

# **Public Information Act**

**Riley Fletcher Basic Municipal Law Seminar**

**Dallas, Texas**

**February 8-9, 2018**

**Presented by Christy Drake-Adams**



# The basics:

the **scope** of the Public Information Act (Open Records Act)

a **request** for information from the public

common **responses** to a request for information

**penalties**

a request for information from a **councilmember**



# The of the PIA

## Gov't Code § 552.001

- 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
- chapter 552 shall be liberally construed in favor of granting a request for information.

# The of the PIA

(Gov't Code § 552.002)

(a) In this chapter, “public information” means 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:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

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

(a-1) Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

(a-2) The definition of “public information” provided by Subsection (a) applies to and includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.

(b) The media on which public information is recorded include:

(1) paper;

(2) film;

(3) a magnetic, optical, solid state, or other device that can store an electronic signal;

(4) tape;

(5) Mylar; and

(6) any physical material on which information may be recorded, including linen, silk, and vellum.

(c) The general forms in which the media containing public information exist include a book, paper, letter, document, e-mail, Internet posting, text message, instant message, other electronic communication, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory.

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# The Request



- Must be written (typed or handwritten)
- If sent by email or fax, must be sent to person designated by the city council to receive such requests (assuming the city council has made such a designation)
- Must ask for information in existence as of the date the request was received
- No “magic words” are required
- City may provide, but can’t require use of, a specific form to submit a request

City of Dallas

**Open Records Request**

City Hall, Room 4ESouth

Dallas, Texas 75201

Fax 214-670-0160

Please fill out the following information to request a record or document from the City of Dallas.



Last Name: <input type="text"/>	First Name: <input type="text"/>
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**Contact Information:**

At least one method of contact must be filled in to respond to your request.

Mailing Address: <input type="text"/>		
City: <input type="text"/>	State: <input type="text"/>	Zip: <input type="text"/>
Phone #: <input type="text"/>	Fax #: <input type="text"/>	
Email: <input type="text"/>		

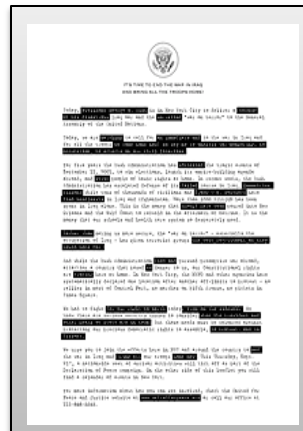
I request:	<input type="checkbox"/> Information Only
	<input type="checkbox"/> Copies of the following records

Please state your document request below:

<input type="text"/>
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# The Response

- May not inquire into the requestor's reasons or motives for requesting the information
- Must treat all requests uniformly
- Four common ways to respond to a request:





# Response 1



Promptly produce information for inspection, duplication, or both

“Promptly” = as soon as possible under the circumstances, within a reasonable time, without delay

If you cannot produce within 10 business days, you must certify that fact to the requestor & set date/hour within a reasonable time when the information will be available

# Response 2



Write a letter to the attorney general asking for a decision as to whether all, or part, of the information is excepted from disclosure. Remember,

- 10 business day deadline; and
- 15 business day deadline

**10-Day Letter**

July 17, 2015

Mr. Justin Gordon  
Open Records Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

Re: Public Information Request No. 15-123

Dear Mr. Gordon:

On July 1, 2015, the City of Pawnee (the "city") received a written request for information from Shauna Malvae-Tweep with the Pawnee Journal. Copies of the request and the requestor's subsequent clarification are attached as Exhibit A. Please note the city's offices were closed on July 3, 2015, in observance of Independence Day, and on July 14, 2015, due to inclement weather.

The city will release some of the responsive information. However, the city asserts the remaining information responsive to this request is excepted from disclosure under the Public Information Act, Chapter 552, Government Code. The city raises section 552.103 of the Government Code.

Pursuant to section 552.301(a) of the Government Code, this letter is submitted in order to seek a decision as to whether this exception applies. We have copied the requestor as a recipient of this letter pursuant to sections 552.301(d). To assist in your review, the city will provide a brief of written comments and a copy of the remaining responsive information, or a representative sample, not later than the 15<sup>th</sup> business day from the date the request was received.

Should you need additional information, please feel free to contact me at 555-555-5555.

Sincerely,

Sean Nottingham  
Public Information Coordinator  
City of Pawnee

cc: Requestor (w/ enclosures)



**15-Day Letter**

July 24, 2015

Mr. Justin Gordon  
Open Records Division  
Office of the Attorney General  
P. O. Box 12548  
Austin, TX 78711-2548

Re: Public Information Request No. 15-123

Dear Mr. Gordon:

On July 1, 2015, the City of Pawnee (the "city") received a public information request under the Texas Public Information Act (the "PIA"), Chapter 552, Government Code, from Shauna Malwae-Tweep with the Pawnee Journal. Copies of the request and the requestor's subsequent clarification are attached as Exhibit A. Please note the city's offices were closed on July 3, 2015, in observance of Independence Day, and on July 14, 2015, due to inclement weather.

The city has released some responsive information to the requestor. However, the city asserts the remaining information responsive to the request is excepted from required disclosure. Pursuant to section 552.301(a) of the Government Code, this brief is submitted to seek a decision as to whether section 552.103 of the Government Code applies to the remaining responsive information. We have copied the requestor as a recipient of this brief pursuant to section 552.301(e-1) of the Government Code. We have attached the remaining responsive information as Exhibit B.

[insert 552.103 argument]

The city respectfully requests a decision from the Open Records Division regarding the applicability of the argued exceptions as provided by the PIA.

Please do not hesitate to contact me at 555-555-5555 if you have questions or require additional information.

Sincerely,

Sean Nottingham  
Public Information Coordinator  
City of Pawnee

cc: Requestor



<https://texasattorneygeneral.gov/og/open-government#tips>

## Practical Tips on Writing Effective Briefs to the Open Records Division

1. The [Public Information Handbook](#) published by this office is your primary resource in writing effective briefs to the Open Records Division.
2. Follow the standards set forth in the Handbook to meet the requirements of your claimed exceptions. For example, if claiming exception under section 552.103 (the "litigation exception"), you must explain how the litigation is either pending or reasonably anticipated AND how the documents at issue relate to the pending or anticipated litigation.
3. Be sure to explain everything in your briefing. Assume your audience knows absolutely nothing about the situation at hand. If it is not abundantly clear, accurately and adequately describe the submitted documents. For example, how are these documents responsive to the instant request for information? Who are the parties described in the documents? What is their relationship to the governmental body? If you are claiming that any of the documents are privileged under either the attorney-client or work product privileges, explain whether or not any of the parties are attorneys for the governmental body.
4. Please DO NOT redact the documents that you are submitting for review. If we can't read them, we can't rule on them.
5. Please provide adequate background information on the documents submitted. If not clear, tell us how the submitted documents are responsive to the request for information. How are they related to the pending investigation, litigation, etc... ? What, if anything, has already been released to the requestor? If not clear, what is your governmental body's function? For example, if you have a law enforcement capacity, please tell us.
6. Proofread all correspondence! Have someone else in your office re-read your submission for minor clerical or typographical errors. Make sure you have typed the correct section number for your claimed exceptions (552.103 vs. 552.130). Also check for incorrectly-typed names, dates, and spelling errors.
7. Mark all submissions clearly, carefully, and consistently. Make sure the exhibit numbers on the documents match up with the exhibit numbers in the brief. Reference previous correspondence with our office on all future, related correspondence.
8. Be sure to comply with the deadlines required under sections 552.301 and 552.305 of the Government Code. Failure to do so can result in a waiver of claimed exceptions.



# What if you miss the deadlines?

- Mandatory exceptions are not waived
- Permissive (discretionary) exceptions are waived

<https://www.texasattorneygeneral.gov/og/efiling>



Texas Attorney General

## Public Information Act Electronic Filing System



### Welcome

Welcome to the Office of the Attorney General's Public Information Act Electronic Filing System. The OAG uses this system to accept a governmental body's request for an attorney general open records decision under the Public Information Act, Texas Government Code Chapter 552. Interested parties can also use this system to submit comments or materials for review by the OAG during the open records decision process.

**Please Note:** This system cannot be used to request public information from the OAG or any other governmental body. Requests for public information must be submitted directly to the governmental body from whom you are seeking information.

You can use this service to:

- Request an attorney general open records decision and submit new material for review; or
- Submit supplemental documents or comments related to an existing request for decision.

#### Information You Need:

- Name of Governmental Body or Interested Party
- Governmental Body PIC ID (This is the internal tracking number assigned to a public information request by a governmental body. This is not the ID number assigned by Texas.gov. Third parties should contact the Governmental Body for this number or use the name of the Governmental Body for this data field.)
- Texas.gov Request ID (if you are submitting additional material to an existing request)
- Credit card (Visa, MasterCard, Discover, or American Express) or Electronic Check information
- Microsoft® Silverlight® Plugin (This software is not required; however, it makes it easier to upload multiple files.) If you don't have Silverlight, you can install it now.



# Response 3

Withhold all, or part, of the information by:

- Relying on a previous determination by the attorney general
- Relying on statutory authority to withhold the information without getting an attorney general ruling (Gov't Code §§ 552.130, 552.136, 552.024, 552.1175, 552.138)







## Open Records Division

ORDs: Overruled, Modified, Affirmed, Withdrawn

Open Records Questions (ORQs)

Open Records Memorandum Rulings

Information about 552.108(a)(1) Previous Determinations

List of Previous Determinations by Governmental Body

Public Information Cost Estimate Model

### Redacting Public Information Rules and Forms

Open Government Resources

eFiling

Questions Regarding Open Records Letter Rulings

Statutes

Open Government – Other PIA Rules

## Redacting Public Information Rules and Forms

A governmental body that wishes to redact information from data or documents it is releasing to the public must generally seek the decision of the attorney general.

A governmental body need not request an attorney general decision if it is relying on a [previous determination](#) to redact information. For more information about previous determinations, please see [Open Records Decision No. 673 \(2001\)](#) and pages 35-38 of the [2016 Public Information Handbook](#).

A governmental body need not request an attorney general decision if it is redacting information pursuant to one of the five sections of the Public Information Act that give a governmental body explicit permission to redact information without requesting an attorney general decision. Those five sections are 552.024, 552.130, 552.136, 552.138 and 552.1175. The Rules and Forms applicable to redaction under those sections of the Public Information Act are provided below.

### Rules

- [Texas Administrative Code, Title 1, Chapter 63, Public Information Subchapter B, Review of Public Information Redactions](#)

### Forms

The following documents are provided in MS Word.

- [Form Letter for Section 552.024 \(public employee's personal information held by governmental body in its capacity as employer\)](#)
- (Effective 05/18/2013) [Form Letter for Section 552.130 \(motor vehicle records\)](#)
- [Form Letter for Section 552.136 \(account and access device numbers\)](#)
- (Effective 06/14/2013) [Form Letter for Section 552.138 \(family violence shelter center, victims of trafficking shelter center, or sexual assault program\)](#)
- (Effective 09/01/2014) [Form Letter for Section 552.1175 \(public employee's personal information held by governmental body in non-employment capacity\)](#)

# Response 4



- Ask the requestor to clarify or narrow a vague or broad request
- 10-day deadline measured from the date the request is clarified or narrowed - *City of Dallas v. Abbott*, 304 SW3d 380 (Tex. 2010)
- If the requestor does not respond in writing to a written request for clarification or additional information within 61 days, the request may be considered withdrawn (must comply with requirements of Gov't Code § 552.222)

<https://texasattorneygeneral.gov/og/charges-for-public-information>

OPEN GOVERNMENT / CHARGES FOR PUBLIC INFORMATION



## More Information:

- Open Records Posters
- OAG Rules for Charges
- Report on Charges for Public Information
- Public Information Cost Estimate Model

### OPEN GOVERNMENT

Open Government Training

Open Records Division

How to Request Information

Open Records Decisions (ORDs)

Open Records Letter Rulings

Charges for Public Information

Open Records Poster Versions

## Charges for Public Information

The Open Records Section of the Office of the Attorney General (OAG) discharges the mandates set out in [Government Code, Chapter 552](#), Subchapter A, Section 552.009; Subchapter D, Section 552.205; and Subchapter F, Sections 552.261 through 552.274.

The OAG Cost Rules Administration administers the rules promulgated by the Attorney General to determine charges and methods for charging for copies of public information, complaints from requestors regarding overcharges for copies of public information, and requests from governmental bodies for exemption from the rules or part of the rules.

Additionally, the section provides advice to governmental bodies and requestors regarding the charges and their applicability.

## Contact the Open Records Division regarding cost rules:

### Postal Mail:

Education and Enforcement Section  
Open Records Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

**Toll-Free Cost Hotline:** 888/672-6787 (888/ORCOSTS)

**Local Cost Hotline:** 512/475-2497

**Fax:** 512/481-1992

**Need More Information?**



<https://www.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. For questions about estimating costs when a requestor asks to **INSPECT** information, please call our toll-free Cost Hotline at 1-888-OR COSTS (1-888-672-6787).

Date request was received: 01/20/2016	
<b>Government Body's Information</b>	<b>Requestor's Information</b>
Agency Name: <input type="text"/>	OMr. OMs. <input type="text"/>
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 ☒



# Civil and Criminal Penalties

The PIA provides for:

- a suit for a writ of mandamus brought by requestor or attorney general to compel a governmental body to release requested information
- a suit for declaratory judgment or injunctive relief brought by the attorney general or a local prosecutor against a governmental body that violates the PIA
- criminal penalties for both the release of information that must not be disclosed and the withholding of information that must be released
- criminal penalties for the destruction, alteration or removal of public records

**What about a request from a  
councilmember?**

## **Tex. Op. Att'y Gen. No. JM-0119 (1983)**

Members of a governmental body have an inherent right of access to records that they seek in their official capacity

## **Tex. Att’y Gen. Op. No. KP-0021 (2015)**

Unless a state or federal law requires otherwise, a court would likely conclude that the Board of Regents of the University of Texas System may not prohibit an individual regent from obtaining access to records in the possession of the University that are necessary to fulfill his duties as a regent.

A court would likely conclude that the Family Educational Rights and Privacy Act does not allow a university to withhold student records from state or local education officials that are necessary in connection with an audit and evaluation of a state supported education program.





*Hall v. McRaven*, 508 S.W.3d 232 (Tex. 2017)

Regent of university system brought action against system's chancellor, seeking a declaration, an injunction, and a writ of mandamus to compel chancellor to produce student-admissions records.

The Supreme Court held that:

- Regent's claim was limited to whether chancellor unlawfully redacted records, and
- Chancellor's redaction of records was not ultra vires, and sovereign immunity applied.

# Example open records rulings:

## **OR2013-20531 (Nov. 25, 2013)**

“There is no indication the requestor is requesting the information in her official capacity as a city council member. Therefore, we find the requestor is making the present request in her personal capacity as a member of the public.”

## **OR2014-19835 (Nov. 3, 2014)**

“The internal procedures of the city for releasing information to city officials govern whether a city commissioner, acting in his official capacity, may access information held by the city. This office cannot resolve an internal dispute about document-management policy that may exist within the city.”

## 84<sup>th</sup> R.S. - DID NOT PASS

**S.B. 336 (V. Taylor) – Public Information:** would, among other things:

- (1) provide that a municipal officer has a right of access to public information of the city;
- (2) provide that a municipal governmental body on request by a municipal officer who oversees the governmental body shall provide public information, including confidential information or information otherwise excepted from disclosure, to the municipal officer in accordance with the Public Information Act;
- (3) authorize a municipal governmental body to require a requesting municipal officer or the employees of the requesting municipal officer who will view or handle information that is confidential or otherwise excepted from disclosure to sign a confidentiality agreement
- (4) allow an individual required to sign a confidentiality agreement as described in (4), above, to seek a decision from the attorney general about whether the information is actually confidential or excepted from disclosure, and void any such agreement that is determined by the attorney general to cover information that is not confidential or otherwise excepted from disclosure

## 85<sup>th</sup> R.S. - DID NOT PASS

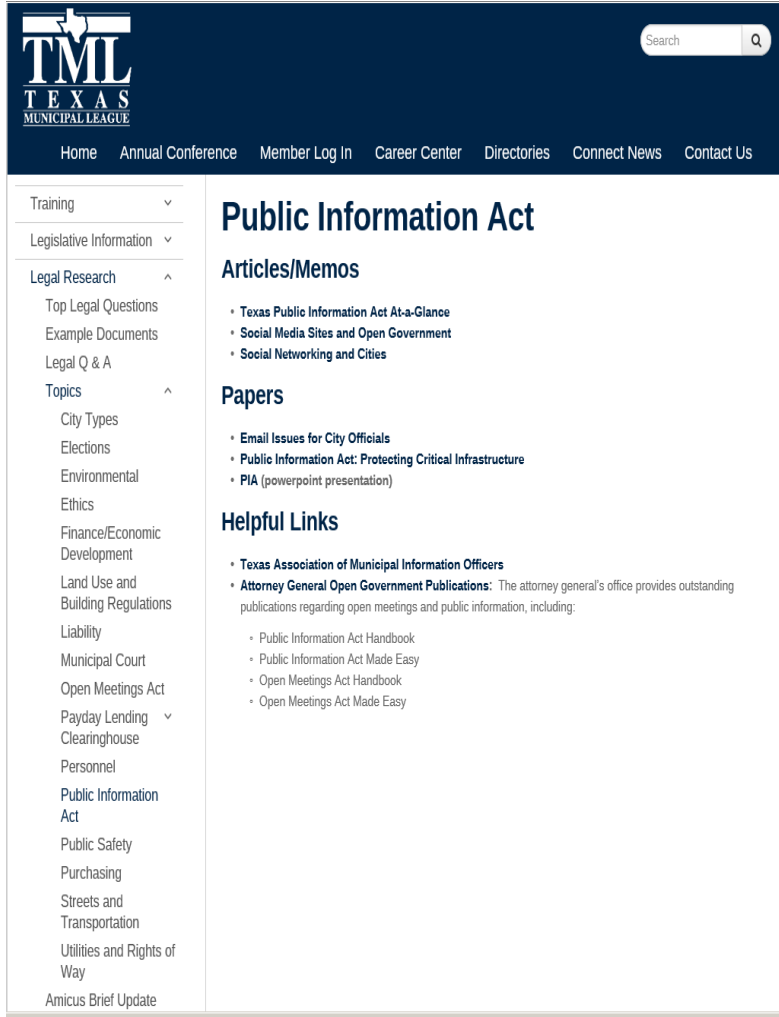
**H.B. 3271 (Shaheen)** – would provide that:

- (1) city officers have a right of access to public information, including confidential information;
  - (2) a city may require a municipal officer to sign a confidentiality agreement that covers the information;
  - (3) a city officer may ask for a ruling from the attorney general's office as to whether the information in (2) is confidential;
  - (4) a city officer may appeal the attorney general's ruling in (3) in district court;
  - (5) a city charter may not limit the right of a city officer to obtain information under other law or grant authority to a city council to withhold information from the officer; and
  - (6) city councilmembers have a right of access to any building, structure, room, land, or body of water owned, leased by, or under the exclusive control of the city.
- (Companion bill is S.B. 515 by V. Taylor.)**



# Other Resources?

<http://www.tml.org/public-information-act>



**attorney general's open government hotline**

(512) 478-6736

(877) 673-6839

staff answer questions about the Public Information Act

**attorney general's open government cost hotline**

(512) 475-2497

(888) 672-6787

staff answer questions about charges relating to the Public Information Act

<https://texasattorneygeneral.gov/og/open-government-related-publications>

