

**HOW TO HANDLE REQUESTS UNDER
THE PUBLIC INFORMATION ACT**

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Elaine S. Hengen, *Senior Associate*

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Elaine represents cities in the El Paso area for the firm. Elaine has over 29 years of experience in municipal law, including public safety, code enforcement, elections, ethics, employment, collective bargaining and drafting home-rule charter amendments. Elaine served as a senior assistant city attorney for the City of El Paso. She received her Bachelor of Arts and Doctor of Jurisprudence in Nebraska, attending the University of Nebraska-Lincoln, College of Law and was admitted to the Texas State Bar in 1989. In addition to making numerous presentations and publishing articles on a variety of municipal law topics during her career, Elaine was the 2012 recipient of the Galen Sparks Award for outstanding assistant city attorney from a large Texas city.

Linda Sjogren, *Senior Associate*

Bojorquez Law Firm, P.C. (Austin, Texas)

Linda represents cities of varying sizes in the Central Texas/Waco area for the firm. Linda has over 21 years of municipal law experience. She served the City of Big Spring as City Attorney for eight years and also served the Cities of San Angelo and Waco as Assistant City Attorney. During that time, she gained extensive experience working with an array of diverse municipalities—focusing on matters involving open government, personnel issues, civil litigation, land use and economic development. She served as Trial Attorney for the City of San Angelo from 1995 to 2006 handling all aspects of defense litigation, appeals and civil enforcement of city ordinances. As the City of Waco liaison with the National Park Service, her efforts helped lead to the designation of the Waco Mammoth Site as a National Monument. Linda is a lifelong Texas resident and a graduate of the University of North Texas and Southern Methodist University School of Law.

The best resource for all Public Information Act questions is the Texas Attorney General’s Public Information Act Handbook available online:

https://www.texasattorneygeneral.gov/files/og/PIA_handbook_2018.pdf

**PUBLIC INFORMATION ACT EXCEPTIONS
MANDATORY/PERMISSIVE**

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MANDATORY EXCEPTIONS	PERMISSIVE EXCEPTIONS
<p><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.</p>	<p><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></p>
<p>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.</p>	<p>Sec. 552.103. Litigation or Settlement Negotiations where Governmental Body or Employee (as consequence of employment) is a Party. Applies to Civil and Criminal.</p>
<p>Sec. 552.102. Personnel information in a personnel file that would be unwarranted invasion of personal privacy. Employee has special right of access</p>	<p>Sec. 552.104. Competition or Bidding Information.</p>
<p>Sec. 552.1081. Information Regarding Execution of Convict.</p>	<p>Sec. 552.105. Location or Price of Property.</p>
<p>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</p>	<p>Sec. 552.106. Legislative Documents: a draft or working paper involved in the preparation of proposed legislation.</p>
<p>Sec. 552.109. Private Communications of an elected office holder if would constitute invasion of privacy.</p>	<p>Sec. 552.107. Attorney Client Privileged and Court Sealed Legal Matters. Information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct; or that a court by order has prohibited disclosure.*</p>
<p>Sec. 552.110. Confidentiality of trade secrets and Certain Commercial or Financial Information if demonstrated that disclosure would cause substantial competitive harm.</p>	<p>Sec. 552.108. Law Enforcement, Corrections or Prosecutorial Information.</p>

MANDATORY EXCEPTIONS	PERMISSIVE EXCEPTIONS
Sec. 552.113. Geological or geophysical information (logs, data, maps)	Sec. 552.111. Agency Memoranda. An interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency.
Sec. 552.114. Student Records education records as that term is defined by the Family Educational Rights and Privacy Act of 1974 or information in a record of an applicant for admission to an educational institution, including a transfer applicant.	Sec. 552.112. Information Relating to Regulation of Financial Institutions or Securities.
Sec. 552.115. Birth and Death Records	Sec. 552.116. Audit Working Papers. Working papers of a state auditor or state agency auditor, an institution of higher education, a county, a municipality, a school district, a hospital district, or a joint board operating under Transportation Code.
Sec. 552.117. Certain Employee Information: addresses, telephone numbers, SS numbers and personal family information of current or former officials or employees with written statement under 552.024 and various law enforcement and military personnel even without written statement.	Sec. 552.122. Test Items. Developed by an educational institution that is funded wholly or in part by state revenue or by a licensing agency or governmental body.
Sec. 552.1175. Records and Personal Identifying Information of Certain Law Enforcement and Other Specific Officials. Requires written election and applies to documents held by governmental body in any capacity (not just personnel files), no time limit – applies until rescinded.	Sec. 552.125. Environmental Health and Safety Audits. Any documents or information privileged under the Texas Environmental, Health, and Safety Audit.
Sec. 552.1176. Information Maintained by the State Bar.	Sec. 552.144. Working Papers and Electronic Communications of Administrative Law Judges. State Office of Administrative Hearings judges.
Sec. 552.118. Official Prescription Program information.	Sec. 552.146. Communications with Assistant or Employee of Legislative Budget Board.
Sec. 552.119. Certain Photographs of Peace Officers, the release of which would endanger the life or physical safety of the officer.	Sec. 552.147. Social Security Numbers. The social security number of a living person is excepted from the requirements of Section 552.021, but is not confidential under this section and this section does not make the social security number of a living person confidential under another provision of this chapter or other law.**

MANDATORY EXCEPTIONS	PERMISSIVE EXCEPTIONS
Sec. 552.120. Rare Books and Original manuscripts.	Sec. 552.153. Proprietary Records and Trade Secrets In Certain Partnerships. Applies to public private partnerships for infrastructure and facilities.
Sec. 552.121. Documents held for historical research.	Sec. 552.154. Applicant name for Certain Positions with Teacher Retirement System.
Sec. 552.123. Name of Applicant for Chief Executive Officer of Institution of Higher Education.	
Sec. 552.1235. Identity of private donor to institution of higher education.	
Sec. 552.124. Records of Library or Library System.	
Sec. 552.126. Name of Applicant for Superintendent of Public School District.	
Sec. 552.127. Personal Information relating to Participants in a Neighborhood Crime Watch Organization.	
Sec. 552.128. Information Submitted by Potential Vendors or Contractors.	
Sec. 552.129. Motor Vehicle Inspection Information.	
<u>Sec. 552.130. Motor Vehicle Records. A motor vehicle operator's or driver's license or permit; a motor vehicle title or registration; or a personal identification document, issued by an agency of this state or another state or country or a local agency. However, may be released in accordance with Transportation Code Chapter 730.</u>	
Sec. 552.131(a). Economic Development Information. If competitive harm 3 rd party	
Sec. 552.132. Crime Victim or Claimant Information. Held by AG CVC	
Sec. 552.1325. Crime Victim Impact Statement Information. The name, social security number, address, and telephone number of a crime victim and any other information the disclosure of which would identify or tend to identify the crime victim.	
Sec. 552.133. Public Power Utility Competitive matters.	

MANDATORY EXCEPTIONS	PERMISSIVE EXCEPTIONS
Sec. 552.134. Information Relating to Inmate of TDCJ. But not Basic Information	
Sec. 552.135. Certain information held by School District.	
<u>Sec. 552.136. Credit Card, Debit card, Charge Card and Access Device Numbers.</u>	
Sec. 552.137. E-Mail Addresses. Email addresses of members of public provided for communication with a governmental body. There are numerous exceptions and can release to another governmental body.	
<u>Sec. 552.138. Shelter or Program Information about:</u> <ul style="list-style-type: none"> • <u>Family Violence Shelter Center.</u> • <u>Victims of Trafficking Shelter Center.</u> • <u>Sexual Assault Program information.</u> 	
Sec. 552.139. Government Information Related to Security or Infrastructure issues for Computers.	
Sec. 552.140. Military Discharge Records.	
Sec. 552.141. Marriage License Application Information.	
Sec. 552.142. Records subject to Order of Nondisclosure (criminal history record information)	
Sec. 552.143. Investment Information. Information prepared or provided by a private investment fund and held by a governmental body that is not listed in Section 552.0225(b) is confidential.	
Sec. 552.145. Texas No-Call List.	
Sec. 552.148. Certain Personal Information maintained by Municipality pertaining to minor in a recreational program.	
Sec. 552.149. Records of Comptroller or Appraisal District Received from Private Entity.	
Sec. 552.150. Information that Could Compromise Safety of Officer or Employee of Hospital District.	

MANDATORY EXCEPTIONS	PERMISSIVE EXCEPTIONS
Sec. 552.151. Information regarding select biological or toxin agents identified or listed as a select agent under federal law.	
Sec. 552.152. Information Concerning Public Employee or Officer Personal Safety. Applies if specific circumstances would subject person to substantial threat of physical harm.	
Sec. 552.155. Property Tax Appraisal Photographs in some circumstances.	
Sec. 552.156. Continuity of Operations Plan for State Agencies.	

* **Paxton v City of Dallas – Texas Supreme Court** ruled Attorney-Client privilege is in itself a compelling reason to overcome presumption of openness for missing a deadline. Court said other exceptions may be as well.

Great Quote by Justice Guzman; “[r]obotic perfection by a governmental body’s public information officer is a statutory ideal, not an absolute requirement. To err is human, but to conduct a City’s legal affairs without the occasional error would require divinity.”

** **Section 552.147(b) – Social Security Numbers** exception does not make them “confidential” by law, and is therefore not considered a mandatory exception, and yet the SS#’s of living persons can be automatically redacted with the required form.

Underlined Sections are those that reference information that can be automatically redacted without an opinion of the Attorney General but must be submitted with the required form.

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**Updates from the 85<sup>th</sup> Texas Legislature (2017):**

HB 3107 - This bill contains many substantive procedural changes, largely relating to large requests, unpaid requests and dealing with frequent requestors. All requests received from an individual within a single calendar day can be treated as a single request for the purposes of calculating costs.

HB 8, HB 1861, SB 532 – Collectively, these bills expand the confidentiality of computer security information.

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Update on requesting AG opinions:

The AG is issuing previous determinations regarding the release of dates of birth. If your agency does not have a previous determination on this, ask for it the next time you submit a request to the AG regarding the release of a date of birth.

PUBLIC INFORMATION ACT CHECKLIST

1. Check to see if the request is for court or judicial records. If for judicial records, send to municipal court.
2. Calendar the request. You have a maximum of ten business days to respond (release, redact, or request AG opinion).
3. Determine whether the request needs clarification or narrowing, if so, send written request to requestor. Do this as quickly as possible.
4. Determine who can best answer the request and send the request to that person with a deadline.
5. As you respond, check to see if there are any: (1) mandatory exceptions to release or (2) discretionary exceptions to release.
6. If there are any exceptions, determine whether the Attorney General must be contacted to withhold the information or not. Or ask the requestor to narrow their request to not include the excepted information.
7. Prepare a cost estimate if the requestor asks for copies or for something that requires data manipulation. If the cost is over \$40, send the estimate before completing the request.
8. Gather the documents. Make copies or print any documents that require redaction. Perform redactions on copies and then make copies or scan redacted copies.
9. Within 10 days either: (1) ask for clarification or narrowing; (2) release the information; (3) redact and release; (4) send cost estimate; (5) send date for pickup if gathering information will take more than ten days; or (6) submit request for attorney general opinion.