

Texas Public Information Act

A 30-minute race to transparency!





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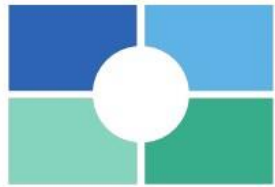
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Of Counsel:

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Texas Public Information Act

- “Public information”
 - Info that is written, produced, collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business:
 - By a governmental body,
 - For a governmental body and the body
 - owns the info
 - has a right of access to the info, or
 - Spends money for the purpose of writing, producing, collecting...
- OR (again)**



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- “Public information”
 - By an officer or employee of a governmental body in his/her official capacity and info pertains to official business.
 - Applies to information recorded in any form
- Only written requests trigger the TPIA
- Cannot ask requestor why they are seeking information
 - Can ask requestor only to clarify or narrow the request





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You are all Temporary Custodians!

- 86th Legislative Session - SB 944: Temporary Custodian
 - Adkisson v. Paxton 459 S.W.3d 761 (Tex. App.-Austin 2015)
 - City of El Paso v. Abbot, 444 S.W.3d315 (Tex. App.-Austin 2014)
- Temporary Custodian is any current or former public official or employee (holding public information)
- Requires PIO to take effort to acquire information to respond to request
- Places 10 calendar day duty to provide info subject to statutory penalty (discipline, civil and criminal)
- Starts 10 calendar day administrative processing on day info returned to governmental body



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Sec. 552.235. PUBLIC INFORMATION REQUEST FORM.

(a) The attorney general shall create a public information request form that provides a requestor the option of excluding from a request information that the governmental body determines is:

(1) confidential; or

(2) subject to an exception to disclosure that the governmental body would assert if the information were subject to the request.

(b) A governmental body that allows requestors to use the form described by Subsection (a) and maintains an Internet website shall post the form on its website.



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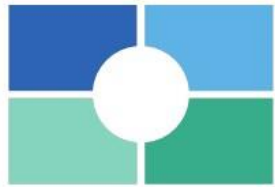
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Deadlines

- Must provide information to requestor promptly
 - Within 10 days of receipt of request, must EITHER:
 - Provide requested information,
 - Inform the requestor information is being gathered and will be available by a specific date, OR
 - Request an open records decision from AG and provide requestor with a copy of the request to AG
 - If a decision from AG is requested:
 - Within 15 days of receipt of request, must submit to AG written comments stating the reasons information should be withheld
 - Include copy of request and copies of the requested records (or representative samples, if voluminous)



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Key Considerations

- Is the requested info “public information”?
- Does the city (current/former employees/officials) have the requested info?
- Is info responsive to request?
- Is the info “core public information”?
- Is the info confidential?
- Does requestor have a special right of access?
- Does an exception to disclosure apply?
 - Do you want to apply the exception?



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Core Public Information

- Information that is ALWAYS PUBLIC unless confidential under the TPIA or another law
- Examples:
 - Completed report, audit, evaluation, investigation made of, for, or by a governmental body
 - Name, sex, ethnicity, salary, title, dates of employment for government employees
 - Information in an account, voucher, or contract relating to receipt or expenditure of public funds



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Confidentiality and Notable Exceptions to Disclosure

- Info considered confidential under another law
- Certain confidential info in a personnel file
- Info relating to litigation or settlement negotiations
- Attorney/client privileged communications
- Info held by law enforcement/prosecutor dealing with detection, investigation, prosecution of crime if release would interfere with pending investigation or prosecution



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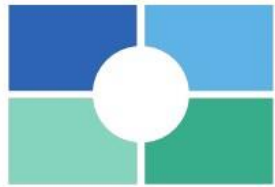
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Confidentiality and Notable Exceptions to Disclosure

- Certain motor vehicle information
- DL info and numbers
- License plate numbers
- VIN
- Credit card numbers, bank account numbers, etc.
- Certain e-mail address of members of the public that were provided for communication with government



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Confidential Personal Info of Peace Officers

- Section 552.1175, Gov't Code, provides a special procedure for peace officers to prevent disclosure of personal info.
- Peace officers must provide to PD/City written notice of each officer's choice to restrict info
 - PD/City should provide form allowing officers to choose which pieces of info to restrict access to:
 - Home address
 - Home phone number
 - Emergency contact info
 - Date of birth
 - Social security number
 - Info regarding whether individual has family members



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Special Right of Access

- A person (or their authorized representative) has special right of access to info protected by a law intended to protect that person's privacy
- Government cannot withhold that info from person UNLESS it can/must be withheld under other provisions of the TPIA



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Transparency is complicated and it matters

- Transparency is a financial obligation on the government
 - Embrace it
 - Find strategies and tactics to make it as easy to comply as possible
 - Seek informal reconsideration if a bad ruling comes your way
 - Consider strategic use of appeal process
 - Challenge legal interpretation by TAG
 - Situational circumstances
 - Protect our distinct legal systems
 - TPIA administrative release processes
 - Federal and State Civil and Criminal Discovery processes
 - Distinguish information when released to officials and caution against improper disclosure



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Be sure to thank the folks at TML for putting this program on each year, as they do an outstanding job!

And, I and my firm thank you for your time and attention!

Russell Rodriguez Hyde Bullock, LLP.

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