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Case of the Month

The Texas Public Information Act does not allow a governmental body to indefinitely postpone production of public information in certain circumstances when its physical offices are closed due to COVID-19 and staff work remotely.

Houston Community College (HCC) received requests for information under the [Texas Public Information Act](#) (PIA) when its facilities were closed due to the COVID-19 pandemic. HCC informed the requestors that it would process the requests during normal operations and that it followed the attorney general's guidelines stating that if a governmental body closes its physical offices due to a public health or epidemic response or is unable to access its records on a calendar day, then that day is not a business day for purposes of the PIA, even if staff continues to work remotely. The requestors sought writs of mandamus to compel disclosure. HCC filed a plea to the jurisdiction, arguing it had not refused to release public information because the PIA's disclosure deadline had not passed during the closure of HCC's offices. The trial court found HCC had violated the PIA, denied the plea to the jurisdiction, and granted the writs of mandamus and HCC appealed.

The appellate court considered whether HCC refused to produce public information under the PIA, which requires a governmental body, including a community college, to promptly produce public information in response to a written request or, if it cannot produce within 10 business days, certify when the information would be available. HCC argued that it had not refused to comply with the PIA because it had followed the attorney general's guidelines regarding office closures during a public health or epidemic response. The court rejected the attorney general's guidance as inconsistent with the PIA and stated that the PIA allowed the suspension of the 10 business-day deadline for up to 14 consecutive days in the event of a catastrophic event, including an epidemic or pandemic, and that HCC never elected the suspension. The court held that HCC did not show that, as a matter of law, it did not refuse to produce information under the PIA and the court therefore affirmed the denial of HCC's plea to the jurisdiction. [Houston. Comm. Coll. v. The Hall Group, PLLC](#), No. 01-20-00673-CV, 2021 WL 2369505 (Tex. App.—Houston [1st Dist.] June 10, 2021, no pet. h.) (mem. op.).

Why is This Case Significant?

This is the first instance of an appellate court holding that a day on which a governmental body's physical offices are closed may still count towards the PIA's disclosure deadline, contrary to the attorney general's guidance. The 2021 Texas Legislature also amended the statute authorizing suspension of the PIA's disclosure requirements during a catastrophe. Additional information regarding those legislative changes and others will be available at the [TASB/TACCA Post-Legislative Seminar](#).

Highlights

[Update 41](#) is now available.

Join us at the [2021 TASB/TACCA Post-Legislative Seminar](#) (July 30)

New on eLaw:

[Open Meetings Act—Basic Principles](#)

Resources

[Texas Higher Education Coordinating Board](#)
[Texas Legislature](#)
[Texas Statutes](#)
[Texas Attorney General](#)
[U.S. Department of Education](#)



From the Courts and the Attorney General

Business and Finance

The U.S. Supreme Court held that the states challenging the constitutionality of the federal [Affordable Care Act](#), after the [Tax Cuts and Jobs Act](#) reduced the individual mandate to zero, did not have standing to challenge the law. [California v. Texas](#), No. 19–840, 2021 WL 2459255 (U.S. June 17, 2021).

Personnel

University employee failed to provide sufficient evidence that the university discriminated against her based on her race or retaliated against her in violation of [Title VII of the Civil Rights act of 1964](#) because she had not pled an adverse employment action by the university. [Sussman v. Univ. of Tex. Medical Branch](#), No. 4:21-CV-00298, 2021 WL 2302640 (S.D. Tex. June 4, 2021).

University was not entitled to summary judgment on an employment applicant's claim that the university discriminated against her because of her race in violation of [Title VII](#) because irregularities in the interview process raised questions as to whether the university's stated reasons for hiring an alternate candidate were merely pretextual. [Taite v. Bridgewater State Univ., Bd. of Trustees](#), No. 18-1229, 2021 WL 2217457 (1st Cir. June 2, 2021).

Former university track coach failed to plead a plausible claim that the university's differential treatment was discriminatory and based on her sex or was sufficient to create a hostile work environment in violation of [Title VII](#). [Warmington v. Bd. of Regents of Univ. of Minnesota](#), 998 F.3d 789 (8th Cir. May 24, 2021).

The Texas Attorney General addressed whether the Texas Behavioral Health Executive Council could adopt a rule prohibiting licensed

social workers from discriminating based upon gender rather than sex, as provided for in [Texas Occupations Code section 505.451](#), as well as disability, sexual orientation, and gender identity, terms that are also not present in the statute. The attorney general concluded the council lacked the authority to discipline a licensee for discrimination not expressly prohibited by statute. Tex. Att'y Gen. Op. No. [KP-372](#) (June 14, 2021).

Students and Instruction

University football players alleged a plausible claim of sex discrimination under [Title IX of the Education Amendments of 1972](#) for the university's handling of a misconduct investigation and disciplinary proceedings following an allegation of sexual assault by a female student. However, the players failed to allege they were treated less favorably because of their race in violation of [Title VI of the Civil Rights Act of 1964](#) or the U.S. Constitution [Fourteenth Amendment](#) or that the university retaliated against them in violation of [Title IX](#) after filing a complaint. [Does 1-2 v. Regents of the Univ. of Minnesota](#), No. 19-2552, 2021 WL 2197073 (8th Cir. June 1, 2021).

Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings¹ based on requests from Texas community colleges related to:

- Invoices, account information, complaints, and communications of named individuals during stated time periods. Tex. Att'y Gen. [OR2021-13120](#) (May 18, 2021);
- Information pertaining to a specified bidding opportunity. Tex. Att'y Gen. [OR2021-13184](#) (May 19, 2021);

¹ Open record letter rulings are limited to the particular records at issue and the facts as presented to the attorney general. These rulings must not be relied upon as a previous determination regarding any other records or any other circumstances.

- Three categories of information pertaining to a named employee. Tex. Att’y Gen. [OR2021-14260](#) (June 1, 2021);
- Investigations pertaining to four named individuals. Tex. Att’y Gen. [OR2021-14509](#) (June 3, 2021); and
- Evaluation or scoring information and the winning response from a request for proposal. Tex. Att’y Gen. [OR2021-14554](#) (June 3, 2021).



Recent Regulations and Guidance

The Texas Historical Commission amended regulations concerning [definitions](#) of terms for historical markers and monuments, [applications](#) for historic cemeteries, [requests](#) to review historical marker text, [requests](#) to remove historical markers and monuments, [definitions](#) of terms used in the Antiquities Code of Texas, and [categories](#) of antiquities permits.

The Texas Water Development Board amended a [regulation](#) concerning public notice requirements for regional water planning groups.

The Texas Behavioral Health Executive Council (TBHEC) repealed a [regulation](#) concerning the licensing in certain behavioral health professions, including social work, of persons with criminal convictions.

The TBHEC amended a [regulation](#) concerning the proportion of licensees, including social work

licensees and other regulated licensees, that are selected for continuing education audits.

The Texas State Board of Public Accountancy amended [regulations](#) concerning educational and examination requirements for public accountants, including the [deletion](#) of a reference to distance education and the [recognition](#) of community colleges offering baccalaureate degrees.

The Texas Health and Human Services Commission amended [regulations](#) concerning training requirements for child-placing agencies, including continuing education requirements.

The Texas Department of Insurance amended [regulations](#) concerning continuing education requirements for insurance professionals, including agents, adjusters, public insurance adjusters, and managing general agents.



In the News

The Texas Governor [renewed](#) the disaster proclamation issued for all counties in Texas due to the COVID-19 pandemic.

The Texas Governor [renewed](#) the disaster proclamation issued for all counties in Texas due to severe winter weather.

The Texas Governor [announced](#) the state will invest \$94.6 million in Coronavirus Aid, Relief, and Economic Security (CARES) Act funding to institutions of higher education.

The U.S. Centers for Disease Control and Prevention (CDC) updated its [guidance](#) related to COVID-19 for institutions of higher education and [guidance](#) related to cleaning and disinfecting vehicles.

The U.S. Equal Employment Opportunity Commission (EEOC) updated its [guidance](#) on workplace COVID-19 vaccination policies and [updated](#) its COVID-19 technical assistance, addressing federal equal employment opportunity laws.

The EEOC [announced](#) the publication of its federal sector Digest of Equal Employment Opportunity Law, summarizing noteworthy federal sector decisions.

The U.S. Department of Education (DOE) released volume three of its [COVID-19 Handbook](#) with resources for institutions of higher education to reopen for in-person instruction.

The DOE [announced](#) and issued an [interpretation](#) stating that Title IX prohibits discrimination on the basis of sex, including based on sexual orientation and gender identity.

The DOE [published](#) the deadlines for institutions of higher education and students related to the 2021-2022 award year, including for the Free Application for Federal Student Aid (FAFSA), Institutional Student Information Record (ISIR), and Student Aid Report (SAR).

The DOE [published](#) a notice inviting award applications for the Business and International Education program with an estimated \$1.6 million in available funds and for which the deadline is August 13, 2021.

The DOE [published](#) a notice inviting award applications for the Strengthening Institutions Program with an estimated \$17 million in available funds and for which the deadline is July 13, 2021.

The DOE [published](#) a notice containing instructions on attending and providing comment at a July 27-29, 2021, virtual meeting of the National Advisory Committee on Institutional Quality and Integrity.

The U.S. House of Representatives Committee on Ways and Means published an [analysis](#) and [fact sheet](#) on the [Trade Adjustment Assistance Act of 2021](#) (TAA), which if passed would provide \$9.1 billion in federal grants over seven years under the TAA for the Community College and Career Training Grant program.

U.S. Congress passed a [law](#) declaring June 19 a federal holiday, Juneteenth National Independence Day.

The final day of the [87th regular session](#) of the Texas Legislature was May 31, 2021.