

# Public Information Act

Riley Fletcher Basic Municipal Law Seminar  
Austin, Texas  
February 20-21, 2014  
Presented by Christy Drake-Adams

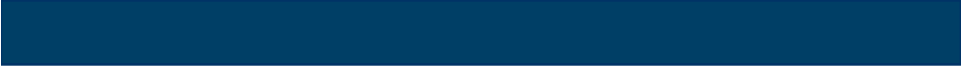


the basic **process** of  
responding to a  
request

and

the **scope** of the PIA  
(aka: Open  
Records Act)





# The Request



- Must be written (typed or handwritten)
- Must ask for information in existence as of the date the request was received
- No “magic words” are required
- Must be from a person
- City may provide, but can’t require use of, a specific form to submit a request



Example  
(not a model)

**City of Emerald  
INFORMATION REQUEST FORM**

All requests must be in writing and directed to the City Manager, 321 N. Yellow Brick Road, Emerald, Texas, 79666. Fax: (800) 987-6343. Email: wizzard@ci.emerald.tx.us  
(please type or print)

Requestor's Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Detailed Description of Information Sought:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Check one) (a)  I request paper copies  
 (b)  I request digital copies on diskette (when available)  
 (c)  I request only to view at City Hall  
 (d)  Other (please explain in detail)  
 \_\_\_\_\_  
 \_\_\_\_\_

*For completion by City only*

Date Received: \_\_\_\_\_ ID# \_\_\_\_\_

Disposition: (a) \_\_\_\_\_ provided the following information for viewing: \_\_\_\_\_  
 \$ \_\_\_\_\_ (fees assessed) \_\_\_\_\_ (date)  
 (b) \_\_\_\_\_ provided copies of the following information: \_\_\_\_\_  
 \$ \_\_\_\_\_ (fees assessed) \_\_\_\_\_ (date)  
 (c) \_\_\_\_\_ sent to Attorney on \_\_\_\_\_ (date)  
 (d) \_\_\_\_\_ AG Opinion requested on \_\_\_\_\_ (date)  
 (e) \_\_\_\_\_ AG Opinion \_\_\_\_\_ (number) received on \_\_\_\_\_ (date)

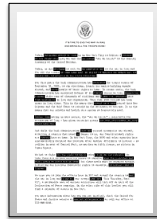
Notes: \_\_\_\_\_

City Official Assigned: \_\_\_\_\_ (signature)



## The Response

- May not inquire into the requestor's reasons or motives for requesting the information
- Must treat all requests uniformly
- Four most common ways to respond to a request:



## Response 1



Promptly produce information for inspection, duplication, or both

“Promptly” = as soon as possible under the circumstances, within a reasonable time, without delay



## Response 2



Write a letter to the attorney general asking for a ruling as to whether all, or part, of the information is excepted from disclosure

- Must request the ruling from the attorney general no later than **10 business days** after receiving the request; and
- Must submit the responsive information, or representative samples, along with arguments as to why the information may be withheld (and certain other information) no later than **15 business days** after receiving the request



## What will the letter to the attorney general say?

That the information requested does not have to be released because it falls within one of the statutory exceptions to disclosure. Examples of exceptions to disclosure include:

- 552.101 – Information confidential by law
- 552.103 – Information related to litigation
- 552.104 – Information related to bidding
- 552.107 – Attorney/client privileged information



## What if you miss the deadlines?

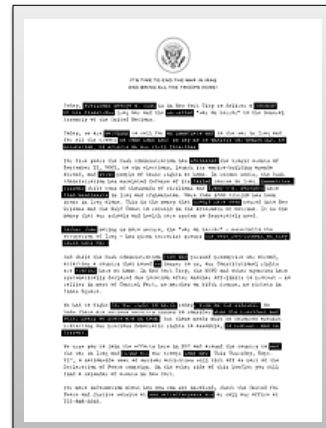
- Mandatory exceptions are not waived
  - Information that is confidential by law or implicates third party interests
- Permissive (discretionary) exceptions are waived
  - Exceptions that protect the governmental body's interests



## Response 3

Withhold all, or part, of the information by:

- Relying on a previous determination by the attorney general
- Relying on statutory authority to withhold the information without getting an attorney general ruling



## Response 4



- Ask the requestor to clarify a vague or broad request
- If the requestor does not respond in writing to a written request for clarification or additional information within 61 days, the request is considered withdrawn
- 2010 Texas Supreme Court case – 10 day deadline starts anew upon receiving clarified request



**What about a request from a councilmember?**



Austin

American-Statesman FEB 07 2014

**UT board approves new policy for regents' information requests**

By Ralph K.M. Haurwitz

The University of Texas System's governing board adopted tighter procedures Thursday for its members' information requests, while also granting the members wide latitude to obtain records and data.

The action was a response to complaints about Regent Wallace Hall Jr.'s demands for massive amounts of records from UT-Austin. Campus officials say they have turned over about 800,000 pages, though system officials say the number is far smaller, perhaps fewer than 100,000.

Hall's activities are under investigation by a state House panel, which could recommend impeachment or some other censure. His critics say he is on a witch hunt to oust UT-Austin President Bill Powers, but supporters say he has raised questions about campuses' compliance with open-records laws and about possible undue influence by legislators in admissions at the Austin flagship.

Under the new rules adopted by the Board of Regents, requests by a regent must be submitted to the system's chancellor, who will review those seeking "significant quantities" of information with the board's chairman. Within 72 hours of receiving a request, the chancellor's office must give the regent an estimated date for producing the material.

The new rules apparently would not bar massive requests like Hall's because of a clause that says a regent cannot be stymied in obtaining information that the regent "deems is necessary to fulfill his or her official duties and responsibilities."

The regents withheld action on a proposed rule that would have "strongly encouraged" them to use UT System email accounts rather than the private accounts they currently use.

Board Chairman Paul Foster told the Statesman that regents want to learn how other universities and state agencies handle email.

"We really felt like we hadn't vetted it properly, and so we'll bring it forward at the next meeting," Foster said. "And I'm relatively sure the board will pass it."

In other action Thursday, the regents:

— Tweaked the source of funds for construction of the first phase of UT-Austin's Dell Medical School, which includes an education and administration building, a research building, a medical office building and a parking garage. The source for the \$334.5 million price tag had previously been listed as bond proceeds. Now, \$250,000 of that sum will come from the UT System's endowment and \$250,000 will come from operation of the Erwin Center.

— Granted preliminary approval for a \$20 million office building at UT-Austin's Texas Advanced Computing Center at the J.J. Pickle Research Campus in North Austin. Half of the money will come from bond proceeds and half from donations.

— Approved UT-Austin employment agreements for men's athletics director Steve Patterson, head football coach Charlie Strong and several assistant coaches. Patterson's annual base salary is \$1.4 million; Strong's, \$5 million, with raises of \$100,000 a year; and the assistants as much as \$760,000.



## The scope of the PIA (Gov't Code § 552.002)

(a) In this chapter, "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:

(1) by a governmental body;

(2) for a governmental body and the governmental body;

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body .

(a-1) Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

(a-2) The definition of "public information" provided by Subsection (a) applies to and includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.

(b) The media on which public information is recorded include:

(1) paper;

(2) film;

(3) a magnetic, optical, solid state, or other device that can store an electronic signal;

(4) tape;

(5) Mylar; and

(6) any physical material on which information may be recorded, including linen, silk, and vellum.

(c) The general forms in which the media containing public information exist include a book, paper, letter, document, e-mail, Internet posting, text message, instant message, other electronic communication, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory.



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## Civil and Criminal Penalties

The PIA provides for:

- a suit for a writ of mandamus to compel a governmental body to release requested information
- a suit for declaratory judgment or injunctive relief brought by the attorney general or a local prosecutor against a governmental body that violates the PIA
- criminal penalties for both the release of information that must not be disclosed and the withholding of information that must be released
- criminal penalties for the destruction, alteration or concealment of public records



## Other Resources?

<http://www.tml.org/public-information-act>

**attorney general's open government hotline**

(512) 478-OPEN (6736)  
(877) OPEN-TEX (673-6839).

staff answer questions about the Public Information Act

**attorney general's open government cost hotline**

(512) 475-2497  
(888) OR-COSTS (672-6787)

staff answer questions about charges relating to the Public Information Act

[https://www.oag.state.tx.us/AG\\_Publications/pdfs/publicinfo\\_hb.pdf](https://www.oag.state.tx.us/AG_Publications/pdfs/publicinfo_hb.pdf)

