

Texas Public Information Act: Hot Topics

TCAA Paralegal Program



Laura Mueller

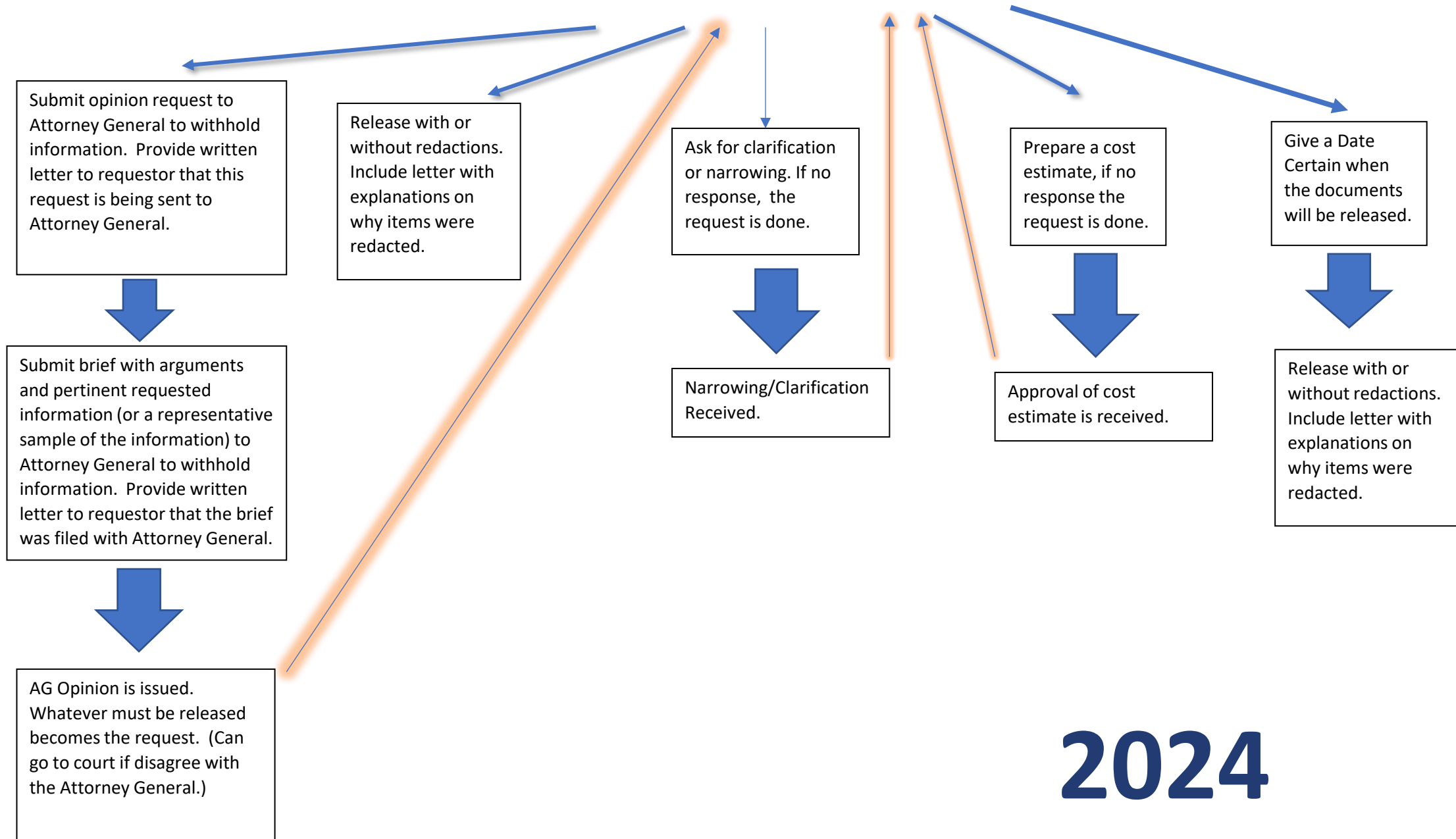
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Written Request is Received in Writing - 10 business day clock begins



2024

WHY: Purpose of Texas Public Information Act

Texas Government Code Section 552.001:

(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.

(b) This chapter shall be liberally construed in favor of granting a request for information.



**CITY OF DRIPPING SPRINGS
TEMPORARY CHAIN OF CUSTODY FORM**

I, _____, have reviewed the following request for information from my private accounts and respond as indicated below.

Requester *[Name of requester]*

Request *[Exact text of request]*

I have searched my private accounts for the requested information and the communications responsive are enclosed.

I have searched my private accounts for the requested information but have no communications responsive to the request.

Other: _____

Signature: _____ Date: _____

Temporary Custodians

Example 1

REDUNDANT REQUESTORS

Tex. Gov't Code Section 552.232

- (1) that the information was already provided;
- (2) when that information was provided, and
- (3) that no new information has been generated by the entity since the last request.

VEXATIOUS REQUESTORS

A vexatious requestor is a person who abuses the Act by sending frequent and/or voluminous public information requests to an entity, especially small governmental bodies, to disrupt the operations of the entity's business.

- Reasonable monthly or yearly time limit (annual cannot be less than 36 hours a year or 15 hours a month);
- All time for all requestors must be tracked;
- Time has to go to each requestor when each response is sent;
- If surpassed, additional costs can be charged;and
- Then, its same cost estimate letter process.

H.B. 3033: Another requestor cannot request for the vexatious requestor unless the vexatious requestor has paid all amounts for previous requests.

Questions and Scenarios

Charging for Public Information

- Requestor may inspect, get copies of the information, or both.
- Governmental body may charge for copies and redaction pursuant to the Act.
- Costs are waived where the release is in the public interest. (552.267(a)).



Cost Estimate

- If the documents can be released or redacted and released but the PIO has a need for a cost estimate (over \$40 or prior non-payment) then the Cost Estimate can be sent.
- If the costs are \$100 or more the governing body can require a deposit or bond of unpaid amount.



KEN PAXTON
ATTORNEY GENERAL of TEXAS

<https://www2.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. If you wish to request to **INSPECT** information, please call our toll-free Cost Hotline at 1-888-OR COSTS (1-888-672-6787).

Date request was received: 10/28/2022

Government Body's Information		Requestor's Information	
Agency Name:	<input type="text"/>	<input type="radio"/> Mr. <input type="radio"/> Ms.	
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

Generate Estimate

Clear Form

Providing Electronic Copies

If requestor asks for electronic format, governmental body shall provide if:

Electronic format = e-mail attachment, or copied to CD, DVD, or Flash Drive.

1. Requested information is electronically stored;

2. Governmental body has the capability of providing it in that format; and

3. The governmental body is able to provide it at no greater expense or time.

Cost Estimate

Dear Mr. Jones,

The City has determined that it will take approximately half of an hour to locate the responsive e-mails and that the e-mails contain confidential information that must be redacted. The City's e-mail system allows electronic redaction by writing a program, which will take our programmer half of an hour to write. Once the program is written it will take half of an hour to execute. You have requested copies on a USB flash drive, and it will take an additional half of an hour to copy the information onto the USB flash drive. The total charges for this request would be:

Labor, .50 hours to locate responsive e-mails, @ \$15.00/hour \$7.50

Labor, .50 hours to write program to redact, @ \$28.50/hour \$14.25

Labor, .50 hours to copy to USB, @ \$15.00/hour \$7.50

Overhead, \$29.25 ($\$7.50 + \$14.50 + \7.50) x .20 \$5.85

Client Server, .50 hours to process program, @ \$2.20/hour \$1.10

Materials, 1 USB flash drive @ \$1.00/each \$1.00

Total for materials & labor (electronic redaction/electronic records) \$37.20

Practical Cost Tips

- Don't have to charge for all requests, but make sure everyone is treated equally.
- Make sure cost rules are written down for PIA, Court Costs, and Subpoenas.
- Costs given by the Attorney General can be adopted with an up to 25% increase without going to the AG for approval.
- Your entity will never recover the full cost of responding to Requests.
- Use the Cost Estimate Model Provided by the Attorney General's Office.

<https://www2.texasattorneygeneral.gov/og/public-information-cost-estimate-model>

Example/Scenario Questions

Exceptions: Generally

Default: public information is subject to disclosure

PIA has over 80 listed exceptions to disclosure

Mandatory

Discretionary



Exceptions: Mandatory

- ***Must* withhold information that is deemed confidential by the Act or any other law.**
- **If released, can face criminal charges.**



Exceptions: Discretionary

- Governmental body *may* decide to withhold the information that is considered discretionary.
- Withholding information is not legally required.
- Subject to disclosure under Section 552.022.

Exception: Privacy Rights

- Under Confidential Information § 552.101.
- Mandatory exception.
- Excludes from public disclosure any information that is protected by the common law right to privacy.



Exception: Privacy Rights by Statute

- **Section 552.101 incorporates specific statutes that protect information from public disclosure:**
 - **The language of the relevant confidentiality statute controls the scope of the protection;**
 - **Statute must explicitly require confidentiality—will not be inferred from the statutory structure; and**
 - **Includes state and federal statutes.**

Exception: Privacy Rights by Statute

- **Examples:**
 - **Family Code – Juvenile and Child Abuse**
 - **Health & Safety Code – Emergency Medical Practices**

The information must:

- **Contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person; and**
- **Be of no legitimate concern to the public.**

Common-Law Right to Privacy

Privacy Rights - Protected Information

- **Sexual assault**
- **Pregnancy**
- **Mental or physical abuse in the workplace**
- **Illegitimate children**
- **Psychiatric treatment of mental disorders**

Privacy Rights - Protected Information Cont'd

- **Attempted suicide**
- **Injuries to sexual organs**
- **Personal financial information not relating to the financial transaction between an individual and governmental body.**
- **Compilation of an individual's criminal history.**

Exception: Child Abuse and Neglect Records

- **Section 552.101 encompassing section 261.201(a) of the Family Code.**
- **Mandatory exception.**
- **Makes a report of alleged or suspected abuse or neglect of a child and the identity of the person making the report confidential.**
 - **Child = a person under 18 and has not been married or who has not had the disabilities of minority removed for general purposes.**
 - **Abuse/neglect = include physical, emotional, and sexual abuse.**

Child Abuse and Neglect Records Cont'd

- **Parent of the child victim listed in the information *may* have special right access if they are not alleged to have committed the abuse or neglect.**
- **The Victim also has a special right of access once turns 18 years of age.**

Child Abuse and Neglect Records Cont'd.

- However, *must* withhold personally identifiable information of a victim or witness under eighteen years of age who is not the child or another child of the parent.
- If a special right of access exists, the governmental body *must* still withhold the identity of the reporting party.
- Also, *may* raise other applicable exceptions.

Exception: Juvenile Law Enforcement Records

Section 552.101 encompassing section 58.008 of the Family Code.

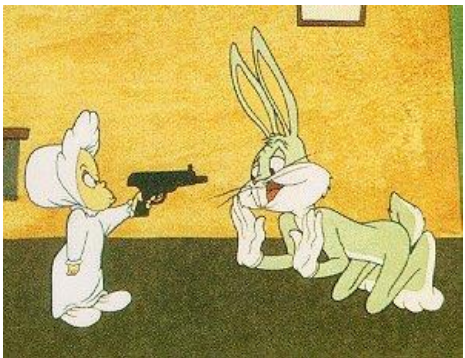
Mandatory exception.

Juvenile law enforcement records are confidential.

- If suspect is a child, the report must be withheld in its entirety (cannot release basic information).

Juvenile = person who is 10 years or older and under 17 when the conduct occurred.

Juvenile Law Enforcement Records Cont'd



Parents/Guardians or Juvenile themselves *may* have special right of access. Sample: [OR2019-15513](#).

If a special right of access exists, information about any other juvenile suspect, offender, victim, or witness *must* be redacted.

The University of Texas at Austin and Jay Hartzell, in his Official Capacity as Interim President of The University of Texas at Austin v. Gatehouse Media Texas Holdings II, Inc., d/b/a Austin American-Statesman

- What does redaction mean?
- How broadly should the Public Information Act be read?
- Who decides what is releasable?

Enlightened Means (Enlightened) Court
For the Non-Enlightened (Enlightened)

1	[Redacted]
2	[Redacted]
3	[Redacted]
4	[Redacted]
5	[Redacted]
6	Missouri, [Redacted]
7	[Redacted]
8	[Redacted]
9	[Redacted]
10	[Redacted]
11	[Redacted]
12	[Redacted]
13	[Redacted]
14	[Redacted]
15	[Redacted]
16	In that case visit, [Redacted]
17	[Redacted]
18	[Redacted]
19	[Redacted]
20	[Redacted]
21	[Redacted]
22	[Redacted]
23	[Redacted]
24	[Redacted]
25	[Redacted]
26	[Redacted]
27	[Redacted]
28	[Redacted]

Recent Case at the Supreme Court of Texas

Questions