

PUBLIC INFORMATION ACT



**Riley Fletcher Basic Municipal Law Seminar
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BASICS OF THE PIA (CH. 552, TX GOV'T CODE)

- 1) Scope
- 2) Requests (ORRs)
- 3) Responses
- 4) Interesting issues / New Legislation
- 5) Better practices / Resources

SCOPE

Section 552.001, Texas Gov't Code

(a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy. (AND, (b) "liberally construed to grant requests")

SCOPE (CONT'D) - DEFINITIONS

“**PUBLIC INFORMATION**” (552.002) – written, produced, collected, assembled, or maintained under a law or ordinance or in connection with official business:

1. **by a governmental body**

2. **for a governmental body** and the governmental body:

- **owns** the information;
- has **right of access** to the information; or
- **spends public money** for the purpose of writing, producing, collecting, assembling, or maintaining the information (**PRACTICE POINTER** – add right of access to contracts!); or

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

SCOPE (CONT'D) - DEFINITIONS

Categories of Public Information (552.022) – Broad!; Releasable UNLESS exception exists –

- Completed report, audit, evaluation, investigation
- Employee information – salary
- Documents with expenditure of funds, estimates
- Official names, voting record
- Policy statements, interpretations
- Staff manuals
- Attorney fee bills
- Settlement agreements

SCOPE (CONT'D) - DEFINITIONS

- **“Public Information”** – VERY, VERY BROAD!
- Applicable to officers and employees
- YES (!!!), includes electronic communications for official business on devices
- **PRACTICE POINTER** – meeting notes → OPEN; texts → OPEN; use official email address/city server

SCOPE (CONT'D) - DEFINITIONS

“Temporary Custodians” (552.003, .233) – ALL OF US!

- current or former official or employee
- requires PIO to acquire info
- No personal/property rights to info
- Required to preserve & provide within 10 business days; personal devices too!
- Criminal penalties

REQUESTS (ORR)

- **Must be written** – PIA only triggered with written ORR (552.234, .301(a)); **PRACTICE POINTER** – work with “verbals”!
- **Submitted by email (fax)** - must be sent to address (email) designated by Council (552.234(c))
- **Information must exist as of ORR date** – no requirement to produce nonexistent information (eg, tax analysis); not prospective; no standing requests; **PRACTICE POINTER** – create document?
- **No “magic words” required** – don’t need to cite law, FOIA, etc.
- **Specific form?** – may use AG’s form (552.235); provides option to exclude confidential info

RESPONSES

- Must treat all requests uniformly (552.223)
- No inquiry into reasons or motives – may not ask “Why?”, “For what purpose?”, “Are you sure?” (552.222); but.....
- What are permissible inquiries?

RESPONSES (CONT'D)

Permissible inquiries (552.222):

- Establish “proper identification” – anonymous?
- Seek clarification – if unclear
- Large amount of information – may discuss narrowing (but can't ask purpose!)

RESPONSES (CONT'D) - QUESTIONS

- Is requested info “public information”?
- Who has the info? Current or former official/employee?
- Is info responsive to ORR?

RESPONSES (CONT'D) - QUESTIONS

- Does Requestor have special right of access?
Councilmember?
- Any applicable exceptions?
- Want to apply? Voluntary disclosure (552.107);
but, release for one is release for all!
- Confidential? Privacy interests?

RESPONSES (CONT'D) - EXCEPTIONS

- Confidential under another law? **(552.101)**
Privacy?
- Personnel file –DOB, tax info, beneficiaries **(552.102)**
- Litigation or settlement **NEGOTIATIONS?**
(552.103)
- Legal matters – atty/client **(552.107)**

RESPONSES (CONT'D) - EXCEPTIONS

- Law enforcement/prosecutor – investigation if would interfere? **(552.108)**
- Motor vehicle info **(552.101 + Transp Code)**
- DL info and numbers, license plate, VIN **(552.130)**

RESPONSES (CONT'D) - EXCEPTIONS

- Financial accounts – credit cards, bank account? **(552.136)**
- Email address of public? **(552.137)**
- Peace officer? **(552.117, .1175)**

RESPONSES (CONT'D) - #1

- **Promptly produce** – “as soon as possible under the circumstances, that is within a reasonable time, without delay” (552.221 (a))
- Must produce within 10 business days OR, respond to Requestor & set specific date/hour within a reasonable time for release (552.221 (d))
 - Produce – inspect, duplicate, or both; mail if fees paid
 - Cite to website – but requestor preference

RESPONSES (CONT'D) - #1

Fees – See 552.261-268

- If > 50 pages, may apply labor costs (but not for atty time)
- If > \$40, must provide estimate; ORR considered withdrawn if no response
- Cities authorized to apply charges set by AG; may increase rate by 25% or request increase from AG; see AG's Cost Estimate Model (AG website)

RESPONSES (CONT'D) - #2

Request AG opinion – must request to withhold, whether exception applies

- Request (letter) to AG – 10 business days for request + exceptions; 15 business days for argument; **PRACTICE POINTER** – submit both together!
- Letter – specific information required, eg, date ORR rec'd
- Copy sent to Requestor – without records!
- If date missed? Presumed open unless “compelling reason” to withhold (552.302); mandatory exceptions not waived – eg, confidential by law, 3rd party privacy
- AG – “Responding to a PIA Request” webpage; “Best Writing Tips” for effective briefs; **PRACTICE POINTER** - use AG's wording!

RESPONSES (CONT'D) - #3

Withhold based upon Previous Determination –

Previous determination? An exception -

- Allows withholding without AG ruling; eg, home addresses, SS#s, etc., vehicle records, financial accounts, family violence
- Previous determination by AG – previous determination for your city for exact information

OTHER INTERESTING ISSUES

- **“Vexatious” requestors** – frequent or voluminous; council may adopt yearly/monthly time limits (552.275)
- **Criminal charges** - civil AND Criminal Penalties; Requestors, DA, AG; misdemeanor &/or 6 months in jail; failure to release **OR** release of confidential info **OR** destruction!

OTHER INTERESTING ISSUES (CONT'D)

- **Special right of access** – to own info; can't use privacy interest to withhold!
- **Release to Councilmember** – YES!; “Special right of access” – for “official capacity” (AG Op. JM-119); not a “release”
- **Peers?** – County, State, or Feds?

NEW LEGISLATION FROM 2023

- **Law Enforcement Exception** (552.108) – not “basic information” but **1)**, pending investigations/prosecutions; **2)**, no conviction or deferred adjudication; **3)**, attorney work → Discretionary but automatic with AG opinion; HOWEVER, must now release if deceased/incapacitated or everyone consents
- **“Business Day”** – more specifically defined to include religious days, Fri/Mon around holiday, etc.
- **More training!** - if required by AG
- **AG’s Electronic Filing System** – must use unless **1)** 16 or fewer employees or county population < 150K; **2)**, “impractical or impossible”; **3)** hand-delivered

BETTER (BEST?) PRACTICES?

- **Transparency!** – embrace it! Obligation, costs \$; uncomplicate/simplify/make process easy!
- **Train** – and train and train!
- **PIO** City Manager; Dept Heads are agents
- **Policy/procedures** – set out expectations!
- **Remind** – and remind and remind...and train!

RESOURCES

- Open Government Hotline – Texas AG
- Texas AG's *Public Information Act Handbook 2022* (website)
- *Texas Public Information Act Made Easy* – TML (website)

Good luck!
Thank you!