

Open Government

The Public Information Act and the Open Meetings Act are the backbone of our system of public accountability and public participation. Recent changes to the Act have pushed the public out of critical decisionmaking.



The Texas Public Information Act (PIA) gives citizens oversight of government officials. But recent changes to the Public Information Act and its interpretation by the courts, as well as amendments buried in other statutes, limit public participation in important decisions affecting regulatory, tax and other policy.

At the same time, improvements in the open records process by the 76th Legislature have significantly improved public access to certain information and these improvements should be retained. The most important improvements include:

- A faster Attorney General process for reviewing information when governmental bodies want to withhold it from the public;
- Better notice to citizens of their rights and responsibilities;
- Clarification that certain information is clearly public—like finalized reports, or expenditure records;
- Elimination of reconsideration; and

In Short

New exceptions to the Act and new court interpretations have limited public involvement in public decisions, including decisions to give incentives to corporations and decisions about the activities of city owned utilities. Information that directly affects the public and government policy should be open.

- An itemized estimate of charges.

These changes all help citizens get the information they need to understand, and participate, in government decisions.

Yet these

improvements are offset by the new exceptions and new court interpretations that limit access to key information.

The electric deregulation bill passed by the 76th Legislature created broad new secrecy provisions for municipal utilities even if they elect not to open local markets to competition. Since passage of this enabling legislation, every public utility has closed its records although none have elected to join the competitive market.

Other legislation allowed public officials to negotiate tax and other public incentives with corporations in secret. It is vital that information that directly affects public decisions on how public money is spent and decisions state regulators make remain available to the public.

The 77th Legislature created an interagency committee to purchase drugs at lower prices, but made the price of a drug confidential if associated with the name of its manufacturer. Drug price information is unavailable to the public and meetings where specific drug prices will be discussed are closed.

Virtually all information about complaints against lawyers, doctors, hospitals, and a wide range of other professions is closed under amendments to the Occupations Code and the statutes related to hospital licensing. Even statistical or aggregated information about the number of complaints filed with the Texas Department of Health is a secret. Complaint information tells the public critical information both about emerging problems in

the market place and about the effectiveness of our regulatory system.

The Courts have significantly reduced access to public information in the past two years by giving governmental bodies the broad discretion to withhold information as “privileged” under court rules. Officials may withhold not only legal advice and opinion but also facts and final reports.

RECOMMENDATIONS

- Narrow the broad exceptions for municipal utilities and tax incentive negotiations;
- Reopen access to complaint information related to hospitals and the health professions and open access to such information about attorneys;
- Make public the prices that various state agencies pay for drugs, including the name of the manufacturer or retailer who sold them;
- Require disclosure of factual material while blacking out material that represents actual legal advice and opinion;
- Prohibit abuse of privilege rules to hide public information;
- Maintain the clear access to records listed under the Categories of Public Information; and
- Avoid creating broad new exceptions for particular types of officials or in specific regulatory arenas.

