefit structures as of December 31, 2017:

- Members with 20 years or more of pension service are entitled to monthly pension benefits beginning at age 50 equal to 50% of base pay, defined as the maximum monthly civil service pay established by the City for a police officer or firefighter at the time of retirement, plus 50% of the longevity pay the member was receiving either at the time he or she left active service with the City or the effective date the member joined the Deferred Retirement Option Plan (DROP). Benefit payments are adjusted annually according to changes in active service base pay, if any. Additionally, a member is eligible to receive 50% of the difference between any annualized City service incentive pay granted to the member less annual longevity pay.
- Members with 20 years or more of pension service are entitled to monthly pension benefits beginning at age 55 equal to 3% of their base pay, computed as noted in the prior paragraph, for each year of pension service with a maximum of 32 years. In addition, a member receives 50% of the longevity pay and $\frac{1}{24}$ th of any City service incentive pay the member was receiving either at the time he or she left active service with the City or the effective date the member joined DROP. Prior to September 1, 2017 pension benefit payments increased annually on October 1st by 4% of the initial benefit amount. After September 1, 2017 pension benefit payments are eligible for an ad hoc cost of living increase as approved by the Board, if certain funding requirements are met. It is not anticipated that the funding requirements necessary to grant an ad hoc cost of living increase will be met for several decades.

Group B members of the Combined Pension Plan receive one of two benefit structures as of December 31, 2017:

- Members who began membership before March 1, 2011 with 5 or more years of pension service are entitled to monthly pension benefits beginning at age 50 equal to 3% of the member's average base pay plus education and longevity pay (Computation Pay) determined over the highest 36 consecutive months of Computation Pay, multiplied by the number of years of pension service prior to September 1, 2017. The monthly pension benefit for service earned after September 1, 2017 is based on the highest 60 consecutive months of Computation Pay

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

multiplied by a 2.5% multiplier at age 58. The multiplier is reduced to between 2.0% and 2.4% for retirement beginning at age 53 and prior to age 58. The member cannot accrue a monthly pension benefit that exceeds 90% of the member's average Computation Pay. Certain members may receive a 2.5% multiplier for pension service after September 1, 2017 prior to age 58 if the combination of their pre and post September 1, 2017 pension service calculations using the 2.5% multiplier for post September 1, 2017 meets or exceeds the 90% maximum benefit. Certain members who meet the service prerequisite or were 45 prior to September 1, 2017 may elect to take early retirement with reduced benefits starting at age 45, or earlier if the member has 20 years of pension service.

- Members who began membership after February 28, 2011 are entitled to monthly pension benefits after accruing 5 years of pension service and the attainment of age 58. Pension benefits are equal to the member's average Computation Pay determined over the highest 60 consecutive months of Computation Pay, multiplied by 2.5% for the number of years of pension service. The member cannot accrue a monthly pension benefit that exceeds 90% of the member's average Computation Pay. Certain members who meet the service prerequisite may elect to take early retirement with reduced benefits starting at age 53.

A Group B member who has accrued 20 or more years of pension service and who has been on active service at any time on or after January 1, 1999 may take a pension benefit regardless of age except that the percent multiplier would be based on the member's age at the time of applying for the pension, or earlier if the member has 20 years of pension service.

After September 1, 2017, Group B benefits for all members are eligible for an ad hoc cost of living increase as approved by the Board, if certain funding requirements are met. It is not anticipated that the funding requirements necessary to grant an ad hoc cost of living increase will be met for several decades. Prior to September 1, 2017 Group B members hired prior to January 1, 2007 received an automatic annual increase of 4% of the initial benefit amount each October 1st. Group B members hired on or after January 1, 2007 were eligible for an ad hoc increase not to exceed 4% of the initial benefit amount.

Additional provisions under the Combined Pension Plan as of December 31, 2017 are as follows:

- Prior to September 1, 2017 members with over 20 years of pension service, upon attaining age 55, received a monthly supplement equal to the greater of \$75 or 3% of their total monthly benefits (excluding the benefit supplement amount). After September 1, 2017, no additional members will receive the monthly supplement and no increases will be made to the amount of the supplement received by those members receiving the supplement prior to September 1, 2017.
- Service-connected disability benefits are available for members in active service who began service prior to March 1, 2011 and have not entered DROP who become disabled during the performance of their duties from the first day of employment. Members receiving service-connected disability benefits are given credit for the greater of actual pension service or 20 years of pension service. A benefit of 3% times the average of the highest 36 consecutive months of Computation Pay times the number of years of pension service prior to September 1, 2017 and a multiplier based on their age at the time the disability is granted for pension service after September 1, 2017 plus additional time necessary to reach 20 years of pension service credit times the average of the highest 60 consecutive months of Computation pay. Members who began membership after February 28, 2011 and have not entered DROP are

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

entitled to a disability benefit based on the average of the highest 60 consecutive months of Computation Pay times a 2.5% multiplier regardless of their age. If a member has more than 20 years of service, the benefit is calculated in the same manner as their service retirement pension. If the member has fewer than 36 or 60 months of service, based on hire date, the benefit is based on the average of Computation Pay during their entire pension service.

- Members who began membership before March 1, 2011, who are determined to be eligible for a non-service connected disability benefit are entitled to a benefit of 3% times the average of the highest 36 consecutive months of Computation Pay times the number of years of pension service prior to September 1, 2017, plus a multiplier based on their age at the time the disability is granted for pension service after September 1, 2017 times the average of the highest 60 consecutive months of Computation pay. Total service is rounded to the nearest whole year. Members who began membership after February 28, 2011 are entitled to a disability benefit based on the average of the highest 60 consecutive months of Computation Pay, times a 2.5% multiplier regardless of their age. All non-service connected disability benefits are subject to a minimum benefit of \$110 for every year of pension service. The minimum benefit cannot exceed \$2,200 per month. If the member has fewer than 36 or 60 months of service, based on hire date, the benefit is based on the average of Computation Pay during their entire pension service.
- Members who are eligible to retire are eligible to enter the DROP program which is an optional method of accruing monthly pension benefits prior to leaving active service. Members who are receiving disability benefits are not eligible to enter the DROP program. The amount of an active member's DROP balance is based on the accumulation of the member's monthly benefit each month while in active DROP, and interest accrued prior to September 1, 2017. DROP balances do not earn interest after September 1, 2017. DROP balances of retired members and other DROP account holders, excluding active member DROP account holders, were converted to annuities (a stream of payments) on November 30, 2017. DROP balances of active members are annuitized upon retirement. The life expectancy of a DROP account holder at the time of annuitization determines the term of the annuity. Interest is included in the annuity calculation for balances accrued prior to September 1, 2017. The interest rate is based on the provisions of HB 3158 and rules adopted by the Board. See Note 6 for information about the changes in the DROP program resulting from the passage of HB 3158. See below, under Contributions, for discussion of required DROP contributions. The total DROP account balance including the present values of the annuitized balances for the Combined Pension Plan was \$1.05 billion at December 31, 2017 and 2016. The total DROP balances include amounts that may be paid out of the Excess Benefit Plan and Trust.
- A minimum benefit is paid to vested retired members of \$2,200 per month subject to any restrictions contained in the Combined Pension Plan. The minimum benefit is prorated for members who retire with less than 20 years of service credit and equals \$1,200 monthly for a qualified surviving spouse if there are no qualified surviving children receiving benefits. The minimum benefit is \$1,100 monthly for qualified surviving children combined and qualified surviving spouses if qualified surviving children are receiving or had received benefits.

The Supplemental Plan's benefits are designed to supplement Group B benefits for those members holding a rank higher than the highest civil service rank because their Combined Pension Plan benefits are capped by the Combined Pension Plan's definition of considered compensation. Accordingly, when Group B benefits are amended, the Supplemental Plan's benefit calculation is also affected. The basis for a member's benefits are the difference between the monthly rate of pay a member is due as the base pay for the rank the member currently holds and the monthly rate of pay the member is due for the highest civil service rank (and pay step) the member held as a

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

result of competitive examinations. The service time used to determine the member's Group B benefit is used to determine the member's benefit under the Supplemental Plan so that the same length of time is used for both plans. Average Computation Pay is calculated for each plan separately and combined in determining the benefit. Application for benefits under the provisions of the Combined Pension Plan is deemed to be an application for benefits under the Supplemental Plan and no additional application need be filed.

Members of the Supplemental Plan who enter the DROP program in the Combined Pension Plan also enter the DROP program in the Supplemental Plan. The total DROP account balance and the present value of the annuitized balances related to the Supplemental Plan was \$8.1 million and \$8.0 million at December 31, 2017 and 2016, respectively. The total DROP balances include amounts that may be paid out of the Excess Benefit Plan and Trust.

Death benefits are available to a surviving spouse, dependent children, handicapped children, or dependent parents in the event of the death of a member either after disability or service retirement, prior to leaving active service or retirement eligible deferred vested members.

Members retiring with 20 years of pension service or who were receiving a service-connected disability benefit had been eligible to receive a benefit supplement upon reaching age 55. The supplement amount was 3% of the member's monthly benefit, with a minimum of \$75 per month in the Combined Pension Plan. After September 1, 2017, no additional members will receive the monthly supplement and no supplement amount will increase.

Contributions

HB 3158 increased employee contribution rates effective the first pay period beginning after September 1, 2017, which was September 6, 2017, to 13.5% of Computation Pay for all active members regardless of their status. Prior to September 1, 2017, Group B members not in DROP were required to contribute to the Combined Pension Plan 8.5% of Computation Pay. Beginning October 1, 2011, active members in DROP paid contributions at the rate of 3% of Computation Pay through September 30, 2012, 6% of Computation Pay through October 1, 2013, and 8.5% of Computation Pay through December 31, 2014. Effective January 1, 2015, active members in DROP paid contributions at the rate of 4% of Computation Pay.

Prior to September 1, 2017 the City contribution rates to the Combined Pension Plan were defined in Article 6243a-1 of the Revised Civil Statutes of Texas and required the City to make contributions of 27.5% of total wages, including overtime. HB 3158 required that effective the first bi-weekly pay period beginning after September 1, 2017, the City contribute the greater of (i) 34.5% of Computation Pay and (ii) a bi-weekly minimum (floor) amount defined in the bill, plus \$13 million annually until 2024. The 2017 floor amount was \$5.173 million. After 2024 the floor amount and the additional \$13 million annual amount are eliminated.

During 2024 an independent actuary selected by the Texas State Pension Review Board (PRB) must perform an analysis that includes the independent actuary's 1) conclusion regarding whether the pension system meets State Pension Review Board funding guidelines; and 2) recommendations regarding changes to benefits or to member or city contribution rates. The Board must adopt a plan

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

that complies with the funding and amortization period requirements under Subchapter C, Section 802 of the Texas Government Code.

The City is required by ordinance to contribute amounts, as determined by an actuary, necessary to maintain the Supplemental Plan. Member contributions in the Supplemental Plan follow the same rules as the Combined Pension Plan on Computation Pay over the compensation of the highest civil service rank held as a result of competitive examinations.

City contributions can be changed by the legislature, by a majority vote of the voters of the city or in accordance with a written agreement entered into between the city and the pension system, where at least a eight trustees have approved the agreement, provided that the change does not increase the period required to amortize the unfunded accrued liability of the Combined Pension Plan. Employee contribution changes can be made by the legislature or by a vote of the Board where at least eight trustees have approved the change. Decreases in employee contributions can be approved by the Board only if certain funding conditions are met.

The Supplemental Plan's plan document can be amended only by the City Council in accordance with City ordinance. The benefit and contribution provisions of the Supplemental Plan follow those of the Combined Pension Plan.

Members of Group B are immediately vested in their member contributions. If a member's employment is terminated and the member is not vested, or the member elects not to receive present or future pension benefits, the member's contributions are refunded, without interest, upon written application. If application for a refund is not made within three years of normal retirement age, the member forfeits the right to a refund of his or her contribution; however, a procedure exists whereby the member's right to the contributions can be reinstated and refunded by the Board after the three-year period.

Administration

Collectively, the Combined Pension Plan Board of Trustees and the Supplemental Plan Board of Trustees are referred to as the Board. The Board is responsible for the general administration of DPFP and has the full power to invest the Plans' assets.

Effective September 1, 2017, HB 3158 modified the structure of the Board. Prior to September 1, 2017 the Plans were administered by a twelve-member Board of Trustees consisting of four City Council members appointed by the City Council, three active police officers and three active firefighters who were elected by employees of their respective departments, one pensioner who has retired from the Police Department and one pensioner who has retired from the Fire-Rescue Department who was elected by pensioners from their respective departments.

Beginning September 1, 2017, the Plans are administered by an eleven-member Board consisting of six Trustees appointed by the mayor of the City of Dallas, in consultation with the City Council; one current or former police officer, nominated and elected by active members; one current or former firefighter, nominated and elected by active members; and three non-member Trustees (who may

Dallas Police and Fire Pension System

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not be active members or retirees) elected by the active members and retirees from a slate of nominees vetted and nominated by the Nominations Committee. The Nominations Committee consists of representatives from 11 named police and fire associations and the Executive Director of DFPF. The Executive Director is a nonvoting member of the committee.

To serve as a Trustee, a person must have demonstrated financial, accounting, business, investment, budgeting, real estate or actuarial expertise and may not be an elected official or current employee of the City of Dallas, with the exception of a current police officer or firefighter. The new Board was fully seated on October 12, 2017.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying financial statements are presented in accordance with accounting principles generally accepted in the United States (GAAP). In doing so, DFPF adheres to guidelines established by the Governmental Accounting Standards Board (GASB). The accompanying financial statements include solely the accounts of the Plans on a combined basis, which include all programs, activities and functions relating to the accumulation and investment of the net position and related income necessary to provide the service, disability and death benefits required under the terms of the governing statutes and amendments thereto.

Basis of Accounting

The accrual basis of accounting is used for the Plans. Revenues are recognized in the period in which they are earned and collection is reasonably assured. Expenses are recognized when the liability is incurred. Member and employer contributions are recognized in the period in which the contributions are due. Accrued income, when deemed uncollectible, is charged to operations.

Contributions for the final biweekly payroll of the year for the years ended December 31, 2017 and 2016 were not received by DFPF until subsequent to year end and accordingly, uncollected contributions are recorded as receivables in the accompanying financial statements. Benefits, lump sum payments, and refunds are recognized when due and payable. Dividend income is recorded on the ex-dividend date. Other income consists primarily of rental income which is recognized on a straight-line basis over the lease term. Realized gains and losses on sales of securities are recognized on the trade date. The cost of investments sold is determined using the average cost method.

Reporting Entity

DFPF is an independently governed component unit of the City and the basic financial statements and required supplementary information of the Plans are therefore included in the City's Comprehensive Annual Financial Report.

Administrative Costs

All costs of administering the Plans are paid from the Plans' assets pursuant to an annual fiscal budget approved by the Board.

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

Federal Income Tax

Favorable determinations that the Plans are qualified and exempt from Federal income taxes were received on October 20, 2014. While the Board has authorized a filing with the Internal Revenue Service under the Voluntary Correction Program, the Board believes that the Plans are designed to meet and operate in material compliance with the applicable requirements of the Internal Revenue Code.

Use of Estimates

The preparation of financial statements in accordance with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the actuarial information included in the notes to the financial statements as of the benefit information date, the reported amounts of income and expenses during the reporting period, and when applicable, disclosures of contingent assets and liabilities at the date of the financial statements. Actual results could differ from those estimates.

Cash and Cash Equivalents

DPFP considers only demand deposits as cash. Cash equivalent securities, which are composed of all highly liquid investments with a maturity of three months or less when purchased, are considered to be cash equivalents. Highly liquid securities invested by third party investment managers as part of a short-term investment fund are not considered cash equivalents and are classified as short-term investments.

Plan Interest in the Group Master Trust

Effective January 1, 2006, the Board elected to establish a Group Master Trust (Group Trust) in order to unitize the investments of the Combined Pension Plan and the Supplemental Plan. JPMorgan Chase Bank, N.A. (JPMorgan) served as custodian of the Group Trust for the years ended December 31, 2017 and 2016. The fair value of the Combined Pension Plan's interest and the Supplemental Plan's interest in the Group Trust is based on the unitized interest that each plan has in the Group Trust. The Combined Pension Plan's interest in the Group Trust's investments was approximately 99.2% at December 31, 2017 and 2016, while the remaining interest belongs to the Supplemental Plan. The allocation of investment income and expenses between the Combined Pension Plan and the Supplemental Plan is based on percentage interest in the Group Trust. Shared professional and administrative expenses are allocated to each plan directly in proportion to each plan's ownership interest. Benefits and contributions are attributed directly to the plan that such receipts and disbursements relate to and are not subject to a pro-rated allocation.

Investments

Investment Policy

Statutes of the State of Texas authorize DPFP to invest surplus funds in the manner provided by Government Code, Title 8, Subtitle A, Subchapter C which provides for the investment of surplus assets in any investment that is deemed prudent by the Board. These statutes stipulate that the governing body of the Plans is responsible for the management and administration of the funds of the Plans and shall determine the procedure it finds most efficient and beneficial for the management of the funds of the Plans. The governing body may directly manage the investments of the Plans or may contract for professional investment management services. Investments are reported at fair value.

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The investment policy of the Board does not restrict the types of investments authorized to be made on behalf of the Group Trust. HB 3158 requires at least eight members of the Board to approve an investment in an alternative asset. The Board determined that alternative assets include all asset classes other than traditional assets. Traditional assets include publicly traded stocks, bonds and cash equivalents. The investment policy is based upon an asset allocation study that considers the current and expected financial condition of the Plans, the expected long-term capital market outlook and DPFP's risk tolerance. The following is the Board's adopted asset allocation policy as of December 31, 2017:

Asset Class	Target Allocation
Equity	30%
Global Equity	20%
Emerging Markets Equity	5%
Private Equity	5%
Fixed Income	33%
Short-term Core Bonds	2%
Global Bonds	3%
High Yield	5%
Bank Loans	6%
Emerging Markets Debt	6%
Structured Credit and Absolute Return	6%
Private Debt	5%
Global Asset Allocation	10%
Risk Parity	5%
Global Tactical Asset Allocation	3%
Absolute Return	2%
Real Assets	25%
Liquid Real Assets	3%
Natural Resources	5%
Infrastructure	5%
Real Estate	12%
Cash	2%

The value and performance of DPFP's investments are subject to various risks, including, but not limited to, credit risk, interest rate risk, concentration of credit risk, custodial credit risk, and foreign currency risk, which are in turn affected by economic and market factors impacting certain industries, sectors or geographies. See Note 3 for disclosures related to these risks.

See Note 12 for Board action taken on May 8, 2018 to suspend a portion of the target allocation to asset classes.

Investment Transactions

The accompanying Combining Statements of Changes in Fiduciary Net Position present the net appreciation (depreciation) in the fair value of investments which consists of the realized gains and

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

losses on securities sold and the changes in unrealized gains and losses on those investments still held in the portfolio at year end.

Purchases and sales of investments and forward foreign exchange contracts are recorded on the trade date. Unsettled investment trades as of fiscal year end are reported in the financial statements on the accrual basis of accounting. Realized gains or losses on forward foreign exchange contracts are recognized when the contract is settled.

Interest earned but not yet received and dividends declared but not yet received are recorded as accrued interest and dividends receivable, respectively. In addition, unsettled investment purchases and sales are accrued.

Valuation of Investments

The diversity of the investment types in which the Group Trust invests requires a wide range of techniques to determine fair value.

Short-term investments include money market funds and government bonds with a maturity of less than one year and are valued based on stated market rates.

Fixed income investments include government securities such as Treasury securities, bank loans, US corporate bonds, foreign securities such as dollar denominated and non-dollar denominated issues of non-US governments and private corporations, plus units of commingled fixed income funds of both US and foreign securities. Equity securities consist of individual shares of equity securities plus units of commingled stock funds of both US and foreign entities. The stated market value of investments in publicly traded fixed income and equity securities is based on published market prices or quotations from major investment dealers as provided by JPMorgan, utilizing vendor supplied pricing. Vendor supplied pricing data for equity securities is based upon the daily closing price from the primary exchange of each security while vendor supplied pricing data for fixed income securities is based upon a combination of market maker quotes, recent trade activity, and observed cash flows. Securities traded on an international exchange are valued at the last reported sales price as of year-end at exchange rates as of year-end. The fair value of non-publicly traded commingled fixed income funds and commingled stock funds is based on their respective net asset value (NAV) as reported by the investment manager.

Real assets consist of privately held real estate, infrastructure, timberland, and farmland investments. Real estate is held in separate accounts, limited partnerships, joint ventures, and commingled funds, and as debt investments in the form of notes receivable. Infrastructure, timberland, and farmland are held in separate accounts, limited partnerships, and joint ventures. Real estate, timberland and farmland are generally subject to independent third-party appraisals performed in accordance with the Uniform Standards of Professional Appraisal Practice on a periodic basis, every three years at minimum, as well as annual financial statement audits. Infrastructure funds are valued based on audited NAV reported by the manager which is based on internal manager valuation or independent appraisal at the discretion of the manager. Interests in joint ventures, limited partnerships and notes receivable are valued at the dollar value reported by the general partner or investment manager, as applicable. Certain real estate investments are managed internally by DPFP staff and the real estate holdings of such ventures are subject to independent third-party appraisals on a periodic basis, every three years at minimum. Internally managed investments are valued at their net equity on a fair value basis. Externally managed partnerships, joint venture, commingled funds, and separate accounts are valued at the NAV provided by the investment or fund manager, as applicable. The underlying investment holdings are valued by the investment or fund manager on a continuous basis.

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Private equity and alternative investments consist of various investment vehicles including limited partnerships, commingled funds, trusts and notes receivable. Alternative investments, also referred to as the global asset allocation portfolio, consist of risk parity, tactical asset allocation, and absolute return funds. Private equity limited partnership investments and notes receivable are valued as reported by the investment manager. Alternative investment commingled funds are valued using their respective NAV as reported by the fund's custodian or investment manager, as applicable. Private equity funds are valued using their respective NAV as reported by the fund's custodian, investment manager or independent valuations obtained by DPFP, as applicable.

DPFP has established a framework to consistently measure the fair value of the Plans' assets and liabilities in accordance with applicable accounting, legal, and regulatory guidance. This framework has been provided by establishing valuation policies and procedures that provide reasonable assurance that assets and liabilities are carried at fair value as described above and as further discussed in Note 4.

Foreign Currency Transactions

DPFP, through its investment managers, is party to certain financial arrangements, utilizing forward contracts, options and futures as a hedge against foreign currency fluctuations. Entering into these arrangements involves not only the risk of dealing with counterparties and their ability to meet the terms of the contracts, but also the risk associated with market fluctuations. Realized gains and losses on option and future arrangements are recorded as they are incurred. Realized gains and losses on forward contracts are recorded on the settlement date.

Gains and losses resulting from foreign exchange contracts (transactions denominated in a currency other than the Group Trust's functional currency - US dollar) are recorded based on changes in market values and are included in investment income (loss) in the accompanying financial statements. Investment managers, on behalf of the Group Trust, structure foreign exchange contracts and enter into transactions to mitigate exposure to fluctuations in foreign exchange rates.

Investments and broker accounts denominated in foreign currencies outstanding at December 31, 2017 and 2016 were converted to the US dollar at the applicable foreign exchange rates quoted as of December 31, 2017 and 2016, respectively. The resulting foreign exchange gains and losses are included in net appreciation (depreciation) in fair value of investments in the accompanying financial statements.

Recent Accounting Pronouncements

In March 2016, GASB issued Statement No. 82, Pension Issues - an amendment of GASB Statements No. 67, No. 68, and No. 73. This Statement addresses issues regarding (1) the presentation of payroll-related measures in required supplementary information, (2) the selection of assumptions and the treatment of deviations from the guidance in an Actuarial Standard of Practice for financial reporting purposes, and (3) the classification of payments made by employers to satisfy employee (plan member) contribution requirements. This Statement was adopted by DPFP for the 2017 annual financial statements. The implementation of this new standard did not significantly impact the financial statements.

In 2017 GASB adopted Statement No. 86, Certain Debt Extinguishment Issues and Exposure Draft, Certain Disclosures Related to Debt, Including Direct Borrowings and Direct Placements, the

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effective dates of GASB Statement No. 86 and the Exposure Draft are in subsequent periods and the new standards are not anticipated to have an impact on the DFPF financial statements.

In 2017 GASB adopted Statement No. 87, Leases, this standard will require recognition of certain lease assets and liabilities for leases that are currently classified as operating leases. It is not anticipated that GASB Statement No. 87 will have a material effect on the financial statements. The statement is effective December 31, 2020.

3. Investments

The Board has contracted with investment managers to manage the investment portfolio of the Group Trust subject to the policies and guidelines established by the Board. The Board has a custody agreement with JPMorgan under which JPMorgan assumes responsibility for the safekeeping of certain investments, handling of transactions based on the instructions of investment managers, and reporting investment transactions.

The fair value of investments at December 31, 2017 and 2016 is as follows (in thousands):

	2017	2016
Short-term investments		
Short-term investment funds	\$ 24,133	\$ 7,154
Fixed income securities		
US Treasury bonds	41,686	6,854
US government agencies	871	-
Corporate bonds	104,434	88,307
Foreign-denominated bonds	37,209	28,896
Commingled funds	142,115	144,924
Municipal bonds	1,699	907
Equity securities		
Domestic	223,743	80,190
Foreign	196,092	74,469
Commingled funds	50,246	-
Real assets		
Real estate	532,079	589,364
Infrastructure	61,430	273,533
Timberland	52,171	95,734
Farmland	155,526	170,334
Private equity	222,106	264,780
Alternative investments	144,927	134,898
Forward currency contracts	135	(287)
Total	\$ 1,990,602	\$ 1,960,057

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Notes to Combining Financial Statements

Custodial Credit Risk

Portions of DPFP's investments are classified as security investments. A security is a transferable financial instrument that evidences ownership or creditorship. Investments in companies, partnerships and real estate are investments that are evidenced by contracts rather than securities.

Custodial credit risk is the risk that, in the event of the failure of an investment counterparty, the investor will not be able to recover the value of its investment or collateral securities that are in the possession of an outside party. Investment securities are exposed to custodial credit risk if the securities are uninsured, are not registered in the name of the investor, and are held by either the counterparty or the counterparty's trust department or agent, but not in the investor's name. DPFP mitigates this risk by having investments held at a custodian bank on behalf of DPFP. At December 31, 2017 and 2016, all investment securities held by the custodian were registered in the name of DPFP and were held by JPMorgan in the name of DPFP.

DPFP considers only demands on deposit as cash. As of December 31, 2017 and 2016, DPFP had a balance of \$62.7 million and \$3.9 million, respectively, on deposit at two financial institutions. The Federal Depository Insurance Corporation (FDIC) insures any deposits of an employee benefit plan in an insured depository institution on a "pass-through" basis, in the amount of up to \$250,000 for the non-contingent interest of each plan participant at each financial institution. The pass-through insurance applies only to vested participants. DPFP believes the custodial credit risk, if any, is not material.

DPFP does not have a formal policy for custodial credit risk; however, management believes that custodial credit risk exposure is mitigated by the financial strength of the financial institutions in which the deposits and securities are held.

Concentration of Credit Risk

Concentration of credit risk is the risk of loss attributable to the magnitude of the Group Trust's investment in a single issue. DPFP does not have an investment policy specifically regarding concentration of credit risk; however, the target allocations of assets among various asset classes are determined by the Board with the objective of optimizing the investment return of the Group Trust within a framework of acceptable risk and diversification. For major asset classes, the Group Trust will further diversify the portfolio by employing multiple investment managers who provide guidance for implementing the strategies selected by the Board.

As of December 31, 2017, the Group Trust did not have any single investment in an issuer which represented greater than 5% of the Plans' net position.

Interest Rate Risk

Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment. Interest rate risk is the greatest risk faced by an investor in the fixed income market. The price of a fixed income security typically moves in the opposite direction of the change in interest rates. The weighted average maturity of a fixed income security expresses investment time horizons (when the investment comes due and payable) in years, weighted to reflect the dollar size of individual investments within the investment type. DPFP does not have a formal investment policy that limits investment maturities as a means of managing its exposure to potential fair value

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losses arising from future changes in interest rates, but rather mandates such limits within investment management services contracts. Investment managers have full discretion in adopting investment strategies to address these risks.

The Group Trust invests in fixed income securities including, but not limited to, investments representing instruments with an obligated fixed rate of interest including public and private debentures, mortgage backed securities, guaranteed investment contracts with maturities greater than one year, and options/futures. Purchases and sales, investment selection, and implementation of investment strategies are delegated to the discretion of the investment manager, subject to compliance with its management agreement and DFPF's investment policy.

At December 31, 2017, the Group Trust had the following fixed income securities and maturities (in thousands):

Investment Type	Less than 1 year	1 to 5 years	6 to 10 years	More than 10 years	Total
US Treasury bonds	\$ 9,199	\$ 30,800	\$ -	\$ 1,687	\$ 41,686
US Government Agencies	-	-	-	871	871
Corporate bonds	11,316	52,243	21,948	18,927	104,434
Municipal Bonds	-	399	-	1,300	1,699
Foreign-denominated bonds	4,671	13,412	4,419	14,707	37,209
Total	\$ 25,186	\$ 96,854	\$ 26,367	\$ 37,492	\$ 185,899

At December 31, 2016, the Group Trust had the following fixed income securities and maturities (in thousands):

Investment Type	Less than 1 year	1 to 5 years	6 to 10 years	More than 10 years	Total
US Treasury bonds	\$ -	\$ 1,760	\$ -	\$ 5,094	\$ 6,854
Corporate bonds	7,803	35,121	18,924	26,459	88,307
Municipal Bonds	-	-	-	907	907
Foreign-denominated bonds	2,758	8,689	4,908	12,541	28,896
Total	\$ 10,561	\$ 45,570	\$ 23,832	\$ 45,001	\$ 124,964

Commingled fixed income funds do not have specified maturity dates and are therefore excluded from the above tables.

Foreign Currency Risk

Foreign currency risk is the risk that changes in exchange rates will adversely affect the fair value of an investment or a deposit. The books and records of the Plans are maintained in US dollars. Foreign currencies and non-US dollar denominated investments are translated into US dollars at the bid prices of such currencies against US dollars at each balance sheet date. Realized and unrealized gains and losses on investments which result from changes in foreign currency exchange rates have been included in net appreciation (depreciation) in fair value of investments in the accompanying financial statements. Net realized foreign currency gains and losses resulting from changes in exchange rates include foreign currency gains and losses between trade date and settlement date of investment securities transactions, foreign currency transactions, and the difference between the amounts of interest and dividends are recorded on the books of the Plans and the amount actually received. International and global managers have permission to use currency forward and futures contracts to hedge currency against the US dollar. DFPF does not have an investment policy

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specific to foreign currency risk, however to mitigate foreign currency risk, investment managers with international exposure are expected to maintain diversified portfolios by sector and by issuer.

The Group Trust's exposure to foreign currency risk in US dollars as of December 31, 2017 is as follows (in thousands):

Currency	Fixed Income	Equity	Real Assets	Total
Australian Dollar	\$ 3,818	\$ 6,116	\$ 9,067	\$ 19,001
Brazilian Real	3,060	-	7,965	11,025
British Pound Sterling	4,671	27,120	-	31,791
Danish Krone	-	4,283	-	4,283
Euro	688	65,982	-	66,670
Hong Kong Dollar	-	13,831	-	13,831
Indonesian Rupiah	2,958	686	-	3,644
Japanese Yen	-	46,158	-	46,158
Malaysian Ringgit	4,213	-	-	4,213
Mexican Peso	9,085	-	-	9,085
Polish Zloty	5,178	-	-	5,178
Singaporean Dollar	-	157	-	157
South African Rand	3,538	-	28,940	32,478
South Korean Won	-	3,164	-	3,164
Swedish Krona	-	2,235	-	2,235
Swiss Franc	-	25,800	-	25,800
Taiwanese Dollar	-	560	-	560
Total	\$ 37,209	\$ 196,092	\$ 45,972	\$ 279,273

The Group Trust's exposure to foreign currency risk in US dollars as of December 31, 2016 was as follows (in thousands):

Currency	Fixed Income	Equity	Real Assets	Total
Australian Dollar	\$ 3,296	\$ 1,665	\$ 8,337	\$ 13,298
Brazilian Real	2,900	-	11,428	14,328
British Pound Sterling	4,322	7,930	15,842	28,094
Canadian Dollar	-	1,970	-	1,970
Danish Krone	-	1,363	-	1,363
Euro	923	24,991	-	25,914
Hong Kong Dollar	-	5,582	-	5,582
Indonesian Rupiah	2,472	-	-	2,472
Japanese Yen	-	18,083	-	18,083
Malaysian Ringgit	2,137	-	-	2,137
Mexican Peso	8,408	-	-	8,408
New Zealand Dollar	1,228	-	-	1,228
Singaporean Dollar	-	144	-	144
South African Rand	3,210	-	33,115	36,325
Swedish Krona	-	2,302	-	2,302
Swiss Franc	-	10,439	-	10,439
Total	\$ 28,896	\$ 74,469	\$ 68,722	\$ 172,087

In addition to the above exposures, certain fund-structure investments in the private equity, emerging markets debt, global asset allocation and real assets asset classes with a total fair value of \$295.0 million and \$277.6 million at December 31, 2017 and 2016, respectively, have some level

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of investments in various countries with foreign currency risk at the fund level. The individual investments in these funds with such exposure are not included in the above table.

Credit Risk

Credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. DFPF was party to negotiated derivative contracts in the form of forward foreign exchange contracts as of December 31, 2017 as discussed below. DFPF does not have an investment policy specific to credit risk, however to mitigate credit risk on the currency forward contracts, investment managers who manage such contracts maintain a diversified portfolio by counterparty.

The Group Trust's exposure to credit risk in fixed income securities, including short-term investment funds classified as cash equivalents, as of December 31, 2017 and 2016 using the Standard & Poor's rating scale, at fair value, is as follows (in thousands):

December 31, 2017

Rating	Corporate Bonds	Municipal Bonds	Foreign-Denominated Bonds	Commingled Funds	Short-term Investment Funds ⁽¹⁾	US Government Securities	Total
AAA	\$ 10,092	\$ -	\$ 1,936	\$ -	\$ -	\$ 41,686	\$ 53,714
AA+	2,587	-	974	-	-	-	3,561
AA	-	-	5,579	-	-	-	5,579
AA-	5,297	730	-	-	-	-	6,027
A+	1,933	-	-	-	-	-	1,933
A	4,603	969	1,344	-	-	-	6,916
A-	3,839	-	17,132	-	-	-	20,971
BBB+	9,491	-	-	-	-	-	9,491
BBB	3,141	-	-	-	-	-	3,141
BBB-	2,594	-	6,496	-	-	-	9,090
BB+	941	-	-	-	-	-	941
BB	4,276	-	3,060	-	-	-	7,336
BB-	7,392	-	-	-	-	-	7,392
B+	3,807	-	-	-	-	-	3,807
B	3,170	-	-	-	-	-	3,170
B-	13,482	-	688	-	-	-	14,170
CCC+	6,317	-	-	-	-	-	6,317
CCC	2,954	-	-	-	-	-	2,954
CCC-	736	-	-	-	-	-	736
CC	4,031	-	-	-	-	-	4,031
C	4,419	-	-	-	-	-	4,419
D	2	-	-	-	-	-	2
NR ⁽²⁾	9,330	-	-	142,115	80,245	871	232,561
Total	\$ 104,434	\$ 1,699	\$ 37,209	\$ 142,115	\$ 80,245	\$ 42,557	\$ 408,259

(1) Includes short-term money market funds classified as cash equivalents.

(2) NR represents those securities that are not rated.

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December 31, 2016

Rating	Corporate Bonds	Municipal Bonds	Foreign- Denominated Bonds	Commingled Funds	Short-term Investment Funds ⁽¹⁾	US Government Securities	Total
AAA	\$ 3,288	\$ -	\$ 1,565	\$ -	\$ -	\$ 6,854	\$ 11,707
AA+	6,888	-	7,282	-	-	-	14,170
AA	1,244	-	-	-	-	-	1,244
AA-	3,259	-	-	-	-	-	3,259
A+	2,063	-	-	-	-	-	2,063
A	2,513	907	-	-	-	-	3,420
A-	1,948	-	8,407	-	-	-	10,355
BBB+	657	-	-	-	-	-	657
BBB	1,111	-	3,210	-	-	-	4,321
BBB-	822	-	2,472	-	-	-	3,294
BB+	695	-	-	-	-	-	695
BB	5,393	-	2,900	-	-	-	8,293
BB-	8,528	-	-	-	-	-	8,528
B+	5,180	-	-	-	-	-	5,180
B	3,287	-	-	-	-	-	3,287
B-	8,295	-	448	-	-	-	8,743
CCC+	4,916	-	-	-	-	-	4,916
CCC	6,536	-	-	-	-	-	6,536
CCC-	1,944	-	475	-	-	-	2,419
CC	5,655	-	-	-	-	-	5,655
C	7,337	-	-	-	-	-	7,337
D	160	-	-	-	-	-	160
NR ⁽²⁾	6,588	-	2,136	144,924	330,768	-	484,416
Total	\$ 88,307	\$ 907	\$ 28,895	\$ 144,924	\$ 330,768	\$ 6,854	\$ 600,655

(1) Includes short-term money market funds classified as cash equivalents.

(2) NR represents those securities that are not rated.

Securities Lending

The Board has authorized the Group Trust to enter into an agreement with JPMorgan for the lending of certain of the Group Trust's securities including, but not limited to, stocks and bonds to counterparty brokers and banks (borrowers) for a predetermined fee and period of time. Such transactions are allowed by State statute.

JPMorgan lends, on behalf of the Group Trust, securities held by JPMorgan as the Group Trust's custodian and receives US dollar cash and US government securities as collateral. JPMorgan does not have the ability to pledge or sell collateral securities absent a borrower default. Borrowers are required to put up collateral for each loan equal to: (i) in the case of loaned securities denominated in US dollars or whose primary trading market is in the US or sovereign debt issued by foreign governments, 102% of the fair market value of the loaned securities and (ii) in the case of loaned securities not denominated in US dollars or whose primary trading market is not in the US, 105% of the fair market value of the loaned securities.

The Board did not impose any restrictions during 2017 or 2016 on the amount of the loans that JPMorgan made on its behalf. There were no failures by any borrowers to return the loaned securities or pay distributions thereon during 2017 or 2016. Moreover, there were no losses during

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2017 or 2016 resulting from a default of the borrower. JPMorgan indemnifies the Group Trust with respect to any loan related to any non-cash distribution and return of securities.

During 2017 and 2016, the Board and the borrowers maintained the right to terminate all securities lending transactions on demand. The cash collateral was invested, together with the collateral of other qualified tax-exempt plan lenders, in a collective investment pool maintained by JPMorgan. The relationship between the maturities of the collateral pool and the Group Trust's securities lent has not been determined. The market value for securities on loan for the Group Trust was \$17.9 million and \$26.1 million at December 31, 2017 and 2016, respectively. Cash collateral held for the Group Trust was \$12.2 million and \$21.7 million at December 31, 2017 and 2016, respectively. Non-cash collateral held for the Group Trust was \$6.2 million and \$5.2 million at December 31, 2017 and 2016, respectively, consisting primarily of corporate bonds and equity securities. At year end, credit risk is substantially mitigated as the amounts of collateral held by the Group Trust exceed the amounts the borrowers owe the Group Trust. Securities lending transactions resulted in income, net of expenses, of \$101 thousand and \$402 thousand during 2017 and 2016, respectively.

Forward Contracts

During fiscal years 2017 and 2016, certain investment managers, on behalf of the Group Trust, entered into forward foreign exchange contracts as permitted by guidelines established by the Board. DFPF's staff monitors guidelines and compliance. A currency forward is a contractual agreement between two parties to pay or receive specific amounts of foreign currency at a future date in exchange for another currency at an agreed upon exchange rate. Forward commitments are not standardized and carry credit risk due to possible nonperformance by one of the counterparties. The maximum potential loss is the aggregate face value in US dollars at the time the contract was entered into. Forwards are usually traded over-the-counter. These transactions are initiated in order to hedge risks from exposure to foreign currency rate fluctuation and to facilitate trade settlement of foreign security transactions. Forwards carry market risk resulting from adverse fluctuations in foreign exchange rates. Recognition of realized gain or loss depends on whether the currency exchange rate has moved favorably or unfavorably to the contract holder upon termination of the contract. Prior to termination of the contract, the Group Trust records the unrealized currency translation gain or loss based on the applicable forward exchange rates. Forward currency contracts are considered derivative financial instruments and are reported at fair value.

The fair value and notional amounts of derivative instruments outstanding at December 31, 2017 and 2016, classified by type, and the changes in fair value of such derivative instruments for the year then ended are as follows (in thousands):

<u>December 31, 2017</u>	Change in Fair Value	Fair Value	Notional Value
Currency forwards	\$ 422	\$ 135	\$ 56,015
<u>December 31, 2016</u>	Change in Fair Value	Fair Value	Notional Value
Currency forwards	\$ (102)	\$ (287)	\$ 48,108

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Notes to Combining Financial Statements

4. Fair Value Measurement

GASB No. 72 requires all investments be categorized under a fair value hierarchy. Fair value of investments is determined based on both observable and unobservable inputs. Investments are categorized within the fair value hierarchy established by GASB and the levels within the hierarchy are as follows:

- Level 1 - quoted prices (unadjusted) for identical assets or liabilities in active markets that a government can access at the measurement date
- Level 2 - inputs (other than quoted prices included within Level 1) that are observable for an asset or liability, either directly or indirectly. These inputs can include quoted prices for similar assets or liabilities in active or inactive markets, or market-corroborated inputs.
- Level 3 - significant unobservable inputs for an asset or liability

The remaining investments not categorized under the fair value hierarchy are shown at NAV. These are investments in non-governmental entities for which a readily determinable fair value is not available, such as member units or an ownership interest in partners' capital to which a proportionate share of net assets is attributed. Investments at NAV are commonly calculated by subtracting the fair value of liabilities from the fair value of assets.

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

The following table presents a summary of the Group Trust's investments by type as of December 31, 2017, at fair value (in thousands):

	Fair Value December 31, 2017	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Investments by Fair Value Level				
Short-term investment funds	\$ 24,133	\$ 24,133	\$ -	\$ -
Fixed income securities				
US Treasury bonds	41,686	-	41,686	-
US government agencies	871	-	871	-
Corporate bonds	104,434	-	104,434	-
Foreign-denominated bonds	37,209	-	37,209	-
Municipal bonds	1,699	-	1,699	-
Equity securities				
Domestic	223,743	223,743	-	-
Foreign	196,092	196,092	-	-
Real assets				
Real estate ¹	352,960	-	310	352,650
Timberland	14,637	-	-	14,637
Farmland	155,526	-	-	155,526
Private equity	79,381	-	79,381	-
Forward currency contracts	135	-	135	-
Total Investments by Fair Value Level	\$ 1,232,506	\$ 443,968	\$ 265,725	\$ 522,813

Investments Measured at NAV

Equity - commingled funds	\$ 50,246
Fixed income - commingled funds	142,115
Real assets ⁽¹⁾	278,083
Private equity	142,725
Alternative investments	144,927

Total Investments Measured at NAV **\$ 758,096**

Total Investments Measured at Fair Value **\$ 1,990,602**

(1) Direct holdings of real estate at Level 3 include only the assets which are wholly-owned and valued using significant unobservable inputs. Remaining real assets are valued at NAV.

The following table presents a summary of the Group Trust's investments by type as of December 31, 2016, at fair value (in thousands):

	Fair Value December 31, 2016	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Investments by Fair Value Level				
Short-term investment funds	\$ 7,154	\$ 7,154	\$ -	\$ -
Fixed income securities	-	-	-	-
US Treasury bonds	6,854	-	6,854	-
Corporate bonds	88,307	-	88,307	-
Foreign-denominated bonds	28,895	-	28,895	-
Commingled funds	41,893	-	35,677	6,216

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

Municipal bonds	907	-	907	-
Equity securities	-	-	-	-
Domestic	80,190	80,190	-	-
Foreign	74,469	74,469	-	-
Real assets				
Real estate ¹	444,609	-	66,483	378,126
Infrastructure	179,100	-	-	179,100
Timberland	43,536	-	-	43,536
Farmland	170,334	-	-	170,334
Private equity	149,822	-	40,023	109,799
Alternative investments	927	-	927	-
Forward currency contracts	(287)	-	(287)	-
Total Investments by Fair Value Level	\$ 1,316,710	\$ 161,813	\$ 267,786	\$ 887,111

Investments Measured at NAV

Fixed income - commingled funds	\$ 103,032
Real assets ⁽¹⁾	291,386
Private equity	114,958
Alternative investments	133,971
Total Investments Measured at NAV	\$ 643,347
Total Investments Measured at Fair Value	\$ 1,960,057

(1) Direct holdings of real estate at Level 3 include only the assets which are wholly-owned and valued using significant unobservable inputs. Remaining real assets are valued at NAV.

Short-term investments consist of highly liquid securities invested by third party investment managers and held directly by the Group Trust with the custodian.

Fixed income securities consist primarily of US treasury securities, US corporate securities, international debt securities and commingled funds. Fixed income securities classified in Level 2 of the fair value hierarchy are valued using matrix pricing. This method uses quoted prices for securities with the same maturities and ratings rather than a fixed price for a designated security. Many debt securities are traded on a dealer market and much less frequently, which is consistent with a Level 2 classification as these investments are valued using observable inputs. Forward currency contracts are classified as Level 2 as these securities are priced using the cost approach on a dealer market traded on lower frequencies. Commingled funds classified as Level 3 involve internal evaluation of collectability and therefore involve unobservable inputs.

Equity securities, which include both domestic and foreign securities, are classified as Level 1 as fair value is obtained using a quoted price from active markets. The security price is generated by market transactions involving identical or similar assets, which is the market approach to measuring fair value. Inputs are observable in exchange markets, dealer markets, and brokered markets for which prices are based on trades of identical securities.

Private equity and real assets classified as Level 3 are investments in which DFP either owns 100 percent of the asset or for which the valuation is based on non-binding offers from potential buyers to purchase the investments. Real estate investments which are wholly-owned direct holdings are valued at the income, cost, or market approach depending on the type of holding. All direct holdings are valued using unobservable inputs and are classified in Level 3 of the fair value hierarchy. Real estate and private equity holdings classified as Level 2 are investments which were sold subsequent to year end for which fair value is based on sales price.

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

Alternative investments in Level 2 relate to residual cash proceeds on sales of assets which were settled subsequent to year end.

The following table presents a summary of the fair value and remaining unfunded commitments of the Group Trust's investments measured at NAV at December 31, 2017 (in thousands):

Asset Category/Class	Fair Value	Unfunded Commitments
Equity - commingled funds	\$ 50,246	\$ -
Fixed income - commingled funds	142,115	823
Real assets	278,083	7,154
Private equity	142,725	38,316
Alternative investments	144,927	-
Total	\$ 758,096	\$ 46,293

The following table presents a summary of the fair value and remaining unfunded commitments of the Group Trust's investments measured at NAV at December 31, 2016 (in thousands):

Asset Category/Class	Fair Value	Unfunded Commitments
Fixed income - commingled funds	\$ 103,032	\$ 4,626
Real assets	291,386	249,688
Private equity	114,958	4,892
Alternative investments	133,971	-
Total	\$ 643,347	\$ 259,206

Investments measured at NAV include commingled funds, real assets, private equity and alternative investments.

Equity commingled funds are fund structure investments reported by the fund manager at NAV. The commingled investment has a redemption notice period of 5 days.

Fixed income commingled funds are fund-structure investments reported by the fund managers at NAV. Certain of the commingled investments have a redemption notice period of 7-30 days and others are less liquid, with estimated redemption periods ranging from 5 to 10 years as assets within the funds are liquidated.

Real asset investments (real estate, infrastructure, timberland and farmland) are held either in separate accounts, as a limited partner, or in a joint venture. These investments are illiquid and resold at varying rates, with distributions received over the life of the investments. They are typically not redeemed, nor do they have set redemption schedules.

Private equity holdings include fund-structure investments with general partners. By their nature, these investments are illiquid and typically not resold or redeemed. Distributions from each fund will be received as the underlying investments of the funds are liquidated. It is expected that the underlying assets of the funds will be liquidated over a period ranging from 5 to 15 years on average.

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

Alternative investments include funds that hold securities for the specific strategy of focusing on management of total risk and on generation of returns independent of broad market movements. These investments are reported at NAV as they are fund or trust-structure investments.

Upon initial investment with a general partner or in certain fund-structures, DFPF commits to a certain funding level for the duration of the contract. At will, the partners or fund managers may request that DFPF fund a portion of this amount. Such amounts remaining as of December 31, 2017 and 2016 for investments measured at NAV are disclosed above as unfunded commitments.

5. Net Pension Liability

The net pension liability is measured as the total pension liability, less the amount of the plan's fiduciary net position. The components of the net pension liability at December 31, 2017 and 2016 are as follows (in thousands):

Combined Pension Plan

	2017	2016
Total pension liability	\$ 4,497,347	\$ 8,450,281
Less: Plan fiduciary net position	(2,103,345)	(2,150,662)
Net pension liability	\$ 2,394,002	\$ 6,299,619

Plan fiduciary net position as a percentage of the total pension liability at December 31, 2017 and 2016 is 46.8% and 25.5%, respectively.

Supplemental Plan

	2017	2016
Total pension liability	\$ 33,670	\$ 40,647
Less: Plan fiduciary net position	(17,805)	(17,670)
Net pension liability	\$ 15,865	\$ 22,977

Plan fiduciary net position as a percentage of the total pension liability at December 31, 2017 and 2016 is 52.9% and 43.5%, respectively.

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

Actuarial Assumptions as of December 31, 2017 and 2016

The total pension liability was determined by an actuarial valuation as of January 1, 2018, using the below significant assumptions, applied to all periods included in the measurement, except as noted below. 2016 and 2017 assumptions are based on an actuarial experience review covering the period January 1, 2010 to December 31, 2014, and based on assumption changes included in the January 1, 2017 valuation that are not related to September 1, 2017 plan changes. In addition, assumptions related to Plan changes which were effective September 1, 2017 as a result of the passage of HB 3158 are reflected in the 2017 assumptions below as the net pension liability is based on the plan provisions which are in effect on December 31, 2017.

Investment rate of return	7.25% per annum, compounded annually, net of investment expenses. This rate is based on an average inflation rate of 2.75% and a real rate of return of 4.50%.
Administrative expenses	Explicit assumption of \$8.5 million per year or 1% of Computation Pay, whichever is greater for the Combined Pension Plan and \$65 thousand per year for the Supplemental Plan, increasing 2.75% annually. Includes investment-related personnel costs.
Projected salary increases	2017: 10% if less than 10 years; 7% if 10-11 years; 2% if more than 11 years 2018: 5% if less than 10 years; 2% if more than 10 years 2019: 10% if less than 10 years; 7% if 10-11 years; 2% if more than 11 years 2020 and later: Range of 3.00% to 5.20% per year, inclusive of 2.75% inflation assumption, dependent upon years of service, with separate tables for police officers and firefighters 2017-2019 are based on the 2016 Meet and Confer Agreement. Remaining scale is based on the City's pay plan, along with analysis completed in conjunction with the most recent experience study.
Payroll growth	2.75% per year, to match inflation assumption
Actuarial cost method	Entry age normal cost method (level percent of pay)
Post-retirement benefit increases for participants hired prior to January 1, 2007	Ad hoc COLA after the Combined Plan is 70% funded after accounting for the impact of the COLA. 2% of original benefit, beginning October 1, 2053.

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

Asset valuation method	Combined Pension Plan - Reset of the actuarial value of assets to market value as of December 31, 2015, with a five-year smoothing in future periods; Supplemental Pension Plan - Market value of assets
Amortization method	Level percent-of-pay
Remaining amortization period	Combined Pension Plan - 30 years; Supplemental Pension Plan - 10 years
DROP interest, compounded annually, net of expenses	3% on active balances as of September 1, 2017, payable upon retirement, 0% on balances accrued after September 1, 2017.
Retirement age	Experience-based table of rates based on age, extending to age 62, with separate tables for police officers and firefighters
Pre-retirement mortality	RP-2014 sex-distinct Employee Mortality Table, with a two-year setback for males and no adjustments for females; projected generationally using the MP-2015 improvement scale
Post-retirement mortality	RP-2014 sex-distinct Blue Collar Healthy Annuitant Mortality Table, with no adjustment for males and a two-year set forward for females; projected generationally using the MP-2015 improvement scale
Disabled mortality	RP-2014 sex-distinct Disabled Retiree Mortality Table, with a three-year setback for both males and females; projected generationally using the MP-2015 improvement scale
DROP election	0% elect to enter DROP. Current DROP members with at least eight years in DROP are assumed to retire. DROP members with less than eight years are assumed to retire when they have eight years in DROP.

Assumptions used to develop the 2016 Net Pension Liability did not include the changes related to HB 3158. The following assumptions used in the developing the 2016 Net Pension Liability differ from the 2017 assumptions.

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

Assumption Category	Prior Assumption (1-1-17 Valuation)
Administration Expenses	The greater of \$10 million per year or 1% of Computation Pay for the Combined Plan. \$60,000 for the Supplemental Pension Plan.
Post-retirement benefit increases for participants hired prior to January 1, 2007	4% of original pension, annually
DROP interest, compounded annually, net of expenses	At October 1, 2016 - 6.0% At October 1, 2017 - 5.0% At October 1, 2018 and thereafter - 0.0%
Retirement age	Experience-based table of rates based on age, extending to age 67, with separate tables for police officers and firefighters
DROP election	100% assumed to elect DROP at first eligibility for unreduced benefits. Any active members who satisfy these criteria and have not entered DROP are assumed to never join DROP. Members who retired prior to January 1, 2015 are assumed to receive their DROP payments over a 10-year period from January 1, 2015. All retirees after January 1, 2015 are assumed to receive their DROP payments over a 10-year period from their retirement date.

The long-term expected rate of return used by the external actuary to evaluate the assumed return on the Plans' investments was determined using a building-block method in which best-estimate ranges of expected future real rates of return (expected returns, net of pension plan investment expense) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. The actuary's best estimates of arithmetic real rates of return for each major asset class included in the Plans' target asset allocation as of December 31, 2017 are summarized as shown below. The rates of return below are net of the inflation component of 2.0%.

Asset Class	Long-Term Expected Real Rate of Return	Target Asset Allocation
Global Equity	6.54%	20%
Emerging Markets Equity	9.41%	5%
Private Equity	10.28%	5%
Short-term Core Bonds	1.25%	2%

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

Global Bonds	1.63%	3%
High Yield	4.13%	5%
Bank Loans	3.46%	6%
Emerging Markets Debt	4.42%	6%
Structured Credit and Absolute Return	5.38%	6%
Private Debt	7.30%	5%
Global Asset Allocation	4.90%	10%
Liquid Real Assets	4.71%	3%
Natural Resources	7.62%	5%
Infrastructure	6.25%	5%
Real Estate	4.90%	12%
Cash	1.06%	2%

Discount rate

The discount rate used to measure the Combined Pension Plan liability was 7.25%. The projection of cash flows used to determine the discount rate assumed City contributions will be made in accordance with the provisions of HB 3158, including statutory minimums through 2024 and 34.50% of Computation Pay thereafter. Members are expected to contribute 13.50% of Computation Pay. For cash flow purposes, projected payroll is based on 90% of the City's Hiring Plan payroll projections through 2037, increasing by 2.75% per year thereafter. This payroll projection is used for cash flow purposes only and does not impact the Total Pension Liability. The normal cost rate for future members is assumed to be 14.60% for all years. Based on these assumptions, the System's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability. The increase in the discount rate from the prior year and the HB 3158 benefit changes resulted in a decrease in the total pension liability of approximately \$3.953 billion.

For the December 31, 2016 measurement date, the cash flow projections were not expected to be sufficient to pay benefits, therefore a blended discount rate of 4.12% was used to measure the pension liability at December 31, 2016. In order to develop the blended GASB No. 67 discount rate of 4.12%, the actuarial assumed rate of return of 7.25% was used for the first twelve years of payments, and a municipal bond rate of 3.78% was used thereafter. The 3.78% municipal bond rate is based on the Bond Buyer 20-Bond General Obligation Index as of December 31, 2016 (published weekly by the Federal Reserve System). For the December 31, 2016 measurement date, the blended discount rate used to measure total pension liability was 4.12%.

The discount rate used to measure the total pension liability for the Supplemental Plan was 7.25%. The projection of cash flows used to determine the discount rate assume that City contributions will equal the employer's normal cost plus a ten-year amortization payment on the unfunded actuarial accrued liability and member contributions will equal 13.50% of supplemental Computation Pay. Based on those assumptions, the Supplemental Plan's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability. The increase in the discount rate from the prior year and the HB 3158 benefit changes resulted in a decrease in the total pension liability of approximately \$6.98 million.

For the December 31, 2016 measurement date, the cash flow projections were not expected to be sufficient to pay benefits of the Supplemental Plan, therefore a blended discount rate of 7.10% was

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

used to measure the pension liability at December 31, 2016. In order to develop the blended GASB No. 67 discount rate of 7.10%, the actuarial assumed rate of return of 7.25% was used during the period that the plan was projected to have a fiduciary net position, and a municipal bond rate of 3.78% was used thereafter. The 3.78% municipal bond rate is based on the Bond Buyer 20-Bond General Obligation Index as of December 31, 2016 (published weekly by the Federal Reserve System).

Sensitivity of the net pension liability to changes in the discount rate

The following tables present the net pension liability, calculated using the current discount rates, as well as what the net pension liability would be if it were calculated using a discount rate that is 1-percentage-point lower or 1-percentage-point higher than the current rate (dollars in thousands).

December 31, 2017

Combined Pension Plan

	1% Decrease (6.25%)	Current Discount Rate (7.25%)	1% Increase (8.25%)
Net pension liability	\$ 2,886,444	\$ 2,394,002	\$ 1,980,920

Supplemental Plan

	1% Decrease (6.25%)	Current Discount Rate (7.25%)	1% Increase (8.25%)
Net pension liability	\$ 18,826	\$ 15,865	\$ 13,316

December 31, 2016

Combined Pension Plan

	1% Decrease (3.12%)	Current Discount Rate (4.12%)	1% Increase (5.12%)
Net pension liability	\$ 7,746,688	\$ 6,299,619	\$ 5,159,478

Supplemental Plan

	1% Decrease (6.10%)	Current Discount Rate (7.10%)	1% Increase (8.10%)
Net pension liability	\$ 27,039	\$ 22,977	\$ 19,552

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

6. Deferred Retirement Option Plan

HB 3158 changed the terms of the Deferred Retirement Option Plan. DROP interest for active DROP members was eliminated after September 1, 2017; only the balance as of September 1, 2017 is eligible for interest once active DROP members retire. Active DROP participation is limited to 10 years. Retirees are not allowed to defer payments into their DROP accounts. Retirees and other DROP account holders, excluding active DROP members, had their DROP balance converted to an annuity (stream of payments) on November 30, 2017. The term of the annuity was based on the DROP account holders expected lifetime at November 30, 2017. The annuity included Interest on balances accrued prior to September 1, 2017 at a rate that is correlated to the United States Treasury Note or Bond rates based on the term of the annuity and rules adopted by the Board.

DROP account balances of a member that retires after November 30, 2017 are converted to an annuity (stream of payments) at the time the member retires. The annuity is based on the member's life expectancy and interest rates at the time of retirement. Interest on retiree DROP accounts is based on the length of the retiree's expected lifetime and will be based on U.S. Treasury Bond Rates and rules adopted by the Board. Interest is only payable on the September 1, 2017 account balance.

HB 3158 allowed active members an opportunity to revoke their DROP election prior to February 28, 2018 under rules adopted by the Board. 183 members revoked their prior DROP participation election.

Prior to the passage of HB 3158, DROP accounts earned interest based on the 2014 plan amendments, which instituted a gradual step-down in the interest rate paid on DROP accounts. The interest paid on DROP accounts beginning October 1, 2016 until September 1, 2017 was 6%. See Note 10 for discussion of the status of litigation related to the 2014 plan amendments.

The following tables reflect the change in DROP balances and the change in the present value of DROP annuities and the number of participants and annuitants during the year ended December 31, 2017:

Combined Pension Plan

	DROP Balance (000's)		DROP Participants
Balance at December 31, 2016	\$ 1,053,151	Participants at December 31, 2016	2,978
Accumulations	85,650		
Balances Annuitized	(812,414)		
Other Distributions/Deductions ¹	(83,266)		
Balance at December 31, 2017	\$ 243,121	Participants at December 31, 2017	642
	Annuity Balance (000's)		Annuity Participants
Present Value of Annuities at December 31, 2016	\$ 0	Annuitants at December 31, 2016	0
Accumulations	812,414		
Other Distributions/Deductions ¹	(2,828)		
Present Values of Annuities at December 31, 2017 ²	\$ 809,586	Annuitants at December 31, 2017	1,978

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Notes to Combining Financial Statements

Supplemental Plan

		DROP Balance (000's)		DROP Participants
Balance at December 31, 2016	\$	8,016	Participants at December 31, 2016	70
Accumulations		379		
Balances Annuitized		(7,530)		
Other Distributions/Deductions ¹		(275)		
Balance at December 31, 2017	\$	590	Participants at December 31, 2017	7
		Annuity Balance (000's)		Annuity Participants
Present Value of Annuities at December 31, 2016	\$	0	Annuitants at December 31, 2016	0
Accumulations		7,530		
Other Distributions/Deductions ¹		(10)		
Present Value of Annuities at December 31, 2017 ²	\$	7,520	Annuitants at December 31, 2017	55

¹ Includes distributions and the elimination of DROP balances due to DROP revocation elections and amounts paid from the Excess Benefits Plan and Trust.

² Includes annuities that may be paid out of the Excess Benefits and Trust.

7. Notes Payable

As of December 31, 2015, DFPF had a credit agreement with Bank of America, N.A. (BoA) which provided for a maximum borrowing of \$200 million. As of December 31, 2015, the line of credit was in technical default due to the fact that the January 1, 2015 actuarial valuation report concluded that the Plans' fiduciary net position was not projected to be available to make all projected future payments to current plan members. On July 13, 2016, BoA waived the default and the loan agreement was amended to remove the financial covenant related to the actuarial projection of DFPF's ability to make all projected future payments.

At December 31, 2016, DFPF had outstanding \$40,000,000 and \$90,000,000 on the revolving line of credit and the term loan, respectively. At December 31, 2016, the line of credit was in technical default due to the fact that the surplus liquidity ratio covenant was not met for the quarter ended September 30, 2016. Non-compliance with the liquidity covenant stemmed from significant withdrawals of DROP balances by members beginning in the third quarter of 2016. On March 28, 2017, BoA waived the default and the loan agreement was amended. The line of credit and term loan were paid in full on July 7, 2017.

Dallas Police and Fire Pension System

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8. Deferred Compensation Plan

DPFP offers its employees a money purchase pension plan (MPP) created in accordance with Internal Revenue Code Section 401. An employee of DPFP becomes a participant in the MPP on their first day of service. Participation ceases, except for purposes of receiving distributions in accordance with the terms of the MPP, on the day employment with DPFP is terminated. Employees are required to contribute 6.5% of their regular pay. Employees are allowed to make after-tax contributions, not to exceed IRS Code limitations. In accordance with the MPP, DPFP is obligated to contribute 12% of permanent employees' regular rate of pay and 8% of part-time and temporary employees' regular rate of pay each year. During 2017 and 2016, DPFP contributed approximately \$305 thousand and \$354 thousand, respectively, and participants contributed approximately \$165 thousand and \$192 thousand, respectively, to the MPP. The MPP is administered by a third party, Voya Financial, Inc. (Voya), and the cost of administration is borne by the MPP participants. The MPP is held in trust by Voya and is not a component of the accompanying financial statements.

9. Capital Assets

As of December 31, 2014, the DPFP office building and land were transferred to DPFP from a limited liability investment wholly owned by DPFP and were therefore reclassified from an investment asset to a capital asset. As donated capital assets, the DPFP office building and land are recorded at acquisition value as of December 31, 2014. Purchased capital assets which include building improvements, are recorded at historical cost. Depreciation is charged over the estimated useful lives of the assets using a straight-line method. Depreciation expense of \$226 thousand and \$212 thousand is included in professional and administrative expenses in the accompanying financial statements for the years ended December 31, 2017 and 2016, respectively. All capital assets belong to DPFP. Maintenance and repairs are charged to expense as incurred.

Capitalization thresholds for all capital asset classes and useful lives for exhaustible assets are as follows (dollars in thousands):

Asset Class	Capitalization Threshold	Depreciable Life
Building	\$ 50	50 years
Building improvements	\$ 50	15 years

Capital asset balances and changes for the fiscal years ending December 31, 2017 and 2016 are as follows (in thousands):

Asset Class	Balance December 31, 2015			Balance December 31, 2016			Balance December 31, 2017		
		Increases	Decreases		Increases	Decreases		Increases	Decreases
Land	\$ 3,321	\$ -	\$ -	\$ 3,321	\$ 241	\$ -	\$ 3,562		
Building	8,628	-	176	8,452	659	190	8,921		
Building improvements	243	61	36	268	-	36	232		
Total	\$ 12,192	\$ 61	\$ 212	\$ 12,041	\$ 900	\$ 226	\$ 12,715		

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

10. Commitments and Contingencies

Members

As described in Note 1, certain members of the Plans whose employment with the City is terminated prior to being eligible for pension benefits are entitled to refunds of their accumulated contributions. Members who began service before March 1, 2011 who terminate employment with the City with less than five years of pension service are only entitled to a refund of their accumulated employee contributions, without interest, as they vest at five years. Prior to September 1, 2017, members who began service after February 28, 2011 were only entitled to a refund, without interest, if they terminate with less than ten years of pension service as they vested at ten years. After the passage of HB 3158 and the September 1, 2017 effective date the vesting period was reduced from ten to five years for employees hired after March 1, 2011, and such members are only entitled to a refund of their accumulated contributions, without interest, if they have less than five years of pension service. As of December 31, 2017 and 2016, aggregate contributions from non-vested members for the Combined Pension Plan were \$11.9 million and \$14.0 million, respectively. The portion of these contributions that might be refunded to members who terminate prior to pension eligibility and request a refund has not been determined. Refunds due to terminated non-vested members in the amount of \$1 million and \$537 thousand were included in accounts payable and other accrued liabilities of the Combined Pension Plan as of December 31, 2017 and 2016, respectively. The increase in refunds due to terminated non-vested members reflects a change in the interpretation of the liability. As of December 31, 2017 the aggregate contributions from active non-vested members of the Supplemental Plan was \$36 thousand. There are no contributions eligible for refund for terminated members in the Supplemental Plan.

At December 31, 2017 the total accumulated DROP balance and the present value of the DROP annuities was \$1.05 billion for the Combined Plan and \$8.1 million for the Supplemental Plan. The total accumulated DROP balance at December 31, 2016 was \$1.05 billion for the Combined Plan and \$8 million for the Supplemental Plan.

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

Investments

The following table depicts the total commitments and unfunded commitments to various limited partnerships and investment advisors at December 31, 2017, by asset class (in thousands).

Asset Class	Total Commitment	Total Unfunded Commitment
Real assets	\$ 117,000	\$ 7,154
Private equity	201,283	38,316
Fixed income	10,000	823
Total	\$ 328,283	\$ 46,293

Capital calls related to private equity and real estate assets were received after December 31, 2017 which reduced the unfunded commitments to \$5,806 and \$6,927, respectively. A distribution was made subsequent to December 31, 2017 in fixed income which increases the unfunded capital commitments in fixed income to \$2.077 million. See Note 12.

Legal

DPFP is a defendant in litigation in which certain individual members have alleged that 2014 plan amendments to the Combined Pension Plan reducing the DROP interest rate and a related policy and procedure change to accelerate DROP distributions violated Article 16, Section 66 of the Texas Constitution. On April 14, 2015, the district court entered judgment for DPFP, holding these amendments and changes are constitutional. As a result of this court decision, the Board voted on April 16, 2015 to implement the changes approved by the members. Plaintiffs appealed and on December 13, 2016, the Fifth District Court of Appeals rendered a decision affirming the district court's ruling. On January 24, 2017, plaintiffs filed a petition for review with the Texas Supreme Court. On June 1, 2018 the Texas Supreme Court granted review of the appeal. DPFP will continue to vigorously defend this lawsuit. The ultimate outcome cannot be determined at this time and, accordingly, no amounts related to these claims have been recorded in the accompanying financial statements as of December 31, 2017 and 2016.

A lawsuit was filed in 2016 in state court related to distributions from DROP balances. The state court proceeding was initially brought by Mike Rawlings, Mayor of Dallas, in his individual capacity. Several parties subsequently intervened, including four trustees of the Board who are City of Dallas council members. Mr. Rawlings subsequently withdrew from the lawsuit. The plaintiffs sought various types of relief, including a request for a receivership and the prevention of any further amounts from being distributed from DROP balances to members. This lawsuit was dismissed in 2017.

In 2017 a group of retirees filed a lawsuit in federal court which seeks to require the Board to distribute lump sum payments from DROP upon the retirees' request. This lawsuit is pending. DPFP will continue to vigorously defend this lawsuit. The ultimate outcome of this lawsuit cannot be determined at this time and, accordingly, no amounts related to these claims have been recorded in the accompanying financial statements as of December 31, 2017.

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

11. Risks and Uncertainties

The Group Trust invests in various investment securities. Investment securities are exposed to various risks such as interest rate, market and credit risks. The effect of such risks on the Group Trust's investment portfolio is mitigated by the diversification of its holdings. Due to the level of risk associated with certain investment securities, it is reasonably possible that changes in the value of investment securities may occur over the course of different economic and market cycles and that such change could be material to the financial statements.

The Plans' actuarial estimates disclosed in Note 5 are based on certain assumptions pertaining to investment rate of return, inflation rates, and participant demographics, all of which are subject to change. Due to uncertainties inherent in the estimations and assumptions process, it is reasonably possible that changes in these estimates and assumptions in the near term could be material to the financial statements.

Several lawsuits are pending against the City by police officers and firefighters, which claim the right to significant back pay on behalf of many current and former City of Dallas police officers and firefighters. DPFP previously intervened in such lawsuits to protect DPFP's right to Member and City contributions if they were to become due upon a successful outcome of the police officers' and firefighters' claims. HB 3158, passed by the Texas Legislature in 2017, provided that any award of back pay arising out of litigation would not be included in Computation Pay, thereby eliminating any liability of DPFP for increased benefits regardless of the outcome of these suits. Additionally, a settlement agreement was signed by all parties in September 2018 which eliminates any liability for DPFP. Accordingly, no amounts related to these claims have been recorded in the accompanying financial statements as of December 31, 2017 and 2016.

Dallas Police and Fire Pension System

Notes to Combining Financial Statements

12. Subsequent Events

DROP Revocation

HB 3158 allowed certain members who had previously elected to participate in DROP to revoke the election until February 28, 2018. In total 183 members elected to revoke their DROP election, 38 members completed the revocation prior to December 31, 2017 and 145 members completed the revocation after January 1, 2018 and before February 28, 2018. Contributions paid by members as part of the revocation process were recorded as revenue in the year the contributions were received. The actuarial valuation dated January 1, 2018 accounts for the liability associated with all the DROP revocations, including the revocations made after December 31, 2017.

Investment Policy Statement - Target Allocation to Asset Classes

On May 8, 2018 the Board voted to temporarily suspend portions of the Investment Policy Statement specifically (i) to allow for GAA to be fully liquidated, (ii) to allow for a 15% allocation to be invested in a combination of approximately 12% allocation to Short-Term Core Bonds and approximately 3% allocation to Cash. The temporary suspension is effective until the Board adopts a revised asset allocation.

Capital Calls Resulting in the Reduction of Unfunded Commitments

Subsequent to December 31, 2017 DPFP received and paid the following material capital calls: Lone Star Opportunities Fund V \$18.75 million and Lone Star Growth Capital Fund \$13.76 million. In addition, a distribution was received which increases the unfunded commitments to Riverstone from \$823 thousand at December 31, 2017 to \$2.077 million.

Management has evaluated subsequent events through October 10, 2018, which is the date that the financial statements were available for issuance and noted no subsequent events to be disclosed other than those which are disclosed in this Note or elsewhere in the Notes to Combining Financial Statements.

Dallas Police and Fire Pension System

Required Supplementary Information (Unaudited)

Schedule of Changes in the Net Pension Liability and Related Ratios For Last Four Fiscal Years (dollars in thousands)

Combined Pension Plan

For fiscal year ending December 31,	2017	2016	2015	2014
Total pension liability				
Service cost	\$ 148,552	\$ 167,432	\$ 125,441	\$ 131,312
Interest	348,171	360,567	359,023	369,408
Changes of benefit terms	(1,167,597)	-	-	(329,794)
Differences between expected and actual experience	(134,665)	(77,463)	379,461	(4,453)
Changes of assumptions	(2,851,241)	(712,003)	908,988	-
Benefit payments, including refunds of employee contributions	(296,154)	(825,092)	(285,003)	(245,932)
Net change in total pension liability	(3,952,934)	(1,086,559)	1,487,910	(79,459)
Total pension liability - beginning	8,450,281	9,536,840	8,048,930	8,128,389
Total pension liability - ending (a)	\$ 4,497,347	\$ 8,450,281	\$ 9,536,840	\$ 8,048,930
Plan fiduciary net position				
Employer contributions	\$ 126,318	\$ 119,345	\$ 114,886	\$ 109,792
Employee contributions	32,977	25,518	25,676	29,333
Net investment income (loss), net of expenses	98,911	164,791	(235,207)	(138,893)
Benefits payments	(296,154)	(825,092)	(285,003)	(245,932)
Interest expense	(1,279)	(4,532)	(8,417)	(7,361)
Administrative expenses	(8,090)	(9,492)	(6,006)	(8,003)
Net change in plan fiduciary net position	(47,317)	(529,462)	(394,071)	(261,064)
Plan fiduciary net position - beginning	2,150,662	2,680,124	3,074,195	3,335,259
Plan fiduciary net position - ending (b)	\$ 2,103,345	\$ 2,150,662	\$ 2,680,124	\$ 3,074,195
Net pension liability - ending (a) - (b)	\$ 2,394,002	\$ 6,299,619	\$ 6,856,716	\$ 4,974,735
Plan fiduciary net position as a percentage of total pension liability	46.8%	25.5%	28.1%	38.2%
Covered employee payroll	\$ 346,037	\$ 357,414	\$ 365,210	\$ 383,006
Net pension liability as a percentage of covered employee payroll	691.8%	1,762.6%	1,877.5%	1,298.9%

See Notes below related to this schedule.

Dallas Police and Fire Pension System

Required Supplementary Information (Unaudited)

Supplemental Pension Plan

For fiscal year ending December 31,	2017	2016	2015	2014
Total pension liability				
Service cost	\$ 111	\$ 70	\$ 36	\$ 28
Interest	2,799	2,911	2,953	2,969
Changes of benefit terms	(5,305)	-	-	(526)
Differences between expected and actual experience	(1,435)	1,105	928	336
Changes of assumptions	(479)	(916)	(600)	-
Benefit payments	(2,668)	(5,912)	(2,640)	(3,414)
Net change in total pension liability	(6,977)	(2,742)	677	(607)
Total pension liability - beginning	40,647	43,389	42,712	43,319
Total pension liability - ending (a)	\$ 33,670	\$ 40,647	\$ 43,389	\$ 42,712
Plan fiduciary net position				
Employer contributions	\$ 2,077	\$ 3,064	\$ 2,443	\$ 1,817
Employee contributions	66	35	43	49
Net investment income (loss), net of expenses	740	1,141	(1,689)	(517)
Benefit payments	(2,668)	(5,912)	(2,640)	(3,414)
Interest expense	(11)	(78)	(44)	(51)
Administrative expenses	(69)	(37)	(61)	(56)
Net change in plan fiduciary net position	135	(1,787)	(1,948)	(2,172)
Plan fiduciary net position - beginning	17,670	19,457	21,405	23,577
Plan fiduciary net position - ending (b)	\$ 17,805	\$ 17,670	\$ 19,457	\$ 21,405
Net pension liability - ending (a) - (b)	\$ 15,865	\$ 22,977	\$ 23,932	\$ 21,307
Plan fiduciary net position as a percentage of total pension liability	52.9%	43.5%	44.8%	50.1%
Covered employee payroll	\$ 916	\$ 525	\$ 725	\$ 557
Net pension liability as a percentage of covered employee payroll	1,731.6%	4,376.2%	3,303.3%	3,827.3%

See Notes below related to this schedule.

Notes to Schedule:

Changes of benefit terms:

As of December 31, 2017

HB 3158 was signed by the Governor on May 31, 2017, the significant benefit and contribution changes in the bill were effective September 1, 2017.

- Normal Retirement Age increased from either age 50 or 55 to age 58
- For members less than the age of 45 on September 1, 2017, hired prior to March 1, 2011, and less than 20 years of pension service, the Early Retirement Age increased from age 45 to age 53

Dallas Police and Fire Pension System

Required Supplementary Information (Unaudited)

- Vesting for members hired after February 28, 2011 was reduced from ten years to five years of service
- Benefit multiplier for all future service for members hired prior to March 1, 2011 was lowered from 3.00% to 2.50%
- Benefit multiplier retroactively increased to 2.50% for members hired on or after March 1, 2011
- Benefit multipliers for 20 and Out benefit lowered and begin at later ages
- Members hired after February 28, 2011 are eligible for an early retirement benefit after 20-years of service
- Maximum benefit reduced from 96% of computation pay to 90% of computation pay for members hired prior to March 1, 2011
- Average computation pay period changed from 36 months to 60 months for future service for members hired prior to March 1, 2011
- Annual Adjustment (COLA) discontinued for all members. The Board may choose to provide a COLA if the funded ratio on a market value basis is at least 70% after the implementation of a COLA.
- The supplemental benefit is eliminated prospectively; only those for whom the supplement was already granted as of September 1, 2017 will maintain the supplement
- Active DROP participation is limited to 10 years
- DROP interest for active DROP members was eliminated after September 1, 2017; only the balance as of September 1, 2017 will be eligible for interest once active DROP members retire
- Retirees with DROP accounts as of September 1, 2017 will have their DROP account balances paid out over their expected lifetime based on their age as of September 1, 2017
- Future retirees with DROP accounts will have their DROP account balances paid out over their expected lifetime as of the date of their retirement
- Interest on retiree DROP accounts will be paid based on the length of the retiree's expected lifetime and will be based on U.S. Treasury rates which correlate to expected lifetime, as determined by the Board of Trustees
- Member contributions for both DROP and non-DROP members increased to 13.5% effective September 1, 2017
- The City's contribution rate will increase to 34.5% of computation pay. Between September 1, 2017 and December 31, 2024, the City's contribution will be the greater of (i) 34.5% and (ii) a biweekly contribution floor amount as stated in HB3158, plus \$13 million per year.

As of December 31, 2016 and 2015 - None

As of December 31, 2014

The Board approved a plan amendment implementing changes to DROP interest rates on April 16, 2015. Such changes were reflected in the valuation of the net pension liability as of December 31, 2015 and 2014.

Dallas Police and Fire Pension System

Required Supplementary Information (Unaudited)

Changes of methods and assumptions:

As of December 31, 2017

The discount rate used to measure the total pension liability changed from a blended discount rate of 4.12% to the assumed rate of return of 7.25% for the Combined Pension Plan and from blended discount rate of 7.10% to the assumed rate of return of 7.25% for the Supplemental Plan.

As a result of the passage of HB 3158 the following assumption were changed:

- The DROP utilization factor was changed from 100% to 0%
- Current DROP members with at least eight years in DROP as of January 1, 2017 are assumed to retire in 2018. Current DROP members with less than eight years in DROP as of January 1, 2017 are assumed to retire once they have been in the DROP for eight years.
- Retirement rates were changed effective January 1, 2018
- 100% retirement rate once the projected sum of age plus service equals 90
- New terminated vested members are assumed to retire at age 58
- DROP account balances annuitized as of September 1, 2017 are assumed to earn 2.75% interest; DROP account balances as of September 1, 2017 for active members are assumed to earn 3.00% interest upon retirement; DROP account balances accrued after September 1, 2017 for active members do not earn interest
- DROP payment period based on an 85%/15% male/female blend of the current healthy annuitant mortality tables
- COLA assumed to be a 2.00% COLA beginning October 1, 2053 and payable every October 1st thereafter.

The administrative expense assumption was changed from the greater of \$10 million per year or 1% of computation pay to the greater of \$8.5 million per year or 1% of computation pay for the Combined Plan and changed from \$60 thousand to \$65 thousand for the Supplemental Plan

As of December 31, 2016

The blended discount rate used to measure the total pension liability changed from 3.95% to 4.12% for the Combined Pension Plan and from 7.19% to 7.10% for the Supplemental Plan.

The remaining amortization period was adjusted from 40 years to 30 years for the Combined Pension Plan based on Section 802.101(a) of the Texas Government Code.

The salary scale was modified for valuation years 2017-2019 in accordance with the Meet and Confer Agreement. DROP interest is assumed to decline from 6.00% to 5.00% effective October 1, 2017, and to 0.00% effective October 1, 2018, per Section 6.14(c) of the plan document as amended and restated through April 16, 2015.

As of December 31, 2015

The blended discount rate used to measure the total pension liability changed from 4.94% to 3.95% for the Combined Pension Plan and from 7.13% to 7.19% for the Supplemental Plan.

As a result of the actuarial experience study completed for the five-year period ending December 31, 2014, the following changes in assumptions were adopted by the Board. For further information

Dallas Police and Fire Pension System

Required Supplementary Information (Unaudited)

regarding the changes to actuarial assumptions, refer to the January 1, 2016 Dallas Police and Fire Pension System actuarial valuation reports for the Combined Pension Plan and the Supplemental Plan.

- Salary scales were updated with separate service-based salary assumptions for police officers and firefighters, lowering the range of increase to 3.00% to 5.20% from the previous assumed range of 4.00% to 9.64%.
- The payroll growth rate assumption was lowered from 4.00% to 2.75% to equal the assumed inflation rate.
- In the prior valuation, the investment return assumption was net of both investment and administrative expenses. In the December 31, 2015 valuation, an explicit assumption for administrative expenses was added to the normal cost. Assumptions of \$10 million and \$60 thousand per year were utilized for the Combined Pension Plan and Supplemental Plan, respectively.
- In the prior valuation for the Combined Pension Plan, an asset valuation method using a 10-year smoothing period was applied. In the December 31, 2015 valuation, the actuarial value of assets was reset to market value as of the measurement date. A five-year smoothing period will be used in future periods.
- The remaining amortization period was adjusted from 30 years to 40 years for the Combined Pension Plan based on Section 802.101(a) of the Texas Government Code.
- Mortality tables were updated from the RP-2000 tables to the RP-2014 tables
- Assumed rates of turnover were lowered for police officers and raised for firefighters to reflect recent experience.
- Retirement rates were lowered for both police officers and firefighters, with the separation of service-based assumptions implemented based on recent experience.
- Disability rates were lowered for both police officers and firefighters and service-based assumptions were eliminated based on the similarity of recent experience between the two services.
- The assumption of the portion of active employees who are married was lowered from 80% to 75% and the age of the youngest child was raised from 1 to 10.

As of December 31, 2014

The assumption for the future interest rates credited to DROP balances was changed from 8.5% to the following rates prescribed by the 2014 plan amendment:

- At October 1, 2014 - 8.0%;
- At October 1, 2015 - 7.0%;
- At October 1, 2016 - 6.0%; and
- At October 1, 2017 and thereafter - 5.0%

Dallas Police and Fire Pension System

Required Supplementary Information (Unaudited)

Schedule of Employer Contributions - Combined Pension Plan (dollars in thousands)

Measurement Year Ending December 31,	Actuarially Determined Contribution	Actual Contribution	Contribution Deficiency (Excess)	Covered Payroll	Actual Contribution as a % of Covered Payroll
2017	\$ 168,865	\$ 126,318	\$ 42,547	\$ 357,414	35.3%
2016	261,859	119,345	142,514	365,210	32.7%

Schedule is intended to show information for 10 years. Additional years will be presented as they become available.

Prior to January 1, 2016, the actuarial determined contribution for the Combined Plan was not determined by the actuary.

The City's contribution rate for the Combined Pension Plan is set by State statutes. The difference between the actuarial determined contribution and the City contribution set by State statutes results in the contribution deficiency.

Notes to Schedules:

The following methods and assumptions used to calculate the actuarial determined contribution for the year ended December 31, 2017.

Actuarial cost method	Entry age normal cost method
Amortization method	30-year level percent-of-pay
Remaining amortization period	Infinite as of January 1, 2017
Asset valuation method	Reset of the actuarial value of assets to market value as of December 31, 2015, with a five-year smoothing in future periods
Investment rate return	7.25% per annum, compounded annually, net of all expense, including administrative expenses. This rate is based on an average inflation rate of 2.75% and a real rate of return of 4.50%.
Inflation rate	2.75%
Projected salary increases	Inflation plus merit increases, varying by group and service, ranging from 0.25% to 2.45%
Post-retirement benefit increases	COLA assumed to be a 2.00% COLA beginning October 1, 2049 and payable every October 1 thereafter
Retirement age	Experienced-based table of rates, based on age

Dallas Police and Fire Pension System

Required Supplementary Information (Unaudited)

Mortality	<p>Pre-retirement: Sex-distinct RP-2014 Employee Mortality Table, set back two years for males, projected generationally using Scale MP-2015</p> <p>Post-retirement: Sex-distinct RP-2014 Blue Collar Healthy Annuitant Mortality Table, set forward two years for females, projected generationally using Scale MP-2015</p> <p>Disabled: Sex-distinct RP-2014 Disabled Retiree Mortality Table, set back three years for males and females, projected generationally using Scale MP-2015</p>
DROP balance returns	6% per year until September 1, 2017. Beginning September 1, 2017, DROP account balances for annuitants are assumed to earn 2.75% interest; DROP account balances as of September 1, 2017 for active members are assumed to earn 2.75% interest upon retirement; DROP account balances accrued after September 1, 2017 for active members do not earn interest.
DROP election	The DROP utilization factor is 0% for new entrants. Current DROP members with at least eight years in the DROP as of January 1, 2017 are assumed to retire in 2018. Current DROP members with less than eight years in DROP as of January 1, 2017 are assumed to retire once they have been in the DROP for eight years.
Changes in Methods and assumptions used to determine the actuarially determined contribution for the year ended December 31, 2016 were as follows:	
Post-retirement benefit increases	4.00% simple COLA, October 1 st
DROP balance returns	At October 1, 2015 - 7.0% At October 1, 2016 - 6.0% At October 1, 2017 and thereafter - 5.0%
DROP election	Age 50 with 5 years of service. Any active member who satisfy these criteria and have not entered DROP are assumed never to join DROP. Active members who retire with a DROP account are assumed to receive the balance of their account over a 10-year time period.
Methods and assumptions used to determine the actuarially determined contribution for the years ended December 31, 2014 and 2015 for the Supplemental Plan differed from the above as follows:	
Projected salary increases	Range of 4.00% - 9.64%
Mortality	RP-2000 Combined Healthy Mortality Table projected to 10 years beyond the valuation date using Scale AA for healthy retirees and active members

Dallas Police and Fire Pension System

Required Supplementary Information (Unaudited)

Schedule of Employer Contributions - Supplemental Plan (dollars in thousands)

Measurement Year Ending December 31,	Actuarially Determined Contribution	Actual Contribution	Contribution Deficiency (Excess)	Covered Payroll	Actual Contribution as a % of Covered Payroll
2017	\$ 2,087	\$ 2,077	\$ 10	\$ 525	395.6%
2016	3,063	3,063	-	725	422.9%
2015	2,443	2,443	-	557	438.8%
2014	1,817	1,817	-	521	348.5%

Schedule is intended to show information for 10 years. Additional years will be presented as they become available.

Actuarially determined employer contributions for the Supplemental Plan are required by City ordinance. Actuarially determined contributions are calculated as of January 1 in the fiscal year in which the contribution is reported. The deficiency shown on the table is due to Supplemental Plan contributions paid directly to the Excess Benefit Plan in compliance with Internal Revenue Code Section 415.

Notes to Schedules:

The following methods and assumptions used to calculate the actuarial determined contribution for the year ended December 31, 2017 relate to both the Combined Pension Plan and the Supplement Plan unless specially noted:

Actuarial cost method	Entry age normal cost method
Amortization method	10-year level percent of pay
Remaining amortization period	10 years
Asset valuation method	Market value of assets
Investment rate return	7.25% per annum, compounded annually, net of all expense, including administrative expenses. This rate is based on an average inflation rate of 2.75% and a real rate of return of 4.50%.
Inflation rate	2.75%
Projected salary increases	Inflation plus merit increases, varying by group and service, ranging from 0.25% to 2.45%
Post-retirement benefit increases	COLA assumed to be a 2.00% COLA beginning October 1, 2049 and payable every October 1 thereafter

Dallas Police and Fire Pension System

Required Supplementary Information (Unaudited)

Retirement age	Experienced-based table of rates, based on age
Mortality	<p>Pre-retirement: Sex-distinct RP-2014 Employee Mortality Table, set back two years for males, projected generationally using Scale MP-2015</p> <p>Post-retirement: Sex-distinct RP-2014 Blue Collar Healthy Annuitant Mortality Table, set forward two years for females, projected generationally using Scale MP-2015</p> <p>Disabled: Sex-distinct RP-2014 Disabled Retiree Mortality Table, set back three years for males and females, projected generationally using Scale MP-2015</p>
DROP balance returns	6% per year until September 1, 2017. Beginning September 1, 2017, DROP account balances for annuitants are assumed to earn 2.75% interest; DROP account balances as of September 1, 2017 for active members are assumed to earn 2.75% interest upon retirement; DROP account balances accrued after September 1, 2017 for active members do not earn interest.
DROP election	The DROP utilization factor is 0% for new entrants. Current DROP members with at least eight years in the DROP as of January 1, 2017 are assumed to retire in 2018. Current DROP members with less than eight years in DROP as of January 1, 2017 are assumed to retire once they have been in the DROP for eight years.
Changes in Methods and assumptions used to determine the actuarially determined contribution for the year ended December 31, 2016 were as follows:	
Post-retirement benefit increases	4.00% simple COLA, October 1 st
DROP balance returns	<p>At October 1, 2015 - 7.0%</p> <p>At October 1, 2016 - 6.0%</p> <p>At October 1, 2017 and thereafter - 5.0%</p>
DROP election	Age 50 with 5 years of service. Any active member who satisfy these criteria and have not entered DROP are assumed never to join DROP. Active members who retire with a DROP account are assumed to receive the balance of their account over a 10-year time period.

Dallas Police and Fire Pension System

Required Supplementary Information (Unaudited)

Methods and assumptions used to determine the actuarially determined contribution for the years ended December 31, 2014 and 2015 for the Supplemental Plan differed from the above as follows:

Projected salary increases	Range of 4.00% - 9.64%
Mortality	RP-2000 Combined Healthy Mortality Table projected to 10 years beyond the valuation date using Scale AA for healthy retirees and active members

Dallas Police and Fire Pension System

Required Supplementary Information (Unaudited)

Schedule of Investment Returns

Fiscal Year Ended December 31,	Annual Money-weighted Rate of Return, net of Investment Expense
2017	5.07%
2016	3.09%
2015	(12.70%)
2014	3.98%

Notes to Schedule:

The annual money-weighted rate of return is calculated as the internal rate of return on pension plan investments, net of pension plan investment expense, and expresses investment performance adjusted for the changing amounts actually invested. Pension plan investment expense consists of manager fees. The return is calculated using a methodology which incorporates a one quarter lag for market value adjustments on private equity, debt, and real assets investments.

Schedule is intended to show information for 10 years. Additional years will be presented as they become available.

Dallas Police and Fire Pension System

Supplementary Information

Administrative, Investment, and Professional Services Expenses

Year Ended December 31, 2017

Administrative expenses:	
Information technology	\$ 339,534
Education	50,316
Insurance	440,706
Personnel	3,977,797
Office equipment	149,114
Dues and subscriptions	103,504
Board meetings	8,317
Office supplies	25,148
Utilities	52,087
Postage	30,564
Printing	3,659
Election	19,060
Facilities	588,974
Other	8,323
Total administrative expenses	\$ 5,797,103
Investment expenses:	
Investment management	\$ 5,534,243
Custodial	252,705
Valuation	645,469
Research	19,303
Consulting and reporting	487,712
Legal	81,216
Transaction advisory	1,450,522
Tax	11,746
Other	618,117
Total investment expenses	\$ 9,101,033
Professional services expenses:	
Consulting	\$ 12,967
Actuarial	524,097
Auditing	149,500
Accounting	61,616
Medical review	7,360
Legal	1,020,957
Mortality records	2,800
Legislative	319,085
Communications	247,104
Other	15,523
Total professional services expenses	\$ 2,361,009

Notes to Schedule:

Supplementary information on investment expenses does not include investment management fees and performance fees embedded in the structure of private equity and other limited partnership investments. Rather, these fees are a component of the net appreciation (depreciation) in fair value of investments in the accompanying Statements of Changes in Fiduciary Net Position. In addition, management fees paid directly by DFPF are included net of rebates received.

The members of the Board of Trustees serve without compensation; they are reimbursed for actual expenses incurred.

See accompanying independent auditor's report.



THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS
OPEN MEETINGS *Handbook 2018*





KEN PAXTON
ATTORNEY GENERAL OF TEXAS

Dear Fellow Texans:

Founding Father Patrick Henry once said of the importance of transparency in government, “The liberties of a people never were, nor ever will be, secure when the transactions of their rulers may be concealed from them.”

The Texas Open Meetings Act was enacted to ensure that Texas government is transparent, open and accountable to all Texans. It requires that state and local governmental entities conduct public business responsibly and in accordance with the law.

This *Open Meetings Act Handbook* is intended to help public officials comply with the various provisions of the Texas Open Meetings Act and to familiarize the public with using the Open Meetings Act as a resource for obtaining information about their government. The handbook is available on the Internet and as a printable document at https://www.texasattorneygeneral.gov/files/og/OMA_handbook_2018.pdf.

As Attorney General, I am proud of my office’s efforts to promote open government laws. We’ve 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 governmental entities is an essential element of a properly functioning democracy. 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,

A handwritten signature in black ink that reads "Ken Paxton".

Ken Paxton
Attorney General of Texas

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*Introduction***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 1967³ 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

C. Quorum and Majority Vote

The authority vested in a governmental body may be exercised only at a meeting of a quorum of its members. The Code Construction Act⁹ states as follows:

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. Civ. 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).

⁹ TEX. GOV’T CODE ch. 311.

Introduction

- (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.¹⁰
- (b) A quorum of a public body is a majority of the number of members fixed by statute.¹¹

The Act defines “quorum” as a majority of the governing body, unless otherwise defined by applicable law or the governing body’s charter.¹² 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.¹³ Ex officio, nonvoting members of a governmental body are counted for purposes of determining the presence of a quorum.¹⁴ 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.¹⁵ 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.¹⁶ A board member may not delegate his or her authority to deliberate or vote to another person, absent express statutory authority to do so.¹⁷

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.¹⁸ 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.”¹⁹

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.²⁰

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

¹⁰ 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).

¹¹ 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).

¹² TEX. GOV’T CODE § 551.001(6).

¹³ TEX. LOC. GOV’T CODE § 81.006.

¹⁴ Tex. Att’y Gen. Op. No. JC-0580 (2002) at 2–3 (overruling Tex. Att’y Gen. Op. No. DM-160 (1992) in part).

¹⁵ Tex. Att’y Gen. Op. No. GA-0355 (2005) at 3.

¹⁶ *Id.* at 4.

¹⁷ Tex. Att’y Gen. Op. No. JM-903 (1988) at 4–5.

¹⁸ *Comm’rs Ct. of Limestone Cty. v. Garrett*, 236 S.W. 970, 972 (Tex. Comm’n App. 1922, judgment adopted), *reh’g overruled*, 238 S.W. 894 (Tex. Comm’n App. 1922); Tex. Att’y Gen. Op. Nos. GA-0554 (2007) at 2, GA-0412 (2006) at 3.

¹⁹ *Webster*, 166 S.W.2d at 77.

²⁰ 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).

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Constitution, statutes, and common law.²¹ A governmental body subject to the Act may not conduct its meetings according to procedures inconsistent with the Act.²²

2. Preparing the Agenda

An agenda is “[a] list of things to be done, as items to be considered at a meeting.”²³ 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.²⁴

Some governmental entities are subject to statutes that expressly address agenda preparation.²⁵ Other entities may adopt their own procedures for preparing the agenda of a meeting.²⁶ Officers and employees of the governmental body must avoid deliberations subject to the Act while preparing the agenda.²⁷

²¹ See Tex. Att’y Gen. Op. No. GA-0412 (2006) at 2; *see also generally* Tex. Att’y Gen. Op. No. GA-0554 (2007).

²² 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).

²³ BLACK’S LAW DICTIONARY 72 (9th ed. 2009).

²⁴ See, e.g., *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762, 764 (Tex. 1991).

²⁵ See TEX. TRANSP. CODE § 201.054 (providing that Chair of Transportation Commission shall oversee the preparation of an agenda for each meeting).

²⁶ See Tex. Att’y Gen. Op. No. DM-473 (1998) at 3 (discussing home-rule city procedure for agenda preparation).

²⁷ *Id.*

*Recent Amendments***II. Recent Amendments**

Amendments to the Act adopted by the 85th Legislature are quoted or summarized below:

A. Section 551.001. Definitions

Senate Bill 1440 amended the Act's definition of "meeting" to provide that "the attendance by a quorum of a governmental body at a candidate forum, appearance, or debate to inform the electorate" is not a meeting if formal action is not taken at the forum, appearance, or debate.²⁸

B. Section 551.089. Deliberation Regarding Security Devices or Security Audits; Closed Meetings

Two bills from the 85th legislative session amended section 551.089, but the changes in the two bills are identical. Section 551.089 is no longer limited to the Department of Information Resources and now provides that any governmental body may meet in a closed meeting to deliberate specified information resource technology security matters.²⁹

C. Section 551.127. Videoconference Call

Section 551.127 was amended to provide that: "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)."³⁰

D. Section 551.128. Internet Broadcast of Open Meeting

House Bill 523 amended subsection 551.128(b-1) to provide that an elected school district board of trustees for a school district with a student enrollment of 10,000 or more must make a video or audio recording of its work sessions or special called meetings if the board of trustees votes on any matter or allows public comment or testimony at the work session or special called meeting.³¹

E. Other Notable Changes

Section 81.001(b) of the Local Government Code provides that the county judge, if present, is the presiding officer of the commissioners court.³² The section was amended to clarify that it "does not apply to a meeting held under Section 551.127, Government Code, if the county judge is not

²⁸ Act of May 24, 2017, 85th Leg., R.S., S.B. 1440, § 1 (to be codified at TEX. GOV'T CODE § 551.001(4)).

²⁹ See Act of May 24, 2017, 85th Leg., R.S., H.B. 8, § 3 (to be codified at TEX. GOV'T CODE § 551.089); Act of May 24, 2017, 85th Leg., R.S., S.B. 564, § 1 (to be codified at TEX. GOV'T CODE § 551.089).

³⁰ Act of May 24, 2017, 85th Leg., R.S., H.B. 3047, § 1 (to be codified at TEX. GOV'T CODE § 551.127(a-3)).

³¹ See Act of May 24, 2017, 85th Leg., R.S., H.B. 523, § 1 (to be codified at TEX. GOV'T CODE § 551.128(b-1)).

³² See TEX. LOC. GOV'T CODE § 81.001(b).

Recent Amendments

located at the physical space made available to the public for the meeting.”³³ Section 551.127 of the Government Code generally requires the presiding officer of the governmental body to be physically present at a meeting held by videoconference call.³⁴ The change ensures that a county judge may remotely participate in a meeting conducted by videoconference call while another member of the commissioners court presides over the meeting at the physical location accessible to the public.

Section 16.053(h) of the Water Code was amended to provide that regional water planning groups and any committee or subcommittee of a regional water planning group are subject to the Open Meetings Act.³⁵

Election Code section 67.004 was amended to require the presiding officer of a canvassing authority to “note the completion of the canvass in the minutes or in the recording required by Section 551.021 of the Government Code.”³⁶

Chapter 531 of the Government Code, governing the Health and Human Services Commission and health and human services agencies, was amended to add section 531.0165.³⁷ Section 531.0165 requires the Commission or agency to broadcast over the Internet live video and audio of each open meeting.³⁸ Among other things, section 531.0165 also requires the Commission or agency to make a video and audio recording of the broadcast as well as to provide access to the archived recordings on the Internet website.³⁹ In addition, any Commission advisory committee meetings must be broadcast via streaming live video and audio, and must be archived on the Internet website.⁴⁰

³³ Act of Apr. 27, 2017, 85th Leg., R.S., S.B. 988, § 1 (to be codified at TEX. LOC. GOV'T CODE § 81.001(b)).

³⁴ TEX. GOV'T CODE § 551.127(c).

³⁵ See Act of May 3, 2017, 85th Leg., R.S., S.B. 347, § 1 (to be codified at TEX. WATER CODE § 16.053(h)(12)).

³⁶ See Act of May 11, 2017, 85th Leg., R.S., H.B. 1001, § 1 (to be codified at TEX. ELEC. CODE § 67.004(g)).

³⁷ See Act of May 11, 2017, 85th Leg., R.S., H.B. 630, § 2 (to be codified at TEX. GOV'T CODE § 531.0165).

³⁸ See *id.*

³⁹ See *id.*

⁴⁰ See *id.* § 1 (to be codified at TEX. GOV'T CODE § 531.0121(e)).

*Noteworthy Cases Since 2016 Handbook***III. Noteworthy Decisions Since 2016 Handbook****A. Judicial Decisions**

In April 2017, the 221st District Court of Montgomery County, Texas, ordered the dismissal of indictments against the County Judge of Montgomery County, the Precinct 2 Commissioner, and a political consultant who were charged with the criminal offense of conspiring to circumvent the Open Meetings Act.⁴¹ The court issued no findings of fact or conclusions of law in connection with the orders for dismissal.⁴² In the matter, the court considered a facial challenge to the constitutionality of section 551.143 as “vague and ambiguous.”⁴³ The special prosecutor in the case has filed an appeal.⁴⁴

In an unreported opinion, *Baker v. City of Farmers Branch*, the Dallas Court of Appeals considered the sufficiency of a notice.⁴⁵ The case arises from the action of the Farmers Branch city council voting to approve a settlement in a federal voting rights lawsuit.⁴⁶ In the case, the plaintiff, Baker, challenged the sufficiency of the open meeting notice indicating the city council would go into executive session to consult with its attorney to “[d]iscuss pending litigation relating to [the federal case].”⁴⁷ Baker argued that the notice was insufficient because it should have stated that the city council would discuss settlement of the lawsuit.⁴⁸ The court determined the notice sufficient because, in a lawsuit with heightened public interest, the notice was more specific than a general notice item of “litigation.”⁴⁹ The court also said that the Open Meetings Act did not require the notice to specifically “disclose strategies that might be discussed in the closed session” when the question “whether to settle the lawsuit is a type of private consultation allowed under the Open Meetings Act.”⁵⁰ The court concluded that to “require the notice . . . to state specifically that settlement would be discussed . . . would defeat the purpose of the provision which authorizes private consultations between the governmental body and its attorney about pending litigation and settlement offers.”⁵¹ In considering Baker’s second issue, the court also reiterated that the “Open

⁴¹ See Order, *State v. Doyal*, No. 16-06-07315-CR (221st Dist. Ct., Montgomery Cty., Tex. Apr. 4, 2017) (order granting motion to dismiss indictment), Order, *State v. Riley*, No. 16-06-07316-CR (221st Dist. Ct., Montgomery Cty., Tex. Apr. 4, 2017) (order granting motion to dismiss indictment), Order, *State v. Davenport*, No. 16-06-07318-CR (221st Dist. Ct., Montgomery Cty., Tex. Apr. 4, 2017) (order granting motion to dismiss indictment), available through <http://www.mctx.org>.

⁴² See *id.*

⁴³ See Brief for Appellant at 9, *State v. Doyal*, No. 09-17-00123-CR (Tex. App.—Beaumont July 10, 2017), available at <http://www.search.txcourts.gov/SearchMedia.aspx?MediaVersionID=3856e35e-d85a-4e8F-990c-078632046c3d&coa=coa09&DT=Brief&MediaID=a1290cfc-fc8b-4e06-876f-809fde26ebca>

⁴⁴ See *id.*

⁴⁵ *Baker v. City of Farmers Branch*, No. 05-13-01174-CV, 2014 WL 3513367 (Tex. App.—Dallas July 15, 2014, no pet.) (mem. op.).

⁴⁶ See *id.* at *1.

⁴⁷ See *id.* at *2.

⁴⁸ See *id.*

⁴⁹ See *id.*

⁵⁰ *Id.* (citing TEX. GOV’T CODE § 551.071(1)(B)).

⁵¹ *Id.*

Noteworthy Cases Since 2016 Handbook

Meetings Act does not prohibit the council members from expressing in a closed session how they intend to vote when they go back into open session.”⁵²

In *Harper v. Best*, 493 S.W.3d 105 (Tex. App.—Waco 2016, pet. granted), the Waco Court of Appeals considered an Open Meetings Act claim based on a series of text messages between Harper and a second county hospital board member, Parker, as well as a series of text messages between Harper and a third board member, Harrison.⁵³ Both sets of text messages concerned public business of the county hospital district.⁵⁴ The text messages between Harper and Parker referenced communications with a fourth board member, Eugene.⁵⁵ The state argued, that because the quorum of the county hospital board was four, Harper’s reference to Eugene in communications with Parker established a walking quorum in violation of the Open Meetings Act.⁵⁶ The court of appeals determined that even assuming the reference to the fourth board member established a walking quorum, the reference did not indicate that deliberations subject to the Open Meetings Act had occurred.⁵⁷ The court said: “Harper mentioned in his text that he told Eugene that he had several motions but that he did not ‘get into’ the subject of those motions.”⁵⁸ Because [n]othing was presented to show that an exchange occurred between Harper and Eugene about an issue within the jurisdiction of the board or any public business, particularly the issues discussed with Parker and Harrison,” the court determined that there was no violation of the Act.⁵⁹

B. Attorney General Decisions

Attorney General Opinion KP-0038 (2015) concluded that a group of district judges who meet to appoint a county auditor is not a governmental body under the Open Meetings Act.⁶⁰ The opinion similarly concluded that a group of district and county judges meeting to appoint a community supervision and corrections department director does not constitute a governmental body under the Open Meetings Act.⁶¹

⁵² *Id.* at 3.

⁵³ *Harper v. Best*, 493 S.W.3d 105, 116 (Tex. App.—Waco 2016, pet. granted).

⁵⁴ *See id.* at 117.

⁵⁵ *See id.* (“I told . . . [Harrison] and Eugene I had a number of motions, did not get into what they were[.] I think we are still good at this point.”).

⁵⁶ *See id.*

⁵⁷ *See id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Tex. Att’y Gen. Op. No. KP-0038 (2015) at 2, 4.

⁶¹ *Id.* at 3, 4.

*Training for Members of Governmental Bodies***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.⁶²

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.

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 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.

⁶² An Open Meetings Act training video is available online at <https://www.texasattorneygeneral.gov/og/oma-training>.

*Governmental Bodies***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.”⁶³ “Governmental body” is defined by section 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;⁶⁴ 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; and
- (L) a joint board created under Section 22.074, Transportation Code.

⁶³ An agency financed entirely by federal money is not required by the Act to conduct an open meeting. TEX. GOV'T CODE § 551.077.

⁶⁴ See 42 U.S.C.A. §§ 9901–9926 (Community Services Block Grant Program).

Governmental Bodies

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.⁶⁵

B. State-Level Governmental Bodies

Section 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.”⁶⁶ Moreover, it must have supervision or control over public business or policy.⁶⁷ 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.⁶⁸ 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.⁶⁹ *See* Part V.E.

The section 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.⁷⁰

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 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.”⁷¹

⁶⁵ TEX. GOV'T CODE § 551.0015; *but see* TEX. PROP. CODE § 209.0051(c) (requiring that regular and special board meetings of property owners associations not otherwise subject to chapter 551 be open to the owners), *id.* § 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”).

⁶⁶ TEX. GOV'T CODE § 551.001(3)(A); *see id.* § 551.003.

⁶⁷ *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.

⁶⁸ *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).

⁶⁹ 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).

⁷⁰ *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).

⁷¹ TEX. HEALTH & SAFETY CODE § 85.276(d); *see also* TEX. WATER CODE § 16.053(h)(12) (providing that regional water planning groups are subject to the Open Meetings Act).

Governmental Bodies

Alternatively, other entities that may otherwise be a “governmental body” are excluded by statute from operation of the Act, such as the Interagency Obesity Council.⁷²

C. Local Governmental Bodies

Subsection 551.001(3)(B) through (L) 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.”⁷³ 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*⁷⁴ 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.⁷⁵ 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.⁷⁶

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.⁷⁷

⁷² See HEALTH & SAFETY CODE § 114.008(b).

⁷³ TEX. GOV’T CODE § 551.001(3)(D).

⁷⁴ *City of Austin v. Evans*, 794 S.W.2d 78, 83 (Tex. App.—Austin 1990, no writ).

⁷⁵ *Id.*

⁷⁶ *Id.* (emphasis omitted); see also *Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353, 360 (Tex. App.—Waco 1998, pet. denied).

⁷⁷ *City of Austin*, 794 S.W.2d at 83.

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The court in *Fiske v. City of Dallas*⁷⁸ 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.⁷⁹

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.⁸⁰ 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.⁸¹ Attorney General Opinion DM-426 concluded on similar grounds that a county housing authority was a governmental body.⁸²

Subsection 551.001(3)(H) provides “the governing board of a special district created by law”⁸³ is a governmental body. This office has concluded that a hospital district⁸⁴ and the Dallas Area Rapid Transit Authority⁸⁵ are special districts.

*Sierra Club v. Austin Transportation Study Policy Advisory Committee*⁸⁶ 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.⁸⁷ 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

⁷⁸ *Fiske v. City of Dallas*, 220 S.W.3d 547, 551 (Tex. App.—Texarkana 2007, no pet.).

⁷⁹ *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).

⁸⁰ Tex. Att’y Gen. Op. No. DM-426 (1996) at 2.

⁸¹ *Id.* at 2.

⁸² *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).

⁸³ TEX. GOV’T CODE § 551.001(3)(H).

⁸⁴ *See* Tex. Att’y Gen. Op. No. H-238 (1974) at 2.

⁸⁵ *See* Tex. Att’y Gen. Op. No. JM-595 (1986) at 2.

⁸⁶ *Sierra Club v. Austin Transp. Study Policy Advisory Comm.*, 746 S.W.2d 298, 301 (Tex. App.—Austin 1988, writ denied).

⁸⁷ *Id.* at 300–301.

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unincorporated areas, or to accomplish a primarily local benefit or improvement, *e.g.*, parks and planning mosquito control, sewage removal.⁸⁸

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.⁸⁹ 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.⁹⁰ It determined that other governmental entities, such as a county committee on aging created under the Non-Profit Corporation Act, were not “special districts.”⁹¹

D. Committees and Subcommittees of Governmental Bodies

Generally, meetings of less than a quorum of a governmental body are not subject to the Act.⁹² 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.⁹³ In *Willmann v. City of San Antonio*,⁹⁴ 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.⁹⁵ 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.”⁹⁶ 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.⁹⁷

⁸⁸ *Id.* at 301 (quoting BLACK’S LAW DICTIONARY 1253 (5th ed. 1986)).

⁸⁹ *See* Tex. Att’y Gen. Op. No. DM-395 (1996) at 3–4. *But see* Tex. Att’y Gen. Op. No. GA-0504 (2007) at 2 n.4 (observing that Texas Supreme Court Order No. 97-9141, 1997 WL 583726 (per curiam), had raised questions about the premises underlying the conclusion of Attorney General Opinion DM-395).

⁹⁰ *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).

⁹¹ *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).

⁹² *See Hays Cty. v. Hays Cty. Water Planning 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.

⁹³ Tex. Att’y Gen. Op. Nos. JC-0060 (1999) at 2, JC-0053 (1999) at 3; Tex. Att’y Gen. LO-97-058, at 2–5; LO-97-017, at 5.

⁹⁴ *Willmann v. City of San Antonio*, 123 S.W.3d 469 (Tex. App.—San Antonio 2003, pet. denied).

⁹⁵ *See id.* at 471–72.

⁹⁶ *Id.* at 478.

⁹⁷ *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).

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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 the Act takes place, the committee meeting will constitute a meeting of the governmental body.⁹⁸ 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.”⁹⁹

E. Advisory Bodies

An advisory committee that does not control or supervise public business or policy is not subject to the Act,¹⁰⁰ even though its membership includes some members, but less than a quorum, of a governmental body.¹⁰¹ For example, the multidisciplinary team established to review offenders’ records under the Commitment of Sexually Violent Predators Act was not subject to the Act.¹⁰² 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.¹⁰³

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.¹⁰⁴ 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,¹⁰⁵ the nursing advisory committee established by the statewide health coordinating council,¹⁰⁶ advisory committees for existing Boll Weevil Eradication zones appointed by the commissioner of the Official Cotton Growers’ Boll Weevil Eradication Foundation,¹⁰⁷ and an education research center advisory board.¹⁰⁸

⁹⁸ See Tex. Att’y Gen. Op. No. GA-0957 (2012) at 2–3.

⁹⁹ 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).

¹⁰⁰ 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).

¹⁰¹ 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).

¹⁰² See *Beasley*, 95 S.W.3d at 606.

¹⁰³ *Id.*

¹⁰⁴ Tex. Att’y Gen. Op. Nos. H-467 (1974) at 3–4, H-438 (1974) at 3.

¹⁰⁵ TEX. LOC. GOV’T CODE § 211.0075.

¹⁰⁶ TEX. HEALTH & SAFETY CODE § 104.0155(e).

¹⁰⁷ TEX. AGRIC. CODE § 74.1041(e).

¹⁰⁸ TEX. EDUC. CODE § 1.006(b).

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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.”¹⁰⁹ 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.¹¹⁰

However, the Act itself provides that certain nonprofit corporations are governmental bodies.¹¹¹ Other statutes provide that specific kinds of nonprofit corporations are subject to the Act, such as economic development corporations created under the Development Corporation Act of 1979¹¹² and the governing body of an open-enrollment charter school, which may be a private school or a nonprofit entity.¹¹³ 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.¹¹⁴

A private entity does not become a governmental body within the Act merely because it receives public funds.¹¹⁵ A city chamber of commerce, a private entity, is not a governmental body within the Act although it receives public funds.¹¹⁶

G. Legislature

There is very little authority on section 551.003. A 1974 attorney general letter advisory discussed it in connection with Texas Constitution article III, section 11, which provides in part that “[e]ach House may determine the rules of its own proceedings.”¹¹⁷ 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.”¹¹⁸ 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.¹¹⁹

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.¹²⁰

¹⁰⁹ 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).

¹¹⁰ Tex. Att’y Gen. Op. No. DM-7 (1991) at 3.

¹¹¹ TEX. GOV’T CODE § 551.001(3)(J)–(K).

¹¹² TEX. LOC. GOV’T CODE § 501.072.

¹¹³ TEX. EDUC. CODE § 12.1051.

¹¹⁴ Tex. Att’y Gen. LO-96-146, at 5.

¹¹⁵ Tex. Att’y Gen. LO-98-040, at 2.

¹¹⁶ Tex. Att’y Gen. LO-93-055, at 3.

¹¹⁷ TEX. CONST. art. III, § 11; *see* Tex. Att’y Gen. LA-84 (1974) at 2.

¹¹⁸ Tex. Att’y Gen. LA-84 (1974) at 2.

¹¹⁹ *See id.*

¹²⁰ *In re The Tex. Senate*, 36 S.W.3d 119 (Tex. 2000).

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Members of the media contended that the Act prohibited the Senate from voting by secret ballot.¹²¹ The Supreme Court stated that section 551.003 “clearly covers the Committee of the Whole Senate. Thus, its meetings and votes cannot be kept secret ‘except as specifically provided’ by the Texas Constitution.”¹²² 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 551.003.¹²³

¹²¹ *See id.* at 119.

¹²² *Id.* at 120.

¹²³ *See id.*

*Meetings***VI. Meetings****A. Definitions**

The Act applies to a governmental body, as defined by section 551.001(3), when it engages in a “regular, special, or called meeting.”¹²⁴ Informal meetings of a quorum of members of a governmental body are also subject to the Act.¹²⁵

“Deliberation,” a key term for understanding the Act, is defined as follows:

‘Deliberation’ means a verbal exchange during a meeting between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body or any public business.¹²⁶

“Deliberation” and “discussion” are synonymous for purposes of the Act.¹²⁷ A “verbal exchange” clearly includes an exchange of spoken words,¹²⁸ but it may also include an exchange of written materials or electronic mail.

The Act includes two definitions of “meeting.”¹²⁹ Section 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 action¹³⁰

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 section 551.001(4)(A):

- (1) The body must be an entity within the executive or legislative department of the state.

¹²⁴ TEX. GOV’T CODE § 551.002.

¹²⁵ *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).

¹²⁶ TEX. GOV’T CODE § 551.001(2).

¹²⁷ *Bexar Medina Atascosa Water Dist.*, 2 S.W.3d at 461.

¹²⁸ *Gardner v. Herring*, 21 S.W.3d 767, 771 (Tex. App.—Amarillo 2000, no pet.).

¹²⁹ Tex. Att’y Gen. Op. Nos. GA-0896 (2011) at 2, JC-0307 (2000) at 5, DM-95 (1992) at 5.

¹³⁰ TEX. GOV’T CODE § 551.001(4)(A).

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- (2) The entity must be under the control of one or more elected or appointed members.
- (3) The meeting must involve formal action or deliberation between a quorum of members.¹³¹
- (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.¹³²

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.”¹³³ 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.¹³⁴ A purely advisory body, which has no authority over public business or policy, is not subject to the Act,¹³⁵ unless a governmental body routinely adopts or “rubber stamps” the recommendations of the advisory body.¹³⁶ *See* Part V.E.

C. Gathering at Which a Quorum Receives Information from or Provides Information to a Third Party

Section 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

¹³¹ Deliberation between a quorum and a third party now satisfies this part of the test. *See id.* § 551.001(2).

¹³² *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).

¹³³ *See* TEX. GOV’T CODE § 551.001(3).

¹³⁴ *See* Tex. Att’y Gen. Op. No. GA-0504 (2007) at 3.

¹³⁵ 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).

¹³⁶ Tex. Att’y Gen. Op. Nos. H-467 (1974) at 4, H-438 (1974) at 3–4.

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public policy over which the governmental body has supervision or control.

The term does not include the gathering of a quorum of a governmental body at a social function unrelated to the public business that is conducted by the body, or the attendance by a quorum of a governmental body at a regional, state, or national convention or workshop, ceremonial event, 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.¹³⁷

Section 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.¹³⁸ Section 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.¹³⁹ Under the circumstances described by section 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.¹⁴⁰

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."¹⁴¹ The definition also excludes from its reach the attendance by a quorum at certain other events such as conventions, ceremonial events, press conferences, and candidate forums.¹⁴² 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."¹⁴³

¹³⁷ TEX. GOV'T CODE § 551.001(4)(B).

¹³⁸ *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 section 551.001(4)).

¹³⁹ *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).

¹⁴⁰ Tex. Att'y Gen. Op. No. JC-0169 (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).

¹⁴¹ TEX. GOV'T CODE § 551.001(4)(B).

¹⁴² *See id.*

¹⁴³ *Id.* (emphasis added).

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E. Meetings of Less than a Quorum to Evade the Act: “Walking Quorums”

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.¹⁴⁴ Conducting secret deliberations and voting over the telephone, when no statute authorized this, was one such method.¹⁴⁵

A “walking quorum” is described in *Esperanza Peace and Justice Center v. City of San Antonio*.¹⁴⁶ The night before an open city council meeting was to be held, the mayor met with several city council members in the city manager’s office and spoke with others by telephone about the city budget. A decision was made that night and ratified at the public meeting the next day. The federal court stated that it would violate the spirit of the Act and render a result not intended by the Legislature “[i]f a governmental body may circumvent the Act’s requirements by ‘walking quorums’ or serial meetings of less than a quorum, and then ratify at a public meeting the votes already taken in private.”¹⁴⁷ The *Esperanza* court said that a meeting of less than a quorum is not subject to the Act “when there is no intent to avoid the Act’s requirements.”¹⁴⁸

On the other hand, the Act would apply to meetings of groups of less than a quorum where a quorum or more of a body attempted to avoid the purposes of the Act by deliberately meeting in groups less than a quorum in closed sessions to discuss and/or deliberate public business, and then ratifying their actions as a quorum in a subsequent public meeting.¹⁴⁹

The evidence showed that the city council intended to avoid the Act. For example, the mayor met with council members constituting less than a quorum to reach a conclusion; the city manager kept track of the number of council members present so as to avoid a formal quorum; the consensus reached was memorialized in a memorandum containing the signatures of each council member; and the consensus was “manifested” when adopted at an open meeting.¹⁵⁰

F. New Technologies and Social Media

In response to its charge to consider how advances in technology and increased use of social media affect the communications of governmental bodies, the Senate Committee on State Affairs prepared an Interim Report to the 82nd Legislature.¹⁵¹ The Interim Report acknowledged the challenge that new technologies present in complying with the Act. It said:

¹⁴⁴ 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.).

¹⁴⁵ *See Hitt v. Mabry*, 687 S.W.2d 791, 793, 796 (Tex. App.—San Antonio 1985, no writ).

¹⁴⁶ *Esperanza Peace & Justice Ctr. v. City of San Antonio*, 316 F. Supp. 2d 433 (W.D. Tex. 2001).

¹⁴⁷ *Id.* at 476.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 476–77.

¹⁵⁰ *See id.*

¹⁵¹ SENATE COMMITTEE ON STATE AFFAIRS, INTERIM REPORT TO THE 82D LEGISLATURE at 59 (Dec. 2010).

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The walking quorum concept combined with newer technologies such as microblogs (e.g., Twitter), social media websites (e.g., Facebook), text messaging and instant messaging, raise new issues for consideration by the Attorney General, the courts and the Legislature. Neither the courts nor the Attorney General have determined the applicability of the [Act] to these new technologies, however, under the current interpretations of the Act, a quorum would exist if a majority of the governmental body discusses public business on a Facebook wall. The Facebook wall could be closed to the public, or open; however, absent prior notice of the “meeting” the [members of the governmental body] could be in violation of the [Act]. A similar situation could arise with Twitter where members can have public or private accounts.¹⁵²

The 82nd Legislature considered various bills that would amend chapter 551 regarding such new technologies and social media, but enacted none. The 83rd Legislature did not enact any new provision under the Act expressly related to social media, although it authorized governmental bodies to communicate through an online message board under section 551.006. The 84th Legislature did not enact any provisions allowing open meetings on social media, but it did expressly provide, in amending section 551.128, that archived copies of recordings of meetings can be kept on publicly accessible video-sharing or social networking sites.¹⁵³ The 85th Legislature enacted no new provisions relating to social media and open meetings.

G. 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.¹⁵⁴

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.¹⁵⁵

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

¹⁵² *See id.*

¹⁵³ Act of May 25, 2015, 84th Leg., R.S., ch. 681, § 1, 2015 Tex. Gen. Laws 2154, 2154–55.

¹⁵⁴ *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 Cty. Emergency Serv. Dist. No. 1 v. Harris Cty. 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).

¹⁵⁵ TEX. GOV’T CODE § 551.121–.126 (authorizing meetings by telephone conference call under specified circumstances).

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- (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.¹⁵⁶

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.¹⁵⁷

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.¹⁵⁸ The Texas Board of Criminal Justice may hold an emergency meeting by telephone conference call,¹⁵⁹ 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.¹⁶⁰ The Act permits 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.¹⁶¹

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.¹⁶²

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.¹⁶³ If the governmental body deducts employment taxes from the attorney's compensation, the attorney is an employee of the governmental body.¹⁶⁴ The restriction against remote

¹⁵⁶ *Id.* § 551.125(b). *See* Tex. Att'y Gen. Op. No. GA-0379 at 2–3 (addressing Government Code section 551.125(b)(3)).

¹⁵⁷ TEX. GOV'T CODE § 551.125(b)–(f).

¹⁵⁸ *Id.* § 551.121(c); *see* TEX. EDUC. CODE §§ 61.001–9776 (Higher Education Coordinating Board); 66.61–.84 (Board for Lease of University Lands).

¹⁵⁹ TEX. GOV'T CODE § 551.123.

¹⁶⁰ *Id.* § 551.124.

¹⁶¹ *Id.* § 551.130.

¹⁶² 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).

¹⁶³ TEX. GOV'T CODE § 551.129(a), (d).

¹⁶⁴ *Id.* § 551.129(e).

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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.¹⁶⁵

2. Videoconference Call meetings

Section 551.127 addresses meetings by videoconference call.¹⁶⁶ Generally, the Act permits a governmental body to hold an open or closed meeting by videoconference call when conducted under section 551.127.¹⁶⁷ Prior to the 2013 regular legislative session, section 551.127 set out provisions on the conduct of a videoconference call meeting when a quorum of the governmental body was present at one location or when only a majority of the quorum was present at one location.¹⁶⁸ Two 2013 enactments amended section 551.127: House Bill 2414 and Senate Bill 984.¹⁶⁹ Section 551.127 still generally requires a quorum of the governmental body to be physically present for a videoconference call meeting “except as provided by Subsection (c).”¹⁷⁰

Yet the two 2013 enactments yield two separate subsection (c)s, each containing different requirements related to the location of a videoconference call meeting.¹⁷¹ Both 2013 enactments contain requirements as to the audio and visual equipment that must be available to allow all participants in the videoconference call meeting to be able to see and hear each other during the meeting.¹⁷² Senate Bill 984 provides that if a problem results in the meeting being no longer visible and audible to the public, 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.¹⁷³ Additionally, the two enactments contain two subsection (e)s with differing notice requirements for meetings held by videoconference call.¹⁷⁴ Unchanged by the two enactments is the provision that permits a governmental body to allow a member of the public to testify at a meeting from a remote location by videoconference call without regard to whether a member of the governmental body was participating in the meeting by videoconference call.¹⁷⁵

Attorney General Opinion GA-1079 provided some clarity on the interaction of the two bills.¹⁷⁶ A preliminary question of the Commissioner of Education involved the ability of a charter school board to conduct an in-person meeting outside of its geographic territory. The opinion observes that there is no express authority in the Act for a governmental body to conduct an in-person

¹⁶⁵ *Id.* § 551.129(f).

¹⁶⁶ *Id.* § 551.127.

¹⁶⁷ *Id.* § 551.127(a).

¹⁶⁸ Act of May 23, 2001, 77th Leg., R.S., ch. 630, § 1, sec. 551.127(b)–(c), 2001 Tex. Gen. Laws 1190, 1190–91.

¹⁶⁹ See Act of May 23, 2013, 83d Leg., R.S., ch. 685, § 2, 2013 Tex. Gen. Laws 1782, 1782; Act of May 8, 2013, 83d Leg., R.S., ch. 159, § 1, 2013 Tex. Gen. Laws 598, 598 (both Acts codified at TEX. GOV’T CODE § 551.127) [hereinafter H.B. 2414 and S.B. 984, respectively].

¹⁷⁰ See TEX. GOV’T CODE § 551.127(b)–(c), *as amended* by H.B. 2414 and S.B. 984.

¹⁷¹ See *supra* H.B. 2414; S.B. 984.

¹⁷² See *supra* H.B. 2414, § 2(c)(1), (h), (j); S.B. 984, § 1(f)–(h).

¹⁷³ See *supra* S.B. 984, § (f); see also Tex. Att’y Gen. Op. No. DM-480 (1998) at 3 (concluding that a governmental body cannot avoid having to adjourn because of technical difficulties by stating in its meeting notice that the quorum of the governmental body will continue its open meeting should technical difficulties occur).

¹⁷⁴ See TEX. GOV’T CODE § 551.127(d)–(e), *as amended* by H.B. 2414, § 2(e) and S.B. 984, § 1(e).

¹⁷⁵ *Id.* § 551.127(k).

¹⁷⁶ Tex. Att’y Gen. Op. No. GA-1079 (2014).

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meeting outside of its territory.¹⁷⁷ Instead, as prior opinions explained, the Act’s requirement that a meeting be open to the public means that the meeting location must be one that is physically accessible to the public.¹⁷⁸ The question of whether a location is accessible often depends on the facts of a given situation. Given the absence of particular facts about the meeting of the board, the opinion stated that it could not conclude as a matter of law that the Act would permit an in-person meeting conducted outside the charter school’s geographic area.¹⁷⁹

Opinion GA-1079 further reconciles the difference in applicability between Senate Bill 984 and House Bill 2414 by determining that, even though they are treated separately in Senate Bill 984, statewide governmental bodies and governmental bodies that extend into three or more counties are still governmental bodies. As such, they are also within the scope of House Bill 2414.¹⁸⁰ Thus, the opinion concludes that a statewide governmental body or a governmental body that extends into three or more counties is also limited by this territorial restriction.¹⁸¹ But GA-1079 also notes that so long as the requirements about the meeting’s physical location and the audio/video requirements are met, members may participate in videoconference call meetings from remote locations outside of their geographic territory, including a location outside of the state.¹⁸²

The 85th Legislature amended section 551.127 to provide that a member of a governmental body is “absent from any portion of the meeting during which audio or video communication with the member is lost or disconnected,” but provided no further clarification of subsection 551.127(c).¹⁸³

No judicial opinion addresses other questions raised by House Bill 2414 and Senate Bill 984. Until such time as the Legislature addresses these questions, any governmental body seeking to hold a meeting by a videoconference call should first consult its legal counsel.

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.¹⁸⁴ 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.¹⁸⁵

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

¹⁷⁷ *Id.* at 1.

¹⁷⁸ *Id.* at 1–2.

¹⁷⁹ *Id.* at 2.

¹⁸⁰ *Id.* at 3.

¹⁸¹ *Id.*

¹⁸² *Id.* at 4.

¹⁸³ Act of May 24, 2017, 85th Leg., R.S., H.B. 3047 (to be codified at TEX. GOV’T CODE § 551.127(a-3)).

¹⁸⁴ TEX. GOV’T CODE § 551.128(b).

¹⁸⁵ *Id.* § 551.128(b-1).

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later than seven days after the date of the meeting.¹⁸⁶ 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.”¹⁸⁷ 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.”¹⁸⁸ 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.”¹⁸⁹ 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.¹⁹⁰

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 551.128.¹⁹¹ An Internet broadcast does not substitute for conducting an in-person meeting but provides an additional way of disseminating the meeting.

¹⁸⁶ *Id.* § 551.128(b-1)(1), (b-4)(1).

¹⁸⁷ *Id.* § 551.128(b-4)(2).

¹⁸⁸ *See id.* § 551.128(b-1)(B).

¹⁸⁹ *See id.* § 551.128(b-2).

¹⁹⁰ *See* TEX. TRANSP. CODE § 472.036.

¹⁹¹ *See* TEX. GOV'T CODE §§ 551.1281–.1282.

*Notice Requirements***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.¹⁹²

A governmental body must give the public advance notice of the subjects it will consider in an open meeting or a closed executive session.¹⁹³ The Act does not require the notice of a closed meeting to cite the section or subsection numbers of provisions authorizing the closed meeting.¹⁹⁴ 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,¹⁹⁵ 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.¹⁹⁶

Governmental actions taken in violation of the notice requirements of the Act are voidable.¹⁹⁷ 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.¹⁹⁸ (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*,¹⁹⁹ 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:

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.²⁰⁰

¹⁹² *Id.* § 551.041.

¹⁹³ *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.).

¹⁹⁴ *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.

¹⁹⁵ Tex. Att'y Gen. Op. No. JC-0057 (1999) at 5; Tex. Att'y Gen. LO-90-27, at 1.

¹⁹⁶ Tex. Att'y Gen. Op. No. JC-0057 (1999) at 5.

¹⁹⁷ TEX. GOV'T CODE § 551.141.

¹⁹⁸ *Point Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176, 182–83 (Tex. App.—Corpus Christi 1990, writ denied).

¹⁹⁹ *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762 (Tex. 1991).

²⁰⁰ *Id.* at 764.

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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.²⁰¹ 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.”²⁰² Its purpose was to provide public access to and increase public knowledge of the governmental decision-making process.²⁰³

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.²⁰⁴

In *City of San Antonio v. Fourth Court of Appeals*, the Texas Supreme Court reviewed its earlier decisions on notice.²⁰⁵ In *Texas Turnpike Authority v. City of Fort Worth*,²⁰⁶ 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].”²⁰⁷ 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.²⁰⁸

²⁰¹ *Id.*

²⁰² *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).

²⁰³ *Fourth Court of Appeals*, 820 S.W.2d at 765.

²⁰⁴ *Id.* at 765–66.

²⁰⁵ *Id.* at 765.

²⁰⁶ *Tex. Tpk. Auth. v. City of Fort Worth*, 554 S.W.2d 675 (Tex. 1977).

²⁰⁷ *Id.* at 676.

²⁰⁸ *Id.*; see also *Charlie Thomas Ford, Inc., v. A.C. Collins Ford, Inc.*, 912 S.W.2d 271, 274 (Tex. App.—Austin 1995, writ dismissed) (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) (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”). 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

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In *Lower Colorado River Authority v. City of San Marcos*,²⁰⁹ 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.”²¹⁰ “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.’”²¹¹

The Texas Supreme Court noted that in *Cox Enterprises, Inc. v. Board of Trustees*²¹² “we finally held a notice inadequate.”²¹³ 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.”²¹⁴ 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.²¹⁵

“If the facts as to the content of a notice are undisputed, the adequacy of the notice is a question of law.”²¹⁶ 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.²¹⁷ Consequently, counsel for the governing body should be consulted if any doubt exists concerning the specificity of notice required for a particular matter.

development agreements and recognizing that a notice listing all possible consequences could overwhelm, rather than inform, the reader).

²⁰⁹ *Lower Colorado River Auth. v. City of San Marcos*, 523 S.W.2d 641 (Tex. 1975).

²¹⁰ *Id.* at 646.

²¹¹ *Fourth Court of Appeals*, 820 S.W.2d at 765 (quoting *Lower Colorado River Auth.*, 523 S.W.2d at 646).

²¹² *Cox Enters. Inc. v. Bd. of Trs.*, 706 S.W.2d 956 (Tex. 1986).

²¹³ *Fourth Court of Appeals*, 820 S.W.2d at 765 (describing its opinion in *Cox Enterprises*).

²¹⁴ *Cox Enters. Inc.*, 706 S.W.2d at 959.

²¹⁵ *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); Tex. Att’y Gen. Op. No. H-1045 (1977) at 5 (holding “discussion of personnel changes” insufficient to describe selection of university system chancellor or university president).

²¹⁶ *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).

²¹⁷ *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).

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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.²¹⁸ 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.²¹⁹ “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.²²⁰ When a governmental body is responsible for a presentation, it can easily give notice of its subject matter, but it usually cannot predict the subject matter of public comment sessions.²²¹ 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.²²² The term “presentation” was vague; moreover, it was noticed for the “Proclamations & Presentations” portion of the meeting, which otherwise consisted of formalities.²²³

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.²²⁴ 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;

²¹⁸ Tex. Att’y Gen. Op. No. H-662 (1975) at 3.

²¹⁹ 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).

²²⁰ Tex. Att’y Gen. Op. No. JC-0169 (2000) at 4.

²²¹ *Id.*

²²² *Hays Cty. Water Planning P’ship v. Hays Cty.*, 41 S.W.3d 174, 180 (Tex. App.—Austin 2001, pet. denied).

²²³ *Id.* at 180 (citing Tex. Att’y Gen. Op. No. JC-0169 (2000)).

²²⁴ TEX. GOV’T CODE § 551.0415(a).

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- (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.²²⁵

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 551.044–551.046.²²⁶

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.²²⁷

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

²²⁵ *Id.* § 551.0415(b).

²²⁶ *Id.* § 551.043(a).

²²⁷ *Id.* § 551.043(b).

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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.²²⁸

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.²²⁹

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 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*."²³⁰

The Texas Supreme Court had previously addressed this matter in *City of San Antonio v. Fourth Court of Appeals*.²³¹ 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 551.050.²³²

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.²³³ 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.²³⁴ Legislative committees, however, post notices "as

²²⁸ *Id.* § 551.044.

²²⁹ *Id.* § 551.046.

²³⁰ *Id.* § 551.043(b)(3) (emphasis added).

²³¹ *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762 (Tex. 1991).

²³² *Id.* at 768.

²³³ Tex. Att'y Gen. Op. No. JC-0308 (2000) at 2.

²³⁴ *Id.* at 2; *see also* Tex. Att'y Gen. Op. No. JC-0248 (2000) at 2.

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provided by the rules of the house of representatives or of the senate,”²³⁵ and these generally require shorter time periods than the seven-day notice required for state agencies.²³⁶ 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.²³⁷

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. 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.²³⁸
- (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.

²³⁵ TEX. GOV’T CODE § 551.046.

²³⁶ Tex. Att’y Gen. Op. No. JC-0308 (2000) at 2.

²³⁷ TEX. GOV’T CODE § 551.0035.

²³⁸ Notices of open meetings filed in the office of the secretary of state as provided by law are published in the Texas Register. *Id.* § 2002.011(3); *see* 1 TEX. ADMIN. CODE § 91.21 (Tex. Sec’y of State, How to File an Open Meeting Notice).

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§ 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.
- (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

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- (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.²³⁹ In *Sierra Club v. Austin Transportation Study Policy Advisory Committee*, the

²³⁹ TEX. GOV'T CODE § 551.141; see *Smith Cty. v. Thornton*, 726 S.W.2d 2, 3 (Tex. 1986).

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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 551.053.²⁴⁰ 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.²⁴¹

§ 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 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; and
- (7) a joint board created under Section 22.074, Transportation Code.²⁴²

If a covered municipality’s population is 48,000 or more and a county’s population is 65,000 or more, it must also post the agenda for the meeting on its website.²⁴³ 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.²⁴⁴

²⁴⁰ *Sierra Club v. Austin Transp. Policy Advisory Comm.*, 746 S.W.2d 298, 301 (Tex. App.—Austin 1988, writ denied).

²⁴¹ *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).

²⁴² TEX. GOV’T CODE § 551.056(b).

²⁴³ *See id.* § 551.056(c)(1)–(2); *see also id.* § 551.056(c)(3)–(6) (providing that certain other covered entities must post agenda on Internet).

²⁴⁴ *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

*Notice Requirements***F. Internet Posting of Meeting Materials**

In 2013, the 83rd Legislature added special posting provisions pertaining to general academic teaching institutions and certain junior college districts. 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.²⁴⁵ This posting requirement excludes any written materials “that the general counsel or other appropriate attorney” for the particular governmental body certifies are confidential.²⁴⁶

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 or the supplemental notice of a subject added as an item to the agenda for a meeting for which notice has been posted in accordance with this subchapter is sufficient if it is posted for at least two hours before the meeting is convened.
- (b) An emergency or urgent public necessity exists only if immediate action is required of a governmental body because of:
 - (1) an imminent threat to public health and safety; or
 - (2) a reasonably unforeseeable situation.
- (c) The governmental body shall clearly identify the emergency or urgent public necessity in the notice or supplemental notice under this section.
- (d) A person who is designated or authorized to post notice of a meeting by a governmental body under this subchapter shall post the notice taking at face value the governmental body’s stated reason for the emergency or urgent public necessity.
- (e) For purposes of Subsection (b)(2), the sudden relocation of a large number of residents from the area of a declared disaster to a governmental body’s jurisdiction is considered a reasonably unforeseeable situation for a reasonable period immediately following the relocation. Notice of an emergency meeting or supplemental notice of an emergency item added to the agenda of a meeting

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”).

²⁴⁵ TEX. GOV’T CODE §§ 551.1281–.1282.

²⁴⁶ *Id.*

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to address a situation described by this subsection must be given to members of the news media as provided by Section 551.047 not later than one hour before the meeting.²⁴⁷

The public notice of an emergency meeting must be posted at least two hours 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 notice of the subject added as an item to the agenda at least two hours before the meeting begins.²⁴⁸

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.²⁴⁹ The notice to members of the news media is to be given by telephone, facsimile transmission or electronic mail.²⁵⁰

Because section 551.045 provides for two-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.

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.²⁵¹ The Act defines “emergency” for purposes of emergency meetings and emergency items.²⁵²

A governmental body’s determination that an emergency exists is subject to judicial review.²⁵³ The existence of an emergency depends on the facts in a given case.²⁵⁴

²⁴⁷ *Id.* § 551.045.

²⁴⁸ *Id.* § 551.045(a).

²⁴⁹ *Id.* § 551.047(b).

²⁵⁰ *Id.* § 551.047(c).

²⁵¹ *Id.* § 551.045(c).

²⁵² *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 dismissed) (construing “emergency” consistently with definition later adopted by Legislature).

²⁵³ *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).

²⁵⁴ *Common Cause v. Metro. Transit Auth.*, 666 S.W.2d 610, 613 (Tex. App.—Houston [1st Dist.] 1984, writ refused n.r.e.); *see generally* Tex. Att’y Gen. Op. No. JC-0406 (2001) at 5–6.

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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.²⁵⁵

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.²⁵⁶

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.²⁵⁷

²⁵⁵ See TEX. GOV'T CODE § 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).

²⁵⁶ TEX. GOV'T CODE § 551.0411(c).

²⁵⁷ 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.

*Open Meetings***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.²⁵⁸ This requirement applies even if the governmental body plans to go into an executive session, or closed meeting, immediately after convening.²⁵⁹ The public is entitled to know which members are present for the executive session and whether there is a quorum.²⁶⁰

B. Location of the Meeting

The Act requires a meeting of a governmental body to be held in a location accessible to the public.²⁶¹ 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.²⁶² 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.²⁶³ Nor could an entity subject to the Act meet in an underwriter's office in another state.²⁶⁴ 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.²⁶⁵ The Act does not entitle the public to choose the items to be discussed or to speak about items on the agenda.²⁶⁶ A governmental body may, however, give members of the public an opportunity to speak at a public meeting.²⁶⁷ If it does so, it may set reasonable limits on the number, frequency

²⁵⁸ 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).

²⁵⁹ 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.

²⁶⁰ *Martinez*, 879 S.W.2d at 56; *Cox Enters., Inc.*, 706 S.W.2d at 959.

²⁶¹ Other statutes may specify the location of a governmental body's meeting. *See* 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).

²⁶² 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).

²⁶³ Tex. Att'y Gen. Op. No. JC-0487 (2002) at 7.

²⁶⁴ Tex. Att'y Gen. Op. No. JC-0053 (1999) at 5–6.

²⁶⁵ Tex. Att'y Gen. Op. No. M-220 (1968) at 5.

²⁶⁶ *See Charlestown Homeowners Ass'n, Inc. v. LaCoke*, 507 S.W.2d 876, 883 (Tex. Civ. App.—Dallas 1974, writ ref'd n.r.e.); Tex. Att'y Gen. Op. Nos. JC-0169 (2000) at 1, H-188 (1973) at 2.

²⁶⁷ Tex. Att'y Gen. Op. Nos. JC-0169 (2000) at 1, H-188 (1973) at 2.

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and length of presentations before it, but it may not unfairly discriminate among speakers for or against a particular point of view.²⁶⁸

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.²⁶⁹ A public comment session is a meeting as defined by section 551.001(4)(B) of the Government Code because the members of the governmental body “receive information from . . . or receive questions from [a] third person.”²⁷⁰ Accordingly, the governmental body must give notice of a public comment session.

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.²⁷¹

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:
 - (1) the location of recording equipment; and
 - (2) the manner in which the recording is conducted.

²⁶⁸ Tex. Att’y Gen. Op. LO-96-111, at 1.

²⁶⁹ Tex. Att’y Gen. Op. No. JC-0169 (2000) at 4.

²⁷⁰ TEX. GOV’T CODE § 551.001(4)(B)(iv); *see* Tex. Att’y Gen. Op. No. JC-0169 (2000) at 3.

²⁷¹ TEX. GOV’T CODE § 551.042.

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- (c) A rule adopted under Subsection (b) may not prevent or unreasonably impair a person from exercising a right granted under Subsection (a).²⁷²

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.²⁷³

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.²⁷⁴ Furthermore, a governmental body may not take action by written agreement without a meeting.²⁷⁵

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.²⁷⁶ 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.²⁷⁷ 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.²⁷⁸

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

²⁷² *Id.* § 551.023.

²⁷³ *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.”).

²⁷⁴ Tex. Att’y Gen. Op. No. H-1163 (1978) at 2.

²⁷⁵ *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).

²⁷⁶ *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.)).

²⁷⁷ *See id.* at 758.

²⁷⁸ *See City of San Antonio v. Aguilar*, 670 S.W.2d 681, 685–86 (Tex. App.—San Antonio 1984, writ dism’d); *see also* Tex. Att’y Gen. Op. No. MW-32 (1979) at 1–2 (concluding that procedure whereby 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).

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insurance had independent authority to terminate employees.²⁷⁹ The board's superfluous approval of the firings was irrelevant to their validity.²⁸⁰ 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.²⁸¹

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*,²⁸² 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.²⁸³ 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.²⁸⁴ The court determined that the board of trustees' action violated the Act and held that the order of annexation was ineffective.²⁸⁵ 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.²⁸⁶ In *Board of Trustees v. Cox Enterprises, Inc.*,²⁸⁷ the court of appeals held that a school board violated the statutory predecessor to section 551.102 when it 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

²⁷⁹ *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).

²⁸⁰ *Spiller*, 949 S.W.2d at 551.

²⁸¹ *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).

²⁸² *Toyah Indep. Sch. Dist. v. Pecos-Barstow Indep. Sch. Dist.*, 466 S.W.2d 377 (Tex. Civ. App.—San Antonio 1971, no writ).

²⁸³ *Id.* at 377.

²⁸⁴ *Id.* at 378 n.1.

²⁸⁵ *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).

²⁸⁶ 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).

²⁸⁷ *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).

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individual who won the vote in the executive session.²⁸⁸ 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 551.102.²⁸⁹ 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.”²⁹⁰

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 the names and qualifications of the candidates public. 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.”²⁹¹

²⁸⁸ *Id.* at 90.

²⁸⁹ *Id.*

²⁹⁰ *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).

²⁹¹ *Bd. of Trs.*, 679 S.W.2d at 89–90.

*Closed Meetings***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.²⁹² 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.²⁹³

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.²⁹⁴ 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.²⁹⁵ 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.²⁹⁶

²⁹² TEX. GOV'T CODE §§ 551.071–.090; *see also Cox Enters., Inc. v. Bd. of Trs.*, 706 S.W.2d 956, 958 (Tex. 1986) (noting the narrowly drawn exceptions).

²⁹³ TEX. GOV'T CODE § 551.101.

²⁹⁴ *Martinez v. State*, 879 S.W.2d 54, 56 n.5 (Tex. Crim. App. 1994).

²⁹⁵ *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).

²⁹⁶ *Lone Star Greyhound Park, Inc.*, 863 S.W.2d at 748.

*Closed Meetings***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.²⁹⁷

This provision implements the attorney-client privilege, an attorney's duty to preserve the confidences of a client.²⁹⁸ 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,²⁹⁹ 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.³⁰⁰ 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.³⁰¹ A governmental body may not invoke section 551.071 to convene a closed session and then discuss matters outside of that provision.³⁰² "General discussion of policy, unrelated to legal matters is not permitted under the language of [this exception] merely

²⁹⁷ TEX. GOV'T CODE § 551.071.

²⁹⁸ *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.

²⁹⁹ TEX. GOV'T CODE § 551.071(1); *Lone Star Greyhound Park Inc.*, 863 S.W.2d at 748.

³⁰⁰ TEX. GOV'T CODE § 551.071(2).

³⁰¹ *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.

³⁰² *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, *5–6 (Tex. App.—Houston [14th Dist.] March 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").

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because an attorney is present.”³⁰³ 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.³⁰⁴

The attorney-client privilege can be waived by communicating privileged matters in the presence of persons who are not within the privilege.³⁰⁵ 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.”³⁰⁶ 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.³⁰⁷

This exception is an affirmative defense on which the governmental body bears the burden of proof.³⁰⁸

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.³⁰⁹

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.³¹⁰ 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.³¹¹ It does not allow a

³⁰³ 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.

³⁰⁴ *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).

³⁰⁵ *See* Tex. Att’y Gen. Op. Nos. JC-0506 (2002) at 6, JM-100 (1983) at 2.

³⁰⁶ 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).

³⁰⁷ *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.

³⁰⁸ *See Killam Ranch Props., Ltd. v. Webb Cty.*, 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.

³⁰⁹ TEX. GOV’T CODE § 551.072.

³¹⁰ Tex. Att’y Gen. Op. No. MW-417 (1981) at 2 (construing statutory predecessor to Government Code section 551.072).

³¹¹ *See City of Laredo v. Escamilla*, 219 S.W.3d 14, 21 (Tex. App.—San Antonio 2006, pet. denied).

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governmental body to “cut a deal in private, devoid of public input or debate.”³¹² 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.³¹³

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

³¹² *Finlan*, 888 F. Supp. at 787.

³¹³ *Save Our Springs All., Inc. v. Austin Indep. Sch. Dist.*, 973 S.W.2d 378, 382 (Tex. App.—Austin 1998, no pet.).

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- (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.³¹⁴

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.³¹⁵

Before the Act was codified as Government Code chapter 551 in 1993, a single provision encompassed the present sections 551.073 and 551.072.³¹⁶ The authorities construing the statutory predecessor to section 551.072 may be relevant to section 551.073.³¹⁷

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.³¹⁸

This section permits executive session deliberations concerning an individual officer or employee. Deliberations about a *class* of employees, however, must be held in an open session.³¹⁹ For example, when a governmental body discusses salary scales without referring to a specific

³¹⁴ TEX. GOV'T CODE § 551.0726.

³¹⁵ *Id.* § 551.073.

³¹⁶ 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).

³¹⁷ See, e.g., *Dallas Cty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 282–83 (Tex. App.—Dallas 1991, writ denied).

³¹⁸ TEX. GOV'T CODE § 551.074.

³¹⁹ *Gardner*, 21 S.W.3d at 777; Tex. Att'y Gen. Op. No. H-496 (1975) (construing predecessor to Government Code section 551.074).

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employee, it must meet in open session.³²⁰ 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.³²¹

Section 551.074 authorizes the public officer or employee under consideration to request a public hearing.³²² In *Bowen v. Calallen Independent School District*,³²³ 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.³²⁴ Similarly, in *James v. Hitchcock Independent School District*,³²⁵ 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."³²⁶ However, silence may not be deemed a waiver if the employee has no opportunity to object.³²⁷ When a board heard the employee's complain, 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.³²⁸

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."³²⁹ However, this provision does not apply if the person who is the subject of the deliberation requests a public hearing.³³⁰

³²⁰ See Tex. Att'y Gen. Op. No. H-496 (1975).

³²¹ *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.

³²² TEX. GOV'T CODE § 551.074(b); see *City of Dallas*, 737 S.W.2d at 848; *Corpus Christi Classroom Teachers Ass'n v. Corpus Christi Indep. Sch. Dist.*, 535 S.W.2d 429, 430 (Tex. Civ. App.—Corpus Christi 1976, no writ).

³²³ *Bowen v. Calallen Indep. Sch. Dist.*, 603 S.W.2d 229 (Tex. Civ. App.—Corpus Christi 1980, writ ref'd n.r.e.).

³²⁴ *Id.* at 236; accord *Thompson v. City of Austin*, 979 S.W.2d 676, 685 (Tex. App.—Austin 1998, no pet.).

³²⁵ *James v. Hitchcock Indep. Sch. Dist.*, 742 S.W.2d 701 (Tex. App.—Houston [1st Dist.] 1987, writ denied).

³²⁶ *Id.* at 707 (citing *Bowen*, 603 S.W.2d at 236).

³²⁷ *Gardner*, 21 S.W.3d at 775.

³²⁸ *Id.*

³²⁹ TEX. GOV'T CODE § 551.0745.

³³⁰ See *id.*

*Closed Meetings***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.³³¹

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.³³²

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.³³³

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.³³⁴ 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.³³⁵

³³¹ *Id.* § 551.075.

³³² *Id.* § 551.076; *see* Tex. Att'y Gen. LO-93-105, at 3 (indicating a belief that "the applicability of 551.076 rests upon the definition of 'security personnel'").

³³³ TEX. GOV'T CODE § 551.077.

³³⁴ *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).

³³⁵ TEX. GOV'T CODE § 551.0785.

*Closed Meetings***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.

*Closed Meetings***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.³³⁶

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.³³⁷

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

³³⁶ *Id.* § 551.082.

³³⁷ *United Indep. Sch. Dist. v. Gonzalez*, 911 S.W.2d 118, 127 (Tex. App.—San Antonio 1995, writ denied).

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or personally identifiable information.³³⁸ 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.³³⁹

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,³⁴⁰ 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,³⁴¹ that is subject to this chapter is not required to conduct an open meeting to deliberate information described by Subsection (a).³⁴²

³³⁸ 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).

³³⁹ *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).*

³⁴⁰ 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.

³⁴¹ This provision authorizes certain hospital districts to establish HMOs.

³⁴² TEX. GOV’T CODE § 551.085.

*Closed Meetings***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.³⁴³ Anyone wishing to know when and how it applies should read it in its entirety.³⁴⁴ 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.³⁴⁵ 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.”³⁴⁶ The definition of “competitive matter” further provides that the term is reasonably related to several categories of information specifically defined³⁴⁷ and does not include other specified categories of information.³⁴⁸ “Public power utility” is defined as “an entity providing electric or gas utility services” that is subject to the provisions of the Act.³⁴⁹ 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.³⁵⁰

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).³⁵¹

³⁴³ See Act of May 27, 1999, 76th Leg., R.S., ch. 405, 1999 Tex. Gen. Laws 2543, 2543–2625.

³⁴⁴ TEX. GOV’T CODE § 551.086.

³⁴⁵ *Id.* § 551.086(c).

³⁴⁶ *Id.* § 552.133(a-1).

³⁴⁷ *Id.* § 552.133(a-1)(1)(A)–(F).

³⁴⁸ *Id.* § 552.133(a-1)(2)(A)–(O).

³⁴⁹ *Id.* § 551.086(b)(1).

³⁵⁰ *Id.* § 551.086(d).

³⁵¹ *Id.* § 551.087.

*Closed Meetings***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.³⁵²

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.³⁵³

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.³⁵⁴

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.³⁵⁵

³⁵² *Id.* § 551.088.

³⁵³ *See* Tex. Att’y Gen. Op. LO-96-058, at 2.

³⁵⁴ TEX. GOV’T CODE § 551.089. Chapter 2059 of the Government Code relates to the “Texas Computer Network Security System.” *Id.* §§ 2059.001–.153.

³⁵⁵ *Id.* § 551.090; *see also* TEX. OCC. CODE §§ 901.501–.511 (subchapter K entitled “Prohibited Practices and Disciplinary Procedures”).

*Closed Meetings***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.³⁵⁶ 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.³⁵⁷

Section 418.183 states that “[t]his section applies only to information that is confidential under” specific sections of chapter 418.³⁵⁸

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.”³⁵⁹ 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.³⁶⁰

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 session applied to the deliberations.³⁶¹ 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.³⁶²

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

³⁵⁶ 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).

³⁵⁷ TEX. GOV’T CODE § 418.183(f).

³⁵⁸ *Id.* § 418.183(a).

³⁵⁹ 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).

³⁶⁰ TEX. TAX CODE § 41.66(d-1).

³⁶¹ 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).

³⁶² Tex. Att’y Gen. Op. No. H-484 (1974) at 2.

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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.³⁶³ 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.³⁶⁴ 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,³⁶⁵ 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.³⁶⁶ Thus, a school board could require its superintendent of schools to attend all executive sessions of the board without violating the Act.³⁶⁷ 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.³⁶⁸

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; and (3) the county auditor's presence will not waive the attorney-client privilege.³⁶⁹ 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.³⁷⁰

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. For example, 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.³⁷¹ Nor may a governmental body admit the opposing party in litigation to an executive

³⁶³ See Tex. Att'y Gen. Op. No. MW-578 (1982) at 4.

³⁶⁴ *Id.*

³⁶⁵ 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.

³⁶⁶ 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).

³⁶⁷ Tex. Att'y Gen. Op. No. JC-0375 (2001) at 2.

³⁶⁸ *Id.*

³⁶⁹ 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).

³⁷⁰ *See* Tex. Att'y Gen. Op. No. JC-0506 (2002) at 6.

³⁷¹ *Finlan v. City of Dallas*, 888 F. Supp. 779, 787 (N.D. Tex. 1995).

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session under section 551.071.³⁷² 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.³⁷³

³⁷² 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).

³⁷³ See Tex. Att’y Gen. Op. No. GA-0511 (2007) at 6.

*Records of Meetings***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.³⁷⁴

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.³⁷⁵

If minutes are kept instead of a recording, the minutes should record every action taken by the governmental body.³⁷⁶ If open sessions of a commissioners court meeting are recorded, the recordings are available to the public under the Public Information Act.³⁷⁷ (For a discussion of record retention laws, refer to Part XII.F of this *Handbook*).

B. 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.³⁷⁸ If a certified agenda

³⁷⁴ 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).

³⁷⁵ 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).

³⁷⁶ *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”).

³⁷⁷ 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).

³⁷⁸ TEX. GOV'T CODE § 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

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is kept, the presiding officer must certify that the agenda is a true and correct record of the executive session.³⁷⁹ 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.”³⁸⁰ 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.³⁸¹ 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.³⁸² 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.³⁸³

The certified agenda or recording of an executive session must be kept a minimum of two years after the date of the session.³⁸⁴ If during that time a lawsuit that concerns the meeting is brought, the agenda or recording of that meeting must be kept pending resolution of the lawsuit.³⁸⁵ 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.³⁸⁶

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.³⁸⁷ 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

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.”).

³⁷⁹ TEX. GOV’T CODE § 551.103(b).

³⁸⁰ *Id.* § 551.103(c).

³⁸¹ Tex. Att’y Gen. Op. No. JM-840 (1988) at 4–7.

³⁸² *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).

³⁸³ TEX. GOV’T CODE § 551.145.

³⁸⁴ *Id.* § 551.104(a).

³⁸⁵ *Id.*

³⁸⁶ Tex. Att’y Gen. Op. No. GA-0277 (2004) at 3–4.

³⁸⁷ TEX. GOV’T CODE § 551.146.

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- (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).³⁸⁸

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.³⁸⁹ The Office of the Attorney General has recognized that it lacks authority under the Public Information Act³⁹⁰ to review certified agendas or recordings of closed sessions for compliance with the Open Meetings Act.³⁹¹ However, the confidentiality provision may be preempted by federal law.³⁹² When the Equal Employment Opportunity Commission served a Texas city with an administrative subpoena for tapes of closed city council meetings, the Open Meetings Act did not excuse compliance.³⁹³

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.³⁹⁴ 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.³⁹⁵

³⁸⁸ *Id.* § 551.104.

³⁸⁹ Tex. Att’y Gen. Op. No. JM-995 (1988) at 5.

³⁹⁰ TEX. GOV’T CODE ch. 552.

³⁹¹ See Tex. Att’y Gen. ORD-495 (1988) at 2, 4.

³⁹² *Equal Emp’t Opportunity Comm’n v. City of Orange, Tex.*, 905 F. Supp. 381, 382 (E.D. Tex. 1995).

³⁹³ *Id.*

³⁹⁴ 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).

³⁹⁵ Tex. Att’y Gen. LO-98-033, at 2–3.

*Penalties and Remedies***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.³⁹⁶ The Act does not authorize the attorney general to enforce its provisions. 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.³⁹⁷

B. Mandamus, Injunction, or Declaratory Judgment

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.³⁹⁸

Texas courts examining this provision have said that “[t]he Open Meetings Act expressly waives sovereign immunity for violations of the [A]ct.”³⁹⁹ The four-year limitations period in section 16.051 of the Civil Practices and Remedies Code applies to an action under this provision.⁴⁰⁰

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.⁴⁰¹ The Act does not automatically confer jurisdiction on the county court, but where the plaintiff's money demand brings the amount in controversy within the court's monetary limits, the county court has authority to issue injunctive and mandamus relief.⁴⁰² Absent such a pleading, jurisdiction in original mandamus and original injunction proceedings lies in the district court.⁴⁰³

³⁹⁶ See *State v. Williams*, 780 S.W.2d 891, 892–93 (Tex. App.—San Antonio 1989, no writ).

³⁹⁷ See TEX. GOV'T CODE § 402.028(a).

³⁹⁸ *Id.* § 551.142.

³⁹⁹ *Hays Cty. v. Hays Cty. Water Planning 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).

⁴⁰⁰ *Rivera v. City of Laredo*, 948 S.W.2d 787, 793 (Tex. App.—San Antonio 1997, writ denied).

⁴⁰¹ *Boston v. Garrison*, 256 S.W.2d 67, 69 (Tex. 1953).

⁴⁰² *Martin v. Victoria Indep. Sch. Dist.*, 972 S.W.2d 815, 818 (Tex. App.—Corpus Christi 1998, pet. denied).

⁴⁰³ *Id.*

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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.⁴⁰⁴ In keeping with the purpose of the Act, standing under the Act is interpreted broadly.⁴⁰⁵ 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.’”⁴⁰⁶ The phrase “any interested person” includes a government league,⁴⁰⁷ an environmental group,⁴⁰⁸ the president of a local homeowners group,⁴⁰⁹ a city challenging the closure of a hospital by the county hospital district,⁴¹⁰ and a town challenging annexation ordinances.⁴¹¹ 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.⁴¹²

Texas courts have also recognized that an individual authorized to seek a writ of mandamus or an injunction under the Act may also bring a declaratory judgment action pursuant to the Uniform Declaratory Judgments Act, chapter 37 of the Texas Civil Practice and Remedies Code.⁴¹³ In such a proceeding, the court is authorized to “declare rights, status, and other legal relations” of various persons, including public officers, and thus may determine the validity of a governmental body’s actions under the Act.⁴¹⁴

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.⁴¹⁵ This relief, however, is discretionary. The Uniform Declaratory Judgments Act also authorizes a court to award reasonable attorney fees.⁴¹⁶

⁴⁰⁴ TEX. GOV’T CODE § 551.142(a); see *Cameron Cty. Good Gov’t League v. Ramon*, 619 S.W.2d 224, 230–31 (Tex. App.—Beaumont 1981, writ ref’d n.r.e.).

⁴⁰⁵ See *Burks v. Yarbrough*, 157 S.W.3d 876, 880 (Tex. App.—Houston [14th Dist.] 2005, no pet.); *Hays Cty. Water Planning P’ship v. Hays Cty.*, 41 S.W.3d 174, 177 (Tex. App.—Austin 2003, no pet.).

⁴⁰⁶ See *Hays Cty. Planning 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])).

⁴⁰⁷ See *Cameron Cty.*, 619 S.W.2d at 230.

⁴⁰⁸ See *Save Our Springs All., Inc.*, 934 S.W.2d at 162–64.

⁴⁰⁹ *Id.*

⁴¹⁰ *Matagorda Cty. Hosp. Dist. v. City of Palacios*, 47 S.W.3d 96, 102 (Tex. App.—Corpus Christi 2001, no pet.).

⁴¹¹ *City of Port Isabel v. Pinnell*, 161 S.W.3d 233, 241 (Tex. App.—Corpus Christi 2005, no pet.).

⁴¹² *Rivera v. City of Laredo*, 948 S.W.2d 787, 792 (Tex. App.—San Antonio 1997, writ denied).

⁴¹³ *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).

⁴¹⁴ TEX. CIV. PRAC. & REM. CODE § 37.003(a).

⁴¹⁵ TEX. GOV’T CODE § 551.142(b); see *Austin Transp. Study Policy Advisory Comm. v. Sierra Club*, 843 S.W.2d 683, 690 (Tex. App.—Austin 1992, writ denied) (upholding award of attorney fees).

⁴¹⁶ TEX. CIV. PRAC. & REM. CODE § 37.009; *City of Fort Worth*, 746 S.W.2d at 911, 917–19 (affirming trial court’s award in excess of \$40,000 in attorney fees to prevailing plaintiff in action pursuant to Uniform Declaratory Judgments Act).

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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*,⁴¹⁷ 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.⁴¹⁸

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.⁴¹⁹

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.”⁴²⁰ 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 invalidation.⁴²¹ 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.⁴²²

In *Point Isabel Independent School District v. Hinojosa*,⁴²³ 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

⁴¹⁷ *Ferris v. Tex. Bd. of Chiropractic Exam'rs*, 808 S.W.2d 514, 518–19 (Tex. App.—Austin 1991, writ denied).

⁴¹⁸ *Id.* at 519 (awarding executive director attorney fees of \$7,500).

⁴¹⁹ TEX. GOV'T CODE § 551.146(a)(2).

⁴²⁰ *Id.* § 551.141.

⁴²¹ 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. Civ. 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).

⁴²² See *Collin Cty., 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).

⁴²³ *Point Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176 (Tex. App.—Corpus Christi 1990, writ denied).

Penalties and Remedies

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.⁴²⁴ (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.⁴²⁵

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.⁴²⁶ The ratification will be effective only from the date of the meeting at which the valid action is taken.⁴²⁷

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.⁴²⁸ 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.⁴²⁹

Ratification of an action previously taken in violation of the Act must comply with all applicable provisions of the Act.⁴³⁰ 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.⁴³¹ 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

⁴²⁴ *Id.* at 182.

⁴²⁵ *Id.* at 182–83.

⁴²⁶ *Lower Colorado 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 Cty. 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).

⁴²⁷ *River City Cabaret, Ltd.*, 32 S.W.3d at 293.

⁴²⁸ *Ferris*, 808 S.W.2d at 518–19.

⁴²⁹ *Id.*

⁴³⁰ *See id.* at 518 (“A governmental entity may ratify only what it could have lawfully authorized initially.”).

⁴³¹ *Porth v. Morgan*, 622 S.W.2d 470, 473, 475–76 (Tex. App.—Tyler 1981, writ ref’d n.r.e.).

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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:

- (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.⁴³²

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.⁴³³

⁴³² TEX. GOV'T CODE § 551.145.

⁴³³ *Id.* § 551.146.

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In order to find that a person has violated one of these provisions, the person must be determined to have “knowingly.” Section 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 knowledge, with respect to his conduct when he is aware that his conduct is reasonably certain to cause the result.⁴³⁴

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.⁴³⁵ 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.⁴³⁶ He was later charged with violation of section 551.146.⁴³⁷ 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.⁴³⁸

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.⁴³⁹ 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 as follows:

- (a) A member or group of members of a governmental body commits an offense if the member or group of members knowingly conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.
- (b) An offense under Subsection (a) is a misdemeanor punishable by:
 - (1) a fine of not less than \$100 or more than \$500;
 - (2) confinement in the county jail for not less than one month or more than six months; or

⁴³⁴ TEX. PENAL CODE § 6.03(b).

⁴³⁵ *Cooksey v. State*, 377 S.W.3d 901, 905 (Tex. App.—Eastland 2012, no pet.).

⁴³⁶ *Id.* at 903–04.

⁴³⁷ *Id.* at 904.

⁴³⁸ *Id.* at 907.

⁴³⁹ Tex. Att’y Gen. Op. No. JM-1071 (1989) at 2–3.

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- (3) both the fine and confinement.⁴⁴⁰

Section 551.144 provides as follows:

- (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.⁴⁴¹
- (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.⁴⁴²
- (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.⁴⁴³

In 1998, the Texas Court of Criminal Appeals determined in *Tovar v. State*⁴⁴⁴ 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).⁴⁴⁵

⁴⁴⁰ TEX. GOV'T CODE § 551.143; see Tex. Att'y Gen. Op. No. GA-0326 (2005) at 7 (concluding that Government Code section 551.143 is not facially void for vagueness).

⁴⁴¹ 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*, 133 S.Ct. 1634 (2013) (upholding constitutionality of section 551.144).

⁴⁴² 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).

⁴⁴³ TEX. GOV'T CODE § 551.144.

⁴⁴⁴ *Tovar v. State*, 978 S.W.2d 584 (Tex. Crim. App. 1998).

⁴⁴⁵ TEX. GOV'T CODE § 551.144(c).

*Open Meetings Act and Other Statutes***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.⁴⁴⁶

In *Shackelford v. City of Abilene*,⁴⁴⁷ 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.⁴⁴⁸

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 meeting⁴⁴⁹ but the procedures for agenda preparation must be consistent with the openness requirements of the Act.⁴⁵⁰

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.⁴⁵¹ 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.⁴⁵² Certain governmental actions may be subject to statutory notice provisions⁴⁵³ 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

⁴⁴⁶ *Id.* § 551.004.

⁴⁴⁷ *Shackelford v. City of Abilene*, 585 S.W.2d 665, 667 (Tex. 1979).

⁴⁴⁸ *Id.* at 667 (emphasis omitted).

⁴⁴⁹ 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.

⁴⁵⁰ Tex. Att'y Gen. Op. Nos. DM-473 (1998) at 3, DM-228 (1993) at 3.

⁴⁵¹ 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).

⁴⁵² See TEX. LOC. GOV'T CODE § 211.006.

⁴⁵³ See *id.* § 152.013(b); see also TEX. ELEC. CODE §§ 31.033(d), .155(d).

Open Meetings Act and Other Statutes

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.⁴⁵⁴ The state agencies subject to the APA are as a rule also subject to the Act.⁴⁵⁵ The decision-making process under the APA is not excepted from the requirements of the Act.⁴⁵⁶

However, this office has concluded that the APA creates an exception to the requirements of the Act with regard to contested cases.⁴⁵⁷ 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.⁴⁵⁸ 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.⁴⁵⁹

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.⁴⁶⁰ 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.”⁴⁶¹ 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.⁴⁶²

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.⁴⁶³ 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.⁴⁶⁴ 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

⁴⁵⁴ TEX. GOV’T CODE § 2001.001(1); *see also id.* § 2001.003(1), (6).

⁴⁵⁵ *See id.* § 2001.003(7) (defining “state agency”).

⁴⁵⁶ Tex. Att’y Gen. Op. No. H-1269 (1978) at 1 (considering statutory predecessor to APA).

⁴⁵⁷ Tex. Att’y Gen. Op. No. JM-645 (1987) at 5–6.

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.* at 4–5; *see* TEX. GOV’T CODE § 2001.083.

⁴⁶⁰ *Acker v. Tex. Water Comm’n*, 790 S.W.2d 299, 301 (Tex. 1990).

⁴⁶¹ TEX. GOV’T CODE § 2001.061.

⁴⁶² *Acker*, 790 S.W.2d at 301.

⁴⁶³ 42 U.S.C.A. §§ 12131–12165.

⁴⁶⁴ *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).

Open Meetings Act and Other Statutes

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.⁴⁶⁵

A governmental body may not exclude a disabled individual from participation in the activities of the governmental body because the facilities are physically inaccessible.⁴⁶⁶ The room in which a public meeting is held must be physically accessible to a disabled individual.⁴⁶⁷ A governmental body must also ensure that communications with disabled individuals are as effective as communications with others.⁴⁶⁸ 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.⁴⁶⁹

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: 7-1-1.⁴⁷⁰

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.⁴⁷¹ His court challenge included a Whistleblower claim based on his report to the city council of the violation of the Open Meetings Act.⁴⁷² 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.⁴⁷³

⁴⁶⁵ 42 U.S.C.A. § 12102(2); 28 C.F.R. § 35.104.

⁴⁶⁶ See 28 C.F.R. § 35.149–150.

⁴⁶⁷ See *Dees v. Austin Travis Cty. Mental Health & Mental Retardation*, 860 F. Supp. 1186, 1190 (W.D. Tex. 1994); see generally *Tyler*, 849 F. Supp. at 1442.

⁴⁶⁸ 28 C.F.R. § 35.160.

⁴⁶⁹ *Id.* § 35.160(b)(1).

⁴⁷⁰ Available at <http://www.sos.state.tx.us/open/access.shtml>.

⁴⁷¹ *City of Elsa v. Gonzalez*, 325 S.W.3d 622 (Tex. 2010).

⁴⁷² See *id.* at 626–28.

⁴⁷³ See *id.* at 628.

*Open Meetings Act and Other Statutes***E. The Open Meetings Act Distinguished from the Public Information Act**

Although the Open Meetings Act and the Public Information Act⁴⁷⁴ both serve the purpose of making government accessible to the people, they work differently to accomplish this goal.⁴⁷⁵ 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,⁴⁷⁶ while the Open Meetings Act does not.⁴⁷⁷ Each statute contains a different set of exceptions.⁴⁷⁸ 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.⁴⁷⁹ 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.⁴⁸⁰ 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.⁴⁸¹

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.⁴⁸² 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.⁴⁸³ 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.⁴⁸⁴

⁴⁷⁴ TEX. GOV'T CODE ch. 552.

⁴⁷⁵ 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).

⁴⁷⁶ TEX. GOV'T CODE § 552.003(1)(A).

⁴⁷⁷ See Tex. Att'y Gen. LO-98-040, at 2.

⁴⁷⁸ See Tex. Att'y Gen. ORD-491 (1988) at 4.

⁴⁷⁹ See TEX. GOV'T CODE §§ 552.301–.309, .321–.327.

⁴⁸⁰ *Id.* §§ 402.041–.045.

⁴⁸¹ 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).

⁴⁸² See *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 366–67 (Tex. 2000); 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).

⁴⁸³ 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).

⁴⁸⁴ 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).

*Open Meetings Act and Other Statutes***F. Records Retention**

The Open Meetings Act requires a governmental body to prepare and keep minutes or make a recording of each open meeting.⁴⁸⁵ 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.⁴⁸⁶ 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.⁴⁸⁷

Instead, other provisions require a local governmental body or state agency to retain and manage its governmental records.⁴⁸⁸ 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").⁴⁸⁹ 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.⁴⁹⁰

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."⁴⁹¹ 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

⁴⁸⁵ TEX. GOV'T CODE § 551.021(a).

⁴⁸⁶ *Id.* §§ 551.103, .104.

⁴⁸⁷ *See id.* §§ 552.001–.353 ("Public Information Act"), .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 governmental records").

⁴⁸⁸ *See* TEX. LOC. GOV'T CODE §§ 201.001–205.010 (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").

⁴⁸⁹ *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), 441.185(b) (authoring the TSLAC to prescribe a minimum period for any state record).

⁴⁹⁰ TEX. LOC. GOV'T CODE § 201.003(8).

⁴⁹¹ TEX. GOV'T CODE § 441.180(11).

Open Meetings Act and Other Statutes

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.⁴⁹²

⁴⁹² 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

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 exchange during a meeting between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body or any public business.
- (3) “Governmental body” means:
 - (A) a board, commission, department, committee, or agency within the executive or legislative branch of state government that is directed by one or more elected or appointed members;
 - (B) a county commissioners court in the state;
 - (C) a municipal governing body in the state;
 - (D) a deliberative body that has rulemaking 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; and
 - (L) a joint board created under Section 22.074, Transportation 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

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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

Appendix A: Text of the Open Meetings Act

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.

Appendix A: Text of the Open Meetings Act

§ 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 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;

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- (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

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- (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.

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.

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- (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.

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§ 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.

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§ 551.043. Time and Accessibility of Notice; General Rule

- (a) The notice of a meeting of a governmental body must be posted in a place readily accessible to the general public at all times for at least 72 hours before the scheduled time of the meeting, except as provided by Sections 551.044–551.046.
- (b) If this chapter specifically requires or allows a governmental body to post notice of a meeting on the Internet:
 - (1) the governmental body satisfies the requirement that the notice must be posted in a place readily accessible to the general public at all times by making a good-faith attempt to continuously post the notice on the Internet during the prescribed period;
 - (2) the governmental body must still comply with any duty imposed by this chapter to physically post the notice at a particular location; and
 - (3) if the governmental body makes a good-faith attempt to continuously post the notice on the Internet during the prescribed period, the notice physically posted at the location prescribed by this chapter must be readily accessible to the general public during normal business hours.

§ 551.044. Exception to General Rule: Governmental Body With Statewide Jurisdiction

- (a) The secretary of state must post notice on the Internet of a meeting of a state board, commission, department, or officer having statewide jurisdiction for at least seven days before the day of the meeting. The secretary of state shall provide during regular office hours a computer terminal at a place convenient to the public in the office of the secretary of state that members of the public may use to view notices of meetings posted by the secretary of state.
- (b) Subsection (a) does not apply to:
 - (1) the Texas Department of Insurance, as regards proceedings and activities under Title 5, Labor Code, of the department, the commissioner of insurance, or the commissioner of workers' compensation; or
 - (2) the governing board of an institution of higher education.

§ 551.045. Exception to General Rule: Notice of Emergency Meeting or Emergency Addition to Agenda

- (a) In an emergency or when there is an urgent public necessity, the notice of a meeting or the supplemental notice of a subject added as an item to the agenda for a meeting for which notice has been posted in accordance with this subchapter is sufficient if it is posted for at least two hours before the meeting is convened.

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- (b) An emergency or an urgent public necessity exists only if immediate action is required of a governmental body because of:
 - (1) an imminent threat to public health and safety; or
 - (2) a reasonably unforeseeable situation.
- (c) The governmental body shall clearly identify the emergency or urgent public necessity in the notice or supplemental notice under this section.
- (d) A person who is designated or authorized to post notice of a meeting by a governmental body under this subchapter shall post the notice taking at face value the governmental body's stated reason for the emergency or urgent public necessity.
- (e) For purposes of Subsection (b)(2), the sudden relocation of a large number of residents from the area of a declared disaster to a governmental body's jurisdiction is considered a reasonably unforeseeable situation for a reasonable period immediately following the relocation. Notice of an emergency meeting or supplemental notice of an emergency item added to the agenda of a meeting to address a situation described by this subsection must be given to members of the news media as provided by Section 551.047 not later than one hour before the meeting.

§ 551.046. Exception to General Rule: Committee of Legislature

The notice of a legislative committee meeting shall be as provided by the rules of the house of representatives or of the senate.

§ 551.047. Special Notice to News Media of Emergency Meeting or Emergency Addition to Agenda

- (a) The presiding officer of a governmental body, or the member of a governmental body who calls an emergency meeting of the governmental body or adds an emergency item to the agenda of a meeting of the governmental body, shall notify the news media of the emergency meeting or emergency item as required by this section.
- (b) The presiding officer or member is required to notify only those members of the news media that have previously;
 - (1) filed at the headquarters of the governmental body a request containing all pertinent information for the special notice; and
 - (2) agreed to reimburse the governmental body for the cost of providing the special notice.
- (c) The presiding officer or member shall give the notice by telephone, facsimile transmission, or electronic mail.

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§ 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.

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- (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 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;

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- (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 is required to be posted by this subchapter, the following governmental bodies and economic development corporations must also concurrently post notice of a meeting on the Internet website of the governmental body or economic development corporation:
 - (1) a municipality;
 - (2) a county;
 - (3) a school district;
 - (4) the governing body of a junior college or junior college district, including a college or district that has changed its name in accordance with Chapter 130, Education Code;
 - (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; and
 - (7) a joint board created under Section 22.074, Transportation Code.
- (c) The following governmental bodies and economic development corporations must also concurrently post the agenda for the meeting on the Internet website of the governmental body or economic development corporation.
 - (1) a municipality with a population of 48,000 or more;
 - (2) a county with a population of 65,000 or more;
 - (3) a school district that contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more;
 - (4) the governing body of a junior college district, including a district that has changed its name in accordance with Chapter 130, Education Code, that contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more;

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- (5) a development corporation organized under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) that was created by or for:
 - (A) a municipality with a population of 48,000 or more; or
 - (B) a county or district that contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more.
- (6) a regional mobility authority included within the meaning of an “authority” as defined by Section 370.003, Transportation Code.
- (d) The validity of a posted notice of a meeting or an agenda by a governmental body or economic development corporation subject to this section that made a good faith attempt to comply with the requirements of this section is not affected by a failure to comply with a requirement of this section that is due to a technical problem beyond the control of the governmental body or economic development corporation.

SUBCHAPTER D. EXCEPTIONS TO REQUIREMENT THAT MEETINGS BE OPEN

§ 551.071. Consultation with Attorney; Closed Meeting

A governmental body may not conduct a private consultation with its attorney except:

- (1) when the governmental body seeks the advice of its attorney about:
 - (A) pending or contemplated litigation; or
 - (B) a settlement offer; or
- (2) on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.

§ 551.072. Deliberation Regarding Real Property; Closed Meeting

A governmental body may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.

§ 551.0725. Commissioners Courts: Deliberation Regarding Contract Being Negotiated; Closed Meeting

- (a) The commissioners court of a county may conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated if, before conducting the closed meeting:

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- (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.

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§ 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

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- (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,⁴⁹³ 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

⁴⁹³ Now, repealed.

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- (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.

§ 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.

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- (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,⁴⁹⁴ 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.
 - (3) Repealed by Acts 2011, 82nd Leg., ch. 925 (S.B. 1613), § 3.
- (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.

⁴⁹⁴ Now, repealed.

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- (b) In this section:
 - (1) “Public power utility” means an entity providing electric or gas utility services that is subject to the provisions of this chapter.
 - (2) “Public power utility governing body” means the board of trustees or other applicable governing body, including a city council, of a public power utility.
- (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:

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- (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.

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.

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- (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

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- (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.

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- (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

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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

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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.
- (c) A meeting of a governmental body may be held by videoconference call only if:
 - (1) the governmental body makes available to the public at least one suitable physical space located in or within a reasonable distance of the geographic jurisdiction, if any, of the governmental body that is equipped with videoconference equipment that provides an audio and video display, as well as a camera and microphone by which a member of the public can provide testimony or otherwise actively participate in the meeting.
 - (2) the member of the governmental body presiding over the meeting is present at that physical space;⁴⁹⁵ and
 - (3) any member of the public present at that physical space is provided the opportunity to participate in the meeting by means of a videoconference call in the same manner as a person who is physically present at a meeting of the governmental body that is not conducted by videoconference call.
- (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

⁴⁹⁵ Section 81.001(b) of the Local Government Code clarifies that the statutory provision establishing the county judge, if present, as the presiding officer of the county commissioners court is inapplicable to a meeting held by videoconference call “if the county judge is not located at the physical space made available to the public for the meeting.” TEX. LOC. GOV’T CODE § 81.001(b).

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meeting is physically present shall be open to the public during the open portions of the meeting.

- (e) The notice of a meeting to be held by videoconference call must specify as a location of the meeting the location of the physical space described by Subsection (c)(1).
- (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 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.
- (h) The physical location specified under Subsection (e) shall have two-way audio and video communication with each member who is participating by videoconference call during the entire meeting. Each participant in the videoconference call, while speaking, shall be clearly visible and audible to each other participant and, during the open portion of the meeting, to the members of the public in attendance at the physical location described by Subsection (e) and at any other 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.

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§ 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

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- (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 the 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

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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 publically 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.

§ 551.129. 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:

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- (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.

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- (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:

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- (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.

§ 551.143. Conspiracy to Circumvent Chapter; Offense; Penalty

- (a) A member or group of members of a governmental body commits an offense if the member or group of members knowingly conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.
- (b) An offense under Subsection (a) is a misdemeanor punishable by:
 - (1) a fine of not less than \$100 or more than \$500;
 - (2) confinement in the county jail for not less than one month or more than six months; or
 - (3) both the fine and confinement.

§ 551.144. Closed Meeting; Offense; Penalty

- (a) A member of a governmental body commits an offense if a closed meeting is not permitted under this chapter and the member knowingly:
 - (1) calls or aids in calling or organizing the closed meeting, whether it is a special or called closed meeting;
 - (2) closes or aids in closing the meeting to the public, if it is a regular meeting; or

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- (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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THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

PUBLIC INFORMATION ACT *Handbook 2018*





Dear Fellow Texans:

As the Texas Constitution states, “All political power is inherent in the people,” and that means a free government should work for the people, not the other way around. One of my priorities when I became Texas Attorney General in 2015 was to encourage open government – and to enforce our laws that mandate it when necessary. The Texas Public Information Act sets requirements for the ability of citizens to access information on action taken by governmental bodies. Such transparency provides Texans with a more complete understanding of how their government works, and, when necessary, provides them an opportunity to hold their public officials accountable.

Open government is vital to a free and informed society, and this updated guide will help both public officials and the people they serve understand and comply with the Texas Public Information Act. You can view or download the handbook by visiting www.texasattorneygeneral.gov/files/og/publicinfo_hb.pdf. What’s more, my office’s Open Government Hotline is available to answer any questions about open government in Texas. The toll-free number is 877-OPEN TEX (877-673-6839).

Texans have a right to know how their government is spending their tax dollars and exercising the powers granted by the people. Transparency and open decision-making are fundamental principles of the Texas Public Information Act, and they are essential to ensuring continued trust and confidence in officials and our government.

Best regards,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

Ken Paxton
Attorney General of Texas

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A PREFACE TO THE PUBLIC INFORMATION ACT 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 <http://www.texasattorneygeneral.gov>. 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 Act 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 <i>for questions regarding the Act and the Texas Open Meetings Act</i>	TOLL-FREE or	(877) OPEN TEX (512) 478-6736
Cost Hotline <i>for questions regarding charges under the Act</i>	TOLL-FREE or	(888) ORCOSTS (512) 475-2497
Freedom of Information Foundation <i>for questions regarding FOIA</i>		(800) 580-6651
State Library and Archives Commission Records Management Assistance <i>for records retention questions</i>		(512) 463-7610
U.S. Department of Education Family Policy Compliance Office <i>for questions regarding FERPA and education records</i>		(800) 872-5327
U.S. Department of Health and Human Services Office for Civil Rights <i>for questions regarding the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and protected health information</i>		(800) 368-1019

*How the Public Information Act Works***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 2016 *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 1993³ 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:

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/online/articles/mqs01>.

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.

How the Public Information Act Works

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 purpose of the Public Information Act is to maintain the people's control "over the instruments they have created." The 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:

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**

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.

How the Public Information Act Works

- (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.**

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 552.158, 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 requires public officials to receive training in the requirements of the Public Information Act. The training requirement of the Public Information Act, codified at section 552.012, 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.**
- (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**

⁸ Open Records Decision No. 363 (1983) (information is public unless it falls within specific exception).

How the Public Information Act Works

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 educational course on the Public Information Act. This is a one-time-only training requirement; no refresher courses are required.

How the Public Information Act Works

Compliance Deadlines: The law took effect on January 1, 2006. Officials who were in office before January 1, 2006 had one year—until January 1, 2007—to complete the required training. Officials who were elected or appointed after January 1, 2006, 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 top 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 open records 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.

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

⁹ Gov’t Code § 552.0035.

¹⁰ Gov’t Code § 552.012(d).

How the Public Information Act Works

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. 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.

*How the Public Information Act Works***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; and**
- (xii) **the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds[.]**

The judiciary is expressly excluded from the definition of “governmental body.”¹¹ The required public release of records of the judiciary is governed by Rule 12 of the Texas Rules of Judicial Administration.¹²

¹¹ Gov’t Code § 552.003(1)(B).

¹² Rule 12 of the Texas Rules of Judicial Administration is located in Part Seven of this *Handbook*.

How the Public Information Act Works

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.¹³

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)–(xi), it is supported by public funds and is therefore a “governmental body” within section 552.003(1)(A)(xii).¹⁴

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)(xii) of the Government Code. Public funds are “funds of the state or of a governmental subdivision of the state.”¹⁵ 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.”¹⁶ Thus, section 552.003(1)(A)(xii) encompasses only those private entities that are dependent on public funds to operate as a going concern,¹⁷ and only those entities acting as the functional equivalent of the government.¹⁸

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.**¹⁹

There are no cases or formal opinions interpreting this subsection of the Education Code.

¹³ 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).

¹⁴ Open Records Decision No. 78 (1975) (discussing statutory predecessor to Gov’t Code § 552.003(1)(A)(xii)); 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).

¹⁵ Gov’t Code § 552.003(5).

¹⁶ *Greater Houston P’ship v. Paxton*, 468 S.W. 3d 51, 63 (Tex. 2015).

¹⁷ *Greater Houston P’ship v. Paxton*, 468 S.W. 3d 51, 61 (Tex. 2015).

¹⁸ *Greater Houston P’ship v. Paxton*, 468 S.W. 3d 51, 62 (Tex. 2015).

¹⁹ Educ. Code § 51.212(f).

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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**
 - (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.

*How the Public Information Act Works***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.²⁰ 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.²¹

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.²² The private consultant is acting as the governmental body's agent in holding the records. Section 552.002(a) of the Act was amended in 1989 to codify this interpretation of the Act.²³

The definition of "public information" in Government Code Section 552.002 read 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**
 - (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**

²⁰ Open Records Decision No. 617 (1993); *see* Open Records Decision No. 674 (2001).

²¹ Open Records Decision No. 576 (1990).

²² Open Records Decision No. 462 (1987).

²³ Act of May 29, 1989, 71st Leg., R.S., ch. 1248, § 9, 1989 Tex. Gen. Laws 4996, 5023.

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(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) — 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.²⁴

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.

F. Judiciary Excluded from the Public Information Act

Section 552.003(1)(B) 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.²⁵ (See Part Seven 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) were discussed in *Benavides v. Lee*.²⁶ 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”

²⁴ 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).

²⁵ 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).

²⁶ *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ).

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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. 5139JJ, § 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.²⁷

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) of the Government Code], is important to safeguard judicial proceedings and maintain the independence of the judicial 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.²⁸

The Texas Supreme Court also addressed the judiciary exception in *Holmes v. Morales*.²⁹ 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."³⁰ Because the court found the Harris County District Attorney did not perform these functions, it held the district attorney 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.³¹

²⁷ *Benavides v. Lee*, 665 S.W.2d 151, 151–52 (Tex. App.—San Antonio 1983, no writ) (footnote omitted).

²⁸ *Benavides v. Lee*, 665 S.W.2d 151, 152 (Tex. App.—San Antonio 1983, no writ).

²⁹ *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996).

³⁰ *Holmes v. Morales*, 924 S.W.2d 920, 923 (Tex. 1996).

³¹ *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).

How the Public Information Act Works

The State Bar of Texas is a “public corporation and an administrative agency of the judicial department of government.”³² 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.³³

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 subject to the Public Information Act.³⁴ 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.

³² 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).

³³ *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).

³⁴ *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).

How the Public Information Act Works

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.³⁵ 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.”

B. 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.”³⁶ While acknowledging the comprehensive scope of the term “information,” the attorney general nevertheless determined the legislature could not have intended that the Public Information Act compromise the physical security of information management systems or other government property.³⁷ 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.³⁸

³⁵ 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).

³⁶ Open Records Decision No. 581 at 6 (1990).

³⁷ 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).

³⁸ 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).

*How the Public Information Act Works***C. 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.”³⁹ Thus, such personal notes were not considered subject to the Public Information Act.⁴⁰ Governmental bodies are advised to use caution in relying on early open records decisions that address “personal notes.”

More recent decisions have concluded personal notes are not necessarily excluded from the definition of “public information” and may be subject to the Act.⁴¹ 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.⁴² 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.⁴³ 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 2013.⁴⁴

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.

³⁹ Open Records Decision No. 77 (1975) (quoting statutory predecessor to Gov’t Code § 552.021).

⁴⁰ 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).

⁴¹ 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).

⁴² See 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)).

⁴³ 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).

⁴⁴ *Adkisson v. Paxton*, 459 S.W.3d 761 (Tex. App.—Austin 2015, no pet.).

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Section 552.002(a-1) further defines “information . . . in connection with the transaction of official business” as:

information . . . 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 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.⁴⁵

There are no cases or formal decisions applying these amendments to section 552.002 or 552.003.

D. 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.

⁴⁵ Gov’t Code § 552.003(2-a).

*How the Public Information Act Works***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 Public Information Act.⁴⁶ 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 governmental body whose duties involve receiving or responding to requests under the Act. The sign's format as prescribed by the attorney general is available on the attorney general's website. In addition, a chart outlining various deadlines to which governmental bodies are subject can be found in Part Eight of this *Handbook*.

B. The Request for Public Information

A governmental body that receives a verbal request for information may require the requestor to submit that request in writing because the governmental body's duty under section 552.301(a) to request a ruling from the attorney general arises only after it receives a written request.⁴⁷ Open Records Decision No. 654 (1997) held the Public Information Act did not require a governmental body to respond to a request for information sent by electronic mail. However, the 75th Legislature amended section 552.301 by defining a written request for information to include "a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission."⁴⁸ Therefore, Open Records Decision No. 654 (1997) is superseded by the 1997 amendment of section 552.301.

Generally, a request for information need not name the Act or be addressed to the officer for public information.⁴⁹ An overly technical reading of the Act does not effectuate the purpose of the Act; a written communication that reasonably can be judged to be a request for public information is a request for information under the Public Information Act.⁵⁰ However, a request made by electronic mail or facsimile transmission must be sent to the officer for public information or the officer's designee.⁵¹ 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.⁵²

A governmental body must make a good faith effort to relate a request to information that it holds.⁵³ A governmental body may ask a requestor to clarify a request for information if the request is

⁴⁶ Gov't Code § 552.205(a).

⁴⁷ Open Records Decision No. 304 at 2 (1982).

⁴⁸ Gov't Code § 552.301(c).

⁴⁹ See Open Records Decision Nos. 497 at 3 (1988), 44 at 2 (1974).

⁵⁰ Open Records Decision No. 44 at 2 (1974).

⁵¹ Gov't Code § 552.301(c).

⁵² Open Records Decision No. 617 (1993).

⁵³ Open Records Decision No. 561 at 8 (1990).

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unclear.⁵⁴ 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.⁵⁵ 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.⁵⁶ 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.⁵⁷ 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, and the governmental body does not receive a timely written response or response by electronic mail from the requestor.⁵⁸ 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 physical or mailing address, and the governmental body does not receive a timely written response from the requestor.⁵⁹ 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 the requestor responds to the request for clarification or narrowing.⁶⁰ A governmental body may, however, 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.⁶¹ 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.⁶² In addition, a governmental body may make inquiries of a requestor in order to establish proper identification.⁶³

It is implicit in several provisions of the Act that it applies only to information already in existence.⁶⁴ Thus, the Act does not require a governmental body to prepare new information in response to a request.⁶⁵ 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.⁶⁶ Consequently, a governmental body is not required to comply with a continuing request to supply information on a

⁵⁴ Gov't Code § 552.222(b).

⁵⁵ Gov't Code § 552.222(b).

⁵⁶ Gov't Code § 552.222(d).

⁵⁷ Gov't Code § 552.222(e).

⁵⁸ Gov't Code § 552.222(g).

⁵⁹ Gov't Code § 552.222(f).

⁶⁰ *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010).

⁶¹ Gov't Code § 552.222(c) (referencing Transp. Code ch. 730).

⁶² Gov't Code § 552.222(c-1).

⁶³ Gov't Code § 552.222(a).

⁶⁴ See Gov't Code §§ 552.002, .021, .227, .351.

⁶⁵ *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).

⁶⁶ Open Records Decision No. 452 at 3 (1986).

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periodic basis as such information is prepared in the future.⁶⁷ Moreover, the Act does not require a governmental body to prepare answers to questions or to do legal research.⁶⁸ 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.”

Section 552.232 provides for the handling of repetitious or redundant requests.⁶⁹ 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 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.

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

The Act designates the chief administrative officer and each elected county officer as the officer for public information for a governmental body.⁷⁰ In general, the officer for public information must protect public information and promptly make it available to the public for copying or inspecting.⁷¹ 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**

⁶⁷ Attorney General Opinion JM-48 at 2 (1983); Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987).

⁶⁸ 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).

⁶⁹ Gov’t Code § 552.232.

⁷⁰ 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. dismissed) (school district superintendent, rather than school board member, is chief administrative officer and custodian of public records).

⁷¹ See Gov’t Code § 552.203 (listing general duties of officer for public information).

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- (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).**



- (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).⁷²**

Thus, in order to comply with section 552.221, generally a governmental body must either provide the information for inspection or duplication in its offices or send copies of the information by first class United States mail. The 84th Legislature amended section 552.221 to provide an additional option for a “political subdivision.”⁷³ The 85th Legislature expanded this option to apply to all governmental bodies.⁷⁴ A governmental body may 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.⁷⁵ 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.⁷⁶ 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.⁷⁷ Although the attorney general has determined in a formal decision that a public information officer does not fulfill his or her duty under section 552.221 by simply referring a requestor to a governmental body’s website, this decision is superseded by the amendment to section 552.221.

⁷² Gov’t Code § 552.221(b-1), (b-2).

⁷³ See Act of May 27, 2015, 84th Leg., R.S., ch. 692, § 1, 2015 Tex. Gen. Laws 2167.

⁷⁴ Gov’t Code § 552.221(b-1), (b-2).

⁷⁵ Gov’t Code § 552.221(b-1).

⁷⁶ Gov’t Code § 552.221 (b-2).

⁷⁷ Gov’t Code § 552.221(b-1).

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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.⁷⁸

The officer for public information must “promptly” produce public information in response to an open records request.⁷⁹ “Promptly” means that a governmental body may take a reasonable amount of time to produce the information, but may not delay.⁸⁰ 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.⁸¹

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.”⁸² 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.⁸³

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.

⁷⁸ Gov’t Code § 552.204; Open Records Decision No. 660 at 4 (1999).

⁷⁹ 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).

⁸⁰ Gov’t Code § 552.221(a); *see* Open Records Decision No. 467 at 6 (1987).

⁸¹ Open Records Decision No. 467 at 6 (1987).

⁸² Gov’t Code § 552.221(b).

⁸³ *Conely v. Peck*, 929 S.W.2d 630, 632 (Tex. App.—Austin 1996, no writ).

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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.”



The 85th Legislature added section 552.221(e) of the Government Code, which 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.⁸⁴

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.

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 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).⁸⁵**
- (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**

⁸⁴ Gov’t Code § 552.221(e).

⁸⁵ Gov’t Code § 552.222(a).

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determine whether the requestor is eligible to receive the information under Section 552.155(b).⁸⁶

§ 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 his agent, other than the inmate’s attorney, even if the requested information pertains to the inmate.⁸⁷ While subsection (b) does not prohibit a governmental body from complying with an inmate’s request, it does not mandate compliance.⁸⁸

⁸⁶ Gov’t Code § 552.222(c-1).

⁸⁷ 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).

⁸⁸ *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).

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Generally, a requestor may choose to inspect or copy public information, or to both inspect and copy public information.⁸⁹ In certain circumstances, a governmental body may charge the requestor for access to or copies of the requested information.

1. Right to Inspect

Generally, if a requestor chooses to inspect public information, the requestor must 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.⁹⁰ 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.⁹¹ If the information is needed by the governmental body, the officer for public information may interrupt a requestor's inspection of public information.⁹² 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.⁹³ 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.⁹⁴

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."⁹⁵ However, the Act does not authorize the removal of an original copy of a public record from the office of a governmental body.⁹⁶ If the requested records are copyrighted, the governmental body must comply with federal copyright law.⁹⁷

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.⁹⁸ Rather, the attorney general concluded that the statutory predecessor to

⁸⁹ Gov't Code §§ 552.221, .225, .228, .230.

⁹⁰ 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).

⁹¹ Gov't Code § 552.225(b).

⁹² Gov't Code § 552.225(c).

⁹³ Gov't Code § 552.225(c).

⁹⁴ Gov't Code § 552.230; *see* Attorney General Opinion JM-757 (1987) (governmental bodies may deny requests for information when requests raise questions of safety or unreasonable disruption of business).

⁹⁵ Gov't Code § 552.228(a).

⁹⁶ Gov't Code § 552.226.

⁹⁷ *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).

⁹⁸ Open Records Decision No. 606 at 2-3 (1992).

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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.⁹⁹

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.¹⁰⁰

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**

⁹⁹ Open Records Decision No. 606 at 2–3 (1992).

¹⁰⁰ See also Open Records Decision Nos. 512 (1988), 465 (1987), 144 (1976).

*How the Public Information Act Works***(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.¹⁰¹**

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.¹⁰² 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.¹⁰³

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.¹⁰⁴ If a request for public information requires “programming or manipulation of data,”¹⁰⁵ and “compliance with the request is not feasible or will result in substantial interference with its ongoing operations,”¹⁰⁶ or “the information could be made available in the requested form only at a cost that covers the programming and manipulation of data,”¹⁰⁷ a governmental body is required to provide the requestor with a written statement describing 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.¹⁰⁸ The governmental body shall provide the statement to the requestor within twenty days after the date the governmental body received the request.¹⁰⁹ If, however, the governmental body gives written notice within the twenty days that additional time is needed, the governmental body has an additional ten days to provide the statement.¹¹⁰ 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.¹¹¹ If the requestor does not respond within thirty days, the request is considered withdrawn.¹¹²

¹⁰¹ Gov’t Code § 552.228(b).

¹⁰² Gov’t Code § 552.228(b).

¹⁰³ Gov’t Code § 552.228(c).

¹⁰⁴ *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).

¹⁰⁵ Gov’t Code § 552.231(a)(1); see Gov’t Code § 552.003(2), (4) (defining “manipulation” and “programming”).

¹⁰⁶ Gov’t Code § 552.231(a)(2)(A).

¹⁰⁷ Gov’t Code § 552.231(a)(2)(B).

¹⁰⁸ 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).

¹⁰⁹ Gov’t Code § 552.231(c).

¹¹⁰ Gov’t Code § 552.231(c).

¹¹¹ 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).

¹¹² Gov’t Code § 552.231(d-1).

*How the Public Information Act Works***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.”¹¹³ Thus, the Public Information 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.¹¹⁴ Information that a governmental body 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.**¹¹⁵

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 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.¹¹⁶

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

¹¹³ 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.

¹¹⁴ 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).

¹¹⁵ See also Open Records Decision No. 463 at 1–2 (1987).

¹¹⁶ 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).

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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 Public Information 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.¹¹⁷ The section provides that disclosure of excepted or confidential information to a legislator does not waive or affect the confidentiality of the 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.¹¹⁸ 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.¹¹⁹

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**

¹¹⁷ 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).

¹¹⁸ Gov't Code § 552.008(b).

¹¹⁹ Gov't Code § 552.352(a-1).

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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.¹²⁰**

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.¹²¹ 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).¹²² These rules are available on the attorney general's website and in Part Four of this *Handbook*.

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.**

¹²⁰ Gov't Code § 552.008(b-1), (b-2).

¹²¹ See, e.g., Open Records Letter No. 2013-08637 (2013).

¹²² See 1 T.A.C. §§ 63.1–6.

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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 Public Information Act or confidentiality laws protecting some interest other than that individual's privacy.¹²³ 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 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.¹²⁴ Section 552.026 of the Government Code, which conforms the Act to the requirements of the federal Family Educational Rights and Privacy

¹²³ 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).

¹²⁴ Gov't Code § 552.114(a), (b), (c).

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Act of 1974¹²⁵ (“FERPA”), also incorporates the rights of access established by that federal law.¹²⁶ To the extent FERPA conflicts with state law, the federal statute prevails.^{127,128}

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.¹²⁹ 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 selective disclosure.¹³⁰ Additionally, a state agency may ordinarily transfer information to another state agency or to another governmental body subject to the Public Information Act without violating the confidentiality of the information or waiving exceptions to disclosure.¹³¹

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

¹²⁵ 20 U.S.C. § 1232g.

¹²⁶ Open Records Decision No. 431 at 2–3 (1985).

¹²⁷ Open Records Decision No. 431 at 3 (1985).

¹²⁸ Open Records Decision No. 431 at 3 (1985).

¹²⁹ 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).

¹³⁰ *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) (overruled on other grounds by Open Records Decision No. 615 (1993)).

¹³¹ *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).

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to do so.¹³² 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.”¹³³

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.¹³⁴

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;

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;

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

Open Records Decision No. 400 (1983) — the prohibition against selective disclosure does not apply when a governmental body releases confidential information to the public.

¹³² 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).

¹³³ 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)).

¹³⁴ *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).

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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 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), (b), and (c), provide 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), (b), and (c) 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.**
- (c) **For purposes of this subchapter, a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission.**

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.¹³⁵ 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.¹³⁶ Therefore, when requesting such a decision, the entity 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.

¹³⁵ *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).

¹³⁶ 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).

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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.¹³⁷ 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.¹³⁸ 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.¹³⁹

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;
2. the previous decision is applicable to the particular governmental body or type of governmental body from which the information is requested;¹⁴⁰

¹³⁷ Gov’t Code § 552.301(a); *Dominguez v. Gilbert*, 48 S.W.3d 789, 792–93 (Tex. App.—Austin 2001, no pet.).

¹³⁸ Open Records Decision No. 673 (2001).

¹³⁹ 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.

¹⁴⁰ 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).

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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; and¹⁴¹
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.¹⁴²

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.¹⁴³

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.¹⁴⁴ 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

¹⁴¹ 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.

¹⁴² Open Records Decision No. 511 (1988) (no unilateral withholding of information under litigation exception).

¹⁴³ See Open Records Decision No. 435 at 2–3 (1986) (attorney general has broad discretion to determine whether information is subject to previous determination).

¹⁴⁴ Open Records Decision Nos. 542 at 3 (1990), 449 (1986).

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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:

- (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.**

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.¹⁴⁵

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 attorney general discloses the requested information, a redacted copy of that written communication.**

The attorney general interprets section 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.

¹⁴⁵ Gov't Code § 552.301(g).

*How the Public Information Act Works***B. Items the Governmental Body Must Submit to the Attorney General**

Sections 552.301(e) and (e-1) 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.

*How the Public Information Act Works***1. Written Communication from the Person Requesting the Information**

A written request includes a request sent by electronic mail or facsimile transmission to the public information officer or the officer's designee.¹⁴⁶ 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.¹⁴⁷ These written communications are generally public information.¹⁴⁸

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.¹⁴⁹ 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.¹⁵⁰ 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 sample. The attorney general must not disclose the submitted information to the requestor or the public.¹⁵¹

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

¹⁴⁶ Gov't Code § 552.301(c).

¹⁴⁷ See Gov't Code § 552.306(b); Open Records Decision No. 150 (1977).

¹⁴⁸ 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).

¹⁴⁹ Gov't Code § 552.301(e)(1)(d).

¹⁵⁰ Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

¹⁵¹ Gov't Code § 552.3035.

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to all information in that report or document, does not conform to the Act.¹⁵² 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.¹⁵³ 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.¹⁵⁴

The attorney general does not count skeleton crew days observed by a governmental body as business days for the purpose of calculating that governmental body's deadlines under the Public Information Act. A governmental body briefing the attorney general under section 552.301 must inform the attorney general in the briefing of any holiday, including skeleton crew days, observed by the governmental body. If the briefing does not notify the attorney general of holidays the governmental body observes, the deadlines will be calculated to include those days.

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 Public Information Act presumes that governmental records are open to the public unless the records are within one of the exceptions set out in Subchapter C.¹⁵⁵ 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 the burden of proving that an exception applies to the records requested from it.¹⁵⁶ 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 Public Information Act is discussed in detail in Part Two of

¹⁵² Gov't Code § 552.301(e)(2); Open Records Decision Nos. 419 at 3 (1984), 252 at 3 (1980), 150 at 2 (1977).

¹⁵³ Gov't Code § 552.301(e)(1)(c).

¹⁵⁴ Gov't Code § 552.301(a-1).

¹⁵⁵ See Attorney General Opinion H-436 (1974); Open Records Decision Nos. 363 (1983), 150 (1977), 91 (1975).

¹⁵⁶ 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).

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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.¹⁵⁷

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.¹⁵⁸ 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.¹⁵⁹

C. Section 552.302: Information Presumed Public if Submissions and Notification Required by Section 552.301 Are Not Timely

Section 552.302 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.¹⁶⁰ 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 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

¹⁵⁷ Open Records Decision No. 363 (1983).

¹⁵⁸ Gov’t Code § 552.301(e-1).

¹⁵⁹ Gov’t Code § 552.301(e-1).

¹⁶⁰ 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).

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presumption.¹⁶¹ 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, and submit 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 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.¹⁶²



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 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.¹⁶³ If the attorney general determines more information is necessary to render a decision, it must so notify the governmental body and the requestor.¹⁶⁴ 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.¹⁶⁵

¹⁶¹ 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).

¹⁶² *Paxton v. City of Dallas*, 509 S.W.3d 247, 262, 271 (Tex. 2017).

¹⁶³ Gov't Code § 552.303(b)–(e).

¹⁶⁴ Gov't Code § 552.303(c).

¹⁶⁵ Gov't Code § 552.303(d)–(e).

*How the Public Information Act Works***E. Section 552.305: When the Requested Information Involves a Third Party's Privacy or Property Interests**

Section 552.305 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, 552.104, 552.110, or 552.114, a governmental body may decline to release the information for the purpose of requesting an attorney general decision.**
- (b) **A person whose interests may be involved under Subsection (a), or any other person, may submit in writing to the attorney general the person's reasons why the information should be withheld or released.**
- (c) **The governmental body may, but is not required to, submit its reasons why the information should be withheld or released.**
- (d) **If release of a person's proprietary information may be subject to exception under Section 552.101, 552.110, 552.113, or 552.131, the governmental body that requests an attorney general decision under Section 552.301 shall make a good faith attempt to notify that person of the request for the attorney general decision. Notice under this subsection must:**
 - (1) **be in writing and sent within a reasonable time not later than the 10th business day after the date the governmental body receives the request for the information; and**
 - (2) **include:**
 - (A) **a copy of the written request for the information, if any, received by the governmental body; and**
 - (B) **a statement, in the form prescribed by the attorney general, that the person is entitled to submit in writing to the attorney general within a reasonable time not later than the 10th business day after the date the person receives the notice:**
 - (i) **each reason the person has as to why the information should be withheld; and**
 - (ii) **a letter, memorandum, or brief in support of that reason.**
- (e) **A person who submits a letter, memorandum, or brief to the attorney general under Subsection (d) shall send a copy of that letter, memorandum, or brief to the person who requested the information from the governmental body. If the letter, memorandum, or brief submitted to the attorney general contains the substance of the information requested, the copy of the letter, memorandum, or brief may be a redacted copy.**

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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.¹⁶⁶ 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).¹⁶⁷ 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.

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, 552.113, or 552.131. 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 Nine 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;

¹⁶⁶ Open Records Decision No. 542 at 3 (1990).

¹⁶⁷ See Gov't Code §§ 552.301(a)–(b), (e), .305.

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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.

F. Section 552.3035: Attorney General Must Not Disclose Information at Issue

Section 552.3035 expressly prohibits the attorney general from disclosing information that is the subject of a request for an attorney general decision.

G. Section 552.304: Submission of Public Comments

Section 552.304 of the Act 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.

H. Rendition of Attorney General Decision

Pursuant to section 552.306 of the Act, 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.”¹⁶⁸ 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.¹⁶⁹ The attorney general must provide a copy of the decision to the requestor.¹⁷⁰ 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.

I. Timeliness of Action

Pursuant to section 552.308, when the Act 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

¹⁶⁸ Gov't Code § 552.306(a).

¹⁶⁹ Gov't Code § 552.306(a).

¹⁷⁰ Gov't Code § 552.306(b).

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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.¹⁷¹ 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 mail and the state agency provides sufficient evidence to establish the information was deposited within the proper period.¹⁷²

The attorney general has established an electronic filing system that allows governmental bodies and interested third parties to submit information electronically for a fee.¹⁷³ Information submitted through this designated system will be considered timely if it is electronically submitted within the proper time period.¹⁷⁴ The attorney general has promulgated rules to administer the designated system.¹⁷⁵ These rules are available on the attorney general's website and in Part Four of this *Handbook*. 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 552.308.¹⁷⁶

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 552.262.¹⁷⁷ 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.¹⁷⁸ 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.¹⁷⁹

A. Charges for Copies of Paper Records and Printouts of Electronic Records

Section 552.261(a) allows a governmental body to recover costs related to reproducing public information. A request for copies that results in more than fifty pages may be assessed charges for labor, overhead (which is calculated as a percentage of the total labor), and materials.¹⁸⁰

¹⁷¹ Gov't Code § 552.308(a).

¹⁷² Gov't Code § 552.308(b).

¹⁷³ See Gov't Code § 402.006(d).

¹⁷⁴ Gov't Code § 552.309(a).

¹⁷⁵ 1 T.A.C. §§ 63.21–.24. These rules are available on the attorney general's website and in Part Four of this *Handbook*.

¹⁷⁶ Gov't Code § 552.309(c).

¹⁷⁷ See 1 T.A.C. §§ 70.1–.12.

¹⁷⁸ Gov't Code § 552.262(a), (b).

¹⁷⁹ http://www.texasattorneygeneral.gov/open/cost_page.shtml.

¹⁸⁰ 1 T.A.C. § 70.3(d), (e), (i).

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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.¹⁸¹ The law defines “programming” as “the process of producing a sequence of coded instructions that can be executed by a computer.”¹⁸² “Manipulation” of data is defined as “the process of modifying, reordering, or decoding of information with human intervention.”¹⁸³ Finally, “processing” means “the execution of a sequence of coded instructions by a computer producing a result.”¹⁸⁴ 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 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.



The 85th Legislature amended section 552.261 of the Government Code to allow 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 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.¹⁸⁵

Therefore, a governmental body may now 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 put the information together, redact drivers’ license numbers pursuant to section 552.130 and credit card numbers pursuant to section 552.136, 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	<u>\$4.50</u>
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 individuals and members of the public for the same 12 month period. Pursuant to section 552.137, the governmental body will redact any e-mail addresses of members of the public. The governmental body’s e-mail system allows electronic redaction of e-mail

¹⁸¹ 1 T.A.C. § 70.3(c), (d), (h).
¹⁸² Gov’t Code § 552.003(4).
¹⁸³ Gov’t Code § 552.003(2).
¹⁸⁴ Gov’t Code § 552.003(3).
¹⁸⁵ Gov’t Code § 552.261(e).

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addresses by writing a program. Once the program is written it will take half of an hour to execute. The requestor wants the e-mails on a CD. The total charges for this request would be:

Labor, .50 hours to locate/compile 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 prepare for and download to CD, @ \$15.00/hour	\$7.50
Overhead, \$29.25 x .20	\$5.85
Client Server, .50 hours to process program and make copy, @ \$2.20/hour	\$1.10
Materials, 1 CD @ \$1.00/each	<u>\$1.00</u>
Total for materials & labor (electronic redaction/electronic records)	\$37.20

Postage charges may be added if the requestor wants the CD sent by mail.

3.The governmental body's system does not allow electronic redaction of e-mail addresses. To provide the requestor the records in electronic medium, the governmental body must print the e-mails, manually redact the e-mail addresses, and scan the redacted e-mails into a file. The governmental body may charge to print out and redact the e-mails that will be scanned. The requestor wants the e-mails on a CD. 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 x .20	\$3.75
Client Server, .05 hours to copy to CD, @ \$2.20/hour	\$0.18
Materials, 1 CD @ \$1.00/each	<u>\$1.00</u>
Total for materials and labor (manual redaction/electronic records)	\$31.68

Postage charges may be added if the requestor wants the CD sent by mail.

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B. Charges for Inspection of Paper Records and Electronic Records

Charges for inspection of paper records are regulated by section 552.271, and charges for inspection of electronic records are discussed in section 552.272. 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.¹⁸⁶ No other charges are allowed unless¹⁸⁷ (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.¹⁸⁸ If a governmental body has fewer than 16 full-time employees, the criteria are reduced to: (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.¹⁸⁹ An “archival box” is a box that measures approximately 12.5” W x 15.5” L x 10” H.¹⁹⁰ 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 pages that require redaction. Overhead charges are not allowed on requests for inspection of paper records.¹⁹¹

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.¹⁹² Searching and/or printing electronic records is neither programming nor manipulation of data. Overhead is not allowed on requests for inspection of electronic records.¹⁹³

Example:

The requestor states she wants to inspect travel expenditure records for the past year, and then decide whether or not she wants copies. Of the 120 pages that are responsive, 112 pages have information that must be redacted, as required by sections 552.130 and 552.136, 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	<u>\$0.00</u>
Total for inspection (redacted copies)	\$11.20

¹⁸⁶ Gov’t Code § 552.271(b).

¹⁸⁷ Gov’t Code § 552.271(b).

¹⁸⁸ Gov’t Code § 552.271(c).

¹⁸⁹ Gov’t Code § 552.271(d).

¹⁹⁰ 1 T.A.C. § 70.2(10).

¹⁹¹ Gov’t Code § 552.271(c), (d).

¹⁹² Gov’t Code § 552.271(a), (b).

¹⁹³ Gov’t Code § 552.271(a), (b).

*How the Public Information Act Works***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.¹⁹⁴ The determination of whether providing information is in the “public interest” rests solely with the governmental body whose records are requested.¹⁹⁵ Additionally, the law allows a governmental body to waive charges if the cost of collecting the amount owed exceeds the actual amount charged.¹⁹⁶

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 any work is undertaken.¹⁹⁷ Additionally, the statement must advise the requestor if there is a less costly method of viewing the records.¹⁹⁸ 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.¹⁹⁹ 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.²⁰⁰

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,²⁰¹ and/or (b) preventing the governmental body from considering the request withdrawn by operation of law.²⁰²

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.²⁰³ 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.²⁰⁴ If the requestor does not respond to the updated statement, the request is considered withdrawn.

¹⁹⁴ Gov’t Code § 552.267(a).

¹⁹⁵ Gov’t Code § 552.267(a).

¹⁹⁶ Gov’t Code § 552.267(b).

¹⁹⁷ Gov’t Code § 552.2615(a).

¹⁹⁸ Gov’t Code § 552.2615(a).

¹⁹⁹ Gov’t Code § 552.2615(b).

²⁰⁰ Gov’t Code § 552.2615(a)(3).

²⁰¹ 1 T.A.C. § 70.7(a).

²⁰² Gov’t Code § 552.2615.

²⁰³ Gov’t Code § 552.2615(c).

²⁰⁴ Gov’t Code § 552.2615(c).

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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 prepay, deposit a percentage of the total amount, or provide a bond for the total amount.²⁰⁵ 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 received within ten business days of the date the governmental body requested the deposit or bond.²⁰⁶ If the requestor makes payment within the required time, the request is considered received on the date the payment is made.²⁰⁷ 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.²⁰⁸ 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.²⁰⁹

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.²¹⁰ 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 include that the information is not available in the form requested, in which form it is available, 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.²¹¹ 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.²¹² If the requestor fails to respond to the statement in writing within 30 days, the request is considered withdrawn.²¹³

²⁰⁵ Gov't Code § 552.263(c); 1 T.A.C. § 70.7(d), (e).

²⁰⁶ Gov't Code § 552.263(f).

²⁰⁷ Gov't Code § 552.263(e).

²⁰⁸ Gov't Code § 552.263(c); 1 T.A.C. § 70.7(f).

²⁰⁹ Gov't Code § 552.263(c); 1 T.A.C. § 70.7(f).

²¹⁰ Gov't Code § 552.231(a).

²¹¹ Gov't Code § 552.231(b).

²¹² Gov't Code § 552.231(d).

²¹³ Gov't Code § 552.231(d-1).

*How the Public Information Act Works***E. Cost Provisions Regarding Requests Requiring a Large Amount of Personnel Time**

Section 552.275 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.²¹⁴ 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. The 85th Legislature amended section 552.275 to allow county officials who have designated the same officer for public information to calculate time for purposes of this section collectively.²¹⁵ 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.²¹⁶ 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 inspection for which a charge is authorized under other sections of this law.

On establishing the time limit, a governmental body must make it clear to all requestors that the limit applies to 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.²¹⁷ A governmental body may not charge for the time spent preparing the statement.²¹⁸ 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.²¹⁹ 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.²²⁰ If a requestor fails to submit payment, the request is considered withdrawn.²²¹

²¹⁴ Gov't Code §552.275(a), (b).

²¹⁵ Gov't Code §552.275(a-1).

²¹⁶ Gov't Code §552.275(j).

²¹⁷ Gov't Code § 552.275(d).

²¹⁸ Gov't Code § 552.275(d).

²¹⁹ Gov't Code § 552.275(e).

²²⁰ Gov't Code § 552.275(g).

²²¹ Gov't Code § 52.275(h).

*How the Public Information Act Works***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 states that a requestor who believes he or she has been overcharged may lodge a complaint with the attorney general.²²² The attorney general reviews, investigates, and makes determinations on complaints of overcharges. 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. If a complainant does not provide the required information within the established time frame, the complaint is dismissed.²²³

When a complaint is lodged against a governmental body, the attorney general will contact the governmental body, generally by mail, to obtain information on how the charges were calculated, and the physical location and state of the records. The governmental body may also be asked to provide copies of invoices, contracts, and any other relevant documents.²²⁴ 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.²²⁵ A governmental body may be required to pay three times the difference if it is 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.²²⁶

G. Cost Provisions Outside the Public Information Act

The provisions of section 552.262 do not apply if charges for copies are established by another statute.²²⁷ For example, section 550.065 of the Transportation Code establishes a charge of \$6.00 for an accident report maintained by a governmental entity.²²⁸ Section 118.011 of the Local Government Code establishes the charge for a non-certified copy of information obtained from the county clerk.²²⁹ Section 118.144 of the Local Government Code also establishes a charge for copies obtained from the county treasurer.²³⁰ 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.²³¹

²²² Gov't Code § 552.269(a).

²²³ 1 T.A.C. § 70.8(b).

²²⁴ 1 T.A.C. § 70.8(c), (d), (e).

²²⁵ 1 T.A.C. § 70.8(f).

²²⁶ Gov't Code § 552.269(b); 1 T.A.C. § 70.8(h).

²²⁷ Gov't Code § 552.262(a).

²²⁸ Transp. Code § 550.065(d).

²²⁹ Local Gov't Code § 118.011(a)(4).

²³⁰ Local Gov't Code § 118.144.

²³¹ Local Gov't Code § 191.008; Open Records Decision No. 668 at 9 (2000).

*How the Public Information Act Works***VIII. PENALTIES AND REMEDIES****A. Informal Resolution of Complaints**

The Office of 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 (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. 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 Act 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.²³²

Section 552.353(a) 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 552.324.²³³ A violation of section 552.352 or section 552.353 constitutes official misconduct²³⁴ 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.²³⁵

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

²³² See Open Records Decision No. 490 (1988).

²³³ 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.).

²³⁴ Gov't Code §§ 552.352(c), .353(f).

²³⁵ Gov't Code §§ 552.352(b), .353(e).

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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.²³⁶

C. Civil Remedies

1. Writ of Mandamus

Section 552.321 of the Act 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 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.²³⁷ 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.²³⁸

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.²³⁹ The courts have held a requestor may bring a mandamus action regardless of whether an attorney general decision has been requested.²⁴⁰ 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.²⁴¹ The supreme court held a requestor is not required to defer a suit for mandamus until the attorney general issues a decision.²⁴² 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.²⁴³

2. Violations of the Act: Declaratory Judgment or Injunctive Relief; Formal Complaints

Section 552.3215 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 Public Information Act.

²³⁶ Gov't Code § 552.351(a); *see also* Penal Code § 37.10 (tampering with governmental record).

²³⁷ Gov't Code § 552.321(a); *see Thomas v. Cornyn*, 71 S.W.3d 473, 482 (Tex. App.—Austin 2002, no pet.).

²³⁸ Gov't Code § 552.321(b).

²³⁹ *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).

²⁴⁰ *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).

²⁴¹ *Kallinen v. City of Houston*, 462 S.W. 3d 25 (Tex. 2015).

²⁴² *Kallinen v. City of Houston*, 462 S.W. 3d 25 (Tex. 2015).

²⁴³ *Thomas v. Cornyn*, 71 S.W.3d 473, 482 (Tex. App.—Austin 2002, no pet.).

*How the Public Information Act Works***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 administrative offices are located.²⁴⁴ 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.²⁴⁵

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.²⁴⁶

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.²⁴⁷ 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.²⁴⁸ 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.²⁴⁹

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



²⁴⁴ Gov't Code § 552.3215(c).

²⁴⁵ Gov't Code § 552.3215(d).

²⁴⁶ Gov't Code § 552.3215(e).

²⁴⁷ Gov't Code § 552.3215(e).

²⁴⁸ Gov't Code § 552.3215(f)–(g).

²⁴⁹ Gov't Code § 552.3215(h).

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attorney has not brought an action.²⁵⁰ 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.²⁵¹

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.²⁵²

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.²⁵³

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.²⁵⁴ 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.²⁵⁵

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.²⁵⁶ 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.²⁵⁷ 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.

²⁵⁰ Gov’t Code §552.3215(i).

²⁵¹ Gov’t Code § 552.3215(i).

²⁵² Gov’t Code § 552.3215(j).

²⁵³ Gov’t Code § 552.3215(k).

²⁵⁴ Gov’t Code §§ 552.324, .325.

²⁵⁵ 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).

²⁵⁶ *Morales v. Ellen*, 840 S.W.2d 519, 523 (Tex. App.—El Paso 1992, writ denied).

²⁵⁷ *Morales v. Ellen*, 840 S.W.2d 519, 523 (Tex. App.—El Paso 1992, writ denied).

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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.²⁵⁸ Section 552.324(b) requires that a suit by a governmental body be brought no 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).²⁵⁹

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.²⁶⁰ 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.²⁶¹

4. Discovery and Court's In Camera Review of Information Under Protective Order

Section 552.322 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 permits a party to file the information at issue with the court for in camera inspection as necessary for the adjudication of cases.²⁶² 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.²⁶³ 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.²⁶⁴

²⁵⁸ Gov't Code § 552.324(a).

²⁵⁹ Gov't Code § 552.324(b).

²⁶⁰ Gov't Code § 552.327.

²⁶¹ Gov't Code § 552.327.

²⁶² Gov't Code § 552.3221(a).

²⁶³ Gov't Code § 552.3221(b).

²⁶⁴ Gov't Code § 552.3221(c).

*How the Public Information Act Works***D. Assessment of Costs of Litigation and Reasonable Attorney's Fees**

Section 552.323 of the Act 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 prevails.²⁶⁵ However, a court may not assess such costs and attorney's fees against the governmental body if the court finds that it 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.²⁶⁶ 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.²⁶⁷

The court may 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.²⁶⁸ The trial court has discretion to award attorney's fees and costs incurred by a plaintiff or defendant who substantially prevails in a suit brought under section 552.324.²⁶⁹ In exercising its discretion as to the assessment of such costs and attorney's fees, a court must consider whether the conduct of the officer for public information of the governmental body had a reasonable basis in law and whether the suit was brought in good faith.²⁷⁰

IX. PRESERVATION AND DESTRUCTION OF RECORDS

Subject to state laws governing the destruction of state and local government records, section 552.004 of the Act addresses the preservation period of noncurrent records. 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.²⁷¹ 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 Act 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

²⁶⁵ Gov't Code § 552.323(a).

²⁶⁶ Gov't Code § 552.323(a).

²⁶⁷ *Jackson v. State Office of Admin. Hearings*, 351 S.W.3d 290, 300 (Tex. 2011).

²⁶⁸ Gov't Code § 552.323(b).

²⁶⁹ Gov't Code § 552.323(b); *Hudson v. Paxton*, No. 03-13-00368-CV, 2015 WL 739605 (Tex. App.—Austin Feb. 20, 2015, pet. denied) (mem. op.) (when requestor intervened in suit filed by governmental body under section 552.324 and governmental body voluntarily released documents rendering controversy moot, requestor did not “substantially prevail” so as to be eligible for attorney's fees under section 552.323(b)); *Dallas Morning News v. City of Arlington*, No. 03-10-00192-CV, 2011 WL 182886, at *4 (Tex. App.—Austin, Jan. 21, 2011, no pet.) (mem. op., not designated for publication) (city's voluntary release of requested public information does not make requestor prevailing party).

²⁷⁰ Gov't Code § 552.323(b); see *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 367 (Tex. 2000).

²⁷¹ See, e.g., Attorney General Opinions DM-181 at 3 (1992), JM-1013 at 2, 5–6 (1989), JM-229 at 5 (1984).

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governmental body.²⁷² This section does not, however, limit the authority of a governmental body to establish retention periods for records under applicable law.²⁷³

Section 552.203 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 deterioration, alteration, mutilation, loss, or unlawful removal and that they are repaired as necessary.²⁷⁴ Public records may be destroyed only as provided by statute.²⁷⁵ A governmental body may not destroy records even pursuant to statutory authority while they are subject to an open records request.²⁷⁶

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.²⁷⁷

On the other hand, the Public Information 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 552.158, and there has not been a previous determination about whether the information falls within the exception.²⁷⁸ 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 Public Information Act, but has no authority to seek legal advice on other matters from the attorney general.²⁷⁹

Additionally, the Public Information 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.²⁸⁰

²⁷² Gov’t Code § 552.0215(a).

²⁷³ Gov’t Code § 552.0215(b).

²⁷⁴ *See also* Gov’t Code § 552.351 (penalty for willful destruction, mutilation, removal without permission or alteration of public records).

²⁷⁵ *See generally* Attorney General Opinions DM-40 (1991) (deleting records), JM-830 (1987) (sealing records), MW-327 (1981) (expunging or altering public records).

²⁷⁶ Local Gov’t Code § 202.002(b); Open Records Decision No. 505 at 4 (1988).

²⁷⁷ Gov’t Code § 402.045.

²⁷⁸ Gov’t Code § 552.301(a); *see* Open Records Decision No. 673 (2001) (defining previous determination).

²⁷⁹ *See generally* Attorney General Opinion DM-20 at 3–6 (1991).

²⁸⁰ Gov’t Code § 552.011.

*How the Public Information Act Works***B. Texas Open Meetings Act**

The Public Information Act, Government Code chapter 552, 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 for holding executive session meetings to discuss confidential records.²⁸¹ Furthermore, the mere fact that a document was discussed in an executive session does not make it confidential under the Public Information Act.²⁸² Since the Open Meetings Act has no provision comparable to section 552.301 of the Public Information 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.²⁸³

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.²⁸⁴ The Act's exceptions to required public disclosure do not create privileges from discovery of documents in administrative or judicial proceedings.²⁸⁵ Furthermore, information that might be privileged from discovery is not necessarily protected from required public disclosure under the Act.²⁸⁶

²⁸¹ See Attorney General Opinion JM-595 at 4 (1986).

²⁸² *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).

²⁸³ Open Records Decision No. 684 at 5 (2009).

²⁸⁴ Attorney General Opinion JM-1048 at 2 (1989); Open Records Decision Nos. 551 at 4 (1990), 108 (1975).

²⁸⁵ Gov't Code § 552.005.

²⁸⁶ 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).

*Exceptions to Disclosure***PART TWO: EXCEPTIONS TO DISCLOSURE****I. INFORMATION GENERALLY CONSIDERED TO BE PUBLIC****A. Section 552.022 Categories of Information**

Section 552.022 of the Public Information Act 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”²⁸⁷ 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 Public Information Act.²⁸⁸ Rather, it is a list of information that generally may be withheld only if it is expressly confidential by law.²⁸⁹ Thus, the Act’s permissive exceptions to disclosure generally do not apply to the categories of information contained in section 552.022.²⁹⁰

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.²⁹¹ 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 552.022.²⁹² 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.²⁹³

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.²⁹⁴ However, a fee

²⁸⁷ Gov’t Code § 552.022.

²⁸⁸ See *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 359 (Tex. 2000).

²⁸⁹ Gov’t Code § 552.022(a); *Thomas v. Cornyn*, 71 S.W.3d 473, 480 (Tex. App.—Austin 2002, no pet.).

²⁹⁰ 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) (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).

²⁹¹ See Gov’t Code § 552.022(a); *In re City of Georgetown*, 53 S.W.3d 328, 332–37 (Tex. 2001).

²⁹² *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.

²⁹³ *In re City of Georgetown*, 53 S.W.3d 328, 333–34, 337 (Tex. 2001).

²⁹⁴ 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).

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bill is not excepted in its entirety if a governmental body demonstrates that a portion of the fee bill contains or consists of an attorney-client communication.²⁹⁵ 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.²⁹⁶

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.²⁹⁷ Moreover, information is confidential for the purpose of section 552.022 under rule 192.5 only to the extent the information implicates the core work product aspect of the privilege.²⁹⁸ Other work product is discoverable under some circumstances and therefore is not considered to be confidential for the purpose of section 552.022.²⁹⁹

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.³⁰⁰ 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.³⁰¹

B. Certain Investment Information

Section 552.0225 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;**

²⁹⁵ Open Records Decision No. 676 at 5 (2002).

²⁹⁶ Open Records Decision No. 676 at 5–6 (2002).

²⁹⁷ Open Records Decision No. 677 at 9 (2002).

²⁹⁸ Open Records Decision No. 677 at 10 (2002).

²⁹⁹ Open Records Decision No. 677 at 9–10 (2002).

³⁰⁰ Gov't Code § 552.022(b).

³⁰¹ See *Ford v. City of Huntsville*, 242 F.3d 235, 241 (5th Cir. 2001).

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- (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**

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- (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 552.143.³⁰²**

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 552.0225.³⁰³ The attorney general has determined in an informal letter ruling that section 552.143 is subject to the public disclosure requirements of section 552.0225.³⁰⁴

C. 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.³⁰⁵ 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.³⁰⁶

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 Public Information 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."³⁰⁷ A violation under section 552.352 is a misdemeanor constituting official

³⁰² Gov't Code § 552.0225.

³⁰³ Gov't Code § 552.143.

³⁰⁴ Open Records Letter No. 2005-6095 (2005).

³⁰⁵ 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).

³⁰⁶ Gov't Code § 551.022; *see* Open Records Decision No. 225 (1979).

³⁰⁷ Gov't Code § 552.352(a).

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misconduct.³⁰⁸ 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.³⁰⁹ On the other hand, a governmental body has no discretion to release information deemed confidential by law.³¹⁰ 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.³¹¹

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.³¹² 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 contract³¹³ or a settlement agreement.³¹⁴ 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.³¹⁵

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.³¹⁶
- 2) To fall within section 552.101, a statute must explicitly require confidentiality; a confidentiality requirement will not be inferred from the statutory structure.³¹⁷

a. State Statutes

The attorney general must interpret numerous confidentiality statutes. Examples of information made confidential by statute include the following noteworthy examples:

³⁰⁸ Gov't Code § 552.352(b), (c).

³⁰⁹ Gov't Code § 552.007; *see Dominguez v. Gilbert*, 48 S.W.3d 789, 793 (Tex. App.—Austin 2001, no pet.).

³¹⁰ *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.b of this *Handbook*.

³¹¹ *See* Open Records Decision Nos. 455 at 3 (1987), 325 at 1 (1982).

³¹² 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).

³¹³ *See* Attorney General Opinion JM-672 at 2 (1987); Open Records Decision No. 514 at 1 (1988).

³¹⁴ *See* Open Records Decision No. 114 at 1 (1975).

³¹⁵ *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).

³¹⁶ *See* Open Records Decision No. 478 at 2 (1987).

³¹⁷ *See, e.g.*, Open Records Decision No. 465 at 4–5 (1987).

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- medical records that a physician creates or maintains regarding the identity, diagnosis, evaluation, or treatment of a patient;³¹⁸
- reports, records, and working papers used or developed in an investigation of alleged child abuse or neglect under Family Code chapter 261;³¹⁹
- certain information relating to the provision of emergency medical services;³²⁰
- 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;³²¹ and
- certain personal information in a government-operated utility customer's account records if the customer has requested that the utility keep the information confidential.³²²

In the following examples, the attorney general has interpreted the scope of confidentiality provided by Texas statutes under section 552.101:

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;³²³

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

³¹⁸ 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).

³¹⁹ Fam. Code § 261.201(a).

³²⁰ Health & Safety Code § 773.091; *see* Open Records Decision No. 681 at 17–18 (2004).

³²¹ Health & Safety Code § 611.002.

³²² Util. Code § 182.052(a).

³²³ 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).

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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 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 Rule³²⁴ 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”³²⁵ subject to the Privacy Rule, receives a request for “protected health information”³²⁶ 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

³²⁴ 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.

³²⁵ 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.

³²⁶ *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).

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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.³²⁷

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.³²⁸ 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.³²⁹

2. Information Confidential by Judicial Decision

a. Information Confidential Under Common Law or Constitutional Privacy Doctrine

i. Common-Law Privacy

(a) Generally

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.*,³³⁰ 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 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.³³¹ 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.³³² 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;

³²⁷ *Abbott v. Tex. Dep't of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.).

³²⁸ Attorney General Opinion MW-95 at 2 (1979); Open Records Decision No. 124 at 1 (1976).

³²⁹ 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).

³³⁰ *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

³³¹ *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).

³³² See Open Records Decision No. 455 (1987).

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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,³³³ section 552.101 does not categorically except from required public disclosure, on common-law privacy grounds, the names of crime victims.³³⁴

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*,³³⁵ 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 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*,³³⁶ 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

³³³ See Open Records Decision No. 339 at 2 (1982).

³³⁴ 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).

³³⁵ *Star-Telegram, Inc. v. Doe*, 915 S.W.2d 471 (Tex. 1995).

³³⁶ *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992).

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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*,³³⁷ 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*,³³⁸ 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.

(b) Financial Information

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 protect from required public disclosure information regarding such a transaction.³³⁹ 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.³⁴⁰ 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.³⁴¹ Consequently, the doctrine of common-law privacy generally excepts such financial information from required public disclosure.

³³⁷ *Morales v. Ellen*, 840 S.W.2d 519, 524–25 (Tex. App.—El Paso 1992, writ denied).

³³⁸ *Abbott v. Dallas Area Rapid Transit*, 410 S.W.3d 876 (Tex. App.—Austin 2013, no pet.).

³³⁹ See Open Records Decision Nos. 590 at 3 (1991), 523 at 3–4 (1989).

³⁴⁰ See Open Records Decision No. 600 at 9 (1992).

³⁴¹ See Open Records Decision No. 545 at 3–5 (1990).

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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.³⁴² 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.³⁴³ 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.³⁴⁴

ii. Constitutional Privacy

Section 552.101 also incorporates constitutional privacy.³⁴⁵ 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 *Roe v. Wade*³⁴⁶ and *Paul v. Davis*³⁴⁷ and (2) an individual’s interest in avoiding the disclosure of personal matters to the public or to the government.³⁴⁸ 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.³⁴⁹

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 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.”³⁵⁰

³⁴² 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).

³⁴³ 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).

³⁴⁴ Open Records Decision No. 373 at 4 (1983).

³⁴⁵ *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 678 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

³⁴⁶ *Roe v. Wade*, 410 U.S. 113, 152 (1973).

³⁴⁷ *Paul v. Davis*, 424 U.S. 693, 712–13 (1976).

³⁴⁸ Open Records Decision No. 600 at 4–5 (1992); *see also Whalen v. Roe*, 429 U.S. 589, 599–600 (1977).

³⁴⁹ *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 678, 679 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

³⁵⁰ See Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985)).

*Exceptions to Disclosure***iii. Privacy Rights Lapse upon Death of the Subject**

Common-law and constitutional privacy rights lapse upon the death of the subject.³⁵¹ Consequently, 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.³⁵² 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.³⁵³ 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*.

iv. False-Light Privacy

The Texas Supreme Court has held false-light privacy is not an actionable tort in Texas.³⁵⁴ 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.³⁵⁵ Thus, the truth or falsity of information is not relevant under the Public Information Act.

v. Special Circumstances

Through formal decisions, the attorney general developed the "special circumstances" test under common-law privacy to withhold certain information from disclosure.³⁵⁶ "Special circumstances" 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."³⁵⁷ Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution."³⁵⁸ 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

³⁵¹ *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).

³⁵² *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).

³⁵³ See Gov't Code § 552.304 (any interested person may submit comments explaining why records should or should not be released).

³⁵⁴ *Cain v. Hearst Corp.*, 878 S.W.2d 577, 579 (Tex. 1994).

³⁵⁵ Open Records Decision No. 579 at 3–8 (1990).

³⁵⁶ Open Records Decision Nos. 169 (1977), 123 (1976).

³⁵⁷ Open Records Decision No. 169 at 6 (1977).

³⁵⁸ Open Records Decision No. 169 at 6 (1977).

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information is private under the common law.³⁵⁹ The Texas Supreme Court, however, reversed the court of appeals' opinion.³⁶⁰ 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."³⁶¹ As articulated by the court, the new common-law exception requires more than vague assertions of potential harm.

vi. 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.³⁶² However, in *Paxton v. City of Dallas*,³⁶³ 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 Texas*,³⁶⁴ 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.³⁶⁵ 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.

b. 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*,³⁶⁶ 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

³⁵⁹ *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).

³⁶⁰ *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.P.*, 343 S.W.3d 112 (Tex. 2011).

³⁶¹ 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).

³⁶² See Open Records Decision No. 455 at 7 (1987).

³⁶³ *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.).

³⁶⁴ *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010).

³⁶⁵ *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336, 347-348 (Tex. 2010).

³⁶⁶ *Roviaro v. United States*, 353 U.S. 53 (1957).

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crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.³⁶⁷

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.³⁶⁸ 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.³⁶⁹

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.³⁷⁰ 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.³⁷¹

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.³⁷² Thus, 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.³⁷³

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.**

³⁶⁷ *Roviaro v. United States*, 353 U.S. 53, 59 (1957) (emphasis added) (citations omitted).

³⁶⁸ See Open Records Decision Nos. 515 at 4–5 (1988), 191 at 1 (1978).

³⁶⁹ See Open Records Decision No. 515 at 2 (1988).

³⁷⁰ Open Records Decision No. 515 at 2 (1988).

³⁷¹ Open Records Decision No. 208 at 1–2 (1978).

³⁷² Open Records Decision No. 549 at 5 (1990).

³⁷³ Open Records Decision No. 549 at 6 (1990).

*Exceptions to Disclosure***1. Dates of Birth of Public Employees**

In 1983, the Third Court of Appeals in *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*³⁷⁴ 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.³⁷⁵ 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.³⁷⁶ However, section 552.102 does not apply to applicants for employment.³⁷⁷ In addition, section 552.102 applies only to the personnel records of public employees, not the records of private employees.

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.³⁷⁸ 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.³⁷⁹

C. Section 552.103: Litigation or Settlement Negotiations Involving the State or a Political Subdivision

Section 552.103(a) of the Act, 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.

³⁷⁴ *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.—Austin 1983, writ ref'd n.r.e.).

³⁷⁵ *Tex. Comptroller of Pub. Accounts v. Attorney General of Tex.*, 354 S.W. 3d 336 (Tex. 2010).

³⁷⁶ Attorney General Opinion JM-229 at 2 (1984).

³⁷⁷ Open Records Decision No. 455 at 8 (1987).

³⁷⁸ See Open Records Decision No. 526 (1989).

³⁷⁹ See, e.g., Open Records Letter Nos. 2013-11312 (2013), 2009-18243 (2009), 2008-10363 (2008), 2008-08137 (2008).

Exceptions to Disclosure

Section 552.103(a) was intended to prevent the use of the Public Information Act as a method of avoiding the rules of discovery used in litigation.³⁸⁰ 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.³⁸¹ Section 552.103 is a discretionary exception to disclosure and does not make information confidential under the Act.³⁸² 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 552.301.³⁸³

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.³⁸⁴ Therefore, a governmental body that seeks an attorney general decision has the burden of clearly establishing both prongs of this test.

For purposes of section 552.103(a), a contested case under the Administrative Procedure Act (APA), Government Code chapter 2001, constitutes “litigation.”³⁸⁵ Questions remain regarding whether administrative proceedings not subject to the APA may be considered litigation within the meaning of section 552.103(a).³⁸⁶ 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.³⁸⁷

Whether litigation is reasonably anticipated must be determined on a case-by-case basis.³⁸⁸ Section 552.103(a) requires concrete evidence that litigation is realistically contemplated; it must be more than conjecture.³⁸⁹ The mere chance of litigation is not sufficient to trigger section 552.103(a).³⁹⁰ 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

³⁸⁰ *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); Attorney General Opinion JM-1048 at 4 (1989).

³⁸¹ Open Records Decision No. 551 at 3 (1990).

³⁸² *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).

³⁸³ Open Records Decision Nos. 663 at 5 (1999), 542 at 4 (1990).

³⁸⁴ *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.).

³⁸⁵ Open Records Decision No. 588 at 7 (1991) (construing statutory predecessor to APA).

³⁸⁶ Open Records Decision No. 588 at 6–7 (1991).

³⁸⁷ See Open Records Decision No. 588 (1991).

³⁸⁸ Open Records Decision No. 452 at 4 (1986).

³⁸⁹ Attorney General Opinion JM-266 at 4 (1984); Open Records Decision Nos. 677 at 3 (2002), 518 at 5 (1989), 328 at 2 (1982).

³⁹⁰ Open Records Decision Nos. 677 at 3 (2002), 518 at 5 (1989), 397 at 2 (1983), 361 at 2 (1983), 359 at 2 (1983).

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anticipated.³⁹¹ 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.³⁹² 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.³⁹³ 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.³⁹⁴ 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:

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.³⁹⁵

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.³⁹⁶ In addition, once litigation is neither reasonably anticipated nor pending, section 552.103(a) is no longer applicable.³⁹⁷ 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

³⁹¹ Open Records Decision No. 638 at 4 (1996).

³⁹² See Open Records Decision Nos. 518 at 5 (1989), 474 at 5 (1987).

³⁹³ Open Records Decision No. 551 at 5 (1990).

³⁹⁴ Open Records Decision No. 551 at 5 (1990).

³⁹⁵ Open Records Decision No. 677 at 2–3 (2002).

³⁹⁶ 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).

³⁹⁷ 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.).

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litigation, where the governmental body believes in good faith that it has a constitutional obligation to disclose it.³⁹⁸

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.³⁹⁹ 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.⁴⁰⁰ However, the standard for proving that the litigation exception applies is wholly distinct from the standard for proving that the work product privilege applies.⁴⁰¹ The work product privilege is incorporated into the Act by section 552.111 of the Government Code, not section 552.103.⁴⁰² 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 either or both of the exceptions.⁴⁰³ However, the governmental body must meet distinct burdens depending on the exception it is asserting.⁴⁰⁴ Under section 552.103, the governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation.⁴⁰⁵ 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.⁴⁰⁶

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.

³⁹⁸ Open Records Decision No. 454 at 3 (1986).

³⁹⁹ *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 483 (Tex. App.—Austin 1997, orig. proceeding).

⁴⁰⁰ See Open Records Decision No. 677 at 2 (2002).

⁴⁰¹ See Open Records Decision No. 677 at 2 (2002).

⁴⁰² See Open Records Decision No. 677 at 4 (2002).

⁴⁰³ See Open Records Decision No. 677 at 2 (2002); Open Records Decision No. 647 at 3 (1996).

⁴⁰⁴ Open Records Decision No. 677 at 2 (2002).

⁴⁰⁵ 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.).

⁴⁰⁶ Open Records Decision No. 677 at 5–8 (2002).

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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.⁴⁰⁷

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 it is information that, if released, would give advantage to a competitor or bidder.**
- (b) **The requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under this section.**

Section 552.104(a) of the Government Code excepts from disclosure information that, if released, would give advantage to a competitor or bidder. The Texas Supreme Court considered 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.”⁴⁰⁸ The supreme court further held section 552.104 protection is not limited to governmental bodies, and therefore a private third party may also invoke this exception.⁴⁰⁹ The supreme court’s decision overrules a long line of attorney general decisions limiting the application of section 552.104 to governmental bodies and discussing the burden a governmental body must meet in order to withhold information under section 552.104. Both governmental bodies and third parties should therefore exercise caution in relying on prior attorney general decisions regarding the applicability of section 552.104. Section 552.104(b) provides that information excepted from disclosure under this section may be withheld even if it falls within one of the categories of information listed in section 552.022(a).

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.**

⁴⁰⁷ Open Records Decision No. 518 at 5 (1989).

⁴⁰⁸ *Boeing Co. v. Paxton*, 466 S.W. 3d 831, 841 (Tex. 2015).

⁴⁰⁹ *Boeing Co. v. Paxton*, 466 S.W. 3d 831, 833 (Tex. 2015).

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This exception protects a governmental body's planning and negotiating position with respect to particular real or personal property transactions,⁴¹⁰ 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.⁴¹¹ 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.⁴¹² 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.⁴¹³ 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.⁴¹⁴

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.⁴¹⁵

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].**
- (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.⁴¹⁶ 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.⁴¹⁷ However, section 552.106(a) does not protect purely factual material.⁴¹⁸ 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

⁴¹⁰ Open Records Decision No. 357 at 3 (1982).

⁴¹¹ Gov't Code § 552.105; *see* Open Records Decision No. 222 at 1–2 (1979).

⁴¹² *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).

⁴¹³ Open Records Decision No. 564 (1990).

⁴¹⁴ Open Records Decision No. 348 (1982).

⁴¹⁵ Open Records Decision No. 564 at 2 (1990).

⁴¹⁶ *See* Open Records Decision No. 429 at 5 (1985).

⁴¹⁷ Open Records Decision No. 460 at 2 (1987).

⁴¹⁸ Open Records Decision Nos. 460 at 2 (1987), 344 at 3–4 (1982), 197 at 3 (1978), 140 at 4 (1976).

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exception to disclosure applies.⁴¹⁹ 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.⁴²⁰ 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.⁴²¹

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

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[.]”⁴²² 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

⁴¹⁹ Open Records Decision No. 460 at 2 (1987).

⁴²⁰ Open Records Decision No. 429 at 5 (1985).

⁴²¹ See Open Records Decision Nos. 460 at 2–3 (1987), 367 (1983), 248 (1980).

⁴²² Gov’t Code § 552.106(b).

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judgments, advice, opinions, and recommendations involved in the preparation or evaluation of proposed legislation; it does not except purely factual information from public disclosure.⁴²³

Sections 552.106 and 552.111 were designed to achieve the same goals in different contexts.⁴²⁴ 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.”⁴²⁵ 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.⁴²⁶ Although the provisions protect the same type of information, section 552.106 is narrower in scope because it applies specifically to the legislative process.⁴²⁷

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.

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).⁴²⁸ 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 503.⁴²⁹ 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.⁴³⁰

⁴²³ 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)).

⁴²⁴ Open Records Decision No. 482 at 9 (1987).

⁴²⁵ *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).

⁴²⁶ 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).

⁴²⁷ See Open Records Decision Nos. 460 at 3 (1987), 429 at 5 (1985).

⁴²⁸ Open Records Decision Nos. 676 at 1–3 (2002), 574 at 2 (1990).

⁴²⁹ Open Records Decision No. 676 at 4 (2002).

⁴³⁰ Open Records Decision No. 676 at 6 (2002).

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First, the governmental body must demonstrate that the information constitutes or documents a communication.⁴³¹ Second, the communication must have been made “to facilitate the rendition of professional legal services” to the client governmental body.⁴³² Third, the governmental body must demonstrate that the communication was between or among clients, client representatives, lawyers, and lawyer representatives.⁴³³ 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.”⁴³⁴ Finally, because the client can waive the attorney-client privilege at any time, the governmental body must demonstrate that the communication has remained confidential.⁴³⁵

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.”⁴³⁶ In *Harlandale Indep. Sch. District v. Cornyn*,⁴³⁷ 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.⁴³⁸ The attorney produced a report that included a summary of the factual investigation as well as legal opinions.⁴³⁹ While the court of appeals held the attorney-client privilege does not apply to communications between an attorney 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.⁴⁴⁰ 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

⁴³¹ Open Records Decision No. 676 at 7 (2002).

⁴³² Open Records Decision No. 676 at 7 (2002); TEX. R. EVID. 503(b)(1).

⁴³³ TEX. R. EVID. 503(b)(1)(A)–(E); Open Records Decision No. 676 at 8–10 (2002).

⁴³⁴ 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).

⁴³⁵ Open Records Decision No. 676 at 10–11 (2002).

⁴³⁶ 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).

⁴³⁷ *Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. denied).

⁴³⁸ *Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328, 330 (Tex. App.—Austin 2000, pet. denied).

⁴³⁹ *Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328, 330–331 (Tex. App.—Austin 2000, pet. denied).

⁴⁴⁰ *Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328, 332–35 (Tex. App.—Austin 2000, pet. denied).

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under section 552.107.⁴⁴¹ 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 552.107.⁴⁴²

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.⁴⁴³ 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 552.022.⁴⁴⁴ 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.⁴⁴⁵

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.⁴⁴⁶

⁴⁴¹ 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).

⁴⁴² See, e.g., Open Records Letter Nos. 2013-12509 (2013), 2013-12111 (2013).

⁴⁴³ 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).

⁴⁴⁴ See *In re City of Georgetown*, 53 S.W.3d 328, 337 (Tex. 2001); Open Records Decision No. 676 at 5–6 (2002).

⁴⁴⁵ 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).

⁴⁴⁶ 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).

*Exceptions to Disclosure***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.⁴⁴⁷

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.⁴⁴⁸

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.⁴⁴⁹ 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 this chapter or other law.⁴⁵⁰ A settlement agreement to which a governmental body is a party is one category of information listed in section 552.022.⁴⁵¹

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.⁴⁵² 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 use a protective order as grounds for the exception once the court has dismissed the suit from which it arose.⁴⁵³

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:

⁴⁴⁷ 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).

⁴⁴⁸ *Paxton v. City of Dallas*, 509 S.W.3d 247, 262, 271 (Tex. 2017).

⁴⁴⁹ *See* Open Records Decision No. 415 at 2 (1984).

⁴⁵⁰ Gov't Code § 552.022(b).

⁴⁵¹ Gov't Code § 552.022(a)(18).

⁴⁵² Open Records Decision No. 143 at 1 (1976).

⁴⁵³ Open Records Decision No. 309 at 5 (1982).

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- (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.**
- 1. The Meaning of “Law Enforcement Agency” and the Applicability of Section 552.108 to Other Units of Government**

Exceptions to Disclosure

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.⁴⁵⁴ It generally does not apply to the records created by an agency whose chief function is essentially regulatory in nature.⁴⁵⁵ 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.⁴⁵⁶ 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 552.108.⁴⁵⁷

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);⁴⁵⁸ the Texas National Guard;⁴⁵⁹ the Attorney General's Organized Crime Task Force;⁴⁶⁰ a fire department's arson investigation division;⁴⁶¹ the El Paso Special Commission on Crime;⁴⁶² the Texas Lottery Commission;⁴⁶³ the Texas Alcoholic Beverage Commission's Enforcement Division;⁴⁶⁴ and the Texas Comptroller of Public Accounts for purposes of enforcing the Tax Code.⁴⁶⁵

The following entities are not law enforcement agencies for purposes of section 552.108: the Texas Department of Agriculture;⁴⁶⁶ the Texas Board of Private Investigators and Private Security Agencies;⁴⁶⁷ the Texas Board of Pharmacy;⁴⁶⁸ and the Texas Real Estate Commission.⁴⁶⁹

⁴⁵⁴ See Open Records Decision Nos. 493 at 2 (1988), 287 at 2 (1981).

⁴⁵⁵ Open Records Decision No. 199 (1978).

⁴⁵⁶ 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).

⁴⁵⁷ 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).

⁴⁵⁸ Attorney General Opinion MW-381 at 3 (1981); Open Records Decision No. 413 at 1 (1984).

⁴⁵⁹ Open Records Decision No. 320 at 1 (1982).

⁴⁶⁰ Open Records Decision Nos. 211 at 3 (1978), 126 at 5 (1976).

⁴⁶¹ Open Records Decision No. 127 at 8 (1976).

⁴⁶² See Open Records Decision No. 129 (1976).

⁴⁶³ 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).

⁴⁶⁴ 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).

⁴⁶⁵ *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).

⁴⁶⁶ Attorney General Opinion MW-575 at 1 (1982).

⁴⁶⁷ Open Records Decision No. 199 (1978).

⁴⁶⁸ Open Records Decision No. 493 (1988).

⁴⁶⁹ Open Records Decision No. 80 (1975).

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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.⁴⁷⁰ 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.⁴⁷¹

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.⁴⁷²

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 law enforcement or prosecution;
- 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 or that reflects the prosecutor's mental impressions or legal reasoning.

a. Interference with 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.⁴⁷³ The law enforcement agency must inform the attorney general 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

⁴⁷⁰ Open Records Decision No. 272 at 1–2 (1981).

⁴⁷¹ Open Records Decision No. 474 at 4–5 (1987); *see, e.g.*, Open Records Letter No. 2004-1811 (2004).

⁴⁷² *See* Attorney General Opinion MW-575 at 1–2 (1982) (construing statutory predecessor); Open Records Decision No. 493 at 2 (1988) (same).

⁴⁷³ *See Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977).

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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.⁴⁷⁴

All of the formal open records decisions interpreting the law enforcement exception considered the predecessor statute rather than section 552.108 as it now reads. In these decisions, the attorney general permitted law enforcement agencies to withhold information in a closed criminal case only if its release would “unduly interfere” with law enforcement or crime prevention.⁴⁷⁵ The following is a discussion of the “undue interference” standard under the predecessor statute. The reader may find this information useful in determining the types of information to provide to the attorney general when seeking to withhold information under the current provision’s “interference” standard.

i. Information Relating to the Detection, Investigation, or Prosecution of Crime

To withhold information under former section 552.108, a governmental body had to demonstrate how release of the information would “unduly interfere” with law enforcement or prosecution.⁴⁷⁶ For example, the names and statements of witnesses could be withheld if the law enforcement agency demonstrated that disclosure might either (1) subject the witnesses to possible intimidation or harassment or (2) harm the prospects of future cooperation by the witnesses.⁴⁷⁷ However, to prevail on its claim that section 552.108 excepted the information from disclosure, a law enforcement agency had to do more than merely make a conclusory assertion that releasing the information would unduly interfere with law enforcement. Whether the release of particular records would unduly interfere with law enforcement was determined on a case-by-case basis.⁴⁷⁸

ii. Internal Records of a Law Enforcement Agency

To withhold internal records and notations of law enforcement agencies and prosecutors under former section 552.108, a governmental body had to demonstrate how release of the information would unduly interfere with law enforcement and crime prevention.⁴⁷⁹ For example, the Department of Public Safety was permitted 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.⁴⁸⁰ Although the information did not on its face suggest that its release would unduly 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.⁴⁸¹ The attorney general previously held that release of routine investigative procedures, techniques that are commonly

⁴⁷⁴ 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).

⁴⁷⁵ See Open Records Decision Nos. 628 at 2 (1994), 313 at 2 (1982), 297 at 2 (1981).

⁴⁷⁶ Open Records Decision Nos. 616 at 1 (1993), 434 at 2–3 (1986); see *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977).

⁴⁷⁷ See Open Records Decision No. 297 at 2 (1981).

⁴⁷⁸ Open Records Decision No. 409 at 2 (1984).

⁴⁷⁹ See Open Records Decision No. 508 at 2–4 (1988).

⁴⁸⁰ Open Records Decision No. 341 at 2 (1982).

⁴⁸¹ Open Records Decision No. 341 at 1–2 (1982).

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known, and routine personnel information would not unduly interfere with law enforcement and crime prevention.⁴⁸²

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*,⁴⁸³ 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,⁴⁸⁴ 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.⁴⁸⁵ 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.⁴⁸⁶ For audits that have been concluded, there is little harm in releasing some of this information.⁴⁸⁷ The audit method and audit group remain excepted from disclosure before, during, and after the comptroller undertakes a taxpayer audit under former section 552.108.⁴⁸⁸

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 (formerly the Texas Department of Corrections) plans to use for its next scheduled execution may be withheld because its release may make crowd control unreasonably difficult;

⁴⁸² See Open Records Decision Nos. 216 at 4 (1978), 133 at 3 (1976).

⁴⁸³ *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995).

⁴⁸⁴ 5 U.S.C. § 552(b)(7).

⁴⁸⁵ *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 678 (Tex. 1995).

⁴⁸⁶ *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 679–681 (Tex. 1995).

⁴⁸⁷ *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).

⁴⁸⁸ *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 679 (Tex. 1995).

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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;

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. 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).

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.⁴⁸⁹ 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).⁴⁹⁰

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 mental impressions or legal reasoning. When a governmental body asserts that the information reflects the

⁴⁸⁹ Gov't Code § 411.048(b).

⁴⁹⁰ Open Records Letter No. 2003-3988 (2003).

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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 552.108.⁴⁹¹ 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).⁴⁹² 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;
- (p) a detailed description of the offense; and

⁴⁹¹ Gov't Code § 552.108(c).

⁴⁹² *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).

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- (q) the names of the arresting and investigating officers.⁴⁹³

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 because such information is protected by common-law privacy.⁴⁹⁴ 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.⁴⁹⁵

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, radio dispatch logs or radio cards maintained by a police department that contain the type of information deemed public generally may not be withheld.⁴⁹⁶ Likewise, 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 552.108.⁴⁹⁷ Conversely, a video of a booking that conveys information excepted from disclosure is not subject to disclosure when editing the tape is practically impossible and the public information on the tape is available in written form.⁴⁹⁸

Section 552.108 generally does not apply to information made public by statute or to information to which a statute grants certain individuals a right of access.⁴⁹⁹ 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.⁵⁰⁰

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.⁵⁰¹ General information about a police officer usually is not excepted from required public disclosure by section 552.108.

⁴⁹³ Open Records Decision No. 127 at 3–5 (1976).

⁴⁹⁴ See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

⁴⁹⁵ See Open Records Letter No. 2004-8297 (2004).

⁴⁹⁶ Open Records Decision No. 394 at 3–4 (1983); see *City of Lubbock v. Cornyn*, 993 S.W.2d 461 (Tex. App.—Austin 1999, no pet.).

⁴⁹⁷ See Open Records Decision No. 127 at 3–4 (1976).

⁴⁹⁸ Open Records Decision No. 364 (1983).

⁴⁹⁹ Open Records Decision Nos. 161 (1977), 146 at 2 (1976); see also Open Records Decision Nos. 613 at 4 (1993), 451 at 4 (1986).

⁵⁰⁰ Transp. Code § 550.065(c).

⁵⁰¹ 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).

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For example, a police officer's age, law enforcement background, and previous experience and employment usually are not excepted from disclosure by section 552.108.⁵⁰²

Similarly, information about 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 552.108.⁵⁰³ 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 a complaint against a law enforcement officer does not result in a criminal investigation or prosecution.⁵⁰⁴

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.⁵⁰⁵ 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).⁵⁰⁶ 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.⁵⁰⁷ In cases in which a police department investigates a police officer's misconduct and takes disciplinary action⁵⁰⁸ 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).⁵⁰⁹ Records maintained in the police officer's civil service file are subject to release under chapter 552 of the Government Code.⁵¹⁰ Furthermore, pursuant to section 143.089(e), the police officer has a right of access to the records maintained in his civil service file.⁵¹¹ However,

⁵⁰² *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).

⁵⁰³ Open Records Decision Nos. 350 at 3 (1982), 342 at 2 (1982), 329 at 2 (1982).

⁵⁰⁴ *Morales v. Ellen*, 840 S.W.2d 519, 525–26 (Tex. App.—El Paso 1992, writ denied) (construing statutory predecessor).

⁵⁰⁵ 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).

⁵⁰⁶ Local Gov't Code § 143.089(a), (g).

⁵⁰⁷ Local Gov't Code § 143.089(a).

⁵⁰⁸ 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).

⁵⁰⁹ *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.).

⁵¹⁰ See Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

⁵¹¹ Local Gov't Code § 143.089(e).

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information maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released.⁵¹²

Absent federal authority, a police department must not release to a federal law enforcement agency information made confidential under section 143.089(g).⁵¹³ 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.⁵¹⁴

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.⁵¹⁵ Thus, when a requestor asks for all information concerning a certain 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.⁵¹⁶

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).⁵¹⁷ 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.⁵¹⁸

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."⁵¹⁹ Moreover, the protection in subchapter F does not extend to driving record information maintained by the Department of Public Safety pursuant to subchapter C

⁵¹² 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).

⁵¹³ Open Records Decision No. 650 (1996).

⁵¹⁴ Local Gov't Code § 143.089(g).

⁵¹⁵ 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).

⁵¹⁶ 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.

⁵¹⁷ See Open Records Decision No. 655 (1997).

⁵¹⁸ See 28 C.F.R. pt. 20; Open Records Decision No. 565 at 10–12 (1990).

⁵¹⁹ Gov't Code § 411.081(b).

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of chapter 521 of the Transportation Code.⁵²⁰ Any person is entitled to obtain from the Department of Public Safety information regarding convictions and deferred adjudications and the person's own criminal history information.⁵²¹

b. Juvenile Law Enforcement Records

The 85th Legislature added Section 58.008 of the Family Code and repealed sections 58.007(c), 58.007(d), 58.007(e), and 58.007(f) of the Family Code.⁵²² Section 58.008 applies to records created before, on, or after September 1, 2017.⁵²³ Accordingly, former sections 51.14(d) and 58.007(c) of the Family Code are no longer applicable to the analysis of juvenile law enforcement records.

The relevant language of Family Code section 58.008(b) provides as follows:

- (b) Except as provided by Subsection (d), 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.⁵²⁴**

Section 58.008(b) applies only to the records of a child⁵²⁵ who is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision.⁵²⁶ 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, section 58.008 provides:

- (d) Law enforcement records concerning a child may be inspected or copied by:**

⁵²⁰ Gov't Code § 411.082(2)(B).

⁵²¹ Gov't Code §§ 411.083(b)(3), .135(a)(2).

⁵²² See Act of May 28, 2017, 85th Leg. R.S., S.B. 1304, §§ 13, 21.

⁵²³ See Act of May 28, 2017, 85th Leg. R.S., S.B. 1304, § 22.

⁵²⁴ Fam. Code § 58.008(b).

⁵²⁵ 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).

⁵²⁶ Fam. Code § 51.03(b); see Open Records Decision No. 680 at 4 (2003).

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- (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; or**
 - (4) the child’s parent or guardian.**
- (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.⁵²⁷**

Pursuant to section 58.008(d), a governmental body may not withhold a child’s law enforcement records from the child’s parent, guardian, or the child under section 58.008(b). 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.**

Section 261.201(a) applies to a report of and information used or developed in an investigation of suspected abuse or neglect⁵²⁸ of a child⁵²⁹ and the identity of the individual who made the report of

⁵²⁷ Fam. Code § 58.008(d), (e).

⁵²⁸ Fam. Code § 261.001(1), (4).

⁵²⁹ See Fam. Code § 101.003(a) (defining “child” for section 261.201 purposes).

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abuse or neglect.⁵³⁰ 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.

Moreover, sections 261.201(k) and 261.201(l) provide:

- (k) Notwithstanding Subsection (a), an investigating agency, other than the [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.**

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 another child of the parent, managing conservator, or other legal representative and the identity of the reporting party must be withheld.

⁵³⁰ Open Records Decision No. 440 (1986) (construing statutory predecessors).

*Exceptions to Disclosure***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.⁵³¹

Local law enforcement authorities are required under article 62.053 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.⁵³²

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, 1970.⁵³³

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.⁵³⁴ 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.⁵³⁵ 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.⁵³⁶

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 to disclosure, a governmental body asserting one of the confidentiality provisions of the Texas

⁵³¹ Crim. Proc. Code art. 62.005(b); Open Records Decision No. 645 at 3 (1996) (construing statutory predecessor).

⁵³² Crim. Proc. Code art. 62.053(e), (f) (information must be released if restrictions under Crim. Proc. Code art. 62.054 are met).

⁵³³ See Crim. Proc. Code art. 62.002(a).

⁵³⁴ Open Records Decision No. 649 at 2-3 (1996).

⁵³⁵ Open Records Decision No. 649 at 3 (1996).

⁵³⁶ Open Records Decision No. 649 at 4 (1996).

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Homeland Security Act must explain how the responsive records fall within the scope of the claimed provision.⁵³⁷

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.⁵³⁸ 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.⁵³⁹ 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.⁵⁴⁰

Section 660.2035 of the Government Code provides a voucher or other expense reimbursement form, and any receipt or other document supporting that voucher or other expense reimbursement form, that is submitted under section 660.027 is confidential for 18 months following the date of travel if the voucher or other expense reimbursement form is 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.⁵⁴¹ At the expiration of the 18 months, the voucher or other expense reimbursement form and any supporting documents become subject to disclosure under the Public Information Act and are not excepted from public disclosure or confidential under the Act or other law.⁵⁴² However, 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.⁵⁴³ 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.⁵⁴⁴ 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.⁵⁴⁵ 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

⁵³⁷ See Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

⁵³⁸ *Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.).

⁵³⁹ 49 U.S.C. § 114(r); 49 C.F.R. pt. 1520.

⁵⁴⁰ Open Records Letter Nos. 2013-09028 (2013), 2009-11201 (2009), 2005-07525 (2005).

⁵⁴¹ Gov't Code § 660.2035(a).

⁵⁴² Gov't Code § 660.2035(b).

⁵⁴³ Gov't Code § 660.2035(b).

⁵⁴⁴ Open Records Letter No. 2014-02048 (2014).

⁵⁴⁵ Open Records Letter No. 2014-02048 at 3 (2014).

Exceptions to Disclosure

552.152, and finding the claim had merit, concluded the travel vouchers and supporting documentation were excepted from disclosure under section 552.152.^{546, 547}

g. 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.⁵⁴⁸

Failure to provide this information does not preclude a requestor from requesting the same information again.⁵⁴⁹ 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.⁵⁵⁰

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.⁵⁵¹ However, a law enforcement agency may choose to release such information if doing so furthers a law enforcement interest.⁵⁵² Before a law enforcement agency releases a body-worn camera recording that was made in a private place 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 person is deceased, from the person’s authorized representative.⁵⁵³ 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.⁵⁵⁴

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.⁵⁵⁵ Additionally, a governmental body that receives a “voluminous request” for body-worn camera

⁵⁴⁶ Open Records Letter No. 2014-02048 at 3-4 (2014).

⁵⁴⁷ Open Records Letter No. 2014-02048 at 3-4 (2014).

⁵⁴⁸ Occ. Code § 1701.661(a).

⁵⁴⁹ Occ. Code § 1701.661(b).

⁵⁵⁰ Occ. Code § 1701.661(h).

⁵⁵¹ Occ. Code § 1701.660(a).

⁵⁵² Occ. Code § 1701.660(b).

⁵⁵³ Occ. Code § 1701.661(f).

⁵⁵⁴ Occ. Code § 1701.661(e).

⁵⁵⁵ Occ. Code § 1701.662.

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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.⁵⁵⁶

h. Video Recordings of Arrests for Intoxication

Article 2.1396 of the Code of Criminal Procedure, redesignated by the 85th Legislature, 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.⁵⁵⁷**

Article 2.1396 applies only to a recording of conduct that occurs on or after September 1, 2015.⁵⁵⁸ 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.⁵⁵⁹

I. Section 552.1081: Confidentiality of Certain Information Regarding Execution of Convict

Section 552.1081 of the Government Code provides as follows:

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.**

There are no cases or formal opinions interpreting this section.

⁵⁵⁶ Occ. Code § 1701.663.

⁵⁵⁷ Crim. Proc. Code art. 2.1396.

⁵⁵⁸ 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.

⁵⁵⁹ See Open Records Decision Nos. 613 at 4 (1993), 451 (1986).

*Exceptions to Disclosure***J. Section 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.**

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- (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)(4) 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.

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- (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.⁵⁶⁰ 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.⁵⁶¹

K. Section 552.109: Confidentiality of Certain Private Communications of an Elected Office Holder

Section 552.109 of the Government Code exempts 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

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 552.101.⁵⁶² 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 objectionable to a reasonable person, and (2) is not of legitimate concern to the public.⁵⁶³ Both prongs of this test must be established.⁵⁶⁴ Section 552.109 only protects the privacy interests of elected office holders.⁵⁶⁵ It does not protect the privacy interests of their correspondents.⁵⁶⁶ Certain records of communications between citizens and members of the legislature or the lieutenant governor may not be subject to the Act.⁵⁶⁷

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:

⁵⁶⁰ Open Records Letter No. 2014-04454 at 13 (2014).

⁵⁶¹ Open Records Letter No. 2013-21155 at 4 (2013).

⁵⁶² Open Records Decision Nos. 506 at 3 (1988), 241 (1980), 212 (1978).

⁵⁶³ *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

⁵⁶⁴ *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 681–685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

⁵⁶⁵ Open Records Decision No. 473 at 3 (1987).

⁵⁶⁶ See Open Records Decision No. 332 at 2 (1982).

⁵⁶⁷ See Gov't Code §§ 306.003, .004; Open Records Decision No. 648 (1996); Open Records Letter Nos. 2012-14193 (2012), 2012-06238 (2012).

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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;⁵⁶⁸ 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.”

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) **A trade secret obtained from a person and privileged or confidential by statute or judicial decision is excepted from [required public disclosure].**
- (b) **Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is excepted from [required public disclosure].**

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.⁵⁶⁹ A person so notified bears the burden of establishing the applicability of section 552.110.⁵⁷⁰ A copy of the form the Act requires the governmental body to send to a person whose information may be subject

⁵⁶⁸ See Open Records Decision No. 212 at 4 (1978).

⁵⁶⁹ Gov't Code § 552.305.

⁵⁷⁰ Gov't Code § 552.305.

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to section 552.110, as well as section 552.101, section 552.113, or section 552.131, can be found in Part Nine of this *Handbook*.

1. Trade Secrets

The Texas Supreme Court has adopted the definition of the term “trade secret” from the Restatement of Torts, section 757 (1939).⁵⁷¹ The determination of whether any particular information is a trade secret is a determination of fact.⁵⁷² Noting that an exact definition of a trade secret is not possible, the Restatement lists six factors to be considered in determining whether particular information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company’s] business;
- (2) the extent to which it is known by employees and others involved in [the company’s business];
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information; [and]
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.⁵⁷³

A party asserting the trade secret prong of section 552.110 is not required to satisfy all six factors listed in the Restatement in order to prevail on its claim.⁵⁷⁴ In addition, other circumstances may be relevant in determining whether information qualifies as a trade secret.⁵⁷⁵ Open Records Decision No. 552 (1990) 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.⁵⁷⁶ 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.

⁵⁷¹ *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958).

⁵⁷² Open Records Decision No. 552 at 2 (1990); *see Envoy Med. Sys. v. State*, 108 S.W.3d 333, 337 (Tex. App.—Austin 2003, no pet.).

⁵⁷³ RESTATEMENT OF TORTS § 757 cmt. b (1939); *see Ctr. for Econ. Justice v. Am. Ins. Ass’n*, 39 S.W.3d 337, 344–45 (Tex. App.—Austin 2001, no pet.); *Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766, 783 (Tex. App.—Austin 1999, pet. denied).

⁵⁷⁴ *See In re Bass*, 113 S.W.3d 735, 740 (Tex. 2003).

⁵⁷⁵ *See In re Bass*, 113 S.W.3d 735, 740 (Tex. 2003).

⁵⁷⁶ Open Records Decision Nos. 669 at 2 (2000), 552 at 5 (1990).

*Exceptions to Disclosure***2. Commercial or Financial Information Privileged or Confidential by Law**

Section 552.110 now expressly includes the standard for excepting from disclosure commercial and financial information.⁵⁷⁷ 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.” This standard resembles part of the test for applying the correlative exemption in the federal Freedom of Information Act, 5 U.S.C. § 552(b)(4), as set out in *Nat’l Parks & Conservation Ass’n v. Morton*.⁵⁷⁸ That part of the *National Parks* test states that commercial or financial information is confidential if disclosure of the information is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.⁵⁷⁹ The current commercial and financial information branch of section 552.110 does not incorporate the part of the *National Parks* test for information that is likely to impair the government’s ability to obtain necessary information in the future. Like the federal standard, section 552.110(b) requires the business enterprise whose information is at issue to make a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from disclosure.⁵⁸⁰

M. 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 552.111.⁵⁸¹ 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.⁵⁸² For example, correspondence between a licensing agency and a licensee is not excepted under section 552.111.⁵⁸³

⁵⁷⁷ The former section 552.110 excepted “commercial and financial information . . . privileged or confidential by statute or judicial decision.” It did not set out the standard for excepting commercial or financial information. In 1996, the attorney general followed the test for applying section 552(b)(4) of the federal Freedom of Information Act as set forth in *Nat’l Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). See Open Records Decision No. 639 at 2–3 (1996). However, the Third Court of Appeals held that *National Parks* was not a judicial decision within the meaning of the former section 552.110. *Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. denied). Consequently, after the *Birnbaum* decision, the attorney general no longer used the *National Parks* standard for excepting commercial or financial information under former section 552.110.

⁵⁷⁸ *Nat’l Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

⁵⁷⁹ See *Nat’l Parks & Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

⁵⁸⁰ See Open Records Decision No. 661 at 6 (1999).

⁵⁸¹ Open Records Decision No. 462 (1987) (construing statutory predecessor).

⁵⁸² 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).

⁵⁸³ Open Records Decision No. 474 at 5 (1987) (construing statutory predecessor).

Exceptions to Disclosure

Also, to be protected under section 552.111, an interagency or intraagency communication must be privileged from discovery in civil litigation involving the agency.⁵⁸⁴ The attorney general has interpreted section 552.111 to incorporate both the deliberative process privilege and the work product privilege.⁵⁸⁵

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.⁵⁸⁶ 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.⁵⁸⁷ 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.⁵⁸⁸ “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.”⁵⁸⁹ An agency’s policymaking functions do include, however, administrative and personnel matters of broad scope that affect the governmental body’s policy mission.⁵⁹⁰ 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.⁵⁹¹

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

⁵⁸⁴ Open Records Decision Nos. 677 at 4 (2002), 615 at 2–3 (1993).

⁵⁸⁵ 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).

⁵⁸⁶ *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).

⁵⁸⁷ *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).

⁵⁸⁸ *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).

⁵⁸⁹ 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).

⁵⁹⁰ 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).

⁵⁹¹ Open Records Decision No. 631 at 3 (1995).

Exceptions to Disclosure

opinions found in that memorandum. The deliberative process privilege does not except from disclosure purely factual information that is severable from the opinion portions of the memorandum.⁵⁹²

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 192.5.⁵⁹³ 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.**⁵⁹⁴

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.⁵⁹⁵ One element of the work product test is that the information must have been made or developed for trial or in anticipation of litigation.⁵⁹⁶ 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

⁵⁹² See Open Records Decision No. 615 at 4–5 (1993); *City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000).

⁵⁹³ Open Records Decision No. 677 at 4–8 (2002).

⁵⁹⁴ TEX. R. CIV. P. 192.5(a).

⁵⁹⁵ See Open Records Decision No. 677 at 6 (2002).

⁵⁹⁶ TEX. R. CIV. P. 192.5(a); Open Records Decision No. 677 at 6 (2002)

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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.⁵⁹⁷

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.”⁵⁹⁸

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.⁵⁹⁹ Similarly, in the case of a communication, the communication must have been between a party and the party’s representatives.⁶⁰⁰ 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.⁶⁰¹

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 core work product aspect of the attorney work product privilege.⁶⁰² 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.⁶⁰³

N. 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 (Article 581-1 et seq., Vernon’s Texas Civil Statutes).**
- (c) **Information is excepted from the requirements of Section 552.021 if it is information submitted by an individual or other entity to the Texas Legislative Council, or to any state agency or department overseen by the Finance Commission of Texas and the**

⁵⁹⁷ *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).

⁵⁹⁸ *Nat’l Tank Co. v. Brotherton*, 851 S.W.2d 193, 204, 207 (Tex. 1993); see Open Records Decision No. 677 at 7 (2002).

⁵⁹⁹ TEX. R. CIV. P. 192.5(a)(1); Open Records Decision No. 677 at 7 (2002).

⁶⁰⁰ TEX. R. CIV. P. 192.5(a)(2); Open Records Decision No. 677 at 7–8 (2002).

⁶⁰¹ Open Records Decision No. 677 at 8 (2002).

⁶⁰² Open Records Decision No. 677 at 5–6 (2002).

⁶⁰³ 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”).

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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.⁶⁰⁴ 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.⁶⁰⁵ 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.⁶⁰⁶ 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.”⁶⁰⁷ Notably, a Texas appeals court decision, *Birnbaum v. Alliance of Am. Insurers*,⁶⁰⁸ 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.⁶⁰⁹ 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 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;

⁶⁰⁴ See generally Open Records Decision Nos. 261 (1980), 29 (1974).

⁶⁰⁵ Open Records Decision No. 483 at 9 (1987).

⁶⁰⁶ Open Records Decision No. 158 at 4–5 (1977).

⁶⁰⁷ Open Records Decision No. 158 at 5 (1977); see also Open Records Decision No. 392 at 3 (1983).

⁶⁰⁸ *Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. denied).

⁶⁰⁹ *Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. denied).

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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.

O. Section 552.113: Confidentiality of Geological or Geophysical Information

Section 552.113 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:**

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- (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.

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- (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.⁶¹⁰

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.”⁶¹¹

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

⁶¹⁰ Open Records Decision No. 627 at 3–4 (1994) (footnote omitted).

⁶¹¹ Open Records Decision No. 627 at 4 n.4 (1994).

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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.⁶¹²

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.⁶¹³ 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 counterpart⁶¹⁴ 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.”⁶¹⁵ Thus, the state exception to required public disclosure exempted a more limited class of information than did the federal exemption.⁶¹⁶ 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.⁶¹⁷ 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.⁶¹⁸ 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.⁶¹⁹ 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.⁶²⁰

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 Nine of this *Handbook*.

⁶¹² Open Records Decision No. 504 at 4 (1988).

⁶¹³ See Open Records Decision Nos. 592 at 2–8 (1991), 552 at 2–5 (1990).

⁶¹⁴ 5 U.S.C. § 552(b)(9).

⁶¹⁵ Open Records Decision No. 627 at 2–3 (1994).

⁶¹⁶ Open Records Decision No. 627 at 2–3 (1994).

⁶¹⁷ Open Records Decision No. 627 at 2–3 (1994).

⁶¹⁸ Open Records Decision No. 669 at 6 (2000).

⁶¹⁹ Open Records Decision No. 627 at 2–3 (1994).

⁶²⁰ Open Records Decision No. 627 at 2–3 (1994).

*Exceptions to Disclosure***P. 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 1974,⁶²¹ also known as “FERPA” or the “Buckley Amendment.”⁶²² 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.⁶²³ It also gives parents a right to inspect the education records of their children.⁶²⁴ 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.⁶²⁵ “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.⁶²⁶

Information must be withheld from required public disclosure under FERPA only to the extent “reasonable and necessary to avoid personally identifying a particular student.”⁶²⁷ 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;
- (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

⁶²¹ 20 U.S.C. § 1232g.

⁶²² See Open Records Decision No. 72 (1975) (compliance with federal law was required before enactment of statutory predecessor to Gov’t Code § 552.026).

⁶²³ 20 U.S.C. § 1232g(b)(1).

⁶²⁴ 20 U.S.C. § 1232g(a)(1).

⁶²⁵ 20 U.S.C. § 1232g(d).

⁶²⁶ 20 U.S.C. § 1232g(a)(4)(A).

⁶²⁷ Open Records Decision Nos. 332 (1982), 206 (1978).

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- (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.⁶²⁸

An educational institution or agency may, however, release “directory information” to the public if the educational institution or agency complies with certain procedures.⁶²⁹ 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.”⁶³⁰ The attorney general has determined that marital status and expected date of graduation also constitute directory information.⁶³¹

University police department records concerning students previously were held to be education records for the purposes of FERPA.⁶³² 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.”⁶³³ 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.⁶³⁴

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.⁶³⁵ An “educational agency or institution” is “any public or private agency or institution” that receives federal funds under an applicable program.⁶³⁶ 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.⁶³⁷

If there is a conflict between the provisions of the state Public Information Act and FERPA, the federal statute prevails.⁶³⁸ However, the attorney general has been informed by the Family Policy

⁶²⁸ 34 C.F.R. § 99.3.

⁶²⁹ *See* 20 U.S.C. § 1232g(a)(5)(B).

⁶³⁰ 34 C.F.R. § 99.3.

⁶³¹ 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).

⁶³² *See* Open Records Decision Nos. 342 at 2–3 (1982), 205 at 2 (1978).

⁶³³ 20 U.S.C. § 1232g(a)(4)(B)(ii).

⁶³⁴ 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).

⁶³⁵ *See* Open Records Decision No. 390 at 3 (1983) (City of Fort Worth is not “educational agency” within FERPA).

⁶³⁶ 20 U.S.C. § 1232g(a)(3).

⁶³⁷ 20 U.S.C. § 1232g(b)(1)(E), (b)(4)(B); 34 C.F.R. §§ 99.31, .33, .35.

⁶³⁸ Open Records Decision No. 431 (1985).

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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.⁶³⁹ 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.⁶⁴⁰

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.⁶⁴¹ 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.⁶⁴² 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.⁶⁴³ 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.⁶⁴⁴ 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)

⁶³⁹ 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).

⁶⁴⁰ Open Records Decision No. 431 at 3 (1985).

⁶⁴¹ 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).

⁶⁴² This letter is available on the attorney general's website at: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

⁶⁴³ See 34 C.F.R. § 99.3 (defining "personally identifiable information").

⁶⁴⁴ 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.

*Exceptions to Disclosure***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.⁶⁴⁵ 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.⁶⁴⁶ Section 552.114(c) recognizes a right of access to student records for certain

⁶⁴⁵ Gov’t Code § 552.114(a).

⁶⁴⁶ Gov’t Code § 552.114(b).

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enumerated individuals.⁶⁴⁷ Subsection (d) permits an educational institution to redact information in a student record without requesting an attorney general decision.⁶⁴⁸ 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.⁶⁴⁹

Q. 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 bureau of vital statistics or local registration official;**
 - (2) a death record is public information and available to the public on and after the 25th anniversary of the date of death as shown on the record filed with the 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**

⁶⁴⁷ Gov't Code § 552.114(c).

⁶⁴⁸ Gov't Code § 552.114(d).

⁶⁴⁹ Gov't Code § 552.114(e).

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- (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.⁶⁵⁰ This section does not apply to birth or death records maintained by other governmental bodies.⁶⁵¹ 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.⁶⁵² 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 local registrar of

⁶⁵⁰ Gov't Code § 552.115(a).

⁶⁵¹ See Open Records Decision No. 338 (1982).

⁶⁵² See generally Open Records Decision No. 596 (1991) (regarding availability of adoption records).

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the Unit⁶⁵³ 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.⁶⁵⁴ These specific provisions prevail over the more general provisions in the Act regarding inspection and copying of public records.⁶⁵⁵

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.⁶⁵⁶ 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.⁶⁵⁷ 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.⁶⁵⁸ 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.**

⁶⁵³ See Health & Safety Code § 191.022(c), (f).

⁶⁵⁴ See Attorney General Opinion DM-146 at 2 (1992); see also Attorney General Opinion MW-163 (1980).

⁶⁵⁵ Attorney General Opinion DM-146 at 5 (1992).

⁶⁵⁶ Gov't Code § 552.115(a).

⁶⁵⁷ Gov't Code § 552.115(b).

⁶⁵⁸ 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).

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- (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.⁶⁵⁹**

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.⁶⁶⁰

⁶⁵⁹ 25 T.A.C. § 181.23(b)–(c).

⁶⁶⁰ Gov’t Code § 552.115(a).

*Exceptions to Disclosure***R. Section 552.116: Audit Working Papers**

Section 552.116 provides as follows:

- (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.⁶⁶¹ 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 that 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.⁶⁶² There are no cases or formal opinions interpreting the current version of section 552.116.

⁶⁶¹ Gov’t Code § 552.116(b).

⁶⁶² Gov’t Code § 552.116(a).

*Exceptions to Disclosure***S. Section 552.117: Confidentiality of Certain Addresses, Telephone Numbers, Social Security Numbers, and Personal Family Information**

The 85th Legislature passed three different bills, Senate Bills 1576 and 42 and House Bill 1278, amending section 552.117 of the Government Code. Section 552.117 excepts from required public disclosure:



- (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 peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable;**
 - (3) **a current or former employee of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with Section 552.1175;**
 - (4) **a peace officer as defined by Article 2.12, Code of Criminal Procedure, or other law, a reserve law enforcement officer, a commissioned deputy game warden, or a corrections officer in a municipal, county, or state penal institution in this state who was killed in the line of duty, regardless of whether the deceased complied with Section 552.024 or 552.1175;**
 - (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, 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;**

Exceptions to Disclosure

- (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 Texas military forces, as that term is defined by Section 437.001; or

Text of (a)(12), as added by Acts 2017, 85th Leg., ch. 34 (S.B. 1576), § 12

- (12) 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.



Text of (a)(12), as added by Acts 2017, 85th Leg., ch. 190 (S.B. 42), § 17

- (12) a current or former federal judge or state judge, as those terms are defined by Section 13.0021(a), Election Code, or a spouse of a current or former federal judge or state judge; or



Text of (a)(12), as added by Acts 2017, 85th Leg., ch. 1006 (H.B. 1278), § 1

- (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; or



Text of (a)(13), as added by Acts 2017, 85th Leg., ch. 190 (S.B. 42), § 17

- (13) a current or former district attorney, criminal district attorney, or county attorney whose jurisdiction includes any criminal law or child protective services matter.



Text of (a)(13), as added by Acts 2017, 85th Leg., ch. 1006 (H.B. 1278), § 1

- (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.



- (b) All documents filed with a county clerk and all documents filed with a district clerk are exempt from this section.

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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.⁶⁶³ 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.

1. Subsections (a)(1), (11), and (12): Public Officials and Employees, Members of the Texas Military Forces, and Federal or State Judges and their Spouses

Section 552.117, subsections (a)(1) and (11) and subsection (a)(12) as added by the 85th Legislature in Senate Bill 42 must be read together with section 552.024, which 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 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.**

⁶⁶³ See Open Records Decision No. 516 at 3 (1989).

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- (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. Subsection (a)(11) pertains to a current or former member of the Texas military forces. Subsection (a)(12), as added by the 85th Legislature in Senate Bill 42, pertains to a current or former federal judge or state judge as defined by section 13.0021(a) of the Election Code, or a spouse of a current or former federal judge or state judge. To obtain the protection of section 552.117(a), the individuals identified in subsections (a)(1) and (11) and subsection (a)(12) as added by Senate Bill 42 must comply with section 552.024(c). If these individuals elect to withhold their home addresses, home telephone numbers, emergency contact information, social security numbers, and information that reveals whether they have family members, the governmental body may redact such information

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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.⁶⁶⁴ These rules are available on the attorney general's website and in Part Four of this *Handbook*.

Subsection (a)(11) 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.⁶⁶⁵ In addition, section 437.232 of the Government Code protects certain information pertaining to service members⁶⁶⁶ and provides as follows:

- (a) **In this section, “military personnel information” means a service member’s name, 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.**⁶⁶⁷

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:

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

⁶⁶⁴ See 1 T.A.C. §§ 63.11–.16.

⁶⁶⁵ Gov't Code § 437.001(14).

⁶⁶⁶ See Gov't Code § 437.001(8) (defining “service member” for purposes of chapter 437 of the Government Code).

⁶⁶⁷ Gov't Code § 437.232.

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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.⁶⁶⁸ The attorney general has also determined that section 552.117 does not protect a post office box number.⁶⁶⁹

2. Subsections (a)(2), (3), (4), (5), (6), (7), (8), (9), (10), (12), (12), and (13): Other Categories of Officers and Employees

As noted above, to obtain the protection of section 552.117, subsection (a)(1), the individuals identified in subsections (a)(1) and (11) and subsection (a)(12) as added by Senate Bill 42 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), (3), (4), (5), (6), (7), (8), (9), and (10), as well as subsection (a)(12) as added by Senate Bill 1576 of the 85th Legislature and subsections (a)(12) and (13) as added by House Bill 1278 of the 85th Legislature.

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 meets the definition of “peace officer” set forth in article 2.12 of the Texas Code of Criminal Procedure or “security officer” in section 51.212 of the Texas Education Code, 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.

T. Section 552.1175: Confidentiality of Certain Personal Information of Peace Officers, County Jailers, Security Officers, Employees of Certain State Agencies or Certain Criminal or Juvenile Justice Agencies or Offices, and Federal and State Judges⁶⁷⁰



The 85th Legislature amended section 552.1175 of the Government Code, which provides as follows:



- (a) This section applies only to:**
- (1) peace officers as defined by Article 2.12, Code of Criminal Procedure;**
 - (2) county jailers as defined by Section 1701.001, Occupations Code;**

⁶⁶⁸ See, e.g., Open Records Letter Nos. 2002-1488 (2002), 2001-0050 (2001).

⁶⁶⁹ 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)).

⁶⁷⁰ Gov’t Code § 552.1175.


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- (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;⁶⁷¹**
-  (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;⁶⁷²**
- (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) **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;**
- (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; and**
- (13) **federal judges and state judges as defined by Section 13.0021, Election Code; and**

⁶⁷¹ Gov't Code § 552.1175(a)(5).

⁶⁷² Gov't Code § 552.1175(a)(5-a).

Exceptions to Disclosure

- (14) **current or former employees of the Texas Civil Commitment Office or of the predecessor in function of the office or a division of this office.**⁶⁷³
- 
- (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.**

⁶⁷³ Gov't Code § 552.1175(a)(14).

Exceptions to Disclosure

- (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.**

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 family member information. 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.⁶⁷⁴ 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.⁶⁷⁵ 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.⁶⁷⁶

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."⁶⁷⁷ 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.⁶⁷⁸

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,⁶⁷⁹ 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 that 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

⁶⁷⁴ See, e.g., Open Records Letter Nos. 99-3302 (1999), 96-2452 (1996).

⁶⁷⁵ See, e.g., Open Records Letter No. 2002-6335 (2002).

⁶⁷⁶ Gov't Code § 552.1175(d)-(e).

⁶⁷⁷ Open Records Decision No. 678 at 4 (2003).

⁶⁷⁸ Open Records Decision No. 678 at 4-5 (2003).

⁶⁷⁹ Open Records Decision No. 530 at 5 (1989).

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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*.⁶⁸⁰

U. Section 552.1176: Confidentiality of Certain Information Maintained by State Bar

Section 552.1176 to the Government Code provides as follows:

- (a) **Information that relates to the home address, home telephone number, electronic mail address, social security number, or date of birth of a person licensed to practice law in this state that is maintained under Chapter 81 is confidential and may not be disclosed to the public under this chapter if the person to whom the information relates:**
 - (1) **chooses to restrict public access to the information; and**
 - (2) **notifies the State Bar of Texas of the person's choice, in writing or electronically, on a form provided by the state bar.**
- (b) **A choice made under Subsection (a) remains valid until rescinded in writing or electronically by the person.**
- (c) **All documents filed with a county clerk and all documents filed with a district clerk are exempt from this section.**

The protections of section 552.1176 only apply to records maintained by the State Bar.⁶⁸¹ There are no cases or formal opinions interpreting this exception.

V. Section 552.118: Confidentiality of Official Prescription Program Information

Section 552.118 of the Government Code excepts from required public disclosure:

- (1) **information on or derived from an official prescription form or 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 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 form, including the name, address, and date of birth or age of the person for whom the controlled substance is prescribed.⁶⁸² The dispensing pharmacist is required to complete the form and provide a copy to the

⁶⁸⁰ See 1 T.A.C. §§ 63.11–.16.

⁶⁸¹ Open Records Letter No. 2009-13358 (2009).

⁶⁸² Health & Safety Code § 481.075(a), (e).

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Texas State Board of Pharmacy.⁶⁸³ Section 481.076 of the Health and Safety Code provides that the board may release this information only to certain parties, including named state entities charged with investigating health professionals or a law enforcement or prosecutorial official charged with investigating or enforcing laws governing illicit drugs.⁶⁸⁴ Under section 552.118, copies of the prescription forms filed with the board, any information derived from the forms, and any other information collected under section 481.075 of the Health and Safety Code, are excepted from public disclosure.

W. 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.**
- (b) **A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.**

In Open Records Decision No. 502 (1988), the attorney general held that there need not be a threshold determination that release of a photograph would endanger an officer before the statutory predecessor to section 552.119(a) could be invoked.⁶⁸⁵ However, in 2003, the attorney general re-evaluated its interpretation of this provision and determined that, in order to withhold a peace officer's or security officer's photograph under section 552.119, a governmental body must demonstrate that release of the photograph would endanger the life or physical safety of the officer.⁶⁸⁶

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 that the statutory predecessor to section 552.119 did not apply to photographs of officers who are no longer living.⁶⁸⁷ This opinion reasoned that the section was inapplicable after an officer's death because its purpose was to protect peace officers from life-threatening harassment and to ensure this protection would be effective by granting the

⁶⁸³ Health & Safety Code § 481.075(i).

⁶⁸⁴ Health & Safety Code § 481.076.

⁶⁸⁵ Open Records Decision No. 502 at 4–6 (1988).

⁶⁸⁶ Open Records Letter Nos. 2003-8009 (2003), 2003-8002 (2003).

⁶⁸⁷ Open Records Decision No. 536 at 2 (1989).

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discretionary authority to release the photograph only to the subject of the photograph.⁶⁸⁸ Protecting the photographs of deceased officers would not serve this purpose.⁶⁸⁹

X. Section 552.120: Confidentiality of Certain Rare Books and Original Manuscripts

Section 552.120 of the Government Code excepts from required public disclosure:

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

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 the Education Code:

Rare books, original manuscripts, personal papers, unpublished letters, and audio and video tapes held by an institution of higher education for the purposes of historical research are confidential, and the institution may restrict access by the public to those materials to protect the actual or potential value of the materials and the privacy of the donors.⁶⁹⁰

Y. Section 552.121: Confidentiality of Certain Documents Held for Historical Research

Section 552.121 of the Government Code excepts from required public disclosure:

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 . . . 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. The Education Code sets out a similar provision applicable to institutions of higher education. It states as follows:

An oral interview that is obtained for historical purposes by an agreement of confidentiality between an interviewee and a state institution of higher education is not public information. The interview becomes public information when the conditions of the agreement of confidentiality have been met.⁶⁹¹

An attorney general opinion requested by a committee of the legislature that enacted section 51.910(a) states that the Public Information Act prevents an institution of higher education from agreeing to

⁶⁸⁸ Open Records Decision No. 536 at 2 (1989).

⁶⁸⁹ Open Records Decision No. 536 at 2 (1989).

⁶⁹⁰ Educ. Code § 51.910(b).

⁶⁹¹ Educ. Code § 51.910(a).

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keep oral history information confidential unless the institution has specific authority under law to make such agreements.⁶⁹²

Z. Section 552.122: Test Items

Section 552.122 of the Government Code excepts from required public disclosure:

- (a) **A test item developed by an educational institution that is funded wholly or in part by state revenue . . . [; and]**
- (b) **A test item developed by a licensing agency or governmental body**

The attorney general considered the scope of the phrase “test items” in Open Records Decision No. 626 (1994). That decision considered whether employee evaluations and records used for determining promotions were “test items” under section 552.122(b). “Test item” was defined as “any standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated.”⁶⁹³ The opinion held that in this instance the evaluations of the 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 that such a determination under section 552.122 had to be made on a case-by-case basis.⁶⁹⁴

AA. Section 552.123: Confidentiality of Name of Applicant for Chief Executive Officer of Institution of Higher Education

Section 552.123 of the Government Code excepts from required public disclosure:

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, . . . , 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.

Thus, section 552.123 expressly permits the withholding of any identifying information about candidates, not just their names.⁶⁹⁵ Before the addition of the statutory predecessor to section 552.123, the names of all persons being considered for public positions were available under the Public Information Act.⁶⁹⁶ The addition of this section changed the law only in respect to applicants for the position of university president.⁶⁹⁷ The exception protects the identities of all applicants for

⁶⁹² Attorney General Opinion JM-37 at 2 (1983).

⁶⁹³ Open Records Decision No. 626 at 6 (1994).

⁶⁹⁴ Open Records Decision No. 626 at 6–8 (1994).

⁶⁹⁵ 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).

⁶⁹⁶ *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 551 (Tex. App.—Austin 1983, writ ref’d n.r.e.); Open Records Decision No. 439 at 2 (1986).

⁶⁹⁷ *See* Open Records Decision No. 585 (1991) (availability of names of applicants for position of city manager).

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the position of university president, whether they apply on their own initiative or are nominated.⁶⁹⁸ Section 552.123 does not protect the names of finalists for the university president position.

BB. 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.”⁶⁹⁹

CC. 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:**

⁶⁹⁸ See Open Records Decision No. 540 at 5 (1990).

⁶⁹⁹ Open Records Letter No. 2003-8748 (2003) (citing to Gov’t Code § 311.005402.006(2)).

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- (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.

The legislative history suggests that the purpose of this section is to codify, clarify, and extend a prior decision of the attorney general.⁷⁰⁰ This section protects the identity of the individual library user while allowing law enforcement officials access to such information by court order or subpoena. An individual has a special right of access under section 552.023 to library records that relate to that individual. 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.⁷⁰¹ In a separate informal ruling, the attorney general determined that 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.⁷⁰² In another informal ruling, the attorney general concluded section 552.124 is designed to protect individual privacy.⁷⁰³ Therefore, because the right to privacy lapses at death, identifying information that pertains solely to a deceased person may not be withheld under section 552.124.⁷⁰⁴

DD. Section 552.125: Certain Audits

The 85th Legislature amended section 552.125 of the Government Code, which provides as follows:

Any documents or information privileged under Chapter 1101, Health and Safety Code, are excepted from the requirements of Section 552.021.⁷⁰⁵

Information considered privileged under chapter 1101 of the Health and Safety Code includes audit reports.⁷⁰⁶ 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.”⁷⁰⁷ An environmental or health and safety audit is defined under section 1101.003(a)(3) as:

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

⁷⁰⁰ See Senate Comm. on State Affairs, Bill Analysis, S.B. 360, 73rd Leg., R.S. (1993); Open Records Decision No. 100 (1975) (identity of library user in connection with library materials he or she has reviewed was protected from public disclosure under statutory predecessor to Gov’t Code § 552.101).

⁷⁰¹ Open Records Letter No. 99-1566 (1999).

⁷⁰² Open Records Letter No. 2000-3201 (2000).

⁷⁰³ Open Records Letter No. 2014-13140 at 4 (2014).

⁷⁰⁴ Open Records Letter No. 2014-13140 at 4 (2014).

⁷⁰⁵ Gov’t Code § 552.125); see also Act of May 19, 2017, 85th Leg., R.S., S.B. 1488, § 20.002(b) (repealing Texas Environmental, Health, and Safety Audit Privilege Act, Tex. Rev. Civ. Stat. art. 4447cc).

⁷⁰⁶ Health and Safety Code § 1101.101(a)(3).

⁷⁰⁷ Health and Safety Code § 1101.051(a).

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safety law conducted by an owner or operator, an employee of the 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].⁷⁰⁸**

There are no cases or formal opinions interpreting section 552.125.

EE. 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 superintendent applicants, not just their names.⁷⁰⁹ Section 552.126 does not protect the names of the finalists for a superintendent position.

FF. 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 [required public disclosure] 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.**

⁷⁰⁸ Health and Safety Code § 1101.003(a)(3).

⁷⁰⁹ Open Records Letter No. 99-2495 (1999).

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There are no cases or formal opinions interpreting this exception. 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.⁷¹⁰ However, 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.⁷¹¹

GG. 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 [required public disclosure], 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.**

There are no cases or formal opinions interpreting this exception. However, in informal rulings, the attorney general has determined that the exception does not apply to documents created by the governmental body rather than submitted by the potential vendor or contractor.⁷¹² Additionally, the

⁷¹⁰ Open Records Letter No. 99-2830 (1999).

⁷¹¹ Open Records Letter No. 99-2830 (1999).

⁷¹² Open Records Letter Nos. 99-0565 (1999), 98-0782 (1998).

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exception may cover information submitted orally by an applicant.⁷¹³ Subsection (c) of the exception does not make confidential a potential contractor's bid proposals, but states that bidding information is subject to public disclosure unless made confidential by law.⁷¹⁴

HH. 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 [required public disclosure].

There are no cases or formal opinions interpreting this exception.

II. Section 552.130: Confidentiality of Certain Motor Vehicle Records

Section 552.130 of the Government Code provides as follows:

- (a) Information is excepted from [required public disclosure] 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.**

⁷¹³ Open Records Letter Nos. 99-0979 (1999), 99-0922 (1999).

⁷¹⁴ Open Records Letter No. 99-1511 (1999).

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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.**

Examples of information excepted from required public disclosure under section 552.130(a)(1) include the license number, class, restrictions, and expiration date of a driver's license issued by an agency of the State of Texas.⁷¹⁵ Examples of information excepted from disclosure under section 552.130(a)(2) include a vehicle identification number and license plate number relating to a title or registration issued by an agency of the State of Texas.⁷¹⁶ Section 552.130 protects information relating to a license, title, or registration issued by this state, a state other than Texas, or another country. However, section 552.130 does not apply to motor vehicle record information found in a CR-3 accident report form. Access to a CR-3 accident report is specifically governed by section 550.065 of the Transportation Code, not section 552.130.⁷¹⁷

Because, section 552.130 was enacted to protect privacy interests, an individual or his authorized representative has a special right of access to his motor vehicle record information, and such information may not be withheld from that individual under section 552.130.⁷¹⁸ Furthermore, information otherwise protected under section 552.130 may be released if the governmental body is authorized to release the information under chapter 730 of the Transportation Code. Section 552.222(c) of the Government Code permits the officer for public information or the officer's agent to 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 of the Transportation Code. It should be noted that a deceased person's interest under

⁷¹⁵ See, e.g., Open Records Letter Nos. 2002-7018 (2002), 2001-3659 (2001).

⁷¹⁶ See, e.g., Open Records Letter Nos. 2000-4847 (2000), 2000-1083 (2000).

⁷¹⁷ See discussion of section 550.065 of the Transportation Code in Part Two, Section II, Subsection H of this *Handbook*.

⁷¹⁸ See Gov't Code § 552.023; Open Records Decision Nos. 684 at 12-13 (2009), 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

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section 552.130 lapses upon the person's death, but section 552.130 would protect the interest of a living person who has a co-ownership in the vehicle.⁷¹⁹

Section 552.130(c) provides that subject to chapter 730 of the Transportation Code, a governmental body may redact without the necessity of requesting an attorney general decision information that is subject to subsection (a) of section 552.130. 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.⁷²⁰ 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 information from disclosure.

JJ. 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 business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:**
- (1) a trade secret of the business prospect; or**
 - (2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.**
- (b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from the requirements of Section 552.021.**
- (c) After an agreement is made with the business prospect, this section does not except from the requirements of Section 552.021 information about a financial or other incentive being offered to the business prospect:**

⁷¹⁹ 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 Broadcasting 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).

⁷²⁰ *See* 1 T.A.C. §§ 63.11–.16.

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- (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. There are no formal cases or opinions interpreting this exception.

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 Nine of this *Handbook*.

KK. 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 Subchapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that subchapter.**
- (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 Section 56.34, 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.**

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- (d) **An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the 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.⁷²¹ There are no cases or formal opinions interpreting this exception.

⁷²¹ Open Records Letter No. 2001-0821 (2001).

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LL. Section 552.1325: Crime Victim Impact Statement: Certain Information Confidential

Section 552.1325 of the Government Code provides as follows:

- (a) **In this section:**
 - (1) **“Crime victim” means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.**
 - (2) **“Victim impact statement” means a victim impact statement under Article 56.03, Code of Criminal Procedure.**
- (b) **The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:**
 - (1) **the name, social security number, address, and telephone number of a crime victim; and**
 - (2) **any other information the disclosure of which would identify or tend to identify the crime victim.**

There are no cases or formal opinions interpreting this exception.

MM. Section 552.133: Confidentiality of Public Power Utility Competitive Matters

Section 552.133 of the Government Code provides as follows:

- (a) **In this section, “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 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;**

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- (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; and**
- (2) 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;**

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- (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.**
- (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.**
- (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 fifteen 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

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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.⁷²²

NN. Section 552.134: Confidentiality of Certain Information Relating to Inmate of Department of Criminal Justice

Section 552.134 of the Government Code reads 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.⁷²³ 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.

⁷²² Open Records Decision No. 666 at 4 (2000).

⁷²³ Gov't Code § 508.313(c).

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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:

- (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.⁷²⁴

OO. Section 552.135: Confidentiality of Certain Information Held by School District

Section 552.135 of the Government Code provides as follows:

- (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.**

⁷²⁴ Open Records Decision No. 667 at 4 (2000).

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- (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.

PP. 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**

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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.⁷²⁵ Because section 552.136 protects privacy interests, a 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.⁷²⁶

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

⁷²⁵ Open Records Decision No. 684 at 9 (2009).

⁷²⁶ Open Records Decision No. 684 at 12 (2009); *see* Gov’t Code § 552.023.

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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.⁷²⁷ These rules are available on the attorney general's website and in Part Four of this *Handbook*.

QQ. 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 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.⁷²⁸ Further, this section does not apply to the

⁷²⁷ See 1 T.A.C. §§ 63.11–.16

⁷²⁸ Open Records Decision No. 684 at 10 (2009).

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private e-mail addresses of government officials who use their private e-mail addresses to conduct official government business.⁷²⁹ 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.⁷³⁰ 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.⁷³¹

RR. 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.**
 - (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;**

⁷²⁹ *Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.).

⁷³⁰ Open Records Decision No. 684 at 10 (2009).

⁷³¹ Open Records Decision No. 684 at 10 (2009).

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- (2) the location or physical layout of a family violence shelter center or victims of trafficking shelter center;**
 - (3) the name, home address, home telephone number, or numeric identifier of a current or former client of a family violence shelter center, victims of trafficking shelter center, or sexual assault program;**
 - (4) the provision of services, including counseling and sheltering, to a current or former client of a family violence shelter center, victims of trafficking shelter center, or sexual assault program;**
 - (5) the name, home address, or home telephone number of a private donor to a family violence shelter center, victims of trafficking shelter center, or sexual assault program; or**
 - (6) the home address or home telephone number of a member of the board of directors or the board of trustees of a family violence shelter center, victims of trafficking shelter center, or sexual assault program, regardless of whether the board member complies with Section 552.024.**
- (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 (6) 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;**

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- (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.**

Thus, 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. 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*.⁷³²

SS. Section 552.139: Confidentiality of Government Information Related to Security or Infrastructure Issues for Computers



The 85th Legislature amended Section 552.139 of the Government Code to provide 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;**
 - (3) a photocopy or other copy of an identification badge issued to an official or employee of a governmental body; and**

⁷³² See 1 T.A.C. §§ 63.11–.16.

Exceptions to Disclosure

(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.⁷³³



(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.⁷³⁴



(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.

Text of (d), as added by Acts 2017, 85th Leg., ch. 683 (H.B. 8), § 4

(d) When posting a contract on an Internet website as required by Section 2261.253, a state agency shall redact information made confidential by this section or excepted from public disclosure by this section. Redaction under this subsection does not except information from the requirements of Section 552.021.



Text of (d), as added by Acts 2017, 85th Leg., ch. 683 (H.B. 1861), § 1

(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.



There are no cases or formal opinions interpreting this exception.

TT. 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.**

⁷³³ Gov’t Code § 552.139(b).

⁷³⁴ Gov’t Code § 552.139(b-1).

Exceptions to Disclosure

- (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.⁷³⁵

UU. 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.**

⁷³⁵ Open Records Decision No. 684 at 11 (2009).

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- (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, 2003.⁷³⁶ There are no cases or formal opinions interpreting this exception.

VV. 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.**

There are no cases or formal opinions interpreting this exception.

WW. 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.**

⁷³⁶ See Act of May 21, 2003, 78th Leg., R.S., ch. 804, § 2, 2003 Tex. Gen. Laws 2356.

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- (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.**

There are no cases or formal opinions interpreting this section.

XX. 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.**

Exceptions to Disclosure

There are no cases or formal opinions interpreting this exception. 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 552.0225.⁷³⁷

YY. 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.**

There are no cases or formal opinions interpreting this exception.

ZZ. 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.⁷³⁸

There are no cases or formal opinions interpreting this exception.

⁷³⁷ Open Records Letter No. 2005-6095 (2005).

⁷³⁸ See, e.g., Open Records Letter Nos. 2009-10649 (2009), 2009-07316 (2009).

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AAA. 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 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.

There are no cases or formal opinions interpreting this exception.

BBB. 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

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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.

There are no cases or formal opinions interpreting this exception. However, the attorney general has determined in an informal letter ruling that Section 552.147(a-1) makes confidential the social security numbers of both current and former school district employees.⁷³⁹

CCC. 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.**

There are no cases or formal opinions interpreting this exception.

DDD. 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**

⁷³⁹ Open Records Letter No. 2013-18655 at 6 (2013).

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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. 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 the protest.
- (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.
- (e) This section applies to information described by Subsections (a), (c), and (d) and to an item of information or comparable sales data described by Subsection (b) only if the information, item of information, or comparable sales data relates to real property that is located in a county having a population of more than 50,000.

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

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entity is excepted from disclosure under section 552.149.⁷⁴⁰ 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.⁷⁴¹ 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 not except from disclosure the otherwise public information the private entity received from the Harris County Clerk.⁷⁴²

EEE. 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.**

⁷⁴⁰ *Harris County Appraisal Dist. v. Integrity Title Co., LLC*, 483 S.W.3d 62, 71 (Tex. App.—Houston [1st Dist.] 2015, pet. denied).

⁷⁴¹ *Harris County Appraisal Dist. v. Integrity Title Co., LLC*, 483 S.W.3d 62, 70 (Tex. App.—Houston [1st Dist.] 2015, pet. denied).

⁷⁴² *Harris County Appraisal Dist. v. Integrity Title Co., LLC*, 483 S.W.3d 62, 71 (Tex. App.—Houston [1st Dist.] 2015, pet. denied).

*Exceptions to Disclosure***(c) Repealed by Acts 2011, 82nd Leg., ch. 609 (S.B. 470), § 1.**

There are no cases or formal opinions interpreting this exception. In an informal letter ruling, the attorney general has determined Section 552.150 does not apply to former employees of a hospital district.⁷⁴³

FFF. 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.**

There are no cases or formal opinions interpreting this exception.

⁷⁴³ Open Records Letter No. 2014-15073A at 8 (2014).

*Exceptions to Disclosure***GGG. 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.⁷⁴⁴ 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.⁷⁴⁵ 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 552.152.⁷⁴⁶

HHH. 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**

⁷⁴⁴ Open Records Letter No. 2014-02048 (2014).

⁷⁴⁵ Open Records Letter No. 2014-02048 at 1 (2014).

⁷⁴⁶ Open Records Letter No. 2014-02048 at 3-4 (2014).

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- (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.

There are no cases or formal opinions interpreting this exception.

III. 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.

There are no cases or formal opinions interpreting this exception.

*Exceptions to Disclosure***JJJ. 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.

There are no cases or formal opinions interpreting this exception.

KKK. 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

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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.**

There are no cases or formal opinions interpreting this exception.



LLL. Section 552.158: Confidentiality of Personal Information Regarding Applicant for Appointment by Governor

Section 552.158 of the Government Code was added by the 85th Legislature and 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.⁷⁴⁷**

There are no cases or formal opinions interpreting this exception.

⁷⁴⁷ Gov't Code § 552.158.

Text of the Texas Public Information Act

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.

Text of the Texas Public Information Act

- (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.

§ 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;

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- (vii) a county board of education;
 - (viii) the governing board of a special district;
 - (ix) the governing body of a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code;
 - (x) a local workforce development board created under Section 2308.253;
 - (xi) a nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state; and
 - (xii) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds; and
- (B) does not include the judiciary.
- (2) “Manipulation” means the process of modifying, reordering, or decoding of information with human intervention.
- (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.

§ 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.

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§ 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

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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

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

§ 552.005. Effect of Chapter on Scope of Civil Discovery

- (a) This chapter does not affect the scope of civil discovery under the Texas Rules of Civil Procedure.
- (b) Exceptions from disclosure under this chapter do not create new privileges from discovery.

§ 552.0055. Subpoena Duces Tecum or Discovery Request

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

§ 552.006. Effect of Chapter on Withholding Public Information

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

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

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

§ 552.008. Information for Legislative Purposes

- (a) This chapter does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.
- (b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with this chapter if the requesting member, agency, or committee states that the public information is requested under this chapter for legislative purposes. A governmental body, by providing

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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.

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- (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

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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.

*Text of the Texas Public Information Act***§ 552.012. Open Records Training**

- (a) This section applies to an elected or appointed public official who is:
- (1) a member of a multimember governmental body;
 - (2) the governing officer of a governmental body that is headed by a single officer rather than by a multimember governing body; or
 - (3) the officer for public information of a governmental body, without regard to whether the officer is elected or appointed to a specific term.
- (b) Each public official shall complete a course of training of not less than one and not more than two hours regarding the responsibilities of the governmental body with which the official serves and its officers and employees under this chapter not later than the 90th day after the date the public official:
- (1) takes the oath of office, if the person is required to take an oath of office to assume the person's duties as a public official; or
 - (2) otherwise assumes the person's duties as a public official, if the person is not required to take an oath of office to assume the person's duties.
- (c) A public official may designate a public information coordinator to satisfy the training requirements of this section for the public official if the public information coordinator is primarily responsible for administering the responsibilities of the public official or governmental body under this chapter. Designation of a public information coordinator under this subsection does not relieve a public official from the duty to comply with any other requirement of this chapter that applies to the public official. The designated public information coordinator shall complete the training course regarding the responsibilities of the governmental body with which the coordinator serves and of its officers and employees under this chapter not later than the 90th day after the date the coordinator assumes the person's duties as coordinator.
- (d) The attorney general shall ensure that the training is made available. The office of the attorney general may provide the training and may also approve any acceptable course of training offered by a governmental body or other entity. The attorney general shall ensure that at least one course of training approved or provided by the attorney general is available on videotape or a functionally similar and widely available medium at no cost. The training must include instruction in:
- (1) the general background of the legal requirements for open records and public information;
 - (2) the applicability of this chapter to governmental bodies;
 - (3) procedures and requirements regarding complying with a request for information under this chapter;

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- (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.

*Text of the Texas Public Information Act***§ 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;

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- (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.

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- (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.

§ 552.0225. 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;

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- (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

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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

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- (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.

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§ 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;

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- (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.

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§ 552.104. Exception: Information Related to Competition or Bidding

- (a) Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.
- (b) The requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under this section.

§ 552.105. Exception: Information Related to Location or Price of Property

Information is excepted from the requirements of Section 552.021 if it is information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

§ 552.106. Exception: Certain Legislative Documents

- (a) A draft or working paper involved in the preparation of proposed legislation is excepted from the requirements of Section 552.021.
- (b) An internal bill analysis or working paper prepared by the governor's office for the purpose of evaluating proposed legislation is excepted from the requirements of Section 552.021.

§ 552.107. Exception: Certain Legal Matters

Information is excepted from the requirements of Section 552.021 if:

- (1) it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct; or
- (2) a court by order has prohibited disclosure of the information.

§ 552.108. Exception: Certain Law Enforcement, Corrections, and Prosecutorial Information

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:
 - (1) release of the information would interfere with the detection, investigation, or prosecution of crime;

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- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;
 - (3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or
 - (4) it is information that:
 - (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or
 - (B) reflects the mental impressions or legal reasoning of an attorney representing the state.
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:
- (1) release of the internal record or notation would interfere with law enforcement or prosecution;
 - (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or
 - (3) the internal record or notation:
 - (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or
 - (B) reflects the mental impressions or legal reasoning of an attorney representing the state.
- (c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

§ 552.1081. 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.

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§ 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.

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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

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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) A trade secret obtained from a person and privileged or confidential by statute or judicial decision is excepted from the requirements of Section 552.021.
- (b) Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is excepted from the requirements of Section 552.021.

§ 552.111. Exception: Agency Memoranda

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency is excepted from the requirements of Section 552.021.

§ 552.112. Exception: Certain Information Relating to Regulation of Financial Institutions or Securities

- (a) Information is excepted from the requirements of Section 552.021 if it is information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both.
- (b) In this section, “securities” has the meaning assigned by The Securities Act (Article 581-1 et seq., Vernon’s Texas Civil Statutes).
- (c) Information is excepted from the requirements of Section 552.021 if it is information submitted by an individual or other entity to the Texas Legislative Council, or to any state agency or department overseen by the Finance Commission of Texas and the information has been or will be sent to the Texas Legislative Council, for the purpose of performing a statistical or demographic analysis of information subject to Section 323.020. However, this subsection does not except from the requirements of Section 552.021 information that does not identify or tend to identify an individual or other entity and that is subject to required public disclosure under Section 323.020(e).

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§ 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

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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.

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- (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);

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- (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.

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- (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 peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable;
 - (3) a current or former employee of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with Section 552.1175;
 - (4) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or other law, a reserve law enforcement officer, a commissioned deputy game warden, or a corrections

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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, 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 Texas military forces, as that term is defined by Section 437.001;

Text of (a)(12), as added by Acts 2017, 85th Leg., ch. 34 (S.B. 1576), § 12

- (12) a current or former employee of the Texas Civil Commitment Office or 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.

Text of (a)(12), as added by Acts 2017, 85th Leg., ch. 190 (S.B. 42), § 17

- (12) a current or former federal judge or state judge, as those terms are defined by Section 13.0021(a), Election Code, or a spouse of a current or former federal judge or state judge;
or

Text of (a)(12), as added by Acts 2017, 85th Leg., ch. 1006 (H.B. 1278), § 1

- (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,

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regardless of whether the current or former attorney complies with Section 552.024 or 552.1175; or

Text of (a)(13), as added by Acts 2017, 85th Leg., ch. 190 (S.B. 42), § 17

- (13) a current or former district attorney, criminal district attorney or county attorney whose jurisdiction includes any criminal law or child protective services matter.

Text of (a)(13), as added by Acts 2017, 85th Leg., ch. 1006 (H.B. 1278), § 1

- (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.

- (b) All documents filed with a county clerk and all documents filed with a district clerk are exempt from this section.

§ 552.1175. Confidentiality of Certain Personal Information of Peace Officers, County Jailers, Security Officers, Employees of Certain State Agencies or Certain Criminal or Juvenile Justice Agencies or Offices, and Federal and State Judges

- (a) This section applies only to:

- (1) peace officers as defined by Article 2.12, Code of Criminal Procedure;
- (2) county jailers as defined by Section 1701.001, Occupations Code;
- (3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department;
- (4) commissioned security officers as defined by Section 1702.002, Occupations Code;
- (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) police officers and inspectors of the United States Federal Protective Service;

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- (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;
 - (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 13.0021, Election Code; and
 - (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.
- (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

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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.

§ 552.1176. Confidentiality of Certain Information Maintained by State Bar

- (a) Information that relates to the home address, home telephone number, electronic mail address, social security number, or date of birth of a person licensed to practice law in this state that is maintained under Chapter 81 is confidential and may not be disclosed to the public under this chapter if the person to whom the information relates:
- (1) chooses to restrict public access to the information; and
 - (2) notifies the State Bar of Texas of the person's choice, in writing or electronically, on a form provided by the state bar.
- (b) A choice made under Subsection (a) remains valid until rescinded in writing or electronically by the person.
- (c) All documents filed with a county clerk and all documents filed with a district clerk are exempt from this section.

§ 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 or 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 of that code.

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§ 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.

§ 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.

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§ 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

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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.

*Text of the Texas Public Information Act***§ 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

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- (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.
- (c) After an agreement is made with the business prospect, this section does not except from the requirements of Section 552.021 information about a financial or other incentive being offered to the business prospect:
 - (1) by the governmental body; or
 - (2) by another person, if the financial or other incentive may directly or indirectly result in the expenditure of public funds by a governmental body or a reduction in revenue received by a governmental body from any source.

§ 552.132. 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 Subchapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that subchapter.
- (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 Section 56.34, Code of Criminal Procedure, as of the date of the award of compensation, the name of the crime victim or claimant

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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 Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the 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 56.32, Code of Criminal Procedure.
 - (2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.
- (b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:
- (1) the name, social security number, address, and telephone number of a crime victim; and
 - (2) any other information the disclosure of which would identify or tend to identify the crime victim.

§ 552.133. Exception: Confidentiality of Public Power Utility Competitive Matters

- (a) In this section, "public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

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(a-1) For purposes of this section, “competitive matter” means 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. 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; and
- (2) 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;

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- (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.
- (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.

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- (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.

§ 552.134. 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.

§ 552.135. 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.

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- (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;

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- (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.
 - (2) "Sexual assault program" has the meaning assigned by Section 420.003.
 - (3) "Victims of trafficking shelter center" means:

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- (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 location or physical layout of a family violence shelter center or victims of trafficking shelter center;
 - (3) the name, home address, home telephone number, or numeric identifier of a current or former client of a family violence shelter center, victims of trafficking shelter center, or sexual assault program;
 - (4) the provision of services, including counseling and sheltering, to a current or former client of a family violence shelter center, victims of trafficking shelter center, or sexual assault program;
 - (5) the name, home address, or home telephone number of a private donor to a family violence shelter center, victims of trafficking shelter center, or sexual assault program; or
 - (6) the home address or home telephone number of a member of the board of directors or the board of trustees of a family violence shelter center, victims of trafficking shelter center, or sexual assault program, regardless of whether the board member complies with Section 552.024.
- (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 (6) 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

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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.

§ 552.139. 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.

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(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.

Text of (d), as added by Acts 2017, 85th Leg., ch. 683 (H.B. 8), § 4

(d) When posting a contract on an Internet website as required by Section 2261.253, a state agency shall redact information made confidential by this section or excepted from public disclosure by this section. Redaction under this subsection does not exempt information from the requirements of Section 552.021.

Text of (d), as added by Acts 2017, 85th Leg., ch. 1042 (H.B. 1861), § 1

(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;

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- (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

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- (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.

§ 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.

*Text of the Texas Public Information Act***§ 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.

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- (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

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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. 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 the protest.
- (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) This section applies to information described by Subsections (a), (c), and (d) and to an item of information or comparable sales data described by Subsection (b) only if the information, item of information, or comparable sales data relates to real property that is located in a county having a population of more than 50,000.

§ 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

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- (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.

§ 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

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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.

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(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.

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§ 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.

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.

*Text of the Texas Public Information Act***§ 552.202. Department Heads**

Each department head is an agent of the officer for public information for the purposes of complying with this chapter.

§ 552.203. General Duties of Officer for Public Information

Each officer for public information, subject to penalties provided in this chapter, shall:

- (1) make public information available for public inspection and copying;
- (2) carefully protect public information from deterioration, alteration, mutilation, loss, or unlawful removal; and
- (3) repair, renovate, or rebind public information as necessary to maintain it properly.

§ 552.204. Scope of Responsibility of Officer for Public Information

An officer for public information is responsible for the release of public information as required by this chapter. The officer is not responsible for:

- (1) the use made of the information by the requestor; or
- (2) the release of information after it is removed from a record as a result of an update, a correction, or a change of status of the person to whom the information pertains.

§ 552.205. Informing Public of Basic Rights and Responsibilities Under this Chapter

- (a) An officer for public information shall prominently display a sign in the form prescribed by the attorney general that contains basic information about the rights of a requestor, the responsibilities of a governmental body, and the procedures for inspecting or obtaining a copy of public information under this chapter. The officer shall display the sign at one or more places in the administrative offices of the governmental body where it is plainly visible to:
 - (1) members of the public who request public information in person under this chapter; and
 - (2) employees of the governmental body whose duties include receiving or responding to requests under this chapter.
- (b) The attorney general by rule shall prescribe the content of the sign and the size, shape, and other physical characteristics of the sign. In prescribing the content of the sign, the attorney general shall include plainly written basic information about the rights of a requestor, the responsibilities of a governmental body, and the procedures for inspecting or obtaining a copy of public information under this chapter that, in the opinion of the attorney general, is most useful for requestors to know and for employees of governmental bodies who receive or respond to requests for public information to know.

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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.

*Text of the Texas Public Information Act***§ 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

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- (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.

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§ 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.

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§ 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.

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- (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

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applicable charges under Subchapter F. A request by the requestor for information for which copies have not previously been furnished or made available to the requestor, including information for which copies were not furnished or made available because the information was redacted from other information that was furnished or made available or because the information did not yet exist at the time of an earlier request, shall be treated in the same manner as any other request for information under this chapter.

SUBCHAPTER F. CHARGES FOR PROVIDING COPIES OF PUBLIC INFORMATION**§ 552.261. Charge for Providing Copies of Public Information**

- (a) The charge for providing a copy of public information shall be an amount that reasonably includes all costs related to reproducing the public information, including costs of materials, labor, and overhead. If a request is for 50 or fewer pages of paper records, the charge for providing the copy of the public information may not include costs of materials, labor, or overhead, but shall be limited to the charge for each page of the paper record that is photocopied, unless the pages to be photocopied are located in:
- (1) two or more separate buildings that are not physically connected with each other; or
 - (2) a remote storage facility.
- (b) If the charge for providing a copy of public information includes costs of labor, the requestor may require the governmental body's officer for public information or the officer's agent to provide the requestor with a written statement as to the amount of time that was required to produce and provide the copy. The statement must be signed by the officer for public information or the officer's agent and the officer's or the agent's name must be typed or legibly printed below the signature. A charge may not be imposed for providing the written statement to the requestor.
- (c) For purposes of Subsection (a), a connection of two buildings by a covered or open sidewalk, an elevated or underground passageway, or a similar facility is insufficient to cause the buildings to be considered separate buildings.
- (d) Charges for providing a copy of public information are considered to accrue at the time the governmental body advises the requestor that the copy is available on payment of the applicable charges.
- (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

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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.

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- (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

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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

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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.

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§ 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.

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- (b) If a requested page contains confidential information that must be edited from the record before the information can be made available for inspection, the governmental body may charge for the cost of making a photocopy of the page from which confidential information must be edited. No charge other than the cost of the photocopy may be imposed under this subsection.
- (c) Except as provided by Subsection (d), an officer for public information or the officer's agent may require a requestor to pay, or to make a deposit or post a bond for the payment of, anticipated personnel costs for making available for inspection public information that exists in paper records only if:
 - (1) the public information specifically requested by the requestor:
 - (A) is older than five years; or
 - (B) completely fills, or when assembled will completely fill, six or more archival boxes; and
 - (2) the officer for public information or the officer's agent estimates that more than five hours will be required to make the public information available for inspection.
- (d) If the governmental body has fewer than 16 full-time employees, the payment, the deposit, or the bond authorized by Subsection (c) may be required only if:
 - (1) the public information specifically requested by the requestor:
 - (A) is older than three years; or
 - (B) completely fills, or when assembled will completely fill, three or more archival boxes; and
 - (2) the officer for public information or the officer's agent estimates that more than two hours will be required to make the public information available for inspection.

§ 552.272. Inspection of Electronic Record if Copy Not Requested

- (a) In response to a request to inspect information that exists in an electronic medium and that is not available directly on-line to the requestor, a charge may not be imposed for access to the information, unless complying with the request will require programming or manipulation of data. If programming or manipulation of data is required, the governmental body shall notify the requestor before assembling the information and provide the requestor with an estimate of charges that will be imposed to make the information available. A charge under this section must be assessed in accordance with this subchapter.
- (b) If public information exists in an electronic form on a computer owned or leased by a governmental body and if the public has direct access to that computer through a computer network or other means, the electronic form of the information may be electronically copied from that computer without charge if accessing the information does not require processing,

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programming, or manipulation on the government-owned or government-leased computer before the information is copied.

- (c) If public information exists in an electronic form on a computer owned or leased by a governmental body and if the public has direct access to that computer through a computer network or other means and the information requires processing, programming, or manipulation before it can be electronically copied, a governmental body may impose charges in accordance with this subchapter.
- (d) If information is created or kept in an electronic form, a governmental body is encouraged to explore options to separate out confidential information and to make public information available to the public through electronic access through a computer network or by other means.
- (e) The provisions of this section that prohibit a governmental entity from imposing a charge for access to information that exists in an electronic medium do not apply to the collection of a fee set by the supreme court after consultation with the Judicial Committee on Information Technology as authorized by Section 77.031 for the use of a computerized electronic judicial information system.

§ 552.274. 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.

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- (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.
- (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 the written statement under Subsection (e) 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

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that subsection, the requestor submits a payment of the amount stated in the written statement provided under Subsection (e).

- (h) If the requestor fails or refuses to 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 an 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:

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- (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.

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) For purposes of this subchapter, a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission.
 - (d) A governmental body that requests an attorney general decision under Subsection (a) must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request:
 - (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to public disclosure; and

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- (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;

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- (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.

§ 552.3035. 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).

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§ 552.304. Submission of Public Comments

- (a) A person may submit written comments stating reasons why the information at issue in a request for an attorney general decision should or should not be released.
- (b) A person who submits written comments to the attorney general under Subsection (a) shall send a copy of those comments to both the person who requested the information from the governmental body and the governmental body. If the written comments submitted to the attorney general disclose or contain the substance of the information requested from the governmental body, the copy of the comments sent to the person who requested the information must be a redacted copy.
- (c) In this section, “written comments” includes a letter, a memorandum, or a brief.

§ 552.305. Information Involving Privacy or Property Interests of Third Party

- (a) In a case in which information is requested under this chapter and a person’s privacy or property interests may be involved, including a case under Section 552.101, 552.104, 552.110, or 552.114, a governmental body may decline to release the information for the purpose of requesting an attorney general decision.
- (b) A person whose interests may be involved under Subsection (a), or any other person, may submit in writing to the attorney general the person’s reasons why the information should be withheld or released.
- (c) The governmental body may, but is not required to, submit its reasons why the information should be withheld or released.
- (d) If release of a person’s proprietary information may be subject to exception under Section 552.101, 552.110, 552.113, or 552.131, the governmental body that requests an attorney general decision under Section 552.301 shall make a good faith attempt to notify that person of the request for the attorney general decision. Notice under this subsection must:
 - (1) be in writing and sent within a reasonable time not later than the 10th business day after the date the governmental body receives the request for the information; and
 - (2) include:
 - (A) a copy of the written request for the information, if any, received by the governmental body; and
 - (B) a statement, in the form prescribed by the attorney general, that the person is entitled to submit in writing to the attorney general within a reasonable time not later than the 10th business day after the date the person receives the notice:
 - (i) each reason the person has as to why the information should be withheld; and
 - (ii) a letter, memorandum, or brief in support of that reason.

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- (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.

§ 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) 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.

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- (b) When this subchapter requires an agency of this state to submit or otherwise give to the attorney general within a specified period a request, notice, or other writing, the requirement is met in a timely fashion if:
 - (1) the request, notice, or other writing is sent to the attorney general by interagency mail; and
 - (2) the agency provides evidence sufficient to establish that the request, notice, or other writing was deposited in the interagency mail within that period.

§ 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.

SUBCHAPTER H. CIVIL ENFORCEMENT

§ 552.321. Suit for Writ of Mandamus

- (a) A requestor or the attorney general may file suit for a writ of mandamus compelling a governmental body to make information available for public inspection if the governmental body refuses to request an attorney general's decision as provided by Subchapter G or refuses to supply public information or information that the attorney general has determined is public information that is not excepted from disclosure under Subchapter C.
- (b) A suit filed by a requestor under this section must be filed in a district court for the county in which the main offices of the governmental body are located. A suit filed by the attorney general under this section must be filed in a district court of Travis County, except that a suit against a municipality with a population of 100,000 or less must be filed in a district court for the county in which the main offices of the municipality are located.

§ 552.3215. Declaratory Judgment or Injunctive Relief

- (a) In this section:
 - (1) "Complainant" means a person who claims to be the victim of a violation of this chapter.

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- (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

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- (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,

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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 assess costs of litigation and reasonable attorney’s fees incurred by a plaintiff or defendant who substantially prevails. In exercising its discretion under this subsection, the court shall consider whether the conduct of the 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

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- (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).

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§ 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.

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§ 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;

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- (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.

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**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 applies 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.

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- (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.

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- (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.

*Text of the Texas Public Information Act***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.

*Text of the Texas Public Information Act***§ 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.

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- (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.

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- (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.

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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.

*Text of the Texas Public Information Act***§ 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.

*Text of the Texas Public Information Act***§ 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, blue-line, map, photographic—actual cost).

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- (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).

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- (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 \times .20 = \3.00 ; or Programming labor charge, $\$28.50 \times .20 = \5.70 . If a request requires one hour of labor charge for locating, compiling, and reproducing information ($\$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 \times .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.

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- (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

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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 \times 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;

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- (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.

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- (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.;

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- (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.

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- (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

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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.

*Text of the Texas Public Information Act***§ 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, blue-line, 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;

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- (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.

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- (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;

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- (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;

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- (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.

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- (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.

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§ 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.

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PART SEVEN: 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 notify the 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.

Comment to 2008 change:

The Attorney General's rule, adopted in accordance with Section 552.262 of the Government Code, is in Section 70.3 of Title 1 of the Texas Administrative Code.

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 EIGHT: 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) 552.221(d)	Promptly; Within ten business days of receipt of request for information make public information available, or 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, 552.113, or 552.131. 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 files suit challenging the attorney general decision.	552.324	Within thirty calendar days after the date governmental body receives attorney general decision.		
13	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 NINE: 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> 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> 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).

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 552.104: Confidentiality of Information Relating to Competition

Boeing Co. v. Paxton, 466 S.W. 3d 831 (Tex. 2015).

Section 552.110: Confidentiality of Trade Secrets and Commercial or Financial Information

Trade Secrets:

In re Bass, 113 S.W.3d 735 (Tex. 2003).

Hyde Corp. v. Huffines, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958).

Open Records Decision No. 552 (1990).

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 552.113: 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 Act 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 Act Handbook* or Attorney General Opinions, including those listed above, please visit the attorney general's website at <http://www.texasattorneygeneral.gov>.

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 TEN: 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)

GOVERNMENT CODE

TITLE 5. OPEN GOVERNMENT; ETHICS

SUBTITLE A. OPEN GOVERNMENT

CHAPTER 551. OPEN MEETINGS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 551.001. DEFINITIONS. In this chapter:

- (1) "Closed meeting" means a meeting to which the public does not have access.
- (2) "Deliberation" means a verbal exchange during a meeting between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body or any public business.
- (3) "Governmental body" means:
 - (A) a board, commission, department, committee, or agency within the executive or legislative branch of state government that is directed by one or more elected or appointed members;
 - (B) a county commissioners court in the state;
 - (C) a municipal governing body in the state;
 - (D) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;
 - (E) a school district board of trustees;
 - (F) a county board of school trustees;
 - (G) a county board of education;
 - (H) the governing board of a special district created by law;
 - (I) a local workforce development board created under Section [2308.253](#);

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

(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; and

(L) a joint board created under Section [22.074](#), Transportation Code.

(4) "Meeting" means:

(A) a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action; or

(B) except as otherwise provided by this subdivision, a gathering:

(i) that is conducted by the governmental body or for which the governmental body is responsible;

(ii) at which a quorum of members of the governmental body is present;

(iii) that has been called by the governmental body; and

(iv) at which the members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the governmental body, about the public business or public policy over which the governmental body has supervision or control.

The term does not include the gathering of a quorum of a governmental body at a social function unrelated to the public business that is conducted by the body, 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.23, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 647, Sec. 1, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 633, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 9.012, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 165 (S.B. [1306](#)), Sec. 1, eff. May 22, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 87 (S.B. [471](#)), Sec. 1, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 685 (H.B. [2414](#)), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 115 (S.B. [679](#)), Sec. 1, eff. May 23, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. [1296](#)), Sec. 21.001(26), eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 917 (S.B. [1440](#)), Sec. 1, eff. September 1, 2017.

Sec. 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.

Added by Acts 1999, 76th Leg., ch. 1084, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1367 (H.B. [3674](#)), Sec. 1, eff. September 1, 2007.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 2001, 77th Leg., ch. 447, Sec. 1, eff. June 4, 2001.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 2005, 79th Leg., Ch. 105 (S.B. [286](#)), Sec. 1, eff. January 1, 2006.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 685 (H.B. [2414](#)), Sec. 3, eff. June 14, 2013.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1201 (S.B. [1297](#)), Sec. 1, eff. September 1, 2013.

SUBCHAPTER B. RECORD OF OPEN MEETING

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 87 (S.B. [471](#)), Sec. 2, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 87 (S.B. [471](#)), Sec. 3, eff. May 18, 2013.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 87 (S.B. [471](#)), Sec. 4, eff. May 18, 2013.

Sec. 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).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 87 (S.B. [471](#)), Sec. 5, eff. May 18, 2013.

SUBCHAPTER C. NOTICE OF MEETINGS

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 2005, 79th Leg., Ch. 325 (S.B. [690](#)), Sec. 1, eff. June 17, 2005.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 1377 (S.B. [1182](#)), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1007 (H.B. [2313](#)), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. [1233](#)), Sec. 14, eff. June 17, 2011.

Reenacted and amended by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 9.013, eff. September 1, 2013.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 624 (H.B. [2381](#)), Sec. 1, eff. September 1, 2005.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 622, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. [7](#)), Sec. 6.006, eff. September 1, 2005.

Sec. 551.045. EXCEPTION TO GENERAL RULE: NOTICE OF EMERGENCY MEETING OR EMERGENCY

ADDITION TO AGENDA. (a) In an emergency or when there is an urgent public necessity, the notice of a meeting or the supplemental notice of a subject added as an item to the agenda for a meeting for which

notice has been posted in accordance with this subchapter is sufficient if it is posted for at least two hours before the meeting is convened.

(b) An emergency or an urgent public necessity exists only if immediate action is required of a governmental body because of:

(1) an imminent threat to public health and safety; or

(2) a reasonably unforeseeable situation.

(c) The governmental body shall clearly identify the emergency or urgent public necessity in the notice or supplemental notice under this section.

(d) A person who is designated or authorized to post notice of a meeting by a governmental body under this subchapter shall post the notice taking at face value the governmental body's stated reason for the emergency or urgent public necessity.

(e) For purposes of Subsection (b)(2), the sudden relocation of a large number of residents from the area of a declared disaster to a governmental body's jurisdiction is considered a reasonably unforeseeable situation for a reasonable period immediately following the relocation. Notice of an emergency meeting or supplemental notice of an emergency item added to the agenda of a meeting to address a situation described by this subsection must be given to members of the news media as provided by Section [551.047](#) not later than one hour before the meeting.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. [11](#)), Sec. 3.06, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1325 (S.B. [1499](#)), Sec. 1, eff. June 15, 2007.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 380 (S.B. [592](#)), Sec. 1, eff. June 15, 2007.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 622, Sec. 2, eff. Sept. 1, 1999.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1007 (H.B. [2313](#)), Sec. 2, eff. June 17, 2011.

Sec. 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.

Added by Acts 2015, 84th Leg., R.S., Ch. 115 (S.B. [679](#)), Sec. 2, eff. May 23, 2015.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 380 (S.B. [592](#)), Sec. 2, eff. June 15, 2007.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 622, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 809 (H.B. [3357](#)), Sec. 1, eff. September 1, 2015.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 809 (H.B. [3357](#)), Sec. 2, eff. September 1, 2015.

Sec. 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.

Added by Acts 1995, 74th Leg., ch. 209, Sec. 1, eff. May 23, 1995.

Sec. 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 is required to be posted by this subchapter, the following governmental bodies and economic development corporations must also concurrently post notice of a meeting on the Internet website of the governmental body or economic development corporation:

(1) a municipality;

- (2) a county;
 - (3) a school district;
 - (4) the governing body of a junior college or junior college district, including a college or district that has changed its name in accordance with Chapter [130](#), Education Code;
 - (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; and
 - (7) a joint board created under Section [22.074](#), Transportation Code.
- (c) The following governmental bodies and economic development corporations must also concurrently post the agenda for the meeting on the Internet website of the governmental body or economic development corporation:
- (1) a municipality with a population of 48,000 or more;
 - (2) a county with a population of 65,000 or more;
 - (3) a school district that contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more;
 - (4) the governing body of a junior college district, including a district that has changed its name in accordance with Chapter [130](#), Education Code, that contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more;
 - (5) a development corporation organized under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) that was created by or for:
 - (A) a municipality with a population of 48,000 or more; or
 - (B) a county or district that contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more; and
 - (6) a regional mobility authority included within the meaning of an "authority" as defined by Section [370.003](#), Transportation Code.
- (d) The validity of a posted notice of a meeting or an agenda by a governmental body or economic development corporation subject to this section that made a good faith attempt to comply with the requirements of this section is not affected by a failure to comply with a requirement of this section that is due to a technical problem beyond the control of the governmental body or economic development corporation.

Added by Acts 2005, 79th Leg., Ch. 340 (S.B. [1133](#)), Sec. 1, eff. January 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 814 (S.B. [1548](#)), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 3.10, eff. April 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 115 (S.B. [679](#)), Sec. 3, eff. May 23, 2015.

Acts 2015, 84th Leg., R.S., Ch. 115 (S.B. [679](#)), Sec. 4, eff. May 23, 2015.

SUBCHAPTER D. EXCEPTIONS TO REQUIREMENT THAT MEETINGS BE OPEN

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 2003, 78th Leg., ch. 1287, Sec. 1, eff. June 21, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 758 (H.B. [1500](#)), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. [1233](#)), Sec. 15, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 87 (S.B. [471](#)), Sec. 6, eff. May 18, 2013.

Sec. 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.

Added by Acts 2005, 79th Leg., Ch. 535 (H.B. [976](#)), Sec. 1, eff. June 17, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. [3560](#)), Sec. 3.05, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. 11.011, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 87 (S.B. [471](#)), Sec. 7, eff. May 18, 2013.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1997, 75th Leg., ch. 659, Sec. 1, eff. Sept. 1, 1997.

Sec. 551.075. CONFERENCE RELATING TO INVESTMENTS AND POTENTIAL INVESTMENTS ATTENDED BY BOARD OF TRUSTEES OF TEXAS GROWTH FUND; CLOSED MEETING. (a) This chapter does not require the board of trustees of the Texas growth fund to confer with one or more employees of the Texas growth fund or with a third party in an open meeting if the only purpose of the conference is to:

(1) receive information from the employees of the Texas growth fund or the third party relating to an investment or a potential investment by the Texas growth fund in:

(A) a private business entity, if disclosure of the information would give advantage to a competitor; or

(B) a business entity whose securities are publicly traded, if the investment or potential investment is not required to be registered under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), and its subsequent amendments, and if disclosure of the information would give advantage to a competitor; or

(2) question the employees of the Texas growth fund or the third party regarding an investment or potential investment described by Subdivision (1), if disclosure of the information contained in the questions or answers would give advantage to a competitor.

(b) During a conference under Subsection (a), members of the board of trustees of the Texas growth fund may not deliberate public business or agency policy that affects public business.

(c) In this section, "Texas growth fund" means the fund created by Section [70](#), Article XVI, Texas Constitution.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 647, Sec. 2, eff. Aug. 30, 1999.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. [11](#)), Sec. 3.07, eff. September 1, 2007.

Sec. 551.077. AGENCY FINANCED BY FEDERAL GOVERNMENT. This chapter does not require an agency financed entirely by federal money to conduct an open meeting.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 2003, 78th Leg., ch. 158, Sec. 1, eff. May 27, 2003.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 628, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. [2018](#)), Sec. 11.120, eff. September 1, 2005.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. 25.071, eff. September 1, 2009.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.01(a), eff. Sept. 1, 1995.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 551.0821. SCHOOL BOARD: PERSONALLY IDENTIFIABLE INFORMATION ABOUT PUBLIC SCHOOL STUDENT. (a) This chapter does not require a school board to conduct an open meeting to deliberate a matter regarding a public school student if personally identifiable information about the student will necessarily be revealed by the deliberation.

(b) Directory information about a public school student is considered to be personally identifiable information about the student for purposes of Subsection (a) only if a parent or guardian of the student, or the student if the student has attained 18 years of age, has informed the school board, the school district, or a school in the school district that the directory information should not be released without prior consent. In this subsection, "directory information" has the meaning assigned by the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), as amended.

(c) Subsection (a) does not apply if an open meeting about the matter is requested in writing by a parent or guardian of the student or by the student if the student has attained 18 years of age.

Added by Acts 2003, 78th Leg., ch. 190, Sec. 1, eff. June 2, 2003.

Sec. 551.083. CERTAIN SCHOOL BOARDS; CLOSED MEETING REGARDING CONSULTATION WITH REPRESENTATIVE OF EMPLOYEE GROUP. This chapter does not require a school board operating under a consultation agreement authorized by Section 13.901, Education Code, to conduct an open meeting to deliberate the standards, guidelines, terms, or conditions the board will follow, or instruct its representatives to follow, in a consultation with a representative of an employee group.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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).

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 778, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1229, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 7, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 342 (H.B. [2978](#)), Sec. 1, eff. September 1, 2011.

Sec. 551.086. CERTAIN PUBLIC POWER UTILITIES: COMPETITIVE MATTERS. (a) Notwithstanding anything in this chapter to the contrary, the rules provided by this section apply to competitive matters of a public power utility.

(b) In this section:

(1) "Public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(2) "Public power utility governing body" means the board of trustees or other applicable governing body, including a city council, of a public power utility.

(3) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 925, Sec. 3, eff. June 17, 2011.

(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.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 45, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 925 (S.B. [1613](#)), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 925 (S.B. [1613](#)), Sec. 3, eff. June 17, 2011.

Sec. 551.087. DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS; CLOSED MEETING. This chapter does not require a governmental body to conduct an open meeting:

(1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or

(2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).

Added by Acts 1999, 76th Leg., ch. 1319, Sec. 32, eff. Sept. 1, 1999. Renumbered from Sec. 551.086 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(49), eff. Sept. 1, 2001.

Sec. 551.088. DELIBERATION REGARDING TEST ITEM. This chapter does not require a governmental body to conduct an open meeting to deliberate a test item or information related to a test item if the governmental body believes that the test item may be included in a test the governmental body administers to individuals who seek to obtain or renew a license or certificate that is necessary to engage in an activity.

Added by Acts 1999, 76th Leg., ch. 312, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 551.086 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(50), eff. Sept. 1, 2001.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 183 (H.B. [1830](#)), Sec. 3, eff. September 1, 2009.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 560 (S.B. [564](#)), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 683 (H.B. [8](#)), Sec. 3, eff. September 1, 2017.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 36 (S.B. [228](#)), Sec. 3, eff. September 1, 2013.

SUBCHAPTER E. PROCEDURES RELATING TO CLOSED MEETING

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 87 (S.B. [471](#)), Sec. 8, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 87 (S.B. [471](#)), Sec. 9, eff. May 18, 2013.

Sec. 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).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 87 (S.B. [471](#)), Sec. 10, eff. May 18, 2013.

SUBCHAPTER F. MEETINGS USING TELEPHONE, VIDEOCONFERENCE, OR INTERNET

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1266, Sec. 4.05, 4.06, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 538 (S.B. [1046](#)), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 538 (S.B. [1046](#)), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 778 (H.B. [3827](#)), Sec. 2, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 778 (H.B. [3827](#)), Sec. 3, eff. June 15, 2007.

Reenacted by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. 11.013, eff. September 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. 11.014, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 87 (S.B. [471](#)), Sec. 11, eff. May 18, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1127 (S.B. [27](#)), Sec. 1, eff. September 1, 2015.

Sec. 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.

Added by Acts 2007, 80th Leg., R.S., Ch. 778 (H.B. [3827](#)), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 87 (S.B. [471](#)), Sec. 12, eff. May 18, 2013.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 12.16, eff. Sept. 1, 1997.

Sec. 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 shall be clearly stated prior to speaking.

Added by Acts 1995, 74th Leg., ch. 1046, Sec. 1, eff. Aug. 28, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 87 (S.B. [471](#)), Sec. 13, eff. May 18, 2013.

Sec. 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.

Added by Acts 1997, 75th Leg., ch. 944, Sec. 1, eff. June 18, 1997.

Sec. 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 the physical location described by Subsection (e) and at any other 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.

Added by Acts 1997, 75th Leg., ch. 1038, Sec. 2, eff. Sept. 1, 1997. Renumbered from Sec. 551.126 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(50), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 630, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 159 (S.B. [984](#)), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 685 (H.B. [2414](#)), Sec. 2, eff. June 14, 2013.

Reenacted and amended by Acts 2017, 85th Leg., R.S., Ch. 884 (H.B. [3047](#)), Sec. 1, eff. September 1, 2017.

Sec. 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 Subdivision (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.

Added by Acts 1999, 76th Leg., ch. 100, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 681 (H.B. [283](#)), Sec. 1, eff. January 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 1147 (H.B. [523](#)), Sec. 1, eff. September 1, 2017.

Sec. 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 that 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 842 (H.B. [31](#)), Sec. 1, eff. June 14, 2013.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 690 (H.B. [2668](#)), Sec. 1, eff. June 14, 2013.

Sec. 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 a public consultation by a governmental body with its attorney in an open meeting of the governmental body under Subsection (a) must be audible to the public at the location specified in the notice of the meeting as the location of the meeting.

(c) Subsection (a) does not:

(1) authorize the members of a governmental body to conduct a meeting of the governmental body by telephone conference call, 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.

Added by Acts 2001, 77th Leg., ch. 50, Sec. 1, eff. May 7, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 538 (S.B. [1046](#)), Sec. 4, eff. September 1, 2007.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 455 (S.B. [1667](#)), Sec. 3, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 87 (S.B. [471](#)), Sec. 14, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1078 (H.B. [3357](#)), Sec. 1, eff. June 14, 2013.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 20 (S.B. [293](#)), Sec. 1, eff. May 10, 2013.

SUBCHAPTER G. ENFORCEMENT AND REMEDIES; CRIMINAL VIOLATIONS

Sec. 551.141. ACTION VOIDABLE. An action taken by a governmental body in violation of this chapter is voidable.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 551.143. CONSPIRACY TO CIRCUMVENT CHAPTER; OFFENSE; PENALTY. (a) A member or group of members of a governmental body commits an offense if the member or group of members knowingly conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.

(b) An offense under Subsection (a) is a misdemeanor punishable by:

- (1) a fine of not less than \$100 or more than \$500;
- (2) confinement in the county jail for not less than one month or more than six months; or
- (3) both the fine and confinement.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 647, Sec. 3, eff. Aug. 30, 1999.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 87 (S.B. [471](#)), Sec. 15, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 87 (S.B. [471](#)), Sec. 16, eff. May 18, 2013.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 87 (S.B. [471](#)), Sec. 17, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 87 (S.B. [471](#)), Sec. 18, eff. May 18, 2013.

GOVERNMENT CODE

TITLE 5. OPEN GOVERNMENT; ETHICS

SUBTITLE A. OPEN GOVERNMENT

CHAPTER 552. PUBLIC INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 2, eff. Sept. 1, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1204 (S.B. [1368](#)), Sec. 1, eff. September 1, 2013.

Sec. 552.003. DEFINITIONS. In this chapter:

(1) "Governmental body":

(A) means:

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

(ii) a county commissioners court in the state;

(iii) a municipal governing body in the state;

(iv) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;

(v) a school district board of trustees;

(vi) a county board of school trustees;

(vii) a county board of education;

(viii) the governing board of a special district;

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

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

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

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

(B) does not include the judiciary.

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

(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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 18.24, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 633, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1004, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 9.014, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1204 (S.B. [1368](#)), Sec. 2, eff. September 1, 2013.

Sec. 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.

Added by Acts 1999, 76th Leg., ch. 1319, Sec. 1, eff. Sept. 1, 1999.

Sec. 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.

Added by Acts 1999, 76th Leg., ch. 1084, Sec. 2, eff. Sept. 1, 1999. Renumbered from Sec. 552.0035 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(51), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1367 (H.B. [3674](#)), Sec. 2, eff. September 1, 2007.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 809 (H.B. [2460](#)), Sec. 1, eff. June 17, 2011.

Sec. 552.004. PRESERVATION OF INFORMATION. A governmental body or, for information of an elective county office, the elected county officer, may determine a time for which information that is not currently in use will be preserved, subject to any applicable rule or law governing the destruction and other disposition of state and local government records or public information.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 2, eff. Sept. 1, 1995.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1999, 76th Leg., ch. 1319, Sec. 2, eff. Sept. 1, 1999.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 2, eff. Sept. 1, 1995.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 2, eff. Sept. 1, 1995.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 2, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1364 (S.B. [671](#)), Sec. 1, eff. September 1, 2010.

Acts 2009, 81st Leg., R.S., Ch. 1377 (S.B. [1182](#)), Sec. 2, eff. September 1, 2010.

Sec. 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.

Text of subsection as amended by Acts 2005, 79th Leg., R.S., Ch. 329 (S.B. [727](#)), Sec. 1

(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.

Text of subsection as amended by Acts 2005, 79th Leg., R.S., Ch. 716 (S.B. [452](#)), Sec. 1

(b) The representative of 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.

Added by Acts 1999, 76th Leg., ch. 1319, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 329 (S.B. [727](#)), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 716 (S.B. [452](#)), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. [3560](#)), Sec. 3.06, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1377 (S.B. [1182](#)), Sec. 3, eff. September 1, 2009.

Sec. 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.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 27.01, eff. Jan. 11, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 329 (S.B. [727](#)), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 716 (S.B. [452](#)), Sec. 2, eff. September 1, 2005.

Sec. 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.

Added by Acts 1999, 76th Leg., ch. 1319, Sec. 4, eff. Sept. 1, 1999.

Sec. 552.012. OPEN RECORDS TRAINING. (a) This section applies to an elected or appointed public official who is:

- (1) a member of a multimember governmental body;
- (2) the governing officer of a governmental body that is headed by a single officer rather than by a multimember governing body; or
- (3) the officer for public information of a governmental body, without regard to whether the officer is elected or appointed to a specific term.

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

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

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

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

- (1) the general background of the legal requirements for open records and public information;
- (2) the applicability of this chapter to governmental bodies;
- (3) procedures and requirements regarding complying with a request for information under this chapter;
- (4) the role of the attorney general under this chapter; and

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

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

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

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

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

Added by Acts 2005, 79th Leg., Ch. 105 (S.B. [286](#)), Sec. 2, eff. January 1, 2006.

SUBCHAPTER B. RIGHT OF ACCESS TO PUBLIC INFORMATION

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 2, eff. Sept. 1, 1995.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 462 (S.B. [1907](#)), Sec. 1, eff. September 1, 2011.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 3, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1319, Sec. 5, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 2, eff. September 1, 2011.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 58 (S.B. [1071](#)), Sec. 1, eff. May 19, 2009.

Sec. 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](#).

Added by Acts 2005, 79th Leg., Ch. 1338 (S.B. [121](#)), Sec. 1, eff. June 18, 2005.

Sec. 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](#).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 4, eff. Sept. 1, 1995.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 5, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 119, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 283 (S.B. [1068](#)), Sec. 1, eff. June 4, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 927 (S.B. [1638](#)), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 183 (H.B. [2961](#)), Sec. 1, eff. September 1, 2013.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 552.027. EXCEPTION: INFORMATION AVAILABLE COMMERCIALY; 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.

Added by Acts 1995, 74th Leg., ch. 1035, Sec. 12, eff. Sept. 1, 1995.

Sec. 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.

Added by Acts 1995, 74th Leg., ch. 302, Sec. 1, eff. June 5, 1995. Renumbered from Government Code Sec. 552.027 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(44), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1231, Sec. 6, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 154, Sec. 1, eff. May 21, 1999; Acts 2001, 77th Leg., ch. 735, Sec. 1, eff. June 13, 2001; Acts 2003, 78th Leg., ch. 283, Sec. 45, eff. Sept. 1, 2003.

Sec. 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.

Added by Acts 1999, 76th Leg., ch. 783, Sec. 2, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 21.002(7), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1271 (H.B. [2197](#)), Sec. 1, eff. June 18, 2005.

SUBCHAPTER C. INFORMATION EXCEPTED FROM REQUIRED DISCLOSURE

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 6, eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 3, eff. September 1, 2011.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1319, Sec. 6, eff. Sept. 1, 1999.

Sec. 552.104. EXCEPTION: INFORMATION RELATED TO COMPETITION OR BIDDING. (a) Information is excepted from the requirements of Section [552.021](#) if it is information that, if released, would give advantage to a competitor or bidder.

(b) The requirement of Section [552.022](#) that a category of information listed under Section [552.022\(a\)](#) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under this section.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1272, Sec. 7.01, eff. June 15, 2001.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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](#).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1437, Sec. 1, eff. June 20, 1997.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 7, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. [2018](#)), Sec. 8.014, eff. September 1, 2005.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 7, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1231, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 474, Sec. 6, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 557 (H.B. [1262](#)), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 557 (H.B. [1262](#)), Sec. 4, eff. September 1, 2005.

Sec. 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.

Added by Acts 2015, 84th Leg., R.S., Ch. 209 (S.B. [1697](#)), Sec. 1, eff. September 1, 2015.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1360 (S.B. [1512](#)), Sec. 1, eff. September 1, 2013.

Sec. 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](#).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 4, eff. September 1, 2011.

Sec. 552.110. EXCEPTION: CONFIDENTIALITY OF TRADE SECRETS; CONFIDENTIALITY OF CERTAIN COMMERCIAL OR FINANCIAL INFORMATION. (a) A trade secret obtained from a person and privileged or confidential by statute or judicial decision is excepted from the requirements of Section [552.021](#).

(b) Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is excepted from the requirements of Section [552.021](#).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1319, Sec. 7, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 5, eff. September 1, 2011.

Sec. 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](#).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 552.112. EXCEPTION: CERTAIN INFORMATION RELATING TO REGULATION OF FINANCIAL INSTITUTIONS OR SECURITIES. (a) Information is excepted from the requirements of Section [552.021](#) if it is information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both.

(b) In this section, "securities" has the meaning assigned by The Securities Act (Article [581-1](#) et seq., Vernon's Texas Civil Statutes).

(c) Information is excepted from the requirements of Section [552.021](#) if it is information submitted by an individual or other entity to the Texas Legislative Council, or to any state agency or department overseen by the Finance Commission of Texas and the information has been or will be sent to the Texas Legislative Council, for the purpose of performing a statistical or demographic analysis of information subject to Section [323.020](#). However, this subsection does not except from the requirements of Section [552.021](#) information that does not identify or tend to identify an individual or other entity and that is subject to required public disclosure under Section [323.020](#)(e).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 918, Sec. 2, eff. June 20, 2003.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 8, eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 6, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 279 (H.B. [878](#)), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 279 (H.B. [878](#)), Sec. 5, eff. September 1, 2013.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.38, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 828 (H.B. [4046](#)), Sec. 1, eff. September 1, 2015.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 706, Sec. 1, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 413, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1192, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 8, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 311 (S.B. [1485](#)), Sec. 1, eff. June 1, 2015.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1122, Sec. 10, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1319, Sec. 8, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 379, Sec. 1, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 202 (H.B. [1285](#)), Sec. 1, eff. May 27, 2005.

Acts 2005, 79th Leg., Ch. 202 (H.B. [1285](#)), Sec. 2, eff. May 27, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1372 (S.B. [9](#)), Sec. 24, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1372 (S.B. [9](#)), Sec. 25, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1170 (H.B. [2947](#)), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1170 (H.B. [2947](#)), Sec. 2, eff. June 17, 2011.

Sec. 552.117. EXCEPTION: CONFIDENTIALITY OF CERTAIN ADDRESSES, TELEPHONE NUMBERS, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION.

Text of subsection as amended by Acts 2017, 85th Leg., R.S., Ch. 1006 (H.B. [1278](#)), Sec. 1

(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 peace officer as defined by Article [2.12](#), Code of Criminal Procedure, or a security officer commissioned under Section [51.212](#), Education Code, regardless of whether the officer complies with Section [552.024](#) or [552.1175](#), as applicable;
- (3) a current or former employee of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with Section [552.1175](#);
- (4) a peace officer as defined by Article [2.12](#), Code of Criminal Procedure, or other law, a reserve law enforcement officer, a commissioned deputy game warden, or a corrections officer in a municipal, county, or state penal institution in this state who was killed in the line of duty, regardless of whether the deceased complied with Section [552.024](#) or [552.1175](#);
- (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, 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 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](#); or
- (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](#).

Text of subsection as amended by Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. [1576](#)), Sec. 12

(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 peace officer as defined by Article [2.12](#), Code of Criminal Procedure, or a security officer commissioned under Section [51.212](#), Education Code, regardless of whether the officer complies with Section [552.024](#) or [552.1175](#), as applicable;
- (3) a current or former employee of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with Section [552.1175](#);
- (4) a peace officer as defined by Article [2.12](#), Code of Criminal Procedure, or other law, a reserve law enforcement officer, a commissioned deputy game warden, or a corrections officer in a municipal, county, or state penal institution in this state who was killed in the line of duty, regardless of whether the deceased complied with Section [552.024](#) or [552.1175](#);
- (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, 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 Texas military forces, as that term is defined by Section [437.001](#); or

(12) 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](#).

Text of subsection as amended by Acts 2017, 85th Leg., R.S., Ch. 190 (S.B. [42](#)), Sec. 17

(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 peace officer as defined by Article [2.12](#), Code of Criminal Procedure, or a security officer commissioned under Section [51.212](#), Education Code, regardless of whether the officer complies with Section [552.024](#) or [552.1175](#), as applicable;

(3) a current or former employee of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with Section [552.1175](#);

(4) a peace officer as defined by Article [2.12](#), Code of Criminal Procedure, or other law, a reserve law enforcement officer, a commissioned deputy game warden, or a corrections officer in a municipal, county, or state penal institution in this state who was killed in the line of duty, regardless of whether the deceased complied with Section [552.024](#) or [552.1175](#);

(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, 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 Texas military forces, as that term is defined by Section [437.001](#);

(12) a current or former federal judge or state judge, as those terms are defined by Section [13.0021](#)(a), Election Code, or a spouse of a current or former federal judge or state judge; or

(13) a current or former district attorney, criminal district attorney, or county attorney whose jurisdiction includes any criminal law or child protective services matter.

(b) All documents filed with a county clerk and all documents filed with a district clerk are exempt from this section.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 9, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 512, Sec. 1, eff. May 31, 1997; Acts 1999, 76th Leg., ch. 1318, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 119, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 947, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 621 (H.B. [455](#)), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 927 (S.B. [1638](#)), Sec. 2, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 953 (H.B. [1046](#)), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 9, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1033 (H.B. [2733](#)), Sec. 2, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 170 (H.B. [2152](#)), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 527 (H.B. [1311](#)), Sec. 1, eff. June 16, 2015.

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. [1576](#)), Sec. 12, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 190 (S.B. [42](#)), Sec. 17, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1006 (H.B. [1278](#)), Sec. 1, eff. June 15, 2017.

Sec. 552.1175. CONFIDENTIALITY OF CERTAIN PERSONAL IDENTIFYING INFORMATION OF PEACE OFFICERS, COUNTY JAILERS, SECURITY OFFICERS, EMPLOYEES OF CERTAIN STATE AGENCIES OR CERTAIN CRIMINAL OR JUVENILE JUSTICE AGENCIES OR OFFICES, AND FEDERAL AND STATE JUDGES. (a) This section applies only to:

- (1) peace officers as defined by Article [2.12](#), Code of Criminal Procedure;
 - (2) county jailers as defined by Section [1701.001](#), Occupations Code;
 - (3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department;
 - (4) commissioned security officers as defined by Section [1702.002](#), Occupations Code;
 - (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) 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;
 - (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 [13.0021](#), Election Code; and
 - (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.
- (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.

Added by Acts 2001, 77th Leg., ch. 119, Sec. 3, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 947, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 715 (S.B. [450](#)), Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 715 (S.B. [450](#)), Sec. 2, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 621 (H.B. [455](#)), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 283 (S.B. [1068](#)), Sec. 2, eff. June 4, 2009.

Acts 2009, 81st Leg., R.S., Ch. 732 (S.B. [390](#)), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 927 (S.B. [1638](#)), Sec. 3, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 953 (H.B. [1046](#)), Sec. 2, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 937 (H.B. [1632](#)), Sec. 2, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 937 (H.B. [1632](#)), Sec. 3, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1033 (H.B. [2733](#)), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1033 (H.B. [2733](#)), Sec. 4, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 527 (H.B. [1311](#)), Sec. 2, eff. June 16, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. [1296](#)), Sec. 9.008, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. [1576](#)), Sec. 13, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. [1576](#)), Sec. 14, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1006 (H.B. [1278](#)), Sec. 2, eff. June 15, 2017.

Sec. 552.1176. CONFIDENTIALITY OF CERTAIN INFORMATION MAINTAINED BY STATE BAR. (a) Information that relates to the home address, home telephone number, electronic mail address, social security number, or date of birth of a person licensed to practice law in this state that is maintained under Chapter [81](#) is confidential and may not be disclosed to the public under this chapter if the person to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the State Bar of Texas of the person's choice, in writing or electronically, on a form provided by the state bar.

(b) A choice made under Subsection (a) remains valid until rescinded in writing or electronically by the person.

(c) All documents filed with a county clerk and all documents filed with a district clerk are exempt from this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 95 (H.B. [1237](#)), Sec. 1, eff. September 1, 2007.

Sec. 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 or 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](#) of that code.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 35, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 30, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1228 (S.B. [594](#)), Sec. 6, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 10, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. [195](#)), Sec. 1, eff. September 1, 2016.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 8 (S.B. [148](#)), Sec. 1, eff. May 3, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 11, eff. September 1, 2011.

Sec. 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](#).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 12, eff. September 1, 2011.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 13, eff. September 1, 2011.

Sec. 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](#).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.05(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1035, Sec. 10, eff. Sept. 1, 1995.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. [5](#)), Sec. 5.01, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 14, eff. September 1, 2011.

Sec. 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.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 4.07, eff. June 20, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 15, eff. September 1, 2011.

Sec. 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.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.03(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1035, Sec. 11, eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 16, eff. September 1, 2011.

Sec. 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](#).

Added by Acts 1995, 74th Leg., ch. 219, Sec. 14, eff. May 23, 1995. Renumbered from Government Code Sec. 552.124 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(45), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1231, Sec. 7, eff. Sept. 1, 1997.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. [1488](#)), Sec. 20.002(c), eff. September 1, 2017.

Sec. 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.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 31, eff. May 30, 1995. Renumbered from Government Code Sec. 552.124 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(46), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1231, Sec. 8, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 17, eff. September 1, 2011.

Sec. 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.

Added by Acts 1997, 75th Leg., ch. 719, Sec. 1, eff. June 17, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 18, eff. September 1, 2011.

Sec. 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.

Added by Acts 1997, 75th Leg., ch. 1227, Sec. 1, eff. June 30, 1997. Renumbered from Sec. 552.127 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(51), eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 19, eff. September 1, 2011.

Sec. 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](#).

Added by Acts 1997, 75th Leg., ch. 1069, Sec. 17, eff. June 19, 1997. Renumbered from Sec. 552.127 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(52), eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 20, eff. September 1, 2011.

Sec. 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.

Added by Acts 1997, 75th Leg., ch. 1187, Sec. 4, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 927 (S.B. [1638](#)), Sec. 4, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 21, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 22, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 85 (S.B. [458](#)), Sec. 1, eff. May 18, 2013.

Sec. 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](#).
- (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.

Added by Acts 1999, 76th Leg., ch. 1319, Sec. 9, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 23, eff. September 1, 2011.

Sec. 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 Subchapter B, Chapter [56](#), Code of Criminal Procedure, who has filed an application for compensation under that subchapter.

(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 Section [56.34](#), 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 Subchapter B, Chapter [56](#), Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation

under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the 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.

Added by Acts 1999, 76th Leg., ch. 1319, Sec. 10, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1039, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 290 (H.B. [1042](#)), Sec. 1, eff. September 1, 2007.

Sec. 552.1325. CRIME VICTIM IMPACT STATEMENT: CERTAIN INFORMATION CONFIDENTIAL. (a) In this section:

- (1) "Crime victim" means a person who is a victim as defined by Article [56.32](#), Code of Criminal Procedure.
- (2) "Victim impact statement" means a victim impact statement under Article [56.03](#), Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

- (1) the name, social security number, address, and telephone number of a crime victim; and
- (2) any other information the disclosure of which would identify or tend to identify the crime victim.

Added by Acts 2003, 78th Leg., ch. 1303, Sec. 1, eff. June 21, 2003.

Sec. 552.133. EXCEPTION: CONFIDENTIALITY OF PUBLIC POWER UTILITY COMPETITIVE MATTERS. (a) In this section, "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 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; and

(2) 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.

(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.

(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.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 46, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1272, Sec. 7.02, eff. June 15, 2001. Renumbered from Sec. 552.131 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(52), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 925 (S.B. [1613](#)), Sec. 2, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 24, eff. September 1, 2011.

Sec. 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.

Added by Acts 1999, 76th Leg., ch. 783, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 552.131 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(53), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 25, eff. September 1, 2011.

Sec. 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](#).

Added by Acts 1999, 76th Leg., ch. 1335, Sec. 6, eff. Sept. 1, 1999. Renumbered from Sec. 552.131 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(54), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 26, eff. September 1, 2011.

Sec. 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.

Added by Acts 2001, 77th Leg., ch. 356, Sec. 1, eff. May 26, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 27, eff. September 1, 2011.

Sec. 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.

Added by Acts 2001, 77th Leg., ch. 356, Sec. 1, eff. May 26, 2001. Amended by Acts 2003, 78th Leg., ch. 1089, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 962 (H.B. [3544](#)), Sec. 7, eff. September 1, 2009.

Sec. 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.
- (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 location or physical layout of a family violence shelter center or victims of trafficking shelter center;
- (3) the name, home address, home telephone number, or numeric identifier of a current or former client of a family violence shelter center, victims of trafficking shelter center, or sexual assault program;
- (4) the provision of services, including counseling and sheltering, to a current or former client of a family violence shelter center, victims of trafficking shelter center, or sexual assault program;
- (5) the name, home address, or home telephone number of a private donor to a family violence shelter center, victims of trafficking shelter center, or sexual assault program; or
- (6) the home address or home telephone number of a member of the board of directors or the board of trustees of a family violence shelter center, victims of trafficking shelter center, or sexual assault program, regardless of whether the board member complies with Section [552.024](#).

(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 (6) 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.

Added by Acts 2001, 77th Leg., ch. 143, Sec. 1, eff. May 16, 2001. Renumbered from Government Code Sec. 552.136 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(75), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 283 (S.B. [1068](#)), Sec. 3, eff. June 4, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 28, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 365 (H.B. [2725](#)), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 365 (H.B. [2725](#)), Sec. 2, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 365 (H.B. [2725](#)), Sec. 3, eff. June 14, 2013.

Sec. 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](#).

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 1042 (H.B. [1861](#)), Sec. 1

(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](#).

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 683 (H.B. [8](#)), Sec. 4

(d) When posting a contract on an Internet website as required by Section [2261.253](#), a state agency shall redact information made confidential by this section or excepted from public disclosure by this section. Redaction under this subsection does not except information from the requirements of Section [552.021](#).

Added by Acts 2001, 77th Leg., ch. 1272, Sec. 4.03, eff. June 15, 2001. Renumbered from Government Code Sec. 552.136 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(76), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 183 (H.B. [1830](#)), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 927 (S.B. [1638](#)), Sec. 5, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 29, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 555 (S.B. [532](#)), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 683 (H.B. [8](#)), Sec. 4, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1042 (H.B. [1861](#)), Sec. 1, eff. June 15, 2017.

Sec. 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.

Added by Acts 2003, 78th Leg., ch. 438, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 124 (H.B. [18](#)), Sec. 1, eff. May 24, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 30, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. [1488](#)), Sec. 22.040, eff. September 1, 2017.

Sec. 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.

Added by Acts 2003, 78th Leg., ch. 804, Sec. 1, eff. Sept. 1, 2003.

Sec. 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.

Added by Acts 2003, 78th Leg., ch. 1236, Sec. 5, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 731 (H.B. [961](#)), Sec. 9, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 731 (H.B. [961](#)), Sec. 10, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1070 (H.B. [2286](#)), Sec. 2.02, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1279 (S.B. [1902](#)), Sec. 26, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1279 (S.B. [1902](#)), Sec. 27, eff. September 1, 2015.

Sec. 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.

Added by Acts 2003, 78th Leg., ch. 1236, Sec. 5, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1017 (H.B. [1303](#)), Sec. 9, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1017 (H.B. [1303](#)), Sec. 10, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 780 (S.B. [1056](#)), Sec. 5, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 731 (H.B. [961](#)), Sec. 11, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1279 (S.B. [1902](#)), Sec. 28, eff. September 1, 2015.

Sec. 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, Sec. 17.05(1), eff. September 28, 2011.
- (f) This section does not apply to the Texas Mutual Insurance Company or a successor to the company.

Added by Acts 2005, 79th Leg., Ch. 1338 (S.B. [121](#)), Sec. 2, eff. June 18, 2005.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. [1](#)), Sec. 17.05(1), eff. September 28, 2011.

Sec. 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.

Acts 2003, 78th Leg., ch. 1215, Sec. 1, eff. Sept. 1, 2003.

Renumbered from Government Code, Section [552.141](#) by Acts 2005, 79th Leg., Ch. 728 (H.B. [2018](#)), Sec. [23.001](#)(35), eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 350 (S.B. [178](#)), Sec. 1, eff. June 15, 2007.

Sec. 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 [304.056](#), Business & Commerce Code, are excepted from the requirements of Section [552.021](#).

Added by Acts 2003, 78th Leg., ch. 401, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 171 (H.B. [210](#)), Sec. 2, eff. May 27, 2005.

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.20, eff. April 1, 2009.

Renumbered from Government Code, Section [552.141](#) by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. [3167](#)), Sec. 17.001(39), eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 32, eff. September 1, 2011.

Sec. 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.

Added by Acts 2005, 79th Leg., Ch. 741 (H.B. [2753](#)), Sec. 9, eff. June 17, 2005.

Sec. 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.

Added by Acts 2005, 79th Leg., Ch. 397 (S.B. [1485](#)), Sec. 1, eff. June 17, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 3 (H.B. [2061](#)), Sec. 1, eff. March 28, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 183 (H.B. [2961](#)), Sec. 2, eff. September 1, 2013.

Sec. 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.

Added by Acts 2007, 80th Leg., R.S., Ch. 114 (S.B. [123](#)), Sec. 1, eff. May 17, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 33, eff. September 1, 2011.

Sec. 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. 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 the protest.

(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.

(e) This section applies to information described by Subsections (a), (c), and (d) and to an item of information or comparable sales data described by Subsection (b) only if the information, item of

information, or comparable sales data relates to real property that is located in a county having a population of more than 50,000.

Added by Acts 2007, 80th Leg., R.S., Ch. 471 (H.B. [2188](#)), Sec. 1, eff. June 16, 2007.

Renumbered from Government Code, Section [552.148](#) by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. [27.001](#)(39), eff. September 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 555 (S.B. [1813](#)), Sec. 1, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1153 (H.B. [2941](#)), Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. [1303](#)), Sec. 11.013, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1079 (S.B. [1130](#)), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 34, eff. September 1, 2011.

Sec. 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:

(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., R.S., Ch. 609, Sec. 1, eff. June 17, 2011.

Added by Acts 2009, 81st Leg., R.S., Ch. 1377 (S.B. [1182](#)), Sec. 4, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 609 (S.B. [470](#)), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 35, eff. September 1, 2011.

Sec. 552.151. EXCEPTION: CONFIDENTIALITY OF 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 1377 (S.B. [1182](#)), Sec. 5, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 36, eff. September 1, 2011.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 283 (S.B. [1068](#)), Sec. 4, eff. June 4, 2009.

Redesignated from Government Code, Section [552.151](#) by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. [1303](#)), Sec. 27.001(20), eff. September 1, 2011.

Sec. 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](#).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. [1048](#)), Sec. 2, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. [211](#)), Sec. 4, eff. June 14, 2013.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 455 (S.B. [1667](#)), Sec. 4, eff. September 1, 2011.

Redesignated from Government Code, Section [552.153](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(22), eff. September 1, 2013.

Sec. 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.

Added by Acts 2015, 84th Leg., R.S., Ch. 835 (S.B. [46](#)), Sec. 1, eff. September 1, 2015.

Sec. 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.

Added by Acts 2015, 84th Leg., R.S., Ch. 1045 (H.B. [1832](#)), Sec. 5, eff. June 19, 2015.

Sec. 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.

Added by Acts 2017, 85th Leg., R.S., Ch. 303 (S.B. [705](#)), Sec. 1, eff. May 29, 2017.

SUBCHAPTER D. OFFICER FOR PUBLIC INFORMATION

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 14, eff. Sept. 1, 1995.

Sec. 552.202. DEPARTMENT HEADS. Each department head is an agent of the officer for public information for the purposes of complying with this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 14, eff. Sept. 1, 1995.

Sec. 552.203. GENERAL DUTIES OF OFFICER FOR PUBLIC INFORMATION. Each officer for public information, subject to penalties provided in this chapter, shall:

- (1) make public information available for public inspection and copying;

(2) carefully protect public information from deterioration, alteration, mutilation, loss, or unlawful removal; and

(3) repair, renovate, or rebind public information as necessary to maintain it properly.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 14, eff. Sept. 1, 1995.

Sec. 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.

Added by Acts 1995, 74th Leg., ch. 1035, Sec. 14, eff. Sept. 1, 1995.

Sec. 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.

Added by Acts 1999, 76th Leg., ch. 1319, Sec. 11, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 329 (S.B. [727](#)), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 716 (S.B. [452](#)), Sec. 3, eff. September 1, 2005.

SUBCHAPTER E. PROCEDURES RELATED TO ACCESS

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 15, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1231, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1319, Sec. 12, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 791, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 692 (H.B. [685](#)), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 520 (S.B. [79](#)), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 894 (H.B. [3107](#)), Sec. 1, eff. September 1, 2017.

Sec. 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).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 15, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1187, Sec. 5, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 296 (H.B. [1497](#)), Sec. 1, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 762 (H.B. [2134](#)), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 835 (S.B. [46](#)), Sec. 2, eff. September 1, 2015.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 15, eff. Sept. 1, 1995.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 15, eff. Sept. 1, 1995.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 15, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 329 (S.B. [727](#)), Sec. 4, eff. September 1, 2005.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 15, eff. Sept. 1, 1995.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 15, eff. Sept. 1, 1995.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 15, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 962 (H.B. [3544](#)), Sec. 8, eff. September 1, 2009.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 15, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1231, Sec. 3, eff. Sept. 1, 1997.

Sec. 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.

Added by Acts 1995, 74th Leg., ch. 1035, Sec. 15, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 329 (S.B. [727](#)), Sec. 5, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 716 (S.B. [452](#)), Sec. 4, eff. September 1, 2005.

Sec. 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.

Added by Acts 1999, 76th Leg., ch. 1319, Sec. 13, eff. Sept. 1, 1999.

SUBCHAPTER F. CHARGES FOR PROVIDING COPIES OF PUBLIC INFORMATION

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 16, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1231, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1319, Sec. 14, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 864, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 894 (H.B. [3107](#)), Sec. 2, eff. September 1, 2017.

Sec. 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.

Added by Acts 1999, 76th Leg., ch. 1319, Sec. 15, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 864, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 329 (S.B. [727](#)), Sec. 6, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 716 (S.B. [452](#)), Sec. 5, eff. September 1, 2005.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 17, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1231, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1319, Sec. 16, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 329 (S.B. [727](#)), Sec. 7, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 716 (S.B. [452](#)), Sec. 6, eff. September 1, 2005.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 17, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1231, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1319, Sec. 17, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 315 (S.B. [623](#)), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 349 (S.B. [175](#)), Sec. 1, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1377 (S.B. [1182](#)), Sec. 6, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 38, eff. September 1, 2011.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 17, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1231, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1585, Sec. 1, eff. June 20, 1999.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1231, Sec. 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1155, Sec. 1, eff. June 15, 2001.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 17, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1231, Sec. 4, eff. Sept. 1, 1997.

Sec. 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.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 8 (S.B. [8](#)), Sec. 20, eff. September 28, 2011.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 17, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1231, Sec. 4, eff. Sept. 1, 1997.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 17, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1231, Sec. 4, eff. Sept. 1, 1997.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 17, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1231, Sec. 4, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 864, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 329 (S.B. [727](#)), Sec. 8, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 716 (S.B. [452](#)), Sec. 7, eff. September 1, 2005.

Sec. 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.

Added by Acts 1995, 74th Leg., ch. 1035, Sec. 17, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1231, Sec. 4, eff. Sept. 1, 1997.

Sec. 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.

Added by Acts 1995, 74th Leg., ch. 1035, Sec. 17, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1231, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1319, Sec. 18, eff. Sept. 1, 1999.

Sec. 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.

Added by Acts 1995, 74th Leg., ch. 1035, Sec. 17, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1231, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1327, Sec. 5, eff. Sept. 1, 1997.

Sec. 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., R.S., Ch. 1083, Sec. 25(62), eff. June 17, 2011.

(c) In this section, "state agency" has the meaning assigned by Sections [2151.002](#)(2)(A) and (C).

Added by Acts 1995, 74th Leg., ch. 693, Sec. 17, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19, eff. Sept. 1, 1997. Renumbered from Government Code Sec. 552.270 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(47), eff. Sept. 1, 1997. Renumbered from Government Code Sec. 552.270 and amended by Acts 1997, 75th Leg., ch. 1231, Sec. 4, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1319, Sec. 19, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 9.008(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 329 (S.B. [727](#)), Sec. 9, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 716 (S.B. [452](#)), Sec. 8, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 716 (S.B. [452](#)), Sec. 9, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1377 (S.B. [1182](#)), Sec. 7, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. [1179](#)), Sec. 25(62), eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 9.014, eff. September 1, 2013.

Sec. 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 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.

(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 the written statement under Subsection (e) 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 payment of the amount stated in the written statement provided under Subsection (e).

(h) If the requestor fails or refuses to 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 an 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 news medium or communication 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 a 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.

Added by Acts 2007, 80th Leg., R.S., Ch. 1398 (H.B. [2564](#)), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1383 (S.B. [1629](#)), Sec. 1, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 894 (H.B. [3107](#)), Sec. 3, eff. September 1, 2017.

SUBCHAPTER G. ATTORNEY GENERAL DECISIONS

Sec. 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) For purposes of this subchapter, a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission.

(d) A governmental body that requests an attorney general decision under Subsection (a) must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request:

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 18, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1231, Sec. 5, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1319, Sec. 20, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 329 (S.B. [727](#)), Sec. 10, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 474 (H.B. [2248](#)), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1377 (S.B. [1182](#)), Sec. 8, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. [602](#)), Sec. 39, eff. September 1, 2011.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1319, Sec. 21, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 329 (S.B. [727](#)), Sec. 11, eff. September 1, 2005.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 19, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1319, Sec. 22, eff. Sept. 1, 1999.

Sec. 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).

Added by Acts 1999, 76th Leg., ch. 1319, Sec. 23, eff. Sept. 1, 1999.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 20, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 329 (S.B. [727](#)), Sec. 12, eff. September 1, 2005.

Sec. 552.305. INFORMATION INVOLVING PRIVACY OR PROPERTY INTERESTS OF THIRD PARTY. (a) In a case in which information is requested under this chapter and a person's privacy or property interests may be involved, including a case under Section [552.101](#), [552.104](#), [552.110](#), or [552.114](#), a governmental body may decline to release the information for the purpose of requesting an attorney general decision.

(b) A person whose interests may be involved under Subsection (a), or any other person, may submit in writing to the attorney general the person's reasons why the information should be withheld or released.

(c) The governmental body may, but is not required to, submit its reasons why the information should be withheld or released.

(d) If release of a person's proprietary information may be subject to exception under Section [552.101](#), [552.110](#), [552.113](#), or [552.131](#), the governmental body that requests an attorney general decision under Section [552.301](#) shall make a good faith attempt to notify that person of the request for the attorney general decision. Notice under this subsection must:

(1) be in writing and sent within a reasonable time not later than the 10th business day after the date the governmental body receives the request for the information; and

(2) include:

(A) a copy of the written request for the information, if any, received by the governmental body; and

(B) a statement, in the form prescribed by the attorney general, that the person is entitled to submit in writing to the attorney general within a reasonable time not later than the 10th business day after the date the person receives the notice:

(i) each reason the person has as to why the information should be withheld; and

(ii) a letter, memorandum, or brief in support of that reason.

(e) A person who submits a letter, memorandum, or brief to the attorney general under Subsection (d) shall send a copy of that letter, memorandum, or brief to the person who requested the information from the governmental body. If the letter, memorandum, or brief submitted to the attorney general contains the substance of the information requested, the copy of the letter, memorandum, or brief may be a redacted copy.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 21, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1319, Sec. 24, eff. Sept. 1, 1999.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 22, eff. Jan. 1, 1996; Acts 1999, 76th Leg., ch. 1319, Sec. 25, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 349 (S.B. [175](#)), Sec. 2, eff. June 15, 2007.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 349 (S.B. [175](#)), Sec. 3, eff. June 15, 2007.

Sec. 552.308. TIMELINESS OF ACTION BY UNITED STATES MAIL, INTERAGENCY MAIL, OR COMMON OR CONTRACT CARRIER. (a) When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period, the requirement is met in a timely fashion if the document is sent to the person by first class United States mail or common or contract carrier properly addressed with postage or handling charges prepaid and:

(1) it bears a post office cancellation mark or a receipt mark of a common or contract carrier indicating a time within that period; or

(2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail or with a common or contract carrier within that period.

(b) When this subchapter requires an agency of this state to submit or otherwise give to the attorney general within a specified period a request, notice, or other writing, the requirement is met in a timely fashion if:

(1) the request, notice, or other writing is sent to the attorney general by interagency mail; and

(2) the agency provides evidence sufficient to establish that the request, notice, or other writing was deposited in the interagency mail within that period.

Added by Acts 1995, 74th Leg., ch. 1035, Sec. 23, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1319, Sec. 26, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 909, Sec. 1, 2, eff. June 20, 2003.

Sec. 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](#).

Added by Acts 2011, 82nd Leg., R.S., Ch. 552 (H.B. [2866](#)), Sec. 2, eff. June 17, 2011.

SUBCHAPTER H. CIVIL ENFORCEMENT

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 24, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1319, Sec. 27, eff. Sept. 1, 1999.

Sec. 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 a 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.

Added by Acts 1999, 76th Leg., ch. 1319, Sec. 28, eff. Sept. 1, 1999.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 894 (H.B. [3107](#)), Sec. 4, eff. September 1, 2017.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 461 (S.B. [983](#)), Sec. 1, eff. September 1, 2013.

Sec. 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 assess costs of litigation and reasonable attorney's fees incurred by a plaintiff or defendant who substantially prevails. In exercising its discretion under this subsection, the court shall consider whether the conduct of the governmental body had a reasonable basis in law and whether the litigation was brought in good faith.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1319, Sec. 29, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1377 (S.B. [1182](#)), Sec. 9, eff. September 1, 2009.

Sec. 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 for public information as provided in Section [552.353\(b\)\(3\)](#), suit must be filed within the deadline provided in Section [552.353\(b\)\(3\)](#).

Added by Acts 1995, 74th Leg., ch. 578, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 1035, Sec. 24, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 13.01, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1231, Sec. 9, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1319, Sec. 30, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1377 (S.B. [1182](#)), Sec. 10, eff. September 1, 2009.

Sec. 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).

Added by Acts 1995, 74th Leg., ch. 578, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 1035, Sec. 24, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 13.01, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1231, Sec. 9, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1377 (S.B. [1182](#)), Sec. 11, eff. September 1, 2009.

Sec. 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.

Added by Acts 1999, 76th Leg., ch. 1319, Sec. 31, eff. Sept. 1, 1999.

Sec. 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.

Added by Acts 2007, 80th Leg., R.S., Ch. 474 (H.B. [2248](#)), Sec. 2, eff. September 1, 2007.

SUBCHAPTER I. CRIMINAL VIOLATIONS

Sec. 552.351. DESTRUCTION, REMOVAL, OR ALTERATION OF PUBLIC INFORMATION. (a) A person commits an offense if the person wilfully destroys, mutilates, removes without permission as provided by this chapter, or alters public information.

(b) An offense under this section is a misdemeanor punishable by:

- (1) a fine of not less than \$25 or more than \$4,000;
- (2) confinement in the county jail for not less than three days or more than three months; or
- (3) both the fine and confinement.

(c) It is an exception to the application of Subsection (a) that the public information was transferred under Section [441.204](#).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 25, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 771, Sec. 2, eff. June 13, 2001.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 249, Sec. 7.01, 7.02, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1089, Sec. 2, eff. Sept. 1, 2003.

Sec. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 25, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1377 (S.B. [1182](#)), Sec. 12, eff. September 1, 2009.

GOVERNMENT CODE

TITLE 8. PUBLIC RETIREMENT SYSTEMS

SUBTITLE A. PROVISIONS GENERALLY APPLICABLE TO PUBLIC RETIREMENT SYSTEMS

CHAPTER 802. ADMINISTRATIVE REQUIREMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 802.001. DEFINITIONS. In this chapter:

(1) "Board" means the State Pension Review Board.

(1-a) "Defined contribution plan" means a plan provided by the governing body of a public retirement system that provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants that may be allocated to the participant's account.

(2) "Governing body of a public retirement system" means the board of trustees, pension board, or other public retirement system governing body that has the fiduciary responsibility for assets of the system and has the duties of overseeing the investment and expenditure of funds of the system and the administration of benefits of the system.

(3) "Public retirement system" means a continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision, or of an agency or instrumentality of the state or a political subdivision, other than:

(A) a program providing only workers' compensation benefits;

(B) a program administered by the federal government;

(C) an individual retirement account or individual retirement annuity within the meaning of Section 408, or a retirement bond within the meaning of Section 409, of the Internal Revenue Code of 1986 (26 U.S.C. Sections 408, 409);

(D) a plan described by Section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401);

(E) an individual account plan consisting of an annuity contract described by Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 403);

(F) an eligible state deferred compensation plan described by Section 457(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 457); or

(G)(i) in Sections [802.104](#) and [802.105](#) of this chapter, a program for which benefits are administered by a life insurance company; and

(ii) in the rest of this chapter, a program for which the only funding agency is a life insurance company.

(4) "System administrator" means a person designated by the governing body of a public retirement system to supervise the day-to-day affairs of the public retirement system.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 195, ch. 18, Sec. 1, eff. Nov. 10, 1981; Acts 1985, 69th Leg., ch. 143, Sec. 2, eff. Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.001 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 624, Sec. 11, eff. Sept. 1, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 140 (H.B. [13](#)), Sec. 3, eff. May 24, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1152 (S.B. [200](#)), Sec. 8, eff. September 1, 2013.

Sec. 802.002. EXEMPTIONS. (a) Except as provided by Subsection (b), the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, and the Judicial Retirement System of Texas Plan Two are exempt from Sections [802.101\(a\)](#), [802.101\(b\)](#), [802.101\(d\)](#), [802.102](#), [802.103\(a\)](#), [802.103\(b\)](#), [802.2015](#), [802.2016](#), [802.202](#), [802.203](#), [802.204](#), [802.205](#), [802.206](#), and [802.207](#). The Judicial Retirement System of Texas Plan One is exempt from all of Subchapters B and C except Sections [802.104](#) and [802.105](#). The optional retirement program governed by Chapter [830](#) is exempt from all of Subchapters B and C except Section [802.106](#).

(b) If a public retirement system or program that is exempt under Subsection (a) is required by law to make an actuarial valuation of the assets of the system or program and publish actuarial information about the system or program, the actuary making the valuation and the governing body publishing the information must include the information required by Section [802.101\(b\)](#).

(c) Notwithstanding any other law, a defined contribution plan is exempt from Sections [802.101](#), [802.1012](#), [802.1014](#), [802.103](#), [802.104](#), and [802.202\(d\)](#). This subsection may not be construed to exempt any plan from Section [802.105](#) or [802.106\(h\)](#).

(d) Notwithstanding any other law, a retirement system that is organized under the Texas Local Fire Fighters Retirement Act (Article [6243e](#), Vernon's Texas Civil Statutes) for a fire department consisting exclusively of volunteers as defined by that Act is exempt from Sections [802.101](#), [802.1012](#), [802.1014](#), [802.102](#), [802.103](#), [802.104](#), and [802.202\(d\)](#). This subsection may not be construed to exempt any plan from Section [802.105](#) or [802.106\(h\)](#).

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, Sec. 2, eff. Nov. 10, 1981; Acts 1985, 69th Leg., ch. 143, Sec. 3, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 602, Sec. 2, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.002 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1152 (S.B. [200](#)), Sec. 9, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 940 (H.B. [3310](#)), Sec. 2, eff. June 18, 2015.

Sec. 802.003. WRIT OF MANDAMUS. (a) Except as provided by Subsection (b), if the governing body of a public retirement system fails or refuses to comply with a requirement of this chapter that applies to it, a person residing in the political subdivision in which the members of the governing body are officers may file a motion, petition, or other appropriate pleading in a district court having jurisdiction in a county in which the political subdivision is located in whole or in part, for a writ of mandamus to compel the governing body to comply with the applicable requirement.

(b) If the governing body of the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas Municipal Retirement System, or the Texas County and District Retirement System fails or refuses to comply with a requirement of this chapter that applies to it, any resident of the state may file a pleading in a district court in Travis County to compel the governing body to comply with the applicable requirement.

(c) If the prevailing party in an action under this section is other than the governing body of a public retirement system, the court may award reasonable attorney's fees and costs of suit.

(d) The State Pension Review Board may file an appropriate pleading, in the manner provided by this section for filing by an individual, for the purpose of enforcing a requirement of Subchapter B or C, other than a requirement of Section [802.101\(a\)](#), [802.101\(d\)](#), [802.102](#), [802.103\(a\)](#), or [802.104](#).

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, Sec. 3, eff. Nov. 10, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.003 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. STUDIES AND REPORTS

Sec. 802.101. ACTUARIAL VALUATION. (a) The governing body of a public retirement system shall employ an actuary, as a full-time or part-time employee or as a consultant, to make a valuation at least once every three years of the assets and liabilities of the system on the basis of assumptions and methods that are reasonable in the aggregate, considering the experience of the program and reasonable expectations, and that, in combination, offer the actuary's best estimate of anticipated experience under the program. The valuation must include a recommended contribution rate needed for the system to achieve and maintain an amortization period that does not exceed 30 years.

(b) On the basis of the valuation, the actuary shall make recommendations to the governing body of the public retirement system to ensure the actuarial soundness of the system. The actuary shall define each actuarial term and enumerate and explain each actuarial assumption used in making the valuation. This information must be included either in the actuarial study or in a separate report made available as a public record.

(c) The governing body of a public retirement system shall file with the State Pension Review Board a copy of each actuarial study and each separate report made as required by law.

(d) An actuary employed under this section must be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, Sec. 4, eff. Nov. 10, 1981; Acts 1985, 69th Leg., ch. 143, Sec. 4, eff. Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.101 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 940 (H.B. [3310](#)), Sec. 3, eff. June 18, 2015.

Sec. 802.1012. AUDITS OF ACTUARIAL VALUATIONS, STUDIES, AND REPORTS. (a) In this section, "governmental entity" means a unit of government that is the employer of active members of a public retirement system.

(b) Except as provided by Subsection (k), this section applies only to a public retirement system with total assets the book value of which, as of the last day of the preceding fiscal year, is at least \$100 million.

(c) Every five years, the actuarial valuations, studies, and reports of a public retirement system most recently prepared for the retirement system as required by Section [802.101](#) or other law under this title or under Title 109, Revised Statutes, must be audited by an independent actuary who:

(1) is engaged for the purpose of the audit by the governmental entity; and

(2) has the credentials required for an actuary under Section [802.101\(d\)](#).

(d) Before beginning an audit under this section, the governmental entity and the independent actuary must agree in writing to maintain the confidentiality of any nonpublic information provided by the public retirement system for the audit.

(e) Before beginning an audit under this section, the independent actuary must meet with the manager of the pension fund for the public retirement system to discuss the appropriate assumptions to use in conducting the audit.

(f) Not later than the 30th day after completing the audit under Subsection (c), the independent actuary shall submit to the public retirement system for purposes of discussion and clarification a preliminary draft of the audit report that is substantially complete.

(g) The independent actuary shall:

(1) discuss the preliminary draft of the audit report with the governing body of the public retirement system; and

(2) request in writing that the retirement system, on or before the 30th day after the date of receiving the preliminary draft, submit to the independent actuary any response that the retirement system wants to accompany the final audit report.

(h) The independent actuary shall submit to the governmental entity the final audit report that includes the audit results and any response received from the public retirement system:

(1) not earlier than the 31st day after the date on which the preliminary draft is submitted to the retirement system; and

(2) not later than the 60th day after the date on which the preliminary draft is submitted to the retirement system.

(i) At the first regularly scheduled open meeting after receiving the final audit report, the governing body of the governmental entity shall:

(1) include on the posted agenda for the meeting the presentation of the audit results;

(2) present the final audit report and any response from the public retirement system; and

(3) provide printed copies of the final audit report and the response from the public retirement system for individuals attending the meeting.

(j) The governmental entity shall:

(1) maintain a copy of the final audit report at its main office for public inspection;

(2) submit a copy of the final audit report to the public retirement system and the State Pension Review Board not later than the 30th day after the date the final audit report is received by the governmental entity; and

(3) pay all costs associated with conducting the audit and preparing and distributing the report under this section.

(k) This section does not apply to the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, or the Judicial Retirement System of Texas Plan Two.

Added by Acts 2007, 80th Leg., R.S., Ch. 733 (H.B. [2664](#)), Sec. 1, eff. September 1, 2007.

Sec. 802.1014. ACTUARIAL EXPERIENCE STUDY. (a) In this section, "actuarial experience study" means a study in which actuarial assumptions are reviewed in light of relevant experience factors, important trends, and economic projections with the purpose of determining whether actuarial assumptions require adjustment.

(b) Except as provided by Subsection (c), a public retirement system that conducts an actuarial experience study shall submit to the board a copy of the actuarial experience study before the 31st day after the date of the study's adoption.

(b-1) Except as provided by Subsection (c), a public retirement system that has assets of at least \$100 million shall conduct once every five years an actuarial experience study and shall submit to the board a copy of the actuarial experience study before the 31st day after the date of the study's adoption.

(c) This section does not apply to the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, or the Judicial Retirement System of Texas Plan Two.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1152 (S.B. [200](#)), Sec. 10, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 940 (H.B. [3310](#)), Sec. 4, eff. June 18, 2015.

Sec. 802.102. AUDIT. The governing body of a public retirement system shall have the accounts of the system audited at least annually by a certified public accountant in accordance with generally accepted auditing standards. A general audit of a governmental entity, as defined by Section [802.1012](#), does not satisfy the requirement of this section.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 143, Sec. 5, eff. Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.102 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1152 (S.B. [200](#)), Sec. 11, eff. September 1, 2013.

Sec. 802.1024. CORRECTION OF ERRORS. (a) Except as provided by Subsection (b), if an error in the records of a public retirement system results in a person receiving more or less money than the person is entitled to receive under this subtitle, the retirement system shall correct the error and so far as practicable adjust any future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid. If no future payments are due, the retirement system may recover the overpayment in any manner that would be permitted for the collection of any other debt.

(a-1) On discovery of an error described by Subsection (a), the public retirement system shall as soon as practicable, but not later than the 90th day after the date of discovery, give written notice of the error to the person receiving an incorrect amount of money. The notice must include:

- (1) the amount of the correction in overpayment or underpayment;
- (2) how the amount of the correction was calculated;
- (3) a brief explanation of the reason for the correction;
- (4) a statement that the notice recipient may file a written complaint with the retirement system if the recipient does not agree with the correction;
- (5) instructions for filing a written complaint; and
- (6) a payment plan option if no future payments are due.

(a-2) Except as provided by this subsection and Section [802.1025](#), the public retirement system shall begin to adjust future payments or, if no future payments are due, institute recovery of an overpayment of benefits under Subsection (a) not later than the 90th day after the date the notice required by Subsection (a-1) is delivered by certified mail, return receipt requested. If the system does not receive a signed receipt evidencing delivery of the notice on or before the 30th day after the date the notice is mailed, the system shall mail the notice a second time by certified mail, return receipt requested. Except as provided by Section [802.1025](#), not later than the 90th day after the date the second notice is mailed, the system shall begin to adjust future payments or, if no future payments are due, institute recovery of an overpayment of benefits.

(b) Except as provided by Subsection (c), a public retirement system:

- (1) may correct the overpayment of benefits to a person entitled to receive payments from the system by the method described by Subsection (a) only for an overpayment made during the three years preceding the date the system discovers or discovered the overpayment;
- (2) may not recover from the recipient any overpayment made more than three years before the discovery of the overpayment; and

(3) may not recover an overpayment if the system did not adjust future payments or, if no future payments are due, institute recovery of the overpayment within the time prescribed by Subsection (a-2) or Section [802.1025](#).

(c) Subsection (b) does not apply to an overpayment a reasonable person should know the person is not entitled to receive.

Added by Acts 2003, 78th Leg., ch. 416, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1164 (H.B. [155](#)), Sec. 1, eff. June 15, 2007.

Sec. 802.1025. COMPLAINT PROCEDURE. (a) Not later than the 20th day after the date of receiving notice under Section [802.1024](#)(a-1) or, if applicable, the second notice under Section [802.1024](#)(a-2), the notice recipient may file a written complaint with the retirement system. The recipient shall include any available supporting documentation with the complaint.

(b) Not later than the 30th day after the date of receiving a complaint under Subsection (a), the retirement system shall respond in writing to the complaint by confirming the amount of the proposed correction or, if the retirement system determines the amount of the proposed correction is incorrect, by modifying the amount of the correction. If the retirement system modifies the amount of the correction, the response must include:

- (1) how the modified correction was calculated;
- (2) a brief explanation of the reason for the modification; and
- (3) a payment plan option if no future payments are due.

(c) Subject to Subsection (d), if a complaint is filed under this section, the retirement system may not adjust future payments or recover an overpayment under Section [802.1024](#) until:

- (1) the 20th day after the date the notice recipient receives the response under Subsection (b), if the recipient does not file an administrative appeal by that date; or
- (2) the date a final decision by the retirement system is issued, if the recipient files an administrative appeal before the date described by Subdivision (1).

(d) If the retirement system has begun the adjustment of future payments or the recovery of an overpayment under Section [802.1024](#)(a-2), the system shall discontinue the adjustment of future payments or the recovery of the overpayment beginning with the first pay cycle occurring after the date the complaint is received by the system. The system may not recommence the adjustment of future payments or the recovery of an overpayment until the date described by Subsection (c)(1) or (2), as

applicable. If a complaint is resolved in favor of the person filing the complaint, not later than the 30th day after the date of the resolution, the system shall pay the person the appropriate amount.

(e) A person whose complaint is not resolved under this section must exhaust all administrative procedures provided by the retirement system. Not later than the 30th day after the date a final administrative decision is issued by the retirement system, a person aggrieved by the decision may appeal the decision to an appropriate district court.

Added by Acts 2007, 80th Leg., R.S., Ch. 1164 (H.B. [155](#)), Sec. 2, eff. June 15, 2007.

Sec. 802.103. ANNUAL FINANCIAL REPORT. (a) Except as provided by Subsection (c), the governing body of a public retirement system shall publish an annual financial report showing the financial condition of the system as of the last day of the fiscal year covered in the report. The report must include the financial statements and schedules examined in the most recent audit performed as required by Section [802.102](#) and must include a statement of opinion by the certified public accountant as to whether or not the financial statements and schedules are presented fairly and in accordance with generally accepted accounting principles.

(b) The governing body of a public retirement system shall, before the 211th day after the last day of the fiscal year under which the system operates, file with the State Pension Review Board a copy of each annual financial report it makes as required by law.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1152 (S.B. 200), Sec. 17, eff. September 1, 2013, and Ch. 1316 (S.B. 220), Sec. 4.01(1), eff. June 14, 2013.

(d) A general audit of a governmental entity, as defined by Section [802.1012](#), does not satisfy the requirement of this section.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, Sec. 5, 6, eff. Nov. 10, 1981; Acts 1985, 69th Leg., ch. 143, Sec. 5, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 126, Sec. 1, eff. May 20, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.103 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1152 (S.B. [200](#)), Sec. 12, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1152 (S.B. [200](#)), Sec. 17, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1316 (S.B. [220](#)), Sec. 4.01(1), eff. June 14, 2013.

Sec. 802.104. REPORT OF MEMBERS AND RETIREES. Each public retirement system annually shall, before the 211th day after the last day of the fiscal year under which the system operates, submit to the board a report containing the number of members and number of retirees of the system as of the last day of the immediately preceding fiscal year.

Added by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, Sec. 7, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 143, Sec. 5, eff. Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.104 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 624, Sec. 12, eff. Sept. 1, 1991.

Sec. 802.105. REGISTRATION. (a) Each public retirement system shall, before the 91st day after the date of its creation, register with the State Pension Review Board.

(b) A registration form submitted to the board must include:

- (1) the name, mailing address, and telephone number of the public retirement system;
- (2) the names and occupations of the chairman and other members of its governing body;
- (3) a citation of the law under which the system was created;
- (4) the beginning and ending dates of its fiscal year; and
- (5) the name of the administrator of the system and the person's business mailing address and telephone number if different from those of the retirement system.

(c) A public retirement system shall notify the board of changes in information required under Subsection (b) before the 31st day after the day the change occurs.

Added by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, Sec. 7, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 143, Sec. 5, eff. Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.105 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 802.106. INFORMATION TO MEMBER OR ANNUITANT. (a) When a person becomes a member of a public retirement system, the system shall provide the person:

- (1) a summary of the benefits from the retirement system available to or on behalf of a person who retires or dies while a member or retiree of the system;
- (2) a summary of procedures for claiming or choosing the benefits available from the retirement system; and

(3) a summary of the provisions for employer and employee contributions, withdrawal of contributions, and eligibility for benefits, including any right to terminate employment and retain eligibility.

(b) A public retirement system shall distribute to each active member and retiree a summary of any significant change that is made in statutes or ordinances governing the retirement system and that affects contributions, benefits, or eligibility. A distribution must be made before the 271st day after the day the change is adopted.

(c) A public retirement system annually shall provide to each active member a statement of the amounts of the member's accumulated contributions and total accumulated service credit on which benefits may be based and to each annuitant a statement of the amount of payments made to the annuitant by the system during the preceding 12 months.

(d) A public retirement system shall provide to each active member and annuitant a summary of the financial condition of the retirement system, if the actuary of the system determines, based on a computation of advanced funding of actuarial costs, that the financing arrangement of the system is inadequate. The actuarial determination must be disclosed to members and annuitants at the time annual statements are next provided under Subsection (c) after the determination is made. An actuary who makes a determination under this subsection must have at least five years of experience working with one or more public retirement systems and be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(e) A member not currently contributing to a particular public retirement system is entitled on written request to receive from that system a copy of any document required by this section to be furnished to a member who is actively contributing.

(f) The governing body of a public retirement system composed of participating subdivisions or municipalities may provide one copy of any document it prepares under this section to each affected participating subdivision or municipality. Each participating subdivision or municipality shall distribute the information contained in the document to its employee members and annuitants, as applicable.

(g) Information required by this section may be contained, at the discretion of the public retirement system providing the information, in one or more separate documents. The information must be stated to the greatest extent practicable in terms understandable to a typical member of the public retirement system.

(h) A public retirement system shall submit to the board copies of the summarized information required by Subsections (a) and (b) before the 31st day after the date of publication or the date a change is adopted, as appropriate.

Added by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, Sec. 7, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 143, Sec. 6, eff. Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.106 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1152 (S.B. [200](#)), Sec. 13, eff. September 1, 2013.

Sec. 802.107. GENERAL PROVISIONS RELATING TO REPORTS AND CONTACT INFORMATION. (a) A public retirement system shall maintain for public review at its main office and at such other locations as the retirement system considers appropriate copies of the most recent edition of each type of report or other information required by this chapter to be submitted to the State Pension Review Board.

(b) Information required by this chapter to be submitted to the State Pension Review Board may be contained in one or more documents but must be submitted within the period provided by the provision requiring the information.

(c) A public retirement system shall post on a publicly available Internet website:

(1) the name, business address, and business telephone number of a system administrator of the public retirement system; and

(2) a copy of the most recent edition of each report and other written information that is required by this chapter or Chapter [801](#) to be submitted to the board.

(d) A public retirement system that maintains a website or for which a website is maintained shall prominently post a link on that website to the information required by Subsection (c). All other public retirement systems shall:

(1) prominently post the information required by Subsection (c) on a website that is maintained by the governing body of the political subdivision of which members of the public retirement system are officers or employees; or

(2) post the information required by Subsection (c) on a publicly available website that is maintained by a state agency.

(e) A report or other information posted under Subsection (c) must remain posted until replaced with a more recently submitted edition of the report or information.

Added by Acts 1985, 69th Leg., ch. 143, Sec. 7, eff. Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.1061 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 140 (H.B. [13](#)), Sec. 4, eff. May 24, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 140 (H.B. [13](#)), Sec. 5, eff. May 24, 2013.

Sec. 802.108. REPORT OF INVESTMENT RETURNS AND ASSUMPTIONS. (a) A public retirement system shall, before the 211th day after the last day of its fiscal year, submit to the board an investment returns and actuarial assumptions report that includes:

- (1) gross investment returns and net investment returns for each of the most recent 10 fiscal years;
- (2) the rolling gross and rolling net investment returns for the most recent 1-year, 3-year, and 10-year periods;
- (3) the rolling gross and rolling net investment return for the most recent 30-year period or the gross and net investment return since inception of the system, whichever period is shorter;
- (4) the assumed rate of return used in the most recent actuarial valuation; and
- (5) the assumed rate of return used in each of the most recent 10 actuarial valuations.

(b) For purposes of this section, "net investment return" means the gross investment return minus investment expenses. The net investment return may be calculated as the money-weighted rate of return as required by generally accepted accounting principles. The period basis for each report of investment returns under this section must be the fiscal year of the public retirement system submitting the report.

(c) If any information required to be reported by a public retirement system under Subsection (a) is unavailable, the governing body of the public retirement system shall, before the 211th day after the last day of the public retirement system's fiscal year, submit to the board a letter certifying that the information is unavailable, providing a reason for the unavailability of the information, and agreeing to timely submit the information to the board if it becomes available.

Added by Acts 2013, 83rd Leg., R.S., Ch. 140 (H.B. [13](#)), Sec. 6, eff. May 24, 2013.

SUBCHAPTER C. ADMINISTRATION OF ASSETS

Sec. 802.201. ASSETS IN TRUST. The governing body of a public retirement system shall hold or cause to be held in trust the assets appropriated or dedicated to the system, for the benefit of the members and retirees of the system and their beneficiaries.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.201 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 802.2015. FUNDING SOUNDNESS RESTORATION PLAN. (a) In this section, "governmental entity" has the meaning assigned by Section [802.1012](#).

(b) This section applies to a public retirement system and its associated governmental entity other than a public retirement system and its associated governmental entity subject to Section [802.2016](#).

(c) A public retirement system shall notify the associated governmental entity in writing if the retirement system receives an actuarial valuation indicating that the system's actual contributions are not sufficient to amortize the unfunded actuarial accrued liability within 40 years. If a public retirement system's actuarial valuation shows that the system's amortization period has exceeded 40 years for three consecutive annual actuarial valuations, or two consecutive actuarial valuations in the case of a system that conducts the valuations every two or three years, the governing body of the public retirement system and the associated governmental entity shall formulate a funding soundness restoration plan under Subsection (e) in accordance with the system's governing statute.

(d) The governing body of a public retirement system and the associated governmental entity that have formulated a funding soundness restoration plan under Subsection (e) shall formulate a revised funding soundness restoration plan under that subsection, in accordance with the system's governing statute, if the system conducts an actuarial valuation showing that:

- (1) the system's amortization period exceeds 40 years; and
- (2) the previously formulated funding soundness restoration plan has not been adhered to.

(e) A funding soundness restoration plan formulated under this section must:

- (1) be developed by the public retirement system and the associated governmental entity in accordance with the system's governing statute; and
- (2) be designed to achieve a contribution rate that will be sufficient to amortize the unfunded actuarial accrued liability within 40 years not later than the 10th anniversary of the date on which the final version of a funding soundness restoration plan is agreed to.

(f) A public retirement system and the associated governmental entity that formulate a funding soundness restoration plan shall report any updates of progress made by the entities toward improved actuarial soundness to the board every two years.

(g) Each public retirement system that formulates a funding soundness restoration plan as provided by this section shall submit a copy of that plan to the board and any change to the plan not later than the 31st day after the date on which the plan or the change is agreed to.

Added by Acts 2015, 84th Leg., R.S., Ch. 940 (H.B. [3310](#)), Sec. 5, eff. June 18, 2015.

Sec. 802.2016. FUNDING SOUNDNESS RESTORATION PLAN FOR CERTAIN PUBLIC RETIREMENT SYSTEMS.

(a) In this section, "governmental entity" has the meaning assigned by Section [802.1012](#).

(b) This section applies only to a public retirement system that is governed by Article 6243i, Revised Statutes.

(c) A public retirement system shall notify the associated governmental entity in writing if the retirement system receives an actuarial valuation indicating that the system's actual contributions are not sufficient to amortize the unfunded actuarial accrued liability within 40 years. If a public retirement system's actuarial valuation shows that the system's amortization period has exceeded 40 years for three consecutive annual actuarial valuations, or two consecutive actuarial valuations in the case of a system that conducts the valuations every two or three years, the associated governmental entity shall formulate a funding soundness restoration plan under Subsection (e) in accordance with the public retirement system's governing statute.

(d) An associated governmental entity that has formulated a funding soundness restoration plan under Subsection (e) shall formulate a revised funding soundness restoration plan under that subsection, in accordance with the public retirement system's governing statute, if the system conducts an actuarial valuation showing that:

- (1) the system's amortization period exceeds 40 years; and
- (2) the previously formulated funding soundness restoration plan has not been adhered to.

(e) A funding soundness restoration plan formulated under this section must:

- (1) be developed in accordance with the public retirement system's governing statute by the associated governmental entity; and
- (2) be designed to achieve a contribution rate that will be sufficient to amortize the unfunded actuarial accrued liability within 40 years not later than the 10th anniversary of the date on which the final version of a funding soundness restoration plan is formulated.

(f) An associated governmental entity that formulates a funding soundness restoration plan shall report any updates of progress made by the public retirement system and associated governmental entity toward improved actuarial soundness to the board every two years.

(g) An associated governmental entity that formulates a funding soundness restoration plan as provided by this section shall submit a copy of that plan to the board and any change to the plan not later than the 31st day after the date on which the plan or the change is formulated.

Added by Acts 2015, 84th Leg., R.S., Ch. 940 (H.B. [3310](#)), Sec. 5, eff. June 18, 2015.

Sec. 802.202. INVESTMENT OF SURPLUS. (a) The governing body of a public retirement system is responsible for the management and administration of the funds of the system.

(b) When, in the opinion of the governing body, a surplus of funds exists in accounts of a public retirement system over the amount needed to make payments as they become due within the next

year, the governing body shall deposit all or as much of the surplus as the governing body considers prudent in a reserve fund for investment.

(c) The governing body shall determine the procedure it finds most efficient and beneficial for the management of the reserve fund of the system. The governing body may directly manage the investments of the system or may choose and contract for professional investment management services.

(d) The governing body of a public retirement system shall:

- (1) develop and adopt a written investment policy;
- (2) maintain for public review at its main office a copy of the policy;
- (3) file a copy of the policy with the State Pension Review Board not later than the 90th day after the date the policy is adopted; and
- (4) file a copy of each change to the policy with the State Pension Review Board not later than the 90th day after the change is adopted.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.202 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 373, Sec. 1, eff. Aug. 30, 1993.

Sec. 802.203. FIDUCIARY RESPONSIBILITY. (a) In making and supervising investments of the reserve fund of a public retirement system, an investment manager or the governing body shall discharge its duties solely in the interest of the participants and beneficiaries:

- (1) for the exclusive purposes of:
 - (A) providing benefits to participants and their beneficiaries; and
 - (B) defraying reasonable expenses of administering the system;
- (2) with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims;
- (3) by diversifying the investments of the system to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
- (4) in accordance with the documents and instruments governing the system to the extent that the documents and instruments are consistent with this subchapter.

(b) In choosing and contracting for professional investment management services and in continuing the use of an investment manager, the governing body must act prudently and in the interest of the participants and beneficiaries of the public retirement system.

(c) A trustee is not liable for the acts or omissions of an investment manager appointed under Section [802.204](#), nor is a trustee obligated to invest or otherwise manage any asset of the system subject to management by the investment manager.

(d) An investment manager appointed under Section [802.204](#) shall acknowledge in writing the manager's fiduciary responsibilities to the fund the manager is appointed to serve.

(e) The investment standards provided by Subsection (a) and the policies, requirements, and restrictions adopted under Section [802.204](#)(c) are the only standards, policies, or requirements for, or restrictions on, the investment of funds of a public retirement system by an investment manager or by a governing body during a 90-day interim between professional investment management services. Any other standard, policy, requirement, or restriction provided by law is suspended and not applicable during a time, and for 90 days after a time, in which an investment manager is responsible for investment of a reserve fund. If an investment manager has not begun managing investments of a reserve fund before the 91st day after the date of termination of the services of a previous investment manager, the standards, policies, requirements, and restrictions otherwise provided by law are applicable until the date professional investment management services are resumed.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 198, ch. 18, Sec. 8, 9, eff. Nov. 10, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.203 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 802.204. INVESTMENT MANAGER. (a) The governing body of a public retirement system may appoint investment managers for the system by contracting for professional investment management services with one or more organizations, which may include a bank if it has a trust department, that are in the business of managing investments.

(b) To be eligible for appointment under this section, an investment manager must be:

(1) registered under the Investment Advisors Act of 1940 (15 U.S.C. Section 80b-1 et seq.);

(2) a bank as defined by that Act; or

(3) an insurance company qualified to perform investment services under the laws of more than one state.

(c) In a contract made under this section, the governing body shall specify any policies, requirements, or restrictions, including criteria for determining the quality of investments and for the use of standard rating services, that the governing body adopts for investments of the system.

(d) A political subdivision of which members of the public retirement system are officers or employees may pay all or part of the cost of professional investment management services under a contract under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 199, ch. 18, Sec. 10, eff. Nov. 10, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.204 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 802.205. INVESTMENT CUSTODY ACCOUNT. (a) If the governing body of a public retirement system contracts for professional investment management services, it also shall enter into an investment custody account agreement designating a bank, depository trust company, or brokerage firm to serve as custodian for all assets allocated to or generated under the contract.

(b) Under a custody account agreement, the governing body of a public retirement system shall require the designated custodian to perform the duties and assume the responsibilities for funds under the contract for which the agreement is established that are performed and assumed, in the absence of a contract, by the custodian of system funds.

(c) A political subdivision of which members of the retirement system are officers or employees may pay all or part of the cost of custodial services under a custody account agreement under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.

(d) If the governing body enters into a contract under Subsection (a) with a brokerage firm, the firm must:

- (1) be a broker-dealer registered with the Securities and Exchange Commission;
- (2) be a member of a national securities exchange;
- (3) be a member of the Securities Investor Protection Corporation;
- (4) be registered with the State Securities Board; and
- (5) maintain net regulatory capital of at least \$200 million.

(e) A brokerage firm contracted with for custodial services under this section may not have discretionary authority over the retirement system's assets in the firm's custody.

(f) A brokerage firm that provides custodial services under Subsection (a) must provide insurance against errors, omissions, mysterious disappearance, or fraud in an amount equal to the amount of the assets the firm holds in custody.

(g) A brokerage firm that provides consulting advice, custody of assets, or other services to a public retirement system under this chapter shall discharge its duties solely in the interest of the public retirement system in accordance with Section [802.203](#).

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.205 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 621, Sec. 1, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 916, Sec. 1, eff. June 20, 2003.

Sec. 802.206. EVALUATION OF INVESTMENT SERVICES. (a) The governing body of a public retirement system may at any time and shall at frequent intervals monitor the investments made by any investment manager for the system. The governing body may contract for professional evaluation services to fulfill this requirement.

(b) A political subdivision of which members of the retirement system are officers or employees may pay all or part of the cost of professional evaluation services under a contract under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.206 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 802.207. CUSTODY AND USE OF FUNDS. (a) An investment manager other than a bank having a contract with a public retirement system under Section [802.204](#) may not be a custodian of any assets of the reserve fund of the system.

(b) When demands of the public retirement system require, the governing body shall withdraw from a custodian of system funds money for use in paying benefits to members and other beneficiaries of the system and for other uses authorized by this subchapter and approved by the governing body.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.207 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. ACTUARIAL ANALYSIS OF LEGISLATION

Sec. 802.301. ACTUARIAL IMPACT STATEMENTS. (a) Except as provided by Subsection (g), a bill or resolution that proposes to change the amount or number of benefits or participation in benefits of a public retirement system or that proposes to change a fund liability of a public retirement system is required to have attached to it an actuarial impact statement as provided by this section.

(b) An actuarial impact statement required by this section must:

- (1) summarize the actuarial analysis prepared under Section [802.302](#) for the bill or resolution accompanying the actuarial impact statement;
- (2) identify and comment on the reasonableness of each actuarial assumption used in the actuarial analysis under Subdivision (1); and
- (3) include other information determined necessary by board rule.

(c) The board is primarily responsible for preparing a required actuarial impact statement under this section.

(d) A required actuarial impact statement must be attached to the bill or resolution:

- (1) before a committee hearing on the bill or resolution is held; and
- (2) at the time it is reported from a legislative committee of either house for consideration by the full membership of a house of the legislature.

(e) An actuarial impact statement must remain with the bill or resolution to which it is attached throughout the legislative process, including the process of submission to the governor.

(f) A bill or resolution for which an actuarial impact statement is required is exempt from the requirement of a fiscal note as provided by Chapter [314](#).

(g) An actuarial impact statement is not required for a bill or resolution that proposes to have an economic effect on a public retirement system only by providing new or increased administrative duties.

(h) The board shall provide to the Legislative Budget Board a copy of any actuarial impact statement required under this section.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.301 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 624, Sec. 13, eff. Sept. 1, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. [59](#)), Sec. 44, eff. September 1, 2013.

Sec. 802.302. PREPARATION OF ACTUARIAL ANALYSIS. (a) The board shall request a public retirement system affected by a bill or resolution as described by Section [802.301\(a\)](#) to provide the board with an actuarial analysis.

(b) An actuarial analysis required by this section must be prepared by an actuary who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(c) A public retirement system that receives a request under Subsection (a) must provide the board with an actuarial analysis on or before the 21st day after the date of the request, if the request relates to a bill or resolution introduced for consideration during a regular legislative session.

(d) The board shall adopt deadlines for the provision under this section of an actuarial analysis that relates to a bill or resolution introduced for consideration during a called legislative session. The deadlines must be designed to provide the most complete information practicable in a timely manner.

(e) The board may prepare an actuarial analysis for a public retirement system that receives a request under Subsection (a) and does not provide the board with an actuarial analysis within the required period under Subsection (c) or (d).

(f) The public retirement system may reimburse the board's costs incurred in preparing an actuarial analysis under Subsection (e).

(g) For each actuarial analysis that a public retirement system prepares, the board shall have a second actuary:

(1) review the actuarial analysis accompanying the bill or resolution; and

(2) comment on the reasonableness of each actuarial assumption used in the public retirement system's actuarial analysis.

(h) Even if a public retirement system prepares an actuarial analysis under Subsection (c) or (d), the board may have a second actuary prepare a separate actuarial analysis.

(i) A public retirement system is not prohibited from providing to the legislature any actuarial analysis or information that the system determines necessary or proper.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.302 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 624, Sec. 14, eff. Sept. 1, 1991.

Sec. 802.3021. STATE PENSION REVIEW BOARD ACTUARY. An actuary who reviews or prepares an actuarial analysis for the board must have at least five years of experience as an actuary working with one or more public retirement systems and must be a fellow of the Society of Actuaries, a member of

the American Academy of Actuaries, or an enrolled actuary under the Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.207 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Redesignated from Sec. 802.302(c) and amended by Acts 1991, 72nd Leg., ch. 624, Sec. 14, eff. Sept. 1, 1991.

Sec. 802.303. CONTENTS OF ACTUARIAL ANALYSIS. (a) An actuarial analysis must show the economic effect of the bill or resolution on the public retirement system affected, including a projection of the annual cost to the system of implementing the legislation for at least 10 years. If the bill or resolution applies to more than one public retirement system, the cost estimates in the analysis may be limited to each affected state-financed public retirement system and each affected public retirement system in a city having a population of 200,000 or more.

(b) An actuarial analysis must include a statement of the actuarial assumptions and methods of computation used in the analysis and a statement of whether or not the bill or resolution, if enacted, will make the affected public retirement system actuarially unsound or, in the case of a system already actuarially unsound, more unsound.

(c) The projection of the effect of the bill or resolution on the actuarial soundness of the system must be based on a computation of advanced funding of actuarial costs.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.303 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 802.304. COST OF ACTUARIAL ANALYSIS. The state may not pay the cost of a required actuarial analysis that is prepared for a public retirement system not financed by the state, except that a sponsor of the bill or resolution for which the analysis is prepared may pay the cost of preparation out of funds available for the sponsor's personal or office expenses.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.304 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 802.305. REPORTS, ANALYSES, AND ACTUARIAL IMPACT STATEMENTS FOR CERTAIN BILLS AND RESOLUTIONS. (a) The board may request a state-financed public retirement system to provide the board with:

(1) a report listing and totalling the actuarial effect of all public retirement bills and resolutions that have been presented in public hearings in either house of the legislature during the current legislative session and that affect the state-financed public retirement system; or

(2) an analysis of the actuarial effect of all public retirement bills and resolutions that have been passed by at least one house of the legislature during the current legislative session and that affect the state-financed public retirement system, assuming that each bill and resolution becomes law.

(b) A state-financed public retirement system that receives a request under Subsection (a) must provide the board with the requested report or analysis on or before the 21st day after the date of the request, if the request is made during a regular legislative session. If the state-financed public retirement system does not provide the board with the requested report or analysis within the 21-day period, the board may prepare the requested report or analysis.

(c) If the board prepares a requested report or analysis under Subsection (b), the state-financed public retirement system may reimburse the board's costs incurred in preparing the requested report or analysis.

(d) Even if a public retirement system prepares a required report or analysis under Subsection (b), the board may have a second actuary prepare a separate report or analysis.

(e) On or before the 70th day before the last possible day of each regular session of the legislature, the board shall provide the presiding officer of the committee responsible for retirement legislation in each house of the legislature an actuarial impact statement listing and totalling for each state-financed public retirement system the actuarial effect of all public retirement bills and resolutions that have been presented in public hearings in either house of the legislature during that legislative session and that affect that state-financed public retirement system.

(f) On or before the 30th day before the last possible day of each regular session of the legislature, the board shall provide the presiding officer of the committee responsible for retirement legislation in each house of the legislature an actuarial impact statement analyzing for each state-financed public retirement system the actuarial effect of all public retirement bills and resolutions that have been passed by at least one house of the legislature during that legislative session and that affect that state-financed public retirement system, assuming that each of the bills and resolutions becomes law.

(g) The board also shall provide the statements required by Subsections (e) and (f) during a called legislative session.

(h) The board shall adopt deadlines for the provision under this section of a report, analysis, or actuarial impact statement that relates to a bill or resolution introduced for consideration during a called legislative session. The deadlines must be designed to provide the most complete information practicable in a timely manner.

(i) In this section:

(1) "Public retirement bill or resolution" means a bill or resolution that proposes to change the amount or number of benefits or participation in benefits of a state-financed public retirement system or that proposes to change a fund liability of a state-financed public retirement system.

(2) "State-financed public retirement system" means the Employees Retirement System of Texas, including the law enforcement and custodial officer supplemental retirement fund, or the Teacher Retirement System of Texas.

Added by Acts 1991, 72nd Leg., ch. 624, Sec. 15, eff. Sept. 1, 1991.

LOCAL GOVERNMENT CODE

TITLE 5. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES

SUBTITLE C. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES OF MORE THAN ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 176. DISCLOSURE OF CERTAIN RELATIONSHIPS WITH LOCAL GOVERNMENT OFFICERS; PROVIDING PUBLIC ACCESS TO CERTAIN INFORMATION

Sec. 176.001. DEFINITIONS. In this chapter:

(1) "Agent" means a third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person. The term includes an employee.

(1-a) "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

(1-b) "Charter school" means an open-enrollment charter school operating under Subchapter D, Chapter [12](#), Education Code.

(1-c) "Commission" means the Texas Ethics Commission.

(1-d) "Contract" means a written agreement for the sale or purchase of real property, goods, or services.

(2) "Family member" means a person related to another person within the first degree by consanguinity or affinity, as described by Subchapter B, Chapter [573](#), Government Code.

(2-a) "Family relationship" means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter [573](#), Government Code.

(2-b) "Gift" means a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.

(2-c) "Goods" means personal property.

(2-d) "Investment income" means dividends, capital gains, or interest income generated from:

(A) a personal or business:

(i) checking or savings account;

(ii) share draft or share account; or

(iii) other similar account;

(B) a personal or business investment; or

(C) a personal or business loan.

(3) "Local governmental entity" means a county, municipality, school district, charter school, junior college district, water district created under Subchapter B, Chapter [49](#), Water Code, or other political subdivision of this state or a local government corporation, board, commission, district, or authority to which a member is appointed by the commissioners court of a county, the mayor of a municipality, or the governing body of a municipality. The term does not include an association, corporation, or organization of governmental entities organized to provide to its members education, assistance, products, or services or to represent its members before the legislative, administrative, or judicial branches of the state or federal government.

(4) "Local government officer" means:

(A) a member of the governing body of a local governmental entity;

(B) a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or

(C) an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.

(5) "Records administrator" means the director, county clerk, municipal secretary, superintendent, or other person responsible for maintaining the records of the local governmental entity or another person designated by the local governmental entity to maintain statements and questionnaires filed under this chapter and perform related functions.

(6) "Services" means skilled or unskilled labor or professional services, as defined by Section [2254.002](#), Government Code.

(7) "Vendor" means a person who enters or seeks to enter into a contract with a local governmental entity. The term includes an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. [914](#)), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. [1491](#)), Sec. 1, eff. May 25, 2007.

Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. [23](#)), Sec. 1, eff. September 1, 2015.

Sec. 176.002. APPLICABILITY TO VENDORS AND OTHER PERSONS. (a) This chapter applies to a person who is:

(1) a vendor; or

(2) a local government officer of a local governmental entity.

(b) A person is not subject to the disclosure requirements of this chapter if the person is:

(1) a state, a political subdivision of a state, the federal government, or a foreign government; or

(2) an employee or agent of an entity described by Subdivision (1), acting in the employee's or agent's official capacity.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. [914](#)), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. [1491](#)), Sec. 2, eff. May 25, 2007.

Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. [23](#)), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. [23](#)), Sec. 3, eff. September 1, 2015.

Sec. 176.003. CONFLICTS DISCLOSURE STATEMENT REQUIRED. (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(1) the vendor enters into a contract with the local governmental entity or the local governmental entity is considering entering into a contract with the vendor; and

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than

investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor; or
- (C) has a family relationship with the local government officer.

(a-1) A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is:

- (1) a political contribution as defined by Title 15, Election Code; or
- (2) food accepted as a guest.

(a-2) A local government officer is not required to file a conflicts disclosure statement under Subsection (a) if the local governmental entity or vendor described by that subsection is an administrative agency created under Section [791.013](#), Government Code.

(b) A local government officer shall file the conflicts disclosure statement with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement under Subsection (a).

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(1), eff. September 1, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(1), eff. September 1, 2015.

(e) The commission shall adopt the conflicts disclosure statement for local government officers for use under this section. The conflicts disclosure statement must include:

(1) a requirement that each local government officer disclose:

(A) an employment or other business relationship described by Subsection (a)(2)(A), including the nature and extent of the relationship; and

(B) gifts accepted by the local government officer and any family member of the officer from a vendor during the 12-month period described by Subsection (a)(2)(B) if the aggregate value of the gifts accepted by the officer or a family member from that vendor exceeds \$100;

(2) an acknowledgment from the local government officer that:

(A) the disclosure applies to each family member of the officer; and

- (B) the statement covers the 12-month period described by Subsection (a)(2)(B); and
- (3) the signature of the local government officer acknowledging that the statement is made under oath under penalty of perjury.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. [914](#)), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. [1491](#)), Sec. 3, eff. May 25, 2007.

Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. [23](#)), Sec. 4, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. [23](#)), Sec. 5, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. [23](#)), Sec. 9(1), eff. September 1, 2015.

Sec. 176.006. DISCLOSURE REQUIREMENTS FOR VENDORS AND OTHER PERSONS; QUESTIONNAIRE. (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section [176.003](#)(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section [176.003](#)(a)(2)(B), excluding any gift described by Section [176.003](#)(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
- (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or

- (C) of a family relationship with a local government officer.
- (b) The commission shall adopt a conflict of interest questionnaire for use under this section that requires disclosure of a vendor's business and family relationships with a local governmental entity.
- (c) The questionnaire adopted under Subsection (b) must require, for the local governmental entity with respect to which the questionnaire is filed, that the vendor filing the questionnaire:
 - (1) describe each employment or business and family relationship the vendor has with each local government officer of the local governmental entity;
 - (2) identify each employment or business relationship described by Subdivision (1) with respect to which the local government officer receives, or is likely to receive, taxable income, other than investment income, from the vendor;
 - (3) identify each employment or business relationship described by Subdivision (1) with respect to which the vendor receives, or is likely to receive, taxable income, other than investment income, that:
 - (A) is received from, or at the direction of, a local government officer of the local governmental entity; and
 - (B) is not received from the local governmental entity; and
 - (4) describe each employment or business relationship with a corporation or other business entity with respect to which a local government officer of the local governmental entity:
 - (A) serves as an officer or director; or
 - (B) holds an ownership interest of one percent or more.
- (d) A vendor shall file an updated completed questionnaire with the appropriate records administrator not later than the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in the questionnaire incomplete or inaccurate.
- (e) A person who is both a local government officer and a vendor of a local governmental entity is required to file the questionnaire required by Subsection (a)(1) only if the person:
 - (1) enters or seeks to enter into a contract with the local governmental entity; or
 - (2) is an agent of a person who enters or seeks to enter into a contract with the local governmental entity.
- (f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(3), eff. September 1, 2015.
- (g) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(3), eff. September 1, 2015.
- (h) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(3), eff. September 1, 2015.
- (i) The validity of a contract between a vendor and a local governmental entity is not affected solely because the vendor fails to comply with this section.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. [914](#)), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. [1491](#)), Sec. 6, eff. May 25, 2007.

Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. [1491](#)), Sec. 9, eff. May 25, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. 15.005, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. [23](#)), Sec. 6, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. [23](#)), Sec. 9(3), eff. September 1, 2015.

Sec. 176.0065. MAINTENANCE OF RECORDS. A records administrator shall:

(1) maintain a list of local government officers of the local governmental entity and shall make that list available to the public and any vendor who may be required to file a conflict of interest questionnaire under Section [176.006](#); and

(2) maintain the statements and questionnaires that are required to be filed under this chapter in accordance with the local governmental entity's records retention schedule.

Added by Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. [1491](#)), Sec. 8, eff. May 25, 2007.

Redesignated and amended from Local Government Code, Section 176.011 by Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. [23](#)), Sec. 7, eff. September 1, 2015.

Sec. 176.008. ELECTRONIC FILING. The requirements of this chapter, including signature requirements, may be satisfied by electronic filing in a form approved by the commission.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. [914](#)), Sec. 1, eff. June 18, 2005.

Sec. 176.009. POSTING ON INTERNET. (a) A local governmental entity that maintains an Internet website shall provide access to the statements and to questionnaires required to be filed under this chapter on that website. This subsection does not require a local governmental entity to maintain an Internet website.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 847, Sec. 3(b), eff. January 1, 2014.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. [914](#)), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. [1491](#)), Sec. 7, eff. May 25, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. [2702](#)), Sec. 76, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 847 (H.B. [195](#)), Sec. 3(b), eff. January 1, 2014.

Sec. 176.010. REQUIREMENTS CUMULATIVE. The requirements of this chapter are in addition to any other disclosure required by law.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. [914](#)), Sec. 1, eff. June 18, 2005.

Sec. 176.012. APPLICATION OF PUBLIC INFORMATION LAW. This chapter does not require a local governmental entity to disclose any information that is excepted from disclosure by Chapter [552](#), Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. [1491](#)), Sec. 8, eff. May 25, 2007.

Sec. 176.013. ENFORCEMENT. (a) A local government officer commits an offense under this chapter if the officer:

- (1) is required to file a conflicts disclosure statement under Section [176.003](#); and
- (2) knowingly fails to file the required conflicts disclosure statement with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement.

(b) A vendor commits an offense under this chapter if the vendor:

- (1) is required to file a conflict of interest questionnaire under Section [176.006](#); and
- (2) either:

(A) knowingly fails to file the required questionnaire with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the vendor becomes aware of the facts that require the filing of the questionnaire; or

(B) knowingly fails to file an updated questionnaire with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in a questionnaire previously filed by the vendor incomplete or inaccurate.

(c) An offense under this chapter is:

(1) a Class C misdemeanor if the contract amount is less than \$1 million or if there is no contract amount for the contract;

(2) a Class B misdemeanor if the contract amount is at least \$1 million but less than \$5 million; or

(3) a Class A misdemeanor if the contract amount is at least \$5 million.

(d) A local governmental entity may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply with a requirement adopted under this chapter.

(e) The governing body of a local governmental entity may, at its discretion, declare a contract void if the governing body determines that a vendor failed to file a conflict of interest questionnaire required by Section [176.006](#).

(f) It is an exception to the application of Subsection (a) that the local government officer filed the required conflicts disclosure statement not later than the seventh business day after the date the officer received notice from the local governmental entity of the alleged violation.

(g) It is an exception to the application of Subsection (b) that the vendor filed the required questionnaire not later than the seventh business day after the date the vendor received notice from the local governmental entity of the alleged violation.

Added by Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. [23](#)), Sec. 8, eff. September 1, 2015.

Other laws applicable to a trustee in performing the trustee's duties, including the board's fiduciary duties described under Section 3.01(a) of this article

The following is an excerpt of Texas Revised Civil Statutes Article 6243a-1, Section 3.01 (a). This information should be read in conjunction with 6243a-1 in its entirety and other applicable laws, regulations and policies

Sec. 3.01. BOARD OF TRUSTEES.

(a) The pension system shall be administered by the board. The board shall execute its fiduciary duty to hold and administer the assets of the fund for the exclusive benefit of members and their beneficiaries under Section 802.203, Government Code, Section 67(f), Article XVI, Texas Constitution, and any other applicable law, in a manner that ensures the sustainability of the pension system for purposes of providing current and future benefits to members and their beneficiaries.

The following is an excerpt of Section 802, Government Code, Section 802.203. This information should be read in conjunction with Section 802 in its entirety, Texas Revised Civil Statutes Article 6243a-1 and other applicable laws, regulations and policies

Sec. 802.203. FIDUCIARY RESPONSIBILITY.

(a) In making and supervising investments of the reserve fund of a public retirement system, an investment manager or the governing body shall discharge its duties solely in the interest of the participants and beneficiaries:

(1) for the exclusive purposes of:

(A) providing benefits to participants and their beneficiaries; and

(B) defraying reasonable expenses of administering the system;

(2) with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims;

(3) by diversifying the investments of the system to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(4) in accordance with the documents and instruments governing the system to the extent that the documents and instruments are consistent with this subchapter.

(b) In choosing and contracting for professional investment management services and in continuing the use of an investment manager, the governing body must act prudently and in the

interest of the participants and beneficiaries of the public retirement system.

(c) A trustee is not liable for the acts or omissions of an investment manager appointed under Section 802.204, nor is a trustee obligated to invest or otherwise manage any asset of the system subject to management by the investment manager.

(d) An investment manager appointed under Section 802.204 shall acknowledge in writing the manager's fiduciary responsibilities to the fund the manager is appointed to serve.

(e) The investment standards provided by Subsection (a) and the policies, requirements, and restrictions adopted under Section 802.204(c) are the only standards, policies, or requirements for, or restrictions on, the investment of funds of a public retirement system by an investment manager or by a governing body during a 90-day interim between professional investment management services. Any other standard, policy, requirement, or restriction provided by law is suspended and not applicable during a time, and for 90 days after a time, in which an investment manager is responsible for investment of a reserve fund. If an investment manager has not begun managing investments of a reserve fund before the 91st day after the date of termination of the services of a previous investment manager, the standards, policies, requirements, and restrictions otherwise provided by law are applicable until the date professional investment management services are resumed.

The following is an excerpt of Texas Constitution, Article XVI, Section 67(f). This information should be read in conjunction Texas Revised Civil Statutes Article 6243a-1 and other applicable laws, regulations and policies

Section 67 - STATE AND LOCAL RETIREMENT SYSTEMS

(f) Retirement Systems Not Belonging to a Statewide System. The board of trustees of a system or program that provides retirement and related disability and death benefits for public officers and employees and that does not participate in a statewide public retirement system shall:

- (1) administer the system or program of benefits;
- (2) hold the assets of the system or program for the exclusive purposes of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the system or program; and
- (3) select legal counsel and an actuary and adopt sound actuarial assumptions to be used by the system or program.

GOVERNMENT CODE

TITLE 8. PUBLIC RETIREMENT SYSTEMS

SUBTITLE A. PROVISIONS GENERALLY APPLICABLE TO PUBLIC RETIREMENT SYSTEMS

CHAPTER 802. ADMINISTRATIVE REQUIREMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 802.001. DEFINITIONS. In this chapter:

(1) "Board" means the State Pension Review Board.

(1-a) "Defined contribution plan" means a plan provided by the governing body of a public retirement system that provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants that may be allocated to the participant's account.

(2) "Governing body of a public retirement system" means the board of trustees, pension board, or other public retirement system governing body that has the fiduciary responsibility for assets of the system and has the duties of overseeing the investment and expenditure of funds of the system and the administration of benefits of the system.

(3) "Public retirement system" means a continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision, or of an agency or instrumentality of the state or a political subdivision, other than:

(A) a program providing only workers' compensation benefits;

(B) a program administered by the federal government;

(C) an individual retirement account or individual retirement annuity within the meaning of Section 408, or a retirement bond within the meaning of Section 409, of the Internal Revenue Code of 1986 (26 U.S.C. Sections 408, 409);

(D) a plan described by Section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401);

(E) an individual account plan consisting of an annuity contract described by Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 403);

(F) an eligible state deferred compensation plan described by Section 457(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 457); or

(G)(i) in Sections [802.104](#) and [802.105](#) of this chapter, a program for which benefits are administered by a life insurance company; and

(ii) in the rest of this chapter, a program for which the only funding agency is a life insurance company.

(4) "System administrator" means a person designated by the governing body of a public retirement system to supervise the day-to-day affairs of the public retirement system.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 195, ch. 18, Sec. 1, eff. Nov. 10, 1981; Acts 1985, 69th Leg., ch. 143, Sec. 2, eff. Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.001 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 624, Sec. 11, eff. Sept. 1, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 140 (H.B. [13](#)), Sec. 3, eff. May 24, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1152 (S.B. [200](#)), Sec. 8, eff. September 1, 2013.

Sec. 802.002. EXEMPTIONS. (a) Except as provided by Subsection (b), the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, and the Judicial Retirement System of Texas Plan Two are exempt from Sections [802.101\(a\)](#), [802.101\(b\)](#), [802.101\(d\)](#), [802.102](#), [802.103\(a\)](#), [802.103\(b\)](#), [802.2015](#), [802.2016](#), [802.202](#), [802.203](#), [802.204](#), [802.205](#), [802.206](#), and [802.207](#). The Judicial Retirement System of Texas Plan One is exempt from all of Subchapters B and C except Sections [802.104](#) and [802.105](#). The optional retirement program governed by Chapter [830](#) is exempt from all of Subchapters B and C except Section [802.106](#).

(b) If a public retirement system or program that is exempt under Subsection (a) is required by law to make an actuarial valuation of the assets of the system or program and publish actuarial information about the system or program, the actuary making the valuation and the governing body publishing the information must include the information required by Section [802.101\(b\)](#).

(c) Notwithstanding any other law, a defined contribution plan is exempt from Sections [802.101](#), [802.1012](#), [802.1014](#), [802.103](#), [802.104](#), and [802.202\(d\)](#). This subsection may not be construed to exempt any plan from Section [802.105](#) or [802.106\(h\)](#).

(d) Notwithstanding any other law, a retirement system that is organized under the Texas Local Fire Fighters Retirement Act (Article [6243e](#), Vernon's Texas Civil Statutes) for a fire department consisting exclusively of volunteers as defined by that Act is exempt from Sections [802.101](#), [802.1012](#), [802.1014](#), [802.102](#), [802.103](#), [802.104](#), and [802.202\(d\)](#). This subsection may not be construed to exempt any plan from Section [802.105](#) or [802.106\(h\)](#).

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, Sec. 2, eff. Nov. 10, 1981; Acts 1985, 69th Leg., ch. 143, Sec. 3, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 602, Sec. 2, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.002 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1152 (S.B. [200](#)), Sec. 9, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 940 (H.B. [3310](#)), Sec. 2, eff. June 18, 2015.

Sec. 802.003. WRIT OF MANDAMUS. (a) Except as provided by Subsection (b), if the governing body of a public retirement system fails or refuses to comply with a requirement of this chapter that applies to it, a person residing in the political subdivision in which the members of the governing body are officers may file a motion, petition, or other appropriate pleading in a district court having jurisdiction in a county in which the political subdivision is located in whole or in part, for a writ of mandamus to compel the governing body to comply with the applicable requirement.

(b) If the governing body of the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas Municipal Retirement System, or the Texas County and District Retirement System fails or refuses to comply with a requirement of this chapter that applies to it, any resident of the state may file a pleading in a district court in Travis County to compel the governing body to comply with the applicable requirement.

(c) If the prevailing party in an action under this section is other than the governing body of a public retirement system, the court may award reasonable attorney's fees and costs of suit.

(d) The State Pension Review Board may file an appropriate pleading, in the manner provided by this section for filing by an individual, for the purpose of enforcing a requirement of Subchapter B or C, other than a requirement of Section [802.101\(a\)](#), [802.101\(d\)](#), [802.102](#), [802.103\(a\)](#), or [802.104](#).

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, Sec. 3, eff. Nov. 10, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.003 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. STUDIES AND REPORTS

Sec. 802.101. ACTUARIAL VALUATION. (a) The governing body of a public retirement system shall employ an actuary, as a full-time or part-time employee or as a consultant, to make a valuation at least once every three years of the assets and liabilities of the system on the basis of assumptions and methods that are reasonable in the aggregate, considering the experience of the program and reasonable expectations, and that, in combination, offer the actuary's best estimate of anticipated experience under the program. The valuation must include a recommended contribution rate needed for the system to achieve and maintain an amortization period that does not exceed 30 years.

(b) On the basis of the valuation, the actuary shall make recommendations to the governing body of the public retirement system to ensure the actuarial soundness of the system. The actuary shall define each actuarial term and enumerate and explain each actuarial assumption used in making the valuation. This information must be included either in the actuarial study or in a separate report made available as a public record.

(c) The governing body of a public retirement system shall file with the State Pension Review Board a copy of each actuarial study and each separate report made as required by law.

(d) An actuary employed under this section must be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, Sec. 4, eff. Nov. 10, 1981; Acts 1985, 69th Leg., ch. 143, Sec. 4, eff. Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.101 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 940 (H.B. [3310](#)), Sec. 3, eff. June 18, 2015.

Sec. 802.1012. AUDITS OF ACTUARIAL VALUATIONS, STUDIES, AND REPORTS. (a) In this section, "governmental entity" means a unit of government that is the employer of active members of a public retirement system.

(b) Except as provided by Subsection (k), this section applies only to a public retirement system with total assets the book value of which, as of the last day of the preceding fiscal year, is at least \$100 million.

(c) Every five years, the actuarial valuations, studies, and reports of a public retirement system most recently prepared for the retirement system as required by Section [802.101](#) or other law under this title or under Title 109, Revised Statutes, must be audited by an independent actuary who:

(1) is engaged for the purpose of the audit by the governmental entity; and

(2) has the credentials required for an actuary under Section [802.101\(d\)](#).

(d) Before beginning an audit under this section, the governmental entity and the independent actuary must agree in writing to maintain the confidentiality of any nonpublic information provided by the public retirement system for the audit.

(e) Before beginning an audit under this section, the independent actuary must meet with the manager of the pension fund for the public retirement system to discuss the appropriate assumptions to use in conducting the audit.

(f) Not later than the 30th day after completing the audit under Subsection (c), the independent actuary shall submit to the public retirement system for purposes of discussion and clarification a preliminary draft of the audit report that is substantially complete.

(g) The independent actuary shall:

(1) discuss the preliminary draft of the audit report with the governing body of the public retirement system; and

(2) request in writing that the retirement system, on or before the 30th day after the date of receiving the preliminary draft, submit to the independent actuary any response that the retirement system wants to accompany the final audit report.

(h) The independent actuary shall submit to the governmental entity the final audit report that includes the audit results and any response received from the public retirement system:

(1) not earlier than the 31st day after the date on which the preliminary draft is submitted to the retirement system; and

(2) not later than the 60th day after the date on which the preliminary draft is submitted to the retirement system.

(i) At the first regularly scheduled open meeting after receiving the final audit report, the governing body of the governmental entity shall:

(1) include on the posted agenda for the meeting the presentation of the audit results;

(2) present the final audit report and any response from the public retirement system; and

(3) provide printed copies of the final audit report and the response from the public retirement system for individuals attending the meeting.

(j) The governmental entity shall:

(1) maintain a copy of the final audit report at its main office for public inspection;

(2) submit a copy of the final audit report to the public retirement system and the State Pension Review Board not later than the 30th day after the date the final audit report is received by the governmental entity; and

(3) pay all costs associated with conducting the audit and preparing and distributing the report under this section.

(k) This section does not apply to the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, or the Judicial Retirement System of Texas Plan Two.

Added by Acts 2007, 80th Leg., R.S., Ch. 733 (H.B. [2664](#)), Sec. 1, eff. September 1, 2007.

Sec. 802.1014. ACTUARIAL EXPERIENCE STUDY. (a) In this section, "actuarial experience study" means a study in which actuarial assumptions are reviewed in light of relevant experience factors, important trends, and economic projections with the purpose of determining whether actuarial assumptions require adjustment.

(b) Except as provided by Subsection (c), a public retirement system that conducts an actuarial experience study shall submit to the board a copy of the actuarial experience study before the 31st day after the date of the study's adoption.

(b-1) Except as provided by Subsection (c), a public retirement system that has assets of at least \$100 million shall conduct once every five years an actuarial experience study and shall submit to the board a copy of the actuarial experience study before the 31st day after the date of the study's adoption.

(c) This section does not apply to the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, or the Judicial Retirement System of Texas Plan Two.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1152 (S.B. [200](#)), Sec. 10, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 940 (H.B. [3310](#)), Sec. 4, eff. June 18, 2015.

Sec. 802.102. AUDIT. The governing body of a public retirement system shall have the accounts of the system audited at least annually by a certified public accountant in accordance with generally accepted auditing standards. A general audit of a governmental entity, as defined by Section [802.1012](#), does not satisfy the requirement of this section.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 143, Sec. 5, eff. Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.102 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1152 (S.B. [200](#)), Sec. 11, eff. September 1, 2013.

Sec. 802.1024. CORRECTION OF ERRORS. (a) Except as provided by Subsection (b), if an error in the records of a public retirement system results in a person receiving more or less money than the person is entitled to receive under this subtitle, the retirement system shall correct the error and so far as practicable adjust any future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid. If no future payments are due, the retirement system may recover the overpayment in any manner that would be permitted for the collection of any other debt.

(a-1) On discovery of an error described by Subsection (a), the public retirement system shall as soon as practicable, but not later than the 90th day after the date of discovery, give written notice of the error to the person receiving an incorrect amount of money. The notice must include:

- (1) the amount of the correction in overpayment or underpayment;
- (2) how the amount of the correction was calculated;
- (3) a brief explanation of the reason for the correction;
- (4) a statement that the notice recipient may file a written complaint with the retirement system if the recipient does not agree with the correction;
- (5) instructions for filing a written complaint; and
- (6) a payment plan option if no future payments are due.

(a-2) Except as provided by this subsection and Section [802.1025](#), the public retirement system shall begin to adjust future payments or, if no future payments are due, institute recovery of an overpayment of benefits under Subsection (a) not later than the 90th day after the date the notice required by Subsection (a-1) is delivered by certified mail, return receipt requested. If the system does not receive a signed receipt evidencing delivery of the notice on or before the 30th day after the date the notice is mailed, the system shall mail the notice a second time by certified mail, return receipt requested. Except as provided by Section [802.1025](#), not later than the 90th day after the date the second notice is mailed, the system shall begin to adjust future payments or, if no future payments are due, institute recovery of an overpayment of benefits.

(b) Except as provided by Subsection (c), a public retirement system:

- (1) may correct the overpayment of benefits to a person entitled to receive payments from the system by the method described by Subsection (a) only for an overpayment made during the three years preceding the date the system discovers or discovered the overpayment;
- (2) may not recover from the recipient any overpayment made more than three years before the discovery of the overpayment; and

(3) may not recover an overpayment if the system did not adjust future payments or, if no future payments are due, institute recovery of the overpayment within the time prescribed by Subsection (a-2) or Section [802.1025](#).

(c) Subsection (b) does not apply to an overpayment a reasonable person should know the person is not entitled to receive.

Added by Acts 2003, 78th Leg., ch. 416, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1164 (H.B. [155](#)), Sec. 1, eff. June 15, 2007.

Sec. 802.1025. COMPLAINT PROCEDURE. (a) Not later than the 20th day after the date of receiving notice under Section [802.1024](#)(a-1) or, if applicable, the second notice under Section [802.1024](#)(a-2), the notice recipient may file a written complaint with the retirement system. The recipient shall include any available supporting documentation with the complaint.

(b) Not later than the 30th day after the date of receiving a complaint under Subsection (a), the retirement system shall respond in writing to the complaint by confirming the amount of the proposed correction or, if the retirement system determines the amount of the proposed correction is incorrect, by modifying the amount of the correction. If the retirement system modifies the amount of the correction, the response must include:

- (1) how the modified correction was calculated;
- (2) a brief explanation of the reason for the modification; and
- (3) a payment plan option if no future payments are due.

(c) Subject to Subsection (d), if a complaint is filed under this section, the retirement system may not adjust future payments or recover an overpayment under Section [802.1024](#) until:

- (1) the 20th day after the date the notice recipient receives the response under Subsection (b), if the recipient does not file an administrative appeal by that date; or
- (2) the date a final decision by the retirement system is issued, if the recipient files an administrative appeal before the date described by Subdivision (1).

(d) If the retirement system has begun the adjustment of future payments or the recovery of an overpayment under Section [802.1024](#)(a-2), the system shall discontinue the adjustment of future payments or the recovery of the overpayment beginning with the first pay cycle occurring after the date the complaint is received by the system. The system may not recommence the adjustment of future payments or the recovery of an overpayment until the date described by Subsection (c)(1) or (2), as

applicable. If a complaint is resolved in favor of the person filing the complaint, not later than the 30th day after the date of the resolution, the system shall pay the person the appropriate amount.

(e) A person whose complaint is not resolved under this section must exhaust all administrative procedures provided by the retirement system. Not later than the 30th day after the date a final administrative decision is issued by the retirement system, a person aggrieved by the decision may appeal the decision to an appropriate district court.

Added by Acts 2007, 80th Leg., R.S., Ch. 1164 (H.B. [155](#)), Sec. 2, eff. June 15, 2007.

Sec. 802.103. ANNUAL FINANCIAL REPORT. (a) Except as provided by Subsection (c), the governing body of a public retirement system shall publish an annual financial report showing the financial condition of the system as of the last day of the fiscal year covered in the report. The report must include the financial statements and schedules examined in the most recent audit performed as required by Section [802.102](#) and must include a statement of opinion by the certified public accountant as to whether or not the financial statements and schedules are presented fairly and in accordance with generally accepted accounting principles.

(b) The governing body of a public retirement system shall, before the 211th day after the last day of the fiscal year under which the system operates, file with the State Pension Review Board a copy of each annual financial report it makes as required by law.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1152 (S.B. 200), Sec. 17, eff. September 1, 2013, and Ch. 1316 (S.B. 220), Sec. 4.01(1), eff. June 14, 2013.

(d) A general audit of a governmental entity, as defined by Section [802.1012](#), does not satisfy the requirement of this section.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, Sec. 5, 6, eff. Nov. 10, 1981; Acts 1985, 69th Leg., ch. 143, Sec. 5, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 126, Sec. 1, eff. May 20, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.103 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1152 (S.B. [200](#)), Sec. 12, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1152 (S.B. [200](#)), Sec. 17, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1316 (S.B. [220](#)), Sec. 4.01(1), eff. June 14, 2013.

Sec. 802.104. REPORT OF MEMBERS AND RETIREES. Each public retirement system annually shall, before the 211th day after the last day of the fiscal year under which the system operates, submit to the board a report containing the number of members and number of retirees of the system as of the last day of the immediately preceding fiscal year.

Added by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, Sec. 7, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 143, Sec. 5, eff. Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.104 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 624, Sec. 12, eff. Sept. 1, 1991.

Sec. 802.105. REGISTRATION. (a) Each public retirement system shall, before the 91st day after the date of its creation, register with the State Pension Review Board.

(b) A registration form submitted to the board must include:

- (1) the name, mailing address, and telephone number of the public retirement system;
- (2) the names and occupations of the chairman and other members of its governing body;
- (3) a citation of the law under which the system was created;
- (4) the beginning and ending dates of its fiscal year; and
- (5) the name of the administrator of the system and the person's business mailing address and telephone number if different from those of the retirement system.

(c) A public retirement system shall notify the board of changes in information required under Subsection (b) before the 31st day after the day the change occurs.

Added by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, Sec. 7, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 143, Sec. 5, eff. Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.105 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 802.106. INFORMATION TO MEMBER OR ANNUITANT. (a) When a person becomes a member of a public retirement system, the system shall provide the person:

- (1) a summary of the benefits from the retirement system available to or on behalf of a person who retires or dies while a member or retiree of the system;
- (2) a summary of procedures for claiming or choosing the benefits available from the retirement system; and

(3) a summary of the provisions for employer and employee contributions, withdrawal of contributions, and eligibility for benefits, including any right to terminate employment and retain eligibility.

(b) A public retirement system shall distribute to each active member and retiree a summary of any significant change that is made in statutes or ordinances governing the retirement system and that affects contributions, benefits, or eligibility. A distribution must be made before the 271st day after the day the change is adopted.

(c) A public retirement system annually shall provide to each active member a statement of the amounts of the member's accumulated contributions and total accumulated service credit on which benefits may be based and to each annuitant a statement of the amount of payments made to the annuitant by the system during the preceding 12 months.

(d) A public retirement system shall provide to each active member and annuitant a summary of the financial condition of the retirement system, if the actuary of the system determines, based on a computation of advanced funding of actuarial costs, that the financing arrangement of the system is inadequate. The actuarial determination must be disclosed to members and annuitants at the time annual statements are next provided under Subsection (c) after the determination is made. An actuary who makes a determination under this subsection must have at least five years of experience working with one or more public retirement systems and be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(e) A member not currently contributing to a particular public retirement system is entitled on written request to receive from that system a copy of any document required by this section to be furnished to a member who is actively contributing.

(f) The governing body of a public retirement system composed of participating subdivisions or municipalities may provide one copy of any document it prepares under this section to each affected participating subdivision or municipality. Each participating subdivision or municipality shall distribute the information contained in the document to its employee members and annuitants, as applicable.

(g) Information required by this section may be contained, at the discretion of the public retirement system providing the information, in one or more separate documents. The information must be stated to the greatest extent practicable in terms understandable to a typical member of the public retirement system.

(h) A public retirement system shall submit to the board copies of the summarized information required by Subsections (a) and (b) before the 31st day after the date of publication or the date a change is adopted, as appropriate.

Added by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, Sec. 7, eff. Nov. 10, 1981. Amended by Acts 1985, 69th Leg., ch. 143, Sec. 6, eff. Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.106 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1152 (S.B. [200](#)), Sec. 13, eff. September 1, 2013.

Sec. 802.107. GENERAL PROVISIONS RELATING TO REPORTS AND CONTACT INFORMATION. (a) A public retirement system shall maintain for public review at its main office and at such other locations as the retirement system considers appropriate copies of the most recent edition of each type of report or other information required by this chapter to be submitted to the State Pension Review Board.

(b) Information required by this chapter to be submitted to the State Pension Review Board may be contained in one or more documents but must be submitted within the period provided by the provision requiring the information.

(c) A public retirement system shall post on a publicly available Internet website:

(1) the name, business address, and business telephone number of a system administrator of the public retirement system; and

(2) a copy of the most recent edition of each report and other written information that is required by this chapter or Chapter [801](#) to be submitted to the board.

(d) A public retirement system that maintains a website or for which a website is maintained shall prominently post a link on that website to the information required by Subsection (c). All other public retirement systems shall:

(1) prominently post the information required by Subsection (c) on a website that is maintained by the governing body of the political subdivision of which members of the public retirement system are officers or employees; or

(2) post the information required by Subsection (c) on a publicly available website that is maintained by a state agency.

(e) A report or other information posted under Subsection (c) must remain posted until replaced with a more recently submitted edition of the report or information.

Added by Acts 1985, 69th Leg., ch. 143, Sec. 7, eff. Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.1061 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 140 (H.B. [13](#)), Sec. 4, eff. May 24, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 140 (H.B. [13](#)), Sec. 5, eff. May 24, 2013.

Sec. 802.108. REPORT OF INVESTMENT RETURNS AND ASSUMPTIONS. (a) A public retirement system shall, before the 211th day after the last day of its fiscal year, submit to the board an investment returns and actuarial assumptions report that includes:

- (1) gross investment returns and net investment returns for each of the most recent 10 fiscal years;
- (2) the rolling gross and rolling net investment returns for the most recent 1-year, 3-year, and 10-year periods;
- (3) the rolling gross and rolling net investment return for the most recent 30-year period or the gross and net investment return since inception of the system, whichever period is shorter;
- (4) the assumed rate of return used in the most recent actuarial valuation; and
- (5) the assumed rate of return used in each of the most recent 10 actuarial valuations.

(b) For purposes of this section, "net investment return" means the gross investment return minus investment expenses. The net investment return may be calculated as the money-weighted rate of return as required by generally accepted accounting principles. The period basis for each report of investment returns under this section must be the fiscal year of the public retirement system submitting the report.

(c) If any information required to be reported by a public retirement system under Subsection (a) is unavailable, the governing body of the public retirement system shall, before the 211th day after the last day of the public retirement system's fiscal year, submit to the board a letter certifying that the information is unavailable, providing a reason for the unavailability of the information, and agreeing to timely submit the information to the board if it becomes available.

Added by Acts 2013, 83rd Leg., R.S., Ch. 140 (H.B. [13](#)), Sec. 6, eff. May 24, 2013.

SUBCHAPTER C. ADMINISTRATION OF ASSETS

Sec. 802.201. ASSETS IN TRUST. The governing body of a public retirement system shall hold or cause to be held in trust the assets appropriated or dedicated to the system, for the benefit of the members and retirees of the system and their beneficiaries.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.201 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 802.2015. FUNDING SOUNDNESS RESTORATION PLAN. (a) In this section, "governmental entity" has the meaning assigned by Section [802.1012](#).

(b) This section applies to a public retirement system and its associated governmental entity other than a public retirement system and its associated governmental entity subject to Section [802.2016](#).

(c) A public retirement system shall notify the associated governmental entity in writing if the retirement system receives an actuarial valuation indicating that the system's actual contributions are not sufficient to amortize the unfunded actuarial accrued liability within 40 years. If a public retirement system's actuarial valuation shows that the system's amortization period has exceeded 40 years for three consecutive annual actuarial valuations, or two consecutive actuarial valuations in the case of a system that conducts the valuations every two or three years, the governing body of the public retirement system and the associated governmental entity shall formulate a funding soundness restoration plan under Subsection (e) in accordance with the system's governing statute.

(d) The governing body of a public retirement system and the associated governmental entity that have formulated a funding soundness restoration plan under Subsection (e) shall formulate a revised funding soundness restoration plan under that subsection, in accordance with the system's governing statute, if the system conducts an actuarial valuation showing that:

- (1) the system's amortization period exceeds 40 years; and
- (2) the previously formulated funding soundness restoration plan has not been adhered to.

(e) A funding soundness restoration plan formulated under this section must:

- (1) be developed by the public retirement system and the associated governmental entity in accordance with the system's governing statute; and
- (2) be designed to achieve a contribution rate that will be sufficient to amortize the unfunded actuarial accrued liability within 40 years not later than the 10th anniversary of the date on which the final version of a funding soundness restoration plan is agreed to.

(f) A public retirement system and the associated governmental entity that formulate a funding soundness restoration plan shall report any updates of progress made by the entities toward improved actuarial soundness to the board every two years.

(g) Each public retirement system that formulates a funding soundness restoration plan as provided by this section shall submit a copy of that plan to the board and any change to the plan not later than the 31st day after the date on which the plan or the change is agreed to.

Added by Acts 2015, 84th Leg., R.S., Ch. 940 (H.B. [3310](#)), Sec. 5, eff. June 18, 2015.

Sec. 802.2016. FUNDING SOUNDNESS RESTORATION PLAN FOR CERTAIN PUBLIC RETIREMENT SYSTEMS.

(a) In this section, "governmental entity" has the meaning assigned by Section [802.1012](#).

(b) This section applies only to a public retirement system that is governed by Article 6243i, Revised Statutes.

(c) A public retirement system shall notify the associated governmental entity in writing if the retirement system receives an actuarial valuation indicating that the system's actual contributions are not sufficient to amortize the unfunded actuarial accrued liability within 40 years. If a public retirement system's actuarial valuation shows that the system's amortization period has exceeded 40 years for three consecutive annual actuarial valuations, or two consecutive actuarial valuations in the case of a system that conducts the valuations every two or three years, the associated governmental entity shall formulate a funding soundness restoration plan under Subsection (e) in accordance with the public retirement system's governing statute.

(d) An associated governmental entity that has formulated a funding soundness restoration plan under Subsection (e) shall formulate a revised funding soundness restoration plan under that subsection, in accordance with the public retirement system's governing statute, if the system conducts an actuarial valuation showing that:

- (1) the system's amortization period exceeds 40 years; and
- (2) the previously formulated funding soundness restoration plan has not been adhered to.

(e) A funding soundness restoration plan formulated under this section must:

- (1) be developed in accordance with the public retirement system's governing statute by the associated governmental entity; and
- (2) be designed to achieve a contribution rate that will be sufficient to amortize the unfunded actuarial accrued liability within 40 years not later than the 10th anniversary of the date on which the final version of a funding soundness restoration plan is formulated.

(f) An associated governmental entity that formulates a funding soundness restoration plan shall report any updates of progress made by the public retirement system and associated governmental entity toward improved actuarial soundness to the board every two years.

(g) An associated governmental entity that formulates a funding soundness restoration plan as provided by this section shall submit a copy of that plan to the board and any change to the plan not later than the 31st day after the date on which the plan or the change is formulated.

Added by Acts 2015, 84th Leg., R.S., Ch. 940 (H.B. [3310](#)), Sec. 5, eff. June 18, 2015.

Sec. 802.202. INVESTMENT OF SURPLUS. (a) The governing body of a public retirement system is responsible for the management and administration of the funds of the system.

(b) When, in the opinion of the governing body, a surplus of funds exists in accounts of a public retirement system over the amount needed to make payments as they become due within the next

year, the governing body shall deposit all or as much of the surplus as the governing body considers prudent in a reserve fund for investment.

(c) The governing body shall determine the procedure it finds most efficient and beneficial for the management of the reserve fund of the system. The governing body may directly manage the investments of the system or may choose and contract for professional investment management services.

(d) The governing body of a public retirement system shall:

- (1) develop and adopt a written investment policy;
- (2) maintain for public review at its main office a copy of the policy;
- (3) file a copy of the policy with the State Pension Review Board not later than the 90th day after the date the policy is adopted; and
- (4) file a copy of each change to the policy with the State Pension Review Board not later than the 90th day after the change is adopted.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.202 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 373, Sec. 1, eff. Aug. 30, 1993.

Sec. 802.203. FIDUCIARY RESPONSIBILITY. (a) In making and supervising investments of the reserve fund of a public retirement system, an investment manager or the governing body shall discharge its duties solely in the interest of the participants and beneficiaries:

- (1) for the exclusive purposes of:
 - (A) providing benefits to participants and their beneficiaries; and
 - (B) defraying reasonable expenses of administering the system;
- (2) with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims;
- (3) by diversifying the investments of the system to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
- (4) in accordance with the documents and instruments governing the system to the extent that the documents and instruments are consistent with this subchapter.

(b) In choosing and contracting for professional investment management services and in continuing the use of an investment manager, the governing body must act prudently and in the interest of the participants and beneficiaries of the public retirement system.

(c) A trustee is not liable for the acts or omissions of an investment manager appointed under Section [802.204](#), nor is a trustee obligated to invest or otherwise manage any asset of the system subject to management by the investment manager.

(d) An investment manager appointed under Section [802.204](#) shall acknowledge in writing the manager's fiduciary responsibilities to the fund the manager is appointed to serve.

(e) The investment standards provided by Subsection (a) and the policies, requirements, and restrictions adopted under Section [802.204](#)(c) are the only standards, policies, or requirements for, or restrictions on, the investment of funds of a public retirement system by an investment manager or by a governing body during a 90-day interim between professional investment management services. Any other standard, policy, requirement, or restriction provided by law is suspended and not applicable during a time, and for 90 days after a time, in which an investment manager is responsible for investment of a reserve fund. If an investment manager has not begun managing investments of a reserve fund before the 91st day after the date of termination of the services of a previous investment manager, the standards, policies, requirements, and restrictions otherwise provided by law are applicable until the date professional investment management services are resumed.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 198, ch. 18, Sec. 8, 9, eff. Nov. 10, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.203 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 802.204. INVESTMENT MANAGER. (a) The governing body of a public retirement system may appoint investment managers for the system by contracting for professional investment management services with one or more organizations, which may include a bank if it has a trust department, that are in the business of managing investments.

(b) To be eligible for appointment under this section, an investment manager must be:

(1) registered under the Investment Advisors Act of 1940 (15 U.S.C. Section 80b-1 et seq.);

(2) a bank as defined by that Act; or

(3) an insurance company qualified to perform investment services under the laws of more than one state.

(c) In a contract made under this section, the governing body shall specify any policies, requirements, or restrictions, including criteria for determining the quality of investments and for the use of standard rating services, that the governing body adopts for investments of the system.

(d) A political subdivision of which members of the public retirement system are officers or employees may pay all or part of the cost of professional investment management services under a contract under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 199, ch. 18, Sec. 10, eff. Nov. 10, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.204 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 802.205. INVESTMENT CUSTODY ACCOUNT. (a) If the governing body of a public retirement system contracts for professional investment management services, it also shall enter into an investment custody account agreement designating a bank, depository trust company, or brokerage firm to serve as custodian for all assets allocated to or generated under the contract.

(b) Under a custody account agreement, the governing body of a public retirement system shall require the designated custodian to perform the duties and assume the responsibilities for funds under the contract for which the agreement is established that are performed and assumed, in the absence of a contract, by the custodian of system funds.

(c) A political subdivision of which members of the retirement system are officers or employees may pay all or part of the cost of custodial services under a custody account agreement under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.

(d) If the governing body enters into a contract under Subsection (a) with a brokerage firm, the firm must:

- (1) be a broker-dealer registered with the Securities and Exchange Commission;
- (2) be a member of a national securities exchange;
- (3) be a member of the Securities Investor Protection Corporation;
- (4) be registered with the State Securities Board; and
- (5) maintain net regulatory capital of at least \$200 million.

(e) A brokerage firm contracted with for custodial services under this section may not have discretionary authority over the retirement system's assets in the firm's custody.

(f) A brokerage firm that provides custodial services under Subsection (a) must provide insurance against errors, omissions, mysterious disappearance, or fraud in an amount equal to the amount of the assets the firm holds in custody.

(g) A brokerage firm that provides consulting advice, custody of assets, or other services to a public retirement system under this chapter shall discharge its duties solely in the interest of the public retirement system in accordance with Section [802.203](#).

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.205 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 621, Sec. 1, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 916, Sec. 1, eff. June 20, 2003.

Sec. 802.206. EVALUATION OF INVESTMENT SERVICES. (a) The governing body of a public retirement system may at any time and shall at frequent intervals monitor the investments made by any investment manager for the system. The governing body may contract for professional evaluation services to fulfill this requirement.

(b) A political subdivision of which members of the retirement system are officers or employees may pay all or part of the cost of professional evaluation services under a contract under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.206 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 802.207. CUSTODY AND USE OF FUNDS. (a) An investment manager other than a bank having a contract with a public retirement system under Section [802.204](#) may not be a custodian of any assets of the reserve fund of the system.

(b) When demands of the public retirement system require, the governing body shall withdraw from a custodian of system funds money for use in paying benefits to members and other beneficiaries of the system and for other uses authorized by this subchapter and approved by the governing body.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.207 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. ACTUARIAL ANALYSIS OF LEGISLATION

Sec. 802.301. ACTUARIAL IMPACT STATEMENTS. (a) Except as provided by Subsection (g), a bill or resolution that proposes to change the amount or number of benefits or participation in benefits of a public retirement system or that proposes to change a fund liability of a public retirement system is required to have attached to it an actuarial impact statement as provided by this section.

(b) An actuarial impact statement required by this section must:

- (1) summarize the actuarial analysis prepared under Section [802.302](#) for the bill or resolution accompanying the actuarial impact statement;
- (2) identify and comment on the reasonableness of each actuarial assumption used in the actuarial analysis under Subdivision (1); and
- (3) include other information determined necessary by board rule.

(c) The board is primarily responsible for preparing a required actuarial impact statement under this section.

(d) A required actuarial impact statement must be attached to the bill or resolution:

- (1) before a committee hearing on the bill or resolution is held; and
- (2) at the time it is reported from a legislative committee of either house for consideration by the full membership of a house of the legislature.

(e) An actuarial impact statement must remain with the bill or resolution to which it is attached throughout the legislative process, including the process of submission to the governor.

(f) A bill or resolution for which an actuarial impact statement is required is exempt from the requirement of a fiscal note as provided by Chapter [314](#).

(g) An actuarial impact statement is not required for a bill or resolution that proposes to have an economic effect on a public retirement system only by providing new or increased administrative duties.

(h) The board shall provide to the Legislative Budget Board a copy of any actuarial impact statement required under this section.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.301 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 624, Sec. 13, eff. Sept. 1, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. [59](#)), Sec. 44, eff. September 1, 2013.

Sec. 802.302. PREPARATION OF ACTUARIAL ANALYSIS. (a) The board shall request a public retirement system affected by a bill or resolution as described by Section [802.301\(a\)](#) to provide the board with an actuarial analysis.

(b) An actuarial analysis required by this section must be prepared by an actuary who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(c) A public retirement system that receives a request under Subsection (a) must provide the board with an actuarial analysis on or before the 21st day after the date of the request, if the request relates to a bill or resolution introduced for consideration during a regular legislative session.

(d) The board shall adopt deadlines for the provision under this section of an actuarial analysis that relates to a bill or resolution introduced for consideration during a called legislative session. The deadlines must be designed to provide the most complete information practicable in a timely manner.

(e) The board may prepare an actuarial analysis for a public retirement system that receives a request under Subsection (a) and does not provide the board with an actuarial analysis within the required period under Subsection (c) or (d).

(f) The public retirement system may reimburse the board's costs incurred in preparing an actuarial analysis under Subsection (e).

(g) For each actuarial analysis that a public retirement system prepares, the board shall have a second actuary:

(1) review the actuarial analysis accompanying the bill or resolution; and

(2) comment on the reasonableness of each actuarial assumption used in the public retirement system's actuarial analysis.

(h) Even if a public retirement system prepares an actuarial analysis under Subsection (c) or (d), the board may have a second actuary prepare a separate actuarial analysis.

(i) A public retirement system is not prohibited from providing to the legislature any actuarial analysis or information that the system determines necessary or proper.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.302 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 624, Sec. 14, eff. Sept. 1, 1991.

Sec. 802.3021. STATE PENSION REVIEW BOARD ACTUARY. An actuary who reviews or prepares an actuarial analysis for the board must have at least five years of experience as an actuary working with one or more public retirement systems and must be a fellow of the Society of Actuaries, a member of

the American Academy of Actuaries, or an enrolled actuary under the Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.207 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Redesignated from Sec. 802.302(c) and amended by Acts 1991, 72nd Leg., ch. 624, Sec. 14, eff. Sept. 1, 1991.

Sec. 802.303. CONTENTS OF ACTUARIAL ANALYSIS. (a) An actuarial analysis must show the economic effect of the bill or resolution on the public retirement system affected, including a projection of the annual cost to the system of implementing the legislation for at least 10 years. If the bill or resolution applies to more than one public retirement system, the cost estimates in the analysis may be limited to each affected state-financed public retirement system and each affected public retirement system in a city having a population of 200,000 or more.

(b) An actuarial analysis must include a statement of the actuarial assumptions and methods of computation used in the analysis and a statement of whether or not the bill or resolution, if enacted, will make the affected public retirement system actuarially unsound or, in the case of a system already actuarially unsound, more unsound.

(c) The projection of the effect of the bill or resolution on the actuarial soundness of the system must be based on a computation of advanced funding of actuarial costs.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.303 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 802.304. COST OF ACTUARIAL ANALYSIS. The state may not pay the cost of a required actuarial analysis that is prepared for a public retirement system not financed by the state, except that a sponsor of the bill or resolution for which the analysis is prepared may pay the cost of preparation out of funds available for the sponsor's personal or office expenses.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 12.304 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 802.305. REPORTS, ANALYSES, AND ACTUARIAL IMPACT STATEMENTS FOR CERTAIN BILLS AND RESOLUTIONS. (a) The board may request a state-financed public retirement system to provide the board with:

(1) a report listing and totalling the actuarial effect of all public retirement bills and resolutions that have been presented in public hearings in either house of the legislature during the current legislative session and that affect the state-financed public retirement system; or

(2) an analysis of the actuarial effect of all public retirement bills and resolutions that have been passed by at least one house of the legislature during the current legislative session and that affect the state-financed public retirement system, assuming that each bill and resolution becomes law.

(b) A state-financed public retirement system that receives a request under Subsection (a) must provide the board with the requested report or analysis on or before the 21st day after the date of the request, if the request is made during a regular legislative session. If the state-financed public retirement system does not provide the board with the requested report or analysis within the 21-day period, the board may prepare the requested report or analysis.

(c) If the board prepares a requested report or analysis under Subsection (b), the state-financed public retirement system may reimburse the board's costs incurred in preparing the requested report or analysis.

(d) Even if a public retirement system prepares a required report or analysis under Subsection (b), the board may have a second actuary prepare a separate report or analysis.

(e) On or before the 70th day before the last possible day of each regular session of the legislature, the board shall provide the presiding officer of the committee responsible for retirement legislation in each house of the legislature an actuarial impact statement listing and totalling for each state-financed public retirement system the actuarial effect of all public retirement bills and resolutions that have been presented in public hearings in either house of the legislature during that legislative session and that affect that state-financed public retirement system.

(f) On or before the 30th day before the last possible day of each regular session of the legislature, the board shall provide the presiding officer of the committee responsible for retirement legislation in each house of the legislature an actuarial impact statement analyzing for each state-financed public retirement system the actuarial effect of all public retirement bills and resolutions that have been passed by at least one house of the legislature during that legislative session and that affect that state-financed public retirement system, assuming that each of the bills and resolutions becomes law.

(g) The board also shall provide the statements required by Subsections (e) and (f) during a called legislative session.

(h) The board shall adopt deadlines for the provision under this section of a report, analysis, or actuarial impact statement that relates to a bill or resolution introduced for consideration during a called legislative session. The deadlines must be designed to provide the most complete information practicable in a timely manner.

(i) In this section:

(1) "Public retirement bill or resolution" means a bill or resolution that proposes to change the amount or number of benefits or participation in benefits of a state-financed public retirement system or that proposes to change a fund liability of a state-financed public retirement system.

(2) "State-financed public retirement system" means the Employees Retirement System of Texas, including the law enforcement and custodial officer supplemental retirement fund, or the Teacher Retirement System of Texas.

Added by Acts 1991, 72nd Leg., ch. 624, Sec. 15, eff. Sept. 1, 1991.



**BOARD OF TRUSTEES AND EMPLOYEES
ETHICS AND CODE OF CONDUCT
POLICY**

As Amended Through January 11, 2018

BOARD OF TRUSTEES AND EMPLOYEES ETHICS AND CODE OF CONDUCT POLICY

**Adopted January 11, 1996
As amended through January 11, 2018**

A. Purpose

The Board of Trustees (“Board”) of the Dallas Police and Fire Pension System (“DPFP” or the “System”) is obligated to administer its pension system as a trust fund solely in the interest of members and beneficiaries. In performance of this obligation, the Board is required to administer DPFP in accordance with Chapter 802, Title 8 of the Texas Government Code and other applicable state and federal laws and regulations. In furtherance of these obligations, the Board adopts the following Ethics and Code of Conduct Policy (this “Policy”), which shall be applicable to all System Representatives. By adopting this Policy, all System Representatives agree to act with integrity, competence, dignity, and in an ethical manner when dealing with the public, members and beneficiaries of the System, current and prospective Consultants and Vendors, DPFP staff, and fellow System Representatives.

B. Definitions

1. **Benefit** – anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested, or anything expressly included as a benefit by applicable law.
2. **Consultants** – independent contractors (whether individuals, partnerships, corporations or other organizations) which provide legal, economic, investment, actuarial or other advice to the Trustees or staff to be used in the performance of fiduciary functions. Any limitations or obligations under this Policy apply to the individuals involved with the System and the contracting organization, if any.
3. **Fiduciary** – any person who (1) exercises any discretionary control over the management of DPFP or any authority or control over the management or disposition of its assets, (2) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of DPFP or has any authority or discretionary responsibility to do so, (3) has any discretionary authority or discretionary responsibility in the administration of DPFP, or (4) has been designated by the Trustees as a fiduciary in the performance of certain duties for DPFP.
4. **Gift** – anything of tangible value given without adequate consideration, which shall include, but not be limited to, any payment of cash, or receipt of goods or services, or anything expressly included as a gift by applicable law.



B. Definitions (continued)

5. **Key Staff** – The Executive Director, Chief Investment Officer, Chief Financial Officer, and General Counsel of the System. For purposes of this Policy, the Executive Director may designate one or more other DPFPP employees as Key Staff as reasonably determined by the Executive Director.
6. **Permitted Benefit or Gift** - A Benefit or Gift that (A) is food, lodging, transportation, or entertainment and is accepted as a guest, (B) has a value of less than \$50 (including taxes), (C) is an honorarium speaking at a conference or event that only includes meals, lodging and transportation, or (D) is deemed a Permitted Benefit or Gift by the Board pursuant to Section F.3. A Benefit or Gift is accepted as a guest if the person or representative of the entity providing the Benefit or Gift is present. Disclosure and related reporting requirements under Chapter 176, Tex. Local Gov't Code (“Chapter 176”), may apply to a Permitted Benefit or Gift, with specific dollar limitations applying for lodging, transportation, or entertainment, including lodging, transportation, or entertainment that is accepted as a guest.
7. **System Representative** –Trustees, Investment Advisory Committee members of the System, and Key Staff.
8. **Third Party** - means and includes a person or entity that is seeking action, opportunity or a specific outcome from DPFPP regarding a DPFPP matter. The Third Party may be seeking the action, opportunity or outcome for his or her or its own behalf or the third party may be seeking it on behalf of another person or entity in the capacity of a representative, agent or intermediary, or as an advocate for a cause or group of individuals or entities. This definition includes public officials.
9. **Trustee** –Members of the Board of Trustees of DPFPP and persons who are candidates for the position of a Trustee.
10. **Undue Influence** - the employment of any improper or wrongful pressure, scheme or threat by which one’s will is overcome, and he or she is induced to do or not to do an act which he or she would not do, or would do, if left to act freely.
11. **Vendors** – independent contractors, whether individuals, partnerships, corporations or other organizations, which perform services for DPFPP for direct or indirect compensation. Services include, but are not limited to, custodianship of funds, management of investments, maintenance of official records and provision of professional advice.



C. Standards of Conduct

The following legal standards of conduct apply to all System Representatives.

A System Representative shall not:

1. solicit, accept or agree to accept any Benefit or Gift that the System Representative knows or should know is being offered with the intent to influence the System Representative's official conduct.
2. solicit, accept, or agree to accept any Benefit or Gift for having exercised the System Representative's official powers or performed the System Representative's official duties in favor of another.
3. solicit, accept, or agree to accept a Benefit or Gift that is not a Permitted Benefit or Gift from a person the System Representative knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of the System Representative's discretion.
4. accept other employment or compensation or engage in a business or professional activity that could reasonably be expected to impair the System Representative's independence of judgment in the performance of the System Representative's official duties or that might reasonably be expected to require or induce the System Representative to disclose confidential information acquired by reason of the official position.
5. make personal investments that could reasonably be expected to create a substantial conflict between the System Representative's private interest and the public interest (this does not include investments in publicly traded index funds or mutual funds where the System Representative has no control over the selection of holdings).
6. use official position for financial gain, obtaining privileges, or avoiding consequence of illegal acts.
7. have any direct or indirect pecuniary interest in a contract entered into by DPFPP other than an interest incidental to the System Representative's membership in a large class such as that of participants in DPFPP (this does not include investments in publicly traded index funds or mutual funds where the System Representative has no control over the selection of holdings).



D. Fiduciary Duties

1. Under Texas State statutes and applicable federal law and regulations, the System is a trust fund to be administered solely in the interest of the members and beneficiaries thereof for the exclusive purpose of providing benefits to members and beneficiaries and to defray reasonable expenses of DFPF.
2. In the performance of these duties, all Fiduciaries are subject to the "prudent person" rule which requires that they exercise their duties with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims. Further, all Fiduciaries shall maintain high ethical and moral character both professionally and personally, including interactions with other Trustees and DFPF staff, such that the conduct of all Fiduciaries shall not reflect negatively upon the Board or DFPF.
3. In making or participating in decisions, Fiduciaries shall give appropriate consideration to those facts and circumstances reasonably available to the Fiduciary which are relevant to the particular decision and shall refrain from considering facts or circumstances which are not relevant to the decision.
4. Investment decisions of Fiduciaries must be made in accordance with the approved Investment Policy Statement of the System.
5. As a Fiduciary, each Trustee shall adhere to the following:
 - A. A Trustee's loyalty must be to the members and beneficiaries of the System and not to the source of his or her appointment. A Trustee must exercise care and caution always to place the interest of members and beneficiaries ahead of the Trustee's own interest.
 - B. All members and beneficiaries of DFPF are to be treated fairly and impartially. A Trustee's duty is to the members and beneficiaries of DFPF as a whole and not to individuals or groups of individuals within DFPF.
 - C. Trustees must possess the ability and willingness to dedicate the time required to satisfy the duties of serving as a Fiduciary. This includes but is not limited to possessing a complete understanding of the obligations and duty to act in accordance with plan documents, as well as having a substantive base of knowledge that contributes to sufficient analysis of recommendations by DFPF staff and other professionals and fulfillment of fiduciary obligations. A Trustee is responsible for preparing himself or herself for Board work, including committee meetings.



D. Fiduciary Duties (continued)

- D. A Trustee shall treat executive session and closed meeting information as confidential.
 - E. A Trustee shall not give, disclose or provide access to any confidential information owned, obtained, or developed by DPFPP.
 - F. Trustees should delegate duties, when appropriate, and prudently select, instruct, and monitor all Vendors, Consultants, DPFPP staff, and agents to whom they delegate such duties.
6. No Trustee shall knowingly or negligently participate in the breach of fiduciary duty by another fiduciary, participate in concealing such breach, or knowingly or negligently permit such breach to occur or continue.

E. Conflicts of Interest and Prohibited Transactions

- 1. Certain transactions by System Representatives of DPFPP are strictly prohibited, specifically:
 - A. Compensation from any person in connection with any action involving assets of DPFPP.
 - B. Participation in a decision or action involving any asset or benefit for personal interest.
 - C. The purchase, sale, exchange or leasing of property with DPFPP if that System Representative holds an interest in the property.
 - D. The purchase, sale or exchange of any direct investment with DPFPP if that System Representative holds an interest in the investment.
 - E. Causing the Fund to engage in any of the prohibited transactions described herein with any immediate relative or business associate of the System Representative, any other Trustee, employee, custodian, or counsel to DPFPP, any other Fiduciary, any person providing services to DPFPP, any employee organization whose members are covered by DPFPP, or the City of Dallas and its officers, officials and employees.



E. Conflicts of Interest and Prohibited Transactions (continued)

2. In addition, any goods, services, or facilities furnished by DPF to any person shall be used for the exclusive benefit of DPF unless reasonable consideration is received by the System for the use of the goods, services, or facilities.
3. Black-Out List for Investment Entities
 - A. For purposes of this subsection, “Investment Entity” means an investment firm, partnership, fund, advisor, consultant, placement agent or owner of property that is being considered for purchase.
 - B. The Chief Investment Officer shall maintain and periodically update as
 - C. appropriate a list (the “Black-out List”) of Investment Entities that meet any of the following criteria:
 - i. The Investment Entity is under consideration by DPF staff for a recommendation to the Board or the Board’s Investment Advisory Committee on a mandate, commitment, increased allocation or any retention for investment-related services (exclusive of rebalancing);
 - ii. The Investment Entity is under consideration by the DPF staff for a recommendation to the Board or the Investment Advisory Committee to decrease the allocation to the Investment Entity (exclusive of rebalancing) or to discontinue use of the Investment Entity, provided, however, this shall not include any Investment Entity where the assets managed by the Investment Entity that are being considered to be reduced in whole or in part are contained within an asset class where the actual assets held by DPF are higher than the target allocation for such asset class in the Investment Policy Statement; or
 - iii. The Investment Entity is in negotiations with DPF for contractual terms after a conditional selection has been made.
 - D. During the first half of each month, the Chief Investment Officer shall supply the current Black-out List to Trustees and any DPF employees that, in the Chief Investment Officer’s opinion, might potentially be affected by this section (the “Affected Employees”). Additionally, prior to departure for DPF-related travel, Trustees and Affected Employees shall be issued the most current Black-out List.



E. Conflicts of Interest and Prohibited Transactions (continued)

- E. Notwithstanding any other DFPF policies, including those in this Policy concerning Benefits or Gifts, while an Investment Entity's name appears on the Black-out List, Trustees and Affected Employees and their immediate relatives shall not accept payment, reimbursement, complimentary admission or similar extension or subsidy for food, lodging, travel or entertainment, including any Permitted Benefit or Gift, from any person or entity identified or affiliated with said Investment Entity, including, without limitation, any placement agent of an Investment Entity (an "Investment Entity Representative"), except for:
 - i. food and beverages that would be typically or conventionally provided by a business host in connection with a business meeting and that are provided by the host at its place of business during a due diligence visit;
 - ii. food and beverages provided at regularly scheduled Investment Entity annual meetings or advisory committee meetings; and
 - iii. food and beverages provided at educational conferences where such food and beverages may be sponsored by an Investment Entity, but are available to all conference attendees.
 - F. Trustees shall not reciprocate communications from an Investment Entity Representative about the Investment Entity outside of committee or Board meetings ("ex-parte communications").
- 4. A System Representative shall report to the Executive Director any business relationship with a current or prospective Vendor on a signed document upon establishment of such relationship if the System Representative knows or should know that the person or entity is a current or prospective Vendor for DFPF.¹ Upon receipt of such information, the Executive Director will as promptly as practicable report apprise the Board of the facts involved.
 - 5. A Trustee shall not lobby against legislative proposals pertaining to DFPF pension issues and benefits that have been duly approved by the Board or an authorized committee of the Board.
 - 6. A System Representative shall not disclose any information deemed confidential by DFPF.

¹ Chapter 176, Texas Local Gov't Code.



E. Conflicts of Interest and Prohibited Transactions (continued)

7. Other than as a member or beneficiary of DPF, a System Representative may have no conflict of interest during such System Representative's tenure with DPF and for one year after tenure ends, such that System Representative shall comply with the provisions of this Policy during such System Representative's tenure, and a System Representative shall not, during such System Representative's tenure with DPF and for one year after such tenure ends, represent any Third Party in any formal or informal appearance before the Board or DPF staff. DPF will not enter into or renew an existing contract with any Vendor during the one year period after the System Representative's tenure with DPF if such Vendor employs or is represented by the System Representative unless the Board determines that such a restriction would not be in DPF's best interest
8. Nothing in this Section shall exempt any System Representative from applicable provisions of any other laws. The standards of conduct set forth in this Section are in addition to those prescribed elsewhere in this Policy and in applicable laws and rules.

F. Gifts, Travel and Expenses

1. System Representatives shall not solicit any Benefit or Gift, including a Permitted Benefit or Gift, from any source which is a current or prospective Vendor of DPF. All Trustees and Key Staff of DPF shall exercise care in accepting any Permitted Benefit or Gift from any source, particularly those sources which are current or prospective Vendors of the System.
2. System Representatives shall not accept from a Vendor or prospective Vendor a Benefit or Gift that is not a Permitted Benefit or Gift. Any Benefit or Gift to a System Representative that is not a Permitted Benefit or Gift shall be returned to its source whenever possible or donated to a suitable charitable organization upon its receipt.
3. If a System Representative has a relationship with a Vendor or prospective Vendor (the "Prior Relationship") which predates the System Representative's relationship with DPF, then the System Representative may disclose to the Board the Prior Relationship and Benefits or Gifts previously received from the Vendor or prospective Vendor (the "Prior Benefits or Gifts") due to the Prior Relationship. The Board may determine that future Benefits or Gifts received by the System Representative that are similar to the Prior Benefits or Gifts are the result of the continuation of the Prior Relationship and shall be deemed a Permitted Benefit or Gift and no further reporting obligation shall be required. If the Board has deemed a Benefit or Gift from a vendor or prospective



F. Gifts, Travel and Expenses (continued)

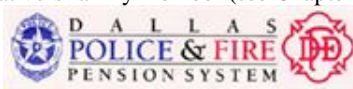
Vendor a Permitted Benefit or Gift due to a Prior Relationship as described in the sentence above, a System Representative shall report to the Board any Benefit or Gift received from such Vendor or prospective Vendor which would not reasonably be considered similar to the Prior Benefits or Gifts. The Board may require recusal of a System Representative from discussion of any matter that directly or indirectly involves a Vendor or prospective Vendor with whom such System Representative has a Prior Relationship.

4. No System Representative shall receive any Permitted Benefit or Gift through an intermediary, if the person knows, or has reason to know, that the Permitted Benefit or Gift has originated from another source.
5. In no event shall any System Representative accept a Permitted Benefit or Gift if the source of the Permitted Benefit or Gift is not identified. If the source of any Permitted Benefit or Gift cannot be ascertained, the Permitted Benefit or Gift shall be donated to a suitable charitable organization.
6. Under no circumstances shall a System Representative accept a cash Gift.
7. In no event shall any System Representative accept any expenses related to travel, other than working meals or ground transportation, the purpose of which is to determine the selection of new Vendors or to determine the assignment of continuing or additional business to existing Vendors.

G. Examples of Situations That Involve a Permitted Benefit or Gift²

1. Permitted Benefit or Gift or No Benefit or Gift Provided (and Reporting Required in Certain Situations)
 - A. A Vendor (not currently in a search) invites a System Representative to attend a sporting event at no cost to the System Representative. The Vendor and the System Representative both attend the event. Because the Vendor accompanies the System Representative to this event, the event is a Permitted Benefit or Gift. However, for purposes of Chapter 176, whether the event has to be reported depends on the whether the value of the sporting event and the value of any Gift, including transportation, lodging or entertainment received by the System Representative from the Vendor in the applicable 12-month period (as described in Chapter 176) would, in the aggregate, exceed \$100.

² In all scenarios, the Vendor does not have a separate employment or other business relationship with the System Representative or the System Representative's family member (see Chapters 171 and 176 for details).



G. Examples of Situations That Involve a Permitted Benefit or Gift³ (continued)

- B. A Vendor (not currently in a search) invites several System Representatives to a dinner at a restaurant. The Vendor and the System Representatives attend the dinner. Because the Vendor accompanies the System Representatives to the dinner, the dinner is a Permitted Benefit or Gift.
- C. While attending a conference, a System Representative attends a reception sponsored and attended by Vendors (none of which currently are in a search). Because the reception is widely attended and the Vendors are present, the reception is a Permitted Benefit or Gift.
- D. While attending a conference, a System Representative and all other attendees of the conference receive a bag with various items and the aggregate value of the items is under \$50 (including taxes). Because the value of the gift bag is under \$50, the gift bag is a Permitted Benefit or Gift. Whether these items must be reported under Chapter 176 depends on whether the items are from a specific Vendor or prospective Vendor and whether that Vendor has provided other gifts within the applicable 12-month period (as described by Chapter 176) that would, in the aggregate, exceed \$100.
- E. A System Representative realizes that seven months ago, he participated in a golf outing valued at \$175 as a guest of a company who had representatives at the golf outing. The company, however, now enters into a contract with DPF in the current month. The System Representative did not know at the time of the golf outing that the company or DPF was considering entering into the contract. Because representatives of the company were in attendance at the golf outing, the outing was a Permitted Benefit or Gift, even though the outing was over \$50. However, because the golf outing was valued at over \$100, it must be reported under Chapter 176 because the System Representative received a Gift from the Vendor during the 12-month period preceding the date that he became aware that a contract with the Vendor had been executed.
- F. A System Representative and her spouse attend a professional basketball game as guests of a company with representatives of the company present. The value of the tickets is over \$100. Six months later, the System Representative becomes aware that DPF and the company are considering entering into a contract, even though no contract is being entered into at such time. Because the basketball

³ In all scenarios, the Vendor does not have a separate employment or other business relationship with the System Representative or the System Representative's family member (see Chapters 171 and 176 for details).



G. Examples of Situations That Involve a Permitted Benefit or Gift⁴ (continued)

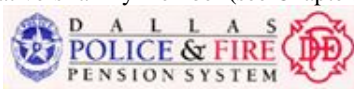
game was attended by a representative of the company, the basketball game was a Permitted Benefit or Gift, even though the value was over \$50. However, because the tickets were valued at over \$100, it must be reported under Chapter 176 because the System Representative received a Gift from the Vendor during the 12-month period preceding the date that she became aware that DPFP and the Company were considering entering into a contract.

- G. While attending a conference, a System Representative and all other attendees of the conference receive an item such as a shirt/sweater or briefcase type bag with the Vendor's name on it. Because items with Vendors' logos and/or company name generally are advertising and do not have retail value, no Benefit or Gift is provided.
- H. A System Representative attends a conference as a speaker and in return the conference pays for transportation, meals and lodging. This is a permitted honorarium, and no Benefit or Gift is provided. Whether the honorarium must be reported under Chapter 176, depends on whether the transportation, meals and lodging are from a current or prospective Vendor and whether that Vendor has provided other gifts within the applicable 12-month period (as described in Chapter 176) that would, in the aggregate, exceed \$100.

2. Benefit or Gift Provided that is Not Permitted

- A. A Vendor (not currently in a search) invites a System Representative to attend a sporting event at no cost to the System Representative, but does not plan on attending the event. Because the Vendor does not attend the event with the System Representative, a Benefit or Gift is provided that is not permitted.
- B. A System Representative, while attending a conference, wins a raffle sponsored by the conference. The prize is \$25 cash. The System Representative may not accept the cash, as it is a Benefit or Gift that is expressly prohibited under Section F.5.
- C. A System Representative, during the Christmas Holidays, receives a pen and pencil set from a Vendor. The value of the set is obviously over \$50 (including taxes). Because the value of the pen and pencil set is over \$50, the pen and pencil set is a Gift that is not permitted and should be returned to the Vendor, or if return is not possible, donated to a charitable organization.

⁴ In all scenarios, the Vendor does not have a separate employment or other business relationship with the System Representative or the System Representative's family member (see Chapters 171 and 176 for details).



H. Undue Influence

1. Trustees recognize that, by virtue of their position of authority with the System, may have Undue Influence on DPFPP staff or Consultants when communicating directly with such staff or Consultants.
2. Individual Trustees shall refer all proposals or other communications regarding potential or existing investments or other contracts or services, or matters involving general System operations, directly to the Executive Director or his or her designee and shall not communicate as to such matters with other DPFPP staff or Consultants.
3. Any communication regarding a potential investment transaction, other contract, or System operations initiated by a Trustee with either DPFPP staff or a Consultant in which the Trustee is advocating for a specified outcome must be documented by the employee or Consultant and reported to the Executive Director. The Executive Director will notify the Chairman of such communications for appropriate action.

I. General Provisions

1. Nothing in this policy shall excuse any Trustee, officer, or employee from any other restrictions of state or federal law concerning conflicts of interest and fiduciary duties, including but not limited to Chapters 171 and 176, Tex. Local Gov't Code, as amended (Attachment III), and the Securities and Exchange Commission "Pay to Play" Regulations, Rule 206(4)-5.⁵
2. Violation of this Policy by a Vendor will result in corrective action, up to and including termination of contract or relationship with DPFPP, discipline, or initiation of removal action pursuant to any and all applicable laws. Enforcement of this Policy with respect to Trustees is provided in Section J.

J. Enforcement

1. It is the duty of all System Representatives to be aware of all provisions of this document and to abide by the letter and the spirit of this Policy.
2. If the Executive Director is notified in writing of an alleged violation of this Policy, the Executive Director shall promptly notify the Chairman of the alleged violation. If the

⁵ <http://www.sec.gov/rules/final/2010/ia-3043.pdf>.



J. Enforcement (continued)

violation is alleged against a Trustee, the Chairman is authorized to call an ad hoc committee of four (4) Trustees who are not the subject of the allegation to review the alleged violation and make recommendations to the Board for resolution of the matter. If the Chairman is a subject of the alleged violation, the Executive Director shall promptly notify the Vice Chairman of the alleged violation. The Vice Chairman is authorized to call an ad hoc committee of four (4) Trustees who are not the subject of the allegation to review the alleged violation and make recommendations to the Board for resolution of the matter.

3. The Board shall have final decision-making authority with respect to Trustee violations of this Policy. The Executive Director shall have final decision-making authority with respect to staff violations of this Policy.

A. Available decisions for Trustee violations of this Policy are:

- i. Require that the Trustee file disclosure or conflicts report(s) within a specified time period.
- ii. Require that the Trustee attend approved specialized training within a specified time period.
- iii. Removal of the Trustee from any Committee Chairman role for a specified time period.
- iv. Removal of the Trustee from any Committee membership for a specified time period.
- v. Censure of the Trustee.
- vi. Bring suit against the Trustee for breach of fiduciary duty.

B. A decision under this Section is binding on the Trustee.

K. Compliance

Trustees and Key Staff are required to file an annual form with the System acknowledging that they have read, understand and will comply with the provisions of this Policy.



Board of Trustee and Employees Ethics And Code Of Conduct Policy
As Amended through January 11, 2018
Page 14 of 14

L. Effective Date

APPROVED on January 11, 2018 by the Board of Trustees of the Dallas Police and Fire Pension System.

[signature]

William F. Quinn
Chairman

ATTEST:

[signature]

Kelly Gottschalk
Secretary



Attachment I

The fiduciary responsibilities of a Trustee of a Public Retirement System in the state of Texas under Texas Government Code, Title 8, Section 802.203.

Sec. 802.203. FIDUCIARY RESPONSIBILITY. (a) In making and supervising investments of the reserve fund of a public retirement system, an investment manager or the governing body shall discharge its duties solely in the interest of the participants and beneficiaries:

- (1) for the exclusive purposes of:
 - (A) providing benefits to participants and their beneficiaries; and
 - (B) defraying reasonable expenses of administering the system;
- (2) with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims;
- (3) by diversifying the investments of the system to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
- (4) in accordance with the documents and instruments governing the system to the extent that the documents and instruments are consistent with this subchapter.

(b) In choosing and contracting for professional investment management services and in continuing the use of an investment manager, the governing body must act prudently and in the interest of the participants and beneficiaries of the public retirement system.

(c) A Trustee is not liable for the acts or omissions of an investment manager appointed under Section 802.204, nor is a Trustee obligated to invest or otherwise manage any asset of the system subject to management by the investment manager.

(d) An investment manager appointed under Section 802.204 shall acknowledge in writing the manager's fiduciary responsibilities to the fund the manager is appointed to serve.

(e) The investment standards provided by Subsection (a) and the policies, requirements, and restrictions adopted under Section 802.204(c) are the only standards, policies, or requirements for, or restrictions on, the investment of funds of a public retirement system by an investment manager or by a governing body during a 90-day interim between professional investment management services. Any other standard, policy, requirement, or restriction provided by law is suspended and not applicable during a time, and for 90 days after a time, in which an investment manager is responsible for investment of a reserve fund. If an investment manager has not begun managing investments of a reserve fund before the 91st day after the date of termination of the services of a previous investment manager, the standards, policies, requirements, and restrictions otherwise provided by law are applicable until the date professional investment management services are resumed.

Attachment II

Chapters 171 and 176 of the Texas Local Government Code

CHAPTER 171. REGULATION OF CONFLICTS OF INTEREST OF OFFICERS OF MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER LOCAL GOVERNMENTS

Sec. 171.001. DEFINITIONS. In this chapter:

- (1) "Local public official" means a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), county, municipality, precinct, central appraisal district, transit authority or district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature.
- (2) "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

Sec. 171.002. SUBSTANTIAL INTEREST IN BUSINESS ENTITY. (a) For purposes of this chapter, a person has a substantial interest in a business entity if:

- (1) the person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or
 - (2) funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.
- (b) A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.
- (c) A local public official is considered to have a substantial interest under this section if a person related to the official in the first degree by consanguinity or affinity, as determined under Chapter [573](#), Government Code, has a substantial interest under this section.

Sec. 171.0025. APPLICATION OF CHAPTER TO MEMBER OF HIGHER EDUCATION AUTHORITY. This chapter does not apply to a board member of a higher education authority created under Chapter [53](#), Education Code, unless a vote, act, or other participation by the board member in the affairs of the higher education authority would provide a financial benefit to a financial institution, school, college, or university that is:

- (1) a source of income to the board member; or
- (2) a business entity in which the board member has an interest distinguishable from a financial benefit available to any other similar financial institution or other school, college, or university whose students are eligible for a student loan available under Chapter [53](#), Education Code.

Sec. 171.003. PROHIBITED ACTS; PENALTY. (a) A local public official commits an offense if the official knowingly:

- (1) violates Section [171.004](#);
 - (2) acts as surety for a business entity that has work, business, or a contract with the governmental entity; or
 - (3) acts as surety on any official bond required of an officer of the governmental entity.
- (b) An offense under this section is a Class A misdemeanor.

Sec. 171.004. AFFIDAVIT AND ABSTENTION FROM VOTING REQUIRED. (a) If a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:

- (1) in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
- (2) in the case of a substantial interest in real property, 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.

(b) The affidavit must be filed with the official record keeper of the governmental entity.

(c) If a local public official is required to file and does file an affidavit under Subsection (a), the official is not required to abstain from further participation in the matter requiring the affidavit if a majority of the members of the governmental entity of which the official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.

Sec. 171.005. VOTING ON BUDGET. (a) The governing body of a governmental entity shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest.

(b) Except as provided by Section [171.004\(c\)](#), the affected member may not participate in that separate vote. The member may vote on a final budget if:

- (1) the member has complied with this chapter; and
- (2) the matter in which the member is concerned has been resolved.

Sec. 171.006. EFFECT OF VIOLATION OF CHAPTER. The finding by a court of a violation under this chapter does not render an action of the governing body voidable unless the measure that was the subject of an action involving a conflict of interest would not have passed the governing body without the vote of the person who violated the chapter.

Sec. 171.007. COMMON LAW PREEMPTED; CUMULATIVE OF MUNICIPAL PROVISIONS. (a) This chapter preempts the common law of conflict of interests as applied to local public officials.

(b) This chapter is cumulative of municipal charter provisions and municipal ordinances defining and prohibiting conflicts of interests.

Sec. 171.009. SERVICE ON BOARD OF CORPORATION FOR NO COMPENSATION. It shall be lawful for a local public official to serve as a member of the board of directors of private, nonprofit corporations when such officials receive no compensation or other remuneration from the nonprofit corporation or other nonprofit entity.

Sec. 171.010. PRACTICE OF LAW. (a) For purposes of this chapter, a county judge or county commissioner engaged in the private practice of law has a substantial interest in a business entity if the official has entered a court appearance or signed court pleadings in a matter relating to that business entity.

(b) A county judge or county commissioner that has a substantial interest in a business entity as described by Subsection (a) must comply with this chapter.

(c) A judge of a constitutional county court may not enter a court appearance or sign court pleadings as an attorney in any matter before:

(1) the court over which the judge presides; or

(2) any court in this state over which the judge's court exercises appellate jurisdiction.

(d) Upon compliance with this chapter, a county judge or commissioner may practice law in the courts located in the county where the county judge or commissioner serves.

CHAPTER 176. DISCLOSURE OF CERTAIN RELATIONSHIPS WITH LOCAL GOVERNMENT OFFICERS; PROVIDING PUBLIC ACCESS TO CERTAIN INFORMATION

Sec. 176.001. DEFINITIONS. In this chapter:

(1) "Agent" means a third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person. The term includes an employee.

(1-a) "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

(1-b) "Charter school" means an open-enrollment charter school operating under Subchapter D, Chapter [12](#), Education Code.

(1-c) "Commission" means the Texas Ethics Commission.

(1-d) "Contract" means a written agreement for the sale or purchase of real property, goods, or services.

(2) "Family member" means a person related to another person within the first degree by consanguinity or affinity, as described by Subchapter B, Chapter [573](#), Government Code.

(2-a) "Family relationship" means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter [573](#), Government Code.

(2-b) "Gift" means a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.

(2-c) "Goods" means personal property.

(2-d) "Investment income" means dividends, capital gains, or interest income generated from:

(A) a personal or business:

(i) checking or savings account;

(ii) share draft or share account; or

(iii) other similar account;

(B) a personal or business investment; or

(C) a personal or business loan.

(3) "Local governmental entity" means a county, municipality, school district, charter school, junior college district, water district created under Subchapter B, Chapter [49](#), Water Code, or other political subdivision of this state or a local government corporation, board, commission, district, or authority to which a member is appointed by the commissioners court of a county, the mayor of a municipality, or the governing body of a municipality. The term does not include an association, corporation, or organization of governmental entities organized to provide to its members education, assistance, products, or services or to represent its members before the legislative, administrative, or judicial branches of the state or federal government.

(4) "Local government officer" means:

(A) a member of the governing body of a local governmental entity;

(B) a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or

(C) an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.

(5) "Records administrator" means the director, county clerk, municipal secretary, superintendent, or other person responsible for maintaining the records of the local governmental entity or another person designated by the local governmental entity to maintain statements and questionnaires filed under this chapter and perform related functions.

(6) "Services" means skilled or unskilled labor or professional services, as defined by Section [2254.002](#), Government Code.

(7) "Vendor" means a person who enters or seeks to enter into a contract with a local governmental entity. The term includes an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries.

Sec. 176.002. APPLICABILITY TO VENDORS AND OTHER PERSONS. (a) This chapter applies to a person who is:

- (1) a vendor; or
- (2) a local government officer of a local governmental entity.

(b) A person is not subject to the disclosure requirements of this chapter if the person is:

- (1) a state, a political subdivision of a state, the federal government, or a foreign government; or
- (2) an employee or agent of an entity described by Subdivision (1), acting in the employee's or agent's official capacity.

Sec. 176.003. CONFLICTS DISCLOSURE STATEMENT REQUIRED. (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(1) the vendor enters into a contract with the local governmental entity or the local governmental entity is considering entering into a contract with the vendor; and

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor; or

(C) has a family relationship with the local government officer.

(a-1) A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is:

(1) a political contribution as defined by Title 15, Election Code; or

(2) food accepted as a guest.

(a-2) A local government officer is not required to file a conflicts disclosure statement under Subsection (a) if the local governmental entity or vendor described by that subsection is an administrative agency created under Section [791.013](#), Government Code.

(b) A local government officer shall file the conflicts disclosure statement with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement under Subsection (a).

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(1), eff. September 1, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(1), eff. September 1, 2015.

(e) The commission shall adopt the conflicts disclosure statement for local government officers for use under this section. The conflicts disclosure statement must include:

(1) a requirement that each local government officer disclose:

(A) an employment or other business relationship described by Subsection (a)(2)(A), including the nature and extent of the relationship; and

(B) gifts accepted by the local government officer and any family member of the officer from a vendor during the 12-month period described by Subsection (a)(2)(B) if the aggregate value of the gifts accepted by the officer or a family member from that vendor exceeds \$100;

(2) an acknowledgment from the local government officer that:

(A) the disclosure applies to each family member of the officer; and

(B) the statement covers the 12-month period described by Subsection (a)(2)(B); and

(3) the signature of the local government officer acknowledging that the statement is made under oath under penalty of perjury.

Sec. 176.006. DISCLOSURE REQUIREMENTS FOR VENDORS AND OTHER PERSONS; QUESTIONNAIRE. (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section [176.003\(a\)\(2\)\(A\)](#);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section [176.003\(a\)\(2\)\(B\)](#), excluding any gift described by Section [176.003\(a-1\)](#); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

(b) The commission shall adopt a conflict of interest questionnaire for use under this section that requires disclosure of a vendor's business and family relationships with a local governmental entity.

(c) The questionnaire adopted under Subsection (b) must require, for the local governmental entity with respect to which the questionnaire is filed, that the vendor filing the questionnaire:

(1) describe each employment or business and family relationship the vendor has with each local government officer of the local governmental entity;

(2) identify each employment or business relationship described by Subdivision (1) with respect to which the local government officer receives, or is likely to receive, taxable income, other than investment income, from the vendor;

(3) identify each employment or business relationship described by Subdivision (1) with respect to which the vendor receives, or is likely to receive, taxable income, other than investment income, that:

(A) is received from, or at the direction of, a local government officer of the local governmental entity; and

(B) is not received from the local governmental entity; and

(4) describe each employment or business relationship with a corporation or other business entity with respect to which a local government officer of the local governmental entity:

(A) serves as an officer or director; or

(B) holds an ownership interest of one percent or more.

(d) A vendor shall file an updated completed questionnaire with the appropriate records administrator not later than the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in the questionnaire incomplete or inaccurate.

(e) A person who is both a local government officer and a vendor of a local governmental entity is required to file the questionnaire required by Subsection (a)(1) only if the person:

(1) enters or seeks to enter into a contract with the local governmental entity; or

(2) is an agent of a person who enters or seeks to enter into a contract with the local governmental entity.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(3), eff. September 1, 2015.

(g) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(3), eff. September 1, 2015.

(h) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(3), eff. September 1, 2015.

(i) The validity of a contract between a vendor and a local governmental entity is not affected solely because the vendor fails to comply with this section.

Sec. 176.0065. MAINTENANCE OF RECORDS. A records administrator shall:

(1) maintain a list of local government officers of the local governmental entity and shall make that list available to the public and any vendor who may be required to file a conflict of interest questionnaire under Section [176.006](#); and

(2) maintain the statements and questionnaires that are required to be filed under this chapter in accordance with the local governmental entity's records retention schedule.

Sec. 176.008. ELECTRONIC FILING. The requirements of this chapter, including signature requirements, may be satisfied by electronic filing in a form approved by the commission.

Sec. 176.009. POSTING ON INTERNET. (a) A local governmental entity that maintains an Internet website shall provide access to the statements and to questionnaires required to be filed under this chapter on that website. This subsection does not require a local governmental entity to maintain an Internet website.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 847, Sec. 3(b), eff. January 1, 2014.

Sec. 176.010. REQUIREMENTS CUMULATIVE. The requirements of this chapter are in addition to any other disclosure required by law.

Sec. 176.012. APPLICATION OF PUBLIC INFORMATION LAW. This chapter does not require a local governmental entity to disclose any information that is excepted from disclosure by Chapter [552](#), Government Code.

Sec. 176.013. ENFORCEMENT. (a) A local government officer commits an offense under this chapter if the officer:

- (1) is required to file a conflicts disclosure statement under Section [176.003](#); and
- (2) knowingly fails to file the required conflicts disclosure statement with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement.

(b) A vendor commits an offense under this chapter if the vendor:

- (1) is required to file a conflict of interest questionnaire under Section [176.006](#); and
- (2) either:
 - (A) knowingly fails to file the required questionnaire with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the vendor becomes aware of the facts that require the filing of the questionnaire; or
 - (B) knowingly fails to file an updated questionnaire with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in a questionnaire previously filed by the vendor incomplete or inaccurate.

(c) An offense under this chapter is:

- (1) a Class C misdemeanor if the contract amount is less than \$1 million or if there is no contract amount for the contract;
- (2) a Class B misdemeanor if the contract amount is at least \$1 million but less than \$5 million; or
- (3) a Class A misdemeanor if the contract amount is at least \$5 million.

(d) A local governmental entity may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply with a requirement adopted under this chapter.

(e) The governing body of a local governmental entity may, at its discretion, declare a contract void if the governing body determines that a vendor failed to file a conflict of interest questionnaire required by Section [176.006](#).

(f) It is an exception to the application of Subsection (a) that the local government officer filed the required conflicts disclosure statement not later than the seventh business day after the date the officer received notice from the local governmental entity of the alleged violation.

(g) It is an exception to the application of Subsection (b) that the vendor filed the required questionnaire not later than the seventh business day after the date the vendor received notice from the local governmental entity of the alleged violation.



**BOARD OF TRUSTEES GOVERNANCE
AND CONDUCT POLICY**

As Amended February 8, 2018

DALLAS POLICE AND FIRE PENSION SYSTEM

BOARD OF TRUSTEES GOVERNANCE AND CONDUCT POLICY

As Adopted December 14, 2017
As Amended February 8, 2018

A. Purpose

The Board of Trustees (“Board”) of the Dallas Police and Fire Pension System (“DPFP” or the “System”) is required to administer DPFP in accordance with Article 6243a-1 (the “Plan”), Chapter 802, Title 8 of the Texas Government Code and other applicable state and federal laws and regulations. In furtherance of these obligations, the Board adopts the following Governance and Conduct Policy (this “Policy”), which shall be applicable to all Trustees.

B. Trustee Communication

1. Trustee Communication with Members

- a. Trustees shall be aware of the risk of communicating inaccurate information to members and beneficiaries and the potential exposure to liability and possible harm that may result from such miscommunications. Trustees shall mitigate this risk by refraining from providing specific advice, counsel or education with respect to the rights or benefits a member or beneficiary may be entitled to pursuant to the Plan or any Board policies.
- b. In the event a member or beneficiary requests that a Trustee provide explicit advice with respect to System benefits or related policies, the Trustee should assist by referring the member or beneficiary to the Executive Director or his or her designee or by having the Executive Director or his or her designee contact the member or beneficiary. The Trustee shall be informed of the outcome.
- c. Trustees shall direct questions regarding any aspect of the System’s operations to the Executive Director or appropriate senior DPFP staff member.

2. Trustee Communication with Staff

- a. Trustees recognize that their link to DPFP operations and administration is through the Executive Director, the executive staff or a designee of the Executive Director. A Trustee should refrain from communicating directly with DPFP staff other than through the Executive Director, the Chief Investment Officer, the Chief Financial Officer, the General Counsel or another designee of the Executive



B. Trustee Communication (continued)

2. Trustee Communication with Staff (continued)

Director, unless otherwise directed by the Executive Director. If the communication involves the Executive Director, the Trustee should communicate with the General Counsel of DPFP or outside fiduciary counsel, as applicable.

- b. In the spirit of open communication, individual Trustees shall share any information pertinent to the System with the Executive Director in a timely manner, and the Executive Director shall similarly share with the Board any information pertinent to the Board's role and responsibilities in a timely manner.
- c. The Executive Director shall ensure that information that has been requested by the Board or by a Trustee is made available to all Trustees as appropriate.

3. Trustee Communication with External Parties

- a. The Executive Director or the Chairman or their designee shall serve as the spokesperson for the System, unless the Board designates another member of the Board to serve as spokesperson on a specified issue. The following guidelines shall apply with respect to the spokesperson:
 - i. If time permits, and to the extent permitted by the Texas Open Meetings Act, the spokesperson shall address sensitive, high profile issues with as many Trustees as possible, prior to engaging in external communications. At a minimum, the Chairman and Vice Chairman shall be contacted.
 - ii. To the extent possible, in situations where Board policy concerning an issue has not been established, the Board or an appropriate committee shall meet to discuss the issue prior to the spokesperson's engaging in external communications.
- b. When asked to be interviewed or otherwise approached by the media for substantive information concerning the affairs of the System, Trustees should generally refer the matter to the Executive Director or spokesperson and shall make no commitments to the media on behalf of the Board or the System.



- c. In their external communications, Trustees shall, as appropriate:
 - i. Speak on behalf of the Board only when explicitly authorized to do so by the Chairman or the Board;
 - ii. Indicate if they are speaking in a capacity other than that of a member of the Board;
- c. In their external communications, Trustees shall, as appropriate: (continued)
 - iii. Respectfully indicate when (a) they are representing a personal position, opinion, or analysis, as opposed to one approved by the Board, (b) their position, opinion, or analysis does not represent the official position of the Board, and (c) their position, opinion or analysis is in opposition to the official position of the Board; and
 - iv. Make known to the Executive Director in a timely fashion if a personal position, opinion, or analysis was publicly communicated, such that it could receive media coverage. The Trustee shall advise as to whom the communication was made and what was discussed.
- d. Trustees may indicate publicly that they disagree with a policy or decision of the Board, but shall do so respectfully and shall abide by such policy or decision to the extent consistent with their fiduciary duties.
- e. Communications by Trustees, when acting in their capacity as Trustees, should be consistent with their fiduciary duty to represent the interests of all DPF members and beneficiaries.
- f. Written press releases concerning the business of DPF shall be the responsibility of the Executive Director and shall clearly and accurately reflect the provisions of the System and the policies of the Board. The Executive Director shall, when feasible, submit to the Chairman and the Vice Chairman for approval all press releases of a sensitive or high-profile nature or pertaining to Board policy. Such press releases shall be shared with the Board concurrently with their release.
- g. Trustees should not prepare materials for publication or general distribution which are related to the affairs of the System without the consent of the Chairman. To ensure the accuracy of materials prepared by Trustees for publication or general distribution which are related to the affairs of the System, and to ensure that the System is not inadvertently placed at risk, Trustees agree to provide such material in a timely manner to the Executive Director, or his or her designee, for review prior to distribution or publication, but such distribution or publication shall only occur if the Chairman has given his or her consent.



C. Requests by Individual Trustees for Information

1. Trustees are entitled to information necessary to make informed decisions relating to their role and responsibilities. However, it is recognized that Trustee requests for information that is not pertinent to their role or any decisions to be made by Trustees can place an unnecessary burden on the System. It is also recognized that access to certain confidential information by Trustees may violate the requirements for keeping such information confidential, be in conflict with the purpose for keeping such information confidential, or unnecessarily jeopardize the System's ability to keep such information confidential.
2. All requests by individual Trustees for information should be directed to the Executive Director or presented at a Board meeting or appropriate committee meeting. Requests for non-confidential information that do not require a significant expenditure of DPF staff time or System resources or the use of external resources should be fulfilled by the Executive Director. (Requests for confidential information are addressed in Section C.5 below).
3. Requests for non-confidential information that require a significant expenditure of DPF staff time or System resources or the use of external resources should be presented to the Board or appropriate committee for approval.
4. In determining whether to approve a potentially burdensome request for non-confidential information, the Board or committee shall balance the Trustee's need to access the particular information for purposes of performing of his or her role as a Trustee with the burden that such request will place on the System. In making its determination, the Board may consider, as it deems appropriate under the circumstances and without limitation, the following factors:
 - a. An assessment of the Trustee's stated purposes and objectives for requesting the information, including, but not limited to, whether (i) the request is tailored to the stated purposes or objectives of the request; (ii) the stated purposes or objectives of the request are specific or general and (iii) the requested information is pertinent to the Trustee's role or any decision to be made by the Trustee;
 - b. Staff time that would be required, and costs and expenses that would be incurred by the System, in responding to the Trustee's request, including, but not limited to, an assessment of whether the information requested already exists as requested and/or whether the request involves acquisition, creation or synthesis of information, analysis, computation or programming that would not otherwise be performed but for the request; other non-public information the release or provision of which the Board determines is not in the best interest of the System's members and beneficiaries; and



C. Requests by Individual Trustees for Information (continued)

- c. An assessment of any possibility that the request for information relates in whole or in part, or directly or indirectly, either (i) to the requesting Trustee's self-interest as distinct from that of members and beneficiaries and/or; (ii) to the requesting Trustee's duties or loyalties to any person, entity or political or corporate official or body other than DPFPP.

5. Requests for Confidential Information

- a. Confidential information of the System includes:
 - i. non-public information relating to investments, members or beneficiaries, litigation, or other matters in which DPFPP has a responsibility (which may be determined by the Board with appropriate advice) to protect the information from disclosure under statute, contract, regulation, DPFPP policy, governmental order or other obligation; or
 - ii. other non-public information the release or provision of which the Board determines is not in the best interest of members and beneficiaries.
- b. All requests by individual Trustees for disclosure of or access to confidential information that has not been presented to the Board as a whole shall be considered by the Board, which is solely responsible for making a determination as to the request.
- c. In considering whether to release or make available confidential information in any form or by any means to any Trustee who requests such information, the Board shall balance said Trustee's need to access the particular information for purposes of performing of his or her role as a Trustee with the need to protect such confidential information. In making its determination, the Board may consider, as it deems appropriate under the circumstances and without limitation, the factors set forth in Section C.4. above and the following factors:
 - i. Whether DPFPP regularly or traditionally provides the requested confidential information to Trustees;
 - ii. An assessment of the Trustee's stated purposes and objectives for requesting the information, including, but not limited to, whether alternative measures or DPFPP resources would adequately satisfy the Trustee's stated purposes and objectives without the release of confidential information;



C. Requests by Individual Trustees for Information (continued)

- iii. The potential liability or damage to DPFP and to Trustees that may result, directly or indirectly, from unauthorized, negligent or inappropriate use, handling or further disclosure of the information; and
 - iv. An assessment of whether it is likely or possible that the information requested, if combined together with other available non-DPFP information, might impair the interests of the members and beneficiaries in confidentiality and/or privacy, or might impair the interests of DPFP's investment program or portfolio.
6. A Board determination to disclose or otherwise make available confidential information to a Trustee in response to a Trustee's request may include within its terms any conditions of time, place, medium and form of disclosure or availability deemed appropriately protective or prudent under the circumstances as determined by the Board in its discretion.
7. A Board determination to disclose or otherwise make available confidential information to a Trustee in response to a Trustee's request shall not waive any confidentiality rights of DPFP or its members or beneficiaries and shall not be deemed or construed to be a waiver of confidentiality or consent to any subsequent use, transfer or disclosure of such information to any other party, including but not limited to, any individual, entity or political or corporate official or body other than DPFP.
8. Unauthorized use by a Trustee of confidential information made available to such Trustee under this section shall constitute an unpermitted appropriation of DPFP information and a violation of this Policy. The Board in its discretion may take any legal action to secure or vindicate its rights in DPFP information that is the subject of suspected or alleged unauthorized use.
9. Nothing in this section shall be construed to contravene the requirements of the Texas Public Information Act, as applicable to System information.
10. Nothing in this section shall be construed to limit the Board's ability as a whole to require that DPFP staff provide information to the Board.



D. Voting Requirements for Board Action

Any action by the Board, except those where the Plan specifically requires approval by 2/3 of all the Trustees of the Board, is required to be approved by a majority of all the Trustees of the Board, i.e. at least six Trustees must approve any Board action regardless of the number Trustees present.

E. Board Agenda

1. The agenda for each Board meeting will be set by the Executive Director. The Executive Director shall consult with the Chairman on the agenda to be posted for the next meeting or meetings in the future.
2. The Chairman may direct that an item be placed on the agenda for consideration by the Board.
3. Any Trustee may file a written request with the Chairman asking that a particular item be placed on the agenda for a future meeting. If either the Chairman approves such request or (ii) three Trustees file a written request with the Executive Director to have such item placed on the agenda for a future meeting, the Executive Director will endeavor to cause such item to be on the agenda for the meeting date requested, subject to the timing of the request, the amount of preparation time required to address such item as well as the projected meeting length of the requested meeting given items already scheduled to be on the agenda.
4. No agenda item may be requested which is a reconsideration of a motion the Board has previously made within the prior twelve months unless the request is made by a Trustee or Trustees who voted in the majority on such motion when last considered by the Board. The Chairman shall have the power to end discussion regarding a particular agenda item if, in the Chairman's discretion, the substance of the discussion relates to a motion that has been previously considered by the Board within the last twelve months and the agenda item has been specifically requested by a Trustee or Trustees, none of whom had voted in the majority on such previously considered item.

F. Board Meetings

1. The Board will use Robert's Rules of Order Newly Revised (RONR 11th ed., 2011) for parliamentary procedure, subject to applicable law and policy.



Board of Trustee Governance and Conduct Policy
As Amended through February 8, 2018
Page 8 of 8

F. Board Meetings (continued)

2. A Trustee shall be considered to have attended a Board meeting if the Trustee is present for at least 50% of the meeting time initially scheduled on the Order of Business posted on the DFPF website on the day of the meeting.
3. Participation in a Board meeting through telephone conference shall be permitted.
4. If a Trustee does not attend a Board meeting, the Trustee may provide a written explanation to the Board to be considered at the next Board meeting.
 - a. At the next Board meeting, the Board shall consider the written explanation together with any other oral information the Trustee shall provide.
 - b. The Board shall vote as to whether the absence shall be noted as excused.
 - c. No reason related to a Trustee's business, work or employment shall be considered a valid basis for excusing an absence. Only personal reasons such as illness, death or extraordinary personal circumstances involving the Trustee or the Trustee's family shall be considered as a basis for excusing an absence.
5. The Chairman shall have the power to call a special meeting.

G. Effective Date

APPROVED on February 8, 2018 by the Board of Trustees of the Dallas Police and Fire Pension System.

[signature]

William F. Quinn
Chairman

ATTEST:

[signature]

Kelly Gottschalk
Secretary



Investments 101 - Alternatives Meketa Investment Group

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Content

- **Alternative Investments**

- Private Equity
- Hedge Funds
- Commodities
- Real Estate



Alternative Investments

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Alternative Investments

Alternative to What?

- Our society is filled with alternatives:
 - Alternative schools
 - Alternative medicine
 - Alternative rock & roll
- So....what is an alternative investment?
 - The term “alternative” can refer to anything other than old-fashioned long-only stock and bond portfolios
 - At one time, GNMA mortgage bonds were considered alternatives, as were non-U.S. stocks – today these are mainstream investments



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Alternative Investments

Alternative Investments Include:

- Private Equity
 - private companies owned via buyout or venture capital structure
- Hedge Funds
 - trading strategies that can use leverage, short selling, derivatives, and illiquid positions
- Real Estate
 - private market equity & debt investment in real estate
- Commodities
 - basic material inputs to economic production, such as oil, gas, timber, gold, soybeans
- Infrastructure
 - purchase or lease of assets typically from the public sector



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Alternative Investments

Alternative Investments Represent a Broad Array of Asset Classes and Strategies that Share Most of the Following Characteristics:

- Specialized effort required to invest successfully
- Have no clear benchmarks
- Lower level of liquidity
- Valued by appraisal
- Best managers are critical to success
- Higher fees



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Alternative Investments

Objectives of Alternative Investments:

- Increase return
- Reduce risk
- Provide diversification
- Create a more “efficient” asset allocation



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Private Equity

Private Equity



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Private Equity

Definition of Private Equity:

- Investment in a company that is not publicly traded
- A claim on the profits of a privately owned company
- Similar to public equities, without the daily market
- Receive valuation information less frequently (typically quarterly)
- Often on lagged reporting cycle
- Long lock up periods

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Private Equity

Private Equity Benefits:

- Spreads above public equities
- Muted observed volatility
- Enhanced diversification
- Strong investment talent
- A true long-term investment
- Inefficient marketplace
- May provide superior long-term returns



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Private Equity

Private Equity Risks:

- Investment in a company that is not publicly traded
- Poor manager selection can greatly diminish performance
- Individual portfolios are much more concentrated
- High fees
- Illiquid
- Largely unregulated
- “J-curve”
- Blind pool risk

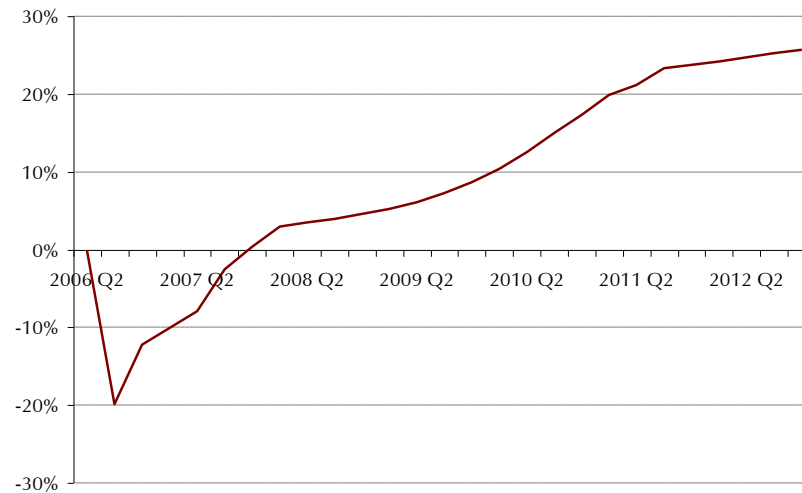


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Private Equity

What is the “J-curve”?

- In the initial years, investment returns are artificially low due to management fees, and limited capital invested
- Value creation strategies implemented by the manager generally take several years to affect valuations
- Portfolio companies are generally held at the lower of cost or market value
- It is usually not until partial or complete sales occur that gains are realized
- The resulting return stream looks roughly like the letter “j”



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Private Equity

Private Equity Investments Come in Many Forms, Including:

- Buyouts
 - Equity investment in existing, generally cash flow positive, companies
- Venture Capital
 - Equity investment in start-up or rapidly growing businesses, generally with negative earnings or cash flows
- Mezzanine Debt
 - Blended debt/equity investment in cash flow positive businesses
- Special Situations
 - A catch-all term used to describe private equity funds that exist outside of buyouts, venture capital, and mezzanine debt

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Private Equity

Where Private Equity has Worked:

- Over the last twenty years, private equity has been instrumental in expansion and creation of new industries:
 - Emergence of personal computing (Compaq, Apple)
 - Business networking (Cisco, 3Com)
 - Search engines (Yahoo, Google)
 - Online social networking (YouTube, Facebook)
- Long-term performance over the last twenty years has shown an investment in private equity has returned **16.5%** annually versus 9.9% annually for the S&P 500.



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Private Equity

Manager Selection is Very Important:

Private Equity Manager Performance¹



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Private Equity

How to Invest in Private Equity:

- Individual limited partnerships
- Fund-of-funds
- Secondary funds
- Co-investments
- Direct investments



Meketa Investment Group**Private Equity****Specials Considerations for Investing in Private Equity:**

- Generally structured in the form of limited partnerships
 - Portfolios typically consist of ten to twenty investments in privately held companies
- Avoid pyramiding fees where possible
 - If you can afford to build your own private fund of funds – do it
- Make sure your gate keepers actually perform the required due diligence
 - Once in a partnership – you’re in it for a decade
- Diversify by:
 - Manager
 - Strategy
 - Industry
 - Geography
 - Company size
 - Vintage year



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Hedge Funds

Hedge Funds



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Hedge Funds

What are Hedge Funds?

- General term used to describe broad array of strategies
- Private investment pools available to individuals and institutions
- Can invest in any asset class

Tools Used by Hedge Funds

- Short-selling
- Leverage
- Derivatives
- Illiquid securities
- Arbitrage

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Hedge Funds

Options:

Puts and Calls

- Put – Option to sell at set price in future. Bet price will go down. Pessimistic.
- Call – Option to buy at set price in future. Bet price will go up. Optimistic.

Forwards and Futures

- Obligation to transact in the future at terms agreed upon today.

Difference between forwards and futures?

- Futures are traded on exchanges with clearing agents (e.g. protection from counter party risk).
- Forwards are customizable agreements between two parties with no intermediary.

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Hedge Funds

Hedge Fund Strategies

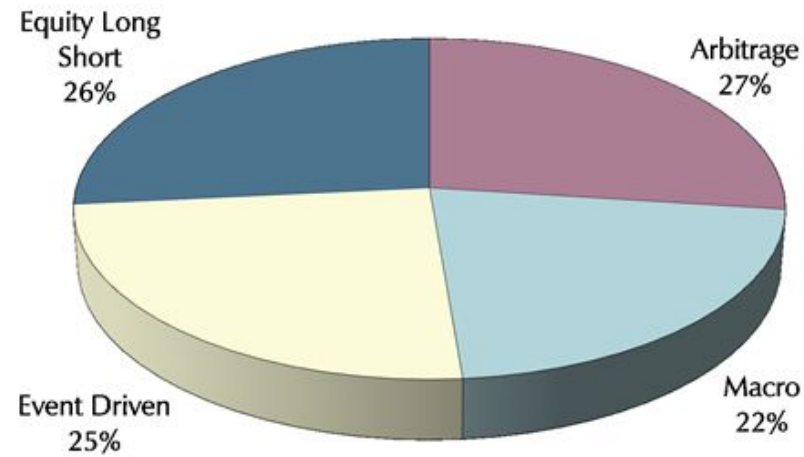
- Directional (market trend)
 - Global macro
 - Short sellers
 - Long/short equity
- Event-Driven
 - Merger arbitrage
 - Distressed debt
 - Special situations
- Relative Value
 - Convertible arbitrage
 - Fixed income arbitrage
 - Market neutral
- Multi-Strategy
- Fund of Funds



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Hedge Funds

Hedge Fund Strategies
Market by Strategy Composition¹



¹ Source: HRFI



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Hedge Funds

Risks Inherent in Hedge Funds

- Complexity
- Leverage
- Illiquidity
- Pricing
- Lack of transparency
- Lack of constraints
- Operational risks
- Potential conflicts
- Headline risk
- Contagion



Meketa Investment Group**Hedge Funds****Why are Hedge Funds So Popular?**

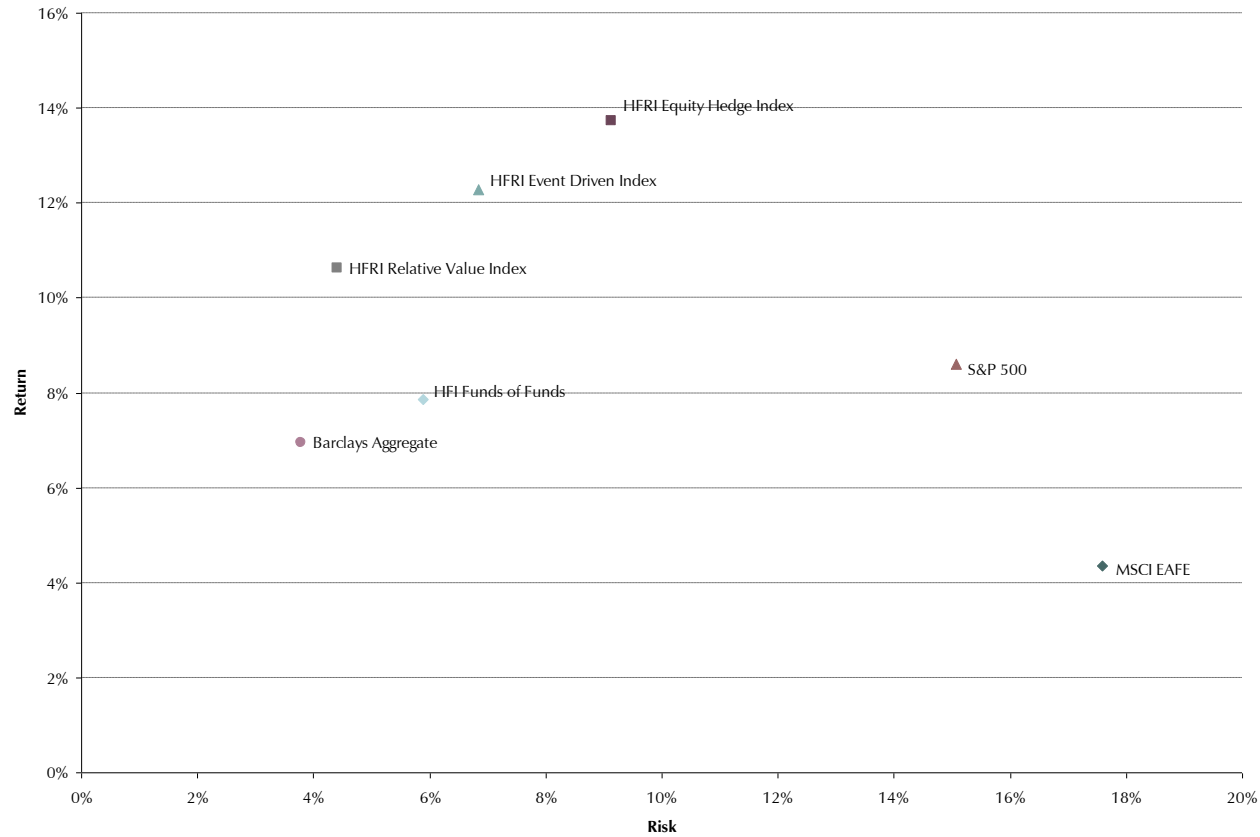
- Performance!
 - Equity-like returns
 - Bond-like volatility
 - Uncorrelated returns
- The best investment talent?
- Strong argument for their potential to add value
 - Larger toolkit
 - Broader opportunity set
- Mystique

“...hedge funds are exciting; they are sexy, happening, and stimulating...”
– Andrew W. Lo, Director, MIT Laboratory for Financial Engineering



Why are Hedge Funds So Popular?

Historical Returns



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Hedge Funds

Why are Hedge Funds So Popular?

- The data is questionable, however
- Returns for the composites are likely overstated because of:
 - Survivorship bias: 200-300 basis points (2%-3%)
 - Selection bias and backfilling bias: 400+ basis points (4%)
- Returns are smoothed, due in part to stale asset pricing
 - Volatility and correlations are artificially dampened



Meketa Investment Group**Hedge Funds****The Market for Alpha**

- Definition of alpha: the actual return an investment provides in relation to the return from its benchmark
- Alpha is not easy to produce, nor does it accrue naturally
- Short term inefficiencies in the market provide the opportunity for skilled investors to profit
- As more hedge fund managers “discover” these inefficiencies, anomalies are being arbitrated away
 - Example: convertible arbitrage produced negative returns in 2005
- The growing number of hedge funds is making the market more efficient
- The market for specific kinds of hedge fund strategies may be cyclical
- The more capital that is allocated to hedge funds, the lower their expected returns should be

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Hedge Funds

Portfolio Concepts

- There are three ways to use hedge funds:
 - Uncorrelated, absolute return providers (e.g., a market-neutral fund)
 - Market-like directional return providers (e.g., a long-short equity fund)
 - Providers of an alpha overlay (i.e., a portable alpha strategy)



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Hedge Funds

Selecting Hedge Fund Strategies

- Building a diversified portfolio of hedge fund strategies includes
 - Determining the plan’s constraints for leverage
 - Establishing risk and return objectives
 - Picking uncorrelated funds and strategies



Meketa Investment Group**Hedge Funds****Selecting Managers**

- More difficult to identify superior managers in the hedge fund space than in traditional asset classes
- Not altogether different than choosing traditional managers, but the process is far more labor intensive
 - Determine whether a manager has found a sustainable inefficiency in the market
 - Determine whether they have the ability to adapt to evolving market conditions
- Be cautious of those trying something new
 - Example: long-only manager starting a long-short fund
 - Example: convertible arbitrage manager moving into relative value arbitrage

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Hedge Funds

Selecting Managers

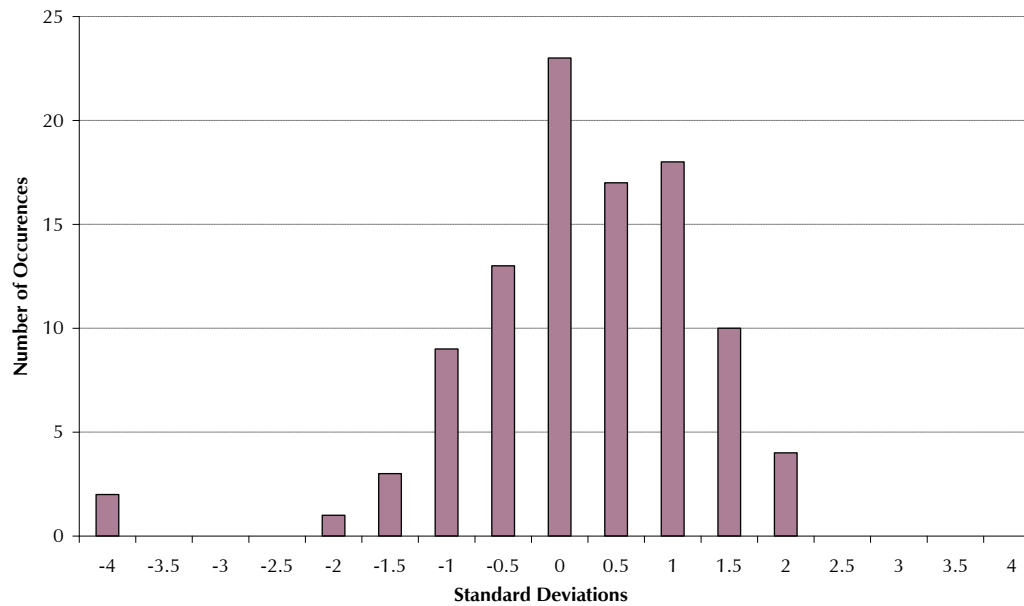
- Strategy, people, and process are still important
- Some unique aspect to evaluate/emphasize
 - Skin in the game
 - Background checks
 - Operations (pricing, accounting, custody, etc.)
 - Risk management

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Hedge Funds

Selecting Managers

- Quantitative analysis also differs
 - Consistency of alpha
 - Volatility and VaR vs. Drawdown
 - Risk of an outlier (fat tail) event



Meketa Investment Group**Hedge Funds****Monitoring Managers**

- Not dissimilar to monitoring traditional managers
- Qualitative aspects:
 - Check if managers are sticking to their stated strategy by watching for style drift, inappropriate bets, or increased use of leverage
 - Monitor if any significant changes have occurred in the firm or among investment personnel
 - Inquire about regulatory violations, lawsuits, or investigations
- Quantitative aspects:
 - No market index exists
 - Peer group comparisons are useful (though inherently flawed)
 - Target absolute return (LIBOR plus 4%)
 - Target standard deviation (5%)

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Hedge Funds

Selecting an Appropriate Vehicle

- Direct hedge funds
- Multi-strategy funds
- Fund of funds
- Hedge fund “indices”



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Hedge Funds

Selecting an Appropriate Vehicle

	Direct Hedge Funds	Multi-Strategy Funds	Funds of Funds
Layers of Fees	One	One	Two
Pay Performance Fees When Funds Down	Yes	No	Yes
Manager Selection and Monitoring	None	Average	High
Transparency	Low	High	Average
Access to Closed Managers	None	Average	Average
Ability to Allocate Among Strategies	None	High	Average
Diversification	Low	Average	High
Risk Management	Low	Good	Good
Liquidity	Low	Average	Average
Allocation Needed	Large	Medium	Small



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Hedge Funds

Summary

- Variety of investment strategies
- Can invest in any asset class
- Ability to utilize leverage and short-selling
- Greater use of derivatives and illiquid securities
- Potential to add value and provide meaningful diversification
- Can be used in a myriad of ways
- Approach cautiously
- Educate extensively



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Commodities

Commodities



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Commodities

Overview

- Commodities are generally physical goods or raw materials.
- Commodities may provide three benefits:
 - Increased portfolio diversification.
 - A modest hedge against consumer price inflation.
 - A hedge against unique economic risks—including currency devaluation and armed conflict.

Representative List of Commodities

Energy	Industrial Metals	Precious Metals	Agriculture	Livestock
Crude Oil	Aluminum	Gold	Wheat	Live Cattle
Gasoline	Copper	Silver	Corn	Feeder Cattle
Heating Oil	Lead	Platinum	Soybeans	Lean Hogs
Natural Gas	Nickel		Cotton	
	Zinc		Sugar	
	Tin		Coffee	
			Cocoa	



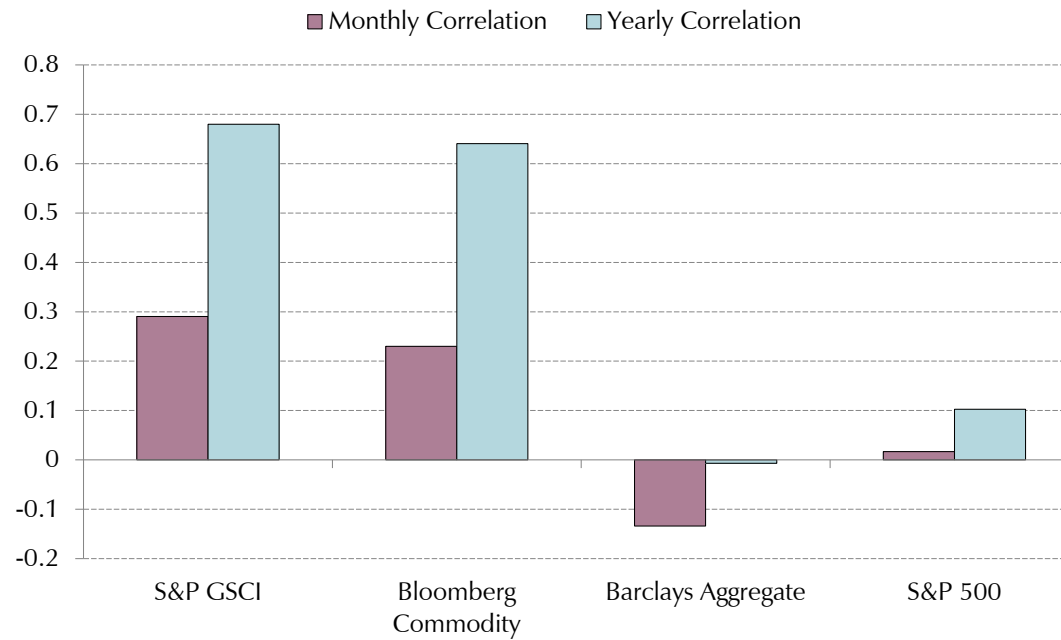
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Commodities

Hedge against Inflation

- Commodities¹ are more correlated with consumer price inflation than stocks or bonds, especially over longer time periods.

Correlation to CPI



¹ The S&P GSCI and Bloomberg Commodity Index were chosen because of their relevance as benchmarks in the asset class.



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Commodities

Hedge against Inflation

- And historically during periods of very high consumer price inflation (as in the 1970s), commodity prices go up even faster.

One-Year ¹	Top Quintile Inflation (%)
Consumer Prices	9.5
Copper	16.8
Corn	14.7
Oil	28.3
Gold	21.0
Sugar	26.5
Natural Gas	22.9

¹ Source: Global Financial Data, 1945 through 2009 rolling 12-month periods.



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Commodities

Implementation

- There are three primary ways to get exposure:
 - Direct ownership of commodities.
 - Equity investment in commodity-based firms.
 - Commodity futures.

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Commodities

Portfolio Benefits

- Commodities exposure may act as a modest inflation hedge (especially in the short-term)
- Low-to-negative correlation to major asset classes → improves portfolio efficiency
- Assuming returns/volatility between bonds and stocks, allocating some money to commodities yields more efficient portfolios (i.e., lower overall volatility without sacrificing expected returns):

	Commodities Allocation	
	0%	5%
Domestic Equities	65%	62%
Domestic Inv. Bonds	35%	33%
Commodities	0%	5%
<i>Exp. Return</i>	6.6%	6.6%
<i>Exp. Std. Dev.</i>	11.9%	11.7%

(Source: Based on Meketa Investment Group 2015 Asset Study expected returns, standard deviation and correlations)

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Commodities

Summary

- Commodities may act as valuable portfolio diversifiers.
 - They may hedge against inflationary periods.
 - They may hedge against geopolitical risks.
- Futures are the most appropriate vehicle for commodity investing.
 - However, return will be affected by more than the spot price.

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Real Estate

Real Estate



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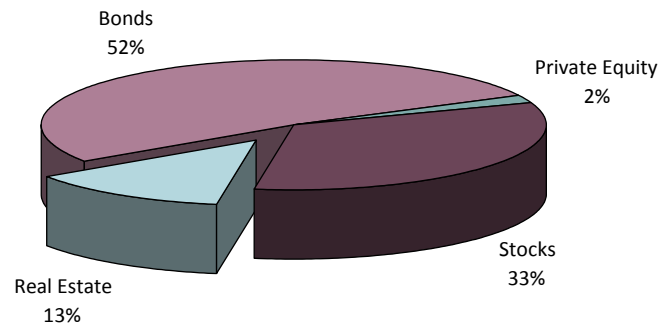
Real Estate

Definition: Real Estate

- A financial claim on real property
- A building, land, or other physical property
- A tangible asset

Sizeable piece of the investment universe

- As much as \$15 trillion in investment-quality real estate exists around the world

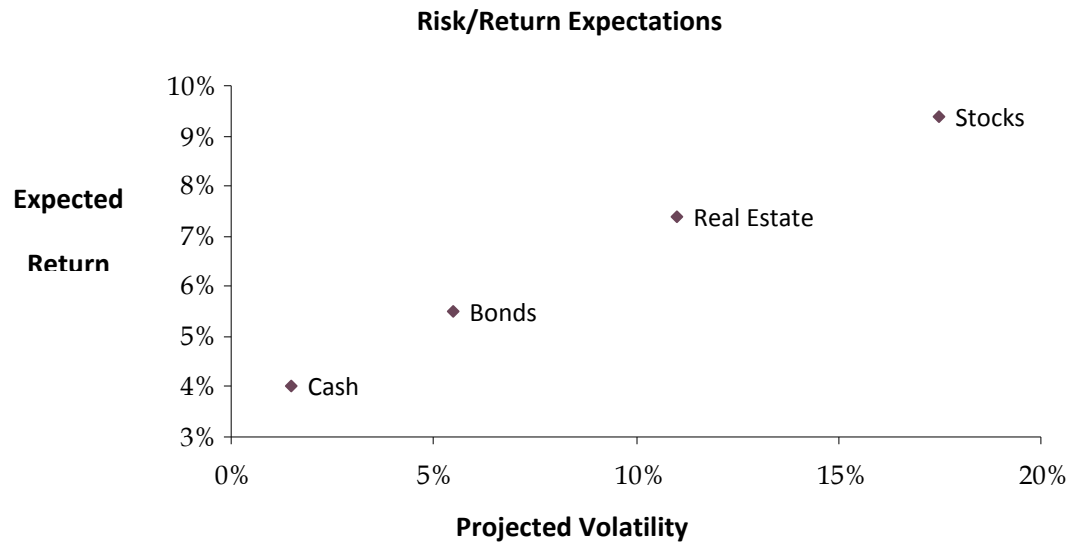
Traditional Investment Universe

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Features of Real Estate

- Hybrid asset class
- Steady income of bonds with appreciation potential of stocks
- Risk and return between stocks and bonds
- Unlike stocks and bonds, real estate represents a tangible asset



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Real Estate

Market Opportunities

- Public market real estate:
 - Equity: Real Estate Investment Trusts (REITs)
 - Debt: MBS & CMBS
- Private market real estate:
 - Equity: direct real estate
 - Debt: commercial loans, mezzanine lending



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Real Estate

Three Main Classifications

- Core:
 - Safest. Stable properties in primary markets with high occupancy
 - Lowest but most consistent return stream
- Value-Add:
 - More risky. Return is influenced by improvements to property
 - Higher return than Core, but higher risk
- Opportunistic:
 - Highest risk. Often ground-up development, speculative, requires most “vision”
 - Highest return potential if development/project works out



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Real Estate

Cap Rates

- Definition:
 - A percentage that relates the value of an income-producing property to its future income, expressed as net operating income divided by purchase price
- What it means:
 - How much money you earn per amount you spent on a property
- Typical Range:
 - 6 - 10% is reasonable historic range for Core properties



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Real Estate

Advantages of Real Estate

- Higher returns than bonds with lower volatility than stocks
- Returns from net operating income exhibit extremely low volatility
- Low correlation to other traditional asset classes (stocks, bonds, and private equity)
- Predictable and stable cash flows (income)
- Potential long-term inflation hedge



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Real Estate

Disadvantages of Real Estate

- Appraisal-based pricing smoothes returns
- Private real estate exhibits lower liquidity than stocks or bonds
- Lack of an appropriate benchmark for private real estate
- Historically, longer return cycle
- Often long boom-bust cycles



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Real Estate

Fit in a Diversified Portfolio

- Think of real estate as a bridge between stocks and bonds
- Consider a meaningful allocation (between 5% and 15%)
- Don't do it yourself
- Use the very best professional managers
- Diversify wisely & widely
 - By location
 - By property type (i.e., office, industrial, retail, multi-family)
 - By individual property

