



**Minutes of the Meeting
of the Board of Trustees of the
Fire and Police Retiree Health Care Fund, San Antonio
July 27, 2026**

PRESENT: Frank Gutierrez, Fire Department Retiree Representative;
Mike Despres, Retired Police Representative;
Steve Carse, Fire Department Representative;
Doug Berry, Fire Department Representative;
Jason Sanchez, Police Department Representative;
Councilperson Misty Spears, City of San Antonio.

ABSENT: Councilperson Edward Mungia, City of San Antonio;
Councilperson Jalen McKee-Rodriguez, City of San Antonio;
Chris Lutton, Police Department Representative.

OTHERS PRESENT: James Bounds, Executive Director, and Cecilia Puga, Retiree Health Care;
Frank Burney and Jon Lowe, Martin & Drought, P.C.; and
Charlie Ricketts and Michael Trainer, Retirees Association.

At 10 a.m., Chair Berry called the meeting to order. The roll was called, and a quorum was declared present. The minutes from the meetings held on June 25, 2026 and June 29, 2026, were reviewed and unanimously approved upon motion by Trustee Sanchez and second by Trustee Despres.

The Board also congratulated its Board Members that negotiated a new Police CBA.

EXECUTIVE

SESSION: The Board went into Executive Session at 11:00 a.m. to discuss legal issues regarding litigation. The Executive Session adjourned at 11:40 a.m. No action was taken.

**MEMBERS
TO BE**

HEARD: See list attached:

1. Mark Kochheiser (retired Police): related positive stories on services provided by Health by Design.
2. Perry Smith (retired Police): positive recommendation of Health by Design.
3. Mike Trainer (retired Police): supports retirees and their health care—strong supporter of Health by Design.
4. Wayne Harwell (retired Police): strong supporter of Health by Design.

5. Walter Yates (retired Fire): questioned why Board took no action on possible purchase of Health by Design; wanted to know returns of Health Fund;
6. Mike Rankin (retired Fire): raised questions about Health Fund's compliance with Texas Open Meetings Act and Public Information Act. Also supports acquisition of Health by Design.
7. Conrad Gonzales (retired Fire): supports Health by Design
8. Steve Peterson (retired Police): supports Health by Design and wants to continue its services to the Health Fund.
9. Charlie Ricketts (retired Police): strong supporter of Health by Design and encourages Board to reconsider acquisition of Health by Design. If Board wants to pursue a RFP, then quality of care should be of utmost importance.

ACTION
ITEMS:

1. Investments: Meeting is scheduled for August 3, 2026 at 3:00 pm.
2. Personnel/ Audit: A final audit should be final in the next few weeks.
3. Benefits:
 - a. Eligibility Question/Issue: no action.
 - b. PBM Market Check Proposal: Ms. Puga advised the Board of a proposed study by Foster & Foster to evaluate the PBM market for pricing of drugs and prescriptions at a cost of \$30,000 (net cost of \$20,000). Upon by motion by Trustee Carse and second by Trustee Despres, the Board unanimously approved the PBM pricing market study.
4. Legislative: Chair Carse briefed the Board on initial actuarial report for legislative issues that will be addressed at the August 13, 2026 meeting at 10:00 am.
5. Administrative Report:
 - a. Expenses: Mr. Bounds presented the expenditures for the Fund. Upon motion by Trustee Despres and second by Trustee Gutierrez, a list of expenses and claims and the Financial Report were unanimously approved by the Board. Trustee Sanchez requested information on costs of members' services and prescriptions.
 - b. Strategic Business Planning Committee Meeting: none
6. Consultant Report:
 - a. Legal: none

7. Educational Opportunities:

Upon motion by Trustee Gutierrez and second by Trustee Carse, the Board approved attendance at any of the following educational opportunities:

- IFEBP: 72nd Employee Benefits Conference, October 23-25, 2026
- iDEC: 5th Annual Global Summit on Talent Maximization, September 22-25, 2026
- NPPFA: 2026 National Round Table Conference, August 24-26, 2026

8. Next Meeting: The next regularly scheduled meeting will be tentatively set for August 17, 2026 at 10 am (moved by Trustee Sanchez and second by Trustee Spears) and August 31, 2026 at 10:00 a.m.

ADJOURNMENT: There being no further business, a motion was made by Trustee Gutierrez and second by Trustee Spears, that the meeting adjourn. The motion carried unanimously. The meeting adjourned at 11:44 a.m.

Enclosures

- Financial Statement
- List of approved claims and expenses
- Agenda
- Minutes
- Memo from Rankin on TPIA and Open Meetings Act

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Board Meeting Sign-In Sheet

July 27, 2026

10:AM

Name	Organization/Title	Phone/Email
MICHAEL F. RAYMOND	SAFD RET.	210-843-7171
Conrad Cordoba	SAFD RET	210-421-5660
Roy E. Willbourn	SAFD Ret	210 273 5726
Walter Yates	" "	210-854-7285
Wayne Horvath	SAFD Ret	210-849 4520
Perry Smith	SAFD Ret	210-268-6700
Steven Peterson	SAFD	210 375 5522
Mark Kochheim	SAFD Ret	210-215-4444
Elizabeth Jackson	D9 Intern	(210)994-0199 (Misty Spears)
Bruce Werline	D9 Intern	210-372-6528 (Misty Spears)
Jerry Cortez	SAFD Ret	210-825-4565
Mundo Perez	SAFD	210 391 7666
Car Perez	"	"
Jim Norst	SAFD	210 386 9495

F&P Retiree Health Care Fund - Calendar
Statement of Plan Net Assets
June 30, 2026

June 30, 2026 December 31, 2025

ASSETS

Cash - City	\$	0.00	\$	0.00
Cash - Trust		183,158.03		4,577.45
Leasehold Improvements		32,514,570.46		41,076,490.48
Investments - Trust		731,724,349.97		678,251,559.12
Accrued Interest - Trust		2,959,388.14		4,743,196.89
Pre-paid Expenses		1,390,395.01		37,274.30
Total Assets		768,771,861.61		724,113,098.24

LIABILITIES

Claims Payable		7,454,770.26		7,548,903.20
Accounts Payable		823,442.35		1,370,516.64
Security Lending Collateral		0.00		0.00
Total Liabilities		8,278,212.61		8,919,419.84

Net Assets Held in Trust	\$	<u>760,493,649.00</u>	\$	<u>715,193,678.40</u>
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F&P Retiree Health Care Fund - Calendar
Statement of Changes in Plan Net Assets
For the Six Months Ending June 30, 2026

	Current Month	Current Budget	Year to Date	YTD Budget
Additions				
Contributions:				
City of San Antonio	\$ 4,558,642.20	4,866,833.32	\$ 29,700,032.27	29,200,999.92
Active	2,285,336.40	2,433,333.32	15,028,106.45	14,599,999.92
Retirees less than 30	134,424.48	116,249.99	651,738.36	697,499.94
COBRA	824.92	4,166.66	3,060.19	24,999.96
Children	81,600.00	76,500.00	472,175.00	459,000.00
Total Contributions	<u>7,060,828.00</u>	<u>7,497,083.29</u>	<u>45,855,112.27</u>	<u>44,982,499.74</u>
Investment Income:				
Interest	512,241.66	405,833.33	3,042,468.21	2,434,999.98
Net Appreciation of Inves	2,183,543.66	3,449,999.90	27,418,231.67	20,699,999.40
Other Income	1,313.69	1,666.66	750,340.23	9,999.96
Less Investment Expense	(54,833.33)	(32,749.75)	(265,999.98)	(196,498.50)
Net Investment Income	<u>2,642,265.68</u>	<u>3,824,750.14</u>	<u>30,945,040.13</u>	<u>22,948,500.84</u>
Total Additions	<u>9,703,093.68</u>	<u>11,321,833.43</u>	<u>76,800,152.40</u>	<u>67,931,000.58</u>
Deductions				
Members Benefit Paymen	4,762,252.72	5,776,249.99	28,702,867.99	34,657,499.94
COBRA Benefit Payment	0.00	4,166.66	95.33	24,999.96
Children's Benefit Payme	190,688.42	76,500.00	521,838.11	459,000.00
General and Administrati	367,772.74	345,916.55	2,275,380.37	2,075,499.30
Total Deductions	<u>5,320,713.88</u>	<u>6,202,833.20</u>	<u>31,500,181.80</u>	<u>37,216,999.20</u>
Net Increase	<u>4,382,379.80</u>	<u>5,119,000.23</u>	<u>45,299,970.60</u>	<u>30,714,001.38</u>



AGENDA
BOARD OF TRUSTEES MEETING
FIRE AND POLICE RETIREE HEALTH CARE FUND
LOCATED AT 11603 W. COKER LOOP, SUITE 210, SAN ANTONIO, TX 78216
Monday, July 27, 2026-10:00 a.m.

Members of the public may provide comment on any Agenda item, consistent with procedural rules governing the Board meetings and state law. Public comments may be provided as follows:

- a. Written: Submit written comments, along with name and address, by emailing them to Leticia Deleon at ldeleon@thefundsa.org by 12:00 p.m. on the day before the meeting. Comments will be read into the record during the designated time on the agenda.
- b. In Person: Speakers shall be given the opportunity to speak at the beginning of the meeting during "Public Comment" for up to 3 minutes (6 minutes if translation is needed).

1. Call to Order:

2. Roll Call: Doug Berry, Frank Gutierrez, Steven Carse, Chris Lutton, Michael Despres, Jason Sanchez, Mayoral Appointee Edward Mungia, Councilperson Jalen Mekce-Rodriguez, Councilperson Misty Spears

3. EXECUTIVE SESSION (Discussion only – Closed to Public):

The Board of Trustees may recess the meeting to the public at any time and hold an Executive Session pursuant to the Texas Open Meetings Act, Chapter 551.071, of the Texas Government Code. Such Act provides for Executive Session on any matter to be considered during the meeting as it relates to consultation with attorneys, real property, personnel, and other matters. While any matter on the agenda may also be discussed, these specific matters may be discussed with counsel in Executive Session:

- a. Government Code §551.072 – Discussions Regarding Purchase, Exchange, Lease, or Value of Real Property if Deliberation in an Open Meeting Would Have a Detrimental Effect on the Position of Health Fund in Negotiations with a Third Party;
- b. Government Code §551.071 - All Matters Where Health Fund Seeks the Advice of its Attorney as Privileged Communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, including but not limited to, tax qualification of the Fund.
- c. Pending or Contemplated Litigation including, but not limited to, PBM contractors.
- d. Government Code §551.074- Personnel Matters involving Senior Executive Staff and Employees of Health Fund.
- e. Government Code 551.078 and .0785: Deliberation Involving Individuals' Medical or Psychiatric Records.

4. Minutes (Discussion and possible action):

- Board Meeting Minutes for June 29, 2026

5. Public Comment:
6. Committee Reports (discussion and possible action):
 - a. Investments:
 - b. Personnel/Audit:
 - Update on Audit
 - c. Benefits:
 - Eligibility question/issue
 - PBM Market Check Proposal
 - d. Legislative:
7. Administrative report (discussion and possible action):
 - a. Draft financial reports for June 2026
 - b. Discussion of Strategic Business Planning Committee Meeting
8. Consultant Reports (discussion and possible action):
 - a. Legal: Report by Frank Burney
9. Educational Opportunities (discussion and possible action):
 - IFEBP: 72nd Employee Benefits Conference October 23-25, 2026
 - IDAC: 5th Annual Global Summit on Talent Maximization September 22-25, 2026
 - NPPFA: 2026 National Round Table Conference August 24-26, 2026
10. Adjournment:

NOTE:

Speakers may address the Board regarding any specific Agenda Item, on any matter related to Fund business, or on matters that are within the scope of the authority and legislative functions of the Board. Speakers shall be given the opportunity to speak at the beginning of the meeting during "Public Comment" for up to 3 minutes (6 minutes if translation is needed.) Enumerated agenda items are assigned numbers for ease of reference only and will not necessarily be considered by the Board in that order. For those who need assistance due to physical challenges, accommodation can be arranged by contacting James Bounds at 210-494-6500.



CERTIFIED AGENDA OF CLOSED MEETING

HEALTH FUND

I, DOUG BERRY, THE PRESIDING OFFICER OF HEALTH FUND, CERTIFY THAT THIS DOCUMENT ACCURATELY REFLECTS ALL SUBJECTS CONSIDERED IN AN EXECUTIVE SESSION OF THE BOARD MEETING CONDUCTED ON JULY 27, 2026.

1. The executive session began with the following announcement by the presiding officer: "Health Fund is now in executive session July 27, 2026 at 11:00 a.m."
2. SUBJECT MATTER OF EACH DELIBERATION:
 - Discussions with attorney relating to his or her advice on legal matters related to any matter in which the duty of the attorney to Health Fund under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Open Meetings Act; and
 - Discussions regarding legal matters with counsel.
3. No further action was taken.
4. The executive session ended with the following announcement by the presiding officer: "This executive session ended on July 27, 2026 at 11:40 a.m."

Presiding Officer

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**Minutes of the Meeting
of the Board of Trustees of the
Fire and Police Retiree Health Care Fund, San Antonio
June 29, 2026**

PRESENT: Frank Gutierrez, Fire Department Retiree Representative;
Chris Lutton, Police Department Representative;
Mike Despres, Retired Police Representative;
Steve Carse, Fire Department Representative;
Doug Berry, Fire Department Representative;
Jason Sanchez, Police Department Representative; and
Councilperson Misty Spears, City of San Antonio.

ABSENT: Councilperson Jalen McKee-Rodriguez, City of San Antonio; and
Councilperson Edward Mungia, City of San Antonio.

OTHERS PRESENT: James Bounds, Executive Director, and Cecilia Puga, Retiree Health Care;
Frank Burney, Martin & Drought, P.C.; and
Charlie Ricketts and Michael Trainer, Retirees Association.

At 10:03 a.m., Chair Berry called the meeting to order. The roll was called, and a quorum was declared present. The minutes from the meetings held on May 26, 2026, and June 25, 2026, were reviewed and unanimously approved upon motion by Trustee Sanchez and second by Trustee Gutierrez.

**EXECUTIVE
SESSION:** None.

**MEMBERS
TO BE
HEARD:** See attached.

**ACTION
ITEMS:**

1. Investments: Chair Lutton reported on minor changes to the Investment Policy Statement. Upon motion by Trustee Lutton and second by Trustee Spears, the Investment Policy Statement was unanimously approved.
2. Personnel/ Audit: Mr. Bounds reported that the final audit will likely be finished by July Board meeting.
3. Benefits: No report.
4. Legislative: Chair Carse presented the Legislative Program for 2027. Actuarial review on the proposed changes is expected in the next two weeks.

5. Administrative Report:

- a. Expenses: Mr. Bounds presented the expenditures for the Fund. Upon motion by Trustee Sanchez and second by Trustee Spears, a list of expenses and claims and the Financial Report were unanimously approved by the Board.
- b. Strategic Business Planning Committee: None.
- c. Administrative Building: Mr. Bounds reported on architectural plans by November for new headquarters.
- d. Health By Design: Chair Berry reported that all discussions regarding possible acquisition have terminated.

6. Consultant Report:

- a. Legal: Mr. Burney reported on recent NAPPA Conference Legal Issues facing Pension and Health Funds.
- b. Financial Disclosure 2026: COSA Trustees need to submit their financials.

7. Educational Opportunities:

Upon motion by Trustee Carse and second by Trustee Gutierrez, the Board approved attendance at any of the following educational opportunities:

- Cerity Partners: Institutional Client Summit, July 20-21, 2026
- TEXPERS: Summer Education Forum, August 2-4, 2026

8. Next Meeting: The next regularly scheduled meeting will be July 27, 2026 at 10:00 a.m. A Benefits Meeting will be held at 11:30 a.m. to discuss Continuous Glucose Monitors.

ADJOURNMENT: There being no further business, a motion was made by Trustee Despres and second by Trustee Spears that the meeting adjourn. The motion carried unanimously. The meeting adjourned at 11:05 a.m.

Enclosures

- Financial Statement
- List of approved claims and expenses
- Agenda
- Minutes of May 26, 2026 and June 25, 2026 Meetings of the Board

Members to Be Heard

1. Michael Rankin: expects Board to respond to Retirees' questions. Also raised concern with the practice of approving minutes.
2. Patricia Rankin
3. Wally Yates: Asked what action was taken in regards to Health by Design.
4. Kenneth Hagen: Appreciates clinics and Board.
5. Roy Willborn
6. Jana Willborn
7. David Montalvo: wants fairness and transparency by the Board and its members.
8. Nikki Montalvo
9. Javier Patlan
10. Jim Wueste
11. Tylan Weisetz
12. Patsy Rogers
13. Anthony Rogers: does not support any recall. Based on his background, wants due diligence for medical treatments.
14. Bart Moczygemba: appreciates the work by the Board based on his past role as a Pension Trustee.
15. Michael Helle: as a retiree, appreciates the health care benefits retirees receive. All experiences with the clinics have been excellent. Appreciates the hard work that the Board does.
16. Keith Cruske
17. Armando Perez
18. Jimmy Rodriguez: supports the Board and the clinics.
19. Larry Reed: appropriate to raise the CGM issue and satisfied with Board decision. Recommends that the Board review record-keeping. Finally, supports the clinics and the job they are doing. Absolutely opposed to any recall of the Board.

20. Joe Carrillo

21. Robert McConnauey

22. Charlie Ricketts (President – Pensioner's Association): proud that all parties are working together to resolve issues.

23. Mike Trainer: Past President of Pensioners' Association. Keeping minutes is not a total recitation of everything that accrued – just important discussion and actions of the Board. Strong supporter of clinics.

**Minutes of the Special Meeting
of the Board of Trustees of the
Fire and Police Retiree Health Care Fund, San Antonio
June 25, 2026**

PRESENT: Frank Gutierrez, Fire Department Retiree Representative;
Chris Lutton, Police Department Representative;
Mike Despres, Retired Police Representative;
Steve Carse, Fire Department Representative;
Doug Berry, Fire Department Representative;
Jason Sanchez, Police Department Representative; and
Councilperson Jalen McKee-Rodriguez, City of San Antonio.

ABSENT: Councilperson Misty Spears, City of San Antonio; and
Councilperson Edward Mungia, City of San Antonio.

OTHERS PRESENT: James Bounds, Executive Director, and Cecilia Puga, Retiree Health Care;
Frank Burney, Martin & Drought, P.C.;
Charlie Ricketts and Michael Trainer, Retirees Association; and
Numerous Fire and Police Retirees.

At 10:00 a.m., Chair Berry called the meeting to order. The roll was called, and a quorum was declared present.

EXECUTIVE

SESSION: The Board went into Executive Session at 10:18 a.m. to discuss legal issues regarding litigation. The Executive Session adjourned at 11:15 a.m. No action was taken.

**MEMBERS
TO BE**

- HEARD:**
1. Wally Yates: Health by Design:
 - i. Requested information on background on possible acquisition of Health by Design.
 - ii. Will the members be engaged on their opinion on the acquisition.
 - iii. Requested that the Board table the Health by Design acquisition.
 2. Anthony Rogers: Requested additional information on the acquisition of Health by Design and process for Trustee recall.
 3. Mike Rankin: Questioned the notice for Executive Session discussion for consultation with Fund's attorneys.

4. Keith Crusius: Questions whether the Board has the expertise to negotiate and consummate the acquisition by Health by Design.

ACTION
ITEMS:

Health by Design: Upon motion by Trustee Carse and second by Trustee McKee-Rodriguez, the Board unanimously voted to reconsider the Board vote on May 26, 2026 to move forward with the acquisition of Health by Design.

Upon motion by Trustee Carse and second by Trustee Lutton, the Board unanimously voted to terminate all and any negotiations related to the acquisition of Health by Design.

NEXT

MEETING: July 27, 2026 at 10:00 a.m.

The Chair announced that a Special Board Meeting after the regular July Board meeting on July 27, 2026, will likely be scheduled to discuss the topic of Continuous Glucose Monitors.

ADJOURNMENT: There being no further business, a motion was made by Trustee Gutierrez and second by Trustee Despres that the meeting adjourn. The motion carried unanimously. The meeting adjourned at 11:18 a.m.

Enclosures
- Agenda

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Two Misstated Texas Open Meetings Act Rules

Healthcare Fund Board - Executive Session and Member Questions

June 4, 2026

Purpose. This document addresses two Texas Open Meetings Act rules that appear to be misstated or applied too broadly in connection with Healthcare Fund Board meetings: (1) the attorney-consultation executive-session rule, and (2) the rule governing member questions raised under “members to be heard.” The concern is not that the Board must deliberate every issue on demand. The concern is that the rules appear to be used as a shield to avoid public accountability, factual answers, and meaningful member participation.

Rule 1 - Texas Government Code § 551.071

Sec. 551.071. CONSULTATION WITH ATTORNEY; CLOSED MEETING.

A governmental body may not conduct a private consultation with its attorney except:

(1) when the governmental body seeks the advice of its attorney about:

(A) pending or contemplated litigation; or

(B) a settlement offer; or

(2) on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.

Strong Summary

The Board may consult with its attorney in executive session for legal advice. But § 551.071 is not a blanket permission slip to move substantive Board business behind closed doors simply because counsel is present. The rule is limited. It allows legal consultation; it does not authorize private deliberation over the merits, cost, actuarial assumptions, benefit design, financial policy, political handling, or final direction of CGM coverage unless another specific closed-session exception applies.

The misstatement. If counsel is advising that the Board may enter executive session whenever it is “seeking the advice of counsel,” even when the discussion is actually substantive, that statement is incomplete and dangerous. The legal-advice exception cannot be used to conceal the real policy discussion from members.

Proper closed-session legal advice may include: whether agenda wording is legally sufficient; whether litigation is pending or contemplated; whether the plan documents authorize an action; whether the Board faces legal exposure; or what legal obligations apply under TOMA, ADA, fiduciary principles, or the governing documents.

Improper use would include: privately debating whether CGMs should be covered, whether Foster & Foster’s analysis should be accepted, whether projected costs or savings are persuasive, whether the Board should adopt or reject the proposal, how trustees are leaning, or how to handle member pressure.

Applicable authority. The Texas Attorney General has stated that a governmental body may receive legal advice in executive session on legal issues, but may not engage in general policy discussion of nonlegal matters merely because an attorney is present. Attorney General Opinion JC-0233 applies that principle directly. The Texas Attorney General Open Meetings Handbook likewise explains that § 551.071 does not allow matters outside the legal-advice exception to be discussed merely under the cover of counsel’s presence.

Bottom line. The Board may receive legal advice in private. It may not use the attorney-client exception as a device to deliberate the substance of the CGM issue in private.

Rule 2 - Texas Government Code § 551.042

Sec. 551.042. INQUIRY MADE AT MEETING.

(a) If, at a meeting of a governmental body, a member of the public or of the governmental body inquires about a subject for which notice has not been given as required by this subchapter, the notice provisions of this subchapter do not apply to:

- (1) a statement of specific factual information given in response to the inquiry; or
- (2) a recitation of existing policy in response to the inquiry.

(b) Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.

Strong Summary

The instruction that trustees “cannot speak on anything that is not on the agenda” is too broad. Section 551.042 does not impose total silence. It prohibits unposted deliberation or decision-making, but it expressly permits specific factual information, recitation of existing policy, and a proposal to place the matter on a future agenda.

The misstatement. If counsel instructs trustees that they may not answer questions or talk about anything not on the agenda, that converts a limited anti-deliberation rule into a gag rule. That is not what the statute says. The Board may not debate or vote on an unposted issue, but it may answer factual questions and state existing policy.

Permissible factual or policy responses include: when the Foster & Foster report was presented; whether the CGM issue was separately posted; whether the issue was discussed in executive session; what the current policy is for member-requested agenda items; who controls agenda placement; and whether a trustee will propose placing the issue on a subsequent agenda.

Improper unposted deliberation would include: debating whether CGMs should be covered, arguing the merits of the actuarial analysis, deciding whether the Board should approve or reject coverage, or taking action on the substance of the issue without proper notice.

Applicable authority. The Texas Attorney General Open Meetings Handbook explains that § 551.042 allows a limited response to an inquiry about an unposted subject: specific factual information, existing policy, and a proposal to place the matter on a future agenda. Attorney General Opinion JC-0169 describes the statute as allowing limited responses while preventing deliberation or decision on the unposted subject. Attorney General Opinion GA-0668 likewise recognizes that factual information and existing-policy recitations are permitted in response to an inquiry.

Bottom line. “Members to be heard” does not allow the Board to decide unposted business, but it also does not allow counsel to silence trustees from giving factual answers or stating existing policy.

Combined Concern

The pattern is serious. One overstated rule is being used to move substantive matters into executive session. The other overstated rule is being used to stop trustees from answering factual questions in open session. Used together, these interpretations can create a closed loop: substantive discussion occurs privately, members cannot get answers publicly, and future agenda placement remains controlled by the same process that prevents open discussion.

That is not transparency. It is an overbroad use of TOMA to avoid the accountability TOMA is intended to protect.

Statement for the Record

I am not asking the Board to violate the Texas Open Meetings Act. I am asking the Board to follow it correctly. Section 551.071 allows private legal advice; it does not allow private substantive deliberation merely because counsel is present. Section 551.042 prevents unposted deliberation or action; it does not prohibit factual answers, existing-policy explanations, or a proposal to place the matter on a future agenda. If counsel is instructing trustees that they cannot speak at all about anything not on the agenda, that instruction appears to misstate the statute and improperly prevents transparency, accountability, and meaningful member participation.

Sources Referenced

- Texas Government Code § 551.071, Consultation with Attorney; Closed Meeting.
- Texas Government Code § 551.042, Inquiry Made at Meeting.
- Texas Attorney General, Open Meetings Act Handbook 2026.
- Texas Attorney General Opinion JC-0233.
- Texas Attorney General Opinion JC-0169.
- Texas Attorney General Opinion GA-0668.

Respectfully submitted,

Michael F. Rankin

Healthcare Fund Member

SAN ANTONIO POLICE AND FIRE RETIREE HEALTH CARE FUND
BOARD INFORMATION MEMORANDUM

Documented San Antonio Precedent Under TOMA and TPIA

Prepared for consideration by the Healthcare Fund Board

Subject	Prior City of San Antonio matters involving the Texas Open Meetings Act and Texas Public Information Act
Purpose	To provide a concise, accurate warning that local governmental bodies are subject to enforceable transparency requirements.
Important distinction	A judicial finding of a TOMA violation is different from a disclosure ruling requiring release under TPIA. Both are significant, but they should not be described as identical legal findings.

Executive Summary

Yes. There is a reported federal decision expressly finding that the City of San Antonio violated the Texas Open Meetings Act. There are also reported court decisions and Attorney General open-records rulings in which San Antonio's attempts to withhold information were rejected and disclosure was required. The TOMA precedent is the clearest confirmed violation; the TPIA authorities demonstrate that withholding positions are reviewable and may be overruled, but not every adverse disclosure ruling should automatically be labeled an intentional statutory violation.

1. Confirmed TOMA Violation

Esperanza Peace & Justice Center v. City of San Antonio, 316 F. Supp. 2d 433 (W.D. Tex. 2001).

What occurred. Before a public budget vote, the mayor and councilmembers participated in successive gatherings of fewer than a quorum. The city manager tracked attendance so that a physical quorum would not be present at one time. Through those meetings, a council majority developed a consensus concerning the budget and the elimination of funding for certain organizations. The agreement was reflected in a written consensus memorandum and was implemented at the next day's public meeting.

Court's holding. The federal district court found that the City and its officials violated TOMA. The court treated the serial meetings as a deliberate effort to accomplish privately what the Act required to occur in an open meeting. It also held that the later public vote did not effectively cure or ratify the action reached through the unlawful process.

Continuing significance. The Texas Court of Criminal Appeals later cited Esperanza as a clear example of a prohibited walking-quorum arrangement: successive less-than-quorum communications used to form a majority consensus before the formal public vote.

2. TPIA Matters Involving San Antonio

San Antonio has repeatedly been a party to Public Information Act disputes. In some reported cases and Attorney General rulings, the City's asserted basis for withholding records was rejected and the City was required to release information. These authorities show that a governmental body does not have final authority to decide for itself that records are confidential.

- **City of San Antonio v. Texas Attorney General, 851 S.W.2d 946 (Tex. App.-Austin 1993, writ denied).** A reported Public Information Act case involving the City's effort to withhold information. The litigation is part of the body of law defining the limits of statutory disclosure exceptions and the Attorney General's review authority.
- **City of San Antonio v. San Antonio Express-News, 47 S.W.3d 556 (Tex. App.-San Antonio 2000, pet. denied).** A reported dispute over access to governmental information. The case demonstrates that confidentiality claims are subject to judicial review and must fit a recognized statutory exception.
- **Attorney General Open Records Letter No. OR2011-00953.** The City asserted law-enforcement exceptions for several offense reports. The Attorney General concluded that the City had not established the claimed exception for the remaining reports and directed that the nonconfidential information be released.
- **Austin v. City of San Antonio, 630 S.W.2d 391 (Tex. App.-San Antonio 1982, writ ref'd n.r.e.).** An early open-records case addressing the scope of the deliberative-process exception. It remains cited in Attorney General guidance concerning the limited protection for advice, opinion, and recommendation relating to policymaking.

Necessary caution. An Attorney General direction to release records, or an appellate decision rejecting an exception, establishes that the withholding position was not legally sustained. It does not necessarily establish that an official knowingly or criminally violated TPIA. A knowing failure to comply, missed statutory deadlines, destruction or concealment of records, or refusal to obey a final ruling presents a different and potentially more serious issue.

3. Relevance to the Healthcare Fund Board

- The Fund should not rely on a series of private conversations, committee briefings, attorney communications, or less-than-quorum meetings to develop a board consensus on substantive Fund business outside a properly posted meeting.
- Executive-session authority is limited. The presence of an attorney does not convert ordinary policy, financial, medical, actuarial, governance, or operational deliberation into privileged legal advice.
- A later public vote should not be treated as a safe cure when the actual deliberation and consensus occurred privately. Esperanza specifically warns against a public vote that merely formalizes a privately reached result.
- Public records should be produced promptly unless a specific exception applies. When an Attorney General decision is required, the Fund should follow the statutory process and deadlines rather than making an unreviewable internal determination.
- Certified agendas, recordings, notices, minutes, communications, and documents reflecting the development of board consensus should be preserved in accordance with law. Incomplete records can create the appearance that substantive deliberations occurred elsewhere.

SAN ANTONIO POLICE AND FIRE RETIREE HEALTH CARE FUND

4. Recommended Board Safeguards

1. Use agenda language that identifies the actual subject matter to be discussed, not merely the name of a consultant, attorney, or general statutory citation.
2. Require the presiding officer and counsel to state the specific legal basis before entering executive session and limit the discussion to that authorized subject.
3. Do not poll trustees, circulate proposed outcomes for agreement, or build consensus through serial communications outside a posted meeting.
4. Return to open session for all deliberation and action that is not expressly protected by a statutory exception.
5. Maintain timely, complete minutes and all required certified agendas or recordings, with clear identification of subjects considered.
6. Adopt a written TOMA/TPIA compliance protocol and require periodic training for trustees, staff, consultants, and counsel.

Conclusion

The City of San Antonio's own history demonstrates that open-government requirements are enforceable. Esperanza is a direct judicial finding that serial private deliberations and consensus-building violated TOMA, and that a later public vote did not cure the unlawful process. San Antonio's TPIA litigation and Attorney General rulings likewise demonstrate that claimed disclosure exceptions are subject to independent review and may be rejected. The prudent course for the Healthcare Fund Board is to conduct substantive deliberations openly, use executive sessions narrowly, preserve complete records, and resolve disclosure questions through the statutory process.

Authorities and Sources

- *Esperanza Peace & Justice Center v. City of San Antonio*, 316 F. Supp. 2d 433, 471-78 (W.D. Tex. 2001).
- *Ex parte Doyal*, 589 S.W.3d 136 (Tex. Crim. App. 2019) (discussing Esperanza as an example of successive communications used to form a quorum consensus).
- *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.-Austin 1993, writ denied).
- *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.-San Antonio 2000, pet. denied).
- *Austin v. City of San Antonio*, 630 S.W.2d 391 (Tex. App.-San Antonio 1982, writ ref'd n.r.e.).
- Texas Attorney General Open Records Letter No. OR2011-00953.
- Texas Attorney General, Public Information Act Handbook and public guidance on the Attorney General review process.

Legal notice: This memorandum is an informational summary for board governance purposes and is not a substitute for independent legal advice concerning a specific meeting, record request, or alleged violation.

Criminal Penalties Under Texas Government Code Chapter 551

Texas Open Meetings Act - Summary for Review

Bottom line: Chapter 551 does not make every Open Meetings Act violation a crime. The criminal provisions are concentrated in Subchapter G and primarily address knowing conduct: prohibited serial communications, illegal closed meetings, failure to keep a certified agenda or recording for a closed meeting, and unauthorized disclosure of a closed-session record.

Criminal Penalty Summary

Section	Offense	Who can be charged	Penalty
§ 551.143	Prohibited series of communications, often called a walking quorum or serial deliberation.	A member of a governmental body.	Misdemeanor: \$100-\$500 fine, 1-6 months in county jail, or both.
§ 551.144	Knowingly calling, aiding, closing, or participating in a closed meeting that is not permitted by Chapter 551.	A member of a governmental body.	Misdemeanor: \$100-\$500 fine, 1-6 months in county jail, or both.
§ 551.145	Participating in a closed meeting while knowing that no certified agenda is being kept and no recording is being made.	A member of a governmental body.	Class C misdemeanor.
§ 551.146	Knowingly disclosing, without lawful authority, the certified agenda or recording of a lawfully closed meeting.	An individual, corporation, or partnership.	Class B misdemeanor, plus possible civil liability.

1. Prohibited Series of Communications - § 551.143

A board member commits an offense if the member knowingly participates in at least one communication in a series of communications outside a Chapter 551 meeting, the individual communications involve fewer than a quorum, but the series involves or would involve a quorum and would become deliberation once a quorum participates.

Penalty: misdemeanor punishable by a fine of \$100 to \$500, confinement in county jail for 1 to 6 months, or both.

Practical meaning: The law is aimed at secret serial discussions that accomplish outside the meeting what should have occurred in public.

2. Illegal Closed Meeting / Executive Session - § 551.144

A board member commits an offense if a closed meeting is not permitted under Chapter 551 and the member knowingly calls it, helps call or organize it, closes or helps close a regular meeting to the public, or participates in the closed meeting.

Penalty: misdemeanor punishable by a fine of \$100 to \$500, confinement in county jail for 1 to 6 months, or both.

Important defense: Section 551.144 includes an affirmative defense if the member reasonably relied on a court order or a written interpretation from a court of record, the Attorney General, or the governmental body's attorney.

3. Closed Meeting Without Certified Agenda or Recording - § 551.145

A board member commits an offense if the member participates in a closed meeting while knowing that a certified agenda is not being kept or a recording is not being made.

Penalty: Class C misdemeanor.

Note: Chapter 551 generally requires a certified agenda or recording for closed meetings, although attorney consultation under § 551.071 is treated differently under the recording/certified-agenda provisions.

4. Unauthorized Disclosure of Closed-Session Record - § 551.146

A person, corporation, or partnership commits an offense if, without lawful authority, they knowingly disclose to a member of the public the certified agenda or recording of a meeting that was lawfully closed to the public.

Penalty: Class B misdemeanor. The statute also creates civil liability for actual damages, reasonable attorney fees, court costs, and possible exemplary damages.

Key Enforcement Point

The **strongest criminal exposure under Chapter 551 arises when the conduct is knowing**. Criminal provisions are not limited to one type of misconduct: they reach serial communications outside a public meeting, improper executive sessions, failure to keep required closed-session records, and unlawful release of those records.

Civil Remedies Are Separate

Separate from criminal penalties, Chapter 551 also allows civil remedies. Depending on the facts, an interested person may seek mandamus or injunction, a court may void certain actions taken in violation of the Act, and attorney fees may be considered. These civil tools are different from criminal prosecution.

Sources reviewed: Texas Government Code Chapter 551, §§ 551.143-551.146; Texas Attorney General, 2026 Open Meetings Act Handbook; Texas District & County Attorneys Association overview of TOMA enforcement and penalties.

Prepared June 28, 2026. This summary is for review and discussion, not legal advice.