

Public Information Act

Riley Fletcher Basic Municipal Law Seminar

Austin, Texas

February 11-12, 2016

Presented by Christy Drake-Adams



We're going to talk about:

the **scope** of the Public Information Act (Open Records Act)

a **request** for information from the public

responding to a request for information

penalties

a request for information from a **councilmember**



The 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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The Request



- Must be written (typed or handwritten)
- If sent by email or fax, must be sent to person designated by the city council to receive such requests (assuming the city council has made such a designation)
- Must ask for information in existence as of the date the request was received
- No “magic words” are required
- City may provide, but can’t require use of, a specific form to submit a request



CITY OF DENTON, TEXAS
REQUEST FOR PUBLIC INFORMATION

215 E. McKinney Street
Denton, TX 76201

Fax: 940/349-8596

Email: citysecretary@cityofdenton.com

RPI# _____

Example
(not a model)

I, the undersigned, hereby request the custodian of the following described public records of the City of Denton, Texas, to promptly produce said records for inspection and/or duplication. I understand there may be charges assessed for duplication or access to such records and the City of Denton may require prepayment prior to preparation of the requested copies of such record.

PLEASE PRINT ALL INFORMATION

NAME:		DATE:
ADDRESS:		
CITY:	STATE:	ZIP:
PHONE:	EMAIL ADDRESS:	

PLEASE LIST ALL DOCUMENTS THAT YOU ARE REQUESTING

Be specific regarding dates, time period, name(s), and places. Be sure to request documents; NOT ask questions.

CHECK ONE:

- | | |
|---|--|
| <input type="checkbox"/> Pick up the documents at City Hall. | <input type="checkbox"/> Mail the documents. |
| <input type="checkbox"/> E-mail the documents. | <input type="checkbox"/> Put documents on CD. |
| <input type="checkbox"/> I request only to view the documents at City Hall. | <input type="checkbox"/> Other (Please explain in detail.) |

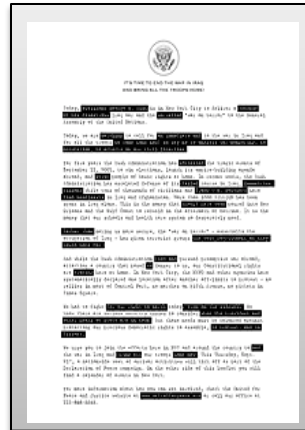
In making this request, I understand that the City is under no obligation to create a document to satisfy my request or to comply with a standing/ongoing request for information. I further understand that copies of the information will be released only in accordance with the Act, and the City reserves its right to seek an opinion from the Texas Attorney General with regard to the release of said information. If an Attorney General's opinion is sought by the City, you will be notified in writing.

Signature of Requestor: _____



The Response

- May not inquire into the requestor's reasons or motives for requesting the information
- Must treat all requests uniformly
- Four 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



10-Day Letter

July 17, 2015

Example
(not a model)

Mr. Justin Gordon
Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Re: Public Information Request No. 15-123

Dear Mr. Gordon:

On July 1, 2015, the City of Pawnee (the "city") received a written request for information from Shauna Malwae-Tweep with the Pawnee Journal. Copies of the request and the requestor's subsequent clarification are attached as Exhibit A. Please note the city's offices were closed on July 3, 2015, in observance of Independence Day, and on July 14, 2015, due to inclement weather.

The city will release some of the responsive information. However, the city asserts the remaining information responsive to this request is excepted from disclosure under the Public Information Act, Chapter 552, Government Code. The city raises section 552.103 of the Government Code.

Pursuant to section 552.301(a) of the Government Code, this letter is submitted in order to seek a decision as to whether this exception applies. We have copied the requestor as a recipient of this letter pursuant to sections 552.301(d). To assist in your review, the city will provide a brief of written comments and a copy of the remaining responsive information, or a representative sample, not later than the 15th business day from the date the request was received.

Should you need additional information, please feel free to contact me at 555-555-5555.

Sincerely,

Sean Nottingham
Public Information Coordinator
City of Pawnee

cc: Requestor (w/ enclosures)



15-Day Letter

Example
(not a model)

July 24, 2015

Mr. Justin Gordon
Open Records Division
Office of the Attorney General
P. O. Box 12548
Austin, TX 78711-2548

Re: Public Information Request No. 15-123

Dear Mr. Gordon:

On July 1, 2015, the City of Pawnee (the "city") received a public information request under the Texas Public Information Act (the "PIA"), Chapter 552, Government Code, from Shauna Malwae-Tweep with the Pawnee Journal. Copies of the request and the requestor's subsequent clarification are attached as Exhibit A. Please note the city's offices were closed on July 3, 2015, in observance of Independence Day, and on July 14, 2015, due to inclement weather.

The city has released some responsive information to the requestor. However, the city asserts the remaining information responsive to the request is excepted from required disclosure. Pursuant to section 552.301(a) of the Government Code, this brief is submitted to seek a decision as to whether section 552.103 of the Government Code applies to the remaining responsive information. We have copied the requestor as a recipient of this brief pursuant to section 552.301(e-1) of the Government Code. We have attached the remaining responsive information as Exhibit B.

[insert 552.103 argument]

The city respectfully requests a decision from the Open Records Division regarding the applicability of the argued exceptions as provided by the PIA.

Please do not hesitate to contact me at 555-555-5555 if you have questions or require additional information.

Sincerely,

Sean Nottingham
Public Information Coordinator
City of Pawnee

cc: Requestor



<https://www.texasattorneygeneral.gov/og/efiling>

eFiling

Electronic filing is now available! Visit the [Public Information Act Electronic Filing System](#) to start eFiling TODAY!

The Office of the Attorney General's (OAG) Open Records Division is now authorized to accept electronic submissions as part of the open records decision process.

Effective January 3, 2012, the Open Records Division of the OAG no longer accepts electronic submissions via fax or email. Pursuant to sections 552.308 and 552.309 of the Government Code, the following methods are the only means of timely submitting a request for decision, a notice or other documents to the Open Records Division of the OAG:

- First Class United States Mail
- Common or contract carrier
- Interagency Mail
- Hand delivery during normal business hours
- Electronic submission through the OAG's designated Electronic Filing System

There is a \$25 nonrefundable administrative convenience fee, plus an additional \$5 fee imposed by [Texas.gov](#) for electronic submissions through the OAG's Electronic Filing System. Should you choose not to use this optional system, you may still submit your documents to the OAG through the other methods listed above.

Governmental bodies may wish to inform interested parties, such as private entities submitting arguments to the OAG under section 552.305(d), of the availability of this electronic submission option.

Rules

- [Texas Administrative Code, Title 1, Chapter 63, Public Information Subchapter C, Electronic Submission of Request for Attorney General Open Records Decision](#)



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

<https://texasattorneygeneral.gov/og/open-government#tips>

Practical Tips on Writing Effective Briefs to the Open Records Division

1. The [Public Information Handbook](#) published by this office is your primary resource in writing effective briefs to the Open Records Division.
2. Follow the standards set forth in the Handbook to meet the requirements of your claimed exceptions. For example, if claiming exception under section 552.103 (the "litigation exception"), you must explain how the litigation is either pending or reasonably anticipated AND how the documents at issue relate to the pending or anticipated litigation.
3. Be sure to explain everything in your briefing. Assume your audience knows absolutely nothing about the situation at hand. If it is not abundantly clear, accurately and adequately describe the submitted documents. For example, how are these documents responsive to the instant request for information? Who are the parties described in the documents? What is their relationship to the governmental body? If you are claiming that any of the documents are privileged under either the attorney-client or work product privileges, explain whether or not any of the parties are attorneys for the governmental body.
4. Please DO NOT redact the documents that you are submitting for review. If we can't read them, we can't rule on them.
5. Please provide adequate background information on the documents submitted. If not clear, tell us how the submitted documents are responsive to the request for information. How are they related to the pending investigation, litigation, etc... ? What, if anything, has already been released to the requestor? If not clear, what is your governmental body's function? For example, if you have a law enforcement capacity, please tell us.
6. Proofread all correspondence! Have someone else in your office re-read your submission for minor clerical or typographical errors. Make sure you have typed the correct section number for your claimed exceptions (552.103 vs. 552.130). Also check for incorrectly-typed names, dates, and spelling errors.
7. Mark all submissions clearly, carefully, and consistently. Make sure the exhibit numbers on the documents match up with the exhibit numbers in the brief. Reference previous correspondence with our office on all future, related correspondence.
8. Be sure to comply with the deadlines required under sections 552.301 and 552.305 of the Government Code. Failure to do so can result in a waiver of claimed exceptions.



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



Open Records Division

ORDs: Overruled, Modified, Affirmed, Withdrawn

Open Records Questions (ORQs)

Open Records Memorandum Rulings

List of Previous Determinations by Governmental Body

Public Information Cost Estimate Model

Redacting Public Information Rules and Forms

Amendments to the Public Information Act: 2013 Texas Legislative Session

Open Government Resources

Open Government Conferences

eFiling

FAQ Open Government Training

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 \(public employee's personal information held by governmental body in non-employment capacity\)](#)



Response 4



- Ask the requestor to clarify or narrow 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 (the written request for clarification must tell the requestor the consequences of failure to respond)
- 10-day deadline measured from the date the request is clarified or narrowed - *City of Dallas v. Abbott*, 304 SW3d 380 (2010)



<https://texasattorneygeneral.gov/og/charges-for-public-information>

Charges for Public Information

The Open Records Section of the Office of the Attorney General (OAG) discharges the mandates set out in [Government Code, Chapter 552](#), Subchapter A, Section 552.009; Subchapter D, Section 552.205; and Subchapter F, Sections 552.261 through 552.274.

The OAG Cost Rules Administration administers the rules promulgated by the Attorney General to determine charges and methods for charging for copies of public information, complaints from requestors regarding overcharges for copies of public information, and requests from governmental bodies for exemption from the rules or part of the rules.

Additionally, the section provides advice to governmental bodies and requestors regarding the charges and their applicability.

Contact the Open Records Division regarding cost rules:

Postal Mail:

Education and Enforcement Section
Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Toll-Free Cost Hotline: 888/672-6787 (888/ORCOSTS)

Local Cost Hotline: 512/475-2497

Fax: 512/481-1992

Need More Information?

- [Charges for Public Information](#)
- [Cost Rules](#) (Secretary of State's website)
- [Agency Open Records Reports](#) Login page



<https://www.texasattorneygeneral.gov/og/public-information-cost-estimate-model>

Public Information Cost Estimate Model

This model will calculate costs associated with a request for **COPIES** of information, but not a request to **INSPECT** information. For questions about estimating costs when a requestor asks to **INSPECT** information, please call our toll-free Cost Hotline at 1-888-OR COSTS (1-888-672-6787).

Date request was received:

Government Body's Information	Requestor's Information
Agency Name: <input type="text"/>	OMr. OMs. <input type="text"/>
Contact Name: <input type="text"/>	First/Last Name: <input type="text"/>
Address: <input type="text"/>	Address: <input type="text"/>
City: <input type="text"/>	City: <input type="text"/>
State/Zip: <input type="text"/>	State/Zip: <input type="text"/>

Itemization of costs:

- Did the requestor ask for standard paper copies? Yes | No
- Did the requestor ask for copies of nonstandard documents (e.g., oversized paper, DVD, or VHS tape)? Yes | No
- Add labor costs? Yes | No
- Are overhead charges applicable? Yes | No
- Are computer resource charges applicable? Yes | No
- Are remote document retrieval charges applicable? Yes | No
- Will there be charges for miscellaneous supplies? Yes | No
- Will there be postage? Yes | No
- If the total charges exceed \$100, will you require a prepayment deposit? Yes | No
- OR
- If the total charges exceed \$100, will you require a prepayment bond? Yes | No



Civil and Criminal Penalties

The PIA provides for:

- a suit for a writ of mandamus brought by requestor or attorney general 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 removal of public records



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

Councilmember Request for Information

Tex. Op. Att'y Gen. No. JM-0119 (1983):

Members of a governmental body have an inherent right of access to records that they seek in their official capacity



Examples of city open records rulings:

OR2013-20531 (Nov. 25, 2013)

“There is no indication the requestor is requesting the information in her official capacity as a city council member. Therefore, we find the requestor is making the present request in her personal capacity as a member of the public.”

OR2014-19835 (Nov. 3, 2014)

“The internal procedures of the city for releasing information to city officials govern whether a city commissioner, acting in his official capacity, may access information held by the city. This office cannot resolve an internal dispute about document-management policy that may exist within the city.”



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.



Tex. Att’y Gen. Op. No. KP-0021 (2015)

Unless a state or federal law requires otherwise, a court would likely conclude that the Board of Regents of the University of Texas System may not prohibit an individual regent from obtaining access to records in the possession of the University that are necessary to fulfill his duties as a regent.

A court would likely conclude that the Family Educational Rights and Privacy Act does not allow a university to withhold student records from state or local education officials that are necessary in connection with an audit and evaluation of a state supported education program.



DID NOT PASS

S.B. 336 (V. Taylor) – Public Information: would, among other things:

- (1) provide that a **municipal officer has a right of access to public information** of the city;
- (2) provide that a municipal governmental body on request by a municipal officer who oversees the **governmental body shall provide public information, including confidential information or information otherwise excepted from disclosure**, to the municipal officer in accordance with the Public Information Act;
- (3) authorize a municipal governmental body to require a requesting municipal officer or the employees of the requesting municipal officer who will view or handle information that is confidential or otherwise excepted from disclosure to sign a **confidentiality agreement**
- (4) allow an individual required to sign a confidentiality agreement as described in (4), above, to seek a **decision from the attorney general about whether the information is actually confidential or excepted from disclosure**, and void any such agreement that is determined by the attorney general to cover information that is not confidential or otherwise excepted from disclosure



HB 628 - 83rd Legislature (2013)

Codified at Section 11.1512, Texas Education Code

- Establishes a **school board member's** inherent right of access to information maintained by the district when the board member is acting in an official capacity.
- Board member does not need to submit a public information request in order to obtain such information.
- Information does not need to be the subject of an upcoming meeting.
- “The district may withhold or redact information, a document, or a record requested by a member of the board to the extent that the item is excepted from disclosure or is confidential under Chapter 552, Government Code, or other law. This subsection does not require the district to provide information, documents, and records that are not subject to disclosure under the Family Educational Rights and Privacy Act of 1974.”



Other Resources?

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



The screenshot shows the TML Texas Municipal League website. The header includes the TML logo and a search bar. The navigation menu lists: Home, Annual Conference, Member Log In, Career Center, Directories, Connect News, and Contact Us. The main content area is titled "Public Information Act" and is divided into three sections: "Articles/Memos", "Papers", and "Helpful Links".

- Articles/Memos**
 - Texas Public Information Act At-a-Glance
 - Social Media Sites and Open Government
 - Social Networking and Cities
- Papers**
 - Email Issues for City Officials
 - Public Information Act: Protecting Critical Infrastructure
 - PIA (powerpoint presentation)
- Helpful Links**
 - Texas Association of Municipal Information Officers
 - Attorney General Open Government Publications: The attorney general's office provides outstanding publications regarding open meetings and public information, including:
 - Public Information Act Handbook
 - Public Information Act Made Easy
 - Open Meetings Act Handbook
 - Open Meetings Act Made Easy

attorney general's open government hotline

(512) 478-6736

(877) 673-6839

staff answer questions about the Public Information Act

attorney general's open government cost hotline

(512) 475-2497

(888) 672-6787

staff answer questions about charges relating to the Public Information Act

<https://texasattorneygeneral.gov/og/open-government-related-publications>

