

Texas Public Information Act: Open Records



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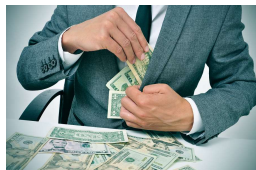
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Introduction to Public Information Requests

Historical Overview

- Adopted in 1973
- Codified as Chapter 552 of the Texas Government Code



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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



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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



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Information Definition

- Traditional paper copies of documents
- Photographs
- Letters
- Audio/video recordings
- Electronic communications
 - E-mails
 - Internet postings
 - Text messages



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Transaction of Official Business

1. Any information created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in their official capacity; and
2. Pertains to official business.
Any matter over which a governmental body has any authority, administrative duties, or advisory duties.

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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 by e-mail or fax if they have been designated*)
- May be sent to any employee by mail

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Who is Responsible for Responding?

- The Officer for Public Information (OPI) of a governmental body (*i.e. City Secretary*)
- Each elected county officer
- Every department head



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Policy: Presumption of Openness

- All public information is subject to disclosure unless specifically made confidential or specifically excepted from disclosure
- Attorney General construes the Act in favor of this open government policy

Permissible Communications with Requestor

- May *not* inquire into purpose for which information may be used
- May inquire the following:
 - Clarification, if unclear
 - Narrowing, if results in large amount of information
 - Identification, if relates to motor vehicle record

Clarifying/Narrowing Request Requirements

- 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).”*

Withdrawing Requests

- Requests are not considered withdrawn unless
 - “(d) unless the governmental body, officer for public information, or agent, as applicable, sends the request for clarification or discussion under Subsection (b) or the written request for additional information under Subsection (c) to that address by **certified mail.**”

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Consequences of Narrowing/Clarifying Request

- Stops deadlines to release information or seek AG ruling
- Resets deadlines to release information or seek AG ruling if requestor responds
- Withdraws the request if requestor does not respond in writing within 61 days

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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



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Options to Respond to Request

1. Release information
2. Seek Attorney General's permission to withhold or redact the information requested
3. Automatically redact and release information pursuant to specific exceptions in the Act or a previous determination.

Option 1: Release Information

- The information is not confidential by law
- The governmental body does not want to assert any discretionary exceptions
- Be promptly made available

Release Information Compliance

- Make available for inspection or duplication
- Send copies by first class U.S. mail
- Refer to an exact internet location, if readily available on the website
- Notify *in writing* that the information is unavailable because in storage or active use
- Notify *in writing* when information can be compiled

Option 2: Seek Attorney General Permission

- Assert exceptions in 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, along with a copy of the request, a copy or samples of the information, and a signed statement as to when the request was received. (“15-day brief”)

Notify the Requestor

- Provide written statement that the city 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

Letters Submittal

Submit the following:

- 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 city failed to request a decision within 10 business days or failed to submit arguments within 15 business days

- All discretionary exceptions considered waived
- Can only withhold information if you have a "compelling" exception under the Act

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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
- Ruling could require release, allow or require withholding, or allow some redaction and some release.



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Option 3: 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

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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 an employee, official, or peace officer that wishes it to remain private
- Information maintained by a family violence center or sexual assault program

Required Form

- Description of the redacted or withheld information
- Citation of the section allowing the redaction
- Instructions on how to appeal withholding the information
- The required form is promulgated by the Office of the Attorney General

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



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Exceptions: Discretionary

- Governmental body **may** decide to withhold the information that is considered discretionary
- Withholding information is not legally required
- Subject to disclosure under Section 552.0225

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Exceptions to the Exceptions

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

SUPERPUBLIC

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Requestor's Special Right of Access to Certain Information

Requestor or its authorized representation has a special right of access, beyond the right of the public, to information that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interest.

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
- **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

Additional Charges

- Labor Charge
 - Locating, compiling, manipulating data, reproducing, and if necessary redacting confidential information
 - Does not apply to requests for 50 or fewer pages of paper records
 - \$15/hour
- Overhead
 - 20% of the charge made to cover any labor costs
 - Applies only when labor charges are appropriate

Statement of Estimated Charges

- Section 552.2615
- If estimated charges will exceed \$40.00, the governmental body **must** provide requestor an itemized estimate of charges **before** any work is done
- **Must** advise if there is a less costly method to view the records

Statement of Estimated Costs Cont'd

- Must include statement that request will be considered automatically withdrawn if requestor does not respond in writing within 10 business days that he:
 - a) Accepts the charges;
 - b) Modifies the request in response to the estimate; or
 - c) Has sent, or is sending, a complaint regarding the charges to the AG.

Statement of Estimated Costs Cont'd

- If actual charge exceeds the initial agreed upon charge by more than 20% before work has been done, governmental body must provide the requestor an updated statement of estimated charges
- If the requestor does not respond in writing to the updated estimate as previously discussed, request is considered withdrawn

Charge for Electronic Copies

- Per page charges *do not* apply for electronic copies
- **May** charge for the following:
 - Labor charges at \$15/hour for locating, compiling, manipulating data, and producing the information;
 - Overhead rate at 20% of charge made to cover any labor costs; and
 - \$1 per CD and \$3 per DVD, if applicable

Charge for Inspection of Information

No charge will be imposed for inspection unless:

1. Information completely fills, or when assembled will fill, six or more archival boxes and would take 5 or more personnel hours to make available;
2. Information is over 5 years old and would take 5 or more personnel hours to make available; or
3. Page being requested contains confidential information that must be edited from the record before made available

Charges for Inspection Cont'd

- Labor charges apply to options 1 and 2, stated previously
- If redaction is required, charge \$0.10/page for cost of making photocopy of the page from which confidential information must be edited
- For inspection of information that electronically exists but is not available directly online, cannot charge unless it requires programming or manipulation of data

S.B. 944 – Private Devices & Accounts

- Applies to former and current city officials
- Pertains to any city information contained on a private device or within a private account (such as an email account)
- Must now:
 1. Forward or transfer this information to the city to be maintained as all public records are; and
 2. Archive the information on the private device or in the account for the city's set records retention schedule

SB 944 – Private Devices & Accounts

- Whoever is answering the Open Records Request is aware of facts “sufficient to warrant a reasonable belief” that the former or current employee has information that relates to the request
- Request cannot be fulfilled without the information
- 10 days to turn over the information to the city to answer the request

Penalties for Non-Compliance

Governmental bodies may face criminal penalties under Sections 552.352 and 552.353 for:

- Releasing information that must not be disclosed; or
- Withholding information that must be released.

Penalties

- Sec. 552.351. DESTRUCTION, REMOVAL, OR ALTERATION OF PUBLIC INFORMATION. (a) A person commits an offense if the person wilfully destroys, mutilates, removes without permission as provided by this chapter, or alters public information.
- (b) An offense under this section is a misdemeanor punishable by:
 - (1) a fine of not less than \$25 or more than \$4,000;
 - (2) confinement in the county jail for not less than three days or more than three months; or
 - (3) both the fine and confinement.
- (c) It is an exception to the application of Subsection (a) that the public information was transferred under Section [441.204](#).

Penalties for Non-Compliance Cont'd

Violation constitutes official misconduct:

- Misdemeanor
- Punishable by confinement in county jail for not more than 6 months
- Fine not to exceed \$1,000
- Or both confinement and fine

Affirmative Defenses for Non-Compliance

- Timely request for a decision from the AG is pending
- Officer for public information is pursuing judicial relief from compliance with a decision of the AG

Injunctive Relief

- Pursuant to Section 552.3215(b)
 - “An action for a declaratory judgment or injunctive relief may be brought in accordance with this section against a governmental body that violates this chapter.”
- A person claiming to be a victim of a violation under this section is the “Complainant”

Civil Remedies for Non-Compliance

Requestor may seek a writ of mandamus to compel a governmental body to release the information if the governmental body refuses to:

1. Seek an attorney general decision;
2. Release public information; or
3. Release information in accordance with the AG decision.

Civil Remedies for Non-Compliance Cont'd

- If sued, governmental body *may* be required to pay a plaintiff's costs and attorneys fees
- Court *may not* assess costs against governmental body if they acted in reasonable reliance on a judgment or order of a court or written decision from the AG
- Requestor who is an attorney *is not* entitled to attorney's fees

Conclusion

Questions?


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