



Board Member Access to School District Records TASB Legal Services, Policy Service, and Leadership Team Services

Texas Education Code section 11.1512(c)-(f), added by House Bill 628 in 2013, grants a school board member, when acting in the member's official capacity, access to information, documents, and records maintained by the district and requires the district to provide the information requested without requiring the board member to submit a public information request under the Texas Public Information Act (PIA), regardless of whether the requested items are the subject of or relate to an item listed on the agenda for an upcoming meeting. Tex. Educ. Code § 11.1512(c). *Official capacity* means "all duties of office and includes administrative decisions or actions." Tex. Educ. Code § 11.1512(f).

These provisions also allow the district to withhold or redact information, documents, or records that are excepted from disclosure or are confidential under the PIA or other law, including the Family Educational Rights and Privacy Act of 1974 (FERPA). Finally, the section requires the district to post, in a place convenient to the public, the cost of responding to one or more requests submitted by a board member if the request(s) are for 200 or more pages of material in a 90-day period. The district must report annually to the Texas Education Agency (TEA) the number of requests submitted by a board member during the preceding school year and the total cost to the district of responding to requests during that school year. Tex. Educ. Code § 11.1512(e).

Historical Background

According to the bill analysis, this legislation authorizes a school board member to request information from a superintendent without submitting a request under the PIA. House Comm. on Pub. Educ., Bill Analysis, Tex. H.B. 628, 83rd Leg., R.S. (2013). Prior to this legislative change, board members relied on an opinion of the Texas attorney general stating that individual board members have "an inherent right of access" to records maintained by the district when the board member requests the records in his or her official capacity. Op. Tex. Att'y Gen. No. JM-119 (1983). Arguably, this law did not create a new right of access, but codified existing law. The same attorney general opinion distinguished a board member's right of access to information maintained by a governmental body from the right of access of a member of the general public. According to the attorney general, a custodian of district records may not rely on the PIA to prevent a board member from obtaining district records, as the board member is not "merely a member of the public." Op. Tex. Att'y Gen. No. JM-119 (1983). To the extent that Section 11.1512 authorizes a school district to withhold or redact information requested by a board member, this legislation is a departure from the status quo.

Since September 1, 2013, the effective date of House Bill 628, districts have grappled with whether and when to withhold information that is excepted from disclosure under law from a board member requesting such information. Uniform application of this provision requires a review of local school district policies and procedures. Additional questions have arisen relating to the tracking requirements and the annual report to TEA.

Denial of Board Member Request for Information

Local policy and written procedures should guide whether school districts will rely on Section 11.1512(c) to withhold information that is excepted from disclosure under the PIA, FERPA, or other law, or provide this information to board members.

Under the TASB Policy Service structure, the provisions related to board members' requests for information are found in TASB Policy BBE. Most districts have language at Policy BBE(LOCAL) that authorizes board members to access information that could be considered confidential under law as long as the board member is accessing this information in his or her official capacity. This allows the board, as much as possible, to maintain the practices that were in place before the law changed.

If, on the other hand, a board desires to withhold confidential information from individual trustees, the board should reflect such a decision in local policy to avoid complaints that the district is withholding information on a case-by-case basis and is acting in an arbitrary or discriminatory manner. TASB Legal Services recommends that the district update Policy BBE(LOCAL) to reflect that confidential information will be withheld and/or redacted in accordance with Texas Education Code section 11.1512(c). The district should have corresponding procedures in place to reflect district guidelines for providing records and documents. TASB Policy Service has sample procedures available for districts who wish to exercise this option.

If the administration denies a board member's record request, the board member may request that the entire board determine whether the information should be provided to him or her. Such a decision should be made at a public meeting and therefore must be placed on the agenda in compliance with the Texas Open Meetings Act.

Tracking Board Member Requests

In addition, school districts must track requests for district records made by individual board members. Specifically, districts must: (1) track and post for the public the cost of responding to one or more requests for records by a board member if the member requests more than 200 pages of records in a 90-day period; and (2) report annually to TEA the number of requests by a board member in the preceding year and the total cost of responding to such requests. Tex. Educ. Code § 11.1512(e).

In order to comply with these tracking requirements, each school board will need to reach some fundamental understandings about how to interpret and consistently apply these provisions. Specifically, the board should address what constitutes a request for information by an individual board member and the measure of costs the district will use to estimate the cost of responding to individual board member requests.

Most boards follow a board operating procedure requiring that when the administration shares information or district records with one board member, the administration provides the same information or records to the rest of the board members. Based on the statutory language, it is not clear if such exchanges of information with the full board are requests by individual members that

need to be tracked under Section 11.1512. The 2014 survey sent by TEA to gather this information from districts asked districts to report the number of requests for information submitted *outside of a school board meeting*. To track all such requests for information, a board's operating procedure should emphasize that every board member request outside of a board meeting must be on a designated form and be tracked.

Some boards may wish to take the position that, if the full board receives a copy of the record, a board member's request for a record at a time other than a board meeting need not be tracked. Following this procedure may make it difficult to respond to the TEA survey. A board that wishes to follow this approach should work with its school attorney and document the practice in local procedures. It may be advisable to request that information be requested in board meetings to the extent practicable.

On the other hand, based on the statutory language and the TEA survey, we conclude that districts need not track: (1) a request made during a board meeting when the request is met with consensus of the board members; (2) a request formally approved by a board or board committee at a board meeting; or (3) a question outside of a board meeting from an individual board member about an item of school business that does not request records, even if the administration chooses to respond by sharing documentation with the full board.

Estimating Costs

Section 11.1512 requires school districts to report the cost of responding to board member requests for information to TEA annually. In some circumstances, the costs of responding to these requests for information must also be posted publically. However, the statute does not specify the measure of costs for districts to use to estimate the cost of responding to individual board member requests. A school district should articulate the measure of costs the district will utilize in its procedures, such as specifying that the district will use the same schedule of costs used for responding to public information requests.

TASB Policy Service offers sample exhibits to assist districts in tracking board member's request for information. TASB Policy Service maintains a sample form for a board member to fill out when requesting information, which includes a signature for acknowledging the tracking requirements of Section 11.1512. TASB Policy Service also provides a form for posting notice of a board member's request of more than 200 pages of documents within a 90-day period. These documents are accessible by member districts through myTASB in the *Regulations Resource Manual* in the Policy Service Resources Library.

Sample Procedure

Your board may find the following sample procedure helpful:

To facilitate the required tracking under Texas Education Code section 11.1512, the Board adopts the following operating procedures:

1. Tracking is not required by Section 11.1512 when a board member requests records or a report during a board meeting.

2. **Optional paragraph:** *Tracking is not required by Section 11.1512 when a board member, acting in his or her official capacity, asks a question or seeks clarification about an item of school business from the Superintendent or designee (“Superintendent”), and the Superintendent responds with an answer or by providing District records, including confidential records, to the board member or the entire Board.*¹
3. If a board member, acting in his or her official capacity, requests specific records maintained by the District from the Superintendent outside of a board meeting, the Superintendent will respond by informing the board member that the request is subject to being tracked under Section 11.1512 and providing the member the appropriate form for a board member’s request for records.
4. If the board member proceeds with the request and completes the form, the administration will track the request and respond in accordance with administrative regulations. For tracking purposes the “cost” of the request will be calculated as if the board member requested one complete set of the records, even if duplicates are provided to the rest of the Board. The cost will be calculated using the Texas Attorney General rules for charges under the Texas Public Information Act. No cost will actually be charged to the board member.
5. If the board member’s written request seeks access to records that are confidential under the Texas Public Information Act or other law, the Superintendent may provide the records in full, provided that the board member is making the request in his or her official capacity.
6. If a board member wishes to request District records in a personal capacity, as opposed to his or her official capacity as a board member, the member may use the District’s procedure for requests for public information by the public. The District will respond to the request following its standard procedures for all public information requests.

For more information on this and other school law topics, visit TASB School Law eSource online at schoollawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is neither an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. It is important for the recipient to consult with the district’s own attorney in order to apply these legal principles to specific fact situations.

¹ Please consult with your district’s school attorney if your board wishes to include this optional paragraph. TASB Legal Services, in consultation with TEA, believes that an administrator’s independent decision to provide school district records to the board as background information in response to a board member’s question or request for clarification is not a board member “request for records.” In many instances, however, a board member’s inquiry outside of a meeting may be best characterized as a request for records; if so, TEA believes that the statute requires the request to be tracked, even if the records are shared with the whole board.

BOARD MEMBERS
AUTHORITY

BBE
(EXHIBIT)

See the following for sample forms related to Board member requests for information:

Exhibit A: Board Member Request for Information, Documents, and Records — 2 pages

Exhibit B: Notice of a Board Member's Requests for Information, Documents, and
Records — 1 page

EXHIBIT A

BOARD MEMBER REQUEST FOR INFORMATION,
DOCUMENTS, AND RECORDS

Please note: The District will comply with requests for information in accordance with law, Board operating procedures, and administrative regulations. [See BBE(REGULATION)]

The following form should be filled out completely by an individual Board member requesting a District record when the request is made in his or her official capacity and when the request is subject to tracking under Texas Education Code section 11.1512 and any applicable Board operating procedures.

A Board member wishing to make an official open records request should use the form for that purpose found at _____ (*location or link where form can be found*).

Date of request: _____

Board member's name: _____

Board member's address: _____

Board member's telephone number: _____

Board member's e-mail address: _____

Please provide below a description of the information requested. Include enough detail to enable the District to accurately identify and locate the information requested.

Once complete, please submit this form to the Superintendent.

PLEASE SIGN BELOW

I certify that I am requesting the above records in my official capacity as a Board member and understand that this request is subject to the tracking and reporting requirements of Texas Education Code section 11.1512.

Board member signature

For Office Use Only

Disposition of request:

- Approved
 Denied (Reason, if denied)

Number of pages requested: _____

Date the information was made available to the Board member: _____

Cost to the District: _____

For tracking purposes, the cost of the request will be calculated as if the Board member requested one complete set of the records, even if duplicates are provided to the rest of the Board. The cost will be calculated using the Texas Attorney General rules for charges under the Texas Public Information Act. No cost will actually be charged to the Board member.

Signature of person providing the information

BOARD MEMBERS
AUTHORITY

BBE
(EXHIBIT)

EXHIBIT B

NOTICE OF A BOARD MEMBER'S REQUESTS FOR
INFORMATION, DOCUMENTS, AND RECORDS

State law requires the District to post in a place convenient to the public the cost of responding to one or more requests for information, documents, or records submitted by a Board member if the request(s) totals 200 or more pages of material in a 90-day period.

Board Member's Name	Number of Pages Requested in a 90-day Period	Dates (Applicable 90-day Period)	Cost to the District

BOARD MEMBERS
AUTHORITY

BBE
(LOCAL)

BOARD AUTHORITY

The Board has final authority to determine and interpret the policies that govern the schools and, subject to the mandates and limits imposed by state and federal authorities, has complete and full control of the District. Board action shall be taken only in meetings that comply with the Open Meetings Act. [See BE(LEGAL)]

TRANSACTIONING
BUSINESS

When a proposal is presented to the Board, the Board shall hold a discussion and reach a decision. Although there may be dissenting votes, which are a matter of public record, each Board decision shall be an action by the whole Board binding upon each member.

INDIVIDUAL
AUTHORITY FOR
COMMITTING THE
BOARD

Board members as individuals shall not exercise authority over the District, its property, or its employees. Except for appropriate duties and functions of the Board President, an individual member may act on behalf of the Board only with the express authorization of the Board. Without such authorization, no individual member may commit the Board on any issue. [See BDAA]

INDIVIDUAL ACCESS
TO INFORMATION

An individual Board member, acting in his or her official capacity, shall have the right to seek information pertaining to District fiscal affairs, business transactions, governance, and personnel matters, including information that properly may be withheld from members of the general public in accordance with the Public Information Chapter of the Government Code. [See GBA]

LIMITATIONS

If a Board member is not acting in his or her official capacity, the Board member has no greater right to District records than a member of the public.

An individual Board member shall not have access to confidential student records unless the member is acting in his or her official capacity and has a legitimate educational interest in the records in accordance with policy FL.

A Board member who is denied access to a record under this provision may ask the Board to determine whether the record should be provided or may file a request under the Public Information Act. [See GBAA]

REQUESTS FOR
RECORDS

An individual Board member shall seek access to records or request copies of records from the Superintendent or other designated custodian of records. When a custodian of records other than the Superintendent provides access to records or copies of records to an individual Board member, the provider shall inform the Superintendent of the records provided.

In accordance with law, the District shall track and report any requests under this provision, including the cost of responding to one or more requests by any individual Board member for 200 or more pages of material in a 90-day period.

BOARD MEMBERS
AUTHORITY

BBE
(LOCAL)

REQUESTS FOR
REPORTS

No individual Board member shall direct or require District employees to prepare reports derived from an analysis of information in existing District records or to create a new record compiled from information in existing District records. Directives to the Superintendent or other custodian of records regarding the preparation of reports shall be by Board action.

CONFIDENTIALITY

At the time a Board member is provided access to confidential records or to reports compiled from such records, the Superintendent or other District employee shall advise the Board member of the responsibility to comply with confidentiality requirements.

REFERRING
COMPLAINTS

If employees, parents, students, or other members of the public bring concerns or complaints to an individual Board member, he or she shall refer them to the Superintendent or another appropriate administrator, who shall proceed according to the applicable complaint policy. [See (LOCAL) policies at DGBA, FNG, and GF]

When the concern or complaint directly pertains to the Board's own actions or policy, for which there is no administrative remedy, the Board member may request that the issue be placed on the agenda.

BOARD MEMBERS
AUTHORITY

BBE
(LOCAL)

BOARD AUTHORITY

The Board has final authority to determine and interpret the policies that govern the schools and, subject to the mandates and limits imposed by state and federal authorities, has complete and full control of the District. Board action shall be taken only in meetings that comply with the Open Meetings Act. [See BE(LEGAL)]

TRANSACTIONING
BUSINESS

When a proposal is presented to the Board, the Board shall hold a discussion and reach a decision. Although there may be dissenting votes, which are a matter of public record, each Board decision shall be an action by the whole Board binding upon each member.

INDIVIDUAL
AUTHORITY FOR
COMMITTING THE
BOARD

Board members as individuals shall not exercise authority over the District, its property, or its employees. Except for appropriate duties and functions of the Board President, an individual member may act on behalf of the Board only with the express authorization of the Board. Without such authorization, no individual member may commit the Board on any issue. [See BDAA]

INDIVIDUAL ACCESS
TO INFORMATION

An individual Board member, acting in his or her official capacity, shall have the right to seek information pertaining to District fiscal affairs, business transactions, governance, and personnel matters, including information that properly may be withheld from members of the general public in accordance with the Public Information Chapter of the Government Code. [See GBA]

LIMITATIONS

If a Board member is not acting in his or her official capacity, the Board member has no greater right to District records than a member of the public.

An individual Board member shall not have access to confidential student records unless the member is acting in his or her official capacity and has a legitimate educational interest in the records in accordance with policy FL.

A Board member who is denied access to a record under this provision may ask the Board to determine whether the record should be provided or may file a request under the Public Information Act. [See GBAA]

REQUESTS FOR
RECORDS

An individual Board member shall seek access to records or request copies of records from the Superintendent or other designated custodian of records. When a custodian of records other than the Superintendent provides access to records or copies of records to an individual Board member, the provider shall inform the Superintendent of the records provided.

In accordance with law, the District shall track and report any requests under this provision, including the cost of responding to one or more requests by any individual Board member for 200 or more pages of material in a 90-day period.

BOARD MEMBERS
AUTHORITY

BBE
(LOCAL)

REQUESTS FOR
REPORTS

No individual Board member shall direct or require District employees to prepare reports derived from an analysis of information in existing District records or to create a new record compiled from information in existing District records. Directives to the Superintendent or other custodian of records regarding the preparation of reports shall be by Board action.

CONFIDENTIALITY

At the time a Board member is provided access to confidential records or to reports compiled from such records, the Superintendent or other District employee shall advise the Board member of the responsibility to comply with confidentiality requirements.

REFERRING
COMPLAINTS

If employees, parents, students, or other members of the public bring concerns or complaints to an individual Board member, he or she shall refer them to the Superintendent or another appropriate administrator, who shall proceed according to the applicable complaint policy. [See (LOCAL) policies at DGBA, FNG, and GF]

When the concern or complaint directly pertains to the Board's own actions or policy, for which there is no administrative remedy, the Board member may request that the issue be placed on the agenda.