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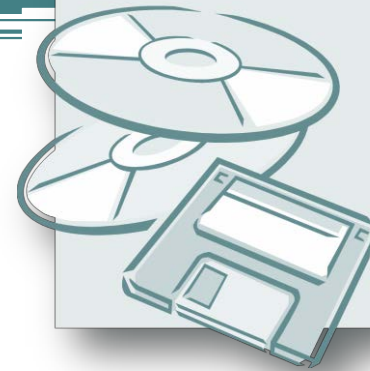
Proudly Representing Public Entities in North Texas

Public Information Act

Andrea D. Russell

Public Information Act

February 10, 2022 ★ Riley Fletcher Basic Municipal Law Seminar



FIRST THING'S FIRST

What is the Public Information Act?

- The PIA is a **law** (Tex. Gov't Code Ch. 552) that gives the public the right to request access to government information.
- **The general rule** is that everything the governmental body maintains is public, unless an exception applies.



What will this presentation cover?

- The **process** that a governmental body must follow in order withhold or release information held by the governmental body.
- The **scope** of the Act (who and what is subject to the Act), including exceptions.



THE PROCESS

- THE REQUEST

- Must be written.

- Must ask for information in existence.

- Does not have to contain any “magic words.”



THE PROCESS

- The public can:
- Request copies of information
- Request to inspect information



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THE PROCESS

- The City's Options:
 - 1) **Release** - Release the requested information.
 - 2) **Clarify** - Ask the requestor to clarify an ambiguous request.
 - 3) **Estimate** - Send the requestor an estimate of charges if the costs are expected to exceed \$40.00.
 - 4) **Submit** – Submit the information to the Office of the Attorney General for a ruling.

THE PROCESS

- **Release the Information**

- If the information is to be released, it must be released “promptly,” which means as soon as possible under the circumstances without delay.



THE PROCESS

- **Clarify the Request**
 - If the request is ambiguous, the city can seek clarification from the requestor.
 - Special language must be included in order to toll the deadline for seeking an Attorney General ruling.



THE PROCESS

- **Estimate the Charges**
 - If the city estimates that the cost to process the request will exceed \$40.00, the governmental body can send a cost estimate to the requestor.
 - The estimate must be sent *before* the information is gathered.



THE PROCESS

- **Submit the Information for an Attorney General Ruling**
 - **The general rule** is that everything the governmental body maintains is public, unless an exception applies.
 - The PIA itself (Gov't Code Ch. 552) contains many exceptions to disclosure.
 - Laws outside of the PIA (other statutes and case law) also require confidentiality of certain types of information.
 - If the city believes an exception applies, it generally must send that information to the Office of the Attorney General for a ruling on whether it may/must be withheld. *This must be done within 10 business days of the date the request was received.*

THE PROCESS

- **Submit the Information for an Attorney General Ruling**
 - **What happens if you miss the deadline?**
 - Mandatory exceptions are not waived. This is information that is confidential by law or implicates the rights of third parties.
 - ❖ 552.101 – common law privacy, juvenile records, child abuse records, etc.
 - Discretionary exceptions are waived. These exceptions protect the governmental body's interests.
 - ❖ 552.108 – law enforcement exception
 - ❖ 552.103 – litigation exception



PREVIOUS DETERMINATIONS

- **“Same Info” Previous Determination**
-- The same information was requested previously.
- **“Applies to All” Previous Determination**
-- The AG has issued a previous determination to all governmental bodies allowing everyone to withhold certain types/categories of information without seeking a ruling
- **“Applies to You” Previous Determination**
-- The AG has issued your specific governmental body a previous determination for a specific category of information.

PREVIOUS DETERMINATIONS

- **“Applies to You” Previous Determination**

-- The AG has issued your specific governmental body a previous determination for a specific category of information.

“108PD” refers to a 552.108(a)(1) previous determination issued by the AG that applies to information from pending investigation or prosecution.

If a governmental body relies on a 108 PD to respond to a request for information, the governmental body must provide the requestor with two things:

1. basic information within 5 business days after the governmental body receives your request for information; and
2. a mandatory notice form that explains the types of records the governmental body withheld from you, e.g. incident report, witness interviews, video recordings, audio recordings, photographs, etc.

Temporary Custodian

A past or present officer or employee of a municipality who, while transacting official business, creates or receives public information that is not provided to the municipality's public information officer.

Must:

- Transfer records to the public information officer; or
- Preserve the records in their original form on the custodian's privately owned device and in a separate backup form; and
- Comply with records retention requirements.



Temporary Custodian

Public information officer must make reasonable efforts to obtain records.

If the PIO does not even ask the employee/officer for the information, the city itself may be on the hook.

Deadlines

Once a request is received, the public information officer must request the records from the custodian. (No deadline for this, but best practice is ASAP.)

Custodian must return the information no later than the 10th day after receiving the request from the officer.

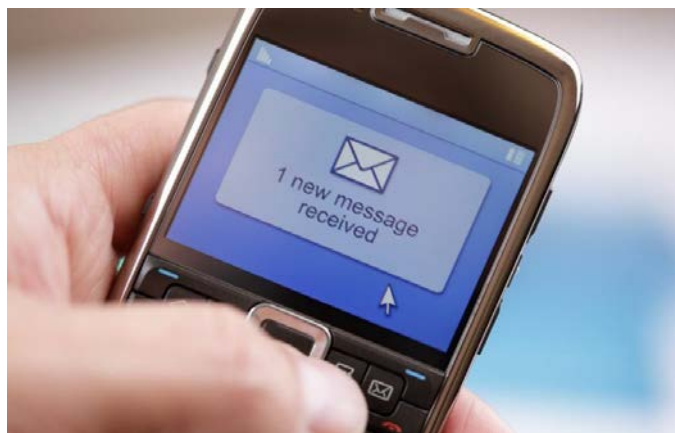
The city is considered to have received the request for public information on the date the information is surrendered or returned to the governmental body from the custodian.

At least I tried... I didnt get the answer I wanted, but, it could have been worse: I could have not asked and been left wondering "what if?"

THE SCOPE OF THE ACT

It's called the Public "**Information**" Act

So, what "**Information**" is subject to the Act?



THE SCOPE OF THE ACT

Under the Act, public information is: 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:
 - owns the information;
 - has a right of access to the information; or
 - spends/contributes public money for the purpose of writing, producing, collecting, assembling, maintaining the information; or
- (3) by an individual officer/employee of the City in his/her official capacity and the information pertains to official City business.



THE SCOPE OF THE ACT

Information is “in connection with the transaction of official business” if it’s ...

created by,
transmitted to,
received by,
or maintained by

a city officer or employee

in his/her official capacity

or a person or entity performing official business on behalf of the governmental body, and pertains to the official business of the governmental body.



THE SCOPE OF THE ACT

- Every form of information in any location is covered by the Act – so long as it pertains to government business.
- The Act now includes language that makes it clear that public information can exist in the form of email, internet postings, text messages, and instant messages.



Literally
Everything



THE EXCEPTIONS

Step 1: Is info subject to any mandatory or discretionary exceptions?

Step 2: If yes, can info be automatically withheld or is AG ruling required?



“...it’s all in the
Details.”

WALT DISNEY

Automatically Withhold



- **The following may be withheld without an Attorney General ruling:**
 - Social security numbers
 - Home address, phone number, family member information of a peace officer
 - Fingerprints
 - Direct Deposit Authorization Form
 - I-9 form and attachments
 - W-2 and W-4 Forms
 - Certified agendas and tapes of executive sessions
 - L-2 and L-3 declarations
 - Motor vehicle record information
 - Access device information/Account numbers
 - E-mail addresses of members of the public
 - Certain military discharge records

THE EXCEPTIONS

- **Send for an Attorney General Ruling**

Examples of Commonly Raised Exceptions:

- ✓ 552.101: Confidential by Other Law
- ✓ 552.108: Law Enforcement Exception
- ✓ 552.107: Attorney-Client Privilege
- ✓ 552.103: Litigation Exception
- ✓ 552.152: Officer Safety Exception
- ✓ 552.104: Info related to competition or bidding
- ✓ 552.137: Info related to economic development



THE EXCEPTIONS

Section 552.101: Confidential by Other Law

Common Law Privacy Exception

Applies to information that is:

- (1) Highly intimate or embarrassing, such that its release would be objectionable to a person of ordinary sensibilities, and
- (2) of no legitimate public interest.

Indus. Found. v. Tex. Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976).

Examples include:

- Dates of Birth;
- Information related to pregnancy, attempted suicide, some kinds of medical information, specific injuries, sexual assault, mental health, mental or physical abuse in the workplace;
- Other intimate or embarrassing personal information.

THE EXCEPTIONS

Section 552.101: Confidential by Other Law

Child Abuse Exception

- Family Code Chapter 261;
- Applies to information regarding a report of alleged or suspected child abuse or neglect;
- Confidential and generally may not be released to ANYONE without a ruling from the Attorney General;
- Exception is release to a parent not alleged to have committed the abuse or neglect.

THE EXCEPTIONS

Section 552.101: Confidential by Other Law

Juvenile Law Enforcement Records Exception

- Family Code Chapter 58;
- Applies to information law enforcement records concerning a child
- “Child” under the Family Code means a person who is ten years of age or older and under seventeen at the time of the conduct;
- Reports containing identifying information of a juvenile witness only are NOT juvenile law enforcement records.
- Parents of children listed in the records have a special right of access after redacting the identifying information of other children who are suspects or offenders. Must go to the AG.

THE EXCEPTIONS

Section 552.108: Law Enforcement Exception

Applies to: information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime...if:

- (1) Release of the information would interfere with the detection, investigation, or prosecution of crime, or
- (2) The information relates to an investigation that did not result in a conviction or deferred adjudication

The AG has routinely agreed that information related to a case that is pending investigation or prosecution, if released, would interfere with the detection, investigation, or prosecution of crime.

Therefore, it is common to raise the law enforcement exception (552.108(a)(1)) for information that relates to an open, pending, active case – whether it is open with the PD or pending prosecution by the DA's Office.

Discretionary!

Not Confidential

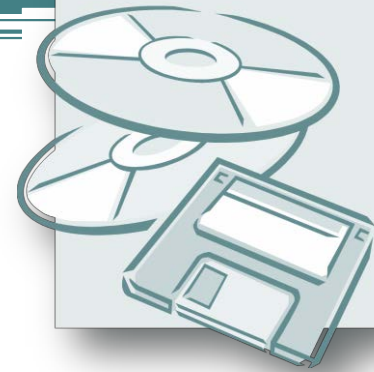
The following are **generally*** considered public information:

- Names of adult suspects/offenders
- Names of witnesses
- Ages (as opposed to dates of birth)
- Phone numbers of members of the public
- Addresses of members of the public



**Exceptions may apply under special circumstances.*

Other Statutes



Open Meetings Act

- The Open Meetings Act operates differently than the PIA and has a different set of exceptions.
- Information discussed in an executive session does not make it confidential under the PIA, *per se*.
- Certified agendas and tapes of closed meetings may be withheld without an Attorney General opinion, but not other information discussed in executive session.

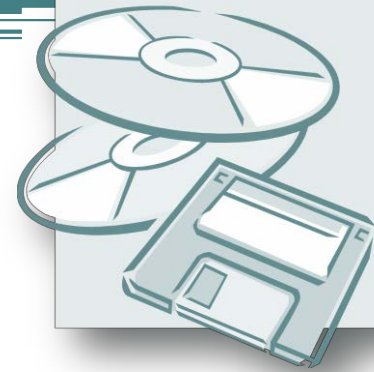


Discovery Requests and Subpoenas

Exceptions to the PIA that allow the City to withhold information do not also authorize withholding those documents from discovery in administrative or judicial proceedings.



Enforcement and Penalties



Civil Remedies

To challenge an Attorney General determination:

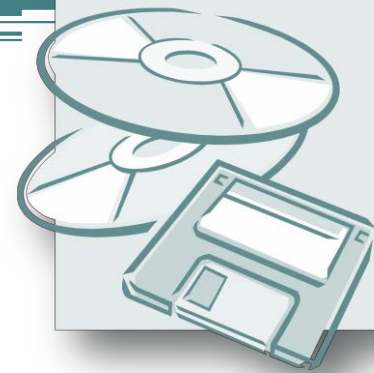
- The city must file suit in Travis County.
- It must be filed within 30 calendar days from the date the ruling is received.
- Requestor may file suit seeking declaratory judgment or injunctive relief.

Criminal Penalties

- **Failing or refusing to give access to, or to permit or provide copying of, public information to a requestor:**
 - Up to 6 months in jail and/or up to \$1,000 fine.
 - For City officials, also constitutes official misconduct which may result in removal from office.
- **Providing, distributing or misusing confidential information:**
 - Up to 6 months in jail and/or up to \$1,000 fine.
 - For City officials, also constitutes official misconduct which may result in removal from office.
- **Destroying, removing or altering governmental information:**
 - Up to 3 months in jail and/or up to \$4,000 fine.



Resources



Resources

Andrea D. Russell

arussell@toase.com or (817) 332-2580

Texas Municipal League:

www.tml.org

Office of the Attorney General:

www.oag.state.tx.us

Open Government Hotline: (877) 673-6839

Open Government Cost Hotline: (888) 672-6787



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