Open Records Request
What to Do When You Receive One

Paul Miles, Associate General Counsel
Questions? Give us a ring!
Public Information Act

Texas Government Code
Chapter 552

Almost EVERYTHING
A record is a record is a record.
Judicial Records available under Rule 12
Rights of the Public

To whom it may concern,

I want all the records related to the commissioners court meeting on March 2, 1987.

And the Judge’s personnel record.

Sincerely,
John Q. Public

(512) 867-5309
123 Citizen Dr.
Somewhere, TX 78700
Super-Public Information
Requesting an AG Ruling
Best Practices

APR. 1, 2019
Record Retention Schedule

TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

Records Management

Forms
Laws and Rules
Training
Local Retention Schedules
State Retention Schedules
The Texas Record Blog
Records Center Storage
Imaging Services
Contact Us
The “10-Day” Rule

produce
or
notify
Confidentiality
Do’s and Don’ts
Costs & Charges

Texas Administrative Code

Title 1
Part 3
Chapter 70.3
Costs & Charges
Exceptions to Disclosure

PERSONNEL RECORD

Name: Powers, Judicial
DOB: March 2, 1977
Address: [redacted]
SS #: [redacted]
DL #: [redacted]
Salary: $50,000.00
Exceptions of Importance

- Confidential by law
- Invasion of privacy
- Competitive bidding
- LE prosecution
- Private communications
- Ongoing litigation
Exceptions for Personal Information
Certain Officials Excepted

CONFIDENTIAL
Penalties
Refusing to Produce

MISDEMEANOR
Penalties
Destroying, Altering or Concealing

MISDEMEANOR
Dear County Officials of Somewhere County,

In this letter, I am respectfully making a Texas Open Records Act request for the following information:

1. The most recent FBI security update provided to the Commissioner Court of anticipated election disturbance.
2. A copy of any internal proposals or draft RFPs as prepared by the Purchasing and/or Elections Departments related to the elections equipment, including the proposed budget allocation set aside for the purchase of the equipment, as well as any other internal communications discussing a change from the present electronic voting method that would improve the security of the process, including the costs to replace the current equipment with a paper ballot or other processes that include individual voter paper verification.
3. The present capabilities to tally mail-in ballots, including the number processed in the past elections: 2018 primary, 2016 general and primary.
4. The total number of working optical scanners in the Elections Department.
5. HAVA funding requests sent to the State of Texas for 2017 and 2018, including funding amount received.
6. Any report by the County IT Department regarding hacking attempts (and breaches) from Russia or Ukraine in 2016, 2017 and YTD 2018.
7. We understand that the court allocated money for the backup paper ballots, yet we are nearing the election and nothing seems to have been done. What was the exact budget allocation and what is the current status of that budget matter?

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NEXT STEPS

- notify Public Information Officer
- locate information
- cost estimate, if necessary
- request AG ruling, if necessary
- retain documentation for 1-2 years (GR-1000-34)
Training and Resources

texasattorneygeneral.gov

county.org/legalpublications
Questions? Give us a ring!

(888) 275-8224
TAC HELPLINE
**PUBLIC INFORMATION ACT**

*All elected officials* are required to take Public Information Act training within 90 days of taking office.

<table>
<thead>
<tr>
<th>THE BASICS</th>
<th>SUPER-PUBLIC INFORMATION</th>
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<tbody>
<tr>
<td>• The Public Information Act: Texas Government Code Chapter 552</td>
<td>Certain categories of information are considered “super public” and must be disclosed (552.022, 552.0221, 552.0225).</td>
</tr>
<tr>
<td>• Don’t write anything down unless you want your family to read it in the local paper.</td>
<td>For example:</td>
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<tr>
<td>• Public has a right to see almost every document related to county business.</td>
<td>• Final audit and investigation reports</td>
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<tr>
<td>• Law applies to ALL public officials.</td>
<td>• Name and salary of public employees</td>
</tr>
<tr>
<td>• The county’s records are public property - including those you keep at home.</td>
<td>• Billing information</td>
</tr>
<tr>
<td>• Law applies to electronic records and e-mail - including information on your personal mobile device.</td>
<td>• Investment information</td>
</tr>
<tr>
<td>• Law often referred to as: Open Records Act or Freedom of Information Act.</td>
<td>• Rules and procedures</td>
</tr>
<tr>
<td>• Judicial records are not subject to Public Information Act, but are available to public under Rule 12 of the Texas Rules of Judicial Administration.</td>
<td>• Settlement information</td>
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**RIGHTS OF THE PUBLIC**

<table>
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<tr>
<th>REQUESTING AN AG RULING</th>
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<tr>
<td>• Public has a right to make a written request for access to or copies of a public record. Any written request, including e-mail, will do.</td>
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<tr>
<td>• Requestor is not required to use magic words.</td>
</tr>
<tr>
<td>• Public may not have a right to access certain documents that are confidential under the Act or other law.</td>
</tr>
<tr>
<td>• Requestor does not have a right to rummage through your files or disrupt county business.</td>
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<tr>
<td>• Requestor may have a right to bring in their own copy machine or scanner.</td>
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<td>• Best practice is to consult your county attorney and have him or her write the Attorney General (AG).</td>
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<tr>
<td>• Collect all documents ASAP and identify both the specific information that may be confidential and the exception to the Act.</td>
</tr>
<tr>
<td>• Be sure to comply with deadlines or you may be required to disclose information.</td>
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<tr>
<td>• If county requests the AG’s permission to withhold information it will be under two types of exceptions:</td>
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<tr>
<td>• Permissive (can release if wants to)</td>
</tr>
<tr>
<td>• Mandatory (must withhold)</td>
</tr>
<tr>
<td>• If AG rules for county, requestor can sue county to require disclosure.</td>
</tr>
<tr>
<td>• If AG rules against county, county can sue AG in state district court to overturn AG ruling.</td>
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BEST PRACTICES
As soon as you or one of your employees receives a written request for documents that might be public records:

- Date stamp the request
- Immediately locate the records
- Notify your county attorney if you think you may need to withhold some of the records

THE 10-DAY "RULE"
Within 10 business days after receiving the request, you must:

- Produce the records or notify the requestor when they will be available; or
- Request an AG’s ruling authorizing you to withhold the records

Records are presumed to be public and you must produce them if, within 10 business days, you fail to either:

- Produce the records or notify requestor of time they will be available; or
- Request an AG’s ruling authorizing you to withhold the records

RECORD RETENTION SCHEDULE

- If you don’t have the record because you have disposed of it under your schedule, you don’t have to produce it.
- If you still have a public document you could have destroyed, you must produce it.

CONFIDENTIALITY

- There is potential civil liability for disclosure of documents subject to a valid claim of confidentiality.
- If you have any question about whether to release a record – request an AG determination.

ORD REQUESTS
If requesting an open records decision (ORD) from the AG, by the 15th business day, you must:

- Submit written comments stating what exceptions apply

DO’S AND DON’TS

- DO produce records as quickly as possible with the least fuss.
- DO request clarification if you do not understand what is being requested or if it is very broad.
- DON’T ask a requestor why he or she wants the records.
- DON’T create a record that does not exist to comply with a request.
- DON’T try to comply with a “standing” or ongoing request.

COSTS & CHARGES

- AG’s Office determines allowable charges for records.
- County may charge for labor and overhead for big requests, but must send an estimate in advance and get requestor’s acceptance.
- County may also require a bond or deposit for large request.
- County cannot require requestor to obtain or pay for copies if the request is for access only.
- Texas Administrative Code Title 1, Part 3, Chapter 70.3 (b) Copy charge.

(1) Standard paper copy. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is $.10 per page or part of a page. Each side that has recorded information is considered a page.

(2) Nonstandard copy. The charges in this subsection are to cover the materials onto which information is copied and do not reflect any additional charges, including labor, that may
be associated with a particular request. The charges for nonstandard copies are:

(A) Diskette--$1.00;
(B) Magnetic tape--actual cost
(C) Data cartridge--actual cost;
(D) Tape cartridge--actual cost;
(E) Rewritable CD (CD-RW)--$1.00;
(F) Non-rewritable CD (CD-R)--$1.00;
(G) Digital video disc (DVD)--$3.00;
(H) JAZ drive--actual cost;
(I) Other electronic media--actual cost;
(J) VHS video cassette--$2.50;
(K) Audio cassette--$1.00;
(L) Oversize paper copy (e.g.: 11 inches by 17 inches, greenbar, bluebar, not including maps and photographs using specialty paper--See also §70.9 of this title)--$.50;
(M) Specialty paper (e.g.: Mylar, blueprint, blueline, map, photographic--actual cost.

(c) Labor charge for programming. If a particular request requires the services of a programmer in order to execute an existing program or to create a new program so that requested information may be accessed and copied, the governmental body may charge for the programmer’s time.

1) The hourly charge for a programmer is $28.50 an hour. Only programming services shall be charged at this hourly rate.

Hourly programmer charge--$28.50/hr
General labor charge--$15/hr

EXCEPTIONS TO DISCLOSURE

Remember - you must request an AG ruling to claim an exception in most cases.

AG Open Records Decision No. 684 lists information that doesn’t require an AG ruling to withhold, including information about a:

- Personal tax return
- Driver’s license number
- Social Security number
- Credit card number
- Personal e-mail address
- Military record information
- Certified agenda and tape of executive session

EXCEPTIONS OF IMPORTANCE

Include information that is:

- Considered confidential by law (constitution, statute, court order)
- A clearly unwarranted invasion of personal privacy
- Related to competitive bidding that is confidential
- Involved in law enforcement prosecution
- A private communications of an elected official if disclosure would constitute an invasion of privacy
- Related to ongoing litigation

EXCEPTIONS FOR PERSONAL INFORMATION

Within 14 days of employment, election, or appointment, a public employee or official must elect NOT to allow public access to his or her:

- home address
- home phone
- social security number
- emergency contact information
- information that reveals information about family members

CERTAIN OFFICIALS EXCEPTED

Information made categorically confidential by the Act includes information related to a:

- peace officer
- current or former county or district attorney and his or her current or former employees
- current or former federal or state judge and his or her spouse,
- current or former county or district judge,
- or a justice of the peace
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<td>• Refusing to produce a public record:</td>
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<tr>
<td>Misdemeanor</td>
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<td>○ Fine up to $1,000</td>
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<td>○ Jail up to 6 months</td>
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<td>○ Both fine and jail</td>
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<td>• Unlawful disclosure of confidential information:</td>
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<td>○ <strong>Official misconduct (automatic removal)</strong></td>
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<td>• Destroying, altering or concealing public record:</td>
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<tr>
<td>Misdemeanor</td>
</tr>
<tr>
<td>○ Fine – $25 minimum to $4,000 maximum</td>
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<tr>
<td>○ Jail – 3 days minimum to 3 months maximum</td>
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