

Open Meetings and Public Records

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Scenario 1

We just received our charter and will be holding a board meeting next week.

Q: Do we have to do anything different from how our 501 (c) (3) board conducted meetings?

Yes, as a charter school, you are now subject to the Texas Open Meetings Act

- Must be open to the public
- Applies to governing board meetings
 - Discussing school business
 - Deliberation between a quorum
 - Board receives school information
 - Board is going to take action

You are at an event, forum or debate and so is the majority of your board.

Q: Is this considered a meeting according to Texas Open Meetings Act (TOMA)?

Answer:

The presence of a quorum at a candidate forum, appearance, or debate to inform the electorate is not a meeting for purposes of the OML

- So long as no formal action is taken and any discussion of public business is incidental to the forum, appearance or debate

Scenario 2

Our board plans to have a summer retreat in order to draft our personnel handbook and prepare for the 2017-2018 school year.

We would like to hold our meeting at a lovely resort on the beach.

- **Q:** Is that okay?

- Probably not
 - Open meetings must be within your geographical boundary
 - Must be accessible to the public
- But maybe
 - Training received by the board
 - No discussion of school business with a quorum
 - No decisions will be made

Scenario 3

We have had an urgent issue come up related to a campus leader's potentially damaging behavior and want to discuss the best course of action as a board.

Q: Can we hold a closed meeting tomorrow?

No, but in 72 hours you can

- All meetings must have an agenda posted 72 hours in advance
- Exception for health and safety concerns
 - Imminent risk to public welfare or safety that would occur if action were not taken within 72 hours
 - Must post notice 2 hours prior
- Even closed meetings must have sufficient notice

Sufficient Notice includes

- Date, time, place, and subject of meeting
- All closed meeting topics
 - “Personnel issues” not sufficient, especially related to superintendent
 - Include Chapter 551 Citation
- Posted on school website and location of meeting

Allowable topics for a closed meeting:

- Discuss personnel issues
- Attorney client-privilege
- Property price or purchase, prior to contract
- Security, infrastructure, IT, security devices
(HB 8, SB 564, 85th Legislative Session)
- Student issues

Closed Meeting Requirements

- Sufficient meeting notice (72 hours)
 - Including citation of Chapter 551.001
- Must keep a certified agenda
 - Topics, brief description
 - Sealed, unless court ordered
 - Discussion only
- Vote must take place in open meeting

Scenario 4

Our board president sent the agenda and board packet to the entire board via email.

Following the email, 3 other board members replied all sharing their thoughts on our procurement process.

Q: What issues do you see?

- This may be considered a meeting
 - Deliberations about school business
 - Quorum present?
- Not open to the public
- Personal email accounts

Scenario 5

At our board meeting tomorrow we will be announcing the consolidation of two of our campuses. We anticipate at least 100 of our parents will be attending.

Q: Do we have to allow all of them to voice their concerns?

Q2: Can we end the meeting promptly at 9pm?

- Yes, you must listen to the concerns
 - You do not have to answer or address everything said
 - You may limit the amount of time each person has to speak (3 minutes)
- No, you cannot close the meeting at an arbitrary time
 - Need to give folks the opportunity to share concerns.

Scenario 6

We have a board member that is going to be traveling during our meeting. He would like to join by video conference.

Q: Can he do that?

Q: Also, do we have to video tape all of our meetings and post them?

Scenario 6: Video rules

- Participation via video conference is allowed
 - Even counts towards your quorum and vote, but must have continuous video and sound of the person
 - Phone calls do not count
- Is your school over 10,000 students?
 - Then yes, you must record and post meetings for regular meetings and **work sessions** (HB 523, 85th Legislative Session)

What happens if you don't following any of these rules?

- A court may find that the board actions are void, order the board to stop, order the board to take action
- **Criminal offense**
 - To release sealed meeting notes
 - Knowingly hold an illegally closed meeting
 - Knowingly try to circumvent the law
 - Daisy chain phone calls or emails

Public Information Act



Scenario 1

- **Q:** Does the Texas Public Information Act apply to charter schools?



- **Q:** What about the Freedom of Information Act?



- Yes
 - Under Chapter 552, the governing body of the charter holder (or the charter school) is considered to be **“governmental bodies”**;
 - Any requirement in Chapter 552 that applies to a school district, the board of trustees of a school district, or public school students applies to an open-enrollment charter school, its board, and its students. Texas Educ. Code §12.1051
- No
 - Charters are not federal agencies

Scenario 2

School A's public information policy

- “All public information requests must be sent to the public information officer. All requests must include the public information request form found on the school's website. School A is not responsible for any delay or non-response to requests not sent to the public information officer or sent without the necessary form.”

Q: What issues do you see?

Only public information officer can receive the request? **False**

- Any employee can receive the request and it is still effective
- Should have a PIA officer
- Train PIA officer and staff



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Allowed to delay or not respond? **False**

- Clock starts as soon as the school receives the request
 - regardless of who it is sent to
- **10 Business days** to file a request for an attorney general opinion
 - Use it or lose it!
- PROMPTLY respond to all PIA requests

Requiring specific form? **False**

- Any written request will start the clock
 - Fax
 - Email
 - Letter
 - Handwritten note



Scenario 3

School B receives a request from a journalist notorious for writing negative articles about charter schools. School wants to know if they have to provide the information in response to the request?

- **What's your advice?**

- **Respond!**
 - Treat all requestor uniformly
 - Newspapers
 - Research polls
 - Businesses
 - Doctoral students
 - Employees
 - No asking why
- Who is it?
 - Can ask for identification



Scenario 4

We received a request from a former employee asking for the salary of teachers based on race and gender.

Q: Do we have to disclose?

Q: Isn't this personal information?

- Yes, you have to disclose
 - Salary is not protected information
 - The name, sex, ethnicity, salary, title, and dates of employment of **each employee and officer**
 - Employee personnel files are confidential
 - But not if the disclosure would constitute a clearly unwarranted invasion of personal privacy
 - Employees **must have the option** to opt-out of sharing home address, phone number, and emergency contact

- Asserting an exception
 - Must make a request to the AG within 10 business days of receipt
 - Include original request
 - Information in question
 - Reason for exception
 - Must send notice to requestor 10 days



What is Considered Public Information?

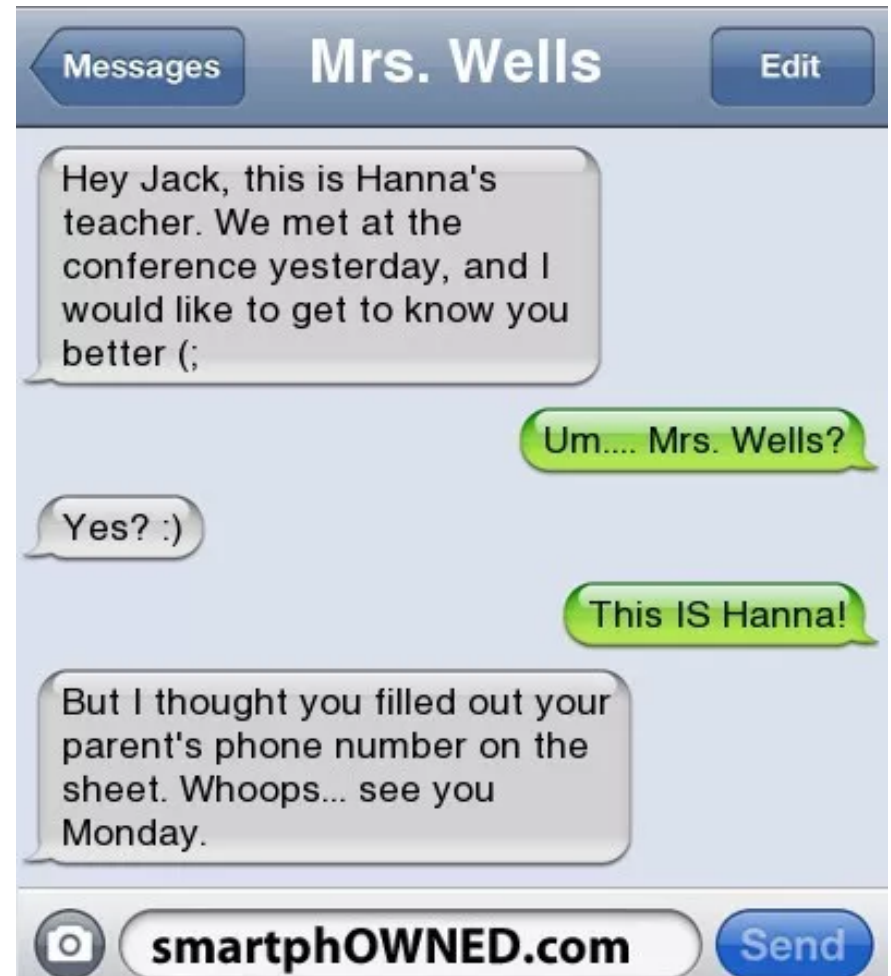
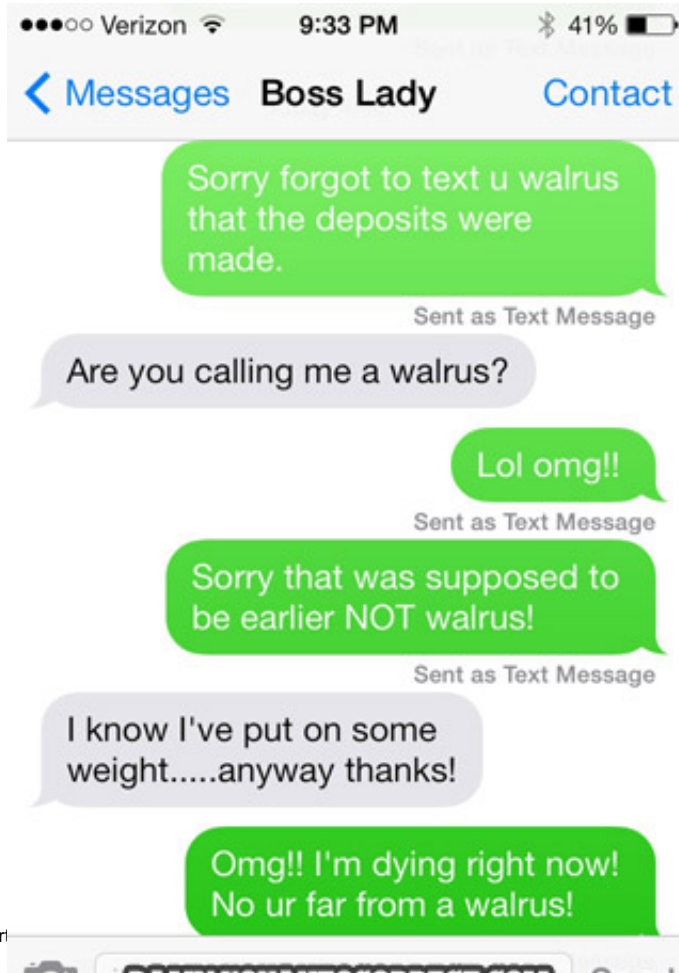
What items or data are considered Public Information?



Other Public Information

- Information in an **account, voucher, or contract** relating to the receipt or expenditure of public or other funds
- **Administrative staff manuals and instructions to staff** that affect a member of the public
- Information that is in a **bill for attorney's fees** and that is not privileged under the attorney-client privilege
- A **settlement agreement** to which a charter is a party
- **EMAILS**

What's in your phone?



- Public information
 - Discussing school business?
 - Using school email accounts
 - Using school phone?
- Must be stored and maintained
- Includes board members
 - Make sure the board are not engaging in group emails or texts

- Information related to competitive bidding
 - If it would give an advantage to a bidder
- Location and price of property
 - Prior to public announcement of the project
 - Appraisal and purchase price is protected prior to award of contract
- Attorney client privilege

Scenario 5

A parent is requesting student information and data for their child and others. Specifically, she is requesting copies of the students' IEPs, discipline records, and videos of her child.

- Do we have to give her all of these records?
- Videos too?

- Yes, but...
 - All records pertaining to the parent's child must be given to the parent under FERPA
 - BUT all records for children other than that parent's child are confidential, under FERPA
- And yes
 - Videos related to the child are part of the child's record and must be shared with the parent
 - Presence of other students does not make the video confidential

- Media Release
 - Must have one to use student's photo, likeness, voice
 - Even on social **media—by any school employee**
 - Create a policy for staff use of photos
 - Narrow release? Broad release?
 - This should include all of these...

- Student Records Exception
 - Do not have to request an AG opinion
 - Considered confidential
- Directory Information
 - May be available to anyone
 - Law enforcement/ICE
 - School Districts
 - Families
 - Not confidential

- Access to students
 - When can someone interview a student?
 - What do we do with warrants/subpoenas?
 - What if a student is getting arrested
 - Are schools sensitive Location?
- Parental Custody Issues
 - Request copy of court order
 - Who maintains the education rights?

- Display PIA sign in office
- Receive the request
- Ask for clarification
 - If request was via email, clarification may be requested through email.
 - If no response to clarification email in 61 days, request considered to be withdrawn.
- Discuss how the scope of the request might be narrowed
- Calculate deadlines
- Ask for proper ID

- How do we provide the information?
- Can we charge for it?
 - How much?
- What if it is already on our website?
- What if we don't have the requested information?
- What if we don't respond?

Charging for Public Information

All charges for public information must be calculated in accordance with the OAG's cost rules. A GB can exceed the OAG's cost rules by up to 25% if necessary to cover its costs. **Can charge for employee time or overtime.**

Sample Charges

- \$.10 per hard copy page
- Labor and overhead charges for more than 50 pages
- Programming, data manipulation, and processing charges
- Charges for inspection in certain situations

Waivers or Reductions

- At the GB's discretion
- Based on "public interest" standard

Statement of Estimated Charges

- Must be provided if the charges will exceed \$40.00
- Must advise of the requestor of a less expensive way, if any
- Contain notice that the request will be considered withdrawn if the request does not respond in writing within 10 business days

The GB must provide an updated statement of estimated charges if the GB determines that the actual cost will be more than 20% of the original estimate.

2016 PIA Handbook:

**Office of the Attorney General
Support Services Division
Opinion Library
Post Office Box 12548
Austin, Texas 78711-2548
(512) 936-1730**

<https://www.texasattorneygeneral.gov/og/open-government-related-publications>

- Open Government Hotline:
877-OPEN TEX
(or 512- 478-6736)
- Costs Rules Administrator:
888ORCOSTS
(or 512-475-2497)
- Annual OAG's Open Government Conference, Austin, TX

Records Retention



Each open-enrollment charter school must have 3 things in place to be compliant with the Local Government Records Act:

- Records Management Policy
- Records Management Officer
- Records Control Schedule

- Policy must be approved by the governing body and on file with the Texas State Library & Archives Commission (TSLAC).
- We recommend charter schools use Policy Model #4:
 - <http://www.tsl.state.tx.us/slrm/recordspubs/forms/pm4.doc>

Records Management Officer

- A Records Management Officer (RMO) appointment form or letter needs to be on file with TSLAC.
- The Records Management policy specifies the position responsible for records management, e.g. the superintendent or business manager.

Records Control Schedule

- A Records Control Schedule must be approved by TSLAC. The school can either
 - develop their own schedule OR
 - adopt TSLAC schedules

To develop own schedule, use forms
SLR500 and SLR 540

- all records series are listed along with the retention period for each
- The retention period must be at least as long as those found in the TSLAC schedules on our website

- To adopt TSLAC schedules,
 - use form SLR508: Declaration of Compliance.
 - Charter Schools would select Local schedules GR and SD.
 - link to the form:
 - <http://www.tsl.state.tx.us/slrm/recordspubs/forms/slr508.doc>

Example Schedule Timeframes

Record Description	Retention Period
Academic Records, grades 9-12	Permanent
Academic Records, grades 5-8	Date of withdrawal + 5 years
Enrollment/Registration Forms	Date of withdrawal + 5 years
Records of Access to Information	2 years to permanent
Attendance Control Documentation	2 years
Attendance Reports submitted to TEA	5 years
PIEMS data	5 years
Financial Records	Fiscal Year + 3 years

Source: Arann Sheperd

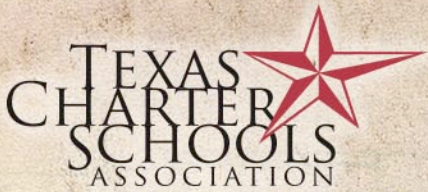
Government Information Analyst

Texas State Library & Archives Commission

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Additional Questions?

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