

Public Information Act:

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- This Session presents an overview concerning the Texas Public Information Act and the County's duties and responsibilities pursuant to the Act. Learn about the relevant statutes and requirements for a County as well as significant changes from the 86th Legislative Session.

The Texas Public Information Act

- The Basics

- Chapter 552, Texas Government Code.
- “The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy. This chapter shall be liberally construed in favor of granting a request for information.”
- Types of Governmental Information subject to the Act.

Types of Governmental Information subject to the Act

- "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.
- Tex. Gov't Code §552.002(a)

This chapter does not authorize the withholding of public information or limit the availability of public information to the public, except as expressly provided by this chapter.

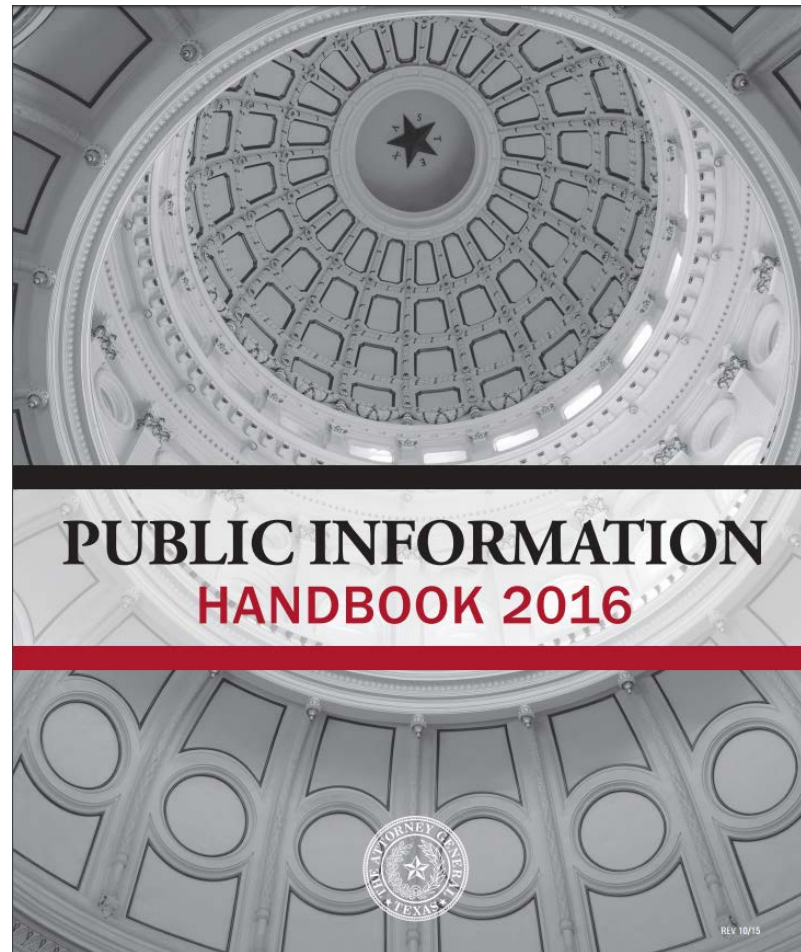
Tex. Gov't Code §552.006

Categories of Public Information

- Tex. Gov't Code §552.022
- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body,...
- (2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body;
- (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;
- (4) the name of each official and the final record of voting on all proceedings in a governmental body;

- (14) administrative staff manuals and instructions to staff that affect a member of the public;
- (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 governmental body is a party.

https://www.texasattorneygeneral.gov/files/og/publicinfo_hb.pdf



Disclosure of Contracting Information

- Tex. Gov't Code §552.0222 (01/01/2020)
- Contracting information is public and must be released
 - Overall value/price
 - Description of items or services
 - Duties under the contract

How Does the Act Work?

- Request for Access to the Information
- Requirements of the Governmental Entity
- Exceptions to the Act
- Penalties for failure to comply with the Act

What are we looking for?

- In order for the Act to be triggered, the request must be in writing.
- Must ask for information in existence
- No magic words required
- No requirement to label it as open records request

How and when to properly respond?

- Governmental body **shall promptly** produce public information for inspection, duplication, or both on application by any person to the officer.
- "Promptly" means as soon as possible under the circumstances, that is, within a reasonable time, without delay.
- If it cannot be produced within 10 business day – shall certify in writing and set a date and hour within a reasonable time when the information will be available

Tex. Gov't Code §552.221

If seeking to withhold information

Within a reasonable time, but no later than the **10th business day** after receipt of request:

- Request an Attorney General Decision;
- Provide notice to the requestor of the request for attorney general decision and a copy of the request for decision
- Notify 3rd Party – if proprietary information

Tex. Gov't Code §552.301(d)

Within a reasonable time, but no later than the **15th business day** after receipt of request:

- Submit Comments to AG explaining why exceptions apply (include statement as to the date which PIA request was received);
- Submit copy of the PIA request;
- Submit copy of requested information or representative samples;
- Copy the Requestor on the Written Comments
- Tex. Gov't Code §552.301(e) and (e-1)

Exceptions to the Act

- Tex. Gov't Code §§ 552.101 - 552.156
- Common Exceptions for Counties:
- Sec. 552.101. confidential by law, either constitutional, statutory, or by judicial decision.
- Sec. 552.102 information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy
- Sec. 552.103. Pending and Anticipated Litigation
- Sec. 552.104. information that, if released, would give advantage to a competitor or bidder. (01/01/2020)

- Sec. 552.105. the location of real or personal property for a public purpose prior to public announcement of the project;
- Sec. 552.106. draft or working paper involved in the preparation of proposed legislation
- Sec. 552.107. Certain Legal Matters – Attorney Client Communication
- Sec. 552.108. Interfere with the detection, investigation, or prosecution of crime
- Sec. 552.110. Trade Secrets (01/01/2020)
- Sec. 552.1101. Proprietary Information (01/01/2020)

- Sec. 552.111. Agency Memoranda. An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation
- Sec. 552.119. Photograph that depicts a peace officer -- the release of which would endanger the life or physical safety of the officer
- Sec. 552.131. Certain Economic Development - a trade secret of the business prospect or commercial or financial information - that disclosure would cause substantial competitive harm
- Sec. 552.140. Military Discharge Records.


Statutory provisions that allow for redaction without request for AG decision

- Employee or Official's home address, home telephone number, emergency contact information, or social security number, or that reveals whether the person has family members – in chosen to be withheld. (§552.024)
- Sec. 552.1175. Certain Personal Identifying Information of Peace Officers, County Jailers, Security Officers, Employees of Certain Criminal or Juvenile Justice Agencies or Offices and Federal and State Judges.

- Sec. 552.130. Certain Motor Vehicle Records
(driver's license number, motor vehicle title or registration or a personal identification document)
- Sec. 552.136. Credit Card, Debit Card, Charge Card and Access Device Numbers
- Sec. 552.138. Family Violence Shelter Center, Victims of Trafficking Shelter Center and Sexual Assault Program Information

Provide the Requestor Letter -- <https://texasattorneygeneral.gov/og/redacting-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
- Information about 552.108(a)(1) Previous Determinations
- List of Previous Determinations by Governmental Body
- Public Information Cost Estimate Model
- Redacting Public Information Rules and Forms**
- Open Government Resources
- eFiling
- 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 [previous determination](#) to redact information. For more information about previous determinations, please see [Open Records Decision No. 673 \(2001\)](#) and pages 35-38 of the [2014 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 Redactions](#)

Forms

The following documents are provided in MS Word.

- [Form Letter for Section 552.024 \(public employee's personal information held by governmental body in its capacity as employer\)](#)
- [\(Effective 05/18/2013\) Form Letter for Section 552.130 \(motor vehicle records\)](#)
- [Form Letter for Section 552.136 \(account and access device numbers\)](#)
- [\(Effective 06/14/2013\)Form Letter for Section 552.138 \(family violence shelter center, victims of trafficking shelter center, or sexual assault program\)](#)
- [\(Effective 09/01/2014\)Form Letter for Section 552.1175 \(public employee's personal information held by governmental body in non-employment capacity\)](#)

Previous Determination

- Must be the exact same information
- ORD 684 (2009)
 - 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

Harassing and Abusive Requests

- Unclear or Unduly Broad Requests
 - Early Communication with the Requestor
 - Permissible Inquiry to the Requestor Tex. Gov. Code
§552.222
 - Clarification or Narrowing of Request

Shall treat all requests for information uniformly without regard to the position or occupation of the requestor, the person on whose behalf the request is made, or the status of the individual as a member of the media.

Tex. Gov't Code §552.223

Clarification

- Cannot ask why they want the information or what they are going to do with the information
- Unclear – ask of clarification
- Large Amount of Requested Information – discuss how to narrow the scope
- Send Written Request for Clarification/Narrowing – withdrawn after 61st day
- Must include consequences for failure to respond

Costs Associated for Copies and Access to Requested Information

- Charges for providing copies
 - Tex. Gov't Code §552.261
 - Required Itemized Estimate of Charges
 - Tex. Gov't Code §552.2615
- Bond/Deposit for Payment of Costs for Preparation of Copies of Public Information
 - Tex. Gov't Code §552.263
- Charges for inspection of public information
 - Tex. Gov't Code §552.271

Responding to Repetitious and Redundant Requests

- The Act requires that the Governmental Entity provide, either:
 - Furnish the information or make the information available again; or
 - Certify in writing that all or part of the requested information was previously furnished or made available (description of information provided; date of original request; date furnished; no changes to information; and person providing certification.)
 - See Tex. Gov't Code §552.232

Temporary Custodian of Records

- Preservation of information by Current or former officer or employee
- Efforts to obtain information from temporary custodian (§552.203)
- Ownership of Public Information (§552.233)

Temporary Suspension of PIA

- Tex. Gov't §552.233
- Catastrophe occurs
- Must submit Notice to OAG of suspension
 - On form prescribed by OAG
- Initial Suspension – max. 7 consecutive days
- Extension – add'l 7 consecutive days
- Notice to the public of suspension
- Calculating days to respond to PIA during suspension

Add'l Provisions Related to Contracts

- §§ 552.371-552.376 (01/01/2020)
- 1 million dollar contracts
 - Strict deadlines and requirements
- Contract provisions
 - Preserve all contract information; promptly provide information and completion of contract requirements
 - Noncompliance and Termination of Contract

Sec. 552.234

Methods of Making Written Request for Public Information

- US mail
- Electronic mail
- Hand delivery
- May designate one mailing or electronic address

Sec. 552.235

Public Information Request Form

- Created by OAG

Management & Preservation of Records

Tex. Local Gov't Code Ch. 203

- Each elected county officer is the records management officer for the records of the officer's office.
- Records Management Program
- Preparation of Records Control Schedules

Tex. Gov't Code §552.012 – Open Records Training
<https://www.texasattorneygeneral.gov/og/pia-training>





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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