

County Clerk



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

Dear Fellow Texans:

Founding Father James Madison once wrote that democracy without information was "but prologue to a farce or a tragedy," and he regarded the diffusion of knowledge as "the only guardian of true liberty." Texas law has long agreed the inherent right of Texans to govern themselves depends on their ability to observe how public officials conduct the people's business. The Texas Open Meetings Act was enacted to ensure the Texas government is transparent, open, and accountable to the people.

At its core, the Texas Open Meetings Act requires government entities to keep official business accessible to the public. The *Open Meetings Act Handbook* helps public officials comply with the provisions of the Texas Open Meetings Act and familiarizes our citizens with using the Open Meetings Act as a resource for obtaining information about their government. The handbook is available online and as a printable document at www.texasattorneygeneral.gov/openmeetings_hb.pdf.

As Attorney General, I am proud of my office's efforts to promote open government. We have established an Open Government Hotline for anyone seeking a better understanding of their rights and responsibilities under the law. The toll-free number is 877-OPEN TEX (877-673-6839).

Public access to the proceedings and decision-making processes of government is essential to a properly functioning and free state. It is my sincere hope that this handbook will make it easier for public officials and citizens to understand and comply with the Texas Open Meetings Act.

Best regards,

A handwritten signature in black ink that reads "Ken Paxton".

Ken Paxton
Attorney General of Texas

THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS
OPEN MEETINGS ACT *Handbook 2024*

III. Noteworthy Judicial Decisions Since 2022 Handbook

A. Judicial Decisions

In *Pete v. Dunn*, a federal district court clarified that individuals cannot generally assert claims for monetary damages for violations of the Act.⁴⁵ The *pro-se* plaintiff, Pete, filed a claim in federal district court that the Beaumont Independent School District's adoption of a mask mandate violated the 1st and 14th Amendments.⁴⁶ To these claims, he joined a state-law claim seeking monetary damages from the school board for violating the Act.⁴⁷ The court dismissed his Open Meetings Act claim as lacking "facial plausibility" under federal pleading rules.⁴⁸ The court added that Pete could not "assert a claim for monetary damages for violations of [the Act]" because the relief provided for by the Act was injunctive.⁴⁹ The court concluded the statute which Pete claimed was violated did not allow for damages and his pleading failed to state a claim for which relief could be granted.⁵⁰

In *Hardy v. Carthage Independent School District*, a federal district court ruled on the scope of section 551.146 of the Act, which makes it an offense to knowingly disclose the certified agenda or recording of a closed meeting.⁵¹ Hardy filed an employment discrimination lawsuit against his former employee, the school district.⁵² During the deposition of a school board member, the school district's counsel objected to a line of questioning related to discussions between board members at a closed meeting.⁵³ Counsel advised the board member not to answer questions on the substance of the closed meeting invoking the criminal penalty in section 551.146.⁵⁴ The court stated that section 551.146 "is not a blanket prohibition against testifying about conversations occurring in a closed meeting, it merely penalizes disclosure of the certified agenda or recording—nothing more."⁵⁵ Noting that the plain language of section 551.146 limits its application to the agenda and recording, the court declined to expand its scope beyond its plain meaning.⁵⁶

In *Burleson v. Collin County Community College District*, the Dallas Court of Appeals considered who constitutes an "interested person" in section 551.142, which sets out who has standing to sue for a violation under the Act.⁵⁷ In connection with the plaintiffs' claims, the court had the

opportunity to address disagreement among Texas appellate courts.⁵⁸ Noting that only one Texas court requires a plaintiff to allege a particular injury or damage, the court recognized the majority view is that the Act "broadly confers standing on any person who shares an injury in common with the general public."⁵⁹ Agreeing with the majority view, the court said "[i]t makes little sense to require a plaintiff to demonstrate an injury distinct from the general public when 'the interest protected by the Open Meetings Act is the interest of the general public.'"⁶⁰

In *State ex rel. Durden v. Shahan*, the Texas Supreme Court addressed the scope of "interested person" in section 551.142 of the Act in a different context.⁶¹ Durden filed three separate cases in his official capacity as county attorney on behalf of the State of Texas, two of which involved violations of the Act.⁶² He argued that because Government Code subsection 311.005(2), the Code Construction Act, defines "person" to include a "governmental subdivision or agency," that he—acting as county attorney on the state's behalf—qualified as an "interested person" under the Act.⁶³ The court rejected the argument because he "purported to file the [] suits on behalf of the state, not on behalf of a governmental subdivision or agency."⁶⁴ The court said it found nothing in the Act or in the Code Construction Act "to support the notion that the state itself qualifies as an 'interested person.'"⁶⁵ The Court referred to the Legislature's 2019 amendment of section 551.142, which authorizes the attorney general to bring certain actions related to the enforcement of one of the Act's provisions and observed that such change would have been unnecessary and meaningless if an "interested person" included the state.

In an unpublished opinion, *In re City of Amarillo*, the Amarillo Court of Appeals held a meeting notice failed to substantially comply with the Act.⁶⁶ The case involved a taxpayer's suit against the City of Amarillo challenging the city's plan to pay for renovations and expansion of its civic center complex.⁶⁷ For context, the city's voters had previously voted against a \$275 million bond proposition regarding the civic center complex, and the city was precluded from issuing certificates of obligation to fund the project for three years.⁶⁸ The city worked on a plan involving several proposed ordinances to generate \$260.525 million by other financing mechanisms not requiring voter approval.⁶⁹ The court considered meeting notice issues with respect one of the ordinances.⁷⁰ The notice vaguely recited "the discussion and consideration of an ordinance authorizing the issuance of the City of Amarillo, Texas Combination Tax and Revenue Notes, Series 2022A

⁴⁵ *Pete v. Dunn*, No. 1:21-CV-546, 2022 WL 2032306 (E.D. Tex. May 11, 2022).

⁴⁶ *Id.* at *1.

⁴⁷ *Id.* at *5-6.

⁴⁸ *Id.* at 5.

⁴⁹ *Id.* at 6.

⁵⁰ *Id.*

⁵¹ *Hardy v. Carthage Indep. Sch. Dist.*, No. 2:19-CV-00277, 2022 WL 609151 (E.D. Tex. Mar. 1, 2022).

⁵² *Id.* at *1.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at *2 (noting that its interpretation of section 551.146 is "further corroborated by" Attorney General Opinion JM-1071, which construed section 551.146's statutory predecessor to not prohibit persons present at an executive session from afterwards talking about the subject matter of the session).

⁵⁷ *Burleson v. Collin Cnty. Cmty. Coll. Dist.*, No. 05-21-00088-CV, 2022 WL 17817965 (Tex. App.—Dallas Dec. 20, 2022, no pet. h.) (mem. op.).

⁵⁸ *Id.* at *9.

⁵⁹ *Id.* (citing *Dallas Indep. Sch. Dist. v. Peters*, No. 05-14-00759-CV, 2015 WL 8732420, at *9 (Tex. App.—Dallas Dec. 14, 2015, pet. denied) (mem. op.)).

⁶⁰ *Id.* (quoting *Save Our Springs All., Inc. v. Lowry*, 934 S.W.2d 161, 163 (Tex. App.—Austin 1996, orig. proceeding (leave denied))).

⁶¹ *State ex rel. Durden v. Shahan*, 658 S.W.3d 300 (Tex. 2022).

⁶² *Id.* at 302.

⁶³ *Id.* at 303-04.

⁶⁴ *Id.*

⁶⁵ *Id.* at 304.

⁶⁶ *In re City of Amarillo*, No. 07-22-00341-CV, 2023 WL 5279473, at *5 (Tex. App.—Amarillo Aug. 16, 2023, no pet. h.) (mem. op.).

⁶⁷ *Id.* at *1.

⁶⁸ *See id.*

⁶⁹ *See id.*

⁷⁰ *See id.* at *1-2.

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resolving other matters incident and related thereto including the approval of a paying agent/registrant agreement and a purchase contract.⁷¹ Citing two prior Texas Supreme Court cases, the court first considered whether the notice's description of the ordinance required a higher degree of specificity due to any special interest of the public.⁷² Then it considered the adequacy of the notice.⁷³

In concluding the issue was one of special interest to the public such that the notice required more detail, the court noted that the project had occupied over a decade of the city's time and that the proposed financing "would have an effect to be felt for years to come."⁷⁴ The court was particularly troubled by the fact that the issue had been submitted to—and rejected by—the voters less than two years earlier.⁷⁵ The court also observed that the notice did not adequately inform the public that the purpose of the alternative financing vehicle was to revive the "previously-voter-rejected civic center project."⁷⁶ The court recognized that notice under the Act need not state all the consequences that might flow from an action, but criticized the city's vague description of the financing vehicles and its omission from the notice of the its intent to finance more than a quarter-billion dollars.⁷⁷ Lastly, the court noted the notice was "patently incorrect" and misled the public by suggesting that the debt would be secured by a "combination of taxes and revenue" instead of solely by ad valorem taxes as provided by the actual executed ordinance and finance documents.⁷⁸

Lastly, the court also considered and disregarded the city's argument that a citizen's appearance at the city council meeting "refuted" any conclusion that the notice was deficient.⁷⁹ The court asked whether attendance by one citizen excused the city's obligations to its other citizens.⁸⁰ The court concluded the notice did not substantially comply with the Act and found the ordinance void.⁸¹

⁷¹ *Id.* at *2.

⁷² See *id.* at *4–5 (relying on *Cox Enters., Inc. v. Bd. of Trs.*, 706 S.W.2d 956 (Tex. 1986) and *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762, 763 (Tex. 1991)).

⁷³ See *id.* at *5–6.

⁷⁴ *Id.* at *5.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ See *id.* at *6 (disagreeing with the city's position that the Act is satisfied "so long as the notice mentions possible debt issuance of some amount" when the debt was anticipated to be in excess of \$260 million).

⁷⁸ *Id.* at *3, 6.

⁷⁹ See *id.* at *6.

⁸⁰ *Id.*

⁸¹ See *id.*

IV. Training for Members of Governmental Bodies

Section 551.005 requires each elected or appointed public official who is a member of a governmental body subject to the Act to complete a course of training addressing the member's responsibilities under the Act. The public official must complete the training not later than the 90th day after taking the oath of office, if required to take an oath to assume duties as a member of the governmental body, or after the public official otherwise assumes these duties if the oath is not required.

Completing training as a member of the governmental body satisfies the training requirements for the member's service on a committee or subcommittee of the governmental body and ex officio service on any other governmental body. The training may also be used to satisfy any corresponding training requirements concerning the Act that another law requires members of a governmental body to complete. The failure of one or more members of a governmental body to complete the training does not affect the validity of an action taken by the governmental body.

The attorney general is required to ensure that the training is made available, and the attorney general's office may provide the training and may approve any acceptable training course offered by a governmental body or other entity. The attorney general must also ensure that at least one course approved or provided by the attorney general's office is available at no cost on videotape, DVD, or a similar and widely available medium.⁸²

The training course must be at least one and no more than two hours long and must include instruction on the following subjects:

- (1) the general background of the legal requirements for open meetings;
- (2) the applicability of this chapter to governmental bodies;
- (3) procedures and requirements regarding quorums, notice and recordkeeping under this chapter;
- (4) procedures and requirements for holding an open meeting and for holding a closed meeting under this chapter;
- (5) penalties and other consequences for failure to comply with this chapter.⁸³

The entity providing the training shall provide a certificate of completion to public officials who complete the training course. A governmental body shall maintain and make available for public inspection the record of its members' completion of training. A certificate of course completion is

⁸² An Open Meetings Act training video is available online at <https://www.texasattorneygeneral.gov/open-government/open-meetings-act-training>.

⁸³ In its review of Open Meetings Act training materials submitted for approval, the Office of the Attorney General considers whether the written materials demonstrate that each subject is accurately and sufficiently covered. Materials may be submitted for review at <https://www.texasattorneygeneral.gov/open-government/online-training-application-approval>.

VII. Notice Requirements

A. Content

The Act requires written notice of all meetings. Section 551.041 of the Act provides:

A governmental body shall give written notice of the date, hour, place, and subject of each meeting held by the governmental body.²¹⁷

A governmental body must give the public advance notice of the subjects it will consider in an open meeting or a closed executive session.²¹⁸ The Act does not require the notice of a closed meeting to cite the section or subsection numbers of provisions authorizing the closed meeting.²¹⁹ No judicial decision or attorney general opinion states that a governmental body must indicate in the notice whether a subject will be discussed in open or closed session,²²⁰ but some governmental bodies do include this information. If the notices posted for a governmental body's meetings consistently distinguish between subjects for public deliberation and subjects for executive session deliberation, an abrupt departure from this practice may raise a question as to the adequacy of the notice.²²¹

Governmental actions taken in violation of the notice requirements of the Act are voidable.²²² If some actions taken at a meeting do not violate the notice requirements while others do, only the actions in violation of the Act are voidable.²²³ (For a discussion of the voidability of the governmental body's actions, refer to Part XI.C. of this Handbook).

B. Sufficiency

The notice must be sufficient to apprise the general public of the subjects to be considered during the meeting. In *City of San Antonio v. Fourth Court of Appeals*,²²⁴ the Texas Supreme Court considered whether the following item in the notice posted for a city council meeting gave sufficient notice of the subject to be discussed:

²¹⁷ *Id.* § 551.041.

²¹⁸ *Cox Enters., Inc. v. Bd. of Trs.*, 706 S.W.2d 956, 958 (Tex. 1986); *Porth v. Morgan*, 622 S.W.2d 470, 475–76 (Tex. App.—Tyler 1981, writ ref'd n.r.e.); but see TEX. GOV'T CODE § 551.091(b), (c) (authorizing county commissioners court in limited circumstances involving a governor-declared disaster or emergency to hold a meeting “without complying with the requirements” of chapter 551 but requiring such county to post “reasonable public notice” to the “extent practicable under the circumstances.”).

²¹⁹ See *Reitberg v. Tex. Dep't of Health*, 873 S.W.2d 408, 411–12 (Tex. App.—Austin 1994, no writ); Tex. Att'y Gen. Op. No. GA-0511 (2007) at 4.

²²⁰ Tex. Att'y Gen. Op. No. JC-0057 (1999) at 5; Tex. Att'y Gen. LO-90-27 (1990) at 1.

²²¹ Tex. Att'y Gen. Op. No. JC-0057 (1999) at 5; see also *Marey v. Tex. Webb Cnty.*, No. 5:18-CV-121, 2020 WL 619902, at *4–5 (S.D. Tex. Feb. 10, 2020) (discussing a county's retreat from its custom of providing adequate notice).

²²² TEX. GOV'T CODE § 551.141.

²²³ *Pointr Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176, 182–83 (Tex. App.—Corpus Christi 1990, writ denied).

²²⁴ *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 162 (Tex. 1991).

An Ordinance determining the necessity for and authorizing the condemnation of certain property in County Blocks 4180, 4181, 4188, and 4297 in Southwest Bexar County for the construction of the Applewhite Water Supply Project.²²⁵

A property owner argued that this notice item violated the subject requirement of the statutory predecessor to section 551.041 because it did “not describe the condemnation ordinance, and in particular the land to be condemned by that ordinance, in sufficient detail” to notify an owner reading the description that the city was considering condemning the owner's land.²²⁶ The Texas Supreme Court rejected the argument that the notice be sufficiently detailed to notify specific owners that their tracts might be condemned. The Court explained that the “Open Meetings Act is not a legislative scheme for service of process; it has no due process implications.”²²⁷ Its purpose was to provide public access to and increase public knowledge of the governmental decision-making process.²²⁸

The Court held that the condemnation notice complied with the Act because the notice apprised the public at large in general terms that the city would consider the condemnation of certain property in a specific area for purposes of the Applewhite project. The Court also noted that the description would notify a landowner of property in the four listed blocks that the property might be condemned, even though it was insufficient to notify an owner that his or her tracts in particular were proposed for condemnation.²²⁹

In *City of San Antonio v. Fourth Court of Appeals*, the Texas Supreme Court reviewed its earlier decisions on notice.²³⁰ In *Texas Turnpike Authority v. City of Fort Worth*,²³¹ the Court had addressed the sufficiency of the following notice for a meeting at which the turnpike authority board adopted a resolution approving the expansion of a turnpike: “Consider request . . . to determine feasibility of a bond issue to expand and enlarge [the turnpike].”²³² Prior resolutions of the board had reflected the board's intent to make the turnpike a free road once existing bonds were paid. The Court found the notice sufficient, refuting the arguments that the notice should have included a copy of the proposed resolution, that the notice should have indicated the board's proposed action was at variance with its prior intent, or that the notice should have stated all the consequences that might result from the proposed action.²³³

²²⁵ *Id.* at 764.

²²⁶ *Id.*

²²⁷ *Id.* at 765 (quoting *Acker v. Tex. Water Comm'n*, 790 S.W.2d 299, 300 (Tex. 1990)); see *Reitberg*, 873 S.W.2d at 413 (holding that the Act does not entitle the executive secretary of a state agency to special notice of a meeting where his employment was terminated); *Stockdale v. Meno*, 867 S.W.2d 123, 125 (Tex. App.—Austin 1993, writ denied) (holding that Act does not entitle a teacher whose contract was terminated to more specific notice than notice that would inform the public at large).

²²⁸ *Fourth Court of Appeals*, 820 S.W.2d at 765.

²²⁹ *Id.* at 765–66.

²³⁰ *Id.* at 765.

²³¹ *Tex. Tpk. Auth. v. City of Fort Worth*, 554 S.W.2d 675 (Tex. 1977).

²³² *Id.* at 676.

²³³ *Id.*; see also *Charlie Thomas Ford, Inc. v. A.C. Collins Ford, Inc.*, 912 S.W.2d 271, 274 (Tex. App.—Austin 1995, writ dismissed) (holding that notice stating “Proposals for Decision and Other Actions—License and Other Cases” was sufficient to apprise the public that Motor Vehicle Commission would consider proposals for decision in dealer licensing cases); *Washington v. Burley*, 930 F. Supp. 2d 790, 807 (S.D. Tex. 2013).

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In *Lower Colorado River Authority v. City of San Marcos*,²³⁴ the Texas Supreme Court found sufficient a Lower Colorado River Authority Board notice providing "ratification of the prior action of the Board taken on October 19, 1972, in response to changes in electric power rates for electric power sold within the boundaries of the City of San Marcos, Texas."²³⁵ "Although conceding that the notice was 'not as clear as it might be,'" the Court held that it complied with the Act "because 'it would alert a reader to the fact that some action would be considered with respect to charges for electric power sold in San Marcos.'"²³⁶

The Texas Supreme Court noted that in *Cox Enterprises, Inc. v. Board of Trustees*²³⁷ "we finally held a notice inadequate."²³⁸ In the *Cox Enterprises* case, the Court held insufficient the notice of a school board's executive session that listed only general topics such as "litigation" and "personnel."²³⁹ One of the items considered at the closed session was the appointment of a new school superintendent. The Court noted that the selection of a new superintendent was not in the same category as ordinary personnel matters, because it is a matter of special interest to the public; thus, the use of the term "personnel" was not sufficient to apprise the general public of the board's proposed selection of a new superintendent. The Court also noted that "litigation" would not sufficiently describe a major desegregation suit that had occupied the district's time for a number of years.²⁴⁰

(determining that notice indicating that school board would "[c]onsider recommendation to propose the termination of the . . . employment of the . . . Chief of Police" was sufficient to inform the public that the board would actually be terminating police chief's employment and that "the notice need not state all of the possible consequences resulting from consideration of the topic"); *City of San Angelo v. Tex. Nat. Res. Conservation Comm'n*, 92 S.W.3d 624, 630 (Tex. App.—Austin 2002, no pet.) (recognizing that "consideration" necessarily encompasses action and stating that the word "consideration alone was sufficient to put the general public on notice that the Commission might act during the meeting"); but see *Save Our Springs All, Inc. v. City of Dripping Springs*, 304 S.W.3d 871, 890 (Tex. App.—Austin 2010, pet. denied) (considering sufficiency of notice about development agreements and recognizing that a notice listing all possible consequences could overwhelm, rather than inform, the reader).

²³⁴ *Lower Colo. River Auth. v. City of San Marcos*, 523 S.W.2d 641 (Tex. 1975).

²³⁵ *Id.* at 646.

²³⁶ *Fourth Court of Appeals*, 820 S.W.2d at 765 (quoting *Lower Colo. River Auth.*, 523 S.W.2d at 646).

²³⁷ *Cox Enters. Inc. v. Bd. of Trs.*, 706 S.W.2d 956 (Tex. 1986).

²³⁸ *Fourth Court of Appeals*, 820 S.W.2d at 765 (describing its opinion in *Cox Enterprises*); see also *Lugo v. Donna Indep. Sch. Dist. Bd. of Trs.*, 557 S.W.3d 93, 98 (Tex. App.—Corpus Christi 2017, no pet.) (holding that an agenda item notifying the public that the board would discuss a special election to fill board vacancies by a special election did not give notice that the board would appoint replacement trustees to the board vacancies).

²³⁹ *Cox Enters. Inc.*, 706 S.W.2d at 959.

²⁴⁰ *Id.*; see also *Mayes v. City of De Leon*, 922 S.W.2d 201, 203 (Tex. App.—Eastland 1996, writ denied) (determining that "personnel" was not sufficient notice of termination of police chief); *Stockdale*, 867 S.W.2d at 124–25 (holding that "discussion of personnel" and "proposed nonrenewal of teaching contract" provided sufficient notice of nonrenewal of band director's contract); *Lone Star Greyhound Park, Inc. v. Tex. Racing Comm'n*, 863 S.W.2d 742, 747 (Tex. App.—Austin 1993, writ denied) (indicating that notice need not list "the particulars of litigation discussions," which would defeat purpose of statutory predecessor to section 551.071 of the Government Code); *Point Isabel Indep. Sch. Dist.*, 757 S.W.2d at 182 (holding that "employment of personnel" is insufficient to describe hiring of principals, but is sufficient for hiring school librarian, part-time counselor, band director, or school teacher); *In re City of Amarillo*, No. 07-22-00341-CV, 2023 WL 5279473, at *5 (Tex. App.—Amarillo Aug. 16, 2023, no pet. h.) (mem. op.) (concluding notice of a city's intention to issue funding notes for a civic center project required more detail due to increased public interest given the amount of time the city had previously devoted to the project and the fact that voters had previously rejected funding for the project); Tex. Att'y Gen. Op. No. H-1045 (1977) at 5 (concluding "discussion of personnel changes" insufficient to describe selection of university system chancellor or university president).

"If the facts as to the content of a notice are undisputed, the adequacy of the notice is a question of law."²⁴¹ The courts examine the facts to determine whether a particular subject or personnel matter is sufficiently described or requires more specific treatment because it is of special interest to the community.²⁴² Consequently, counsel for the governing body should be consulted if any doubt exists concerning the specificity of notice required for a particular matter.

In *City of Donna v. Ramirez*, a court of appeals considered a meeting notice indicating a cancelled meeting.²⁴³ The meeting notice of the Donna city council posted outside city hall had the word "cancelled" written on it, but the notices posted online and inside the city hall did not.²⁴⁴ The meeting occurred and the notice was challenged.²⁴⁵ The court held the notice violated section 551.041's requirement that a governmental body give written notice of the date, hour, place, and subject of each meeting and section 551.043's requirement that the notice be posted at least 72 hours before the meeting.

C. Generalized Terms

Generalized terms such as "old business," "new business," "regular or routine business," and "other business" are not proper terms to give notice of a meeting because they do not inform the public of its subject matter.²⁴⁶ The term "public comment," however, provides sufficient notice of a "public comment" session, where the general public addresses the governmental body about its concerns and the governmental body does not comment or deliberate, except as authorized by section 551.042 of the Government Code.²⁴⁷ "Public comment" will not provide adequate notice if the governmental body is, prior to the meeting, aware, or reasonably should have been aware, of specific topics to be raised.²⁴⁸ When a governmental body is responsible for a presentation, it can easily give notice of its subject matter, but it usually cannot predict the subject matter of public comment sessions.²⁴⁹ Thus, a meeting notice stating "Presentation by [County] Commissioner" did not provide adequate notice of the presentation, which covered the commissioner's views on development and substantive policy issues of importance to the county.²⁵⁰ The term "presentation"

the project); Tex. Att'y Gen. Op. No. H-1045 (1977) at 5 (concluding "discussion of personnel changes" insufficient to describe selection of university system chancellor or university president).

²⁴¹ *Burks v. Yarbrough*, 157 S.W.3d 876, 883 (Tex. App.—Houston [14th Dist.] 2005, no pet.); see also *Friends of Canyon Lake, Inc. v. Guadalupe-Blanco River Auth.*, 96 S.W.3d 519, 529 (Tex. App.—Austin 2002, pet. denied).

²⁴² *River Rd. Neighborhood Ass'n v. S. Tex. Sports*, 720 S.W.2d 551, 557 (Tex. App.—San Antonio 1986, writ denied) (concluding that notice stating only "discussion" is insufficient to indicate board action is intended, given prior history of stating "discussion/action" in agenda when action is intended).

²⁴³ *City of Donna v. Ramirez*, 548 S.W.3d 26, 35–36 (Tex. App.—Corpus Christi 2017, pet. denied).

²⁴⁴ See *id.* at 33.

²⁴⁵ See *id.*

²⁴⁶ Tex. Att'y Gen. Op. No. H-662 (1975) at 3.

²⁴⁷ Tex. Att'y Gen. Op. No. JC-0169 (2000) at 4; see Tex. Gov't Code § 551.042 (providing that governmental body may respond to inquiry about subject not on posted notice by stating factual information, reciting existing policy or placing subject of inquiry on agenda of future meeting).

²⁴⁸ Tex. Att'y Gen. Op. No. JC-0169 (2000) at 4.

²⁴⁹ *Id.*

²⁵⁰ *Hays Cnty. Water Plan. P'ship v. Hays Cnty.*, 41 S.W.3d 174, 180 (Tex. App.—Austin 2001, pet. denied).

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was vague; moreover, it was noticed for the "Proclamations & Presentations" portion of the meeting, which otherwise consisted of formalities.²⁵¹

Attorney General Opinion GA-0668 (2008) had previously determined that notice such as "City Manager's Report" was not adequate notice for items similar to those included in section 551.0415 and that the subject of a report by a member of the city staff or governing body must be included in the notice in a manner that informs a reader about the subjects to be addressed. Section 551.0415, modifying Attorney General Opinion GA-0668, authorizes a quorum of the governing body of a municipality or county to receive reports about items of community interest during a meeting without having given notice of the subject of the report if no action is taken.²⁵² Section 551.0415 defines an "item of community interest" to include:

- (1) expressions of thanks, congratulations, or condolence;
- (2) information regarding holiday schedules;
- (3) an honorary or salutary recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in status of a person's public office or public employment is not an honorary or salutary recognition for purposes of this subdivision;
- (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 member of the governing body or an official or employee of the political subdivision; and
- (6) announcements involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posting of the agenda.²⁵³

D. Time of Posting

Notice must be posted for a minimum length of time before each meeting. Section 551.043(a) states the general time requirement as follows:

The notice of a meeting of a governmental body must be posted in a place readily accessible to the general public at all times for at least 72 hours before the scheduled time of the meeting, except as provided by Sections 551.044–551.046.²⁵⁴

²⁵¹ *Id.* at 180 (citing Tex. Att'y Gen. Op. No. JC-0169 (2000)).

²⁵² TEX. GOV'T CODE § 551.0415(a).

²⁵³ *Id.* § 551.0415(b).

²⁵⁴ *Id.* § 551.043(a).

XI. Penalties and Remedies

A. Introduction

The Act provides civil remedies and criminal penalties for violations of its provisions. District courts have original jurisdiction over criminal violations of the Act as misdemeanors involving official misconduct.⁴⁵² As a general matter, the Act does not authorize the attorney general to enforce its provisions.⁴⁵³ However, a district attorney, criminal district attorney or county attorney may request the attorney general's assistance in prosecuting a criminal case, including one under the Act.⁴⁵⁴

B. Mandamus or Injunction

Section 551.142 of the Act provides as follows:

- (a) An interested person, including a member of the news media, may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of this chapter by members of a governmental body.
- (b) The court may assess costs of litigation and reasonable attorney fees incurred by a plaintiff or defendant who substantially prevails in an action under Subsection (a). In exercising its discretion, the court shall consider whether the action was brought in good faith and whether the conduct of the governmental body had a reasonable basis in law.⁴⁵⁵

Texas courts examining this provision have said that "[t]he Open Meetings Act expressly waives sovereign immunity for violations of the [A]ct."⁴⁵⁶ The four-year limitations period in section 16.051 of the Civil Practices and Remedies Code applies to an action under this provision.⁴⁵⁷

Generally, a writ of mandamus would be issued by a court to require a public official or other person to perform duties imposed on him or her by law. A mandamus ordinarily commands a person or entity to act, while an injunction restrains action.⁴⁵⁸ The Act does not automatically confer jurisdiction on the county court, but where the plaintiff's money demand brings the amount

⁴⁵² See *State v. Williams*, 780 S.W.2d 891, 892–93 (Tex. App.—San Antonio 1989, no writ).

⁴⁵³ See *State ex rel. Durden v. Shahan*, 658 S.W.3d 300, 304 (Tex. 2022) (acknowledging the Legislature's 2019 amendment to section 551.142 authorizing the attorney general to bring certain actions to enforce "one of [the Act's] provisions").

⁴⁵⁴ See TEX. GOV'T CODE § 402.028(a).

⁴⁵⁵ *Id.* § 551.142; see also *Burleson v. Collin Cnty. Cmty. Coll. Dist.*, No. 05-21-00088-CV, 2022 WL 17817965 (Tex. App.—Dallas Dec. 20, 2022) (noting the majority view of the Texas appellate courts is that the Act "broadly confers standing on any person who shares an injury in common with the general public"); *State ex rel. Durden*, 658 S.W.3d at 304 (concluding that "interested person" did not authorize a county attorney to file suit for a violation of the Act suit on behalf of the state).

⁴⁵⁶ *Hays Cnty. v. Hays Cnty. Water Plan. P'ship*, 69 S.W.3d 253, 257 (Tex. App.—Austin 2002, no pet.); see *Riley v. Comm'r's Court*, 413 S.W.3d 774, 776–77 (Tex. App.—Austin 2013, pet. denied).

⁴⁵⁷ *Rivera v. City of Laredo*, 948 S.W.2d 787, 793 (Tex. App.—San Antonio 1997, writ denied).

⁴⁵⁸ *Boston v. Garrison*, 256 S.W.2d 67, 69 (Tex. 1953).

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in controversy within the court's monetary limits, the county court has authority to issue injunctive and mandamus relief.⁴⁵⁹ Absent such a pleading, jurisdiction in original mandamus and original injunction proceedings lies in the district court.⁴⁶⁰

Section 551.142(a) authorizes any interested person, including a member of the news media, to bring a civil action seeking either a writ of mandamus or an injunction.⁴⁶¹ In keeping with the purpose of the Act, standing under the Act is interpreted broadly.⁴⁶² Standing conferred by the Act is broader than taxpayer standing, and a citizen does not need to prove an interest different from the general public, "because 'the interest protected by the Open Meetings Act is the interest of the general public.'"⁴⁶³ The phrase "any interested person" includes a government league,⁴⁶⁴ an environmental group,⁴⁶⁵ the president of a local homeowners group,⁴⁶⁶ a city challenging the closure of a hospital by the county hospital district,⁴⁶⁷ a town challenging annexation ordinances,⁴⁶⁸ and a city manager regarding a meeting he attended.⁴⁶⁹ A suspended police officer and a police officers' association were "interested persons" who could bring a suit alleging that the city council had violated the Act in selecting a police chief.⁴⁷⁰

Despite previous court opinions recognizing that an individual may bring a declaratory judgment action pursuant to the Uniform Declaratory Judgments Act, chapter 37 of the Texas Civil Practice and Remedies Code,⁴⁷¹ the Texas Supreme Court recently concluded that section 551.421's waiver of sovereign immunity includes only a mandamus or injunction.⁴⁷² Thus, a "declaration" that an action is void is no longer a vehicle by which to challenge a governmental body's action taken in violation of the Act.

⁴⁵⁹ *Martin v. Victoria Indep. Sch. Dist.*, 972 S.W.2d 815, 818 (Tex. App.—Corpus Christi 1998, pet. denied).

⁴⁶⁰ *Id.*

⁴⁶¹ TEX. GOV'T CODE § 551.142(a); see *Cameron Cnty. Good Gov't League v. Ramon*, 619 S.W.2d 224, 230–31 (Tex. App.—Beaumont 1981, writ ref'd n.r.e.).

⁴⁶² See *Burks v. Yarbrough*, 157 S.W.3d 876, 880 (Tex. App.—Houston [14th Dist.] 2005, no pet.); *Hays Cnty. Water Plan. P'ship v. Hays Cnty.*, 41 S.W.3d 174, 177 (Tex. App.—Austin 2003, no pet.).

⁴⁶³ See *Hays Cnty. Plan. P'ship*, 41 S.W.3d at 177–78 (quoting *Save Our Springs All., Inc. v. Lowry*, 934 S.W.2d 161, 163 (Tex. App.—Austin 1996, orig. proceeding [leave denied])).

⁴⁶⁴ See *Cameron Cnty.*, 619 S.W.2d at 230.

⁴⁶⁵ See *Save Our Springs All., Inc.*, 934 S.W.2d at 162–64.

⁴⁶⁶ *Id.*

⁴⁶⁷ *Matagorda Cnty. Hosp. Dist. v. City of Palacios*, 47 S.W.3d 96, 102 (Tex. App.—Corpus Christi 2001, no pet.).

⁴⁶⁸ *City of Port Isabel v. Pinnell*, 161 S.W.3d 233, 241 (Tex. App.—Corpus Christi 2005, no pet.).

⁴⁶⁹ *City of Donna v. Ramirez*, 548 S.W.3d 26, 34–35 (Tex. App.—Corpus Christi 2017, pet. denied).

⁴⁷⁰ *Rivera v. City of Laredo*, 948 S.W.2d 787, 792 (Tex. App.—San Antonio 1997, writ denied).

⁴⁷¹ *Bd. of Trs. v. Cox Enters., Inc.*, 679 S.W.2d 86, 88 (Tex. App.—Texarkana 1984), *aff'd in part, rev'd in part on other grounds*, 706 S.W.2d 956 (Tex. 1986) (recognizing news media's right to bring declaratory judgment action to determine if board violated the Act); see also *City of Fort Worth v. Groves*, 746 S.W.2d 907, 913 (Tex. App.—Fort Worth 1988, no writ) (concluding that resident and taxpayer of city had standing to bring suit for declaratory judgment and injunction against city for violation of the Act).

⁴⁷² *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 554 (Tex. 2019) (holding that section 551.142 set the boundaries of a governmental body's immunity waiver to the express relief provided therein—to that of an injunction or mandamus).

Section 551.142(b) authorizes a court to award reasonable attorney fees and litigation costs to the party who substantially prevails in an action brought under the Act.⁴⁷³ This relief, however, is discretionary.

In one instance, the Act gives the attorney general specific enforcement authority. Section 551.142(c) authorizes the attorney general, in a district court in Travis County, to seek mandamus or an injunction to stop, prevent, or reverse a violation or threatened violation of section 551.142(a-1), a provision which limits a governmental body's actions in an emergency meeting or one for which an emergency supplemental notice is posted.⁴⁷⁴

Depending on the nature of the violation, additional monetary damages may be assessed against a governmental body that violated the Act. In *Ferris v. Texas Board of Chiropractic Examiners*,⁴⁷⁵ the appellate court awarded back pay and reinstatement to an executive director whom the board had attempted to fire at two meetings convened in violation of the Act. Finally, at the third meeting held to discuss the matter, the board lawfully fired the executive director. Back pay was awarded for the period between the initial unlawful firing and the third meeting at which the director's employment was lawfully terminated.⁴⁷⁶

Court costs or attorney fees as well as certain other monetary damages can also be assessed under section 551.146, which relates to the confidentiality of the certified agenda. It provides that an individual, corporation or partnership that knowingly and without lawful authority makes public the certified agenda or recording of an executive session shall be liable for:

- (1) actual damages, including damages for personal injury or damage, lost wages, defamation, or mental or other emotional distress;
- (2) reasonable attorney fees and court costs; and
- (3) at the discretion of the trier of fact, exemplary damages.⁴⁷⁷

C. Voidability of a Governmental Body's Action in Violation of the Act; Ratification of Actions

Section 551.141 provides that "[a]n action taken by a governmental body in violation of this chapter is voidable."⁴⁷⁸ Before this section was adopted, Texas courts held as a matter of common law that a governmental body's actions that are in violation of the Act are subject to judicial

⁴⁷³ TEX. GOV'T CODE § 551.142(b); see *Austin Transp. Study Pol'y Advisory Comm. v. Sierra Club*, 843 S.W.2d 683, 690 (Tex. App.—Austin 1992, writ denied) (upholding award of attorney fees).

⁴⁷⁴ TEX. GOV'T CODE § 551.142(c).

⁴⁷⁵ *Ferris v. Tex. Bd. of Chiropractic Exam'rs*, 808 S.W.2d 514, 518–19 (Tex. App.—Austin 1991, writ denied).

⁴⁷⁶ *Id.* at 519 (awarding executive director attorney fees of \$7,500).

⁴⁷⁷ TEX. GOV'T CODE § 551.146(a)(2).

⁴⁷⁸ *Id.* § 551.141.

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A. REGULAR MEETING DATE: Tuesday August 22, 2023 MEETING TIME: 9:00 a.m.
MEETING PLACE: 2nd Floor Courtroom located at 220 S. Pierce, Burnet, Texas

1. Call to Order
2. Invocation and Pledge of Allegiance to the flags.
3. Public Comments. Any person with business before the Commissioner's Court not scheduled on the agenda may speak to the Court. No formal action can be taken on these items at this meeting. Comments regarding specific agenda items should occur when the item is called. There is a 2-minute speaking limit.

B. REGULAR MEETING DATE: Tuesday September 12, 2023 MEETING TIME: 9:00 a.m.
MEETING PLACE: 2nd Floor Courtroom located at 220 S. Pierce, Burnet, Texas

1. Call to Order
2. Invocation and Pledge of Allegiance to the flags.
3. Public Comments. Any person with business before the Commissioner's Court not scheduled on the agenda may speak to the Court. No formal action can be taken on these items at this meeting. Comments regarding specific agenda items should occur when the item is called. There is a 2-minute speaking limit.

C. REGULAR MEETING DATE: Tuesday September 26, 2023 MEETING TIME: 9:00 a.m.
MEETING PLACE: 2nd Floor Courtroom located at 220 S. Pierce, Burnet, Texas

1. Call to Order
2. Invocation and Pledge of Allegiance to the flags.
3. Public Comments – Pursuant to Texas Government Code 551.007 (b), any person may make comment on any item appearing on the agenda. Any comments made will not be addressed by the Commissioners Court during the Public Comments agenda items. Public Comments are limited to two minutes per person.

D. REGULAR MEETING DATE: Tuesday October 10, 2023 MEETING TIME: 9:00 a.m.
MEETING PLACE: 2nd Floor Courtroom located at 220 S. Pierce, Burnet, Texas

1. Call to Order
2. Invocation and Pledge of Allegiance to the flags.
3. Public Comments – Pursuant to Texas Government Code 551.007 (b), any person may make comment on any item appearing on the agenda. Any comments made will not be addressed by the Commissioners Court during the Public Comments agenda items. Public Comments are limited to three (3) minutes per person.