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## PROPOSED EXPANSION OF TEXAS PUBLIC INFORMATION ACT WOULD AFFECT CHARITIES

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Two bills have been filed in this year's legislative session that would expand the reach of the Texas Public Information Act (also referred to as the "Open Records Act") to require many Texas charitable organizations that are not currently subject to the Act to release their records.

### BACKGROUND ON THE PUBLIC INFORMATION ACT

The Public Information Act is similar to the United States Freedom of Information Act and allows the public to request government records and information collected, assembled, produced, or maintained in the course of transacting public business. The Public Information Act applies to all governmental bodies as well as to any private organization that is "supported" in whole or in part by public funds. The Texas Supreme Court recently concluded that in order for an organization to be "supported," it must receive funds from a governmental entity without which the organization could not operate.

### PROPOSED LEGISLATION

House Bill No. 793 and Senate Bill No. 408 would undo the Supreme Court's decision by amending the definition of "governmental body" to replace the "supported in whole or in part by public funds" language with the following:

- receives public funds or other public resources unless the receipt of the funds or other resources imposes a specific and definite obligation on the entity to provide a measurable amount of service in exchange for the funds or other resources as would be expected in an arms-length transaction for services between a vendor and purchaser;
- is a party to a contract with a governmental body or involved in another relationship with a governmental body that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between the entity and one or more governmental bodies; or
- provides services traditionally provided by a governmental body.

### IMPACT ON TEXAS CHARITABLE ORGANIZATIONS

As currently worded, the amendments would dramatically increase the number of organizations subject to the Public Information Act, particularly with respect to charitable organizations. For example, receipt of police or fire protection might cause an organization that is exempt from property taxes to be considered a governmental body. Having a contract to privately manage parks, museums, or cultural facilities, regardless of the amount of public funds involved (a dollar would be enough), would likely

make the organization a governmental body. Leasing government-owned property or facilities could potentially subject a charitable organization to disclosures under the Act. Private schools, nonprofit hospitals, and even churches that deliver services traditionally provided by a governmental body would become subject to the Act even if they receive no public funds and have no contracts with governmental bodies. Even a negotiated business relationship may result in a private organization being covered if the services it provides to the governmental body in exchange for payments are not sufficiently “specific and definite.”

It is important to understand that the ramifications of a charitable organization being covered by the Public Information Act go beyond having most of the organization’s information subject to public disclosure. Independent of the disclosure issue is the cost of compliance. Charitable organizations likely will be forced to add staff to handle requests for information in accordance with the requirements of the Act at considerable cost, incur legal expenses to determine if any of the many exemptions from disclosure apply, and defend any exemption claims.

We are actively working to ensure that the language in the proposed amendments is revised. Please contact us if you have concerns about the amendments so we may convey these to the Texas Legislature. In addition, you can contact [Representative Giovanni Capriglione](#) (R, District 98) and [Senator Kirk Watson](#) (D, District 14), who introduced the bills, to express your concerns.

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**CONTACTS:**

**David M. Rosenberg**

214.969.1508

[David.Rosenberg@tklaw.com](mailto:David.Rosenberg@tklaw.com)

**Bryan P. Neal**

214.969.1762

[Bryan.Neal@tklaw.com](mailto:Bryan.Neal@tklaw.com)

**James B. Harris**

214.969.1102

[James.Harris@tklaw.com](mailto:James.Harris@tklaw.com)

**Lee Meyercord**

214.969.1315

[Lee.Meyercord@tklaw.com](mailto:Lee.Meyercord@tklaw.com)

**Tyree Collier**

214.969.1409

[Tyree.Collier@tklaw.com](mailto:Tyree.Collier@tklaw.com)

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