

Strategies for Processing Public Information Requests



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Overview



- Quick Overview of Public Information Act (“PIA”)
- Processing Tips
- New Exceptions and Rules

Public Information Act

Chapter 552 of the Government Code



- Applies to all government entities, including cities
- Records in all forms
- General Premise- Everything is public information
- Exceptions to disclosure
- The Attorney General's Office decides

Tip 1: Train your clients!



- Giving PIA Handbook isn't enough!
- Everything in writing!
- Forms- clarifications, notices
- Sample "List of exceptions"

LIST OF EXCEPTIONS

Yellow= withhold with no AG opinion or notice needed.

Green= Withhold with no AG opinion needed, Notice required.

Blue- Notice required to third parties in addition to requesting AG opinion

1. Dates of birth of members of the public (Gov't Code 552.101 + common-law right to privacy)
2. Arrest probable cause affidavits (Gov't Code 552.101 + Art 15.26 of the CCP)
3. Social security numbers (Gov't Code 552.147)
4. home address, home telephone number, emergency contact information, social security number, and/or family member information of a public employee or official (Gov't Code 552.024)
5. home address, home telephone number, emergency contact information, social security number, and/or family member information of a peace officer (Gov't Code 552.117 and 552.1175)
6. Juvenile runaway information and criminal suspect information (entire report will be redacted; see exceptions in Family Code) (Gov't Code 552.101 + Family Code 58.008)
7. Juvenile criminal information under court seal (Gov't Code 552.101 + Family Code 28.207(b))
8. Personal financial information (ex. Bank information, retirement information, credit history) (552.101 + common-law right to privacy)
9. Fingerprints (Gov't Code 552.101 + Gov't Code 560.003)
10. Personal information in motor vehicle records (Gov't Code 552.101 + Transportation Code 730.004)
11. EMS records of treatment of a patient (Gov't Code 552.101 + H&S Code 773.091)
12. Drug/Alcohol test results (Gov't Code 552.101+common law right to privacy)
13. Attempted suicide (entire report will be redacted) (Gov't Code 552.101+common law right to

What to ask when a new request comes in?



- When is the 10-day deadline to respond?
- Does this involve a lawsuit, ongoing police investigation, or prosecution?
- Who is asking for the information?
- What exceptions may apply?
- Do I need to seek an opinion?

Tip #2: Keep an electronic or paper copy of your files and communications

- Keep separate files for each request
- Helps with AG Complaints and Cost estimate complaints
- Retention Schedules



Tip #3: Redact electronically



- Adobe Pro DC
- WEBQA and others

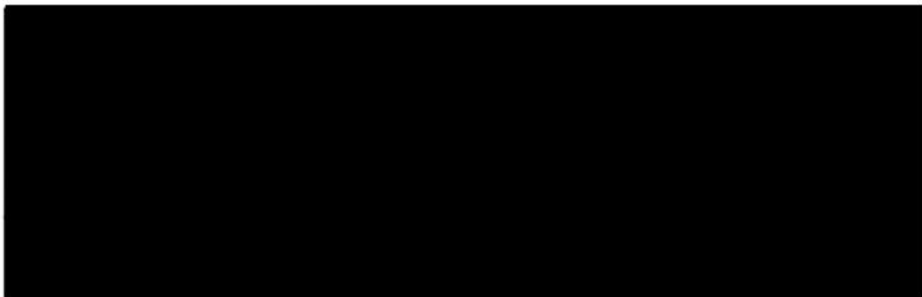


552.101



Interview Assessment Form
Candidate's Name: Brandon Robinson
Rater: Asant

| Characteristic | Question |
|--------------------|---|
| Job Related Skills | 1. Tell us about your background and what qualities and skills you would bring to this department. <i>Plans - Police Academy - East Field Academy - 2nd Place - D. [unclear]</i> |



| Characteristic | Question |
|--------------------|--|
| Job Related Skills | 1. Tell us about your background and what qualities and skills you would bring to this department. <i>Plans - Police Academy - East Field Academy - 2nd Place</i> |

Tip #3: What do you do if you missed the 10- day deadline?



- Compelling Interest
 - Gov't Code §552.101 and other confidentiality provisions
- Law enforcement Exception- Gov't Code §§ 552.108(a)(1) and 552.108(a)(2)
- Sample “Compelling interest” memo
- Investigations by outside agencies

Tip #4: Cost Estimates



- Do a test run
- Include a brief explanation of what would need to happen to locate information requested
- Deposits may be required (Gov't Code §552.263):
 - \$100 or more for 15+ full-time employees
 - \$50 or less than 16 full-time employees
 - Request is not considered received until the deposit is received (Gov't Code §552.263(e))
 - Must give the required written cost estimate and written request for deposit

Tip #4: Cost Estimates



• AG's Public Information Cost Estimate Model

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

Generate Estimate

Clear Form

Tip #5: City Specific Determinations



- Gov't Code §552.108- Law Enforcement Exception previous determinations
- Gov't Code §552.101 + right to privacy - *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at Pg 3 (Tex. App. May 22, 2015) (Pet. Denied September 4, 2015)- Dates of birth of members of the public

NEW LAW



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Suspension of PIA in Catastrophe (SB 494)

- Gov't Code §552.233
- Allows cities to suspend the PIA for up to 7 days (with up to 7-day extension) in the event of a catastrophe.
- Catastrophe = “condition or occurrence that interferes with the ability of a governmental body to comply with the requirements of this chapter, including:
 - A) fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;
 - B) transportation failure, or interruption of communication facilities;
 - C) epidemic; or
 - D) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

Suspension of PIA in Catastrophe Cont.



- Notices to the public and the AG are required.
- Link to forms and steps to suspend the PIA:

<https://www.texasattorneygeneral.gov/open-government/governmental-bodies/catastrophe-notice>

Exception: Disaster fund recipients (HB3175)



- Gov't Code §552.160
- “Disaster” has the meaning assigned by Gov't Code §418.004
- Confidential
 - A) the name, social security number, house number, street name, and telephone number of an individual or household that applies for state or federal disaster recovery funds
 - B) the name, tax identification number, address, and telephone number of a business entity or an owner of a business entity that applies for state or federal disaster recovery funds; and
 - C) any other information the disclosure of which would identify or tend to identify a person or household that applies for state or federal disaster
- Public = street name, census block group, the amount of disaster recovery funds awarded

Temporary Custodian (SB 944)



- Gov't Code §§552.002, 552.003, and 552.233
- “Temporary Custodians” of information= Current and former officers and employees who created or rec'd public information
- Addresses information that deals with official business that is kept on private devices
 - Duty to forward to PIA Officer or preserve as required
 - PIA Officer to get the info from Temporary Custodian if requested → 10 days to respond
- Public request for info held by Temporary Custodian considered received when info is surrendered

Protected Health Information (SB 944)



- Gov't Code §552.002
- PHI (as defined in Health and Safety Code §181.006) is not public information subject to disclosure under the PIA



Firefighter/EMS timesheet or work schedule (SB 2446)



- Gov't Code §552.159
- Confidential = work schedule or a time sheet of a firefighter or volunteer firefighter or emergency medical services personnel as defined by Health and Safety Code §773.003



Economic Development Entities (SB 943)



- Gov't Code §552.003(1)(B)(ii)
- Specified Economic Development entities making less than \$1 million from single gov't source, not having authorizations to grant or recommend certain tax incentives, no officing in government facilities, etc. (see statute for specifics) are not subject to the PIA

Contracting Information (SB 943)



- Gov't Code §§552.371 through 552.376
- Requirements of certain private entities that contract with a governmental body to provide contracting information to the governmental body in response to a request for information.
- §552.371 –Applies to entities who have government contracts involving the expenditure of at least \$1 million in public funds for the purchase of goods or services **or** that results in the expenditure of at least \$1 million in public funds for the purchase of goods or services in the governmental body's fiscal year
- Requires a governmental body that receives a request for contracting information pertaining to such a contract to obtain the responsive information from the contracting entity and sets out the procedural requirements for obtaining the information.

Contracting Information (SB 943)



- §552.372- Establishes records retention and preservation requirements for the contracting entities and required language for subject bids
- §552.373- Notice of non-compliance required from Governmental body
- §552.374- Authorizes a governmental body to terminate a contract if a contracting entity does not provide contracting information pursuant to the requirements laid out in subchapter J

Contracting Information (SB 943)



- Gov't Code §552.0222,
- Contracting information, as defined at new section § 552.003(7) of the PIA, is public and must be released unless excepted from disclosure under the PIA.

Other new exceptions



- **Gov't Code §552.1101-** Confidentiality of Certain proprietary info of vendors, bidders, and contractors
- **Changes to Gov't Code §552.104-** Info related to competitive bidding-Only Governing body can claim when ongoing competitive situation and a competitive situation where the governmental body can establish the situation is set to reoccur
- See “List of Exceptions”



Any questions?

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