

OPEN GOVERNMENT UPDATE

UT Law 2018 Advanced Texas Administrative Law Seminar

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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 seek a decision from the Attorney General to withhold records

Open Records Cases

Cypress Creek EMS v. Dolcefino

- 2018 WL 1597463 April 3, 2018
- Cypress Creek inadvertently mailed unredacted copies of the information at issue to the requestor.
- Cypress Creek immediately sought a TRO in district court compelling the return of the documents, which was granted.
- Requestor had several outstanding requests with Cypress Creek. Pursuant to the court order, requestor returned the next package he received from Cypress Creek without opening it. But Cypress Creek determined that he returned the wrong package. The package he returned related to another request.

Cypress Creek v. Dolcefino, cont.

- The package with the unredacted documents was never returned, so Cypress Creek filed suit for conversion.
- At the hearing, requestor claimed he never received the package in question and testified to that. Cypress Creek presented evidence of mailing.
- Summary judgment granted for requestor on conversion claim. Even if there was a fact issue on whether requestor received the package, there was no evidence that he used it for any purpose, which is a necessary showing in a conversion claim.
- Court did not reach whether a conversion claim of this type could ever be viable.

City of Houston v. Houston Municipal Employees Pension System

- 61 Tex. Sup. Ct. J. 1367
- Two PIA issues:
 - 1) Who is the proper Defendant in a mandamus suit under PIA 552.321?
 - City argued that the public information officer was the proper Defendant and suit against the City was improper.
 - Supreme Court held that a suit against either the governmental body or its public information officer was proper. The two are basically interchangeable in this context.
 - However, suits against other employees of the governmental body were improper. Can only sue the governmental body or its public information officer.

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First appeared as part of the conference materials for the
13th Annual Advanced Texas Administrative Law Seminar session
"Open Government Update and Practice Tips"