

OPEN GOVERNMENT 101

2018 PREPARING TO TAKE OFFICE WORKSHOP

All elected officials are required to take **Public Information Act** training within 90 days of taking office.

County commissioners and judges are required to take **Open Meetings** training within 90 days of taking office.

PUBLIC INFORMATION ACT

THE BASICS

- The Public Information Act: Texas Government Code Chapter 552
- Don't write anything down unless you want your family to read it in the local paper.
- Public has a right to see almost every document related to county business.
- Law applies to **ALL** public officials.
- The county's records are public property - including those you keep at home.
- Law applies to electronic records and e-mail - including information on your personal mobile device.
- Law often referred to as: Open Records Act or Freedom of Information Act.
- Judicial records are not subject to Public Information Act, but are available to public under Rule 12 of the Texas Rules of Judicial Administration.

RIGHTS OF THE PUBLIC

- Public has a right to make a written request for access to or copies of a public record. Any written request, including e-mail, will do.
- Requestor is not required to use magic words.
- Public may not have a right to access certain documents that are confidential under the Act or other law.
- Requestor does not have a right to rummage through your files or disrupt county business.
- Requestor may have a right to bring in their own copy machine or scanner.

SUPER-PUBLIC INFORMATION

Certain categories of information are considered "super public" and must be disclosed (552.022, 552.0221, 552.0225).

For example:

- Final audit and investigation reports
- Name and salary of public employees
- Billing information
- Investment information
- Rules and procedures
- Settlement information

REQUESTING AN AG RULING

- Best practice is to consult your county attorney and have him or her write the Attorney General (AG).
- Collect all documents ASAP and identify both the specific information that may be confidential and the exception to the Act.
- Be sure to comply with deadlines or you may be required to disclose information.
- If county requests the AG's permission to withhold information it will be under two types of exceptions:
 - Permissive (can release if wants to)
 - Mandatory (must withhold)
- If AG rules for county, requestor can sue county to require disclosure.
- If AG rules against county, county can sue AG in state district court to overturn AG ruling.

BEST PRACTICES

As soon as you or one of your employees receives a written request for documents that might be public records:

- Date stamp the request
- Immediately locate the records
- Notify your county attorney if you think you may need to withhold some of the records

RECORD RETENTION

- If you don't have the record because you have disposed of it under your schedule, you don't have to produce it.
- If you still have a public document you could have destroyed, you must produce it.

THE 10-DAY "RULE"

Within 10 business days after receiving the request, you must:

- Produce the records or notify the requestor when they will be available; or
- Request an AG's ruling authorizing you to withhold the records

Records are presumed to be public and you **must** produce them if, within 10 business days, you fail to either:

- Produce the records or notify requestor of time they will be available; or
- Request an AG's ruling authorizing you to withhold the records

CONFIDENTIALITY

- There is potential civil liability for disclosure of documents subject to a valid claim of confidentiality.
- If you have any question about whether to release a record – request an AG determination.

ORD REQUESTS

If requesting an open records decision (ORD) from the AG, by the 15th business day, you must:

- Submit written comments stating what exceptions apply
- Submit a copy of the request for information

- Submit a signed statement as to the date you received the request for information.
- Submit written copy of specific information requested (or representative sample)
- Label written copy to indicate portions where exceptions apply
- Send copy of your comments to requestor

DO'S AND DON'TS

- DO produce records as quickly as possible with the least fuss.
- DO request clarification if you do not understand what is being requested or if it is very broad.
- DON'T ask a requestor why he or she wants the records.
- DON'T create a record that does not exist to comply with a request.
- DON'T try to comply with a "standing" or on-going request.

COSTS & CHARGES

- AG's Office determines allowable charges for records.
- County may charge for labor and overhead for big requests, but must send an estimate in advance and get requestor's acceptance.
- County may also require a bond or deposit for large request.
- County cannot require requestor to obtain or pay for copies if the request is for access only.

EXCEPTIONS TO DISCLOSURE

Remember - you must request an AG ruling to claim an exception in most cases.

AG Open Records Decision No. 684 lists information that doesn't require an AG ruling to withhold, including information about a:

- Personal tax return
- Driver's license number
- Social Security number
- Credit card number
- Personal e-mail address

- Military record information
- Certified agenda and tape of executive session

EXCEPTIONS OF IMPORTANCE

Include information that is:

- Considered confidential by law (constitution, statute, court order)
- A clearly unwarranted invasion of personal privacy
- Related to competitive bidding that is confidential
- Involved in law enforcement prosecution
- A private communications of an elected official if disclosure would constitute an invasion of privacy
- Related to ongoing litigation

EXCEPTIONS FOR PERSONAL INFORMATION

Within 14 days of employment, election, or appointment, a public employee or official must elect NOT to allow public access to his or her:

- home address
- home phone
- social security number
- emergency contact information
- information that reveals information about family members

CERTAIN OFFICIALS EXCEPTED

Information made categorically confidential by the Act includes information related to a:

- peace officer
- current or former county or district attorney and his or her current or former employees
- current or former federal or state judge and his or her spouse,
- current or former county or district judge,
- or a justice of the peace

PENALTIES – PUBLIC INFORMATION ACT

- Refusing to produce a public record: Misdemeanor

- Fine up to \$1,000
- Jail up to 6 months
- Both fine and jail
- **Official misconduct (automatic removal)**
- Unlawful disclosure of confidential information: Misdemeanor
 - Fine up to \$1,000
 - Jail up to 6 months
 - Both fine and jail
 - **Official misconduct (automatic removal)**
- Destroying, altering or concealing public record: Misdemeanor
 - Fine – \$25 minimum to \$4,000 maximum
 - Jail – 3 days minimum to 3 months maximum
 - Both fine and jail.

NOTES

OPEN MEETINGS ACT

THE BASICS

- The Open Meetings Act: Texas Government Code Chapter 551.
- The public has a right to know about how, when and why you make your decisions as a public official.
- All commissioners court meetings must be public.

WHAT IS A MEETING

- A meeting is a deliberation among a quorum of the members of the court during which:
 - public business or policy is discussed; or
 - the commissioners court takes formal action.
- Quorum is three for commissioners court.
- “Walking quorum” is an illegal meeting of less than a quorum in an attempt to avoid the Act.

AGENDA PREPERATION

- Commissioners court as a whole is responsible for preparation of the agenda.
- Each member of the commissioners court must be permitted to place any item on the agenda.
- Commissioners court may or may not use the county clerk to prepare and post its agenda.

NOTICE OF A PUBLIC MEETING

- Notice must be in writing and posted not less than 72 hours before the beginning of the meeting at a place accessible to the public.
- Notice must be posted both at the county courthouse and online if the county has a website.
- Notice must include: date, hour, place, and actions under consideration.

DISCUSSION AND ACTION

- Commissioners court may not discuss items that are not posted on the agenda.

- Commissioners court can only take action on an item that is on the agenda.
- The commissioners court may only meet in executive session on a posted agenda item.

EMERGENCY MEETING

Emergency meetings require two hour notice, but must be real emergency:

- Imminent threat to public health and safety.
- Unforeseeable situation that required immediate action.
- A governmental body’s determination that an emergency exists is subject to judicial review.

MINUTES

Minutes of a public meeting must be recorded or in writing and show:

- Each subject considered; and
- The vote, order, decision or action on each item.

EXECUTIVE SESSION

- Public meeting must be convened before the court may go into executive session.

EXECPTIONS TO OPEN MEETING

Executive sessions are exceptions to the rule of public discussion. For example:

- Real estate – must relate to county’s negotiations.
- Economic development – must relate to county’s offer to business being solicited.
- Consultation with attorney – lawyer must be there.
- Personnel matters – must be county staff and must be open at request of employee under discussion.

RIGHTS OF THE PUBLIC

- Public has a right to attend and record a public meeting.
- Public does not have a right to talk during a meeting.
- Commissioners court may allow public comment as agenda item.

DO'S AND DON'TS

- DO publish notice of a meeting, even a committee meeting of less than a quorum if court is likely to rubber stamp decision.
- DO get what you want to talk about on the agenda with enough information that a reasonably intelligent person will know what you are going to discuss.
- DON'T communicate with other court members outside of a public meeting with the intention of persuading them to vote a certain way – this includes e-mail or text.
- DON'T vote in executive session – no “straw votes”.
- DON'T debate issues raised in public comment period unless the issue is also posted – limit response to facts or policy statement.

PENALTIES – OPEN MEETINGS ACT

- Actions taken in violation of Open Meetings Act are voidable by court order.
- Meeting in numbers less than a quorum with intent to violate the law; or
- Participation in an illegal closed meeting: Misdemeanor
 - Fine: \$100 - \$500
 - Jail: 1-6 months
 - Both fine and jail
- You can commit a violation by participating in an illegal executive session even if you don't know that the closed meeting is not allowed.
- It is an affirmative defense if you relied on a written opinion from the county attorney saying the executive session was allowed.

TRAINING & RESOURCES

- Attorney General's Office has required training and basic information online at texasattorneygeneral.gov
- AG's office has online handbooks on both the Public Information Act and the Open Meetings Act.
- TAC Legal also has print and online handbooks on both the Public Information Act and the Open Meetings Act.

HOW TO FIND HELP

- TAC Legal: 888-ASK-TAC4 (275-8224)
- TAC Website: county.org
- Texas AG's Open Government Helpline: 877-OPEN-TEX (673-6839)
- AG's Public Information Act Cost Hotline: 888-OR-COSTS (672-6787)
- AG's Website: texasattorneygeneral.gov

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