

INTERIM REPORT
to the 86th Texas Legislature



HOUSE COMMITTEE ON GOVERNMENT
TRANSPARENCY & OPERATION

November 2018

**HOUSE COMMITTEE ON
GOVERNMENT TRANSPARENCY & OPERATION
INTERIM REPORT 2018**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
86TH TEXAS LEGISLATURE**

**GARY ELKINS
CHAIRMAN**

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Committee On
Government Transparency & Operation

November 1, 2018

Gary Elkins
Chairman

P.O. Box 2910
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The Honorable Joe Straus
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Government Transparency & Operation of the Eighty-fifth Legislature hereby submits its interim report including recommendations for consideration by the Eighty-sixth Legislature.

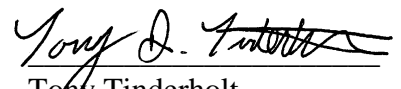
Respectfully submitted,


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INTRODUCTION

At the beginning of the 85th Legislature, the Honorable Joe Straus, Speaker of the Texas House of Representatives, appointed seven members to the House Committee on Government Transparency & Operation. The Committee membership included the following: Gary Elkins, Chairman; Giovanni Capriglione, Vice-Chair; Larry Gonzales (resigned 7 June 2018), Eddie Lucio III, Matt Shaheen, Tony Tinderholt, and Tomas Uresti.

The committee was given jurisdiction over all matters pertaining to:

- the organization, operation, powers, regulations, and management of state departments, agencies, institutions, and advisory committees;
- the elimination of inefficiencies in the provision of state services;
- open government matters, including open records and open meetings;
- advances in science and technology, including telecommunications, electronic technology, or automated data processing, by state agencies, including institutions of higher education; the promotion within the state of these advances;
- the cooperation between the state or a local governmental entity and the scientific and technological community, including private businesses, institutions of higher education, and federal governmental laboratories;
- cybersecurity; and
- the Texas Emerging Technology Fund Advisory Committee and the Sunset Advisory Commission.

INTERIM STUDY CHARGES

- Examine the role of technology in disaster preparedness and the response to Hurricane Harvey and future natural disasters. Review and make recommendations to drive innovation and efficiency and evaluate whether there are any regulatory impediments to collaboration between the public and private sectors.
- Evaluate whether qualifying state agencies are appropriately utilizing available state disaster recovery services, including the statewide technology centers. Consider the costs and benefits of allowing other states to participate in Texas' statewide technology centers under Subchapter L, Chapter 2054, Texas Government Code for disaster recovery purposes.
- Review Texas' open meeting laws and related government decision-making policies. Determine if the formal processes prevented the efficient delivery of assistance during Hurricane Harvey. Make recommendations on maintaining the current standards of accountability without limiting government-provided aid during disaster events.
- Evaluate whether, in light of recent Texas Supreme Court rulings, the provisions of the Public Information Act are adequate to support transparency and accountability in government, particularly as it relates to government contracting and procurement.
- Study how state agencies can share knowledge and practices, reduce duplicative data gathering, and conduct business in a more efficient manner through interagency data sharing. Review best practices to provide the public with more transparency and access to government information.
- Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 85th Legislature. In conducting this oversight, the committee will also specifically monitor the implementation of H.B. 8 (85R).

TECHNOLOGY IN DISASTER PREPAREDNESS

BACKGROUND

The 2017 hurricane season was devastating. Harvey, Irma, Maria and Nate were so destructive and deadly during the 2017 Atlantic hurricane season that the World Meteorological Organization's Hurricane Committee decided to retire those names from future Atlantic Basin tropical cyclone name lists. Three of these storms, Harvey, Irma and Maria, brought devastating winds, rain, and flooding to Texas, Florida, Puerto Rico, the U.S. Virgin Islands, and several Caribbean nations. Many lives were tragically lost, and the total estimated cost of damage from these three hurricanes is in the hundreds of billions and rebuilding will require many years.¹

Hurricane Harvey was a Category 4 storm that hit Texas on August 25, 2017. It caused \$125 billion in damage according to the National Hurricane Center. It affected 13 million people from Texas through Louisiana, Mississippi, Tennessee, and Kentucky. At least 88 people died from the storm. Harvey made landfall three times in six days. At its peak on September 1, 2017, one-third of Houston was underwater. Two feet of rain fell in the first 24 hours. Flooding forced 39,000 people out of their homes and into shelters. Dallas created a mega-shelter for 5,000 evacuees out of its main convention center.²

In Houston, 75 out of 275 schools were closed due to flood damage. In the Gulf area, 1 million vehicles were ruined beyond repair, according to auto data firm Black Book. That includes 300,000 to 500,000 vehicles owned by individuals. Harvey flooded 800 wastewater treatment facilities and 13 Superfund sites which spread sewage and toxic chemicals into the flooded areas.³

Throughout these disasters, technology companies played an important role in preparedness, relief, and recovery efforts. Tech companies moved quickly to adapt and deploy resources, gather and share information to aid emergency response and to create an invaluable bridge between those needing help and those offering it.

COMMITTEE HEARING

On Tuesday, March 27, 2018, the Government Transparency & Operation Committee met in Austin, Texas, to take testimony and receive an update on the following interim charge:

Examine the role of technology in disaster preparedness and the response to Hurricane Harvey and future natural disasters. Review and make recommendations to drive innovation and efficiency and evaluate whether there are any regulatory impediments to collaboration between the public and private sectors.

The following witnesses testified on the charge:

John Fanelli (Hughes Network Systems)
Donnie Gerault (Self)
Caroline Joiner (TechNet)
Brian Maholic (AT&T)
Joshua Sanders (Lyft)

Ms. Joiner told the committee that throughout these disasters, technology companies played an important role in preparedness, relief, and recovery efforts. Tech companies moved quickly to adapt and deploy resources, to gather and share information to aid emergency response and to create an invaluable bridge between those needing help and those offering it. She offered the following examples.

Google set up an SOS alert that provided official updates, contact information for emergency services, relevant news stories and a link to donate money to relief funds. The company also launched a Hurricane Harvey-focused Google map that listed traffic problems, road closures, and shelter locations — and included the ability to highlight safe evacuation routes. This tool helped citizens avoid dangerous areas as they evacuated, keeping citizens safe and potentially lightening the burden on first responders. Unmanned aerial vehicles (UAVs) or drones helped perform critical tasks in the aftermath of Hurricane Harvey. AT&T, Comcast, and others, in conjunction with, or on behalf of, local, state, or federal agencies used drones to assess damage to roads, bridges, cell towers, wire lines and water treatment plants — and spot people in need of rescue in real time — in areas that were inaccessible. These drones provided High Definition video of affected areas that

was often posted online and used by local governments and agencies to prioritize where to send assistance and to pinpoint and more quickly restore electricity and cellular service. Drones have also been used to temporarily provide data, voice, and text services.

These uses highlight the significant value of unmanned aerial vehicles to not only improve disaster response, but also preview the economic opportunities and life changing innovations from continued investment in this technology.

Ms. Joiner informed the committee that over the last three sessions, the Legislature has considered and passed dozens of bills to restrict the use of drones in Texas. If this continues, she stated, it will have a chilling effect on an industry that could produce billions of dollars of economic impact in the coming years.

After Harvey, sharing-economy companies effectively deployed their wide networks of flexible assets to aid in disaster recovery, according to Joiner. Online platforms like DoorDash and Postmates helped deliver food, clothing, and toiletries to shelters. Ride-sharing companies like Lyft partnered with the City of Houston to deploy willing drivers to move thousands of people from temporary homes to shelters or back to the homes they had fled in the wake of the storm. Shelter managers and the American Red Cross used Lyft's concierge system which was initially created to let someone request a ride for another person, to coordinate rides. This platform provided a seamless, easy way to request, track, and verify trips.

Joshua Sanders, representing Lyft, told the committee that over the past year, Lyft has been able to utilize their technology platform to assist with the implementation of a disaster response and recovery program. Their "Relief Rides Program" started out in Houston during Hurricane Harvey. Working with the City of Houston, the American Red Cross, and other non-profits in the region, Lyft's drivers gave close to 4,000 rides helping displaced individuals who filled the region's emergency shelters. Rides consisted of individuals and families transitioning to temporary housing, or in some cases, non-emergency medical trips to doctor's appointments and treatments.

With the help of Lyft's Concierge Platform, which allows someone to request a ride for an individual through an online portal, Lyft was able to train City of Houston and shelter staff to operate the concierge system through their laptops and smart phones. Once active, Lyft's platform allowed for an easy way to request, track, and verify trips from shelters across the Houston region.

With the cooperative efforts of local governments and non-profit sector, Lyft was able to create a process that operated smoothly. The program was replicated in Florida for Hurricane Irma, and in Las Vegas shortly after the Mandalay Bay active shooter crisis.

While Lyft provided these services as a donation during each disaster and crisis, they have learned through these experiences that there are Federal funds, and possible state funds, to help supplement local governmental efforts in disaster relief and recovery that deal specifically with transportation. If done in proper coordination with local governments, FEMA will reimburse certain expenses related to transportation.

Social media was a lifeline for people affected by Hurricane Harvey. Social media platforms allowed users to notify their networks that they were safe as well as request and offer help. These features functioned as a virtual command center in some ways — providing a description of the event, forecasts, lists of areas affected, and ways that people can get involved in the relief efforts. Victims unable to connect with overloaded 911 call systems turned to social media to plead for assistance. In turn, volunteer groups including the "Cajun Navy" used social media to identify those in need of help and to coordinate rescue efforts. Social media was not just used by residents. Local and national agencies — including FEMA — relied on this information and used it to help create faster and more effective disaster responses. In some agencies, crews were brought on during disasters to gather intelligence through social media networks, and then report about areas that need relief efforts. Federal, State, and local agencies also used social media to disseminate information, sending targeted messages to affected areas much faster than emergency response protocols they have relied on for decades.

Cloud computing has been transformational for preparation and management of disaster responses. Disasters that knock out or overload local infrastructure make access to data and communication systems nearly impossible. Cloud computing reduces concerns about whether a data center will survive a disaster because data is stored and kept accessible far from the disaster zone. Agencies and companies using the cloud can maintain or quickly restore mission critical systems and enable employees to work from remote locations.

Finally, fully autonomous cars may be a decade or more away, but such vehicles could revolutionize evacuations during a hurricane. Imagine fleets of autonomous buses and specialized vehicles navigating treacherous terrain, ferrying supplies, picking up evacuees, and even making rescue trips — without putting human drivers in danger. Perhaps no one would stand to benefit from such technology more than the populations that are most vulnerable during floods, hurricanes, and other disasters — those without access to personal transportation. For autonomous vehicles to deliver on this promise, state and local governments must prioritize infrastructure that supports their operation — including robust 5G networks.

RECOMMENDATIONS

As state and local agencies continue to evolve with technology to create better systems for quicker disaster relief, the committee encourages them to use every tool possible — including embracing and leveraging the wide network of technology assets at private companies. Collaboration is key. The State of Texas should encourage emergency management officials to forge partnerships with innovative technology companies so they can better complement state and local efforts.

Planning and Communication are key elements to the successful implementation of any effort. The committee encourages the state to coordinate its resources and use its authority to help aid local governments in the planning process to better incorporate the private sector and its resources. Ensuring there are proper communications channels between the government and the public during these events is imperative for the safety and success of any relief efforts. People need to know what resources and help are available to them before, during and after a major disaster.

DISASTER RECOVERY SERVICES

BACKGROUND

The state of Texas uses information technology to perform almost all of its objectives. Employees use electronic mail and Voice Over Internet Protocol telephone systems to communicate. Electronic data interchange is used to administer and transmit financial data including payroll, orders and payments. Servers process information and store large amounts of data. Desktop computers, laptops and wireless devices are used by employees to create, process, manage and communicate information. The State is dependent on its information technology to operate.⁴

A disaster in information technology (IT) is an unplanned event that interrupts a customer's access to its data and processing capabilities residing at a datacenter or other technical facilities. The interruption must be for a significant amount of time, as determined by the nature of the interruption, to warrant Disaster Recovery (DR) activities to commence. A disaster can be anything that disables an organization's business operations for a prolonged period. If the interruption in service is anticipated to be less than the time it would take to activate the disaster recovery environment, then it would not be considered a disaster and normal remediation activities would occur. The goal of DR is for a business to recover its technical capabilities if lost in the event of a disaster and continue operating as close to normal as possible.⁵

A Disaster Recovery Plan is the combination of policies, procedures, and tools in place that enable technical teams to restore technical capabilities (critical infrastructure, systems, and business applications) following a major disruptive event. The Plan provides information for how service restoration procedures are initiated in the event of a disaster. It lists or references the resources and infrastructure needed to restore vital business processes, and the steps to be executed to implement the recovery of capabilities. The primary purpose of a DR Plan is to document the processes required to recover production systems identified as essential for the functioning of a customer. The plan will be activated when a disaster has been declared.⁶

The most important aspect of disaster recovery is to perform annual disaster recovery tests. Agencies that use the Department of Information Resources' (DIR) Data Center Services (DCS) test their disaster recovery plans for their applications annually by either a Recovery Test or a

Table Top Exercise (Walk through). A recovery test is a disaster discovery exercise that simulates a real disaster in a controlled environment. This option allows participants to evaluate pertinent processes and procedures for completeness and accuracy. Walk through tests are conducted using the DR plan and technical recovery guide (TRG) documentation, without interacting with the infrastructure or applications. The same recovery steps are covered, in the form of a logical walk-through of the recovery checklist process, as well as the Technical Recovery Steps in the TRG. Improvements to the DR Plan and TRG documentation will be captured at the end of the test for subsequent updates/additions to the DR documentation.⁷

Two critical objectives are used to focus IT and business resources on the most critical systems during a disaster situation: Recovery Time Objective (RTO), which is the maximum time it takes from disaster declaration to when critical processes and related systems are available and Recovery Point Objective (RPO) - the maximum tolerable period in which data might be lost in the event of a disaster.⁸

In 2005, the 79th Legislature passed H.B. 1516 directing DIR to consolidate agencies' IT infrastructure to reduce statewide costs for IT services, modernize aging state infrastructure, and increase overall security and disaster recovery capability. Today, the data center services (DCS) program:

- Enables Texas state agencies to share costly data center infrastructure, reduce focus on IT operations and therefore concentrate on enabling their core mission
- Provides mainframe, server, network, data center, application management, cyber security services and print/mail services
- Delivers services in remaining legacy agency data centers while consolidating operations to the two regionally diverse state data centers and eliminating most legacy data centers
- Supports most of the largest state agencies, while providing the flexibility to deliver services to smaller agencies as well

About 25 state agencies are required to use DIR's DCS. Disaster Recovery and testing is included in services they receive from DIR. Among these are the Health & Human Services Commission, Texas Department of Criminal Justice, Texas Education Agency and Texas Department of Transportation. Another 25 agencies use some of DIR's services at their own discretion.⁹

Agencies are required to provide continuity of operations plans (COOP) to the State Office of Risk Management (SORM). However, disaster recovery services are not a requirement of the COOP. For those agencies not in DIR's DCS, whether or not they have appropriate data recovery services is not monitored by any specific authority. DIR has conducted a survey of agencies to determine if they have a written disaster recovery plan and to determine if they have tested the plan in the past 12 months. All agencies received the survey and are required to respond. However, they do not have to report their DR plans or testing protocols to DIR, SORM or any other authority.

COMMITTEE HEARING

On Tuesday, March 27, 2018, the Government Transparency & Operation committee met in Austin, Texas, to take testimony on the following interim charge:

Evaluate whether qualifying state agencies are appropriately utilizing available state disaster recovery services, including the statewide technology centers. Consider the costs and benefits of allowing other states to participate in Texas' statewide technology centers under Subchapter L, Chapter 2054, Texas Government Code for disaster recovery purposes.

Stephen Vollbrecht, Executive Director of the State Office of Risk Management (SORM) , and Dale Richardson, Chief Operations Officer at the Department of Information Resources (DIR) addressed the committee.

Mr. Vollbrecht told the committee that his office administers the continuity of government operations program, among others, for the State of Texas.

In his testimony, Mr. Vollbrecht explained in the event of a catastrophe or disaster, consequences of an incident may interrupt essential operations of government entities. The practical effect of these events is an adverse impact on the clients of government entities, whether these are other governmental units or the general public. To prepare for such interruptions, government entities have various available protocols for plans to respond to those events and resume essential functions, each with a potentially different emphasis and level of detail and complexity.

Examples of available plans in use include, but are not limited to, business continuity plans, continuity of operations plans (COOP), continuity of government plans, crisis communications plans, critical infrastructure protection plans, cyber incident response plans, disaster recovery plans, information system contingency plans, emergency operations plans, occupant emergency plans, and others.

Mr. Vollbrecht highlighted the differences between Continuity of Operations Plan (COOP) and IT Disaster Recovery plans, as follows. Continuity of Operations (COOP), as defined in the National

Continuity Policy Implementation Plan (NCPIP) and the National Security Presidential Directive-51/Homeland Security Presidential Directive-20 (NSPD-51/HSPD-20), is an effort within individual executive departments and agencies to ensure that Primary Mission Essential Functions (PMEFs) continue to be performed during a wide range of emergencies, including localized acts of nature, accidents and technological or attack-related emergencies.

This is the standard adopted by SORM. According to Texas Labor Code 412.054, each state agency shall work with SORM to develop an agency-level COOP that outlines procedures to keep the agency operational in case of disruptions to production, finance, administration, or other essential operations. The plan must include detailed information regarding resumption of essential services after a catastrophe. It does not include, according to SORM, an IT Disaster Recovery Plan mandate.

Mr. Vollbrecht explained that an information technology disaster recovery plan (IT DRP) should be developed in conjunction with the business continuity plan, not the COOP. Priorities and recovery time objectives for information technology should be developed during the business impact analysis. Technology recovery strategies should be developed to restore hardware, applications and data in time to meet the needs of the business recovery.

Businesses large and small create and manage large volumes of electronic information or data. Much of that data is important. Some data is vital to the survival and continued operation of the business. The impact of data loss or corruption from hardware failure, human error, hacking or malware could be significant. A plan for data backup and restoration of electronic information is essential. SORM is not specifically authorized to designate a statewide standard/framework for IT planning.

Dale Richardson, Chief Operations Officer for the Department of Information Resources (DIR), addressed the committee. He explained DIR's data center services and disaster relief services. The DCS program is purposely built for the government, with government's unique requirements incorporated into the managed service offering. Other benefits of the DCS program include: industry standard service levels, disaster recovery in alternate data center, including options for

annual full disaster recovery test and full compliance with FBI Criminal Justice Information Services (CJIS) requirements, Texas State Auditor (SAO) requirements, annual SSAE 16 audits and biannual IRS audits, among others.

The DCS program uses a shared governance model that engages customer agencies at all levels of decision-making. Customer agencies are divided into five partner groups that choose representatives to serve on governance committees and solution groups. This approach enables complete transparency, standardization and encourages communication across the enterprise.

DCS supports a fully managed environment designed specifically to protect business critical data, applications and supporting systems. There are four typical types of data storage solutions for large IT enterprises:

- Online Storage - large disk array solutions, minimizing access time to data, and maximizing reliability with geo-redundant data replication
- Backup Storage - offline storage for data protection, with a lesser price per byte than online storage, but at an operational cost of higher average access time
- Archiving - similar to backup, but its purpose is long-term retention, management, and discovery of fixed-content data to meet regulatory compliance, litigation protection and storage cost optimization objectives
- Disaster Recovery Solutions - used to protect the data from localized disasters, usually being a vital part of a broader business continuity plan.

The DCS program supports all four enterprise storage solutions and recently added additional cloud storage options for state agency customers which includes the following:

- Fully managed experience for IT infrastructure storage solutions
- Continuous security operations
- Complies with CJIS, FTI, HIPPA, PCI etc. regulatory policies
- Geo-redundant data centers within the State of Texas for full disaster and data recovery
- Data can be encrypted “at Rest and In-Transit” when under DCS management

All storage solutions comply with FBI Criminal Justice Information Services (CJIS) requirements, Texas State Auditor (SAO) requirements, annual SSAE 16 audits, and bi-annual IRS audits.

The Data Center Services (DCS) program uses a self-insured disaster recovery model utilizing two geographically dispersed data centers located in Austin, Texas and in San Angelo, Texas. The model requires customers to define their level of disaster recovery needs per application. Utilizing a balanced work load strategy, agency production servers are placed in one data center with test and development servers placed in the other. This ensures that if one data center goes off line during a disaster, there would be equipment already allocated to bring the applications back on-line by repurposing the test and development servers in the alternate data center to become the active production environment.

Remote backup services are available to DCS customers over existing network connectivity. This service is scalable and available to any potential customers that may need to backup their data to an off-premise location for data protection. Service features include regular (as defined by the user) backup of data to the State's Data Centers via network connections, ability for authorized users to request recovery of data or files anytime, backup reports provided via the State of Texas DCS portal and annual backup and recovery reviews with customers

Disaster Recovery as a service combines the benefits of Backup as a Service (BaaS) with Disaster Recovery (DR) services. It provides a DR solution in line with DCS Customer's financial and business continuity planning requirements, an enterprise backup and recovery solution that addresses business continuity requirements for state agencies and an annual DR Table Top Exercise to test the recovery capabilities. Further, it establishes a process to be followed in the event a disaster is declared.

This service has many benefits not generally offered in typical "Drop Ship" disaster recovery solution. Because data is backed up to a Consolidated Data Center (CDC) based centralized tapeless environment, DR recovery data is already onsite at the recovery location. This same architecture is used for BaaS and allows data to be restored from the CDC to the customers' Legacy

Data Center (LDC) leveraging de-duplicated cached local system data. For BaaS, DCS provides a proven architecture and solution that has been successfully deployed within the DCS program. Data backed up from the LDC to the CDC will be replicated to the alternate CDC as an offsite copy within the DCS program and can be used to recover agency applications any time required.

HCS was introduced to the DCS program to provide customers with expanded cloud and self-management options, while meeting the business, security, and regulatory requirements of Texas state government. The services include Fully Managed and self-managed options, as well as DCS private community cloud and public government cloud options. Some of the key features and benefits of this service are:

- Integrated DCS private community cloud with public government cloud options in the consolidated data centers
- Semi-managed and fully-managed service options
- Automated cloud self-provisioning
- Next generation tools & infrastructure automation improving service delivery and infrastructure availability
- Agility, transparency, and control of customer IT infrastructure and financial spend
- TAC 202 security compliance

DR in the Cloud in DCS is a backup and restoration strategy that involves storing and maintaining copies of data records in a public cloud environment. The goal of cloud DR is to provide customers with an efficient and rapid way to recover data in the event of a disaster.

Effective DCS cloud disaster recovery provides continuity for services and the ability to fail over to a second site if there is a hardware or software failure of IT systems for customers outside the DCS program. Workloads are then failed back to their original locations when the crisis is resolved. Failover and failback can be automated. Customers should run tests at regular intervals on isolated network segments that do not impact production data.

The Comptroller of Public Accounts (CPA) is one of the larger agencies not required to use the DCS. With the initial creation of the state data center, (H.B. 1516, 79th Regular Session) the treasury, tax, financial, revenue, and expenditure systems managed by Comptroller's Office were excluded. Government Code, §2054.376(b) sets out the exclusion of the Comptroller's systems.

The CPA submitted the following information regarding their DR plans to the committee. The CPA currently operates and manages a stand-alone data center separate from the Data Center Services (DCS) provided by the Texas Department of Information Resources (DIR).

The 2005 legislature chose to specifically exempt CPA from the consolidated data center when it was initially created. Based on a 2007 financial analysis, the current CPA data center provides a more cost effective solution than the DCS offering. The CPA data center facility currently meets the needs of the agency including the critical treasury, tax, financial, revenue, and expenditure systems.

To ensure critical systems still operate in a disaster scenario where the data center is no longer operational, CPA currently relies on a vendor to provide an alternative data center facility. The Comptroller's Office is actively reviewing the DIR offering for disaster recovery services to determine if it is a better option. The Comptroller's Office will proceed with the best value solution.

RECOMMENDATIONS

During the 80th Regular Session, H.B. 1788 authorized DIR to survey agencies regarding a number of operational aspects of each agency's information resources. The statute requires all agencies to respond to the survey. Since 2009, DIR has had an explicit Disaster Recovery or Continuity of Operations section in the survey. However, the agencies' specific plans and testing are not submitted to or reviewed by DIR. Therefore, those agencies that do not use DIR's Data Center Services may not have adequate disaster recovery plans or perform appropriate testing of their plans and recovery systems. The committee recommends that the 86th Legislature consider the following:

Require all state agencies to include in their COOP a section on their disaster recovery services and testing.

All agencies are required to submit a COOP. In order for the state to know which agencies have appropriate disaster recovery plans, each agency should include their disaster recovery plans and testing requirements that follow appropriate model guidelines in their COOP.

Require all state agencies, not in the data center, to include in their IT contracts a provision mandating disaster recovery services and testing.

Whereas all agencies are required to submit a COOP, all agencies are not required to submit a disaster recovery plan or to test their plans. By including in contracts for outside data services a provision following model guidelines, the state could be more assured of appropriate disaster recovery plans and testing by agencies.

Allow other states to become customers of the state's data center

Subchapter L, Chapter 2054, Government Code, currently does not allow for tax payer funded entities outside the state of Texas to access DCS services. A legislative policy change would be required to allow other states to become customers. To date, several other states have expressed interest in having discussions about using the DCS program in their DR plans, including Kansas, Vermont and Georgia.

OPEN MEETINGS DURING DECLARED DISASTER

BACKGROUND

The Open Meetings Act (the “Act”) was adopted to help make governmental decision-making accessible to the public. It requires meetings of governmental bodies to be open to the public, except for expressly authorized closed sessions, and to be preceded by public notice of the time, place and subject matter of the meeting. The provisions of the Act are mandatory and are to be liberally construed in favor of open government. The Act was adopted in 1967, substantially revised in 1973-4 and codified without substantive change in 1993 as Government Code Chapter 551. It has been amended many times since its enactment. Before the Act was established, it was common-law rule that decisions entrusted to governmental bodies must be made by the body as a whole at a properly called meeting. This requirement gives each member of the body an opportunity to state his or her views to other board members and to give them the benefit of his or her judgment, so that the decision may be the composite judgment of the body as a whole. The authority vested in a governmental body may be exercised only at a meeting of a quorum of its members. The Act defines “quorum” as a majority of the governing body, unless otherwise defined by applicable law or the governing body’s charter. For example, three members of the five-member commissioners court constitute a quorum for conducting county business, except for levying a county tax, which requires the presence of at least four members of the court. Absent an express provision to the contrary, a proposition is carried in a deliberative body by a majority of the legal votes cast, a quorum being present. Thus, if a body is “composed of twelve members, a quorum of seven could act, and a majority of that quorum, four, could bind the body.” A statute may expressly provide a different rule.¹⁰

The Act requires each elected or appointed public official who is a member of a governmental body subject to the Act to complete a course of training addressing the member’s responsibilities under the Act. The public official must complete the training not later than the 90th day after taking the oath of office, if required to take an oath to assume duties as a member of the governmental body, or after the public official otherwise assumes these duties if the oath is not required. The Act provides civil remedies and criminal penalties for violations of its provisions. The Act authorizes governmental bodies to meet to address emergencies if they post notice at least two hours before the meeting is convened.¹¹

Hurricane Harvey was a devastating storm. Hurricane Harvey was a Category 4 storm that hit Texas on August 25, 2017. It caused \$125 billion in damage according to the National Hurricane Center. It affected 13 million people from Texas through Louisiana, Mississippi, Tennessee, and Kentucky. At least 88 people died from the storm. Harvey made landfall three times in six days. At its peak on September 1, 2017, one-third of Houston was underwater. Two feet of rain fell in the first 24 hours.¹²

A major disaster was declared on August 25, 2017.¹³ Many thousands of homes were flooded, tornadoes touched down during the worst of the event, and tens of thousands of people had to be rescued from their homes. Severe flooding and devastation from the storm caused evacuation orders. The situation changed quickly, and continued to change and cause more emergency orders over several days.

The Act authorizes governmental bodies to meet to address emergencies if they post notice at least two hours before the meeting is convened. The storm made it difficult, if not impossible, for some governmental bodies to fulfill the open meetings act. It also made it difficult for some elected officials to fulfill their duties, without possibly violating the Act.

COMMITTEE HEARING

On Tuesday, March 27, 2018, the Government Transparency & Operation Committee met in Austin, Texas, to take testimony and receive an up date on the following interim charge:

Review Texas' open meeting laws and related government decision-making policies. Determine if the formal processes prevented the efficient delivery of assistance during Hurricane Harvey. Make recommendations on maintaining the current standards of accountability without limiting government-provided aid during disaster events.

The following witnesses testified on the charge:

Chris Cobler, Freedom of Information Foundation of Texas
Jim Hemphill, Freedom of Information Foundation of Texas
Jennie Hoelscher, Office of the Attorney General
W.A. "Andy" Meyers, Commissioner, Fort Bend County

Jennie Hoelscher, Opinions Chair in the Office of the Attorney General, gave a brief synopsis of the Open Meetings Act during emergencies. She told the committee the Act authorizes governmental bodies to meet to address emergencies if they post notice at least two hours before the meeting is convened. The notice must be posted in accordance with the physical location requirements of the Act. That is, counties must post in the county courthouse, municipalities must post in city hall and school districts must post in the central administrative office of the district.

During Hurricane Harvey, some governmental bodies were unable to access the physical locations where the law required them to post meeting notices.

Under the Act, a governmental body's failure to post notice in accordance with the statutory notice requirements results in the voidability of any action taken at the meeting. Additionally, a member of the public could sue the governmental body to void action taken at a meeting that was not noticed in compliance with the Act. Ms. Hoelscher suggested amending the posting requirements in the statute to address similar situations in the future.

Further, she informed the committee that the Act authorizes governmental bodies to meet by teleconference if an emergency or public necessity exists and convening a quorum at one location

is difficult or impossible. The teleconference meeting must be held at the location where meetings of the governing body are usually held, and the meeting must be audible to the public at that location. Governmental bodies unable to access their normal meeting location due to flooding or some other catastrophe are unable to meet by teleconference. She suggested a possible solution would be to amend the Act to allow teleconferencing at an alternative location if the regular meeting location is inaccessible due to a cause outside of the governmental body's control.

Fort Bend County Commissioner W.A. "Andy" Meyers addressed the committee and relayed his experience during Harvey. Commissioner Meyers has a constituency of 250,000 people. He is the only local elected official for a population slightly smaller than Corpus Christi. While he supports the purpose of the open meetings act, it greatly inhibited his ability to communicate effectively with his constituents during the Harvey event. Although the Act allows two hours notice to be given in times of emergencies, this exception to the 72-hour rule is limited. Although the Act allows for phone conferences, which were utilized during Hurricane Harvey, they, too, proved to be limited. Again, both of these measures are helpful, and subject to the 2-hour notice rule in times of emergencies, but Harvey demonstrated that there are flaws associated with these statutes.

The Act does not cover communications with the County Judge, who is the Emergency Manager and in absolute control during an emergency. During Harvey, Commissioner Meyers could not speak with the Emergency Manager (the County Judge) because of the possibility of a walking quorum. The Commissioner's office had to wait for updates from Emergency Management; he couldn't deal with the disaster in real time. He was not able to serve his constituents in a timely manner. Commissioners of large unincorporated areas are the county officials who have direct contact with the various community organizations, such as schools, churches and service organizations as well as individual community leaders because they deal with them on a daily basis, according to Commissioner Meyers.

When a major flood event is happening, he, and his constituents, need information immediately. He needs the ability to communicate with the Judge, who is the Emergency Manager, in real time. Residents in most Texas counties live in a city where the mayors can communicate with the Judge, who is the Emergency Manager, directly and at any time without violating the Act. This gives city residents real time information and help during disasters. County constituents suffer because

County Commissioners do not have the same ability as city mayors to get real time information about a disaster. Only during meetings posted with two-hour notice was he able to gather in “real time” information from the Judge, who is the Emergency Manager.

Residents of Sugar Land, Katy, and Rosenberg were able to get real time information from their mayors because the Judge (Emergency Manager) could communicate with them at all times. Commissioner Meyers' residents, much greater in number than the combined population of those three cities, are at the highest risk of flooding. In fact, 2/3rds of the homes that flooded in Fort Bend County were in his Precinct.

Commissioner Meyers recommended the following:

- Allow members of Commissioners Courts in counties with a population greater than 100,000 that also have an unincorporated population greater than 50% to meet without notice during a state or federally declared disaster, as long as all meetings are recorded and minutes are posted at the earliest possible time.
- Explicitly state that the County Judge, as Emergency Manager, can communicate with individual Commissioners during state or federally declared disasters in order to gather or disseminate information pertinent to individual precincts.
- Allow for a waiver of the two-hour notification rule during state or federally declared disasters if there is an imminent threat to life or property.
- Explicitly allow Commissioner’s Court members to ask questions on conference/video calls with any county official, even if a quorum is present, during times of state or federally declared disasters.

Jim Hemphill, attorney and vice president of the Freedom of Information Foundation (FOIF) of Texas board, told the committee that there are “broad levels of agreement” that local officials need flexibility in responding to natural disasters. He praised the Fort Bend County officials who testified earlier for their efforts. The FOIF advocates for the use of technology to improve information flow. The conveyance of information is essential in an emergency, and most counties

have emergency plans in place that allow an executive to take action, such as the Fort Bend County Judge. The situation outlined by the Fort Bend officials, according to Mr. Hemphill, is not likely a “walking quorum”. Because, he stated, that the discussions were not deliberative, but were actions in response to an emergency.

Under the current law, “urgent public necessity” is covered with a two-hour notice for meetings. He suggested that if language was added to allow for a “declared emergency,” that might be too narrow or too broad. Sometimes declared emergencies last a very long time. Currently, there’s nothing that prohibits the real-time flow of information. The existing language of the Texas Open Meetings Act allows for a quick flow of information and even rapid meetings, if necessary, according to Mr. Hemphill. For example, §551.045(a) of the Government Code titled EXCEPTION TO GENERAL RULE: NOTICE OF EMERGENCY MEETING OR EMERGENCY ADDITION TO AGENDA states that in an emergency or when there is an urgent public necessity, the notice of a meeting or the supplemental notice of a subject added as an item to the agenda for a meeting for which notice has been posted in accordance with this subchapter is sufficient if it is posted for at least two hours before the meeting is convened.

He said that information is able to flow in real time; it doesn’t need to wait two hours for an actual meeting. Still, he noted, clarity in the law is a good thing.

Chris Cobler, editor of the *Victoria Advocate* and president of FOIF, told the committee that the Victoria region suffered severely during Hurricane Harvey and its aftermath, and the *Victoria Advocate* newspaper worked hand in hand with local officials to publish useful information for the community. They were working around the clock to try to get information out to the public, he said. According to Cobler, they worked in a good faith effort to get information out through the local media.

County Judge Bob Hebert submitted written testimony to the committee. In his testimony, he reiterated that the open meetings act requires that the discussion of any item by Commissioners Court be done in a meeting open to the public, and called by public posting of an agenda three days prior to the discussion. During an emergency, an agenda may be posted two hours prior to a meeting, according to Judge Hebert. However, during a declared emergency, waiting two hours

to talk to commissioners about needs within their precincts hampers their ability to respond to those needs in a timely fashion. As Emergency Management Director, the County Judge meets with all mayors of the county twice daily by phone, and individually whenever necessary to coordinate a response to a variety of issues. The eighteen mayors represent around 300,000 of our 765,000 residents. The four commissioners represent around 465,000 residents within the unincorporated areas of Fort Bend. Those residents of the county - those not residing in a municipality - are entitled to the same response to their needs as city dwellers. The Judge urged the committee to amend the open meetings act to allow for reasonable communication between a county judge and commissioners during a declared emergency.

The committee was told that some city councils and school boards were not able to fulfill all provisions of the Act during Hurricane Harvey. Governmental bodies were unable to access their normal meeting location and notice posting location due to flooding. However, Harvey hit when the municipalities and schools were on a strict timeline to approve ad valorem tax rates and budgets. No specific city or school board representative was available to testify before the committee. Under the Act, a governmental body's failure to post notice in accordance with the statutory notice requirements results in the voidability of any action taken at the meeting. Additionally, a member of the public could sue the governmental body to void action taken at a meeting that was not noticed in compliance with the Act.

Some of these governmental bodies turned to the Governor and asked for his assistance. The Governor issued a number of proclamations suspending all laws necessary to allow certain boards to hold a telephonic meeting necessary to cope with the disaster caused by Hurricane Harvey and the deadline prescribed by Texas law for certain jurisdictions to adopt ad valorem tax rates and budgets, following the disaster created by Hurricane Harvey.

RECOMMENDATIONS

The Committee recommends that the 86th Legislature explore the following amendments to Chapter 551 of the Government Code:

- Explicitly state that the County Judge, as Emergency Manager, can communicate with individual commissioners during state or federally declared disasters in order to gather or disseminate information pertinent to individual precincts.
- Explicitly allow Commissioner’s Court members to ask questions on conference/video calls with any county official, even if a quorum is present, during times of state or federally declared disasters.
- Modify the posting requirements for emergency meetings in the event the physical location where notice must be posted is inaccessible due to a catastrophe.
- Allow a good faith attempt to comply with the posting requirements of the Act to be sufficient when failure to comply is due to the inability to access the posting locations because of a catastrophe.
- Allow teleconferencing at an alternative location if the regular meeting location is inaccessible due to a cause outside of the governmental body’s control.

**RECENT TEXAS SUPREME COURT PUBLIC INFORMATION
ACT RULINGS**

BACKGROUND

After the Sharpstown fraud scandal in the early 1970s, the Texas Legislature passed the Public Information Act (PIA) to ensure the public could obtain public information. The PIA, Government Code, Chapter 552, establishes the types of government records that are public and that must be released to those who request the information. It defines “public information” as “information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by and, in certain cases, for a governmental body. Examples in the law include information in a contract “relating to the receipt or expenditure of public or other funds by a governmental body.” Enacted in 1973 by the 63rd Legislature, the law states that it is to be “liberally construed in favor of granting a request for information.”¹⁴

The PIA contains requirements for preserving and maintaining public information, training requirements for certain elected and appointed officials, procedures for accessing public information, and timelines for governmental bodies to produce requested information. It also addresses repetitious or redundant requests for information, fees that governmental entities may charge to produce certain information, and actions that may be taken against violators of the law, including unauthorized destruction or removal of public records.¹⁵

The law makes certain categories of information subject to disclosure and contains numerous exceptions. Subchapter G of the PIA directs governmental bodies to ask the attorney general for a decision about whether information they seek to withhold falls within an exception. Third parties whose privacy or property interests may be involved in a request may submit in writing to the attorney general the reasons the information should be withheld or released.¹⁶

Requests to the attorney general from governmental bodies may result in either an open records decision or an open records letter ruling on the question. Open records decisions are formal opinions that usually address novel or problematic legal questions and are signed by the attorney general. These decisions may be cited as precedent in subsequent requests to the attorney general. More commonly, informal open records letter rulings will be issued based on established law and practice and signed by assistant attorneys general in the Open Records Division. Letter rulings are

applicable only to the specific documents and circumstances presented in the request, and the attorney general advises that they not be cited as precedent on open records questions.¹⁷

In 2015, two Texas Supreme Court decisions limited the availability of public records when the government engages outside parties. In *Boeing v. Paxton*, the court ruled that private businesses could keep their contracts secret because competitors might gain an advantage if they were made public.¹⁸ In *Greater Houston Partnership v. Paxton*, the court said that a private entity must be “sustained” by public funds to fall under the definition of a governmental body and be subject to the Public Information Act.¹⁹

Those decisions have raised concerns over the government's interactions with both for-profit and non-profit entities.

Boeing v. Paxton addressed a provision of the PIA that allows records to be withheld from public disclosure if it would provide an advantage to a competitor or bidder. The Texas Supreme Court’s decision in that case allows not only governmental entities but private companies contracting with the government to assert the exception to protect competitively sensitive information and for it to be withheld from public disclosure if it would provide an advantage to another bidder or competitor, including after a contract has been awarded.²⁰ Since the 2015 court decision, there have been more than 2,000 rulings by the Texas Attorney General's Office withholding access to information based on this expanded Boeing decision, including some completed contracts that have been closed to the public.

The dispute leading to the *Boeing* decision began in 2005 when a requestor sought a copy of the lease agreement between Boeing and the Greater Kelly Development Authority relating to Boeing’s facility for repairing and refurbishing aircraft. The authority was later renamed Port San Antonio and was created by the City of San Antonio. Port San Antonio notified Boeing of the request and the company provided a redacted version of the lease to the requestor. Boeing submitted to the attorney general the reasons it believed the redacted parts should be withheld, saying the information fell under Texas Government Code §552.110, which provides exceptions for trade secrets and certain commercial or financial information. Boeing said it contained sensitive

information on their costs that would allow a competitor to underbid Boeing on government contracts. This information included maintenance costs, insurance limits, certain penalties for early lease termination, dollar caps on potential incentives, and calculation of future rent. An open records letter ruling (OR2005-11107) concluded that none of the withheld information was exempt from disclosure under §552.110.²¹

Boeing sought declaratory and injunctive relief in state district court. The trial court ordered Port San Antonio to provide the redacted information, determining that it was not exempt under §552.110 and that Boeing did not have standing under §552.104 to assert that the requested information would give advantage to a competitor or bidder. Boeing appealed and the Third Court of Appeals affirmed the trial court ruling in 2012. One member of the three-judge panel wrote a concurring opinion, saying he agreed with the majority decision but found nothing in the law's text to support the court's conclusion that the exception for information related to competition or bidding was only for the government's benefit.²²

At the Texas Supreme Court, Boeing argued that the appeals court should have granted the company standing to assert §552.104, which excepts from disclosure information that would give advantage to a competitor or bidder. Port San Antonio argued that the Third Court of Appeals' decision imposed obligations on government bodies to assert exceptions on behalf of third parties. The attorney general argued that the exception does not apply to third parties like Boeing and should be considered in the context of the PIA as a whole, which seeks to balance governmental transparency with third party privacy and confidentiality concerns. The attorney general also argued that the exception applies only to ongoing competitive bidding. The Texas Supreme Court in 2015 reversed the decision of the appeals court, allowing Boeing to assert the exception and allowing the information in question to be withheld.²³

One justice dissented from the ruling and another did not participate. The court came to three main conclusions about §552.104. First, the court ruled that either the government or a private party may assert the exception to protect its competitively sensitive information. Second, the court said that when evaluating whether §552.104 permits an exception to disclosure, the attorney general must determine whether knowing information about another bidder's offer would be an advantage,

not whether it would be a decisive advantage. Third, the court said nothing in the exception's text says it applies only to ongoing competitive bidding.²⁴

The majority opinion said that certain financial aspects of Boeing's lease with Port San Antonio concerned the company's overhead costs and contained competitive information that, if disclosed, would enable other military service contractors to reverse engineer Boeing's bid and undercut it. The court reversed the court of appeals' judgment and sustained Boeing's objection to the mandatory release of the information.²⁵

The Texas Supreme Court made another major public information decision in 2015 in *Greater Houston Partnership (GHP) v. Paxton*. In that case, the court said a private entity must be "sustained" by public funds to fall under the definition of a governmental body and be subject to the Public Information Act. In 2007, the Greater Houston Partnership was asked to fulfill a public information request due to a contract with the City of Houston to promote the Houston region. The requestor was seeking the Partnership's full check register even though the fee-for-service contracts with the City and other public entities only amounted to less than 8 percent of the Partnership's total revenue. The vast majority of their revenue was derived through membership dues, event sponsorship and registration fees, and traditional fundraising efforts.²⁶

The Partnership refused the public information request, setting off a legal process which was only resolved in 2015 when the Texas Supreme Court agreed with the Partnership's original position, agreeing they are not a governmental entity and, therefore, not subject to PIA law.

The court said GHP, a non-profit corporation that provides economic development services to area cities, does not qualify as a governmental body because it does not rely on government contracts to sustain itself.

COMMITTEE HEARING

On Tuesday, March 27, 2018, the Government Transparency & Operation Committee met in Austin, Texas, to take testimony and receive an up date on the following interim charge:

Evaluate whether, in light of recent Texas Supreme Court rulings, the provisions of the Public Information Act are adequate to support transparency and accountability in government, particularly as it relates to government contracting and procurement.

The following witnesses testified on the charge:

Chris Cobler, Freedom of Information Foundation of Texas
Amanda Crawford, Office of the Attorney General
Bruce Gibson, Texas Association of Business
Justin Gordon, Office of the Attorney General
Jim Hemphill, Freedom of Information Foundation of Texas
Dave Hendricks, Texas Association of Broadcasters
Gary Huddleston, Irving Las Colinas Chamber of Commerce
Rob Johnson, Clients of the firm
Peyton McKnight, American Council of Engineering Companies of Texas

Peyton McKnight speaking for the American Council of Engineering Companies of Texas (ACEC), a business association representing over 450 engineering firms in Texas that practice a variety of engineering disciplines, told the committee that when responding to Requests for Qualifications (RFQs), professional services providers (mainly architects and engineers) are many times required to submit detailed, specific, and unique answers to questions regarding project approach, specific design options, specific solutions, recommendations, methodology, innovative concepts, etc. In addition, the RFQs most often seek specific information regarding employees, team members and internal company organizational charts, among others.

Some of the information submitted in response to these types of professional service RFQs are considered proprietary by the professional service providers and integral to how each individual firm operates. (See Appendix A) This information is based on the special expertise of the firm's staff and can be unique. Disclosure of such information undoubtedly gives competitors an advantage when seeking the same or similar work. Under current law as interpreted by the Supreme Court, firms have some ability to protect this competitive information.

McKnight said that although it is appropriate to provide for disclosure of any final contract for services (including the fee paid and the scope of work), professional services providers should not be required to give away what amounts to the intellectual property as a condition of competing for government work.

Jim Hemphill, attorney and vice president of the Freedom of Information Foundation of Texas board said the *Boeing* case was a sea change. Hemphill explained the way the attorney general's office had for years interpreted Texas Government Code §552.110 and §552.104 (the trade secrets exemption and competitive bidding exemption, respectively, within the Texas Public Information Act). Now, many governments and private entities are arguing expanded readings of the *Boeing* ruling.

Hemphill gave examples. In the recent case of the search for an Austin city manager, the City of Austin offered an argument on how *Boeing* should apply to keep information about city manager finalists secret. The City later tried to misuse the Open Meetings Act, as well. The attorney general's office ruled that the City must release the finalist information. His main point is that it took weeks longer to get this information because of the attempt to use the Boeing ruling.

So, the overall cost of the *Boeing* ruling has caused not only a financial cost, but has cost transparency, as well. Transparency must be the goal, and it is being prevented, often with delay actions, by entities that now seek attorney general rulings; when previously, they wouldn't seek such a ruling, according to Hemphill.

Currently, entire contracts are being withheld from public scrutiny, including pricing information, which goes far beyond the *Boeing* ruling, Hemphill noted. What is being withheld is far beyond the scope of what was narrowly the issue in *Boeing*. If you're going to take public money, you're going to have to be responsible to the public on what's being done with that money, said Hemphill. Regarding the *Greater Houston Partnership* decision by the Texas Supreme Court, this ruling additionally put the spending of taxpayer money off limits by saying a non-profit performing traditional government duties and spending public money can shield that money from public view, Hemphill told the committee.

Dave Hendricks, a freelance journalist based in McAllen, representing the Texas Association of Broadcasters, testified about how the *Boeing* case affected application of the Texas Public Information Act and requests for release of information. During his four years at Channel 4, he covered the Agua Special Utility District, which provides water and sewer service to western Hidalgo County and a small part of Starr County. In 2017, the utility district spent nearly \$500,000 on severance payments for two employees — and went to extraordinary lengths to keep the payments secret. On July 6, the utility board voted to “delegate authority to (the) executive director of Agua SUD to resolve any potential dispute with employees who will be affected by Senate Bill 814.” The following week, the executive director approved two settlement agreements: \$221,000 for Community Relations Coordinator Oscar Salinas and \$268,000 for Project Manager Armin Garza. Garza and Salinas weren’t just public employees. They also served on the La Joya ISD school board. The public had a clear and compelling interest in knowing whether or not two public employees — who are also elected officials — received nearly \$500,000 in public money. But Agua SUD went to extraordinary lengths to keep the severance payments secret from the public. Both severance agreements included a confidentiality clause that Parties agree that under the Supreme Court decision of *Boeing*, contents of the settlement do not meet the definition of public information and/or are excepted from disclosure. By invoking *Boeing* in severance agreements for public employees, Agua SUD appeared to be making the argument that release of the information would place Agua SUD at a competitive disadvantage when negotiating future severance payments. When Agua SUD refused to comment on the rumors, he submitted several Texas Public Information Act requests for the severance agreements. Agua SUD refused to release the records or request a decision from the attorney general’s office as required by law. The back-and-forth went on for nearly five months. Agua SUD eventually released the records in November. Without intervention from a state senator and a TV station with substantial resources, the severance payments may have remained secret.

Rob Johnson told the committee he believes there are some changes that could attract broad consensus support and help improve what is still the premier open records statute in the country. Texas Public Information Act's strength has always been in the certainty of the procedures. The deadlines are concrete, so it is impossible for governmental bodies to delay or ignore requests. If some additional clarity is brought to the criteria to be applied during the review, the Act will be

much stronger. It is his firm belief that general consensus can be built around sensible adjustments to the Act that would benefit all concerned. He said the recent Texas Supreme Court opinions which have attracted renewed attention to the PIA are not problems which must be reversed. They are entreaties from the judiciary asking that the legislature provide guidance and additional detail to the Act. These opinions merely interpreted the text of the statutes as written and preserved for the legislature the authority to make any amendments.

According to Johnson, the *Boeing* opinion itself is not written as a sweeping change in the balance of open government in Texas. The discrete legal issue it decided was virtually inevitable. Every attorney general since the Act was originally adopted had expressed the opinion that the exception for competitor and bidder information, §552.104, could only be raised by the governmental body because, in the attorney general's opinion, the exception was only intended to protect the interests of the governmental body reviewing the bids. For many years bidders had complained that as it is written the exception was not so strictly limited. Trial judges have commented that there was nothing in the text of the statutory exception that supported the overly restrictive view espoused by the Attorneys General. The unanimous 8-0 Texas Supreme Court did not consider its ruling surprising or revolutionary – it was a rather straightforward reading of the statutory text. The same result likely would have come to pass years earlier if there had been a case and company that could afford to appeal all the way to the Supreme Court.

The actual resolution of the Boeing public information request hinged on the facts that Boeing only requested the redaction of limited, specific information, and that Boeing introduced evidence establishing the sensitivity of the information and how its particular business situation necessitated the redactions. Far from a sweeping statement that withholds virtually any information a company might designate (as it is sometimes mischaracterized), the opinion interprets the §552.104 exception the same way it had been applied for years when limited by the Attorneys General to governmental bodies – it is a fact-based analysis that requires evidence regarding the type of information at issue and why the particular business situation justifies withholding.

What the *Boeing* opinion does point out is that cases involving the PIA are rarely appealed to the Supreme Court, so mistaken interpretations by the OAG can perpetuate themselves for decades

without meaningful judicial review unless the legislature periodically updates the Act and provides needed guidance to all parties involved in the open records process.

In order to improve predictability and stability in the application of the Public Information Act, Johnson suggests adopting the statutory definition of “trade secret” for use under the Public Information Act, providing more detailed criteria for applying existing exceptions, improving notice to third parties, transparency in briefing and reducing unnecessary submissions to the OAG.

Chris Cobler, editor of the *Victoria Advocate* and president of the Freedom of Information Foundation of Texas, discussed the overall problems with the *Boeing* case and provided some examples. He pointed out that his family-owned newspaper dates back to 1846 and is working on behalf of the citizens in holding government accountable through its news reporting.

He told the committee that the newspaper does not have deep pockets to litigate. They have to rely on the goodwill of public officials and on attorney general rulings for guidance. There are some serious flaws that have been exposed by the *Boeing* ruling. He believes it is time to return to the spirit of the Texas Public Information Act and to get back to those roots.

In response to questions, Cobler noted that in many cases today, government officials try to prevent the release of public information such as basic police reports, by seeking attorney general rulings. His sense is that the governmental entity is trying to stall in the release of information.

In testimony submitted to the committee, Greater Houston Partnership (GHP) stated that in addition to offering programming to provide members with opportunities for networking and business development, GHP engages in public policy advocacy activities to ensure that Houston and Texas remain conducive and open for business. In their efforts to ensure the region's continued long-term economic growth, which is of great benefit to member companies, they also engage in promoting the Houston region to companies around the world with the goal that they choose Houston for an expansion or relocation of their business. In doing so, they often work alongside public entities in this mutually-beneficial effort to promote the region, while maintaining an independent, business-oriented voice.

The Partnership believes in the need for transparent government and has advocated for such on numerous issues, including public pension systems. Open access to government records is critical to efficient representative government. GHP, however, is not a governmental entity. Like other non-profits and corporations, they are answerable to members and to a board of directors, a fact recognized by long-standing tradition and more recently, the Texas Supreme Court.

In 2007, the Greater Houston Partnership was asked to fulfill a public information request due to a contract with the City of Houston to promote the Houston region. The requestor was seeking the Partnership's full check register even though the fee-for-service contracts with the City and other public entities only amounted to less than 8percent of the Partnership's total revenue. The vast majority of our revenue was derived through membership dues, event sponsorship and registration fees, and traditional fundraising efforts.

The Partnership refused the public information request, setting off a legal process which was only resolved in 2015, when the Texas Supreme Court agreed with the Partnership's original position, that they are not a governmental entity and, therefore, not subject to PIA law. During the eight year period that elapsed during the litigation, the Partnership made an independent decision to terminate all fee-for-service contracts with governmental entities.

While GHP strives to work alongside local governments where mutually-beneficial, they are a privately funded, non-profit representing the interests of the business community. They work for the benefit of the entire region and their goals sometimes puts them at odds with elected officials and local governmental bodies.

Gary Huddleston, a member of the Legislative Affairs Committee for the Greater Irving - Las Colinas Chamber of Commerce, informed the committee that the Chamber, like many other in Texas, serves the best interest of all those within our designated geographic region. He said they are most knowledgeable about their communities and focus efforts to serve member companies, governmental entities and individuals as they help shape the goals for the Irving- Las Colinas area.

The City of Irving contracts with the Chamber for economic development services including international affairs and Sister Cities. The Chamber views the relationship with the City of Irving and all of the Chamber's members as a “partnership” with shared goals and objectives. This partnership has been a model for other communities, allowing for an arms-length agreement for measurable services. In 2017, the Chamber delivered a 353 percent return on investment to the City of Irving. The Chamber created 22 “wins” for Irving, including \$837 million in capital investment, 5,799 new and retained jobs, 3.3 million square feet of newly rented commercial space, \$1 billion in construction permits, and \$24.4 million in additional tax dollars.

Transparency and accountability are very important to the Chamber and the City. The Chamber reports publically every quarter to the mayor and city council on the progress and results of 134 deliverable tasks. These tasks include programs, trade missions and marketing efforts. These quarterly presentations are recorded live and available for viewing on the City’s website. Additionally, the Chamber is required to provide an annual budget, undergo an annual audit and present the findings to the Chamber's Board of Directors and the City.

The Chamber has experienced firsthand the high cost of hiring outside Public Information Act lawyers and extensive time spent by their staff complying with Texas’ complex open records statutes which directly detracts from the Chamber’s ability to fulfill what it is being paid to do – grow the economy, improve the quality of life and deliver results for our community, and ultimately bringing quality jobs and paychecks to Texans.

Prior to the Texas Supreme Court decision in 2015, the Chamber was required to respond to 21 open records requests over a four month period. During that time, more than 200 hours of staff time and more than \$100,000 was spent on responding and contracting with outside legal counsel. The majority of those 21 requests were denied by the attorney general. Had these open records requests continued at the same pace for the remainder of the year – 24 percent of the Chamber’s public funds and taxpayer dollars would have been spent solely on open records requests.

RECOMMENDATIONS

The Committee recommends that the 86th Legislature explore the following amendments to the Public Information Act, Government Code, Chapter 552:

1. **Adopt the statutory definition of “trade secret” for use under the Public Information Act** – Since Texas has now adopted the Uniform Trade Secrets Act [TUTSA], all commercial disputes involving "trade secrets" will be litigated using the procedures and definitions of that statute. As such, there will likely be no more case law in Texas regarding the common law definition of "trade secret" created by the courts and applied by the attorney general's office in reviewing public information requests. In order to provide the Open Records Division, as well as the requestors and interested third parties, with the benefit of the legislature's more detailed and modern definition of trade secret, and any contemporary case law applying it, an amendment is needed. Otherwise, the public information process will be condemned to applying a fossilized definition of "trade secret" without any hope of future guidance. By adopting the TUTSA definition of "trade secret", the legislature made the policy decision that the prior common law definition was insufficient to meet the needs of a modern, vibrant economy largely shaped by technology and information. An application of the TUTSA definition could be accomplished by either:
 - a. Amending Civ. Prac. & Rem. Code, §134A.007(d) to specify that the definitions and case law (but not the procedures) from TUTSA should be used in public information review, or
 - b. Amending Gov't Code §552.110(a) to incorporate the TUTSA definition into the PIA exception.

2. **Provide more detailed criteria for applying existing exceptions** – It would appear that most of the dissatisfaction with the application of the *Boeing* opinion lies not with the fundamental question addressed by the case – whether or not the §552.104 exception may be raised by third parties. The debate lies more in what elements need to be established in order for the exception to apply and for information to be withheld. While it is difficult for the Open Records Division to make factual determinations in the letter briefing process, it

cannot be avoided when applying the exceptions in the PIA. There are two exceptions where criteria and/or clarification would be particularly helpful:

- a. Gov't Code §552.104 is the exception addressed by the *Boeing* opinion. The Legislature could provide detailed criteria setting forth what facts a bidder or competitor needs to show in order to qualify for the exception. It could also specify types of information that could not be withheld under the exception, like the ultimate price to be paid under a final contract and the goods or services to be received. Most bidders and competitors are primarily interested in protecting line-item, detailed information about the methodology that generated their ultimate price, but certainly understand that taxpayers have a right to know how public funds are spent. An amendment clarifying the balance between these interests would prevent some of the more egregious examples of letter rulings relying on the *Boeing* opinion.
 - b. Gov't Code §552.110(b) is the exception most commonly cited prior to *Boeing*. The statute requires “specific factual evidence that disclosure would cause substantial competitive harm,” but provides no definitions or guidance as to what the evidence must prove. This exception was a source of inconsistent and sometimes conflicting rulings which made it very difficult for the business community and the governmental entities to anticipate what information would be found to be public. Defining terms and/or providing elements to be proven by the “specific factual evidence” would remove a great deal of uncertainty and delay from the public information process.
3. **Improve notice to third parties** – Gov't Code §552.305(d) requires that a governmental body referring a PIA request to the Open Records Division must make a good faith attempt to notify any party whose information might be released, so that party may submit a briefing. Typically, governmental bodies only provide notice to the party that submitted the information, and make no attempt to provide notice to other third parties identified in the information being requested whose interests would likely be affected. An amendment could clarify that all those with an interest in the information need to be notified, and could specify whether the governmental body is responsible for notifying all parties, or whether

the party that submitted the information to the governmental body should be responsible for notifying the additional parties.

4. **Transparency in briefing** -- Gov't Code §552.305(e) requires that any person submitting a briefing to the Open Records Division must send a copy to the requestor. There is no requirement that a brief submitted by the requestor or briefs submitted by other third parties should be copied to all persons submitting briefs. Occasionally a letter ruling is issued that refers to a briefing provided by a requestor that was never seen by parties that submitted letter briefs, which undermines trust in the process. To avoid placing a burden on requestors or governmental entities, consider adding §552.305(f) to provide that an interested third party could request that the Open Records Division provide notice and a copy of any briefing filed.

5. **Clarify that governmental entities must respond to PIA requests for those private and/or non profit entities with which they contract.** Private, non-profit entities are not governmental entities, but the contracts they receive from governmental entities should be made public. Private, non-profit entities do not have appropriate staff to respond to PIA requests, whereas governmental entities, cities, and counties budget for and use taxpayer dollars to respond to all duly submitted open records requests. These governmental entities have a team of trained Public Information Act staff whose job is to respond to such requests. In addition, there needs to be clarification that not only the funds, but the specifics of the contracts should also be made public along with the audits and work product the private entity is to fulfill.

6. **Reduce unnecessary submissions to OAG** – It would be beneficial to all involved in public information requests to reduce the workload of the Open Records Division. A pair of simple suggestions for accomplishing this include the following:
 - a. Specify that certain exceptions should be applied by the governmental body without referring them to the AG's office. In 2009, Attorney General Greg Abbott issued Open Records Decision ORD-684. This decision permitted governmental bodies

to withhold certain information that is undisputedly confidential without referring it for AG review by relying on ORD-684 as a previous determination. This is specifically permitted by §552.011 and §552.301(a). However, governmental bodies still refer requests including these basic exceptions for AG review. ORD-684 listed the following types of information that may be withheld: direct deposit authorization forms, I-9 employment eligibility forms, W-2 and W-4 income tax forms, certified agendas and recordings of meetings designated as closed under the Open Meetings Act, fingerprints, L-2 and L-3 forms filed by law enforcement personnel, driver's license and vehicle registration information, access device information (like credit card and bank account numbers, etc.), private e-mail addresses, and military discharge records. An amendment to the Act could instruct governmental bodies that not only may they withhold such information without referring it to the AG's office for review, but that they must do so. The types of information listed in ORD-684 are a great place to start when considering exceptions that governmental bodies must attempt to apply without requesting an OAG ruling. Governmental bodies routinely handle these exceptions correctly and they are found in many government records. Revising the PIA to require governmental bodies to withhold the information listed in ORD-684 would reduce the number of straightforward rulings requests. Other relatively straightforward exceptions could be added to the list in ORD-684, such as information submitted to state regulatory agencies that is expressly confidential and protected from public disclosure by state statute.

- b. Presume a narrow interpretation of a request unless the requestor specifies otherwise. A potential amendment to §552.222 could permit a governmental body to presume that a broad request for information does not encompass information typically excepted from public disclosure unless the requestor specifies otherwise. Types of information that could be included in this presumption could be attorney-client communications, personal information about private individuals, student records, or any of the types of information discussed in ORD-684 if there is no amendment to automatically withhold the information without AG review. Many

PIA requests are delayed as a governmental body, based on a broad request, either conducts expensive and time-consuming reviews of information the requestor never intended to request, or submits multiple requests for clarification to the requestor pursuant to §552.222(b) to narrow the request. Most requestors do not actually intend to request things that are widely accepted to be confidential. Those that do would be able to specify that fact in the request. As long as there is notice of the default narrow interpretation combined with a guided application of the exceptions, governmental body can demonstrate transparency and release relevant information in a more efficient manner. This suggestion is like previous actions the legislature implemented on an exception-by-exception basis. For example, PIA sections 552.130 and 552.136 were amended to permit a governmental body to withhold information without an OAG ruling or requestors' prior authorization, if the governmental body provides a statutory notice. The requestor can appeal the withholding under these exceptions. Other provisions, including PIA sections 552.114 and 552.147, permit a governmental to withhold information without an OAG ruling, and do not require notice or provide for an appeal. Thus, the PIA already permits some information to be withheld without an OAG ruling or prior requestor authorization. These approaches could be expanded to other PIA exceptions.

INTERAGENCY DATA SHARING

BACKGROUND

It is said that data is the “new oil.” In Texas, this is an appropriate analogy. Second only to our employees, data is the most important, strategic asset that the state maintains. Its value and validity are critical to the overall success in the services we deliver to our constituents.²⁷

The state continues to accumulate and produce large quantities of data. To enhance its value and usefulness for decision-makers and the public, data must be managed effectively. Integration of data across various systems within an organization increases its accuracy and, therefore, its value. Currently, each state agency in Texas collects and manages customer data independently. Texans seeking services often are required to provide duplicative data to each state agency with which they engage, and the lack of coordination between agencies allows greater possibility for fraud, inconsistency, and inaccuracy, among other concerns.²⁸

In 2015, the 84th Texas Legislature passed Senate Bill 1844 that established the Interagency Data Transparency Commission (IDTC). The IDTC was created to study and review current public data structure, classification, sharing, and reporting protocols for state agencies, as well as the possibility of the collecting and posting of agency data in an open source format.²⁹ The 84th Legislature also passed H.B. 1912 that required the creation of the Statewide Data Coordinator (SWDC), who would initiate the Statewide Data Program (SWDP), to enable a data sharing culture throughout all levels of Texas government, through shared governance and secure infrastructure.³⁰

S.B. 1844 required the Commission to conduct a study to consider methods of improving the facilitation of the collection and maintenance of data, as well as data sharing among agencies and with constituents. The study was carried out by the IDTC and the SWDC as a joint effort, and provided valuable insights allowing for the identification of key findings and recommendations for possible legislative policy considerations and actions surrounding state information technology and security, as well as data management, sharing and use.³¹

The IDTC’s study evaluated ways to structure, classify, and share data among state agencies; more efficiently gather and process data; standardize data across agencies; improve the coordination of

interagency data sharing; reduce data collection costs and duplicative data; and increase agency accountability in sharing and reporting data. The study also examined methods to increase information security through data management and analysis, reduce agency costs, verify compliance with applicable laws, and improve overall agency efficiency and effectiveness. Finally, the IDTC's study considered ways to post agency data online in an open source format easily accessible to the public, incorporate agency reporting practices into the open data system, and determine any other data and transparency issues encountered by Texas state agencies.³²

The ITDC made recommendations divided into five categories: Enterprise Information Management (EIM); Open Data Sharing and Public Information Requests; Interagency Data Sharing; Transparency; and General recommendations.³³

H.B. 1912 (84R) directed the SWDC to improve the control and security of information collected by state agencies; promote between state agencies the sharing of information, including customer information; and reduce information collection costs incurred by this state. Additionally, the SWDC was directed to develop and implement best practices among state agencies to improve interagency information coordination; reduce duplicative information collection; increase accountability and ensure compliance with statutes and rules requiring agencies to share information; improve information management and analysis to increase information security, uncover fraud and waste, reduce agency costs, improve agency operations, and verify compliance with applicable laws; encourage agencies to collect and post on the agencies' Internet websites information related to agency functions that is in an open file format and is machine-readable, exportable, and easily accessible by the public; and encourage the evaluation of open document formats for storing data and documents generated by state agencies.³⁴

COMMITTEE HEARING

On Tuesday, March 27, 2018, the Government Transparency & Operation Committee met in Austin, Texas, to take testimony on the following interim charge:

Study how state agencies can share knowledge and practices, reduce duplicative data gathering, and conduct business in a more efficient manner through interagency data sharing. Review best practices to provide the public with more transparency and access to government information.

Ed Kelly, the Statewide Data Coordinator, updated the committee on interagency data sharing and best practices for providing the public with more transparency and access to government information. In his testimony, Mr. Kelly informed the committee that every day the State of Texas collects and accumulates vast amounts of data in conducting its business by serving the citizens of Texas. This data is a critical digital resource as well as a strategic asset which often contains untapped value. To enhance its value and usefulness for decision-makers and the public, data must be managed effectively. Today, each state agency in Texas collects and manages customer data independently. The lack of coordination between agencies allows greater possibility for fraud, inconsistency, and inaccuracy, among other concerns. Only through good data management practices and the integration of data across various systems within an organization can one increase its accuracy and, therefore, its overall value.

Over the past two and a half years, the Office of the Statewide Data Coordinator has approached accomplishing the program goals by collaboration, establishing best practices and developing key foundational components that enable a solid enterprise information management program.

To best enable collaboration, the program established two key groups, The Texas Enterprise Information Management (TEIM) community group and the Open Data Portal User Group. TEIM represents a community of government representatives involved, or interested in, some aspect(s) of Enterprise Information Management, (e.g. data governance, data sharing, open data, business intelligence, and analytics) for their respective organization. The community provides an

opportunity to collaborate, share best practices and methodologies which describe, contextualize, and manage data, as well as, develop governance policies and guiding frameworks/principles for each agency to adopt. The community aids in establishing relationships to further enable information sharing and other data-related initiatives while supporting the fulfillment of their organization's core mission. It provides a forum for the state's data professionals to meet and learn from each other on how to best further their individual agency programs. More established program representatives teach those who are just beginning their data management journey by providing guidance, encouragement, tips and documentation. These partnership relationships help to further data programs across all state government.

The TEIM Group is composed of members from state agencies, institutions of higher education and public/private organizations. Quarterly meetings are held to share information and provide updates on the SWDP, agency spotlights and vendor partner highlights. These meetings serve as the focal point for the overall program. Currently there are 26 agencies, including DIR and three higher education institutions, participating regularly.

In 2017, the Statewide Data Program established the Open Data Portal User Group (ODPUG) to bring together the current data publishers of the Texas Open Data Portal. Like the TEIM community group the ODPUG meets to establish best practices, share knowledge, and develop standards for publishing and presenting open data. Topics such as dataset descriptions, data normalization content standards, metrics and dashboard reporting have been recent topics of discussion within the group. The goal of this collaboration is to share best practices for managing and serving up open data to agency constituents to increase government transparency.

The State of Texas Open Data Portal, located at <https://data.texas.gov>, was launched by DIR in 2014 to provide state agencies with a common platform to present agency public data for citizen consumption. Today, the portal has over 377 datasets from ten different agencies that are available for public search, download, and manipulation. The SWDP's Open Data initiative is driving focus of increasing both agency participation and dataset submission to the portal. The Open Data Portal is a critical component of the SWDP providing a centralized access point for key agency data and transparency of agency operations. The numbers in the chart below encompass data from the

dataset origin date to the portal. DIR datasets are the oldest, starting back in 2014, the Bond Review Board are the newest starting in 2018.

Open Data Portal Usage



*Data as of 3/2/18

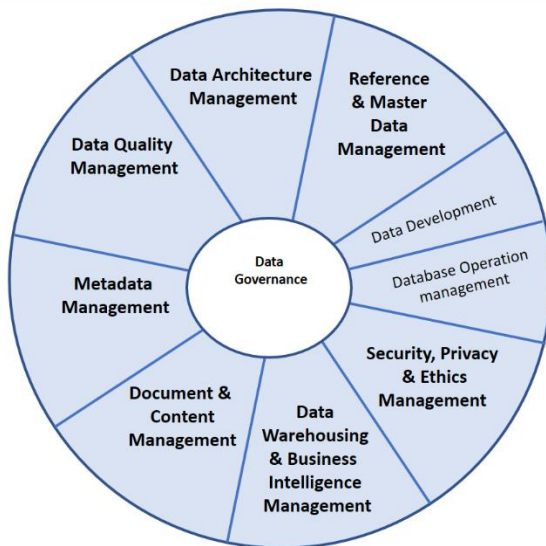
Open Data Publishers	Datasets	Visits	Downloads
Capital Metro	21	10,629	159,044,896
Denton County Transportation Authority	1	200	0
Texas Bond Review Board	34	1628	240
Texas Commission on the Arts	1	68	13
Texas Comptroller of Public Accounts	32	43,118	7,371
Texas Department of Agriculture	4	653	259
Texas Department of Family and Protective Services	268	30,192	11,797
Texas Department of Information Resources	29	29,308	6,976
Texas Department of Licensing and Regulation	4	12,526	71,141
Texas Facilities Commission	2	47	30
Texas Parks and Wildlife Department	2	7,790	1,611
Texas Racing Commission	1	9,809	283
*Totals	399	145,968	159,144,617
*Agency Totals	377	135,139	99,721

The Texas Open Data Portal is an important part of the overall Statewide Data Program by providing a central location for agencies to post their open data. Since the passing of S.B. 79 in 2017, state agencies are now allowed to direct constituent public information requests (PIR) to a web site, such as the Texas Open Data Portal. This establishes a self-service model and allows the requestor to obtain that data they are seeking in a faster, more convenient way. It also provides benefit to the state agency by creating greater efficiency allowing state agency personnel who would normally fulfill a PIR to work on other agency items or priorities. It is important to recognize that no personally identifiable information (PII), or sensitive personal information (SPI) from constituents is published on the Texas Open Data Portal and that DIR works with each agency during the on-boarding process to educate them on this as well as other important topics.

In best practices, the Statewide Data Program has created the Texas Data Management Framework. This framework is based on an established and recognized methodology from the Data Management Association. The key principles on the framework are based on data industry practices and provide agencies with a guide to develop their individual agency enterprise information management programs.

To provide a roadmap for the development of an Enterprise Information Management (EIM) program, a subcommittee from the TEIM group came together to select a methodology that could be used by each individual agency. The Data Management Associations' (DAMA) Data Management Body of Knowledge (DMBOK) wheel (see picture below) was selected for its completeness, best practice approach and non-vendor alignment. The Texas Data Management Framework (TDMF) leverages the key principle components of the DAMA methodology in developing an EIM for the state.

DAMA DMBOK Wheel



7

Texas Data Management Framework components:

1. **Data Governance.** *Includes the core and formal arrangement of people, process, and technology to enable an organization to leverage data as an enterprise asset. Establishing a Data Governance structure enables an organization to address the transformational change*

management around how enterprise data is managed and leveraged to support the businesses goals and objectives.

2. **Data Architecture Management.** *Includes the design and context of enterprise data that aligns the conceptual, logical, and business data models. Data Architecture is a framework that defines data for the enterprise. It contextualizes and describes the data across the enterprise, so it can be looked at by the way the business needs to manage it.*
3. **Data Quality Management.** *Includes the degree to which data is accurate, timely, complete, and consistent for its intended use. Data quality is an important factor in an EIM program because it allows you to measure the data and you cannot have trust in the data for decision making without being able to understand the quality.*
4. **Metadata Management.** *Includes the descriptive and contextualized insight into the meaning of the data. Metadata management provides the structure of the data, it is often called data about the data or the DNA of data. Business metadata focuses on what is useful for a business purpose (scope, purpose, meaning). Technical metadata focuses on the structure of the data and is used by information technology practitioners to understand the columns and rows (definitions, valid values).*
5. **Reference and Master Data Management.** *Includes the process, governance, policy standards and tools that consistently manage the best version of the truth. Reference and Master Data work hand-in-hand with Data Quality and help to standardize and re-use data across all business programs.*
6. **Data Warehousing and Business Intelligence Management.** *Includes the insight to the information. The Data Warehouse is the repository for the data to store offline reporting capability. Business Intelligence provides the ability to conduct analytical insights on the information.*

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7. **Document and Content Management.** *Includes the best practices of records retention and the overall data life cycle. Through document and content management you can make conscious decisions about what you will display, what information people can access, and how it is managed.*

 8. **Security, Privacy and Ethics.** *Includes the ongoing custodial responsibilities that governmental entities must protect, secure, and maintain the data and ultimately the trust of those in which we serve. It provides the Foundational cornerstone that wrap around: the duty and responsibly to ensure information is secured, the proper training on the ethical use of information and the awareness of the privacy of our constituent's information.*

Another example of best practices was the development of the Texas Statewide Data Exchange Compact. The data sharing compact provides the necessary standard terms and conditions language that any agency would need to affect a data exchange. The goal being to expedite data exchange, eliminate the long lead time to obtain mutual agreement and streamline the entire process.

In the foundational area, the Statewide Data Program has leveraged the work of the Interagency Data Transparency Commission and incorporated the findings and recommendations in to the overall program. Another foundational element is the State Strategic Plan which identified the strategic goal of Data Utility with sub-goals that focus on Data Governance, Data Sharing, and the use of Data Analytics. The State Strategic Plan is the guide that agencies use to develop their individual Agency Strategic Plans. The Data Utility goal allows agencies to develop their specific data management programs using the State Strategic Plan as a foundational guide and focus.

Another example within the foundational area is the establishment of three new data related job titles. Working with the State Auditor's Office the new job classifications were added to the state's job list this past year. Data Analyst, Data Architect and Chief Data Officer are now available so that agencies can either re-classify existing employees or hire into the new roles. This allows agencies to build their data management teams to strengthen their commitment in developing a data centric culture.

These are some examples of the progress and work of the Statewide Data Program. In the year to come, there will be a continued focus on all three areas: collaboration, best practices, and foundational elements. Some of the efforts include:

- Continued collaboration efforts across the state
- Continued promotion and improvement of the Texas Open Data Portal
- Development of draft data management rules set
- Launch of the Texas Statewide Data Exchange Compact
- Participation in multi-organization civic hackathon
- Continued development of data management education, training courses
- Continued discussions surrounding data sharing opportunities

RECOMMENDATIONS

The Committee recommends that the Legislature encourage agencies to include their data in the Open Data Portal.

Today, only 10 agencies participate by publishing their open data on the portal. Most state agencies publish data on their individual agency portal. Constituents who deal with multiple state agencies must traverse multiple web sites to find the information they are looking to obtain. The technology within the portal allows for agencies to have the data in both places, on their individual web site and on the Texas Open Data Portal at no additional cost. An example of this comes from the Comptroller's office who last year decided to place all their open data on the Texas Open Data Portal and through a simple application programming interface, or API, they pull it back to feed their individual agency web site. This allows the Comptroller to store their open data in a secure cloud environment, at no additional cost to their agency, and have the information available in both locations. So effectively a citizen, researcher, journalist, private company, or anyone can access the same information in either locations.

The Committee recommends that each state agency with more than 250 employees have a dedicated data management employee.

To move forward, the state must offer continued support and focus on applying good data management practices. Keys to a successful data program include establishing a formal and defined data governance structure, led by dedicated data management professional(s). Having these two pieces in place allow agencies to focus on the opportunity and create the value that is within their data.

Additionally, having dedicated resources across the enterprise allows for more data sharing discussions between agencies that can lead to overall better services for our citizens, better efficiencies for our operations, better coordinated fraud identification, and higher levels of security and management of our overall strategic asset, that is data.

The Committee recommends that the position of Statewide Data Coordinator be changed from Statewide Data Coordinator to Chief Data Officer and the expiration date of September 1, 2021, as outlined in H.B. 1912, Section 2054.0286(d), be abolished.

The position of Statewide Data Coordinator (SWDC) is critical to continue the progress of the Statewide Data Program while attaining the long-term program goals, objectives, and on-going success. In the role, the SWDC provides a driving and centralized focus on establishing best practices for data management, data sharing, open data government transparency and the use of data analytics as well as supporting agency and higher education enterprise information management.

To maintain the view of Texas as the forefront of technology and to align the position with industry best practices and other state's similar data management programs, it is recommended that the position be changed from Statewide Data Coordinator to Chief Data Officer and the expiration date of September 1, 2021, as outlined in H.B.1912, Section 2054.0286 (d), be abolished.

HB 8 IMPLEMENTATION

BACKGROUND

As sensitive information is increasingly stored online, there must be a commensurate increase in efforts to protect the data of private citizens from rapidly evolving and sophisticated cyber-attacks. House Bill 8, (HB 8) the Texas Cybersecurity Act passed by the 85th Legislature, seeks to minimize Texas' vulnerability to cybersecurity events by enhancing the role of the Texas Cybersecurity Council, providing for assessments of state agency security posture, and providing for education and training regarding cybersecurity risks and incidents. It would create certain cybersecurity-related requirements for all state agencies, establish a cybersecurity task force and select legislative committees, and require the production of certain studies and reports.³⁵

COMMITTEE HEARING

On Tuesday, March 27, 2018, the Government Transparency & Operation Committee met in Austin, Texas, to take testimony and receive an up date on the following interim charge:

Monitor the agencies and programs under the Committee’s jurisdiction and oversee the implementation of relevant legislation passed by the 85th Legislature. In conducting this oversight, the committee will also specifically monitor the implementation of H.B. 8 (85R).

Nancy Rainosek, Texas Chief Information Security Officer, provided the following information to the committee. The Department of Information Resources (DIR) and state agencies were charged with additional cybersecurity responsibilities through H.B. 8 (85R). In implementing these provisions, DIR chose to prioritize the specific charges according to the impact to state agencies. DIR set forth a plan based as shown in Figure 1.³⁶

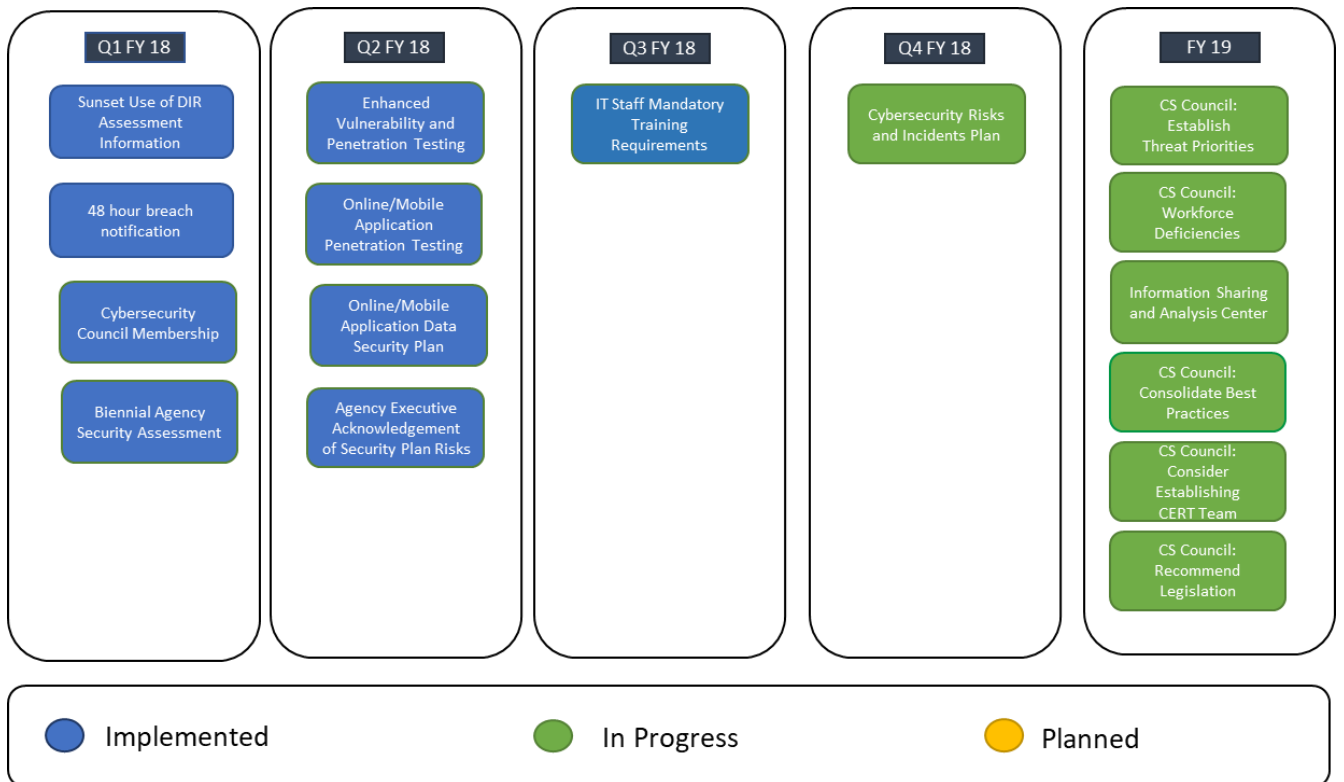



Figure 1


Section 2 325.011	Sunset review shall include an assessment of the agency's cybersecurity practices using confidential information available from the Department of Information Resources or any other appropriate state agency.	
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Requirement

Section 2 of the bill requires the Sunset Advisory Commission and its staff to use DIR’s confidential assessments of an agency’s cybersecurity practices during a review.

Status

DIR has worked very closely with the Sunset Advisory Commission staff, showing them the information available and how to analyze the results of the various assessments. DIR and Sunset Advisory Commission have established inter-agency procedures for sharing this data and providing ongoing knowledge support as and when needed.


Section 5 2054.0594	Information Sharing and Analysis Center	
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Requirement

Section 5 requires DIR to establish an information sharing and analysis center to provide a forum for state agencies to share information regarding cybersecurity threats, best practices, and remediation strategies. The department, using funds other than funds appropriated to the department in a general appropriations act, shall provide administrative support to the information sharing and analysis center.

Status

DIR has begun planning for the information sharing and analysis organization. This will be a multi-year effort as this organization is built. Due to the funding mechanism and the complexity of setting up this organization, DIR anticipates the overall structure and a first service component will be completed in fiscal year 2019. The progress and structuring of this service is being governed by the Texas Cybersecurity Council, which meets every other month.


Section 6 2054.076	DIR shall provide mandatory guidelines for continuing cybersecurity education requirements and shall consult with ITCHE for higher education guidelines.	
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Requirement

Section 6 requires DIR to provide mandatory guidelines to state agencies regarding the continuing education requirements for cybersecurity training that must be completed by all information resources employees of the agencies, and for DIR to consult with the Information Technology Council for Higher Education on applying the guidelines to institutions of higher education.

Status

DIR has completed draft guidelines. The document has been reviewed by the Statewide Information Security Advisory Council and has been sent to the Information Technology Council for Higher Education for feedback.


Section 7 2054.077 (B)	The IRM of a state agency shall prepare a vulnerability assessment including printers and mobile devices.	
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Requirement

Section 7 requires state agency information resource managers (IRMs) to prepare vulnerability assessments and to include printers and mobile devices in the assessments.

Status

DIR has recently signed a managed security services contract to improve the availability of security services to governmental entities in Texas. This new contract includes expanded vulnerability testing services to cover the provisions of H.B. 8.


Section 8 2054.1125 (b)	48 hour breach notification	
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Requirement

Section 8 requires state agencies to notify DIR within 48 hours of a breach or suspected breach of confidential information.

Status

DIR has provided a secure web platform for agencies to notify DIR of breaches within 48 hours. Agency Information Security Officers (ISOs) and IRMs have been granted access to the platform and are provided training.

Section 9 2054.512	Cybersecurity Council shall: <ul style="list-style-type: none">• consider the costs and benefits of establishing a CERT team• establish criteria and priorities for addressing cybersecurity threats to critical state installations• consolidate and synthesize best practices• assess the knowledge, skills and capabilities of the cyber workforce and plan for addressing needs• provide legislative recommendations	
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Requirement

Section 9 requires the Cybersecurity Coordinator to establish a Cybersecurity Council and defines membership on the Council. Additionally, it requires the council to:


- consider the costs and benefits of establishing a computer emergency readiness team to address cyber-attacks occurring in this state during routine and emergency situations;
- establish criteria and priorities for addressing cybersecurity threats to critical state installations;
- consolidate and synthesize best practices to assist state agencies in understanding and implementing cybersecurity measures that are most beneficial to this state; and
- assess the knowledge, skills, and capabilities of the existing information technology and cybersecurity workforce to mitigate and respond to cyber threats and develop recommendations for addressing immediate workforce deficiencies and ensuring a long-term pool of qualified applicants; and
- provide recommendations to the legislature on any legislation necessary to implement cybersecurity best practices and remediation strategies for this state.

Status

The previously formed Cybersecurity Council has established new members and has begun working on the requirements outlined in the bill.

- The Council has gathered information from the Texas Air and Army National Guard units on their CERT services.
- The Council is participating in the Jack Voltaic II cybersecurity exercise being conducted this summer to assist in establishing criteria and priorities for addressing cybersecurity threats to critical state installations.

- The state Chief Information Security Officer will present the Biennial Report on Agency Information Security to assist in consolidating and synthesizing best practices. The Texas CISO Council report on best practices will be utilized for this as well.
- Texas participated in a SANS Institute for assisting high school girls assess their aptitude for cybersecurity. Additionally, the Council had made cyber workforce recommendations in a 2012 report. They plan to update this report with results from the Jack Voltaic exercise.
- The council has begun working on legislative recommendations. A facilitated session is planned.


Section 10 2054.133	Information security plan a written acknowledgment	
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Requirement

Section 10 requires each state agency to include in the agency's information security plan a written acknowledgment that the executive director or other head of the agency, the chief financial officer, and each executive manager as designated by the state agency have been made aware of the risks revealed during the preparation of the agency's information security plan.

Status

DIR has developed an acknowledgement form for the agency executive director and other executive management to sign and submit to DIR as a part of their information security plan.



Section 11 2054.515	Biennial information security assessment	
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Requirement

Section 11 requires each state agency to conduct an information security assessment at least once every two years. The agency shall report the results of the assessment to the department, the governor, the lieutenant governor, and the speaker of the house of representatives.

Status

Each state agency is required to do a self-assessment on the maturity of their information security program by October 15th of even numbered years. DIR has developed a standard template for reporting these results to the governor, the lieutenant governor, and the speaker of the house of representatives.





Section 11 2054.516	<ul style="list-style-type: none"> • Each agency shall submit a biennial data security plan to DIR not later than October 15 of each even-numbered year • subject the website or application to a vulnerability and penetration test and address any vulnerability identified in the test. 	 
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Requirement

Section 11 requires state agencies implementing an Internet website or mobile application that processes any sensitive personal information or confidential information to submit a biennial data security plan to the department not later than October 15 of each even-numbered year to establish planned beta testing for the website or application and subject the website or application to a vulnerability and penetration test and address any vulnerability identified in the test.

Status

DIR has added a section to the agency biennial security plan so that agencies implementing Internet or mobile applications that process confidential information can submit a data security plan. Additionally, DIR has recently signed a managed security services contract to improve the availability of security services to governmental entities in Texas. This new contract includes expanded vulnerability and penetration testing services for testing these Internet and mobile applications.

Section	Subject	Status
Section 11 2054.519	Cybersecurity risks and incidents – DIR shall develop a plan to address cybersecurity risks and incidents in this state. <ul style="list-style-type: none"> • providing fee reimbursement for appropriate industry-recognized certification examinations for and training to state agencies preparing for and responding to cybersecurity risks and incidents; • developing and maintaining a cybersecurity risks and incidents curriculum using existing programs and models for training state agencies; • delivering to state agency personnel with access to state agency networks routine training related to appropriately protecting and maintaining information technology systems and devices, implementing cybersecurity best practices, and mitigating cybersecurity risks and vulnerabilities; • providing technical assistance services to support preparedness for and response to cybersecurity risks and incidents; 	   

Section 11 2054.519	<p>Cybersecurity risks and incidents – DIR shall develop a plan to address cybersecurity risks and incidents in this state.</p> <ul style="list-style-type: none"> • conducting cybersecurity training and simulation exercises for state agencies to encourage coordination in defending against and responding to cybersecurity risks and incidents; • assisting state agencies in developing cybersecurity information-sharing programs to disseminate information related to cybersecurity risks and incidents; and • incorporating cybersecurity risk and incident prevention and response methods into existing state emergency plans, including continuity of operation plans and incident response plans. 	
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Requirement

Section 11 requires DIR to develop a cyber risk and incidents plan to address:


- providing fee reimbursement for appropriate industry-recognized certification examinations for and training to state agencies preparing for and responding to cybersecurity risks and incidents;
- developing and maintaining a cybersecurity risks and incidents curriculum using existing programs and models for training state agencies;
- delivering to state agency personnel with access to state agency networks routine training related to appropriately protecting and maintaining information technology systems and devices, implementing cybersecurity best practices, and mitigating cybersecurity risks and vulnerabilities;
- providing technical assistance services to support preparedness for and response to cybersecurity risks and incidents;
- conducting cybersecurity training and simulation exercises for state agencies to encourage coordination in defending against and responding to cybersecurity risks and incidents;
- assisting state agencies in developing cybersecurity information-sharing programs to disseminate information related to cybersecurity risks and incidents; and
- incorporating cybersecurity risk and incident prevention and response methods into existing state emergency plans, including continuity of operation plans and incident response plans.

Status

DIR has completed the following:

- DIR offers training to state agency information security personnel through its InfoSec Academy. DIR has recently expanded the InfoSec Academy to include paying for appropriate industry-recognized certification examinations.
- DIR’s InfoSec Academy maintains the curriculum for training state agencies.
- DIR has contracted with the SANS Institute to provide Securing the Human end-user training to state agency personnel. DIR is also in the process of developing other end-user training to further train state agency personnel.
- DIR has recently signed a managed security services contract to improve the delivery of security services to governmental entities in Texas. This new contract includes services for preparedness for response to cybersecurity risks and incidents.

- DIR offers monthly tabletop exercises for state agencies to simulate cybersecurity events. Additionally, DIR and other state agencies are participating in Cyber Storm VI which is hosted by the Department of Homeland Security. The goal of Cyber Storm is to strengthen cybersecurity preparedness and response capabilities by exercising policies, processes, and procedures for identifying and responding to a multi-sector cyber-attack targeting critical infrastructure.
- DIR publishes weekly and monthly threat information for state agencies, which happens more routinely as the need arises.
- DIR has published an Incident Response Team Redbook for agencies to use in developing response methods for their agency plans. Additionally, DIR is developing an overall incident response plan at a statewide level.

Section 16	DIR/TSLAC study on agency digital data storage and record management practices	
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Requirement

Section 16 requires DIR, in consultation with the Texas State Library and Archives Commission, to conduct a study on state agency digital data storage and records management practices and the associated costs to this state.

Status

DIR has developed a questionnaire for agencies to respond to as a part of the Information Resources Deployment Review process. The survey was distributed to all agencies in January 2018. The responses are due at the end of March. Additionally, DIR will host a facilitated session with volunteer age.

The Committee is pleased with the efficient manner in which DIR has implemented the requirements of HB 8.

APPENDIX A

TxDOT REQUEST FOR PROPOSAL

The following Texas Department of Transportation Request for Proposal was submitted to the committee as an example of what is consider proprietary by some professional service providers.

Solicitation Number: 0000000700

Attachment 2: Question & Response Template

Instructions: ▪ All firms must complete the sections below. Print completed forms and submit with the SOQsubmittal packet.

Provider Name:

Question 1: (20%) Your team has been assigned a project on a four (4) mile long stretch of roadway with 2 – 10’ lanes in a rural county. The Average Daily Traffic (ADT) is 7050, and the scope of the proposed project is to rehabilitate and widen the narrow roadway. The pavement is in fair to good condition. There are nine (9) existing drainage crossings. Each of the drainage areas for the nine crossings exceeds 1000 acres. The maintenance office has stated there are major issues with flooding along this highway. Your project budget is \$2.5 million. Provide your team’s project approach and recommendations to design to meet the scope and budget.

Response limited 2000 characters with spaces).

Solicitation Number: 0000000700

Attachment 2: Question & Response Template

Instructions: ▪ All firms must complete the sections below. Print completed forms and submit with the SOQ submittal packet.

Provider Name:

Question 2: (19%) Your team has been tasked to design a rehabilitation project for a three (3) mile, rural, two-lane highway. The ADT is 7000 and the Equivalent Single Axle Load (ESAL) is greater than 10 Million. The existing pavement is deteriorating due to heavy energy sector traffic. The construction project budget is \$2 million. Discuss some of the issues that you might consider while developing the PS&E.

Response limited 2000 characters with spaces).

Solicitation Number: 0000000700

Attachment 2: Question & Response Template

Instructions: • All firms must complete the sections below. Print completed forms and submit with the SOQ submittal packet.

Provider Name:

Question 3: (23%) Assume your team has been tasked with developing PS&E for a project on a narrow, two (2) mile segment of roadway in a rural county. There are multiple farms along this stretch of road. The Average Daily Traffic (ADT) is 2000. The scope of the project is to widen the narrow roadway. There are three (3) narrow bridges within the project that have substandard rail. Provide details on what your team will incorporate into the design to make this project successful. Describe a similar project your team has designed. Include the three (3) most difficult challenges you encountered, the options you considered to solve those challenges and the final solution for each.

Response limited 4000 characters with spaces).

Solicitation Number: 0000000700

Attachment 2: Question & Response Template

Instructions: • All firms must complete the sections below. Print completed forms and submit with the SOQ submittal packet.

Provider Name:

Question 4: (15%) Your team has been tasked to provide PS&E for a mill and overlay project in an urban county on an interstate through the downtown area. There are a high number of wet weather crashes and multiple bridges. Provide your approach to this project. What would be the biggest areas of concern and how would you recommend mitigating these concerns. Please state any assumptions made.

Response limited 2000 characters with spaces).

Solicitation Number: 0000000700

Attachment 2: Question & Response Template

Instructions: - All firms must complete the sections below. Print completed forms and submit with the SOQ submittal packet.

Provider Name:

Question 5: (18%) Your team has been tasked with developing PS&E for a safety improvement project on a two (2) mile long suburban corridor. The scope of work includes the installation of a raised median and one traffic signal on the existing 4-lane roadway with a two-way left turn lane. What would be your approach toward determining the locations for the raised median?

Response limited 2000 characters with spaces).

Solicitation Number: 36-4RFP5001

Attachment 2: Question & Response Template

Instructions: - All firms must complete the sections below. Print completed forms and submit with the SOQ submittal packet.

Provider Name:

Question 1: (15%) Provide 2 example projects from the past 10 years where the PM proposed and successfully completed the Plans, Specifications, and Estimate (PS&E) where major design changes were required. Describe the capabilities of the Team that helped to resolve these design changes and complete the PS&E on time and within the approved budget. In addition, for each example briefly describe the project and major design changes required, location and what year the project took place.

Response limited to the space provided. (5050 characters including all blank spaces).

Solicitation Number: 36-4RFP5001

Attachment 2: Question & Response Template

Instructions: - All firms must complete the sections below. Print completed forms and submit with the SOQ submittal packet.

Provider Name:

Question 2: (10%) Your firm has completed the design of an urban roadway widening project in a politically sensitive area. During the preconstruction meeting, your Project Manager (PM) was informed that for various reasons, the previous Traffic Control Plans (TCP) were no longer acceptable and the PM was asked to revise it with major changes in a timely manner. Please outline 5 important specific actions and techniques in determining the newly revised TCP for this type of project. If applicable, please provide an example from the past 10 years where the PM or Task Leader has successfully addressed this TCP situation; otherwise, describe your approach for a similar situation. In addition, provide project(s) description, TCP changes, specific actions taken, location and what year the project took place.

Response limited to the space provided. (3786 characters including all blank spaces).

Solicitation Number: 36-4RFP5001

Attachment 2: Question & Response Template

Instructions: - All firms must complete the sections below. Print completed forms and submit with the SOQ submittal packet.

Provider Name:

Question 3: (20%) Assume you are working on an urban state highway widening project which includes a bridge and will require traffic to remain open during the construction. The bridge is a 106-ft long three span pan girder over a creek. Existing AADT = 4,200 with a future (20 year) AADT = 6,600 and the roadway classification is urban collector. Discuss the possible structure type(s) you would consider and why, and discuss the bridge cross section and the design factors you would evaluate if stage construction is required. In addition, provide an example in the last 5 years where the Team has encountered a similar experience, not necessarily with the same bridge length or ADT. Briefly describe the project, location, and what year the project took place.

Response limited to the space provided. (3786 characters including all blank spaces).

Solicitation Number: 36-4RFP5001

Attachment 2: Question & Response Template

Instructions: • All firms must complete the sections below. Print completed forms and submit with the SOQ submittal packet.

Provider Name:

Question 4: (20%) Provide an example where the PM or Task Leaders encountered a challenging hydrologic or hydraulic design issue on a project within the last 10 years, and explain the steps which were taken to resolve the issue and lessons learned. In addition, please discuss your capabilities, the methodology, and software used in the process.

Response limited to the space provided. (3786 characters including all blank spaces).

Solicitation Number: 36-4RFP5001

Attachment 2: Question & Response Template

Instructions: • All firms must complete the sections below. Print completed forms and submit with the SOQ submittal packet.

Provider Name:

Question 5: (15%) You are upgrading a two lane rural roadway to a four lane or five lane urban facility to accommodate left turn turning movements, a shared use bike lane, and other features; all within the existing 100-ft Right-of-way. The project location additionally includes a railroad crossing and a junior high school. The goal of the project is to improve safety and provide access management throughout. Discuss what challenges you expect to encounter for a project with these characteristics, and how you would address these challenges. Please provide an example of a similar roadway improvement project that your Team has designed within the past 5 years.

Response limited to the space provided. (5050 characters including all blank spaces).

Solicitation Number: 36-4RFP5001

Attachment 2: Question & Response Template

Instructions: - All firms must complete the sections below. Print completed forms and submit with the SOQ submittal packet.

Provider Name:

Question 6: (5%) Your firm currently has multiple contracts with multiple clients. Each client is competing for your valuable time and resources. Discuss your current work load/contracts and describe how you handle multiple ongoing contracts and future assignments in order to provide timely project submittals. Include capabilities that your proposed Team would employ to ensure high quality deliverables within the agreed upon schedule. Provide an example demonstrating the capabilities discussed.

Response limited to the space provided. (2525 characters including all blank spaces).

Solicitation Number: 36-4RFP5001

Attachment 2: Question & Response Template

Instructions: - All firms must complete the sections below. Print completed forms and submit with the SOQ submittal packet.

Provider Name:

Question 7: Assume your Team has been selected to provide engineering services for this statewide contract.
Part a. (5%) How would you ensure that all local design requirements, guidelines and regulations are met. Note that different districts might have different design requirements.

Response limited to the space provided. (2525 characters including all blank spaces).

Solicitation Number: 36-4RFP5001

Attachment 2: Question & Response Template

Instructions: - All firms must complete the sections below. Print completed forms and submit with the SOQ submittal packet.

Provider Name:

Question 7: Assume your Team has been selected to provide engineering services for this statewide contract.

Part b. (5%) Describe the approach your Team would take to minimize field changes due to plan errors.

Response limited to the space provided. (2525 characters including all blank spaces).

Solicitation Number: 32-4RFP5076

Attachment 2: Question & Response Template

Instructions: - All firms must complete the sections below. Print completed forms and submit with the LOI submittal packet.

Provider Name:

Question 1: (10%) You (PM) have been assigned a project with District A. Excluding fee negotiation, what are your initial steps before beginning actual design work?

Response limited to the space provided. (1/2 page or 2525 characters)

Solicitation Number: 32-4RFP5076

Attachment 2: Question & Response Template

Instructions: • All firms must complete the sections below. Print completed forms and submit with the LOI submittal packet.

Provider Name:

Question 2: (20%) During design, it has been determined that an 18” gravity flow sanitary sewer line appears to be in conflict with a proposed retaining wall. What design options would you consider and what are the advantage/disadvantages of each?

Response limited to the space provided. (1 page or 5050 characters)

Solicitation Number: 32-4RFP5076

Attachment 2: Question & Response Template

Instructions: • All firms must complete the sections below. Print completed forms and submit with the LOI submittal packet.

Provider Name:

Question 3: (20%) You are upgrading a four lane roadway with ditches to a 5-lane curb and gutter section with storm sewer and sidewalks. The project location has several intersecting city streets, business driveways, signals, an elementary school, and is three miles in length. Drawing upon your similar experiences, outline some best management practices and the most important considerations in determining the appropriate Traffic Control Plan and Construction Phasing for this type of project?

Response limited to the space provided. (1 page or 5050 characters)

Solicitation Number: 32-4RFP5076

Attachment 2: Question & Response Template

Instructions: - All firms must complete the sections below. Print completed forms and submit with the LOI submittal packet.

Provider Name:

Question 4: (20%) Please provide an example of a project within the last 10 years where you designed a storm sewer system within limited ROW. Focus on the hydraulic and hydrology constraints and challenges you encountered and how you addressed them to provide your final solution.

Response limited to the space provided. (1 page or 5050 characters)

Solicitation Number: 32-4RFP5076

Attachment 2: Question & Response Template

Instructions: - All firms must complete the sections below. Print completed forms and submit with the LOI submittal packet.

Provider Name:

Question 5: (15%) Different geographic areas in the state have different design requirements and regulations. How would you proactively ensure that you meet all design requirements and regulations?

Response limited to the space provided. (1/2 page or 2525 characters)

Solicitation Number: 32-4RFP5076

Attachment 2: Question & Response Template

Instructions: - All firms must complete the sections below. Print completed forms and submit with the LOI submittal packet.

Provider Name:

Question 6: (10%) It has been determined a substantial oversight has been made by your team just prior to the final PS&E submittal. What are your corrective actions and how will you address the proposed schedule and budget?

Response limited to the space provided. (1/2 page or 2525 characters)

APPENDIX B

LETTER OF DISSENT

Representative Capriglione submitted the following letter regarding the committee findings.



GIOVANNI CAPRIGLIONE
TEXAS HOUSE OF REPRESENTATIVES
DISTRICT 98

The Honorable Gary Elkins
Chair
Government Transparency & Operation Committee
P.O. Box 2910
Austin, TX 78768

Dear Chairman Elkins,

It has been a pleasure to serve as the vice chair of the House Committee on Government Transparency & Operation. While I am attaching my signature to the Committee's Report, I do have concerns regarding the background and recommendations for Interim Charge #4:

First, in explaining *Greater Houston Partnership v. Paxton* I believe it is an important part of case context that the Texas Supreme Court overturned a legal standard, known as the *Kneeland* test, which had been in place for more than 30 years. The Court said a private entity must be "sustained" by public funds, which is a vast difference from the previous standard of a private entity being "supported in whole or part" by public funds. For example, in subsequent applications of the *Greater Houston Partnership* ruling, entities that derive more of their revenue from taxpayer dollars, sometimes even obtaining most of their revenue from the government, have been classified as not subject to the Public Information Act (Tex. Att'y Gen. OR2015-15568, 2015 AG Ltr. Rul.; Tex. Att'y Gen. OR2015-23893, 2015 AG Ltr. Rul.; Tex. Att'y Gen. OR2016-13691, 2016 AG Ltr. Rul.; Tex. Att'y Gen. OR2015-14855, 2015 AG Ltr. Rul.; Tex. Att'y Gen. OR2015-14297, 2015 AG Ltr. Rul.).

Second, contrary to this Report, there is great dissatisfaction with the *Boeing* opinion's fundamental question of whether or not the trade secrets exemption can be raised by third parties. It is important to clarify that looking historically at Attorney General decisions, the application of the competitive bidding exemption was only applied to governmental entities. In *Boeing v. Paxton* this exemption was expanded to allow third parties to claim the exemption, and the standard for showing competitive harm was reduced to having to only show any disadvantage, not a decisive disadvantage. The Attorney General's Open Records Division does not fact find in its letter briefing process, so it must accept the disadvantage claim made by the third party.

Finally, this Report recommends that governmental entities respond to PIA requests for those private and/or non-profit entities with which they contract. I wholeheartedly support this recommendation, but I feel it is important to clarify that if traditional governmental entities, such as cities and counties, are required by law to respond to PIA requests for the private and/or non-profit entities they contract with, the law should state that the private and/or non-profit entity is required to hand over those documents to the government's public information officer. Furthermore, the spirit of the *Kneeland* legal test should be restored to make clear that the non-profit's records of its public-supplied money is subject to the PIA. A clarification could also be added protect the private and/or non-profit entity's records that do not relate to the public-supplied money.

I look forward to continuing to discuss these issues, and I appreciate the opportunity to serve.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. Capriglione".

Rep. Giovanni Capriglione
Vice Chair
Government Transparency & Operation Committee

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ENDNOTES

- ¹ <https://www.thebalance.com/hurricane-harvey-facts-damage-costs-4150087>
- ² Ibid
- ³ Ibid
- ⁴ Background information received from the State Office of Risk Management
- ⁵ Background information received from the Department of Information Resources
- ⁶ Ibid
- ⁷ Ibid
- ⁸ Ibid
- ⁹ Ibid
- ¹⁰ https://www.texasattorneygeneral.gov/files/og/OMA_handbook_2018.pdf
- ¹¹ Ibid
- ¹² <https://www.thebalance.com/hurricane-harvey-facts-damage-costs-4150087>
- ¹³ https://www.upi.com/Top_News/US/2017/08/25/Trump-signs-Texas-hurricane-disaster-declaration/5371503671546/
- ¹⁴ <https://hro.house.texas.gov/pdf/interim/int85-1.pdf>
- ¹⁵ Ibid
- ¹⁶ Ibid
- ¹⁷ Ibid
- ¹⁸ Ibid
- ¹⁹ Ibid
- ²⁰ Ibid
- ²¹ Ibid
- ²² Ibid
- ²³ Ibid
- ²⁴ Ibid
- ²⁵ Ibid
- ²⁶ Ibid
- ²⁷ Background provided to the committee by the Department of Information Resources
- ²⁸ Ibid
- ²⁹ <https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=84R&Bill=SB1844>
- ³⁰ <https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=84R&Bill=HB1912>
- ³¹ [file:///C:/Users/H7285ap/Downloads/IDTC_20Final_20Report%20\(4\).pdf](file:///C:/Users/H7285ap/Downloads/IDTC_20Final_20Report%20(4).pdf)
- ³² Ibid
- ³³ Ibid
- ³⁴ <https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=84R&Bill=HB1912>
- ³⁵ <https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=85R&Bill=HB8>
- ³⁶ Testimony provided to the committee by the Department of Information Resources