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Open Government Update

A summary of recent legislation and case law relevant to the Texas Public Information Act and the Texas Open Meetings Act.

Public Information Act

S.B. 1182

- If a governmental body sends written comments to the Attorney General under Section 552.301(e)(1)(a) of the Government Code, then they shall send a copy of the written comments to the requestor within fifteen (15) business days of receiving the written request for information under the Public Information Act (PIA).
- A suit by a governmental body challenging the determination of the Attorney General must be filed in a Travis County district court not later than thirty (30) calendar days after the date the governmental body receives the decision of the Attorney General determining that the requested information must be released to the requestor.
- A non-Texas Youth Commission and/or non-Department of Family and Protective Services investigative agency (e.g., a municipal police department, ect.) shall provide reports of child abuse or neglect in response to a request from either the child who is the subject of the reported abuse if the child is at least eighteen (18) years of age, or the child's parent or guardian, unless the parent or guardian is alleged to have committed the abuse or neglect. However, before the reports are released the agency must redact any personally identifiable information (e.g., name, ect.) regarding a victim or witness less than eighteen (18) years of age who is not the child requestor or other child of the parent or guardian, the identity of the person who made the report, as well as any information that is otherwise excepted from required disclosure under law (e.g., Social Security number, email address, ect.).
- Information that could compromise the safety of an officer or employee of a Hospital District (e.g., Social Security number, home address, phone number, email address, home address of relatives, ect.) is exempt from disclosure.
- Information regarding select biological agents or toxins listed under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. No. 107-188) are exempt from disclosure.
- Requires a court, in exercising its discretion regarding litigation costs under the PIA, to consider whether the conduct of the governmental body, rather than the public information officer of the governmental body, had a reasonable basis in law and whether the litigation was brought in good faith.

S.B. 1629

- Provides that an individual who, for substantial financial gain, works for either a newspaper of general circulation that is published on the Internet by a news medium engaged in the business of disseminating news or information to the public, a radio or television station with a valid FCC license, or for a magazine that is published at least once a week or on the Internet by a news medium engaged in the business of disseminating news or information to the general public, is exempt from the required prepayment of personnel costs incurred by a governmental body in responding to certain PIA requests that require large amounts of personnel time.

S.B. 1068

- Allows a city to redact certain personal information (e.g., Social Security numbers, email addresses, ect.) relating to a current or former city employee, official, or peace officer under the PIA without first requesting a decision from the Attorney General.
- Allows a city to redact certain personal information relating to a volunteer worker or member of the board of directors of a family violence shelter center or sexual assault program under the PIA without first requesting a decision from the Attorney General.
- Provides that a requestor of information may seek a decision from the Attorney General's office regarding information that was redacted by the city without first seeking a decision from the Attorney General.
- Requires a city that redacts information without seeking a decision from the Attorney General to provide certain information to the requestor on a form prescribed by the Attorney General.
- Creates an exception to disclosure that protects information in the custody of a city if that information relates to an employee or officer of the city and disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

H.B. 2004

- Requires a city that owns, licenses, or maintains computerized data that includes sensitive personal information to comply with Section 521.053 of the Business & Commerce Code, which requires that an entity discovering or receiving notification of a breach of sensitive personal information by an unauthorized person must disclose the breach to the individuals as quickly as possible.
- The bill also requires a city to notify each consumer-reporting agency of a breach that affects at one time more than 10,000 persons.
- It also adds mental and physical health information to the list of sensitive personal information under the security breach statute and to the list of information not subject to the PIA.

S.B. 375

- Amends the Transportation Code to establish that the law governing the release of certain motor vehicle accident report information includes accident report information compiled under provisions passed by the 80th Texas Legislature, which requires the Texas Department of Transportation (TxDOT) to tabulate and analyze the vehicle accident reports it receives.
- The bill authorizes TxDOT to release this information or a vehicle identification number and specific accident information relating to that vehicle, and it makes an exception for the information to the provision establishing that motor vehicle accident report information held by TxDOT or another governmental entity is privileged and for the confidential use of certain entities.
- The bill requires the amount that may be charged for the information to be calculated in the manner specified by the PIA for public information provided by a governmental body.
- The bill also prohibits TxDOT from releasing the information if the information is personal information (e.g., license plate numbers, drivers license numbers, Social Security numbers, ect.) as defined by the Motor Vehicle Records Disclosure Act, or the information would allow a person to satisfy the requirements for the release of information for a specific motor vehicle accident.

Emails & Text Messages

- Recently a state district court held that any responsive emails sent or received by privately-owned personal computers (or any other personal electronic device belonging to municipal officials were "public information." The Court's ruling disregarded whether the emails were processed by municipal email servers (i.e., the Court concluded that the emails related to official city business to or from the mayor were public even if they were transmitted through *private* email accounts on a *privately-owned* device). The district court was overturned on appeal, but the risk that private emails could become public information still remains.[1]

[1] *See City of Dallas v. The Dallas Morning News*, 281 S.W.3d 708 (Tex.App.---Dallas 2009).

Open Meetings

S.B. 1182

- Provides that a quorum of the city council may receive from municipal staff, and a member of the governing body may make, a report regarding items of community interest during a council meeting without having given notice of the subject of the report, provided no action is taken or discussed.
- An "item of community interest" includes expressions of thanks, congratulations, or condolence; information regarding holiday schedules; honorary recognitions of city officials, employees, or other citizens; reminders about upcoming events sponsored by the city or other entity that is scheduled to be attended by a city official or city employee; and announcements involving imminent threats to the public health and safety of the city.

First Amendment Protections

- A recent decision of the US Court of Appeals for the Fifth Circuit held that the First Amendment's protection of elected officials' speech, even when made pursuant to their official duties, is analogous to that afforded to regular citizens. Therefore, if a state seeks to restrict the speech of elected officials on the basis of content (i.e., whether the speech refers to public business/policy or not), it must show that the regulation: (a) furthers a compelling state interest, *and* (b) is narrowly tailored to serve that interest.
- The case arose from alleged violations of the Texas Open Meetings Act (TOMA) by certain members of the Alpine City Council for their discussion of public matters via email by a quorum of public officials outside of an open meeting.[2]

Staff or Council Reports

- Although the Attorney General has consented to such general, generic agenda items as "Citizen Comment," they have declined to permit general topics such as "Staff Report."[3] Because employees are under the control and supervision of the governmental body, the body has the opportunity to list the specific items staff will be disclosing in advance.
- Posting general topics such as "City Manager's Report," "Mayor's Update," and "Council and Other Reports" without more information about the subjects of the update and reports does not sufficiently notify a reader as to what is going to be discussed and is therefore inadequate.[4]

For more information on recent legislation & other developments in Municipal Law, visit **www.TexasMunicipalLawyers.com**

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[2] *See Rangra, et al. v. Brown, et al.*, 566 F.3d 515 (5th Cir. 2009). This case has been appealed and is currently scheduled to be reheard by the full panel of the federal Fifth Circuit Court of Appeals in New Orleans.
[3] Op. Tex. Att'y Gen. No. JC-0169 (2000).
[4] *See* Op. Tex. Att'y Gen. No. GA-0668 (2008).