

Council Members' Right of Access

An Examination of Ethical Implications

June 25, 2026

TCAA Summer Conference
Moody Gardens Galveston



The ***Gwosdz***
Law Firm, PLLC
Helping Our Neighbors Build Better Communities

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Who am I?



Thomas A. Gwosdz

- 20+ yrs. representing local gov'ts.
- *Go Home Early*, "The Executive Summary"
- Frequent speaker at statewide conferences

A New Right of Access

H.B. 4310 (2025)

(a) A member ... may ... inspect and duplicate public information maintained by the governmental body ... if the member is acting in the member's official capacity.

(b) Public information requested under this section shall be provided to the member promptly and without charge.

“New?”

Since the governmental body -- in this instance, the board of trustees of the district -- at least constructively maintains records in the district's possession, we believe it logically follows that a member of that board has an inherent right of access to such records, at least when he requests them in his official capacity.

Tex. Att'y Gen. Op. No. JM-119 (1983).

“New?”

Since the governmental body -- in this instance, the board of trustees of the district -- at least constructively maintains records in the district's possession, we believe it logically follows that a member of that board has an inherent right of access to such records, at least when he requests them in his official capacity.

Tex. Att'y Gen. Op. No. JM-119 (1983).

Everything Old is New Again.

...we conclude here that members of the board have an inherent right of access to all information in the personnel files of the board including confidential information, when they request access to the files in their official capacity.

Tex. Att'y Gen. LO-93-69.

Everything Old is New Again.

...we conclude here that members of the board have an inherent right of access to all information in the personnel files of the board including confidential information, when they request access to the files in their official capacity.

Tex. Att'y Gen. LO-93-69.

To Everything, There is a Season. *(turn, turn, turn)*

...the bill author has informed the committee that members of governing boards have faced challenges in accessing certain public information necessary for informed decision-making, especially when the information is deemed confidential.

Bill Analysis for H.B. 4310.

The State of Affairs – before 2025

Official Capacity

- Access as necessary for oversight responsibility
- TPIA deadlines don't apply
- Fiduciary duty to protect

Individual Capacity

- Exceptions, opinions, and redactions apply
- TPIA deadlines apply
- No restriction on subsequent use

The 2025 Changes

Official Capacity

- Access ~~as necessary for oversight responsibility~~
- TPIA deadlines ~~don't~~ apply
- ~~Fiduciary duty to~~ protect with permissive redactions and confidentiality agreements

Individual Capacity

- Exceptions, opinions, and redactions apply
- TPIA deadlines apply
- No restriction on subsequent use

Ethical Consideration: A-C Privilege

Information subject to attorney-client privilege is not subject to disclosure to a member of a governing board under this section unless the attorney-client relationship upon which the privilege is based applies to the member.

Tex. Gov't Code § 552.403(d)

The State of Affairs – before 2025

Official Capacity

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Individual Capacity

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- TPIA deadlines apply
- No restriction on subsequent use

Ethical Consideration: Atty Work Product

If, however, a governmental body seeks to withhold information on the sole basis that the information is work product, section 552.103 is not the proper exception to claim. Rather, such an assertion is properly made under the section 552.111 exception.

Open Records Decision No. 677 (2002)

Discretionary Withholdings?

§ 552.120. Exception: Confidentiality of Certain Rare Books and Original Manuscripts

A rare book or original manuscript ... is excepted from the requirements of Section 552.021.

§ 552.1176. Confidentiality of Certain Information Maintained by State Bar

(a) Information maintained under Chapter 81 is confidential and may not be disclosed to the public under this chapter if...

Trey's Law

Any provision of a nondisclosure or confidentiality agreement ... is void and unenforceable ... to the extent the provision prohibits a person, including a party, from disclosing an act of sexual abuse or facts related to an act of sexual abuse to any other person.

Tex. Civ. Prac. & Rem. § 129C.002.

Model Confidentiality Agreement

- City will mark parts of documents deemed confidential
- City will deliver requested information promptly and without charge
- Member will keep information confidential
- Member will return confidential information at end of term
- Agreement renewable within 15 days after reelection

Questions?
Comments?
Concerns?



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