

How to Successfully Navigate Public Information Request Rules for Your Cases



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Harris County District Attorney's Office

The Public Information Act

- Located in Chapter 552 of the Texas Government Code.
- Passed in 1971 in response to the Sharpstown Scandal.



“[G]overnment is the servant and not the master of the people.”

The Public Information Act

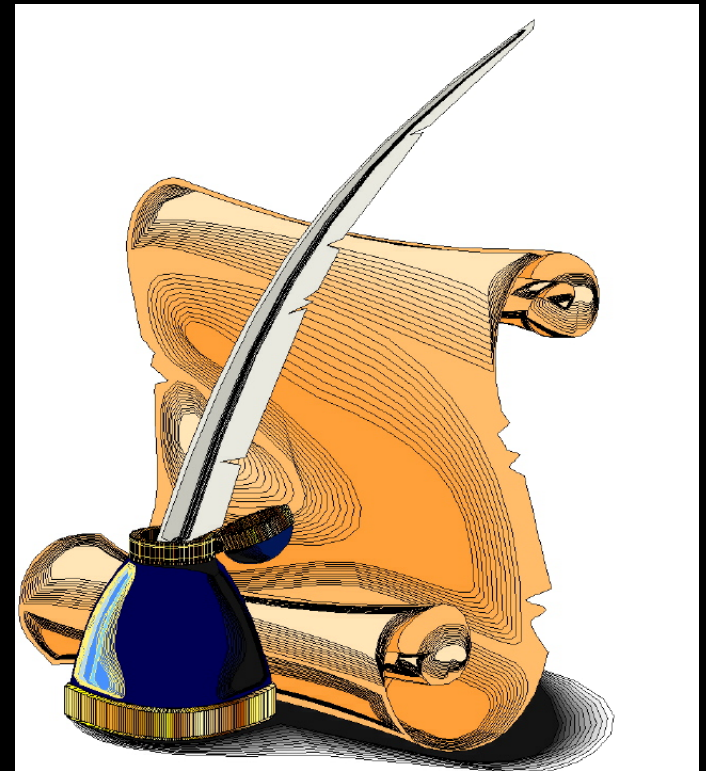
- Not the Freedom of Information Act.
- Not a discovery statute for cases.
- Not a vehicle for interrogatories or admissions.
- Not applicable to judicial records.



Making the Request

The Public Information Act is triggered when a request for information is sent in one of the following forms:

- Writing
- E-mail
- Facsimile



Making the Request

The Public Information Act is not triggered when a request for information is received in one of the following forms:

- Orally
- Subpoena
- Other Discovery



Scott's Tip #1 – Don't trigger the Act



“What are your procedures for obtaining public information?”



“What can I get for you?”

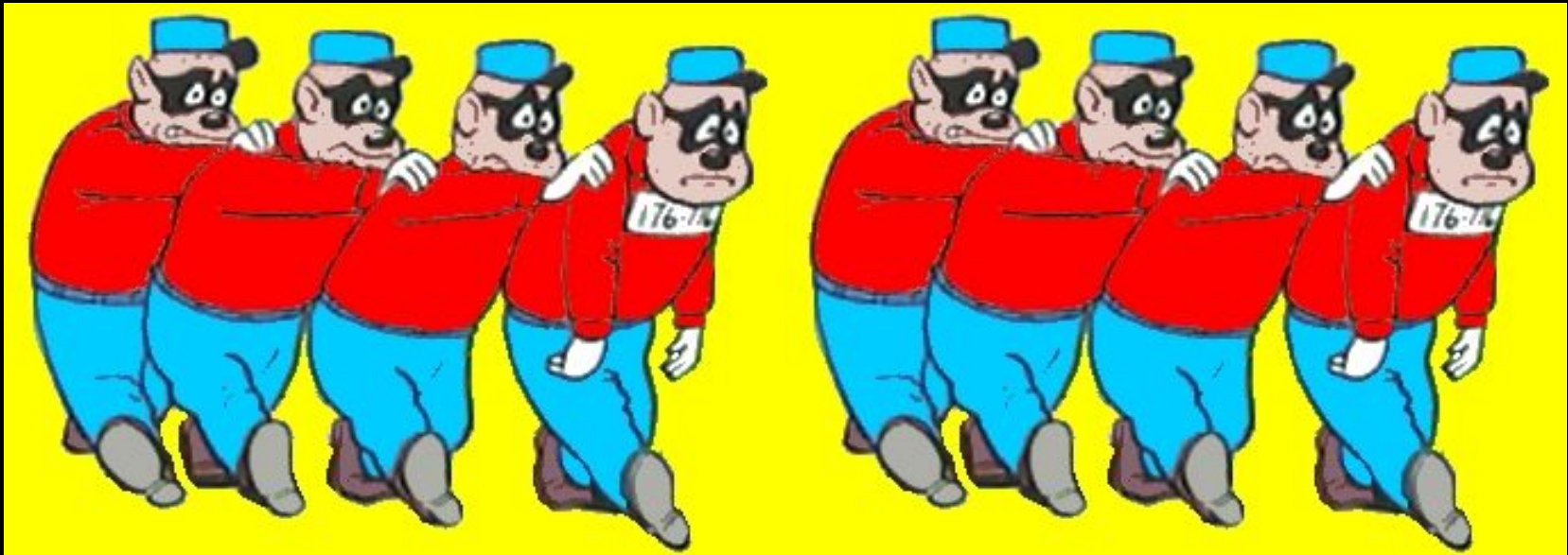
Core Principles for Responding



1. Train your staff.
2. Don't miss your deadlines.
3. When in doubt, ask for the opinion.
4. Make *all* of your arguments or lose them.
5. Respect the requestor and others.

Receiving the Request

Correctional facility inmates (or their agents) have no rights under the PIA. *See* Section 552.028.



Scope of the Request

Does it seek public information?

Includes:

- Tapes
- E-mail
- Photographs
- Books
- Maps and drawings
- Films and video
- Computer data

Scope of the Request

Public information does *not* include:

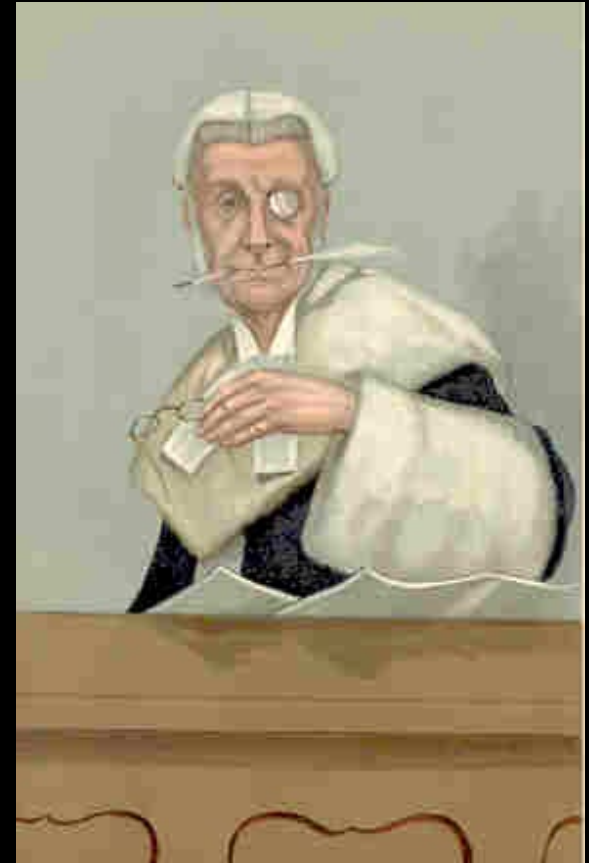
- Tangible items
- Personal items
- Commercially available information
- Future records.
- Answers to questions/legal research.



Scope of the Request

Public information does *not* include:

- Judicial records.
But see Rule of Judicial Administration 12
- Grand jury records.
See Tex. Code Crim. Proc. Art. 20.02(d) (requiring petition to district court and particularized need)



Scope of the Request

Do they have the records you are asking for?

- No? Make sure they are using common sense in interpreting the request.



Scott's Tip #2: Negotiate.



“I would like all records in your possession that relate to DNA testing.”



“O-kay. Is there something you’re *really* looking for?”

Private Devices Now Up for Grabs



Section 552.002(a-2);
see also Adkisson v.
Abbott, 459 S.W.3d 761
(Tex. App.-Austin,
March 6, 2015)

Private Devices Now Up for Grabs



Section 552.002(a-2);
see also Adkisson v.
Abbott, 459 S.W.3d 761
(Tex. App.-Austin
2015)

Definition of “public information” in Section 552.002(a-2) includes “any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.”

Third Party Records Held By GB

- Does GB have to produce records belonging to another person or agency?



Third Party Records Held By GB

- Yes, unless GB is storing the records for another agency. *See* ORD No. 576 (1990).



Right to Electronic Copy of Records

Section 552.228 (b), (c)

If record exists in electronic or magnetic medium, requestor is entitled to it in that form *if*



Right to Electronic Copy of Records

- GB has tech ability to do so;
- GB already has software and hardware to do so; and
- No copyright violations from reproduction.



Right to Refer Requestor to URL

Section 552.221(b-1) - A governmental body may comply with section 552.221 by referring the requestor to an exact Internet location or URL address maintained by the governmental body and accessible to the public, if the requested information is identifiable and readily accessible on the website.



Right to Refer Requestor to URL

Section 552.221(b-2) - If the governmental body uses e-mail to refer the requestor to an Internet location or URL address, the e-mail must contain a statement in a conspicuous font indicating the requestor may still choose to inspect the information or receive copies of the information.



Itemized Estimate Required

Section 552.2615 -
Governmental body must provide itemized estimate of charges if anticipated costs will exceed \$40.

QuickTime VVR, Inc
1123-45 Donald st, CA, USA
800-123-45645

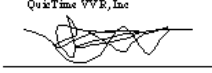
Invoice
Date: 12/31/1998

S O L D T O Donald Apple
1000 NW 100th street suite,
Miami, JP 12345
Tel.(123)456-7890

S H I P T O Donald Apple
1000 NW 100th street suite,
Miami, JP 12345
Tel.(123)456-7890

ITEM	Order	Ship	Description	price	amount
M1111		1	PowerBook1400cs SN:RM123456789	\$5000.00	\$5000.00
M1234		1	Newton MessagePad 2100 SN:AM123456789	\$5000.00	\$5000.00

TOTAL Amount US\$ \$10,000.00

QuickTime VVR, Inc


Itemized Estimate Required

Section 552.2615 - If it appears that the actual costs will exceed the original estimate by 20% or more, the governmental body may update the estimate once, and is thereafter bound to it.


QuickTime VVR, Inc
1123-45 Donald st, CA, USA
800-123-45645

Invoice
Date: 12/31/1998

S O L D T O	Donald Apple	S H I P T O	Donald Apple
	1000 NW 100th street suite, Miami, JP 12345 Tel.(123)456-7890		1000 NW 100th street suite, Miami, JP 12345 Tel.(123)456-7890

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TOTAL Amount US\$ \$10,000.00

QuickTime VVR, Inc


Itemized Estimate Required

Section 552.263(e-1)

If requestor modifies his or her request for information in response to a deposit or bond requirement, the 10 and 15 day response periods under the PIA begin anew. Parallels 2010 *Abbott* decision.


QuickTime VVR, Inc
1123-45 Donald st, CA, USA
800-123-45645

Invoice
Date: 12/31/1998

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M1234		1	Newton MessagePad 2100 SN:AM123456789	\$5000.00	\$5000.00


TOTAL Amount US\$ \$10,000.00

QuickTime VVR, Inc


Itemized Estimate Required

Section 552.2615 -

If the requestor fails to respond to the estimate by accepting it or modifying the request, it is deemed withdrawn.

QuickTime VVR, Inc 1123-45 Donald st, CA, USA 800-123-45645		Invoice Date: 12/31/1998			
S O L D T O	Donald Apple 1000 NW 100th street suite, Miami, JP 12345 Tel.(123)456-7890		S H I P T O	Donald Apple 1000 NW 100th street suite, Miami, JP 12345 Tel.(123)456-7890	
ITEM	Order	Ship	Description	price	amount
M1111		1	PowerBook1400cs SN:RM123456789	\$5000.00	\$5000.00
M1234		1	Newton MessagePad 2100 SN:AM123456789	\$5000.00	\$5000.00
TOTAL Amount US\$					\$10,000.00
 QuickTime VVR, Inc 					

Request Deemed Withdrawn

Section 552.221(e) - A request may now be considered withdrawn if, after the 60th day, the requestor does not appear to inspect the information, fails to pick up the information, or fails to pay any applicable charges for the information.



City of Dallas v. Abbott,
304 S.W.3d 380 (Tex. 2010)

Held that 10 and
15 day deadlines
are restarted when
a requestor
modifies or clarifies
PIA request.



The Request

Are the records always public?

552.022 exceptions:

- Completed GB reports, audits, evaluations, and investigations may be withheld under 552.108.



The Request

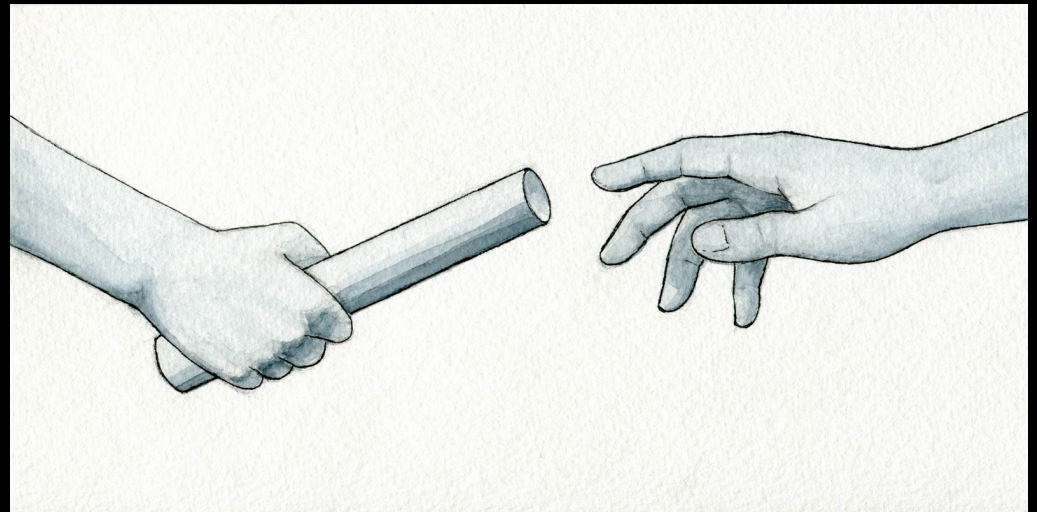
Are the records subject to protection?

There are over fifty exceptions in 552.101, *et seq.* Most are designed to ensure that the governmental body does not give up a competitive advantage to the requestor.



Intergovernmental Transfer Doctrine

A transfer of otherwise confidential information from one governmental entity to another does not waive the confidential nature of the information.



GB's Duty to Seek an Opinion

Can GB withhold without an AG's opinion?

Only if there is a “previous determination” or if expressly permitted by statute.

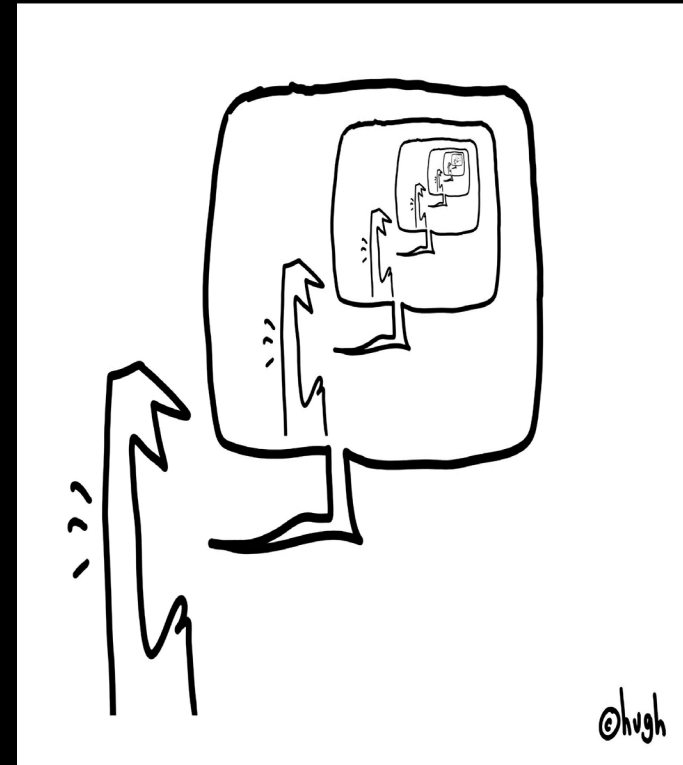


Previous Determinations

One of two situations:

1. *Implied Res Judicata*

- The law, facts, and circumstances of on which the ruling was based have not changed,
- The requested information is *precisely the same information* as was addressed in a prior attorney general ruling, and

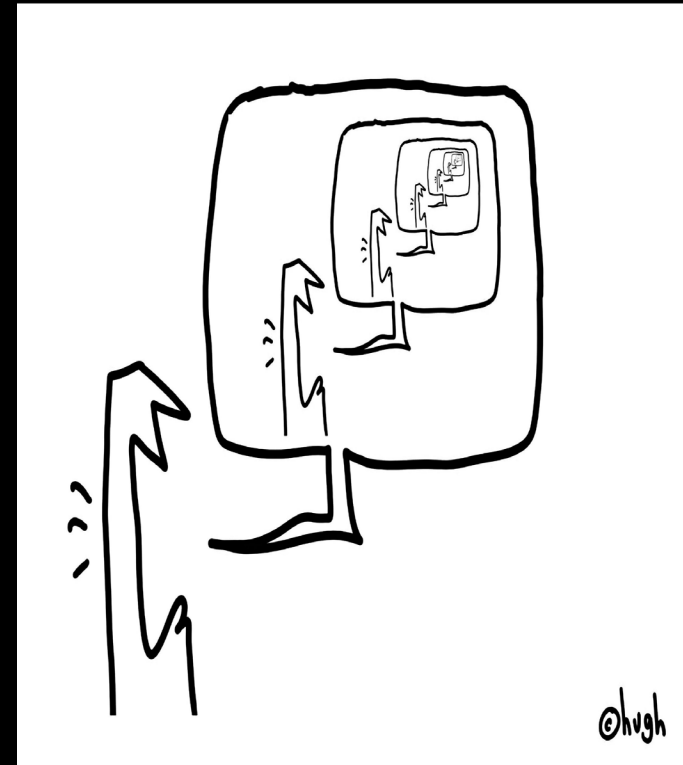


Previous Determinations

One of two situations:

2. *Explicit AG-Made Exception*

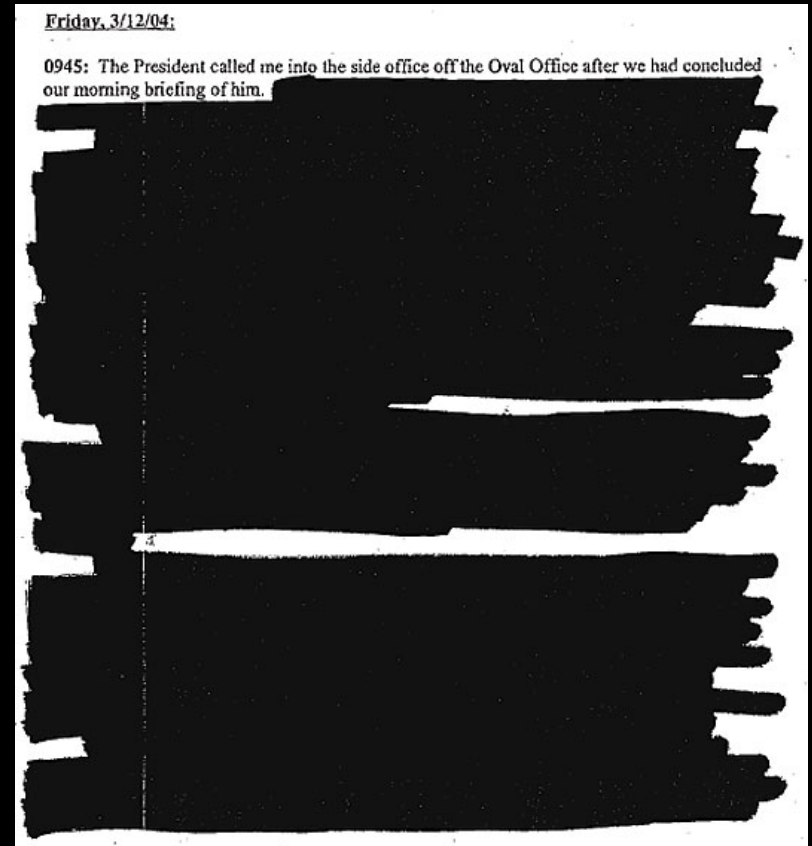
- Prior decision concludes that a *specific, clearly delineated category of information* is excepted from disclosure, and
- Prior decision *explicitly* provides that the governmental body is not required to seek an AG's opinion in response to future requests.



Redactions Not Requiring Permission

Previous Determination Opinions:

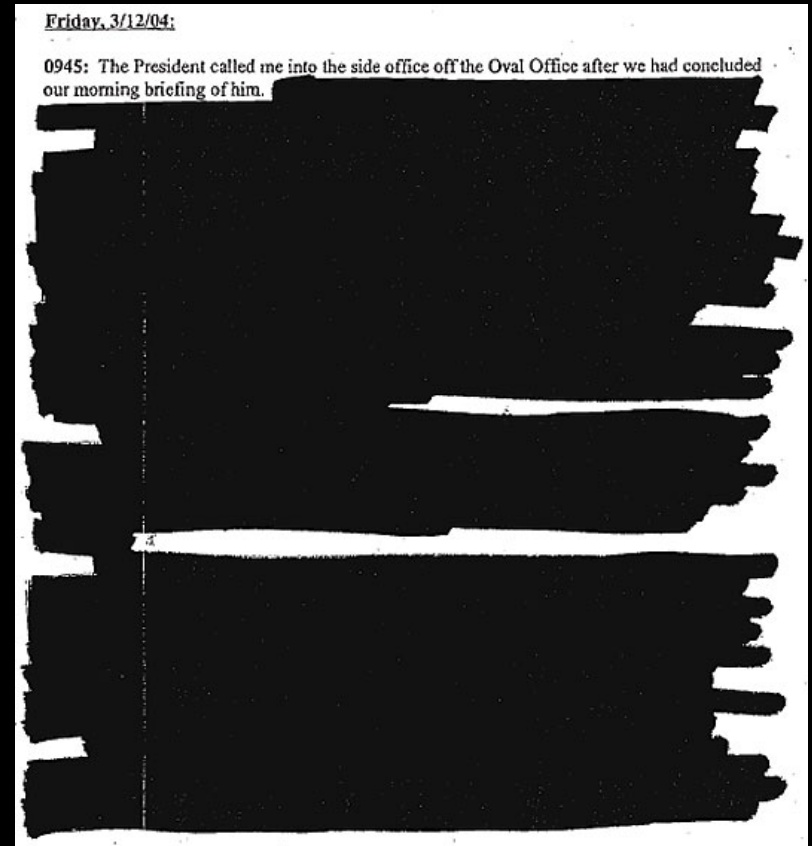
- Direct deposit authorization.
- Form I-9 (Employment Eligibility Verification Form) and attachments.
- W-2 and W-4 Internal Revenue Service forms.
- Certified agenda/recording of closed meeting.



Redactions Not Requiring Permission

Previous Determination Opinions:

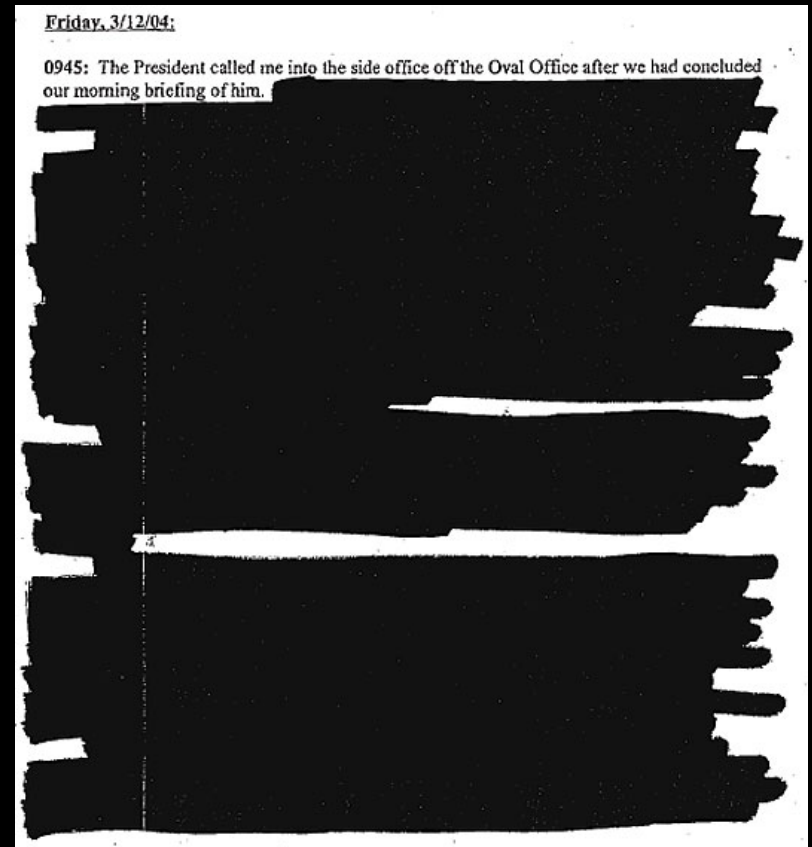
- Fingerprint.
- L-2 (Medical Condition) and L-3 (Psychological and Emotional Health) declarations issued by TCLE.



Redactions Not Requiring Permission

Previous Determination Opinions:

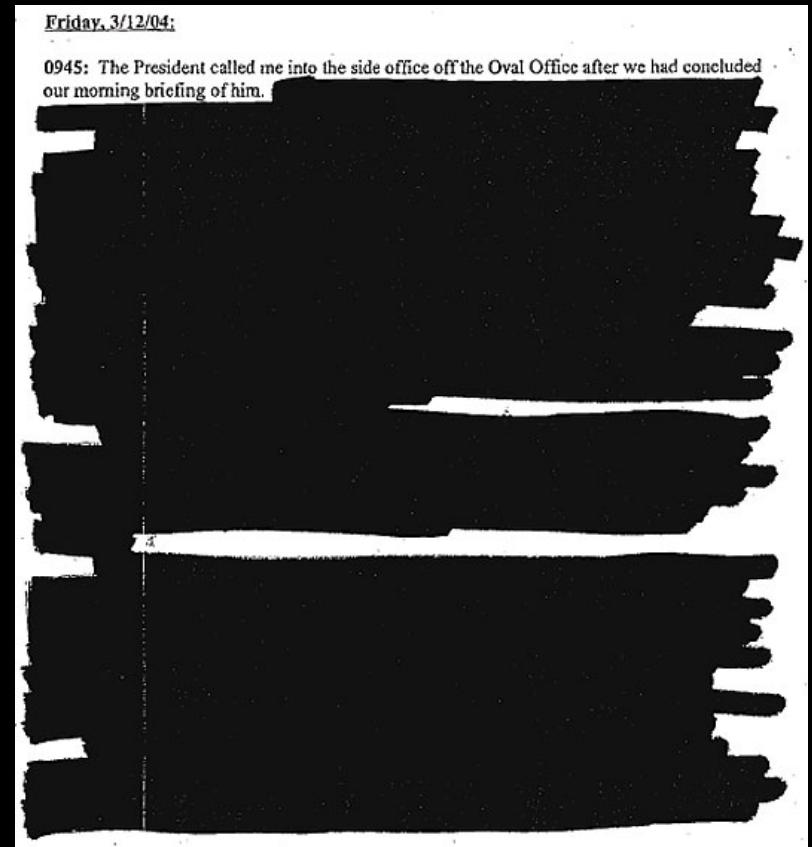
- Texas driver's license number, copy of Texas driver's license, Texas license plate number, portion of a photograph that reveals a Texas license plate number, and portion of any video depicting discernible Texas license plate number.



Redactions Not Requiring Permission

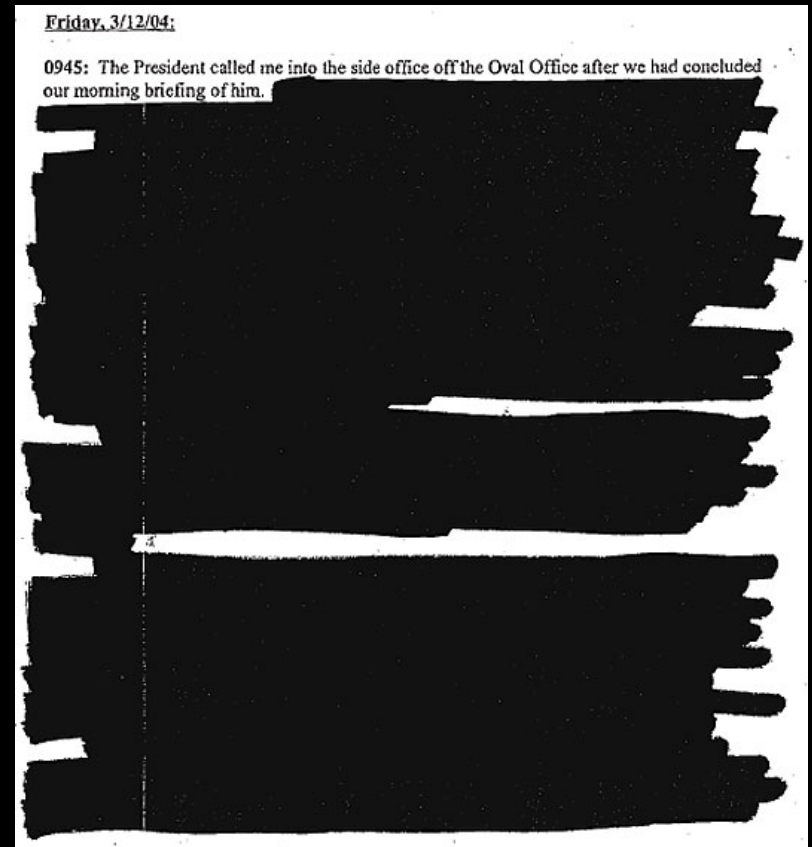
Previous Determination Opinions:

- Credit card number, debit card number, charge card number, insurance policy number, bank account number, and bank routing number.
- Email address of member of the public.



Redactions Not Requiring Permission

For certain exceptions,
statute expressly allows
you to redact without
seeking AG opinion.



Redactions Not Requiring Permission

But . . .

You must
provide a form
letter to the
requestor
detailing right
to appeal.

How to appeal the withholding of information under Gov't Code section 552.024

If you wish to appeal the withholding of the information discussed on the previous page, please sign below and mail or fax a copy of both pages of this letter to the attorney general at:

Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548
Fax: 512-463-2092

Within forty-five business days after receiving your appeal, the attorney general will issue a written ruling on the matter. You will receive a copy of this ruling in the mail.

Printed name

Signature

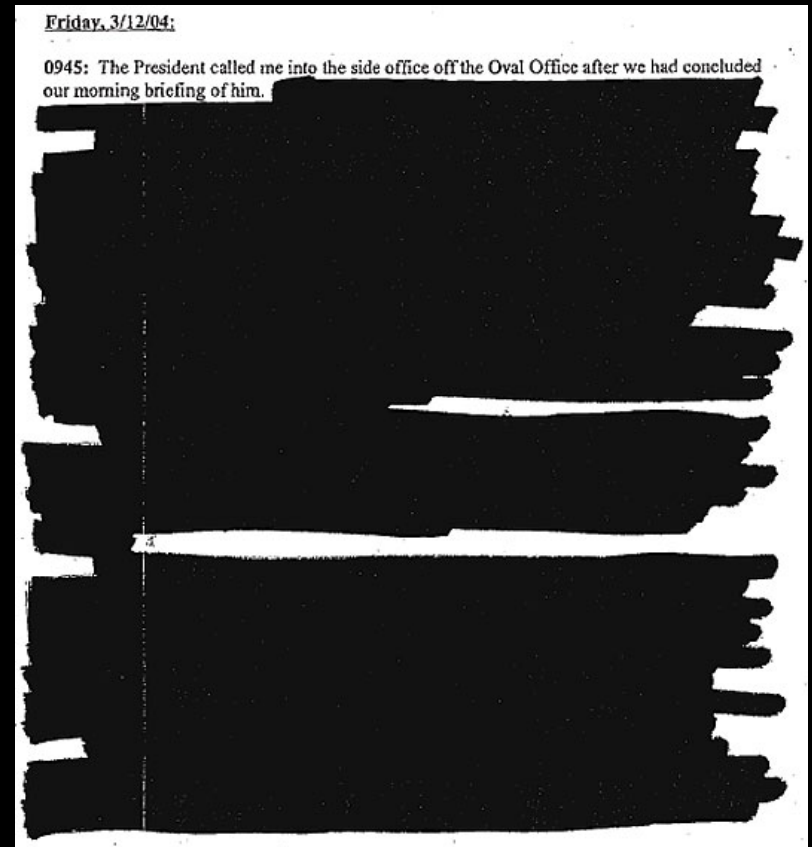
Contact number

Address

Redactions Not Requiring Permission

Statutory:

- DL, MV identifiers.
- Credit card numbers.
- Family violence shelter information.
- GB employee personal information
- SSNs (no form necessary)



Seeking the Opinion

Three things GB has to do within 10 days:

1. Submit reasons for nondisclosure.
2. Submit letter to the requestor.
3. Notify interested third parties.



Seeking the Opinion

Six things GB has to do within 15 days:

1. Written comments.
2. Submit a copy of the request.
3. Prove up date of receipt.



Seeking the Opinion

Six things GB has to do within 15 days:

4. Submit a copy of the records.
5. Label the records.
6. Send briefing to the requestor.



Scott's Tip #3: Use your holidays and skeleton crew days.

If you tell the AG in your briefing, the AG will not count for deadline purposes:

- Holidays.
- Emergency closure days.
- Skeleton crew days.



Scott's Tip #4: Call for help if you're late.



“I screwed up. Can you ask for an opinion to protect the OR?”



“Sure. Right after I finish this . . .”

Compelling Reason

Section 552.302 - Failure of governmental body to timely seek a ruling from the OAG to withhold information means the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a **compelling reason** to withhold the information.



Compelling Reason

Attorney-Client Privilege

Paxton v. City of Dallas, 509 S.W.3d 247 (Tex. 2017) -

Failure of governmental body to timely seek a ruling from the OAG to withhold information subject to the attorney-client privilege does not constitute a waiver of the privilege.



Compelling Reason

Attorney-Client Privilege

Paxton v. City of Dallas, 509 S.W.3d 247 (Tex. 2017) -

The attorney-client privilege constitutes a compelling reason to withhold information under section 552.302 of the Government Code.

