



## Contents

[Case of the Month](#)  
[From the Courts and Attorney General](#)  
[Recent Regulations and Guidance](#)  
[In the News](#)



## Case of the Month

**Only Saturdays, Sundays, and legal holidays may be excluded from the definition of *business day* for purposes of calculating Texas Public Information Act deadlines.**

The Texas Commission on Environmental Quality (TCEQ) received a [Texas Public Information Act](#) (PIA), Texas Government Code chapter 552, request from the Sierra Club for information related to ethylene oxide risk and response on July 1, 2019. TCEQ released some information but held back other information claiming deliberative process privilege under the agency memorandum exception in Texas Government Code section 552.111. TCEQ mailed a request on July 17, 2019, for an attorney general open records decision on the matter. After the attorney general determined the information could not be withheld, TCEQ filed suit seeking to withhold the records. The Sierra Club intervened seeking a writ of mandamus to compel disclosure. TCEQ and the Sierra Club filed motions for summary judgment. Only the Sierra Club's motion was granted. TCEQ appealed.

The Texas Third Court of Appeals considered whether TCEQ's request for the attorney general decision was timely. A governmental entity must request a decision within 10 business days of receiving a PIA request. TCEQ submitted the request for a decision 16 days after receipt of the PIA request. During that period, one day was the July 4th holiday and four days were weekend days, all of which were not counted for purposes of calculating the deadline. TCEQ argued it was closed an additional day, July 5th, in observance of Independence Day so that day should also not be counted.

Since *business day* is not expressly defined by the PIA, the court determined what days may commonly be considered to fall within the definition. The court reviewed select dictionary definitions and definitions found in other Texas statutes, as well as the manner of calculating time periods found in the Texas Rules of Civil Procedure and Texas Rules of Appellate Procedure. The court determined that *business day* for purposes of the PIA should be defined as a day other than Saturday, Sunday, or a legal holiday. Since July 5th is not a state holiday and state agencies must have staff available to conduct business, even on a legal holiday, the court concluded that July 5th should be counted toward the calculation of the deadline. The deadline was also not tolled by TCEQ's request for clarification since it was not in the proper form. For these reasons and because the court did not find the reasons for withholding the information compelling, the court affirmed the lower court's decision. [Tex. Comm. on Environmental Quality v. Sierra Club](#), No. 03-21-00256-CV, 2022 WL 17096693 (Tex. App.—Austin Nov. 22, 2022, no pet. h.) (mem. op.).

### Why is This Case Significant?

The court's definition of *business day* differs from that long advised by the Texas Attorney General. Pending resolution of any case appeals, the attorney general does not plan on updating the advice that the definition excludes additional days an entity has chosen to be closed. A community college that may face a PIA deadline while the college is closed should discuss its response with the college's counsel.

### Highlights

Join us at the [TACCA Conf.](#) at TASB on Jan. 26-27, 2023.

### Resources

[Texas Higher Education Coordinating Board](#)  
[Texas Legislature](#)  
[Texas Statutes](#)  
[Texas Attorney General](#)  
[U.S. Department of Education](#)



## From the Courts and the Attorney General

### Business and Finance

Statute restricting a person subject to a court order prohibiting harassment of an intimate partner, among other acts, from carrying a firearm, [18 U.S.C. § 922\(g\)\(8\)](#), violates the U.S. Constitution [Second Amendment](#). [U.S. v. Perez-Gallan](#), No. PE:22-CR-00427-DC, 2022 WL 16858516 (W.D. Tex. Nov. 10, 2022) (mem.).

### Personnel

Former professor's claim that the denial of his extended leave request constituted a failure to accommodate his disability in violation of the federal [Americans with Disabilities Act](#) and state law failed because being on campus was an essential function, the university provided a reasonable accommodation for his disability following an interactive process, and his requested leave would cause an undue hardship on the university. [Narayanan v. Midwestern State Univ.](#), No. 7:21-cv-00046-O, WL 14318691 (N.D. Tex. Oct. 24, 2022) (mem.).

### Students and Instruction

The U.S. Supreme Court holding in [Bostock v. Clayton County](#), 140 S. Ct. 1731 (2020)<sup>1</sup> that [Title VII of the Civil Rights Act of 1964's](#) prohibition on discrimination "based on...sex" includes prohibitions on gender identity and sexual orientation discrimination does not extend to the provisions prohibiting discrimination "on the basis of sex" in [Title IX of the Education Amendments of 1972](#) or [Section 1557](#) of the federal Affordable Care Act. [Neese v. Becerra](#), No. 2:21-CV-163-Z, 2022 WL

16902425 (N.D. Tex. Nov. 11, 2022).

Recently-announced federal [student loan forgiveness program](#) developed under the [U.S. Higher Education Relief Opportunities for Students \(HEROES\) Act](#) in response to the COVID-19 pandemic was enjoined nationwide because the U.S. Department of Education did not have statutory authority to promulgate the rules. [Brown v. U.S. Dept. of Educ.](#), No. 4:22-cv-0908-P, 2022 WL 16858525 (N.D. Tex. Nov. 10, 2022).

College officials were entitled to qualified immunity from the U.S. Constitution [Fourteenth Amendment](#) claims of a student subject to a sexual misconduct investigation because their actions did not violate the student's due process rights. [Doe v. Prairie View A&M Univ.](#), No. H-22-1019, 2022 WL 14177064 (S.D. Tex. Oct. 24, 2022).

### Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings<sup>2</sup> based on requests from Texas community colleges related to:

- Information regarding a request for proposals. Tex. Atty. Gen. Op. [OR2022-32446](#) (Oct. 20, 2022);
- A contract for services. Tex. Atty. Gen. Op. [OR2022-32785](#) (Oct. 24, 2022);
- Information about a solicitation. Tex. Atty. Gen. Op. [OR2022-33506](#) (Oct. 28, 2022); and
- Bids and evaluation materials associated with a request for proposals. Tex. Atty. Gen. Op. [OR2022-34279](#) (Nov. 03, 2022).

<sup>1</sup> This case was summarized in the [June 2020](#) edition of the Community College Services Legal Update.

<sup>2</sup> Open record letter rulings are limited to the particular records at issue and the facts as presented to the attorney general. These rulings must not be relied upon as a previous determination regarding any other records or any other circumstances.



## Recent Regulations and Guidance

---

The Texas Higher Education Coordinating Board (THECB) amended [regulations](#) addressing the Apply Texas Advisory Committee to reduce the number of community, technical, and state college representatives and add a school district representative.

THECB repealed and amended [regulations](#) addressing the allocation and disbursement of work-study program funds.

THECB amended [regulations](#) addressing the open educational resources grant program to specify institutions as grantees instead of faculty.

The Texas Department of Licensing and Regulation readopted [regulations](#) addressing massage therapy without changes.

The Texas Comptroller amended [regulations](#) addressing the valuation of open-space and agricultural lands and timberlands to reference the most recent versions of the [appraisal manuals](#).

The U.S. Department of Education (DOE) amended [regulations](#) addressing the William D. Ford Federal Direct Loan Program and other federal loan programs, including provisions regarding institution dispute resolution processes and loan repayment.

The DOE amended [regulations](#) addressing Federal Pell Grants for prison education programs, including provisions regarding program standards, an individual's eligibility for a grant, and participating institutions' reporting requirements.

The DOE issued technical corrections to [regulations](#) addressing federal financial aid, including provisions regarding eligible institutions and accrediting agencies, and distance education programs.

The U.S. Department of Transportation amended [regulations](#) to add appendices explaining the existing statutes and regulations administered by the Federal Motor Carrier Safety Administration.



## In the News

---

The Texas Governor renewed the [disaster proclamation](#) issued for all counties in Texas due to the COVID-19 pandemic.

The President issued proclamations celebrating [American Education Week](#) and [National Apprenticeship Week](#), both November 13 through November 19, 2022.