

**Invisible Incentives:
How Secrecy Impedes Evaluation and
Accountability of Economic Development Subsidies**

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Invisible Incentives: How secrecy impedes evaluation and accountability of economic development subsidies

For years, the Fort Bend Economic Development Council did its business in public. The Houston suburb was doling out millions of dollars of tax breaks and other lucrative incentives to corporations large and small, including Frito Lay, Schlumberger and ALDI.

But when the Texas Supreme Court in 2015 [ruled](#) that economic development groups are no longer subject to the state's public records law despite being funded in part by cities and counties, the council and numerous others across the state removed their data from online portals, including the details of millions in abatements and other breaks. New language was added to contracts that gave millions in tax breaks and favors to private businesses in the name of economic development, asserting that economic development groups in Texas were not a public body subject to public information statutes.

Which is where it sits today in Texas, with hundreds of thousands of dollars in public money being spent on secretive expenditures by councils and operations.

The situation is echoed across the U.S., where nearly 95 percent of local governments offer [a form of tax-related business incentives](#).

In some states, the recipients of economic development dollar largesse – private corporations and companies - are given a say in what details are released to the public and what is withheld.

In others, state lawmakers have created statutes that favor privacy when it comes to details of tax break packages, loans and grants.

The practice makes headlines when the proposed beneficiary is Amazon or Tesla. But most of the time, the company is smaller in both brand name and stature.

States and municipalities dangle money in multiple ways, most frequently tax breaks that come through abatements, credits or exemptions. There are also grants, low-interest loans, promises of dedicated infrastructure and in some cases, complicated contracts that take a lawyer to unravel and explain to the public. In return, taxpayers get promises of construction, job creation and other local investment.

Not coincidentally, such projects are also trotted out at campaign time by elected officials as proof they are upgrading the community. Developing a prospering economy is politically aspirational, and no one is shy to mention such achievements when stumping.

Therefore, the motivation to keep details of such “accomplishments” is based on survival. Delivering a lofty project to a city or state is often politically favorable. But if the costs of procuring a project are public, that favorability can be weighed against the costs to the taxpayers.

A candidate’s re-election campaign that’s based in part on bringing in a job-producing company doesn’t always tell the whole story when the tax breaks and grants given to land the deal are considered.

While the money handed over is controversial – some contend that such spending does not deliver economic improvement – what is more troubling is a prevailing practice of conducting the transactions without heed to the public’s right to know.

Providing the recipient and the amount of the favor is a start, and many governments have finally realized that this information needs to be released.

More important, though, is a full disclosure of the data, from fulfillment of job creation promises to the specifics of a package.

A tax abatement valued at \$5 million, for example, should be provided with a detailed breakdown of how that break is valued and for how long it will last. Compliance reports, as well, become a necessary disclosure for the public to evaluate the effectiveness and fairness of the economic favor.

The failing transparency has cast this spending, which one estimate places at between [\\$40 billion and \\$70 billion a year in the U.S.](#), in a shady light among some constituents and given ample opportunities to those who question the appropriateness of the practice.

The opaqueness is due in some cases to the wishes of businesses to keep private what they contend are trade secrets. In other situations, the municipalities insist that what they offer needs to be kept secret in order to maintain competitiveness. If, for example, the city of Denver is offering a package to company A to bring its headquarters to town, the city contends that the city of Nashville cannot know what that package entails.

While publicly-traded companies are bound to disclosures including sales, insider trades of stock, sources of revenue and numerous other practices, in many cases of economic development packages handed out by governments, the public is shut out.

The follow up on such offerings is likewise kept quiet. If a tax break is given to a company that requires a specified number of jobs created, these metrics are also not made public. Were a municipality to turn the page and explain the benefits, showing tangible results with full documentation of the benefits of an economic development package, it would remove the veil of secrecy that has resulted in plausible studies showing such arrangements can also result in questionable financial transactions.

Former Wisconsin Gov. in 2010 campaigned on a promise to create 250,000 jobs in the state. While he succeeded in that respect [according to some metrics](#), a [report in 2018](#) found that 25 donors connected to companies that had received tax incentives from the Wisconsin Economic Development Corp., [created by Walker in 2011](#), “contributed about \$809,000 to Walker’s campaign between January 2009 and December 2017, received about \$66 million in tax credits or cheap loans.”

In some cases, as we’ll see later in this paper, a state will even turn a blind eye to results once the deal is done.

Imagine if a school district were to conduct transactions in private, or a city were to shield access to the cost of new buildings or roads.

Economic development can be carried out, even in the form of incentive packages, above board and with full disclosure. But state lawmakers, many of whose campaigns depend on industry support, have hesitated to pass any provisions that allow these transactions to be carried out in public.

Even the best public records laws contain provisions that protect trade secrets. For example, a trade secrets [exemption in the federal Freedom of Information Act \(FOIA\) that](#) is widely used and liberally interpreted can include anything from staffing numbers and price lists to price schedules and recipe ingredients.

State laws widely vary with respect to these disclosure laws. In Idaho, for example, certain records relating to air and water quality are considered trade secrets.

While the statute is clear that records created by the state are public, including inspection reports, “any record, or portion of a record, provided to or obtained by the department of environmental quality and identified by the person providing the record as a trade secret shall not be disclosed to the public.”

Which means French-owned energy company EDF, which received a \$276 million economic development incentive from Idaho in 2008, can operate with the expectation that much of its operation is protected from public disclosure.

In Kansas, an audit found that some economic development payments from the Kansas Job Creation Program Fund were given [without an application](#).

Often exceptions allow a public entity to skirt an entire request, even if other material requested doesn’t meet the trade secret threshold. A request for a simple [application for a tax abatement](#) can be successfully disputed by a city, citing a [broad state statute](#) that shelters “trade secrets.”

State chambers of commerce, business leagues and other such organizations traditionally carry heavy sway in state legislatures. Corporate lobbyists have had success seeking industry-specific or even project-specific carve-outs from open-government disclosure requirements, even where requirements exist.

Take the example of New Mexico’s foray into the space exploration industry. The \$220 million Spaceport America is funded in part with public money, including \$4 million in economic development funding from the state. Proceeds from local receipts taxes in several counties also helps pay for the operation. Spaceport also receives a tax deduction for several of its activities, including the [catch-all “operating a spaceport in New Mexico.”](#)

Spaceport America was pitched as a place that would house research and launch facilities for the increasingly privatized space exploration industry, bringing in jobs and ancillary businesses.

While the promises were great, the trade-off was secrecy. The records on the spending of Spaceport America received unprecedented exemptions from public records requests, approved by state lawmakers and praised by local politicians.

“I don’t see why the public has to know what SpaceX or Boeing or Virgin Galactic are doing, what technology they’re dealing with,” Steve Green, the mayor of the town of Truth or

Consequences, [told *The Atlantic* magazine in 2018 about the carve-out](#). "That's their business. You want to know about it? Buy their stock."

Predictably, Spaceport America withheld as many records as possible when a local news operation sought records to confirm the project's purported positive economic impact. The group, NMPolitics.net, filed a lawsuit and the state Attorney General's office [found numerous transparency violations by Spaceport](#).

The case [was settled](#) in late 2019. NMPolitics.net got most of what it wanted, including unredacted leases of Spaceport tenants, and the state had to pay \$60,000 to the news organization.

Other cases have not ended with the public on the winning side.

In 2005, Robert Silvas, a disgruntled former employee of aerospace giant Boeing, filed a public records request for numerous records from the Port Authority of San Antonio, for records pertaining to \$32.5 million in enhancements and improvements made to public infrastructure to induce Boeing's relocation, using public money, in a move to lure Boeing to relocate from Tulsa, Oklahoma. The request included Boeing's lease with the port.

The port was prepared to release the lease in full when Boeing objected. The port then redacted several key elements from the agreement, including rental rates, share of common maintenance costs, insurance coverage required by the Port, liquidated damages provisions, and lease incentives.

Silvas contended the full contract was a public record. After prevailing in district court and on appeal, Silvas lost his case in 2015 when the Texas Supreme Court reversed the lower courts.

By 2017, the *Boeing* decision was relied on [nearly 1,500](#) times by agencies seeking the state attorney general's blessing to withhold records, according to the Freedom of Information Foundation of Texas, many connected to economic development funding.

In cases such as these and hundreds of others around the U.S., the effect is a mistrust of the process by the very people that the prize – the job-giving, economy-boosting company -- is supposed to benefit.

At times, the backlash from secrecy is so intense that it drives public-policy change. In Texas, Gov. Greg Abbott signed Senate Bill 943 into law in June 2019, possibly patching

some of the loopholes created by the Texas Supreme Court in the *Boeing* case. The new law, which took effect January 1, 2020, requires government agencies to disclose the core elements of their contracts with private entities, including the total dollar value of the contract, the line-item price of goods or services received, and the key contract terms and obligations.

The measure was not the comprehensive repair everyone wanted.

Bill Aleshire, a Texas public records lawyer, said SB 943 wasn't nearly as tough as it needed to be.

"If someone makes a contract with the government and every page of that is disclosed, they should not be shocked," Aleshire said in an interview shortly after the bill was passed. Language requiring total disclosure of all contract terms failed to receive support from the governor or legislature.

The upside for some, Aleshire said, is that smaller contracts are now more public, but a lease such as that of Boeing "would not be completely disclosable under 943. It's just a political reality."

Almost every state has an office devoted to economic development, well-funded divisions that use the money to entice companies and projects that are determined to benefit the state.

At a local level, many counties and cities have similar operations, while others, through the city council or other elected bodies vote on favors to businesses to incentivize a move to their region. In-kind payments, tax breaks and other favors are their trade.

But how do we know that the jobs and other economic activity that is expected by the municipality – often not disclosed – is met?

The Texas Enterprise Fund has since 2003 provided taxpayer money to companies in exchange for the promise of jobs. But in numerous cases, the money has been paid and the companies left shortly after the deal was completed, taking the jobs with them.

The public rarely hears of it and the money spent is rarely recouped, although because of the opacity surrounding the TEF, it's difficult to discern if any financial recovery by the state is achieved.

The secretive nature of the TEF has created a confusing scenario of state economic grants that are funded through legislative action and managed by the governor's office.

Obtaining contracts between the state and private companies is [frequently contested](#) through referrals of public information requests to the state Attorney General's office, which determines if a request falls within the legal bounds of the state's law for disclosure.

In several states, including Texas, the companies themselves are invited to submit written arguments as to why their own records connected to state deals and concerning public money should be kept private.

After deals are done, some companies renegotiate the terms of their economic development package, lowering the number of jobs created to meet standards, and even reconfiguring how those jobs are calculated.

Nathan Jensen, a government professor at the University of Texas at Austin and Calvin Thrall, a UT Ph.D candidate, in 2017 sought to examine economic development ventures in Texas. They focused on the Texas Enterprise Fund and believed what they found through their open records requests would be a major part of their research. Instead, the public records battles themselves [became a large part of the story](#).

The authors filed public records requests with 164 recipients of the program, seeking the contracts and amendments.

Their requests drew challenges from 45 of those companies. Of those cases in which the authors were successful in obtaining records, they found more than a quarter of the recipients were granted changes to their contracts, often due to a failure to comply with the requirements of the initial agreement. It was those companies that were most likely to fight the records requests. Those renegotiations were not made public by the governor's office, which is charged with administering the TEF.

The challenges, the authors said, were "partially successful." They eventually obtained some materials from 63 of the 164 companies receiving TEF grants, though in many cases it was only part of what was sought. Some responses were substantially redacted.

What they learned was that companies that receive millions of dollars in incentives to locate to Texas frequently renegotiate their contracts, often in secret, to get better deals at taxpayers' expense.

For example, Comerica took a \$3.5 million TEF grant in 2007 to [leave Detroit for Dallas](#) and promised to hire 200 people.

The study found that five years later, Comerica secretly renegotiated the deal to allow it to count 15 of its current executives, including the CEO, toward its obligation.

"Allowing companies to renegotiate contracts outside of the public eye violates the very spirit of adding performance requirements and performance provisions," the study's authors concluded. "We provide evidence consistent with firms using exceptions to public records requests to hide non-compliance with economic development agreements. In short, the firms that are hiding their contracts seem to be doing so for serious reasons."

The report left a public relations ding to the TEF and a lingering mistrust of the program. While the state does a good job of making public the terms of the deals it strikes for economic development -- see list of recipients [here](#) -- the difficulty the professors had in verifying the job creation violates the spirit, if not the law, of transparency.

The Amazon episode drew new attention to the issue of transparency and tax incentives. The retail behemoth in 2017 was seeking to develop a second headquarters, and cities around the U.S. wanted to bring Amazon and the jobs and prestige that trail it. Pitches came from locations large and small, as did requests from the public for copies of those pitches.

An intern at MuckRock, Adanya Lustig, ambitiously filed public records requests with 171 cities, counties and states.

She asked each for "a copy of the bid submitted in response to Amazon's request for proposals for the site of its second headquarters."

In some cases, those requests were filled promptly, including responses from the [city of Boston](#), [Danbury](#), Connecticut, and a [stay-at-home quest](#) by King County, Washington, where Amazon was already based.

Perhaps more remarkable is how many entities, from cities to counties, either ignored the requests or turned them back, citing exceptions in their respective public records laws.

The city of Grand Rapids, Michigan, in November 2017 [claimed it made no bid](#) to the requestor, but in January 2018, [a news story](#) noted the region's failed effort.

The city of Grand Rapids evaded the request because it was part of a consortium of groups making the pitch. Technically, it could claim that its economic development arm was in control of the information. Similar denials of the request came from Houston, Indianapolis and Los Angeles, all revolving around a similar public records dodge.

Eleven locations, including Charlotte, North Carolina, Vallejo, California, Birmingham, Alabama and Cleveland, Ohio, never responded.

Others claimed that economic development projects are not public records.

"As this involves an ongoing economic development matter, the records are not public according to the North Carolina Public Records Law," the city of Raleigh, North Carolina, replied. Similar replies, in some cases citing state statutes, came from 34 municipalities. Many continued withholding the records even after being eliminated from the competition, which resulted in Amazon choosing the Northern Virginia/Greater Washington, D.C. area for its second headquarters.

Requesters sued for access to the incentive packages being offered to Amazon in several states, with mixed outcomes.

In Minnesota, a nonprofit transparency advocate, Public Record Media, sued the state Department of Employment and Economic Development for records of the HQ2 bid package submitted on behalf of the Minneapolis area. The state successfully avoided the request by arguing that the records were prepared and held by a nonprofit regional economic development entity, Greater MSP, which is not subject to the Minnesota Data Practices Act. A state-court judge agreed that the state could not be compelled to turn over records that it neither created nor maintained, and ruled against the requester.

But the result was different in Kentucky, where in 2018, Louisville's *Courier-Journal* sued the consolidated Louisville-Jefferson County government for access to the records of the city's failed HQ2 bid. A trial judge found in favor of the newspaper, and the state Court of Appeals agreed.

Although the Kentucky Open Records Law allows agencies to withhold confidential information about prospective business relocations or expansions, the exemption did not apply to the Amazon pursuit, because the competition was heavily publicized and there was no mystery about the identity of the company being courted. Once a final decision was made to accept or reject the incentive package, it became subject to public inspection, the Court of Appeals ruled.

Do private entities lose their trade secret protections when they receive public funding or favors? Supposedly, yes.

“Any company doing business, or seeking to do business, with a government agency should be aware of the potential risk of losing protection,” Holland & Knight, one of the foremost corporate law firms in the world, [notes in a 2018 blog post](#).

Yet lawyers in some states deny even identifying recipients of a tax break.

The state “Rebuild Rhode Island” program offers a tax credit to real estate developers who don’t have the working capital to complete a project.

“If your real estate project cannot raise sufficient funding, Rebuild Rhode Island can fill the financing gap with redeemable tax credits covering up to 20% – and, in some cases, 30% – of project costs,” the state promises.

But a requestor found that the names of those receiving the favor are not public.

“There is no express statutory authority in Rhode island law or regulations authorizing the Tax Division to disclose the assignor or assignee information under this program,” [a state attorney wrote to the requester in a denial letter](#).

The letter noted that the tax division “is authorized” to annually compile the names of recipients and the amount of the tax credit received.

“But the report is to be issued only to designated officials in State government.”

When seeking to protect clients who benefit from economic development funding from public records requests, legal teams and other defenders of secrecy contend that economic development spending is reported in accordance with professional accounting standards.

In fact, in some cases, bond issuances, dedicated tax revenue and tax credits are made public.

But general accounting standards require minimal disclosure and leaves it to the municipality or state to decide what to release.

“A government that chooses to disclose information about individual tax abatement agreements should present individually only those that meet or surpass a quantitative threshold selected by the government,” a Government Accounting Board Standards [brief](#) notes.

In a 2014 Good Jobs First, a Washington DC group that tracks economic development subsidies, released a status report on transparency in economic development favors. The report was optimistic, and noted strides that states had taken since its past report in 2010, with some states creating dedicated portals for the public to see who got what and how much. Nine more states had begun to provide online information for at least one of their subsidy programs, up to 46 states from 39 in 2010. Four states – Arkansas, Delaware, Idaho and Kansas – had no online disclosure at all.

The 2014 report looked at 246 economic development programs in all 50 states and the District of Columbia.

Of those 246 programs, 135 -- 55 percent -- had online reporting for recipients, up from 42 percent in 2010.

The strides taken in disclosure between 2010 and 2014 were a testament to the hard work of Good Jobs First and other accountability groups, which led a movement to call attention to incentive programs. The strategy was not to simply criticize the states and programs, but to encourage full disclosure of the metrics and details of the plans to allow taxpayers to decide on the merits of such endeavors.

Since 2014, the four states that have declined to release information have done little to move forward:

- Arkansas – Has made almost no improvements to its reporting of economic development favors, which mostly come through sales or income tax credits. The state also offers a program it calls Create Rebate, where companies with a minimum payroll of \$2 million can qualify for annual payments for up to ten years.

- Delaware – Remains silent on its open data regarding tax favors, including recipients of the state’s “Angel Investor” tax credit given for investing in a qualified business. The state each year releases [a tax preference report](#) with amounts of some credits but doesn’t name recipients.
- Idaho – No progress
- Kansas - No progress, according to a [2019 story](#) in the Wichita Eagle, “Millions of dollars intended for economic development in Kansas have been spent on other purposes with no tracking of whether it was used effectively.”

Other states, while making progress in disclosure, continue to remain lax in some elements of disclosure.

- Nevada – State lawmakers in 2015 passed legislation that required the state’s economic development office to provide bi-annual reports of tax abatements. The [January 2019](#) report is readily discoverable through a keyword search at the state’s legislative website, rather than that of the [economic development agency’s site](#). The office was undergoing a revamping of its website in November, and said the reports would be easier to find once that is completed.
- Oregon - While noting some progress in disclosure, [a 2016 audit](#) of Business Oregon, the state’s economic development agency, found that 10 of 15 incentive and business loan programs did not report outcome information, including jobs and wages. A look today finds that little has changed.
- Tennessee - A failed [bill in 2019](#) sought to limit the ability of companies to veto release of information concerning government payments made to them. The state has an open data portal, on which public relations staffers praise the state’s [FastTrack grant programs](#), which go to companies to help with relocation and other costs. But the link to the database of program recipients is [dead](#).
- Georgia – the state has at least six programs that give companies a subsidy or tax break, but report only deals that commit over \$25 million or the hire of 50 or more employees. The who, what, when and where is reported for 30 days on a [state website](#), then removed, in accordance with the state’s [public records law](#).

Most states have had various measures introduced in their respective statehouses that would ease access to subsidy records, but few have made it past committee. Which is both encouraging, showing that the will is there, and discouraging, as they have not managed to get through a full vote.

Examples we are providing here will hopefully show that incentives and open government can operate together. Debate over efficacy will be forever part of the equation. When

everything is on the table, though, that debate will be held with both sides fully satisfied that each is armed with the best information.

Miami-Dade commissioners handed out a \$3.5 million break to a broadcast outlet in 2012, fittingly called “confidential project vision.”

Even [the application](#) of the recipient was cloaked in secrecy. It was so confidential that, in fact, even the broadcast outlet, [four years later found to be TeleMundo](#), was happy to keep taxpayers in the dark.

States are not the only entities that hand out incentives and other economic favors to land businesses, although they have most of the power and the money.

Local governments, including counties, cities and even stand-alone economic development boards appointed by local elected officials, are also empowered with luring businesses.

But like states, they can also be cagey about transparency. Towns and counties have their own economic development departments, funded by the public and in many cases, paying six-figure salaries to executives.

Despite the ability to post so much information through open data sources, towns and counties continue to keep much of their incentive information private. To truly interested or concerned sleuths, some information can be obtained through keyword searches in public meeting archives, if such a capability is available. But the information garnered is usually incomplete and potentially inaccurate, making it unusable for public reporting.

The disclosures are worth mentioning and used as an example of how to serve the public well in matters of disclosure

The City of Memphis/Shelby County has for almost 15 years provided an easy to understand [database](#) for its projects and [a map](#) searchable by zip code for various incentive programs.

New York City, also with a history of disclosure, posts documents and spreadsheets [going back to 2006](#).

There are other cities and counties that do a solid job in accounting to the public.

Yet, while many municipalities have adopted a uniform platform for things like archiving meeting video and the aforementioned keyword search of meeting materials, providing fully accessible information meets some resistance. Such opposition was found when the Governmental Accounting Standards Board (GASB) instituted a new rule in 2015.

GASB 77 requires states and local governments using standard accounting – which includes most states, cities, counties and other taxpayer funded units, to report gains and losses related to corporate subsidies. Its effects on transparency are still uncertain. What it does is allow the public to see the bare bones of an economic development project, although it also gives the reporting entity some leeway in deciding what is “material” information.

Numerous cities and counties have so far ignored GASB 77 altogether on their annual financial reports. This appears to reflect the strong resistance to the practice, predictably coming from municipalities and their confederates.

A cadre of executives from subsidy advocates including the National League of Cities and the Government Finance Officers Association [acknowledged](#) that “if governments were to follow [GASB 77], the disclosure would report that the government would lose revenue and, therefore, have a diminished ability to meet its obligations, when in reality, the agreement is expected to generate revenue.”

GASB responded that benefits would be reflected in the government’s tax revenues and financial statements.

The effects of GASB 77, if followed, are key to helping the public assess how effective these economic development practices are.

In early 2017, the National Conference of State Legislatures evaluated New York City’s [annual financial report](#), which reported the city had lost \$3 billion in tax revenue in 2016 through tax abatement.

“New York City’s report revealed that...two out of the 11 tax abatement programs [it] had entered into included provisions for recapturing abated taxes,” NCSL’s report said. “These programs accounted for about \$130 million, out of more than \$3 billion, of total forgone revenue due to tax abatements in 2016.”

The new practice, the NCSL analyst said, “will allow people to better understand the financial effect these agreements have on their state and others throughout the nation,

since this is the first time all government entities are required to disclose financial information relating to tax abatements in a uniform way.”

Too often, the entities pushing for transparency in release of records connected to subsidies and tax breaks are the same as those who disparage the practice altogether, resulting in an “us versus them” stance from municipal leaders, state lawmakers and the substantial associations and trade groups whose members benefit from the practice.

An acknowledgement that the practice will continue, at least for now, would benefit true transparency advocates. The ability to see the records will determine the benefits or lack thereof. Balanced stories, be they executed by news groups, think tanks or gadflies, give the voting public an ability to make the decision it feels is best.

Opening the records, fully, is the best start to handing the decision to the public.

Steve Miller is a veteran national reporter whose work has been published by legacy and non-profit media outlets across the country including People Magazine, Real Clear Investigations, Miami New Times and the Daily Beast. Miller is the author/editor of eight books, including the oral history Detroit Rock City and the Edgar-finalist true crime, Girl Wanted: The Chase for Sarah Pender.