



**Texas Association of School Boards**

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## **Board Member Responsibilities as Temporary Custodians**

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This article answers basic questions about a board member's responsibilities as temporary custodians under the Texas Public Information Act (PIA). For a more in-depth review of legal duties of temporary custodians under the PIA, see TASB Legal eSource's [Public Information Act—Requirements for Temporary Custodians](#). For general information about the PIA, see TASB Legal eSource's [Public Information Act webpage](#).

### **1. Are school board members considered temporary custodians by the PIA?**

Yes. The PIA defines a *temporary custodian* as any current or former district employee or official who holds on a private device information subject to the PIA that has not been provided to the district. The PIA requires temporary custodians to either preserve the information or transfer it to the district.

### **2. What information on a board member's personal device is subject to the PIA?**

Information defined as *public information*, which is generally anything created or received in the member's official capacity in connection with transacting district business, will be subject to potential public disclosure. Tex. Gov't Code § 552.002.

### **3. What actions are board members required to take as a temporary custodian?**

The PIA requires board members who are temporary custodians to do the following:

- (1) Either transfer information subject to the PIA located on a privately-owned device to the district or a district server or personally preserve the information in its original form in a backup or archive on the device in accordance with all governmental records retention and access laws; and
- (2) If requested by the district's public information officer, surrender or return any information subject to the PIA that is in the board member's possession, custody, or control within 10 calendar days of the request. Tex. Gov't Code §§ 552.004(b); .233(b).

**4. What penalties apply to a board member who does not comply with the PIA?**

A board member who does not comply with the PIA is subject to all penalties available under the PIA and other laws. *See, e.g.*, Tex. Gov't Code §§ 552.233, .351-.353 (criminal violations); Tex. Loc. Gov't Code § 202.008 (destruction of local government records); Tex. Penal Code §§ 37.09 (tampering with or fabricating physical evidence), .10 (tampering with governmental record).

**5. What are some first steps a board member can take as a temporary custodian?**

A board member should determine whether information subject to the PIA is currently held on a personal device or account. If so, the information should be transferred or provided to the district. If a board member plans to retain the information on a personal device, then the information should be reviewed to determine how long it should be retained under the district's records control schedules. If a retention period has expired or there is no retention requirement and legal restriction exists to prohibit destruction of the information, the information may be deleted. Board members uncertain whether a pending legal restriction applies to information on privately owned devices should consult the district's attorney.

**6. How may board members use personal devices to conduct district business?**

Ideally, board members should not conduct district business using personal devices or accounts; however, carrying multiple devices may not always be practical. One way to use a personal device for district business is to allow the district to install or download software applications onto the personal device that segregate district information from personal information.

For example, a board member may use a Microsoft Outlook application on a personal device that links to the school email account, which would store emails transacted within that application on a district-controlled server instead of the personal device or personal server. A board member may then use another email application, such as Gmail, Yahoo or Hotmail, to separately conduct personal business. For texting, numerous options, including GroupMe, Remind, and ClassDojo, could be used to conduct district-related texting while other options, such as Facebook Messenger or WhatsApp, are reserved for personal business.

In addition, certain technology applications allow for remote searching of software applications on personal devices, which may avoid the burden of manual transfer of information by the board member and limit unrestricted access to the entire device by the district.

**7. Must board members transfer or preserve messages concerning personal matters?**

No. Personal communications that do not transact official business and are not created or received by board members in an official capacity are not subject to transfer or preservation.

**8. What are examples of personal communications that are not subject to the PIA?**

A general guideline is whether information (1) exists due to a board member's role on the school board and (2) concerns matters within the district's control. If so, the transaction cannot be considered personal. Typically, general notes of celebration, greetings, gratitude, condolences, or personal concerns would not be information subject to the PIA.

Below are some examples of personal messages:

- "My child will be absent the next two days for a medical procedure."
- "Thanks for inviting me to speak at the Rotary Club about public service. I am available Fridays."
- "It would be my honor to swear you in as a new judge!"
- "Anyone going to make it to the rodeo this weekend?"
- "Congrats on graduation!"
- "Happy Veteran's Day!"
- "I forgot to tell you I am allergic to peanuts."
- "What's the dress code at TASA/TASB convention?"
- "I brought some cookies for the board meeting tonight."

**9. What should a board member do with transactions that contain both district and personal business, or that are unclear?**

To the extent that content may be segregated without destroying the original record, TASB Legal Services recommends that board members transfer to the district the portion of the message that contains district business. Otherwise, the entire message containing both personal and district business should be transferred or preserved. When uncertain as to whether a communication should be transferred or preserved, TASB Legal Services recommends that board members err on the side of preservation and retention and consult a school attorney for specific advice.

**10. If a board member does not transfer district information to the district, how long must the information be preserved on the personal device?**

Board members must preserve information for at least as long as required by the district’s records control schedules. Although a few districts create their own schedules, most districts adopt the record retention schedules published by the Texas State Library and Archives Commission (TSLAC), which provide minimum time periods for retention based on each record’s type of content. Board members who are unsure which schedules have been adopted by their districts should contact the district’s records management officer or school attorney.

**11. What are the most common retention periods likely to apply to board member communications?**

Absent specific circumstances, most board member communications will likely fall under retention periods provided by Schedule GR for correspondence and internal memoranda. TSLAC, Local Government Retention Schedules, [GR: Records Common to All Local Governments](#).

Below is a chart with some examples:

Type of Record	Record Description	Minimum Retention Period	Examples of communications sent to/from board members
<b>GR1000-26a</b> <i>Administrative Correspondence</i>	Pertains to the formulation, planning, implementation, modification, redefinition of the programs, services, or projects of the school district and the administrative regulations, policies, and procedures that govern them.	4 years from creation or receipt	“Chief, do you plan on equipping our officers with body worn cameras?”  “Superintendent, can we please get an update on what HR has in store for new hire incentives?”  “Superintendent, my preference is to set first year teacher salaries at \$60K regardless of what the others think.”  “I propose the wording below for our visitor’s policy to replace your proposal from the last meeting. Can you please distribute new copies at the next meeting?”

<p><b>GR1000-26b</b> <i>General Correspondence</i></p>	<p>Pertains to the regular operation of the policies, programs, services, or projects of the school district.</p>	<p>2 years from creation or receipt</p>	<p>“Dear Trustee, I would like to report a complaint against the principal.”</p> <p>“Thank you for contacting me; however, I am not the proper recipient of formal complaints. Please contact our personnel director for complaint forms.”</p> <p>“Can you please add agenda item ABC to the next meeting. Send confirmation ASAP, thanks.”</p> <p>“Your item will not be added until the meeting after next.”</p> <p>“This is to inform the board that the sheriff’s office as requested lockdown of our elementary campus due to nearby activity. More updates to come.”</p> <p>“I would like to see the raw data for the report you presented at the last budget workshop.”</p> <p>“Board, I’m pleased to inform you that our Science Olympiad team is advancing to nationals!”</p>
<p><b>GR1000-26c</b> <i>Routine Correspondence</i> <b>GR1000-50</b> <i>Transitory Records</i></p>	<ul style="list-style-type: none"> <li>• Letters of transmittal, requests for publications, internal meeting notices, and similar routine matters.</li> <li>• Records with only temporary usefulness, not an integral part of a records series, not regularly filed within the district’s recordkeeping system, and required only for a</li> </ul>	<p>Only as long as administratively valuable (AV), as determined by the district.</p>	<p>“I’m stuck in traffic, feel free to start the meeting without me.”</p> <p>“Attached are my blackout dates for meetings. Let me know what sticks.”</p> <p>“Can you send me a copy of last year’s code of conduct?”</p> <p>“Meeting is cancelled tonight due to power outage in area.”</p>

	<p>limited time for the completion of an official action.</p> <ul style="list-style-type: none"> <li>Records that are not essential to fulfilling statutory obligations or documenting district functions.</li> </ul>		<p>“The city’s annual Memorial Day parade has extra seats on a float. Taking first three RSVPs.”</p> <p>“Please check your email for a copy of the latest draft budget.”</p>
[Information that are not <i>local government records</i> ]	<ul style="list-style-type: none"> <li>Extra, identical copies of documents created only for convenience, reference, or research.</li> <li>Notes, journals, diaries, and similar documents created for personal convenience.</li> <li>Blank forms, stock publications, copies of information furnished to the public.</li> </ul>	Do not need to be retained under records retention laws but may be subject to disclosure under the PIA if in existence at the time of a legal request.	<ul style="list-style-type: none"> <li>Duplicate copies of board meeting materials</li> <li>Appointment book entries created for personal convenience</li> <li>Notes taken by a board member during a board meeting for personal convenience</li> </ul>

Under TSLAC’s minimum retention periods, most board member communications of any district-related substance, including *general correspondence*, must be preserved for two or more years. Only truly non-substantive communications, like transmittal notes and duplicate records, may be deleted when no longer needed. A board member who encounters questions about whether communications are *routine* (non-substantive) or *general* (substantive) should consult the district’s school attorney.

This document is continually updated, and references to online resources are hyperlinked, at [tasb.org/services/legal-services/tasb-school-law-esource/governance/documents/board-member-responsibilities-as-temporary-custodians.pdf](https://tasb.org/services/legal-services/tasb-school-law-esource/governance/documents/board-member-responsibilities-as-temporary-custodians.pdf). For more information on this and other school law topics, visit TASB School Law eSource at [schoollawesource.tasb.org](https://schoollawesource.tasb.org).

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