

## The Basics of the Public Information Act

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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.***



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## What is public information?

### • 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.



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## 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 tape
- Photographs
- Maps
- Drawings

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

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## 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**

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## 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

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## E-mails and Faxes



Gov't Code § 552.301(c)

- A governmental body may designate a person who is authorized to receive requests by e-mail or fax.
- If the governmental body 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 governmental body.

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## What must 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 attorney general (OAG) about whether the information is excepted from disclosure, unless there has been a previous determination that the information is excepted.

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## Timetable for Producing 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.**

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### How much time do you have to request an opinion 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."

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### 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 precise 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 specific, clearly delineated category of information or records
  - ORD 684 - 2009

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### Counting Business Days



General Rules for Counting Business Days

- Start counting the next business day after receiving a written request.
- "Received" = 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 governmental body is closed do not count, but make sure you notify the OAG of such days in writing if you are requesting a decision.

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### What if the request is unclear or unduly broad?



Gov't Code § 552.222

- **Cannot ask** requestor why he/she wants the information.
- Can ask requestor to clarify request and/or discuss with requestor how scope of request might be narrowed.
- 10 business days **used to be** tolled during the interval in which governmental body and requestor are communicating in **good faith**. As of 2010, the 10 day period to request an opinion would start anew upon receiving a clarified request. *City of Dallas v. Abbott*.

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### Procedures for Requesting a Ruling from the Attorney General



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 third parties with proprietary interests in the requested information that they may submit written comments to the OAG stating why the information should be withheld (third party notice must be in the form prescribed by the OAG).

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### Procedures for Requesting a Ruling from the Attorney General



Gov't Code § 552.301(e)

- 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 governmental body or evidence sufficient to establish that date;
  - 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; and
  - Label that copy of the specific information, or representative samples, to indicate which exceptions apply to which parts of the copy.
- You must also send a copy of your written comments to the requestor.

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## Consequences for Missing Deadlines



- Mandatory exceptions are not waived.
- Permissive exceptions are waived.
- See pages 40-43 of your 2008 Public Information Act Handbook for a discussion of mandatory and permissive exceptions.
- 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.

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## Exceptions to Disclosure



### Common Exceptions

- 552.101 Information Confidential by Law
- 552.102 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 Trade Secrets, Commercial or Financial Information
- 552.111 Agency Memoranda (Attorney Work Product)
- 552.116 Audit Working Papers
- 552.117 Certain Addresses, Telephone Numbers, Social Security Numbers, and Personal Family Information – **Changes made last session under S.B. 1068.**
- 552.130 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

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## Civil Enforcement



- Gov't Code § 552.321 - Suit for Writ of Mandamus
- Gov't Code § 552.3215 - Declaratory Judgment or Injunctive Relief
- Gov't Code § 552.324 - Suit by Governmental Body

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### Criminal Violations



- Gov't Code § 552.351 - Destruction, Removal, or Alteration of Public Information
- Gov't Code § 552.352 - Distribution or Misuse of Confidential Information
- Gov't Code § 552.353 - Failure or Refusal of Officer for Public Information to Provide Access to or Copying of Public Information

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### Resources



- OAG's Open Government Hotline
  - (877) OPEN-TEX
- Cost Questions
  - Hadassah Schloss, OAG Cost Rules Administrator
  - (512) 475-2497
- TML
  - (512) 231-7400

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