


THE ATTORNEY GENERAL OF TEXAS  
**KEN PAXTON**



## Texas Public Information Act: An Overview

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 Open Records Division

Views expressed are those of the presenter, do not constitute legal advice and are not official opinions of the Office of the Texas Attorney General

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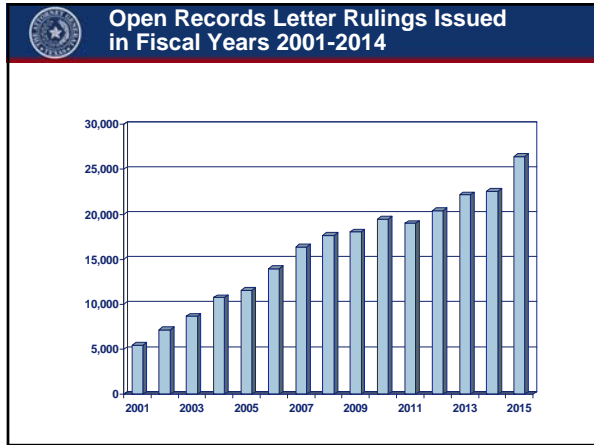
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### Texas Government Code Chapter 552

**Section 552.001. Policy; Construction**

(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 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.***

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**Public Information Defined  
(Slide 1 of 3)**

**Gov't Code § 552.002(a)**

- ▶ "Public Information" means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:
  - 1) by a governmental body;
  - 2) for a governmental body and the governmental body owns the information, has a right of access to it, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
  - 3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

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**Public Information Defined  
(Slide 2 of 3)**

**Gov't Code § 552.002(a-1), (a-2)**

- ▶ Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.
- ▶ The definition of "public information" provided by Subsection (a) applies to and includes *any electronic communication* created, transmitted, received, or maintained *on any device* if the communication is in connection with the transaction of official business.

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**Public Information Defined  
(Slide 3 of 3)**

**Gov't Code § 552.003(a-2)**

- ▶ "Official business" means any matter over which a governmental body has any authority, administrative duties, or advisory duties.

**Gov't Code § 2252.907**

- ▶ A contract between a state agency and a nongovernmental vendor involving the exchange or creation of public information must be drafted in consideration of the requirements of Chapter 552 and contain a provision that requires the vendor to make the information not otherwise excepted from disclosure under Chapter 552 available and accessible to the public.

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## Forms of Public Information

### Gov't Code § 552.002(b)-(c)

- ▶ Information recorded on physical media:
  - Paper, film, or tape
  - Magnetic, optical, or solid state storage
- ▶ And in any form:
  - Audio or video recordings
  - Photographs
  - Maps
  - Drawings
  - Emails, Internet postings, text messages, instant messages, or other electronic communications

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## Governmental Body Defined

### Gov't Code § 552.003

- ▶ The definition of "governmental body" encompasses all public entities supported in whole or in part by public funds, including:
  - State agencies
  - Cities and counties
  - Public school districts and school boards
  - Utility districts
  - Police departments and sheriffs' offices
  - Public universities
  - County commissioners courts
  - Municipal governing bodies
  - Local workforce development boards
  - **Does not include the judiciary**

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## What is a Public Information Request?

- ▶ Must be in writing to trigger the PIA
- ▶ Must ask for information in existence as of the date the request was received
  - No requirement to create new documents
  - No requirement to answer questions
  - No requirement to perform legal research
- ▶ No "magic words" required
- ▶ No requirement to label it as an open records request or public information request
- ▶ Can be typed or handwritten
- ▶ Cannot require the use of a specific form to submit request

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### What if the Request is Unclear or Unduly Broad?

Gov't Code § 552.222

- ▶ **Cannot ask** requestors why they want the information
- ▶ Can ask requestor to clarify request and/or discuss with requestor how scope of request might be narrowed
- ▶ When a governmental body, acting in good faith, requests clarification or narrowing of an unclear or over-broad request, the 10-business-day period to request an Attorney General decision is measured from the date the request is clarified or narrowed.
  - *City of Dallas v. Abbott*, 304 S.W. 3d 380, 387 (Tex. 2010)

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### What if the Request Asked For... (Slide 1 of 4)

**... the superintendent's personnel file pursuant to the U.S. Freedom of Information Act, the First Amendment of the U.S. Constitution and open records laws of the European Union.**

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### What if the Request Asked For... (Slide 2 of 4)

*I want all records involved in Report # 225436-96.  
 Bob Schraw  
 P.O. Box 22  
 Hidden, TX 70000*

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**What if the Request Asked For...  
(Slide 3 of 4)**

**. . . “any and all documents  
pertaining to the superintendent,  
including, but not limited to,  
communications sent or  
received by her in the past five  
years.”**

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**What if the Request Asked For...  
(Slide 4 of 4)**

**. . . the superintendent’s  
personnel file because I think  
the superintendent is  
attractive and I want to  
investigate her background to  
determine whether I should  
ask her out on a date.**

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**What if the Request Said...**

**. . . “What are the legal  
requirements for removing the  
superintendent from her  
position? Also, do you think she  
likes me?”**

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## Emails and Faxes

### Gov't Code § 552.301(c)

- ▶ A governmental body (GB) may designate a person who is authorized to receive requests by email or fax.
- ▶ If the GB makes such a designation, the PIA is triggered only if the request is directed to the designated person.
- ▶ Written requests that are not sent by email or fax do not have to be directed to any specific employee or officer of the GB.

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## What Do You Do When You Receive a Request?

### Gov't Code § § 552.221, 552.301

- ▶ A governmental body must:
  - Promptly produce information for inspection, duplication or both;
- or
- Ask for a decision from the Office of the Attorney General (OAG) about whether the information is excepted from disclosure, unless there has been a previous determination that the information is excepted.

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## How Much Time Do You Have to Produce Information?

### Gov't Code § 552.221

- ▶ "Promptly" means as soon as possible under the circumstances, that is, within a reasonable time, without delay.
- ▶ If you cannot produce information within 10 business days after the date the information is requested, you must certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available.

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## How Much Time Do You Have to Request a Decision from the Attorney General?

### Gov't Code § 552.301(a)-(b)

- ▶ If you wish to withhold information from the requestor, you must request a decision from the OAG not later than 10<sup>th</sup> business day after the date of receiving the public information request.
- ▶ You must request a decision within 10 business days, unless you have a "previous determination."

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## What is a "Previous Determination"?

### Open Records Decision No. 673 (2001)

- ▶ **Type 1**
  - Most common
  - Applicable to only a particular governmental body
  - Applicable only to specific information or records
- ▶ **Type 2**
  - May be applicable to:
    - All governmental bodies
    - All governmental bodies of a certain type
    - Only a particular governmental body
  - Applicable to a precise, clearly delineated category of information or records

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## ORD 684

- ▶ Open Records Decision No. 684 (2009) covers several types of information:
  - Direct deposit authorization forms
  - Form I-9 and attachments
  - W-2 and W-4 forms
  - Certified agenda and tape of closed meeting
  - Fingerprints
  - L-2 and L-3 declarations
  - Certain email addresses
  - Military discharge records

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**Procedures for Requesting a Decision from the OAG (Slide 1 of 3)**

**Gov't Code § § 552.301, 552.305**

**▶ Not later than the 10<sup>th</sup> business day, you must:**

- Ask the OAG for a ruling and state the exceptions that apply;
- Notify the requestor in writing that you have asked for a ruling;
- Provide the requestor a copy of your letter to the OAG requesting a ruling; and
- Notify any third parties with proprietary interests in the requested information that they may submit written comments to the OAG stating why the information should be withheld (third party notice must be in the form prescribed by the OAG).

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**Procedures for Requesting a Decision from the OAG (Slide 2 of 3)**

**Gov't Code § 552.301(e)-(e-1)**

**▶ Not later than the 15<sup>th</sup> business day, you 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 by the GB or evidence sufficient to establish that date.

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**Procedures for Requesting a Decision from the OAG (Slide 3 of 3)**

**Gov't Code § 552.301(e)-(e-1) (continued)**

**▶ Not later than the 15<sup>th</sup> business day, you must:**

- 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 of the specific information, or representative samples, to indicate which exceptions apply to which parts of the copy.
- Send a copy of your written comments to the requestor.

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## Counting Business Days

### General Rules for Counting Business Days

- ▶ Start counting the next business day after receiving a written request.
- ▶ "Received" means when it is physically received, not when it is finally opened or read (this includes email).
- ▶ Saturdays, Sundays and holidays do not count.
- ▶ Skeleton crew days and days the GB is closed do not count, but make sure you notify the OAG of such days in writing if you are requesting a decision.

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## Counting to 10 Can Be Tricky

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18 Written Request Received	19 1	20 2	21
22	23 3	24 State Closed Christmas Eve	25 State Closed Christmas Day	26 State Closed Day After Christmas	27 Skeleton Crew Day	28
29	30 4	31 Half Skeleton/Half Holiday	1 State Closed New Year's Day	2 5	3 6	4
5	6 7	7 8	8 9	9 10	10	11

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## PIA Electronic Filing System

<https://apps2.portal.texas.gov/OAGPIAeFiling/>



### Texas Attorney General Public Information Act Electronic Filing System



#### Welcome

Welcome to the Office of the Attorney General's Public Information Act Electronic Filing System. The OAG uses this system to accept a governmental body's request for an attorney general open records decision under the Public Information Act, Texas Government Code Chapter 552. Interested parties can also use this system to submit comments or materials for review by the OAG during the open records decision process.

**Please Note:** This system cannot be used to request public information from the OAG or any other governmental body. Requests for public information must be submitted directly to the governmental body from whom you are seeking information.

#### You can use this service to:

- Request an attorney general open records decision and submit new material for review, or
- Submit supplemental documents or comments related to an existing request for decision.

#### Information You Need:

- Name of Governmental Body or Interested Party
- Governmental Body POC ID (This is the internal tracking number assigned to a public information request by a governmental body. This is not the ID number assigned by Texas.gov. Third parties should contact the Governmental Body for this number or use the name of the Governmental Body for this data field.)
- Texas.gov Request ID (if you are submitting additional material to an existing request)
- Credit card (Visa, MasterCard, Discover, or American Express) or Electronic Check information
- Microsoft Silverlight Plugin (This software is not required, however, it makes it easier to upload multiple files.) If you don't have Silverlight, you can install it now.

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### Consequences for Missing Deadlines (Slide 1 of 2)

- ▶ Mandatory exceptions are not waived.
- ▶ Permissive exceptions are waived.
- ▶ See page 43 of the 2014 Public Information Act Handbook for a discussion of mandatory and permissive exceptions.
- ▶ [https://www.oag.state.tx.us/AG\\_Publications/pdfs/publicinfo\\_h\\_b.pdf](https://www.oag.state.tx.us/AG_Publications/pdfs/publicinfo_h_b.pdf)

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### Consequences for Missing Deadlines (Slide 2 of 2)

- ▶ Some examples of ways to waive **permissive** exceptions:
  - Fail to request a ruling by 10 business day deadline;
  - Fail to raise all applicable exceptions by 10-business-day deadline (i.e., new exceptions raised later are waived);
  - Fail to notify requestor, within 10 business days, that you are requesting a ruling;
  - Fail to submit information or representative sample within 15-business-day deadline;
  - Fail to submit arguments within 15-business-day deadline; or
  - Fail to submit copy of request within 15-business-day deadline.

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### Exceptions to Disclosure (Slide 1 of 2)

#### Common Exceptions

- ▶ **552.101** Information Confidential by Law
- ▶ **552.102** Confidentiality of Certain Personnel Information
- ▶ **552.103** Information Related to Litigation
- ▶ **552.104** Information Related to Competition or Bidding
- ▶ **552.107** Certain Legal Matters (Attorney-Client Privilege)
- ▶ **552.108** Certain Law Enforcement Records
- ▶ **552.110** Confidentiality of Trade Secrets, Commercial or Financial Information

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## Exceptions to Disclosure (Slide 2 of 2)

### Common Exceptions

- ▶ 552.111 Agency Memoranda (Attorney Work Product)
- ▶ 552.116 Audit Working Papers
- ▶ 552.117 Confidentiality of Certain Employee Information
- ▶ 552.130 Confidentiality of Certain Motor Vehicle Records
- ▶ 552.136 Confidentiality of Credit Card, Debit Card, Charge Card, and Access Device Numbers
- ▶ 552.137 Confidentiality of Certain E-Mail Addresses
- ▶ 552.147 Social Security Numbers

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## "Core" Public Information (Slide 1 of 2)

### Gov't Code § 552.022(a)

- ▶ Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

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## "Core" Public Information (Slide 2 of 2)

### Gov't Code § 552.022 (a)

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a GB, except as provided by Section 552.108;
- (2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a GB;
- (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a GB;
- (5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a GB, on completion of the estimate;
- (16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege;
- (17) information that is also contained in a public court record; and
- (18) a settlement agreement to which a GB is a party.

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## When Can You Redact Without First Seeking a Ruling?

- ▶ If you want to withhold information from the public, you must request a ruling from the Attorney General's Office.
- ▶ Withholding information without requesting a ruling
  - Gov't Code § 552.130
    - Information related to driver's license, motor vehicle title or registration, or 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
    - Personal information of certain public employees

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## Open Records Division Forms

<https://www.texasattorneygeneral.gov/redirecting-public-information-rules-and-forms>

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 BY GOVERNMENTAL BODY

LIST OF FREQUENT DETERMINATIONS BY GOVERNMENTAL BODY

PUBLIC INFORMATION COST ESTIMATE (PICE)

REDACTING PUBLIC INFORMATION RULES AND FORMS

AMENDMENTS TO THE PUBLIC INFORMATION ACT, 2015 TEXAS LEGISLATIVE SESSION

OPEN GOVERNMENT RESOURCES

OPEN GOVERNMENT CONFERENCE

EPFNS

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 [GENERAL DETERMINATION](#) to release information. For more information about previous determinations, please see [Open Records Division No. 873 \(2023\)](#) and pages 35-38 of the [2024 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 Rulings

**Forms**

The following documents are provided in MS Word:

- Form Letter for Section 552.024 (public employer's personal information held by governmental body in its capacity as employer)
- Effective 05/03/2023 Form Letter for Section 552.130 (motor vehicle records)
- Form Letter for Section 552.136 (account and access device numbers)
- Effective 06/20/2023 Form Letter for Section 552.138 (drama, science theater center, victims of trafficking shelter center, or sexual assault program)
- Effective 06/01/2024 Form Letter for Section 552.1175 (public employer's personal information held by governmental body in non-employment capacity)

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## Challenging a Ruling

- ▶ Requests for reconsideration are prohibited.
- ▶ If a governmental body disagrees with the legal interpretation set forth in a ruling, it may file suit against the OAG in accordance with the PIA.
  - No later than the 30<sup>th</sup> calendar day after the receipt of OAG decision

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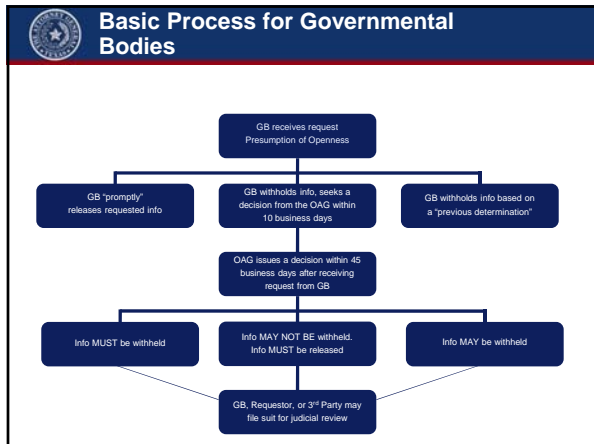
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**Civil Penalties (Slide 1 of 6)**

**Gov't Code § 552.321  
Writ of Mandamus**

- ▶ Used to compel a GB to make information available for public inspection
- ▶ Filed by requestor or Attorney General
- ▶ Examples of potential mandamus situations
  - GB refuses to provide copies or access to information that is clearly public.
  - GB refuses to request an OAG ruling.
  - GB refuses to release information as required by an unchallenged AG ruling.

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**Civil Penalties (Slide 2 of 6)**

**Gov't Code § 552.3215  
Declaratory Judgment or Injunctive Relief**

- ▶ Complaint filed by requestor with district attorney or county attorney in county where governmental body is located
  - Local governmental bodies: district attorney or county attorney for the county may bring action only in district court for that county where the governmental body is located
  - State agencies: Travis County District Attorney or OAG may bring action only in district court in Travis County
- ▶ Before the 31<sup>st</sup> day after the date the complaint was filed, district or county attorney shall determine:
  - Whether the violation was committed
  - Whether an action will be brought
  - Notify complainant in writing their determination

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**Criminal Penalties  
(Slide 3 of 6)**

**Gov't Code § 552.351**

**Destruction, Removal, or Alteration of Public Information**

- ▶ Fine not less than \$25 or more than \$4,000 and/or county jail not less than three days or more than three months

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**Criminal Penalties  
(Slide 4 of 6)**

**Gov't Code § 552.352**

**Distribution or Misuse of Confidential Information**

- ▶ A person commits an offense if the person distributes information considered confidential under the terms of chapter 552 of the Government Code
- ▶ Fine not more than \$1,000 and/or county jail for not more than six months
- ▶ Constitutes official misconduct

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**Criminal Penalties  
(Slide 5 of 6)**

**Gov't Code § 552.353(a), (e)-(f)**

**Failure or Refusal of Officer for Public Information to Provide Access to or Copying of Public Information**

- ▶ Fails or refuses to give access, permit copying, or provide copies of public information *with criminal negligence*
- ▶ Fine not more than \$1,000 and/or county jail for not more than six months
- ▶ Constitutes official misconduct

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## Criminal Penalties (Slide 6 of 6)

### Gov't Code § 552.353(b)-(d)

- ▶ Affirmative defense against prosecution
  - Reasonable belief that public access to information not required **and** relied on court order, court opinion or OAG decision
  - OAG decision sought **and** no decision issued
  - Suit filed in Travis County challenging OAG decision
  - Officer's agent reasonably relied upon written instruction from the officer of public information

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## Public Information Cost Estimate Model

<https://www.texasattorneygeneral.gov/og/public-information-cost-estimate-model>

### Public Information Cost Estimate Model

This model will calculate costs associated with a request for **COPIES** of information, but not a request to **INSPECT** information. For questions about estimating costs when a requestor asks to **INSPECT** information, please call our toll-free Cost Hotline at 1-888-OR-COSTS (1-888-672-6757).

Government Body's Information		Requestor's Information	
Agency Name		First, Last Name	
Contact Name		Address	
Address		City	
City		State/Cp	
State/Cp		State/Cp	

#### Itemization of costs:

- Did the requestor ask for standard paper copies? Yes  No  \*
- Did the requestor ask for copies of nonstandard documents (e.g., oversized paper, DVD, or VHS tape)? Yes  No  \*
- Are labor costs? Yes  No  \*
- Are overhead charges applicable? Yes  No  \*
- Are computer resource charges applicable? Yes  No  \*
- Are remote document retrieval charges applicable? Yes  No  \*
- Will there be charges for miscellaneous supplies? Yes  No  \*
- Will there be postage? Yes  No  \*
- If the total charges exceed \$100, will you require a prepayment deposit? Yes  No  \*
- OR
- If the total charges exceed \$100, will you require a prepayment bond? Yes  No  \*

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## Questions?

**OAG's Open Government Hotline**  
(877) OPEN TEX  
(512) 478-6736

**Cost Questions**  
OAG Cost Rules Administrator  
(888) OR-COSTS  
(512) 475-2497

**OAG website**  
<http://www.texasattorneygeneral.gov>

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