

# PUBLIC INFORMATION ACT STEP BY STEP

Government Law Section

December 7, 2018

# THE TEN STEPS

- Step 1: Receiving a Public Information Act (the “Act”) request
- Step 2: What we can do – and what we cannot do
- Step 3: What are our deadlines?
- Step 4: Can we charge the requestor?
- Step 5: What if the requestor doesn’t respond to a cost estimate or a request to narrow or clarify?

# THE TEN STEPS

- Step 6: Gathering the responsive information
- Step 7: Can we withhold info without a ruling from the Attorney General?
- Step 8: Seeking a ruling from the Attorney General
- Step 9: Possible Attorney General questions and responses
- Step 10: We got the ruling – now what?

# Step 1: Receiving PIA requests

- Request must be in writing (typed, email, fax, letter, PIA form)
- Consider setting up a PIA-designated email address and fax number
- There is no requirement under the PIA to:
  - Create new documents (the requested information must exist as of the date of the request)
  - Answer questions
  - Conduct legal research

# Step 2: What we can – and cannot – do

- You can
  - Ask the requestor to narrow the scope of the request
  - Ask the requestor to clarify the request
  - Send a cost estimate to the requestor
- You *cannot* ask the requestor why they want the information

# Step 3: What are our deadlines?

- The clock begins the first business day after *receiving* the request. (Not “opened,” not “read,” but physically “received”)
- You must respond “promptly” to all PIA requests
  - A governmental body may take a reasonable amount of time to produce the information, but may not delay.
  - Depends on the facts in each case
  - Produce or make the records available or certify the date when the records will be released or made available
- You have 10 business days to request an Attorney General opinion
  - Once you notify the AG you are seeking an opinion, you have 5 business days to submit a “brief” to the AG
  - Only count “business” days – not Saturday, Sunday, or holidays

## Step 3: What are our deadlines?

- If you asked the requestor to narrow or clarify the request, the 10 business day clock begins the next business day after you receive the requestor's response
  - See *City of Dallas v. Abbott*, 304 SW3d 380 (Tex. 2010)
- If you request clarification or narrowing and the requestor does not respond by the 61<sup>st</sup> *calendar* day after the request for clarification/narrowing, the PIA request is considered withdrawn



# Step 4: Can we charge the requestor?

- Short answer – “Yes”
- All charges must be calculated in accordance with the Attorney General Rules under section 552.262 of the PIA
- There is a Cost Estimate Model tool at [http://www.texasattorneygeneral.gov/open/cost\\_page.shtml](http://www.texasattorneygeneral.gov/open/cost_page.shtml)



## Step 4: Can we charge the requestor?

- If the costs are estimated to be more than \$40, you must provide the requestor with a cost estimate before you begin to comply with the request.
- There is a cost letter generator available here:  
<https://www.texasattorneygeneral/og/public-information-cost-estimate-model>
- Require pre-payment

## Step 5: What if the requestor doesn't respond to a cost estimate?

- The PIA request will be considered withdrawn if the requestor does not respond to the request within 10 *business* days (552.2615)

## Step 6: Gathering the responsive information

- If your governing body has multiple departments, consider appointing “public information liaisons” within each department to help gather any responsive information
- Your information technology department can help you search large amounts of electronic data
- Determine whether there is anticipated litigation or other hold issues

# Step 7: Can we withhold information without an AG ruling?

- In some cases, yes
- Common situations:
  - Gov't Code 552.130 – driver's license, vehicle title and registration, personal identification document
  - Gov't Code 552.136 – credit card, debit card, and access device numbers
  - Gov't Code 552.024, 552.1175, and 552.138 – employee home and personal information
  - Previous determinations
  - Open Records Decision No. 684 (2009) allows all governmental bodies to withhold several types of information typically found in personnel files
- The AG website has form letters for withholding this information

# Open Records Division Forms

[www.texasattorneygeneral.gov/open/ord\\_forms.shtml](http://www.texasattorneygeneral.gov/open/ord_forms.shtml)

OPEN GOVERNMENT / OPEN RECORDS DIVISION / REDACTING PUBLIC INFORMATION RULES AND FORMS



OPEN RECORDS DIVISION

ORDS: OVERRULED, MODIFIED, AFFIRMED, WITHDRAWN

OPEN RECORDS QUESTIONS (ORQS)

OPEN RECORDS MEMORANDUM RULINGS

LIST OF PREVIOUS DETERMINATIONS BY GOVERNMENTAL BODY

PUBLIC INFORMATION COST ESTIMATE MODEL

## REDACTING PUBLIC INFORMATION RULES AND FORMS

AMENDMENTS TO THE PUBLIC INFORMATION ACT: 2013 TEXAS LEGISLATIVE SESSION

OPEN GOVERNMENT RESOURCES

OPEN GOVERNMENT CONFERENCES

EFILING

FAQ OPEN GOVERNMENT TRAINING

QUESTIONS REGARDING OPEN RECORDS LETTER RULINGS

STATUTES

OPEN GOVERNMENT – OTHER PIA RULES

## Redacting Public Information Rules and Forms

A governmental body that wishes to redact information from data or documents it is releasing to the public must generally seek the decision of the attorney general.

A governmental body need not request an attorney general decision if it is relying on a [previous determination](#) to redact information. For more information about previous determinations, please see [Open Records Decision No. 673 \(2001\)](#) and pages 35-38 of the [2014 Public Information Handbook](#).

A governmental body need not request an attorney general decision if it is redacting information pursuant to one of the five sections of the Public Information Act that give a governmental body explicit permission to redact information without requesting an attorney general decision. Those five sections are 552.024, 552.130, 552.136, 552.138 and 552.1175. The Rules and Forms applicable to redaction under those sections of the Public Information Act are provided below.

### Rules

- Texas Administrative Code, Title 1, Chapter 63, Public Information Subchapter B, Review of Public Information Redactions

### Forms

The following documents are provided in MS Word.

- Form Letter for Section 552.024 (public employee's personal information held by governmental body in its capacity as employer)
- (Effective 05/18/2013) Form Letter for Section 552.130 (motor vehicle records)
- Form Letter for Section 552.136 (account and access device numbers)
- (Effective 06/14/2013) Form Letter for Section 552.138 (family violence shelter center, victims of trafficking shelter center, or sexual assault program)
- (Effective 09/01/2014) Form Letter for Section 552.1175 (public employee's personal information held by governmental body in non-employment capacity)



# Step 8: Seeking a ruling from the Attorney General

- Pursuant to sections 552.301 and 552.305 of the PIA, not later than the 10<sup>th</sup> business day, a governmental body must:
  - Ask the AG for a ruling and state the exceptions that apply
  - Notify the requestor that you have asked for a ruling
  - Provide the requestor a copy of your letter to the AG requesting a ruling
  - Notify any third parties with proprietary interest in the requested information that they may submit written comments to the AG stating why the information should be withheld
    - Third party notice must be in the form prescribed by the AG (see AG's website)

# Step 8: Seeking a ruling from the AG

- Pursuant to section 552.301(e) and (3-1) of the PIA, not later than the 15<sup>th</sup> business day, a governmental body must:
  - Submit written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld
  - Submit a copy of the written request for information
  - Submit a signed statement as to the date on which the request for information was received or evidence sufficient to establish that date
  - Submit a copy (not your original) of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested
  - Label that copy to indicate which exceptions apply
  - Send a copy of your written comments to the requestor



# Step 8: Seeking a ruling from the Attorney General

- Send copies, *not originals*, of the documents at issue
  - Do not apply redactions on these copies – the AG can't rule on what the AG can't see
- Mark all submissions clearly, carefully, and consistently
  - Make sure all exhibit numbers on documents match up with exhibit numbers in the written comments
  - Make clear what has been released to the requestor and what has not
  - Reference all previous correspondence with the AG's Open Records Division on all future, related correspondence
  - If you have previously received a ruling on the same or very similar information, let the Open Records Division know

# Step 8: Seeking a ruling from the Attorney General

- Describe:
  - How the documents are responsive
  - How they relate to any pending investigation, litigation, etc.
  - Who are the parties mentioned in the documents
  - What is their relationship with the governmental body
  - What has already been released to the requestor
  - Whether there is a pending cost estimate or complaint
  - What your governmental body does – and whether it has a law enforcement function

# Step 9: Possible Attorney General questions and responses

- Letter or fax – “something is missing”
  - Copy of the request, marked records, brief explaining the basis, request for ruling
- PIA section 552.303(c)-(e): 7-day letter that the AG needs more information
- PIA section 552.306: 10-day letter that the AG needs more time to handle your request for a ruling

# Step 10: We got the ruling – now what?

- Follow the ruling
- Call the Open Government Hotline
- PIA section 552.301(f) – requests for reconsideration are prohibited
- Challenge the ruling in court

# Resources

- OAG Hotline 877-673-6839
- [www.oag.state.tx.us](http://www.oag.state.tx.us) (use Google Chrome)
- OAG Handbook 2018
- Searching AG rulings – Westlaw, Lexis
- Networking with other governmental entities for briefs, MCLE, etc.