



## Open Meetings Act Closed Meeting Topics & Procedures<sup>1</sup>

The purpose of the Texas Open Meetings Act (OMA) is to ensure the public's access to meetings of governmental bodies so that it has the opportunity to be informed concerning the transactions of public business. *Toyah Indep. Sch. Dist. v. Pecos-Barstow Indep. Sch. Dist.*, 466 S.W.2d 377 (Tex. App.—San Antonio 1971, no writ).

The OMA, Texas Government Code chapter 551, requires meetings of governmental bodies, including community college boards, to be open to the public except for expressly authorized executive sessions, referred to as closed meetings. Tex. Gov't Code §§ 551.001(3)(E), .002.

### 1. What OMA exceptions permit a community college board to meet in closed session instead of open session?

A community college board may meet in closed session under the OMA to deliberate the following topics:

- **Attorney Consultation:** The board may conduct a closed meeting to privately consult with its attorney to seek the attorney's advice about pending or contemplated litigation, a settlement offer, or a matter in which the attorney's duty of confidentiality conflicts with the requirement for open meetings. Tex. Gov't Code § 551.071.
- **Real Property:** The board may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if open deliberation would have a detrimental effect on the board's negotiations with a third person. Tex. Gov't Code § 551.072.
- **Prospective Gifts:** The board may conduct a closed meeting to deliberate a negotiated contract for a prospective gift or donation to the college if open deliberation would have a detrimental effect on the board's negotiations with a third person. Tex. Gov't Code § 551.073.
- **Personnel or Board Member Matters:** The board may conduct a closed meeting to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee or to hear a complaint or charge against an officer or employee. However, the board may not conduct a closed meeting for these purposes if the

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<sup>1</sup> An electronic version of this document is available on [TASB College eLaw](https://tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-oma-closed-meeting-topics-and-procedures.pdf) at [tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-oma-closed-meeting-topics-and-procedures.pdf](https://tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-oma-closed-meeting-topics-and-procedures.pdf).

officer or employee who is the subject of the deliberation or hearing requests a public hearing. This exception does not apply when the board discusses a class or group of employees or discusses an independent contractor who is not a college employee, such as an engineering, architectural, or consultant firm. Tex. Gov't Code § 551.074; Tex. Att'y Gen. Op. Nos. MW-129 (1980), H-496 (1975).

- **Employee v. Employee Complaints:** The board may conduct a closed meeting to deliberate a complaint or charge brought against a college employee by another employee and the complaint or charge directly results in the need for a hearing. However, this exception does not apply if the employee against whom the complaint or charge is brought makes a written request for an open hearing. Tex. Gov't Code § 551.082.
- **Student Discipline:** The board may conduct a closed meeting to deliberate the discipline of a public school child. However, the board may not conduct a closed meeting for this purpose if the child's parent or guardian makes a written request for an open hearing. Tex. Gov't Code § 551.082.
- **Personally Identifiable Student Information:** The board may conduct a closed meeting to deliberate regarding a public school student if personally identifiable information about the student will necessarily be revealed by open deliberation. Directory information about a student is considered to be personally identifiable information about the student for this purpose only if the student's parent or guardian or the student, if the student is at least 18 years of age, has informed the college that the directory information should not be released without prior consent. However, the board may not conduct a closed meeting for this purpose if the student's parent or guardian or the student, if the student is at least 18 years of age, makes a written request for an open hearing. Tex. Gov't Code § 551.0821.
- **Medical or Psychiatric Records:** A board that administers a public insurance, health, or retirement plan may conduct a closed meeting to deliberate: (1) the medical or psychiatric records of an individual applicant for a plan benefit or (2) a matter that includes a consideration of information in the medical or psychiatric records of an individual applicant for a plan benefit. Tex. Gov't Code § 551.0785.
- **Security and Information Resources Technology:** The board may conduct a closed meeting to deliberate: (1) a security audit, (2) security assessments or deployments relating to information resources technology, (3) certain network security information described by Texas Government Code section 2059.055, or (4) the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices. Tex. Gov't Code § 551.076.

- **Economic Development:** The board may conduct a closed meeting to discuss or deliberate commercial or financial information that the board has received from a business prospect that the board seeks to have locate, stay, or expand in or near the college and with which the board is conducting economic development negotiations. The board may also conduct a closed meeting to deliberate the offer of a financial or other incentive to such a business prospect. Tex. Gov't Code § 551.087.
- **Emergency Management:** The board may conduct a closed meeting to deliberate information confidential under Texas Government Code sections 418.175-.182, relating to homeland security. However, the board must make a tape recording of the proceedings the closed meeting. Tex. Gov't Code § 418.183.
- **Test Items:** The board may conduct a closed meeting to discuss a test item or related information if the board believes the item may be included in a test the board administers to individuals seeking to obtain or renew a license or certificate required to engage in an activity. Tex. Gov't Code § 551.088.

**2. Does the OMA require a community college board to conduct a closed meeting if the subject matter fits in one of the OMA exceptions?**

No. The OMA does not require the board to go into closed meeting on any matter. The OMA states that every regular, special, or called meeting of the board shall be open to the public, except as provided by the OMA. Tex. Gov't Code §§ 551.001(3)(E), .002.

Even if a subject falls within one of the limited statutory exceptions to the requirement that a board meeting be open, those exceptions are permissive, not mandatory. A board should consult with its attorney as it exercises its discretion to invoke or not invoke its option to convene in closed meeting on these subjects.

**3. Does the OMA grant a person who is the subject of a complaint the right to have the complaint heard in a closed meeting?**

No. Under the OMA, consistent with the OMA's inherent preference for public access to the meetings of governmental bodies, a person has the right to have a complaint heard in an open meeting of a community college board, not a closed meeting. For example, the OMA permits, but does not require, closed meeting deliberations on complaints against an employee or public official. However, an open meeting is required if the officer or employee who is the subject of the deliberation or hearing requests a public hearing. Tex. Gov't Code § 551.074.

**4. If a community college board hears a complaint in an open meeting at a grievant's request, may the board deliberate on the matter in closed meeting?**

Yes, unless the person who is the subject of the complaint requests an open hearing. If a request for an open hearing is made, both the hearing and the board's deliberation must be in open meeting. *James v. Hitchcock Indep. Sch. Dist.*, 742 S.W.2d 701 (Tex. App.—Houston [1st Dist.] 1987, writ denied).

A narrow exception to this rule exists if the board convenes in closed session to consult with its attorney about the grievant's pending lawsuit. If a pending lawsuit involves unresolved charges or complaints about an officer or employee, it is permissible for the board to discuss those charges in closed session with its attorney as long as the discussion relates to the lawsuit. *Markowski v. City of Marlin*, 940 S.W.2d 720 (Tex. App.—Waco 1997, writ denied).

Before convening in closed session under the above exception, a community college board and its attorney should ensure that the situation falls within the scope of this narrow holding and that the board does not discuss any matters that are not covered by the exception. See *Olympic Waste Services v. City of Grand Saline*, 204 S.W.3d 496 (Tex. App.—Tyler 2006, no pet.) (concluding the city council violated the OMA by discussing non-legal matters while convened in executive session under exception for consultation with attorney).

**5. What are the steps that a community college must take to conduct a closed meeting?**

A community college board must take various steps before, during, and after a closed meeting, as listed below.

**Give proper notice.** The notice requirements for matters to be discussed in closed meetings are the same as those for matters to be discussed in open meetings. Tex. Att'y Gen. LO-90-27 (1990). For additional information regarding meeting notice requirements, please see [Open Meetings Act—Meeting Notice Requirements](#) on TASB College eLaw.

**Convene in an open meeting.** Before a board may conduct a closed meeting, a quorum of the body must first convene in a properly posted open meeting. Tex. Gov't Code § 551.101; *Cox Enters. v. Bd. of Trs. of Austin Indep. Sch. Dist.*, 706 S.W.2d 956 (Tex. 1986).

**Announce the authority for the meeting.** At the appropriate point on the agenda, during open session, the presiding officer must publicly: (1) announce that a closed session will be held, and (2) identify the section or sections of the OMA under which the closed meeting will be held. The presiding officer must give

enough information about the subject matter of the closed meeting to enable the public to identify the board's authority for the meeting, but need not state the actual section number of the statute that authorizes the closed meeting. Tex. Gov't Code § 551.101; *Lone Star Greyhound Park v. Tex. Racing Comm'n*, 863 S.W.2d 742 (Tex. App.—Austin 1993, writ denied).

**The board may deliberate but may not take action.** A final action, decision, or vote deliberated in a closed meeting may only be made in an open meeting. Tex. Gov't Code § 551.102.

**Convene the closed meeting.** The presiding officer must announce the date and time at the beginning and end of each closed session. Tex. Gov't Code § 551.103(c)(3), (d).

**Record the proceedings.** The community college board must either keep a certified agenda or make a recording of the proceedings of the closed meeting, except for a private consultation with its attorney under Texas Government Code section 551.071. Tex. Gov't Code § 551.103.

## 6. What TASB policies apply to closed meetings?

See TASB Policy BDA(LEGAL) for closed meeting exceptions generally and TASB Policies DGBA(LEGAL) and (LOCAL), FLD(LEGAL) and (LOCAL), and GB(LEGAL) and (LOCAL) for grievance procedures.

## 7. Where can I get more information regarding the OMA?

Community college representatives may contact Community College Services at 800.580.1488 or [colleges@tasb.org](mailto:colleges@tasb.org).

For more information on community college law topics,  
visit TASB Community College eLaw online at [colleges.tasb.org/elaw](https://colleges.tasb.org/elaw).

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