



ATTORNEY GENERAL OF TEXAS
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The Texas Public Information Act – An Overview

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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.***



Public Information Defined

Gov't Code § 552.002(a)

“Public Information” means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- 1) by a governmental body; or
- 2) for a governmental body and the governmental body owns the information or has a right of access to it.



Forms of Public Information

Gov't Code § 552.002(b)-(c)

► Information in any form, including:

- Paper
- Microfilm or microfiche
- Computer data
- E-mail
- Audio or video recordings
- Photographs
- Maps
- Drawings

In other words . . . information recorded in any format.



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**



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



E-mails and Faxes

Gov't Code § 552.301(c)

- ▶ A governmental body (GB) may designate a person who is authorized to receive requests by e-mail 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 e-mail or fax do not have to be directed to any specific employee or officer of the GB.



What if the request asked for . . .

**. . . the police chief'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.**



What if the request asked for . . .

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



What if the request asked for . . .

. . . the police chief's personnel file because,

“I think the police chief is attractive and I want to investigate her background to determine whether I should ask her out on a date.”



What if the request said . . .

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



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.



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.



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 10th 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.”



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



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 e-mail).
- ▶ 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.



Counting Business Days

December 2009-January 2010

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	14 Written Request Received	15 1	16 2	17 3	18 4	19
20 5	21 6	22 7	23	24 Holiday	25 Holiday	26
27 8	28 9	29 10th Business Day	30 11	31 Holiday	1	2
3 12	4 13	5 14	6 15th Business Day	7	8	9



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).



Procedures for Requesting a Decision from the OAG

Gov't Code §§ 552.301, 552.305

Not later than the 10th 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 3rd parties with proprietary interests in the requested information that they may submit written comments to the OAG stating why the information should be withheld (3rd party notice must be in the form prescribed by the OAG).



Procedures for Requesting a Decision from the OAG

Gov't Code § 552.301(e)-(e-1)

Not later than the 15th 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.



Procedures for Requesting a Decision from the OAG

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

Not later than the 15th 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.



Consequences for Missing Deadlines

- ▶ Mandatory exceptions are not waived.
- ▶ Permissive exceptions are waived.
- ▶ See pages 41-44 of the 2012 Public Information Act Handbook for a discussion of mandatory and permissive exceptions.
- ▶ https://www.oag.state.tx.us/AG_Publications/pdfs/publicinfo_hb.pdf



Consequences for Missing Deadlines (cont.)

- ▶ 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.



“Core” Public Information

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:



“Core” Public Information

Gov’t Code § 552.022 (a) continued

- (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.



Exceptions to Disclosure

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



Exceptions to Disclosure

Common Exceptions

- ▶ **552.111** Agency Memoranda (Attorney Work Product)
- ▶ **552.116** Audit Working Papers
- ▶ **552.117** Confidentiality of Certain Addresses, Telephone Numbers, Social Security Numbers, and Personal Family 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



Recent Case Law

- ▶ *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, No. 09-0530, *slip op.* (Tex. July 1, 2011), available at
<http://www.supreme.courts.state.tx.us/historical/2011/jul/090530.pdf>
 - **At issue:** Whether travel vouchers, defined as “core” public information under section 552.022(a)(3), may be withheld if their release may lead to physical harm.
 - **Holding:** Freedom from physical harm is an independent interest protected under law, untethered to the right of privacy. Thus, information may be withheld under the common law if disclosure would create a substantial threat of physical harm.



Recent Case Law

- ▶ *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010).
 - **At issue:** The dates of birth of public employees held in the Comptroller's database.
 - **Holding:** The dates of birth of public employees are confidential under section 552.102(a) of the Government Code.
 - **Please note:** Decision only applies to the dates of birth of public employees, not private citizens.



82nd Texas Legislature

- ▶ **SB 1638 (W. Davis)**
 - Relating to the exception of certain personal information.
 - Amends Gov't Code §§ 552.024, .117, .1175, .130, and .139
 - Emergency contact information must now be withheld under sections 552.117 and .1175.
 - Motor vehicle information issued by another state or country must now be withheld under section 552.130.
 - A copy of an identification badge issued to a public official or employee is confidential under section 552.139.



Public Information Cost Estimate Model

- ▶ In December 2009, our office created a cost letter generator, the Public Information Cost Estimate Model.
- ▶ The tool is available at:
 - http://www.oag.state.tx.us/open/cost_page.shtml



82nd Texas Legislature

- ▶ **HB 2866** (Harper-Brown)
 - Relating to the electronic submission of certain documents to the OAG; imposing certain fees.
 - Adds Gov't Code §552.309 – When a request or other document is required to be submitted to the OAG within a specified period, the requirement is met in a timely fashion if the document is submitted through the OAG's designated electronic filing system within that period.
 - Use of e-filing system is ***optional***.
 - **Please note:** Faxes and other electronic transmissions are not, and have never been, permitted under section 552.308.
 - <https://apps2.portal.texas.gov/OAGPIAeFiling/>



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.oag.state.tx.us/open/index.shtml>