

How to Handle Requests under the Public Information Act



Government Law Boot Camp
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Purpose of Texas Public Information Act



Texas Government Code Section 552.001:

(a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy.

(b) This chapter shall be liberally construed in favor of granting a request for information.

Who is Subject to TPIA?

- Governmental bodies.
 - State and local.
 - Any organization supported in whole or in part by public funds.
- Certain Property Owner's Associations.
- NOT Judiciary → Rule 12 and Common Law Right to Access for Court Case Records

What is Public Information?

- “Information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business.”
- Held by or for a governmental body.



Example: Public information?

Sgt. Supervisor

From: sgt.supervisor@gmail.com
Sent: Friday, March 18, 2016 4:34 PM
To: newby.officer@yahoo.com'
Subject: How are the kids?

Hey Newby,

Just checking in to see how you are liking the Department. I hope your kids don't mind that you are working nights for a while. All the new guys have to pay their dues. How old are they again? Is your little one still really sick? See if your doctor will let you give them topamax that worked for me.

By the way, can you make sure you have your reports turned in before the end of every shift. Chief will jump down your throat if she finds out you aren't following procedure.

Also, I heard about that traffic stop with the guy transporting a monkey. Can't make this stuff up! I'll definitely have to watch that bodycam footage.

I'm off for a couple days. See you next week.

Sgt. Supervisor

What Constitutes a PIR?

- Must be in writing. (*Includes e-mail and fax*).
- Need not refer to Act.
- Need not be addressed to the officer for public information. (*But **must** be sent to the officer for public information or the officer's designee*).

Timeline to Respond

- OPI has duty to “promptly” produce public information.
- “Promptly” = as soon as possible under the circumstances, within a reasonable time, without delay.
- Practical tip: Produce within 10 business days after the date the request was received.

Permissible Communications with Requestor

- Generally: May ***not*** inquire into purpose for which information may be used.
- Clarification or Narrowing
- Release
- Automatically Redact and Release
- Seek Attorney General's permission to withhold or redact the information requested.

First Things First: Figure Out What They Want

Clarification or Narrowing

- In writing; and
- Include statement as to the consequences of failure by requestor to timely respond

“Should you choose not to clarify your request within sixty-one (61) days from the date of this correspondence the City will consider your request withdrawn. See Tex. Gov’t Code § 552.222(d).”

Release Information

- The information is not confidential by law.
- The governmental body does not want to assert any discretionary exceptions.

PUBLIC INFORMATION ACT EXCEPTIONS MANDATORY/PERMISSIVE

MANDATORY EXCEPTIONS	PERMISSIVE EXCEPTIONS
<i>Because they protect information the governmental entity is prohibited from releasing these exceptions are not waivable – Even if deadlines are missed.</i> Note: Based on AG Opinions at this time – update and confirm before reliance.	<i>These exceptions can be waived if deadlines are missed. Can be withheld from disclosure after waiver if prove compelling reason to Attorney General.</i>
Sec. 552.101. Information Confidential by Statute, Common Law or Constitutional Privacy. The Attorney General will raise 552.101 exception for you even if you do not.	Sec. 552.103. Litigation or Settlement Negotiations where Governmental Body or Employee (as consequence of employment) is a Party. Applies to Civil and Criminal.
Sec. 552.102. Personnel information in a personnel file that would be unwarranted invasion of personal privacy. Employee has special right of access.	Sec. 552.104. Competition or Bidding Information.
Sec. 552.1081. Information Regarding Execution of Convict.	Sec. 552.105. Location or Price of Property.
Sec. 552.1085. Sensitive Crime Scene Image. sensitive crime scene image in the custody of a governmental body is confidential and a governmental body may not permit a person to view or copy the image except as provided Applies to any sensitive crime scene image regardless of the date that the image was taken or recorded	Sec. 552.106. Legislative Documents: a draft or working paper involved in the preparation of proposed legislation.

Automatically Redact and Release

May redact without seeking AG permission:

- Direct deposit authorization form.
- Form I-9 and attachments.
- W-2 and W-4 forms.
- Certified agenda and tape of a closed meeting.
- Fingerprint.
- L-2 and L-3 declarations.
- E-mail address of member of public.
- Form DD-214 or military discharge record.
- Social security number.

Automatically Redact and Release & Required Form

- Texas driver's license or license plate number.
- Credit card, debit card, charge card, insurance policy, bank account, bank routing, or access device number.
- Home address/number, or information that reveals family members of a peace officer or of an employee or official that wishes it to remain private who has a signed form on file.
- Information maintained by a family violence center or sexual assault program.



Seek Attorney General Permission

- Assert mandatory and discretionary exceptions.
- Two-step process:
 1. Submit request for decision within 10 business days (“10-day letter”).
 2. Submit written comments why the requested information is excepted within 15 business days (“15-day brief”).



Step One: 10-Day Letter

State exceptions that apply:

The City believes that the responsive information contains confidential information and/or is excepted from disclosure under the following exceptions:

- Tex. Gov't Code § 552.101 – Confidential Information
- Tex. Gov't Code § 552.108 – Certain Law Enforcement, Corrections, and Prosecutorial Information.
- Tex. Gov't Code § 552.130 – Confidentiality Of Certain Motor Vehicle Records

10-Day Letter: Practical Points

- Include date the request was received.
- Note any official holidays that affect deadlines.
- Attach copy of the written request.
- State that you will submit reasons for exceptions apply within 15 business days.



Notify the Requestor

- Provide written statement that the agency wishes to withhold information and has asked for decision from the AG.
- Include copy of the 10-day letter to the AG.

If the letter discloses requested information, include a redacted version.

Step Two: 15-Day Brief

Include the following:

- Written comments stating reasons why the stated exceptions apply.
- Copy of the written request for information.
- Signed statement as to the date the written request was received.
- Copy of the specific information requested or representative samples labeled to show which exceptions apply to which parts of the information.



"I SEEM TO HAVE BROUGHT THE WRONG BRIEF CASE, YOUR HONOR."

Notify the Requestor

- Forward copy of written comments to Requestor.
- If the brief discloses or contains substance of information requested, provide a redacted copy.
- **Do not include any exhibits or attachments.**

Letter Submittal

Submit letters to the AG as follows:

- First class mail.

The Honorable Attorney General Ken Paxton
Office of the Attorney General of the State of Texas
Attention: Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

- Common or contract carrier.
- Interagency mail.
- Hand delivery during normal business hours.
- Via AG's electronic filing system (incurs fees).

Drop-Dead Deadlines

Information is presumed public if agency failed to request a decision within 10 business days or failed to submit arguments within 15 business days.

- All discretionary exceptions considered waived.
- Only information that is confidential by law will be withheld.

Attorney General Ruling

- AG has 45 days to issue a ruling.
- Governmental body is not required to take any additional action after submission of the 15-day brief.



Required Form

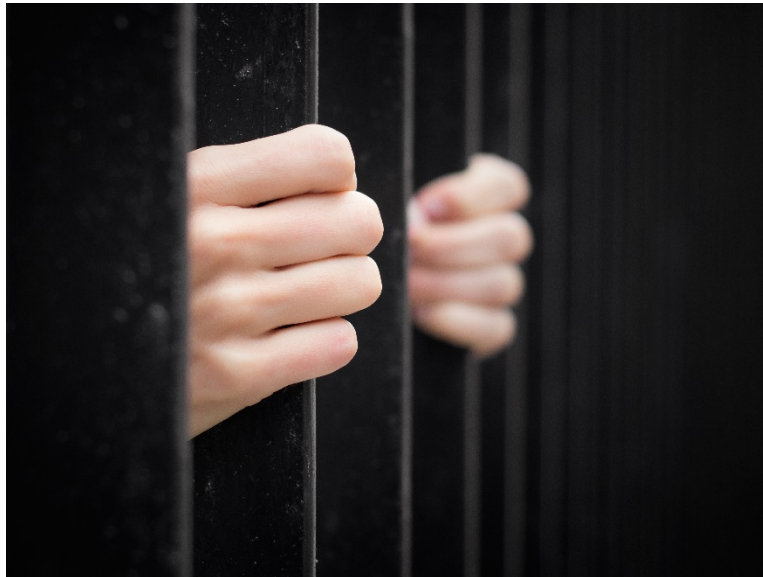
- Description of the redacted or withheld information.
- Citation of the section allowing the redaction.
- Instructions on how to appeal withholding the information.

Exceptions: Generally

- Default: public information is subject to disclosure.
- PIA has 56 listed exceptions to disclosure
 - Mandatory
 - Discretionary

Exceptions: Mandatory

- *Must* withhold information that is deemed confidential by the Act or any other law.
- If released, can face criminal charges.



Exceptions: Discretionary

- Governmental body *may* decide to withhold the information that is considered discretionary.
- Withholding information is not legally required.
- Subject to exceptions under Section 552.022.

Exceptions to the Exceptions

- “Super Public” Information – Section 552.022
- Even if a discretionary exception applies, the information will still be released.

Challenging an AG Ruling

- *May* file suit in Travis County District Court if governmental body disagrees with ruling.

Must be filed within 30 calendar days after receiving the ruling.

- However - *Must* file suit within 10 calendar days after receiving the ruling in order to preserve an affirmative defense to criminal prosecution for failing to produce requested information.

Charging for Public Information

- Requestor may inspect, get copies of the information, or both.
- Governmental body may charge for copies and redaction pursuant to the Act.



Charging for Physical Copies

Providing Paper and Other Physical Copies:

Copies and/or printouts, standard and legal size	\$.10/page
Oversize paper copy	\$.50/page
Specialty Paper (map)	\$1.50/page
Specialty Paper (mylar, blueprint)	Actual Cost
Postage	Actual Cost
Diskettes/CDs	\$1.00
DVD	\$3.00
Body Worn Camera Recording	Set by the AG

Texting



Are Text Messages Records?

“Before hitting ‘send’ on your next text message, you may want to think about the content of your message and whether you’d be willing to disclose it to the public. Several recent cases in Texas have prompted this question: **Are text messages sent by members of governmental bodies public information?**”

“Some would argue that something as short and informal as a text should not be considered an official public record, but remember: a record is a record, despite what medium it is in. Content is what is relevant.”

*Texas State Library and Archives Commission
By Erica Wilson, Government Information Analyst
November 3, 2011*

Texting while Working



Records Retention and Open Records

Sun, Feb. 6, 6:27pm

Homeowner

**Hey, can you tell me how
my application for
wastewater is doing?**

Texting while Working



Records Retention and Open Records

I can't by text, because I cannot
comply with City records policy
when texting. Can you please
email me at my city email
address
mrawesome@cityofpaxton.com

Conclusion

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Alan Bojorquez



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