



Open Meetings Act—Closed Meeting Topics FAQs¹

Q: What Texas Open Meetings Act (OMA) exceptions permit a college district board to meet in closed session instead of open session?

A: A college district board may meet in closed session to deliberate the following topics:

- **Attorney Consultation:** The board may conduct a private consultation with its attorney only when it seeks the attorney's advice about pending or contemplated litigation or a settlement offer, or on 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 Negotiations:** The board may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the board's position in negotiations with a third person. Tex. Gov't Code § 551.072.
- **Prospective Gifts Negotiations:** The board may conduct a closed meeting to deliberate a negotiated contract for a prospective gift or donation to the district if deliberation in an open meeting would have a detrimental effect on the board's position in negotiations with a third person. Tex. Gov't Code § 551.073.
- **Personnel Matters:** The board is not required to conduct an open 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 officer or employee who is the subject of the deliberation or hearing requests a public hearing. Tex. Gov't Code § 551.074. The closed meeting exception for personnel matters does not apply when the board discusses an independent contractor who is not a college employee, such as an engineering, architectural, or consultant firm, or when the board discusses a class or group of employees, not a particular employee. Tex. Att'y Gen. Op. Nos. MW-129 (1980), H-496 (1975).
- **Employee v. Employee Complaints:** The board is not required to conduct an open meeting to deliberate in a case in which a complaint or charge is brought against a district employee by another employee and the complaint or charge directly results in the need for a hearing. However, the board may not conduct a closed meeting for this purpose 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.

¹ An electronic version of this document is available on TASB College eLaw at tasb.org/Services/Community-College-Services/Resources/TASB-College-eLaw/documents/oma_closed_meeting_topics_faq.pdf.

- **Student Discipline:** The board is not required to conduct an open meeting to deliberate in a case involving 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 is not required to conduct an open meeting to deliberate a matter regarding a public school student if personally identifiable information about the student will necessarily be revealed by the deliberation. Directory information about a public school student is considered to be personally identifiable information about the student for this purpose only if a parent or guardian of the student, or the student if the student has attained 18 years of age, has informed the district 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 has attained 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 is not required to conduct an open meeting to deliberate (1) the medical records or psychiatric records of an individual applicant for a benefit from the plan or (2) a matter that includes a consideration of information in the medical or psychiatric records of an individual applicant for a benefit from the plan. Tex. Gov't Code § 551.0785.
- **Security:** The board is not required to conduct an open meeting to deliberate the deployment, or specific occasions for implementation, of security personnel or devices or a security audit. Tex. Gov't Code § 551.076.
- **Emergency Management:** The board is not required to conduct an open 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 of a closed meeting held to deliberate the information. 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.

Q: Does the OMA say we have to go into closed meeting if the subject matter fits in one of the OMA exceptions?

A: No. The OMA does not *require* a 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. Even if a subject falls within one of the limited

statutory exceptions, 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.

Q: Does the OMA give the person who is the subject of a complaint a right to have it heard in a closed meeting?

A: 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 it heard in *open* meeting, not *closed* meeting. For example, the OMA permits closed meeting deliberations on complaints against an employee or public official. But 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.

Q: If a college district board hears a complaint in open meeting at a grievant's request, can it at least deliberate about it in closed meeting?

A: No, not if the person who is the subject of the complaint objects. If a request for 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 in order 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 this exception, a board and its attorney should ensure that their 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 OMA by discussing non-legal matters while convened in executive session under exception for consultation with attorney).

Q: What TASB policies apply to closed meetings?

A: See TASB Policy BD(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.

Q: Where can I get more information regarding the OMA?

A: College district trustees and administrators may contact TASB Community College Services at 800.580.1488 or visit colleges.tasb.org.

For more information on community college law topics,
visit TASB Community College eLaw online at colleges.tasb.org/elaw.

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 college's own attorney in order to apply these legal principles to specific fact situations.