



TEXAS OPEN MEETINGS ACT

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Where does it come from?

- The Texas Open Meetings Act (TOMA) is memorialized in the Texas Government Code, Title 5, Chapter 551. Open Meetings.
- Adopted in 1967.
- **Sec. 551.002** requires that regular, special, or called meetings of a govt. body be open to the public.

Board Meetings

- “Meeting”- **Sec. 551.001(4)**. A meeting is a deliberation between a quorum of a governmental body, or between a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action.
- Meeting also includes any “gathering” of board members, that:
 - is conducted by the govt. body;
 - a quorum being present that; and
 - receives information, asks questions of, or give info to any third party, including an employee of the district.
- Examples of what is **NOT** a meeting: Board members attending a social function or conference or workshop unrelated to business of the District, with no formal discussion of GCD business.

What is a Quorum?

- “Quorum”- **Sec. 551.001(6)**. A majority of a governmental body.
 - For Lost Pines GCD, a quorum constitutes six of the ten members of the board of directors.
- Walking Quorum Risks

BEWARE OF THE WALKING QUORUM

- **Sec 551.143** prohibits certain communications by board members, an offense is committed by:
 - **Knowingly** engaging in at least one communication in a series of communications that each occur outside of a meeting, and that concern an issue within the jurisdiction of the District;
 - In which members individually are less than a quorum, but the total members engaging in the communications constitutes a quorum; and the
 - Individual **knew** at the time they engaged in communication that the series of communications would involve a quorum and would constitute a deliberation once a quorum of members engaged in the conversations.

Avoid the walking quorum

- Walking quorums mostly occur via telephone calls but can also happen in email communications.
- With greater use of electronic communication, greater risk of a walking quorum exists. Ex. Group texts, email groups, and social media.
- Keep communications to formal, district board settings.
- Never “reply all” to board members communications with outside citizens as that can result in a walking quorum.
- Example. Daisy-chain scenario. See potential punishments later.....

Record of Open Meeting & Public Testimony

- Statute requires that minutes of an open meeting are prepared and kept. The minutes must:
 - 1) State the subject of each deliberation; and
 - 2) Indicate each vote, order, decision, or other action taken.
- The minutes and recordings of an open meeting are public records available to the public upon request.
- **Sec. 551.007** allows for any interested member of the public who desires to address the board regarding an item on agenda for an open meeting to do so before the board considers the item.

NOTICE

- Written notice of the date, hour, place, and subject are required for a meeting. **Sec. 551.041**
- Notice must be posted in a place readily accessible to the general public at all times for *at least 72 hours* before the scheduled meeting time.
- Generally posted in the public courthouse bulletin board for notices.

Notice Specifically for Lost Pines GCD

- **Sec. 551.054** provides the notice requirements for water districts extending into fewer than four counties. It establishes:
 - Notice of each meeting posted at a place convenient to the public in the administrative office of the district; and
 - Either provide notice to the county clerk of each county where the district is located or post notice on the district's website
 - County clerk will post notice on the bulletin board of the county courthouse.
 - Ex. Lost pines files with Bastrop and Lee County Clerks AND online on the website.



EXCEPTIONS to Open Meeting Requirements- Closed Meeting

- The most common are:
 - **Sec. 551.071.** The board may meet in closed session to consult with its attorney on certain matters:
 - pending or contemplated litigation; or
 - a settlement offer
 - **Sec. 551.072.** Deliberation regarding purchase, exchange, lease, or value of real property.
 - Ex. January board meeting closed session to discuss sale of real property being finalized.
 - Full list of exceptions at Govt. Code Ch. 551 subchapter D- 551.071-551.091.

Procedures relating to closed meeting

- Prior to the board meeting for closed session, they must first have a quorum convene in an open meeting for which proper notice has been given.
 - During open session, presiding officer must announce that a closed meeting will be held and identify the section of chapter 551 under which the closed meeting is held. **Sec. 551.101**
- Any vote, final action, or decision on a matter deliberated in a closed meeting may only be made in an open meeting. **Sec. 551.102**
- Certified agenda or recording of closed meeting is required under most circumstances and shall be preserved for at least two years after the date of the meeting. Except for when Board has a private consultation with its Attorney in closed session.

Technological Developments- Video Meetings

- Sec. 551.127 allows for board to hold an open or closed meeting by videoconference call, as long as certain conditions are met:
 - Remote members participating must have audio and video feed broadcast live;
 - Quorum of the board must be physically present at one location of the meeting. (i.e. six of you must be together on video)
 - Notice still required! Include location of where quorum will be present and state intent to have quorum at meeting.

Video Meetings Contd.

- Quorum is still needed, open portion still open to public.
- Meeting must be recorded and available to public.
- If board member disconnects during meeting for any reason, they will be considered absent from any topic which they miss.
- The meeting may only continue if a quorum of the board remains present.
- Participants must have working sound and video.
- Telephone conference call meetings can occur under certain emergency scenarios.

ENFORCEMENT AND CRIMINAL VIOLATIONS

- If found guilty of knowingly committing prohibited series of communications (walking quorum) it is a misdemeanor punishable by:
 - A fine of between \$100 and \$500;
 - Confinement in the county jail for not less than one month or more than six months; or
 - Both the fine and jailtime.
 - Government Code Title 5 Sec. 551.143(b)(1—3).

Closed Meetings Must Remain Closed- Penalties

- **Sec. 551.146** an individual commits an offense if they- without lawful authority knowingly discloses to a member of the public the contents of a closed meeting.
- Can be liable to a person injured or damaged by the disclosure for:
 - Actual damages, including personal injury, lost wages, defamation, or mental/emotional distress;
 - reasonable attorney fees and court costs; and
 - at court's discretion, exemplary damages.
- Class B misdemeanor.

Texas Public Information Act (PIA)

- Government Code Title 5, Chapter 552. Public Information
- Policy of the act states “that government is the servant and not the master of the people”, therefore “each person is entitled unless otherwise expressly provided by law, at all times to complete information about the affairs of the government and the official acts of public officials and employees.”
- The provisions of the act shall be liberally construed in favor of granting a request for information.
- 552.001- Policy

What is Public Information?

- **Govt. Code 552.002**
- Defined as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:
 - (1) By a governmental body;
 - (2) For a governmental body and the govt. body:
 - (1) Owns the information
 - (2) Has a right of access to the information; or
 - (3) Spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
 - (3) By an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Public Information contd.

- The definition of “public information” includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.
- This means doing District work on your cell phones can subject your cell phone to being open to a Public Information Request.
- “Governmental Body” means the governing board of a special district. Aka GCD board members! **Sec. 552.003(1)(A)(viii).**

Contents of Public Information Act Requests

- Request must be in writing
- Sent via U.S. mail, electronic mail, hand delivery, or other method approved by the governmental body
- Include enough description and detail about the information requested to enable the govt. entity to accurately identify and locate the information desired
- Most governmental bodies have information on website with forms to help with the request

Right of **Access** to Public Information

- Public information is available to the public at a minimum during the normal business hours of the governmental body. **Sec. 552.021**
- An officer for public information of a govt. body shall promptly produce public information for inspection, duplication, or both no application by any person to the officer. **Sec 552.221(a)**
- “Promptly” means as soon as possible under the circumstances, aka within a reasonable time, without delay.
- If the public info not made available within 10 days, Officer must certify that fact in writing and set a date and hour within a reasonable time when the info will be available. What if we want to withhold info???

Information that is Excluded from Disclosure

- **552.101-** Information considered confidential by law, either constitutional, statutory, or by judicial decision.
 - Medical information, Personal financial information, mental health
- **552.102-** Certain personal information in personnel files
 - Employee date of birth, address, personal phone number
- **552.103-** Litigation or settlement negotiations
- **552.107-** Attorney/Client privileged communications
 - Communications with us seeking/providing legal advice!
- Full list found at **Sec. 552.101-552.163**

Attorney General Opinions!

- A governmental entity may request an open records decision from the Attorney General for a ruling on withholding information
- Info that may be withheld must fall under one of the exceptions located in Subchapter C of Chapter 552 Government Code
- Send request to AG's Office within 10 business days. Notify requestor as well of intent to withhold and the basis for doing so
- What if we miss the 10-day deadline to request an AG opinion?
 - The information requested is presumed to be subject to disclosure and **must be released** to the requestor. Unless there is compelling reason to still withhold. Sec. 552.302.

Attorney General Opinions- 15-day Deadline

- Within 15 days of requesting an AG decision on withholding, the governmental unit must submit to the AG:
 - A copy of the public information request;
 - Comments identifying the reasons why the exceptions apply that would allow the information to be withheld;
 - Signed statement as to the date the request was received by the govt. body or evidence to establish that date;
 - A copy of the specific information requested, or a representative samples of the information if a voluminous amount of information was requested;
 - Must label the copy of the specific info requested, or the representative samples to indicate which exceptions apply to which parts of the copy; and
 - Must also send this information to the requestor (can redact).

Attorney General Response

- The AG shall render a decision on a request, determining whether the requested information is within one of the exceptions of Subchapter C;
- No later than 45 business days after the date the AG received the request for decision, AG can get 10-day extension;
- AG makes a ruling and either Govt entity has to provide or make the information available for viewing to requestor, or not if the exceptions apply

Helpful Links

- Chapter 36 Texas Water Code- Groundwater Conservation Districts
 - <https://statutes.capitol.texas.gov/Docs/WA/htm/WA.36.htm>
- Chapter 551 Government Code- Open meetings
 - <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.551.htm>
- Chapter 552 Government Code- Open Government
 - <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.552.htm>

Thank you



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