

OPEN GOVERNMENT UPDATE

UT Law 2015 Advanced Texas Administrative Law
Seminar

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Views expressed are those of the presenter, do not constitute legal advice, and are not official opinions of the Office of the Texas Attorney General.

Background

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 ("AG") to withhold records

OPEN RECORDS SUPREME COURT CASES

Kallinen v. City of Houston

- *Kallinen v. City of Houston*, No. 14-0015, 2015 WL 1275385 (Tex. Mar. 20, 2015)
- Reversed the First Court of Appeals decision and remanded the case for further proceedings.
- Held: The Attorney General has something akin to primary, not exclusive, jurisdiction in open records cases. Therefore, a requestor may file a mandamus suit before a letter ruling has issued. In such a case, the district court has discretion as to whether to abate the case until the Attorney General has issued the letter ruling.

Boeing v. Paxton

- *Boeing Company v. Paxton*, No. 12-1007, 2015 WL 3854264 (Tex. June 19, 2015)
- Reversed and rendered in favor of Boeing.
- Held: Tex. Gov't Code § 522.104 excepts information from disclosure if release of information would give an advantage to a competitor.
- Previously, only governmental bodies could raise Tex. Gov't Code § 522.104. Under *Boeing*, third parties can raise it as well.
- Previously, Tex. Gov't Code § 522.104 could be raised only during the ongoing, competitive bidding process. Once a contract was signed, Tex. Gov't Code § 522.104 no longer applied. Now, Tex. Gov't Code § 522.104 can be raised at any time.
- Tex. Gov't Code § 522.104 is still a discretionary exception, so it can be waived if not raised by a governmental body. A third party, however, can raise it at any time.

Greater Houston Partnership v. Paxton

- *Greater Houston Partnership v. Paxton*, No. 13-0745, 2015 WL 3978138 (Tex. June 26, 2015)
- Reversed and rendered in favor of GHP.
- The opinion addresses the issue of whether certain entities are governmental bodies for purposes of the TPIA.
- The Court's opinion focuses on the meaning of the phrase "*supported in whole or in part by public funds*" in Tex. Gov't Code § 552.003.
- Held: The definition of governmental body includes only those entities that are sustained by public funds. If an entity depends on public funds to perform its functions, it is a governmental body.
- The test set forth in *Kneeland v. National Collegiate Athletic Ass'n*, 850 F.2d 224 (5th Cir. 1988) no longer applies under the TPIA.

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