



TCSA Model Board Policy Series

500.040. Texas Public Information Act

INTRODUCTION

The Model Board Policies for Charter Schools is a series of publications by the Texas Charter Schools Association (TCSA). These publications are an educational tool for charter school leaders to aid in the operation and management of open-enrollment charter schools in Texas.

Overall Policy Framework

Each module in the Board Policy Series provides a summary of federal and state statutes, regulations, and related materials applicable to open enrollment charter schools. Citations to these materials are provided throughout the module and many contain a hyperlink so the actual statutory or regulatory provision can be accessed on the Internet. The summary is designated by the LEGAL AUTHORITY tab on the right edge of each page.

After the LEGAL AUTHORITY portion of the module you will find the model policy section designed to comply with current statutory and regulatory requirements described in the LEGAL AUTHORITY summaries. These policies are designated by the red CHARTER BOARD POLICY tab on the right edge of each page.

These are suggested policies to address the requirements set forth in this Module. Prior to adoption of the model policies by the Board of a charter school, each policy should be customized by including the school's name and by tailoring the language, if appropriate, to fit the specific needs, culture and requirements of the school. TCSA recommends that the Board of a charter school consult with and obtain the advice of the school's legal counsel in connection with adopting policies to comply with laws governing charter schools.

TCSA plans to update the Model Board Policies for Charter Schools after each Texas Legislative Session to reflect changes in applicable laws. We also will regularly and continually update the Policy Series when changes occur in state and federal case law and administration regulations that affect open enrollment charter schools. We encourage you to renew your subscription to the policy series each year to ensure that your school has the most recent laws and regulations.

Scope of Service & Copyright Notice

This policy module prepared by the TCSA is designed and intended as a resource of information for charter schools and is not to be construed as legal advice. It should be used in connection with consulting and obtaining the advice of the school's legal counsel to ensure compliance with applicable legal requirements.

This policy module and all updates are copyrighted publications of the TCSA. All rights are reserved and will be enforced to the fullest extent of the law. The policy modules are for the sole use of the purchaser. Duplication and distribution in whole or in part are prohibited unless otherwise specifically authorized in writing by TCSA. Inquires should be directed to TCSA, 700 Lavaca, Suite 930, Austin, TX 78701.

For questions concerning the Model Board Policies for Charter Schools contact:

Christine Nishimura, Texas Charter Schools Association
cnishimura@txcharterschools.org
512.584.8272

Module 500: Open Government

The Open Government Module 500, is the fifth module of the Model Board Policies. The material included in this module provides a comprehensive summary of statutes and regulations that apply to charter schools, as well as specific model board policies designed to comply with these legal requirements. Other policy modules in the series include:

Module 100: Financial Operations

Module 200: Charter School Governance & Organization

Module 300: General School Operations

Module 400: Students

Module 600: Human Resources

Legal Abbreviations Used In the TCSA Model Board Policy Series

Atty. Gen. Op.	Attorney General Opinion
C.F.R	Code of Federal Regulations
Tex. Admin. Code	Texas Administrative Code
Tex. Educ. Code	Texas Education Code
Tex. Gov't Code	Texas Government Code
Tex. Labor Code	Texas Labor Code
Tex. Loc. Gov't Code	Texas Local Government Code
U.S.C.A	United States Code Annotated

500.040 TEXAS PUBLIC INFORMATION ACT

A. Applicability and Availability

1. The boards of both an open-enrollment charter holder and an open-enrollment charter school are considered governmental bodies for purposes of the Texas Public Information Act, [Chapter 552 of the Texas Government Code](#) (“PIA”).
2. Any requirement in the PIA, or another law that concerns the availability of information 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, the boards of both a charter holder and charter school, or students attending an open-enrollment charter school.
3. Public information is available to the public at a minimum during the normal business hours of the school.

[Tex. Educ. Code §12.1051](#); [Tex. Gov’t Code §552.021](#).

B. Categories of Public Information

The following categories of information are public information and not exempt from required disclosure unless they are confidential under another law. This is not an exhaustive list:

1. A complete report, audit, evaluation, or investigation made of, for, or by the school, except certain law enforcement and prosecutorial information as provided by [Tex. Gov’t Code §552.108](#);
2. The name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of the school;
3. Information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds;
4. The name of each official and the final record of voting on all proceedings of the school’s board;
5. All working papers, research material, and information used to estimate the need for or expenditure of public funds by the school, on completion of the estimate;
6. A description of the school’s organization and where, from whom, and how the public may obtain information, submit information or requests, and obtain decisions;
7. A statement of the general course and method by which the school functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures;
8. Any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of the official

business of the school, including an electronic communication in the form of an e-mail, Internet posting, text message, instant message, or other electronic communication.

9. Information that is written, produced, collected, assembled, or maintained (including electronic communications described above) by an individual officer or employee of the school in the officer's or employee's official capacity and the information pertains to official business of the school.
10. Information the board of the school has a right of access to or the board spends or contributes public money for the purpose of writing, producing, collecting, assembling or maintaining the information.
11. A rule of procedure, a description of forms available or the places at which forms may be obtained, and instructions relating to the scope and content of all papers, reports, or examinations;
12. All final opinions and orders issued in the adjudication of cases;
13. A policy statement or interpretation adopted or issued by the school;
14. Administrative staff manuals and instructions to staff that affect a member of the public;
15. Information regarded as open to the public under an agency's policies;
16. Information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege;
17. Information that is also contained in a public court record; and
18. A settlement agreement to which a school is a party.

[Tex. Gov't Code §552.022.](#)

C. Information Exempted from Disclosure

1. Confidential by Law
Information considered confidential by other law, either constitutional, statutory, or by judicial decision is exempted from disclosure.
 - a. Military personnel information is confidential, including but not limited to name, rank, awards, and decorations.

[Tex. Gov't Code § 437.232; 84th Leg., R.S. HB 2152](#)

2. Confidentiality of Personal Information

- a. Each current or former employee or official of the school shall choose whether to allow public access to the information in the school's custody that relates to the person's home address, home telephone number, emergency contact information, or social security number, or that reveals whether the person has family members.
- b. Each current and former employee and official shall state that person's choice as to disclosure to the main personnel officer of the school in a signed writing not later than the 14th day after the date on which:
 - i. The employee begins employment with the school;
 - ii. The official is elected or appointed; or
 - iii. The former employee or official ends services with the school.
- c. If the employee, official, or former employee or official fails to specify his or her choice, the information is subject to public access. However, the employee or official may open or close public access to the information at any time by making a written request to the main personnel officer.

[Tex. Gov't Code §552.024.](#)

3. Educational Records

The PIA does not require the release of information contained in education records. Education records may only be released in accordance with the Family Educational Rights and Privacy Act.

Personal information considered confidential may be redacted prior to releasing information under the PIA without requesting an Attorney General's opinion.

[Tex. Gov't Code §552.026 and 552.114. 84th Leg., R.S. HB 4046](#)

4. Personnel Files

Information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, is exempted from disclosure. This includes transcripts from an institution of higher education maintained in the personnel file. However, information regarding the degree obtained or the curriculum on a transcript is not exempted from disclosure.

[Tex. Gov't Code §552.102.](#)

5. Current or Pending Litigation

Information is exempted from disclosure if it relates to litigation to which the school is or may be a party, or to which an officer or employee of the school, as a consequence of the person's office or employment, is or may be a party. The exemption applies only if the litigation is pending or reasonably anticipated at the time the school's public

information officer receives the public information request.

[Tex. Gov't Code §552.103.](#)

6. Competition or Bidding

Information that, if released, would give advantage to a competitor or bidder is exempt from disclosure.

[Tex. Gov't Code §552.104.](#)

7. Real or Personal Property

Information is exempted from public disclosure that relates to the location of real or personal property for a public purpose prior to the public announcement of the project. Also, information related to appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property is exempted from disclosure.

[Tex. Gov't Code §552.105.](#)

8. Certain Legal Matters

Information that the school's attorney is prohibited from disclosing because of a duty to the school under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct, or information prohibited from public disclosure by a court order;

[Tex. Gov't Code §552.107.](#)

9. Trade Secrets; Certain Commercial or Financial Information

A trade secret obtained from a person and privileged or confidential by statute or judicial decision and commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is exempted from disclosure.

[Tex. Gov't Code §552.110.](#)

10. Memoranda

Memoranda or letters that would not be available by law to a party in litigation with the school is exempted from disclosure.

[Tex. Gov't Code §552.111.](#)

11. Student Records

Information from a student record is exempted from disclosure unless it is requested by:

- a. Educational institution personnel;

- b. The student involved or the student's parent, legal guardian, or spouse; or
- c. A person conducting a child abuse investigation required by the Texas Family Code.

[Tex. Gov't Code §552.114.](#)

12. Audit Working Papers

Certain audit working papers are exempted from disclosure.

[Tex. Gov't Code §552.116.](#)

13. Test Items

A test item developed by a school is exempted from disclosure.

[Tex. Gov't Code §552.122.](#)

14. Library Records

A record of the school library that identifies or serves to identify a person who requested, obtained, or used a library material or service unless the record is disclosed because:

- a. The library determines that disclosure is reasonably necessary for the operation of the library and the record is not confidential under another law; or
- b. Other law requires the disclosure of the information.

[Tex. Gov't Code §552.124.](#)

15. Name of Applicant for Superintendent

The name of an applicant for the position of superintendent is exempted from disclosure, except that the board must give public notice of the name or names of the finalists being considered for the position at least 21 days before the date of the meeting at which a final action or vote is to be taken on the employment of the person.

[Tex. Gov't Code §552.126.](#)

16. Certain Motor Vehicle Records

Information described by this section may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

- a. Information relating to a motor vehicle operator's or driver's license or permit issued by an agency of Texas or another state or country;
- b. A motor vehicle title or registration issued by an agency of Texas or another state or county; or
- c. a personal identification document issued by an agency of Texas or another state or

country or a local agency authorized to issue an identification document.

[Tex. Gov't Code §552.130\(a\)-\(b\).](#)

17. The Informer's Privilege: Certain Information Held by a School

- a. A student/former student or an employee/former employee who has furnished a report of another person's possible violation of criminal, civil, or regulatory law to the school or the proper regulatory enforcement authority may have information that would reveal his or her identity exempted from disclosure.

[Tex. Gov't Code §552.135.](#)

18. Credit Card, Debit Card, and Access Device Numbers

- a. A credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a charter holder/school is confidential.

[Tex. Gov't Code §552.136.](#)

19. Certain E-Mail Addresses

- a. With some exceptions, an email address of a member of the public that is provided for the purpose of communicating electronically with the charter holder/school is confidential.

[Tex. Gov't Code §552.137.](#)

20. Information Related to Security or Infrastructure Issues for Computers

- a. Information is confidential if it is information that relates to computer network security, or to the design, operation, or defense of a computer network.
- b. Information may be disclosed to a bidder if the charter holder/school determines that providing the information is necessary for the bidder to provide an accurate bid.

[Tex. Gov't Code §552.139.](#)

21. Certain Investments

- a. Certain charter holder/school investment information is not public information and is exempted from disclosure.

[Tex. Gov't Code §552.143.](#)

22. Social Security Numbers

- a. The social security number of a living person is exempted from disclosure, but the social security number is not confidential.
- b. A charter holder/school may redact the social security number of a living person from any information the charter holder/school publicly discloses without the

necessity of requesting a decision from the attorney general's office.

- c. The social security number of an employee of an open-enrollment charter school in the custody of the open-enrollment charter school is confidential.
- d. A school may not require an employee or former employee of the open-enrollment charter school to choose whether to allow public access to the employee's or former employee's social security number.

Tex. Gov't Code §552.024

23. Public Employee or Officer Personal Safety

- a. Information in the custody of the charter holder/school that relates to an employee or officer of the school is exempted from disclosure if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

[Tex. Gov't Code §552.151.](#)

D. Officer for Public Information

- 1. The chief administrative officer is the officer for public information and each department head is an agent of the officer for public information purposes of complying with the PIA.
- 2. An officer for public information is responsible for the release of public information in compliance with the PIA.

[Tex. Gov't Code §§552.201 - .202; §552.204.](#)

3. General Duties for the Officer for Public Information:

- a. Make public information available for public inspection and copying;
- b. Carefully protect public information from deterioration, alteration, mutilation, loss, or unlawful removal;
- c. Repair, renovate, or rebind public information as necessary to maintain it properly; and
- d. Prominently display a sign that contains information about the rights of a requestor, the responsibilities of a charter holder/school, and the procedures for inspecting or obtaining a copy of public information.
 - i. The sign shall be displayed at one or more places in the administrative offices of the charter holder/school where it is plainly visible to:

- (1) Members of the public who request public information; and
- (2) Employees of the charter holder/school whose duties include receiving or responding to public information requests.

[Tex. Gov't Code §552.203, §552.205.](#)

E. Procedures Related to Access (Updated November 2017)

1. Policy

It shall be a policy of a charter holder/school to provide a suitable copy of public information within a reasonable time after the date on which the copy is requested.

[Tex. Gov't Code §552.228.](#)

2. Promulgation of Rules

A charter holder/school may promulgate reasonable rules of procedure under which public information may be inspected and copied efficiently, safely, and without delay. Rules promulgated cannot be inconsistent with PIA.

[Tex. Gov't Code §552.230.](#)

3. Prompt Production of Public Information

An officer for public information shall promptly produce public information for inspection, duplication, or both on application by any person to the officer. Promptly is defined by PIA as “as soon as possible under the circumstances, that is, within a reasonable time, without delay.” If an officer cannot produce public information for inspection or duplication within 10 business days after the date the information is requested, the officer shall certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available.

An officer of public information complies with PIA when referring a requestor to the open-enrollment charter school’s website if the information is identifiable and accessible.

[Tex. Gov't Code §552.221; 84th Leg., R.S. HB 685](#)

4. Permissible Inquiry by Charter Holder/School

Neither the officer for public information or the officer’s agent may make an inquiry of a requestor except:

- a. To establish proper identification;
- b. To clarify the request if it is unclear; or
- c. If a large amount of information has been requested, the charter holder/school may discuss with the requestor how the scope of the request might be narrowed.

[Tex. Gov't Code §552.222.](#)

5. Uniform Treatment of Requests

All requests for information shall be treated uniformly without regard to the position or occupation of the requestor, the person on whose behalf the request is made, or the status of the individual as a member of the media. The officer for public information or the agent shall give to a requestor all reasonable comfort and facility for the full exercise of the rights granted under the PIA.

[Tex. Gov't Code §552.223 - .224.](#)

6. Requests that Require Manipulation or Programming of Data

- a. A charter holder/school must provide a written statement to a requestor if the charter holder/school determines:
 - i. That responding to a request for public information will require programming or manipulation of data; and that
 - (1) Compliance with the request is not feasible or will result in substantial interference with operations; or
 - (2) The information could be made available in the requested form only at a cost that covers the programming and manipulation of data.
- b. The written statement must include:
 - i. A statement that the information is not available in the requested form;
 - ii. A description of the form in which the information is available;
 - iii. A description of any contract or services that would be required to provide the information in the requested form;
 - iv. A statement of the estimated cost of providing the information in the requested form.
- c. The written statement shall be provided to the requestor within 20 days after the date of the charter holder/school's receipt of request. The charter holder/school has an additional 10 days to provide the statement if the charter holder/school gives written notice to the requestor, within 20 days after the date of receipt of the request, that the additional time is needed.
- d. Once the written statement is provided, the charter holder/school does not have any further obligation unless within 30 days the requestor states in writing to the charter holder/school that the requestor:

- i. Wants the charter holder/school to provide the information in the requested form according to the cost and time parameters set out in the written statement or according to other terms to which the requestor and the charter holder/school agree; or
 - ii. Wants the information in the form in which it is available.
- e. If a requestor does not timely respond to the written statement, the requestor is considered to have withdrawn the request for information.
- f. The officer for public information shall establish policies that assure the expeditious and accurate processing of requests for information that require programming or manipulation of data.
- g. A charter holder/school shall maintain a file containing all written statements issued under this section in a readily accessible location.
7. Limits
- a. A governmental body may set reasonable monthly and yearly limits on the amount of time personnel spend producing responding producing public information without recovering its costs attributable to tat personnel time.
 - i. A yearly limit may not be less than 36 hours per requestor; or
 - ii. A monthly limit may not be less than 15 hours per requestor.

F. Withdrawal of Email Requests (Updated November 2017)

A charter holder/school may consider an email request withdrawn if:

1. The charter holder/school responds to the same email address used in the original request or to an alternate email address provided by the requestor and the charter holder/school does not receive a response by the 61st day, the request is considered withdrawn.

[Tex. Gov't Code §552.222; 84th Leg., R.S. HB 2134](#)

2. The requestor fails to inspect or duplicate the public information in the offices of the governmental body on or before the 60th day after the date the information is made available.
3. The requestor fails to pay postage and any other applicable charges accrued under Subchapter F of the Chapter 552 of the Texas Government Code on or before the 60th day after the date the requestor is informed of the charges.

[Tex. Gov't Code §552.221; 85th Leg., R.S. HB 3107](#)

G. Repetitious Requests (Updated November 2017)

1. A charter holder/school that determines that a requestor has made a request for information for which the charter holder/school has previously furnished or made copies available to the requestor, the charter holder/school may either:
 - a. Furnish the information again in accordance with the request; or
 - b. Shall certify to the requester that the information was previously furnished. The certification must include:
 - i. A description of the information for which copies had been furnished or made available;
 - ii. The date the charter holder/school received the requestor's original request for that information;
 - iii. The date that the charter holder/school previously furnished or made available copies of the information to the requestor;
 - iv. A certification that no subsequent additions, deletions, or corrections have been made to that information; and
 - v. The name, title, and signature of the officer for public information or the officer's agent making the certification.

[Tex. Gov't Code §552.232.](#)

2. If a charter holder/school receives multiple requests in one calendar day from the same individual, the charter holder or school may treat the request as one single request for purposes of calculating cost. A charter may not combine multiple requests from separate individuals from the same organization.

[Tex. Gov't Code §552.261; 85th Leg., R.S. HB 3107](#)

3. If a requestor makes a second request, but has not withdrawn a previous request that the governmental body located and complied the response, and the governmental body provided a statement of the cost of the request that remains unpaid by the requestor, then the governmental body is not required to locate, comply, or produce copies of the newly requested information or prepare a cost statement until the requestor pays the cost of the previous request or withdraws the previous request.
 - a. If the governing body exceeds the time limits set by the governing body under 552.275(a), and provides the requestor with a written statement of the costs of the request, then the governmental body is not required to produce the information in response to the request, unless on or before the 10th days after the date the governmental body provided the written statement the requestor submits payment.

- b. This does not apply to a request that seeks information for dissemination by news medium or communication service provider.

[Tex. Gov't Code 552.275; 85th Leg., R.S. HB 3107](#)

H. Charges for Providing Copies of Public Information

1. Charges

- a. Charges for providing a copy of public information shall be an amount that reasonably includes all costs related to reproducing the public information, including costs of materials, labor, and overhead. If a request is 50 or fewer pages, the costs shall be limited to the charge for each page of the paper that is photocopied, unless the pages to be photocopied are located in:
 - i. Two or more buildings that are not physically connected to each other; or
 - ii. A remote storage facility.

2. Charges That Include Cost of Labor

If a charge for providing a copy of public information includes costs of labor, the requestor may require the officer for public information or the officer's agent to provide the requestor with a written statement as to the amount of time that was required to produce and provide the copy.

- a. The statement must be signed by the officer for public information or the officer's agent and the officer's or the agent's name must be typed or legibly printed below the signature.
- b. A charge may not be imposed for providing this written statement to the requestor.

3. Charges in Excess of \$40

If charges will exceed \$40 the charter holder/school shall provide the requestor with a written itemized statement that details all estimated charges that will be imposed, including any allowable charges for labor or personnel costs. If there is an alternative less costly, the statement must include a notice that the requestor may contact the charter holder/school regarding the alternative method.

- 4. A charter school that receives a request to produce public information for inspection or publication or to produce copies of public information in response to a requestor who, within the preceding 180 days, has accepted but failed to pay written itemized statements of estimated charges from the charter school may require the requestor to pay the estimated charges for the request before the request is fulfilled.

[Tex. Gov't Code §§552.261 - .2615.](#)

I. Attorney General Decision

1. Requesting an Attorney General Decision

- a. Within ten days of receiving a request, if a charter holder/school wishes to withhold information from public disclosure it must ask for a decision from the Attorney General about whether the information is exempted from disclosure. The written statement should state that the charter holder/school considers the information to fall within one of the information categories exempted from disclosure.
2. Notice to Requestor
 - a. If the charter holder/school requests a decision from the Attorney General it must notify the requestor in writing, within ten days of receiving the request, that it wishes to withhold the requested information and has asked for a decision from the Attorney General. A copy of the written communication to the Attorney General, or a redacted version if it discloses the requested information, must accompany the notice.
3. Submitting Supportive Materials
 - a. Within 15 days after receiving the request for information, the charter holder/school must submit to the Attorney General:
 - i. written comments stating why the stated exemptions apply;
 - (1) These must also be sent to the requestor but must be redacted if they contain the requested information.
 - ii. A copy of the written request for information;
 - iii. A signed statement as to the date when the request for information was received by the charter holder/school or evidence sufficient to establish that date; and
 - iv. A copy of the specific information requested, or samples of the information if it is voluminous.
 4. Presumption that Information is Public
 - a. If the charter holder/school does not request an Attorney General decision in compliance with PIA and provide the requestor with the required information, the information requested is presumed subject to public disclosure unless there is a compelling reason to withhold the information.

[Tex. Gov't Code §§552.301 - .302.](#)

J. Criminal Violations

1. Destruction, Removal, or Alteration of Public Information

A person commits a misdemeanor offense, punishable by a fine of \$25 - \$4000 and/ or confinement in county jail for three days – 3 months, if the person willfully destroys, mutilates, removes without permission as provided by the PIA, or alters

public information.

[Tex. Gov't Code §552.351.](#)

2. Distribution or Misuse of Confidential Information

A person commits a misdemeanor offense, punishable by a fine not more than \$1000 and/or confinement in county jail for not more than six months, if the person distributes or misuses information considered confidential under the PIA.

[Tex. Gov't Code §552.352.](#)

3. Failure or Refusal of Officer for Public Information to Provide Access

An officer for public information, or the officer's agent, commits a misdemeanor offense, punishable by a fine of not more than \$1000 and/or confinement in county jail for not more than six months, if, with criminal negligence, the officer or agent fails or refuses to give access to public information to a requestor.

[Tex. Gov't Code §552.353.](#)