OPEN GOVERNMENT UPDATE

UT Law 2016 Advanced Texas Administrative Law Seminar

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VIEWS EXPRESSED ARE THOSE OF THE PRESENTER, DO NO NOT CONSTITUTE LEGAL ADVICE, AND ARE NOT OFFICIAL OPINIONS OF THE OFFICE OF THE TEXAS ATTORNEY GENERAL.

Relevant Law

Texas Open Meetings Act ("TOMA")

- Ch. 551, Tex. Gov't Code
- Requires all meetings of a governmental body to be open to the public unless TOMA authorizes deliberation in closed session

Texas Public Information Act ("TPIA")

- Ch. 552, Tex. Gov't Code
- Requires the disclosure of "public information"
- Includes a number of statutory exceptions
- Governmental body must, with few exceptions, seek a decision from the Attorney General to withhold records

Overview

- Review of noteworthy TPIA cases over the last year
- Review of noteworthy TOMA cases over the last year
- Discussion regarding the impact and application of significant TPIA decisions discussed last year, including:
  - *City of Dallas* cases (waiver of attorney-client privilege)
  - *Boeing v. Paxton* (application of 552.104 to third parties)
  - *Kallinen v. City of Houston* (mandamus actions)
  - *Greater Houston Partnership v. Paxton* (def'n of govt'l body)

RECENT OPEN RECORDS CASES OF NOTE

City of Houston v. Paxton

- No. 03-15-00093-CV, 2016 WL 767755 (Tex. App.—Austin Feb. 23, 2016, no pet.)(mem. op., not designated for publication)
- City Attorney's Office established an Office of Inspector General (OIG) to investigate allegations of employee misconduct.
- Held: Statements given to the OIG were not covered by attorney-client privilege because there is no evidence that employees "made their statements to the OIG investigator for the purpose of effectuating legal representation for the City."
- The OIG was found to be acting as an investigator, not an attorney. The fact that the OIG was part of the City Attorney's office was not enough.

Austin Bulldog v. Leffingwell

- 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.)
- The Attorney General and the trial court both determined that personal e-mail addresses were excepted from disclosure under TPIA section 552.137 even if the personal e-mail address had been used to conduct public business.
- Held: " 'member of the public' in PIA section 552.137 does not include someone who is part of the governmental body with which the email at issue was communicated, the City Officials are not 'members of the public' as that phrase is used in PIA section 552.137."

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