

OPEN GOVERNMENT UPDATE

UT Law 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 Office of the Attorney General ("OAG") to withhold records

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Overview

- Open Government Case Law Update
- Open Government Issues in the News

RECENT OPEN GOVERNMENT CASES OF NOTE

TPIA Cases of Note

- ***Police v. Alexander, No. 4:17-CV-631-ALM-KPJ, 2021 WL 4260494 (E.D. Tex. Sept. 20, 2021)***
 - Because submitting TPIA requests is not a constitutionally protected act, a First Amendment retaliation claim based on such conduct does not plausibly plead a claim upon which relief can be granted.
 - Legal authorities conflict as to whether a private citizen's TPIA rights can be waived through contract and, as such, it was not manifest error for the state court to hold that the right to request information through the TPIA could not be waived in a settlement agreement.
- ***Starkey v. Stainton, No. 02-21-00144-CV, 2022 WL 872599 (Tex. App.—Fort Worth Mar. 24, 2022, no pet.)***
 - The TPIA provides that a requestor has a special right of access to confidential information only if the information relates to the person and is protected from public disclosure by laws intended to protect that person's privacy interests.
 - An entity is required to answer a TPIA request from a member of the general public, but it has discretion to refuse or ignore a TPIA request from a prisoner.

TPIA Cases of Note

- ***City of Georgetown v. Putnam, 646 S.W.3d 61 (Tex. App.—El Paso 2022, pet. filed)***
 - Claims do not fall within the “evading review” exception to the mootness doctrine solely because they may be brought up in the future.
 - The TPIA was modeled on the FOIA, but the two Acts function independently.
 - Under the TPIA, a Plaintiff may recover attorney’s fees only if they *substantially prevail*.
- ***Bay Area Unitarian Universalist Church v. Ogg, No. 4:20-CV-03081, 2022 WL 2916345 (S.D. Tex. July 25, 2022)***
 - A party cannot avoid discovery requests by invoking confidentiality obligations under the TPIA.
- ***Empower Texans, Inc. v. Dallas Cnty., No. 05-20-00546-CV, 2022 WL 2785846 (Tex. App.—Dallas July 15, 2022, no pet. h.)***
 - A governmental body may charge for manipulation of data, and doing so does not constitute a refusal to provide records for purposes of waiving governmental immunity.

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