



Top 5 Things to Know About TOMA in 2019

This is Exciting Stuff!

- Too much to cover in detail
- 10,000 foot description

TOMA #1 – Circumvention

- *State of Texas v. Craig Doyal*, [PD-0254-18](#), 2019 WL 944022 -- S.W. 3d. -- (Tex. Crim. App. – February 27, 2019)
- Walking Quorum/circumvention criminal provision held unconstitutional
- Applies only to parts where no quorum is present
- “Reply-All” emails may still be a problem
- Legislature is ... working on it.

TOMA #2

- *City of Donna v. Ramirez*, 548 S.W.3d 26 (Tex. App.—Corpus Christi 2017, pet. filed), reh'g denied (Dec. 4, 2017)
- Post/Cancel/Post – Not a good idea
- City posted agenda
- City secretary wrote “cancelled”, Mayor removed and reposted outside CH
- TOMA posting inside City Hall with a “cancelled” stamp on an agenda controlled, regardless of other agendas says 13th Court of Appeals

TOMA #3

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- TOMA is an “enforcement action”
 - Which means TCPA does not apply to TOMA enforcement by State

State ex rel. Best v. Harper, 562 S.W.3d 1, 15 (Tex. 2018), as corrected on denial of reh'g (Dec. 21, 2018)

TOMA #4 – Substantial Compliance

- To determine whether a governmental entity substantially complied with the requirements of TOMA, we look to whether the notice fairly identifies the meeting and “is sufficiently descriptive to alert a reader that a particular subject will be addressed.”
- Substantial Compliance is permitted, even if technical non-compliance occurs. Just make a good faith attempt.

Terrell v. Pampa Indep. Sch. Dist., 07-17-00189-CV, 2019 WL 150884, at *2
(Tex. App.—Amarillo Jan. 9, 2019, no pet. h.)

- Generally, notice is sufficient if it informs the reader that “some action” will be considered with regard to the topic. *Lower Colo. River Auth. v. City of San Marcos*, 523 S.W.2d 641, 646 (Tex. 1975); *City of Donna v. Ramirez*, 548 S.W.3d 26, 35 (Tex. App.—Corpus Christi 2017, pet. denied).
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- The required specificity of the notice is directly proportional to the level of public interest in the topic to be discussed. *Cox Enters., Inc. v. Bd. of Trustees of Austin Indep. Sch. Dist.*, 706 S.W.2d 956, 959 (Tex. 1986); *City of Donna*, 548 S.W.3d at 35.

Calhoun Port Auth. v. Victoria Advocate Publ'g Co., 13-18-00486-CV, 2019 WL 1562003, at *2 (Tex. App.—Corpus Christi Apr. 11, 2019, no pet. h.)

TOMA # 5 – Executive Session

- Certified Agendas cannot be released in response to an open records request. *See* Attorney General Opinion JM-995 at 5-6 (1988)
- Other than certified agendas and tape recordings, records relating to closed meetings are not expressly made confidential by chapter 551 of the Government Code.
- Op. Tex. Att'y Gen. No. OR2019-07764 (2019)

The End

