

# OPEN GOVERNMENT UPDATE

UT Law 2017 Advanced Texas Administrative Law  
Seminar

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*KIMBERLY FUCHS*  
OFFICE OF THE ATTORNEY GENERAL  
[KIMBERLY.FUCHS@OAG.TEXAS.GOV](mailto:KIMBERLY.FUCHS@OAG.TEXAS.GOV)

*LORI FIXLEY WINLAND*  
LOCKE LORD LLP  
[LWINLAND@LOCKELORD.COM](mailto:LWINLAND@LOCKELORD.COM)

## Relevant Law

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### **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

## Overview

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- Review of noteworthy TPIA cases over the last year
  - Review of noteworthy TOMA cases over the last year
  - Review of TPIA and TOMA legislation enacted by the 85<sup>th</sup> Legislature
  - Discussion of significant TPIA and TOMA legislation that did not pass
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## RECENT TPIA CASES OF NOTE

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# Paxton v. City of Dallas

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- 509 S.W.3d 247(Tex. 2017)
- COA held: The attorney-client privilege can be raised through section 552.101 of the TPIA in conjunction with Rule of Evidence 503 and Disciplinary Rule of Professional Conduct 1.05(b), and therefore, the compelling reason test does not apply.
- Supreme Court affirmed the COA's decision, but determined that the compelling reason test does apply; held that the attorney-client privilege is inherently compelling.
- The Supreme Court held that “significant interests supporting withholding confidential and privileged attorney-client communications outweigh the competing interests supporting disclosure.”
- Opinion applies only to attorney-client privilege cases.

# McLane Company Inc. v. TABC

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- 514 S.W.3d 871 (Tex. App.—Austin 2017, pet. filed)
- TABC filed suit under section 552.325 of the TPIA. Requestor intervened and sought relief for alleged ultra vires acts under the UDJA. Trial Court granted TABC's plea on the UDJA claims, and intervenor appealed. Third COA affirmed. Two issues in this case.
- Issue 1: McLane framed its claim as a request for a declaratory judgment construing a statute, but the Court held that McLane was actually requesting a declaration of his rights under the statute.
- Held: While the UDJA waives immunity to challenge the validity of a statute, it does not waive immunity to challenge an agency's actions under the statute.
- Issue 2: McLane alleged that TABC's public information officer committed an ultra vires act by failing to comply with its TPIA request.
- Held: Because McLane can pursue the same claims under the TPIA, the ultra vires claims are barred by the redundant remedies doctrine.

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