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To: The Honorable Cody Vasut, Chair, Select Committee on Government Oversight
The Honorable Armando Walle, Vice-Chair, Select Committee on Government Oversight
Members, House Select Committee on Government Oversight

From: Cyrus Reed, Legislative and Conservation Director, Sierra Club Lone Star Chapter,
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Re: Texas Public Information Act: Study the applicability of the Texas Public Information Act, the entities currently subject to the Act, its effectiveness, and the necessity of current exemptions from public disclosure. Additionally, review requirements related to public notices and make recommendations to improve citizen awareness and transparency.

August 26, 2026

Tweaks may be needed to continue to assure public access to government information

State and Local Governments Hiding Behind Exceptions or Limiting Disclosure, Notice and Public Participation

The Lone Star Chapter of the Sierra Club, with some 21,000 members, and some 100,000 supporters in Texas, is very supportive of the need for robust public participation, public notice and correct implementation of the Texas Public Information Act. We have noted a few disturbing trends that merit consideration by this committee and the legislature, including potential legislation to tweak some aspects of the TPIA and related laws. Our comments are focused on NDAs, potential abuse of the “deliberative-process procedure” exception, lack of public notice on certain transmission and minor air quality permit cases, and a trend by some state agencies to limit public participation.

Local Government seems to be hiding too often behind “Non-Disclosure Agreements”

Local and state governments have the ability to exempt certain information from disclosure under the TPIA, especially related to confidential business information involved in potential incentives offered to investments. Thus, under [Sec. 552.131. EXCEPTION: CONFIDENTIALITY OF CERTAIN ECONOMIC DEVELOPMENT INFORMATION](#), governmental bodies can keep information about a proposed deal to attract or retain companies from the public.

While Sierra Club does not object to legitimate confidential business information being kept from the public while a deal is being negotiated, communities throughout Texas have been frustrated by the lack of any information on new companies arriving, including data centers, cryptomines and AI companies. We would support a tweak to the TPIA to assure that basic information on energy, water use, cooling technology and land use could not be withheld from the public, even when some of the business information is maintained secret under a Non-Disclosure Agreement. Much of the anger around data centers is precisely because of the lack of information about the potential community impact due to water, land, electricity and energy generation connected to this new industry.

Recent Decision by Railroad Commission to Limit Public Participation is concerning

While not directly related to the TPIA itself, recently on a 2-1 vote, the Texas Railroad Commission voted to make public participation at their open meetings on non-noticed topics optional, arguing under the new policy that they will decide whether to allow public participation at meetings - or not. The new public participation policy adopted on August 18, 2026 removes the guaranteed monthly public comment period from its open meetings. This decision was taken with no input from the public and sets a dangerous precedent.

This internal decision flies in the face of recent efforts by other agencies to increase access to public participation. Thus, the PUCT, TCEQ and TWDB have all in recent years made it easier to participate in open-agenda meetings.

With the RRC under sunset review in 2028-2029, we urge this committee to consider actions to assure that state agencies are open to public input, even for items not listed on the agenda.

Lack of public notice on Transmission routes must be fixed

Sierra Club has not been a direct participant in the recent large 765 kV lines proposed throughout Texas. While we recognize the need for new transmission lines for a growing state, we are concerned that the very abrupt 180-day timeline for major transmission line decisions has short-circuited proper notice for landowners potentially impacted by these lines, some of which can cut through private property lines. Under Texas House Bill 5066 (passed in 2023), the entire PUCT approval timeline was slashed from one year down to 180 days, which heavily favors utility companies and compresses meaningful public participation. Landowners are supposedly guaranteed notice and at least 30 days to decide whether to formally intervene, which itself is too short a time to realistically review documents, potentially hire a lawyer and intervene. However, even worse, recently, administrative law judges recently rebuked Oncor for failing to properly notify hundreds or thousands of impacted landowners—in some cases adding new route links affecting over 1,400 to 1,650 property owners who never received direct-mail notice of initial public meetings before filings were made. In this case these landowners didn't even get the 30-day notice requirement.

Data Centers may be abusing the use of “minor” permits with little public notice, and EPA proposal to remove public notice for “minor” air permits could further impact this abuse of minor permits in Texas

Sierra Club has been concerned about the lack of notice generally on “minor” air quality permits, particularly for back-up and behind-the-meter and onsite gas plants for data centers. In essence, some data centers have been “stacking” smaller minor permits, some of which have limited notice and public participation requirements. Recently, the EPA proposed removing public participation requirements for minor air quality permits, and if approved, it would be up to each state on what public notice and participation requirements would be required for “minor” air pollution sources. The Legislature may want to consider some basic requirements for all minor air pollution sources, and assure that minor permits are not “stacked” to avoid major air quality permit requirements.

Recent Texas Supreme Court case (Sierra Club vs TCEQ) reveals differing interpretations of “deliberative process privilege” exception clause

Note: this case is ongoing and these comments are meant to highlight an issue, and do not represent any legal analysis or a formal position of the Sierra Club in the ongoing case.

Under the TPIA certain state or local government information can be kept from the public if it is considered to be internal decision-making documents. Thus, Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. Section 552.111 encompasses the deliberative process privilege. The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process before there is a formal proposal. However, the Sierra Club has been concerned that some government agencies are interpreting this “deliberative process privilege” too broadly and keeping documents related to the basis for making

decisions on health-based standards from the public record. In some cases, this can obfuscate and hide the basis for decision-making.

On July 1, 2019, the Sierra Club requested records from TCEQ under the Texas Public Information Act concerning ethylene oxide carcinogenic dose-response assessments. The reason that Sierra Club sought the documents in the first place is because the commission had requested the Environmental Protection Agency raise the limit for how much ethylene oxide can be emitted into the environment. We wanted to better understand the basis for their decision to make this request. Ethylene oxide is a colorless gas used mainly to make other chemicals like antifreeze, but also to sterilize medical equipment. While it can be an important chemical, it also does pose major health concerns.

While the Sierra Club requested documents related to how TCEQ determined the ethylene oxide emissions limit could be raised, the agency argued that many of the documents were protected under the deliberative-process privilege. Thus, TCEQ sought to withhold more than 6,000 internal documents under the deliberative-process privilege. A major legal fight ensued over whether TCEQ missed the strict 10-business-day deadline to ask the Attorney General for permission to withhold the files. Lower courts ruled against TCEQ, deciding the agency missed its deadline and ordering the immediate release of the documents. However, the TCEQ sought redress in the Supreme Court, and In *Texas Commission on Environmental Quality v. Ken Paxton and Sierra Club* (No. 23-0244), the Supreme Court of Texas reversed the lower rulings on April 17, 2026. The court found the commission didn't blow the deadline for two reasons: The commission put its request to the attorney general's office in "interagency mail" within the timeframe, and TCEQ reset the 10-day period by sending an email to the Sierra Club for clarification on their information request.



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However, while the Supreme Court ruled against the position of the Sierra Club and ruled that TCEQ did meet the 10-day deadline to respond, Sierra Club is still seeking the release of all the documents themselves. The case was sent back to the lower district court to decide whether the disputed files are legally protected from release under the deliberative-process privilege

Recently, the Sierra Club made another request of the agency on documents related to other aspects of ethylene oxide regulation, and similarly, we have yet to receive those documents as the agency seeks clarifications from the AG.

This committee and the legislature may want to consider some further clarifying language in statute by what is covered by the deliberate-process privilege. While it is legitimate to keep some documents from the public to preserve the need for internal deliberation of governmental agencies, we believe that some clarification may be needed to require disclosure of studies and other factual documents used in the development of decisions. We would be happy to work with the committee on some exceptions to the exception.

The Sierra Club appreciates the opportunity to provide these comments to the Committee an TPIA, public notice and related issues. We look forward to working with members of this committee and the legislature to honor the spirit of the Texas Public Information Act, meant to assure open access to government and the information it produces.