



**Texas Association of School Boards**

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## **Board Member Access to School District Records**

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### **Introduction—Board Member Request for Information in Official Capacity**

Texas Education Code section 11.1512(c)-(f), as added by House Bill 628 in 2013 and amended by Senate Bill 1566 in 2017, 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). The district must provide the information, documents, and records in the time required by law. Tex. Educ. Code § 11.1512(c-1).

The district may 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). Tex. Educ. Code § 11.1512(c). Under FERPA, the district must withhold 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 TASB Policies FL(LEGAL) and (LOCAL).

Subsection 11.1512(d) 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).

### **Statutory Authorization for a Board Member’s Request**

According to the 2013 bill analysis for House Bill 628, this legislation authorized 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. Tex. Att’y Gen. Op. 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." Tex. Att'y Gen. Op. No. JM-119 (1983).

### **Timeframe for Response to Board Member's Request**

In the 2017 Regular Legislative Session, Senate Bill 1566 added a timeframe for a district's response to a board member's request for information, documents, and records maintained by the district, along with a remedy for failure to timely respond to a legally authorized request.

As the general rule, a district must provide a member of the board of trustees with information, documents, and records requested not later than the 20th business day after the date the district receives the request. As an exception to the general rule, the district may take a reasonable additional period of time, not to exceed the 30th business day after the date the district receives the request, to respond to a request if compliance by the 20th business day would be unduly burdensome given the amount, age, or location of the requested information. The district shall inform the trustee of the reason for the delay in providing the requested information and the date by which the information will be provided. Tex. Educ. Code § 11.1512(c-1).

If a district does not provide requested information to a member of the board of trustees in the time required, the member may bring suit against the district for appropriate injunctive relief. A member who prevails in a suit is entitled to recover court costs and reasonable attorney's fees. The district must pay the costs and fees from the budget of the superintendent's office. Tex. Educ. Code § 11.1512(c-2).

### **Maintaining Confidentiality in Response to a Board Member Request for Information**

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. Local policy and written procedures should guide whether school districts will rely on subsection 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.

Uniform application of Section 11.1512 requires a review of local school district policies and procedures. Under the TASB Policy Service structure, the provisions related to board members' requests for information are found in TASB Policy BBE(LOCAL). Most districts have language at TASB 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 and, if the information contains confidential student records, has a legitimate educational interest in the records in accordance with policy FL. A board member

who receives confidential information must maintain the confidentiality of information, documents, and records received as required by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. § 1232g) and any other applicable privacy laws. 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 TASB Policy BBE(LOCAL) 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 to board members and for requiring security controls if the records and documents contain confidential information. TASB Policy Service has sample procedures available for districts who wish to exercise the option of withholding confidential information from individual trustees.

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**

Additional questions have arisen relating to the tracking requirements and the annual report to TEA. 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. Guidance sent by TEA to gather this

data 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 report the necessary data in TEA's Public Education Information Management System (PEIMS). 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 guidance, 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.*<sup>1</sup>
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 access to the records in full, provided that the board member is making the request in his or her official capacity. If the district provides records or documents, additional security controls may be required.
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.

This document is continually updated, and references to online resources are hyperlinked, at [.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/documents/bd\\_mem\\_access\\_to\\_sch\\_dist\\_records.pdf](https://tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/documents/bd_mem_access_to_sch_dist_records.pdf). For more information on this and other school law topics, visit TASB School Law eSource at [schoollawesource.tasb.org](https://schoollawesource.tasb.org).

<sup>1</sup> 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.

*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.*

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