



Texas Open Meetings Act ("TOMA")

Open Meetings

Texas Open Meetings Act (TOMA) requires prior notice posted 72 hours in advance, openness, and an official recording.

TOMA is triggered if there is:

- A QUORUM of members (established physically, verbally, telephonically or electronically such as email, social media, etc.; need not be real time); AND
- PUBLIC BUSINESS that the City has authority to supervise or oversee; AND
- There is a DELIBERATION or DISCUSSION (includes receiving information, giving information, asking or receiving questions from any 3rd party, including employees) or FORMAL ACTION.

Open Meetings

TOMA is NOT triggered if it is:

- An “Item of community interest” (1) expressions of thanks, congratulations, or condolence; (2) holiday schedules; (3) recognition of a public official, employee, or other citizen, except that a discussion regarding a change in the status of a person's public office or employment is not a “recognition”; (4) a reminder about an upcoming event organized or sponsored by the governing body; (5) information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a councilmember or an official or employee of the City; and (6) announcements involving an imminent threat to the public health and safety which has arisen after posting the agenda. Tex. Gov’t Code §551.0415;
- A Social Event (when no formal action is taken and any discussion of public business is *incidental to* the social gathering, there is no “meeting” for the purposes of the TOMA);
- A Workshop;
- A Convention;
- Testimony in front of Legislature; or
- A Press Conference.

Open Sessions

- You have to have a Quorum to convene an official meeting.
- You may discuss and take action only on items posted.
- You may discuss items not on agenda, but limited to:
 - when to place the item on a future agenda;
 - statements of factual information in response to a question; or
 - recitation of existing policy in response to a question.
- You must vote in public unless the matter is a competitive utility matter.
- You may not make anonymous/secret ballots or straw votes.
- A quorum is no longer required to be physically present for videoconferencing. The City of Denton requires 7 days notice to the CM for videoconferencing.
- TOMA can be applied to meetings even though less than a quorum present if there is a subsequent walking quorum. A Houston case determined that no quorum is no meeting is no violation.
- Think about if you are a quorum on a subcommittee together when discussing city business.

Executive Session(Closed Meeting)

The City MAY conduct a closed meeting with express statutory authority (discretionary).

Attorney Consultation (§551.071)

Real Property Purchase, Lease, or Value (§551.072)

Prospective Gift or Donation (§551.073)

Security Personnel, Devices or Audits (§551.076)

Public Power Utility Competitive Matters (§551.086) (electric or gas)

Economic Development Considerations (§551.087)

Executive session **MUST** be called for such matters as (Mandatory):

Personnel Matters (§551.074), unless employee requests a public hearing before the meeting.

Medical/Psychiatric Information of applicants to benefit plan (§551.0785)

Open Meetings-Quorums

- “Walking Quorum”: When a governmental body “deliberates through a series of closed meetings of members of less than a quorum.” Att’y Gen. Op. No. DM-0095 (1992).
- Refers to a quorum or more of a body that attempts to avoid the TOMA’s purposes by deliberately meeting in numbers physically less than a quorum in closed sessions to discuss public business and then ratifying its actions in a physical gathering of the quorum in a subsequent sham public meeting. Att’y Gen. Op. No. GA-0326 (2005) at 4.
- Ex: Mayor meets with council members constituting less than a quorum to reach a conclusion on public business; the city manager keeps track of the number of council members present so as to avoid a formal quorum; consensus on public business was reached and memorialized in a memorandum prepared by the city manager, which as manifested by a vote in an open meeting. *See Esperanza Peace and Justice Center v. City of San Antonio*, 316 F. Supp. 2d 433 (W.D. Tex. 2001).

Open Meetings

ONLINE MESSAGE BOARDS

- Per TGC Sec. 551.006 (2013), written electronic communications on a gov't body controlled website DO NOT constitute a “meeting” or “deliberation” when:
 - Communication is displayed in real time for at least 30 days;
 - Website/Internet application is owned or controlled by City, is the only message board, and is displayed on the webpage at least one click away;
 - Communication is written by member of gov't body or employee with their name and title;
 - Communication is archived for at least 6 years after the post; AND
 - No vote or action takes place as a result of the written communication/posting

Public Information Act

Public Information is to be accessible to the public and retained.

Sec. 552.002 (a): Public Information means 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 government body;

(2) for a governmental body and the governmental body (A) owns the information; (B) has a right of access to the information; or (C) 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 Act

Sec. 552.002 (a-1) Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

(a-2) The definition of "public information" provided by Subsection (a) applies to and 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 includes e-mail, internet postings, text message, instant message, other electronic communication per Sec. 552.002(c).

Social Media

- TOMA and PIA may apply to Facebook, Snapchat, Twitter, LinkedIn, etc.
- If your post is in connection with the transaction of official business, it is subject to disclosure under the PIA.
- Any of your posts concerning public business are “local government Records” under the Local Government Records Act and must be retained. TLGC Sec. 201.003. These records may be destroyed only in accordance with the act. Violation of this Act is a Class A Misdemeanor.
- Your private correspondence or communications relating to “matters the disclosure of which would constitute an invasion of privacy” are exempt from the PIA. Sec. 552.109 (but, see ORD-635 (1995); ORD-626 (1994))
- You cannot selectively disclose information to particular members of the public. Sec. 552.007(b)
- Don’t forget that if it is related to official business, it is about as private as your least private friend!
- Case law

Social Media

- There are implications of a quorum of city council participating online or posting on social media. If 4 or more of you are chatting about public business online, that dialogue may constitute a violation. Even if you only post regarding city business to the citizens and not to each other, you may violate TOMA.
- Public records may only be destroyed by statute so you may not delete or alter your posts that are subject to the act.
- Public tweets have been donated to the Library of Congress by Twitter since 2006.
- Remember TOMA doesn't require physical presence or real time conversation of the quorum to trigger a meeting.
- Violations of TOMA may be possible even if deliberation occurs through nonspoken exchanges such as posts. JC-0307.
- Retention time would correlate with emails. (City can delete emails with correspondence or internal memos containing routing information as soon as it is no longer administratively significant under the TSLAC rules).

Penalty Provisions--TOMA

- A member or group of members who knowingly conspire(s) to circumvent TOMA by meeting in numbers less than a quorum for secret deliberations is guilty of a Class C misdemeanor Tex. Gov't Code §551.143(a).
- An official who knowingly calls, aids in calling, closes, aids in closing, or participates in a closed meeting where a closed meeting is not permitted, is deemed guilty of a Class C misdemeanor Tex. Gov't Code §551.144(a).
- A member who participates in a closed meeting knowing that a certified agenda or a recording of the closed meeting is not being kept is guilty of a Class C misdemeanor. Tex. Gov't Code §551.145
- Class C misdemeanors are punishable by a fine of \$100-500, confinement in the county jail for one to six months, or both.

Penalty Provisions--TOMA

- An individual who knowingly discloses the certified agenda or tape recording of a closed meeting to a member of the public is deemed guilty of a Class B misdemeanor punishable by a fine not to exceed \$2,000, confinement in jail not to exceed 180 days, or both. Tex. Gov't Code §551.146(a)-(b).
- Any interested person may bring a civil lawsuit to force officials to comply with TOMA, to enjoin officials from acting, or to void actions taken in an illegal meeting. Any action taken found in violation of TOMA is voidable. A person injured by the unlawful disclosure of a certified agenda or tape recording of a lawfully closed meeting may sue for damages, attorney fees, and exemplary damages.

Penalty Provisions--PIA

- The Public Information Act establishes criminal penalties for both the release of information that must not be disclosed and the withholding of information that must be released.
- A violation can constitute official misconduct and is a misdemeanor punishable by confinement in a county jail for not more than six months, a fine not to exceed \$1,000, or both confinement and the fine.

Questions?

- Questions to ask yourself:
 - Does this reveal any potentially embarrassing private information?
 - Am I discussing Official business?
 - Is there a quorum present?
 - Is this information subject to the PIA?
 - If so, how long do I need to retain this information?
 - Who will be able to view the information I post?