

# Basics of the Public Information Act

Bill Longley

TML Legal Counsel



# What is public information?

- “Public information” means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by or for a governmental body.
- What about personal e-mails or texts?

# What is a public information request?

- Must be in writing to trigger PIA
- Must ask for information in existence as of the date of the request
- No “magic words” required
- Can be typed or handwritten
- Cannot require use of a specific form to submit request



# What must you do when you receive a request?

- As a general rule, a governmental body must:
  - Promptly produce information for inspection, duplication, or both; or
  - Ask for a decision from the attorney general about whether the information is excepted from disclosure
- Exceptions: previous determinations and statutory authority

## How much time do you have to request an AG opinion?

- If you wish to withhold information from the requestor, you must request a decision not later than the 10<sup>th</sup> business day after receiving the request
  - Must also notify requestor that city is seeking an opinion
- Also a 15-day deadline
  - Must submit all documentation by this deadline

# What if the request is unclear?

- Cannot ask the requestor why he/she wants the information
- Can ask requestor to clarify request and/or discuss how scope of request might be narrowed
- Supreme Court case in 2010 – 10 day deadline starts anew upon receiving clarified request

# Consequences for missing deadlines

- Mandatory exceptions are not waived
  - Exceptions to disclosure that protect individual privacy interests
  - Information that is confidential by law
- Permissive exceptions are waived
  - Also called discretionary exceptions
  - Exceptions to disclosure that protect city's interests

# Key exceptions to disclosure

- 552.101 – Information confidential by law
- 552.103 – Information related to litigation
- 552.104 – Information related to bidding
- 552.107 – Attorney/client privilege
- 552.108 – Law enforcement exception
- 552.117 – Personal information (if employee elects to keep confidential)



# Open Records Decision 684

- Previous determination issued in 2009
- Allows governmental bodies to withhold various types of information without requesting opinion, including:
  - Direct deposit forms
  - Certified agenda or tape of executive session
  - Motor vehicle information
  - Access device numbers
  - E-mail addresses

# Does a councilmember or mayor have access to city records?

- Yes, if requesting them in official capacity
- Not considered a release to the public, PIA does not apply
- But, keep in mind criminal penalties

# Civil Enforcement

- Government Code Sec. 552.321 – Suit for Writ of Mandamus
- Government Code Sec. 552.3215 – Declaratory Judgment
- Government Code Sec. 552.324 – Suit by Governmental Body

# Criminal Violations

- Government Code Sec. 552.351 – Destruction, Removal, or Alteration of Public Information
- Government Code Sec. 552.352 – Distribution or Misuse of Confidential Information
- Government Code Sec. 552.353 – Failure or refusal of officer for public information to provide access to or copying of public information