PUBLIC INFORMATION ACT

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

(888) 275-8224
TAC HELPLINE
Why are we here?

1. PIA
   How to deal with written requests for information about public business.

2. Records
   Records retention and disposition, and their relationship to the PIA.

3. Review
   Review sample PIA request.
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 commission's 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
Requesting an AG Ruling
Best Practices

APR. 1, 2019
The “10-Day” Rule

produce
or
notify
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
Confidentiality
Open Record Decision Requests
Do’s and Don’ts
Texas Administrative Code

Title 1
Part 3
Chapter 70.3

Costs & Charges

Texas Administrative Code

Office of the Secretary of State

Texas Administrative Code

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<thead>
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<th>Title 1</th>
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<td>Part 1</td>
<td>Office of the Attorney General</td>
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<td>Chapter 70</td>
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Rules

$70.1 Purpose
$70.2 Definitions
$70.3 Charges for Providing Copies of Public Information
$70.4 Requesting an Exemption
$70.5 Access to Information Where Copies Are Not Requested
$70.6 Format for Copies of Public Information
$70.7 Estimates and Waivers of Public Information Charges
$70.8 Processing Complaints of Overcharges
$70.9 Examples of Charges for Copies of Public Information
$70.10 The Attorney General Charge Schedule
$70.11 Informing the Public of Basic Rights and Responsibilities under the Public Information Act
$70.12 Allowable Charges Under Section 552.275 of the Texas Government Code
$70.13 Fee for Obtaining Copy of Body Worn Camera Recording
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
Records

Records retention and disposition, and their relationship to the PIA.
The Basics
What is Records Management?

- creation
- preservation
- retention
- disposition
Commissioners Court
Local Government Records
Record Destruction
Destruction Prohibitions
Discretionary Destruction

LGC §201.003(8)

- copies
- notes, journals, etc.
- blank forms
Destruction Process
Penalties
Unlawful Destruction

MISDEMEANOR
Review sample PIA request.
PIA REQUEST REVIEW

WHAT

WHEN

HOW
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?

Sometimes enormous problems have simple solutions; and this would be paper ballots.
Thank you in advance for your prompt attention to my request.

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John Q. Public
John Q. Public
123 Citizen Drive, Somewhere Texas 78700 | (512) 867-5309

APR. 1, 2018

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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.

**THE BASICS**

- The Public Information Act: Texas Government Code Chapter 552
- Don’t write anything down unless you want your family to read it in the local paper.
- Public has a right to see almost every document related to county business.
- Law applies to **ALL** public officials.
- The county’s records are public property - including those you keep at home.
- Law applies to electronic records and e-mail - including information on your personal mobile device.
- Law often referred to as: Open Records Act or Freedom of Information Act.
- Judicial records are not subject to Public Information Act, but are available to public under Rule 12 of the Texas Rules of Judicial Administration.

**RIGHTS OF THE PUBLIC**

- 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.
- Requestor is not required to use magic words.
- Public may not have a right to access certain documents that are confidential under the Act or other law.
- Requestor does not have a right to rummage through your files or disrupt county business.
- Requestor may have a right to bring in their own copy machine or scanner.

**SUPER-PUBLIC INFORMATION**

Certain categories of information are considered “super public” and must be disclosed (552.022, 552.0221, 552.0225).

For example:

- Final audit and investigation reports
- Name and salary of public employees
- Billing information
- Investment information
- Rules and procedures
- Settlement information

**REQUESTING AN AG RULING**

- Best practice is to consult your county attorney and have him or her write the Attorney General (AG).
- Collect all documents ASAP and identify both the specific information that may be confidential and the exception to the Act.
- Be sure to comply with deadlines or you may be required to disclose information.
- If county requests the AG’s permission to withhold information it will be under two types of exceptions:
  - Permissive (can release if wants to)
  - Mandatory (must withhold)
- If AG rules for county, requestor can sue county to require disclosure.
- If AG rules against county, county can sue AG in state district court to overturn AG ruling.
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

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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<thead>
<tr>
<th>PENALTIES</th>
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<td>• Refusing to produce a public record:</td>
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<td>• Unlawful disclosure of confidential information:</td>
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<td>• Destroying, altering or concealing public record:</td>
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<tr>
<td></td>
<td>Fine up to $1,000</td>
<td>Jail up to 6 months</td>
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<tr>
<td></td>
<td>Both fine and jail</td>
<td>Official misconduct (automatic removal)</td>
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<tr>
<td>Fine – $25 minimum to $4,000 maximum</td>
<td>Jail – 3 days minimum to 3 months maximum</td>
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NOTES

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THE BASICS

- Elected county officers are required to develop policies and procedures for the administration of an active and continuing records management program. Local Gov’t Code 203.002
- Commissioners court required to designate an individual or office to be the records manager for the county. Local Gov’t Code 203.025

WHAT IS RECORDS MANAGEMENT?

- The application of management techniques to the creation, retention, preservation and disposition of records
- Goals are to reduce costs and improve efficiency of record-keeping.

RECORDS MANAGEMENT OFFICER

Each elected county official is records management officer for his or her office.

Duties of records management officer are to:

- Prepare requests to destroy records
- Inventory and preserve essential records of office
- Inventory and preserve records of permanent value
- Comply with records management statute, policies and procedures
- Send records schedules to Texas State Library and Archives Commission (TSLAC)
- Cooperate with TSLAC

COMMISSIONER COURT

Duties of commissioners court are to:

- Promote and support management of records
- Facilitate development of records documenting the essential functions of each elective office
- Facilitate preservation of permanent and essential records
- Establish county clerk records management and preservation fund for fees under Local Government Code §118.0216
- Records management and preservation services after document filed and recorded in clerk’s office
- Commissioners court must approve in advance any expenditures from this fund
- Establish records management and preservation fund for records management fees collected under other statutes (LGC 118.052; 118.0546; 118.0645; Gov’t Code 51.317; Code of Crim. Pro. 102.005(d))
- Approve expenditure in advance, only for preservation or automation

LOCAL GOVERNMENT RECORDS

- Local government records are any information created or received by the county or created by the county pursuant to law, or in the transaction of public business.

- The term “records” does not include:
  - Extra identical copies of documents created for convenience, reference or research by county officials or employees
  - Personal notes, journals (but PIA could apply)

- A record is public property.
- An officer does not have personal right to any record.
- All records are to be delivered to your successor at the expiration of your term.

RECORD DESTRUCTION

You may destroy records if:

- Records listed on records control schedule filed with Texas State Library and Archives Commission AND either the retention period has expired or record has been microfilmed or stored electronically.
• Record appears on list of obsolete records approved by State Library
• Destruction of record approved by State Library
You may destroy records without meeting previous requirements if:
• Expunction ordered by a court
• State Library rules say the records are exempt from scheduling or filing requirements

DESTRUCTION PROHIBITIONS

Cannot destroy records if:
• Records relate to a matter known to be in litigation
• Records might be responsive to a pending Public Information Act request, until the request is resolved

DISCRETIONARY DESTRUCTION

Material can be destroyed at the discretion of the custodian or creator if it is not a local government record and it is described by Local Government Code 201.003(8)(A), (B), or (C):
• Extra identical copies created for convenience, reference or research
• Notes, journals, diaries, and similar documents created for personal convenience
• Blank forms

DESTRUCTION PROCESS

Most records can be destroyed by:
• Burning
• Shredding
• Pulping
• Burial in landfill
• Sale or donation for recycling
Records that are confidential under the PIA must be destroyed by:
• Burning
• Shredding
• Pulping

PENALTY

• Destroying records without following statute and procedures is a Class A misdemeanor if done knowingly or intentionally.
• Punishment is fine up to $4000, jail up to 1 year, or both jail and fine.

TRAINING & RESOURCES

• Attorney General’s Office has required training and basic information online at texasattorneygeneral.gov
• AG’s office has online handbooks on both the Public Information Act and the Open Meetings Act.
• TAC Legal also has print and online handbooks on both the Public Information Act and the Open Meetings Act.

HOW TO FIND HELP

• TAC Legal: 888-ASK-TAC4 (275-8224)
• TAC Website: county.org
• Texas AG’s Open Government Helpline: 877-OPEN-TEX (673-6839)
• AG’s Public Information Act Cost Hotline: 888-OR-COSTS (672-6787)
• AG’s Website: texasattorneygeneral.gov
• Texas State Library and Archives Commission: (512) 463-7610
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