



THE TEXAS PUBLIC INFORMATION ACT

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BACKGROUND

Governor Abbott: “A democracy depends on fully informed citizens and they in turn depend upon a government that is open and accessible.”

Sharpstown stock fraud scandal of the 1970s: Following the scandal in the Texas Legislature, the Public Information Act was enacted to promote transparency in government. (The Sharpstown scandal was a stock fraud scandal in the state of Texas in 1971 and 1972 involving the highest levels of the state government. The name came from the involvement of the Sharpstown area of Houston.)

Senator John Cornyn: “It is only natural that elected officials and government leaders want recognition for their successes, but not for their failures...but we as a healthy democracy need to know the good, the bad, and the ugly.”

APPLICABILITY OF THE ACT – WHAT IS PUBLIC INFORMATION?

§552.002 states in part....(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.

Information is in connection with a 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.

APPLICABILITY OF THE ACT - WHAT IS PUBLIC INFORMATION?



Every form of information is covered

Paper, microfilm, video, e-mails, audiotapes, computer data, text messages, etc.



It does not matter where the information is located

E-mails and documents located at home regarding official city business may be considered public information

Information sent to storage, or a third party may be considered public information

APPLICABILITY
OF THE ACT -
WHO IS
SUBJECT TO
THE ACT?



Executive and Legislative
branches



County Commissioners
Court



Cities



School Districts



Counties



Non-governmental
entities supported by
public funds (example:
EDC's, MDD's, appraisal
districts)

APPLICABILITY OF THE ACT – WHO IS SUBJECT TO THE ACT?

- The judicial branch is NOT subject to the PIA
 - Contact the court clerk's office
 - Requests must be in writing
 - Requests must be addressed to the court's custodian of records



WHAT IS A
PUBLIC
INFORMATION
REQUEST?

Must be in writing to trigger the Act

Must ask for information in existence as of the date the request was received

No “magic words” required

No requirement to label it as an open records request

Can be typed or handwritten

METHODS TO SUBMITTING AN OPEN RECORDS REQUEST

§552.234

(a) A person may make a written request for public information only by delivering the request by one of the following methods to the applicable officer for public information or a person designated by that officer:

- (1) United States mail;
- (2) Electronic Mail;
- (3) Hand Delivery; or
- (4) Any other appropriate method approved by the governmental body, including:
 - (A) Facsimile transmission; and
 - (B) Electronic submission through the governmental body's Internet website.



METHODS TO SUBMITTING AN OPEN RECORDS REQUEST

§ 552.234

(c) A governmental body may designate one mailing address and one electronic mail address for receiving written requests for public information.

(d) A governmental body that posts the mailing address and electronic mail address designated by the governmental body under Subsection (c) on the governmental body's Internet website or that prints those addresses on the sign required to be displayed by the governmental body under Section 552.205 is not required to respond to a written request for public information unless the request is received:

- (1) At one of those addresses;
- (2) By hand delivery; or
- (3) By a method described by Subsection (a)(4) that has been approved by the governmental body.



THE REQUEST

No signature
required

Cannot require
use of a specific
form to submit
request

Examples: letter
from law firm,
handwritten
letter, etc.

Don't be hyper-
technical when
interpreting a
request

REQUEST FOR INFORMATION



The public can:

Request copies of information

Request to inspect information on-site



The public can't:

Request the governmental body to create new documents, answer questions, or to perform legal research



Governmental bodies must:

Display a sign
(<https://www.texasattorneygeneral.gov/opengovernment/governmental-bodies/pia-poster>)



Governmental bodies can't:

Ask why a requestor wants the information or what he or she intends to do with it

PROCESSING THE REQUESTS

Governmental bodies should:

- date stamp the request
- require that requests be made in writing
- document any changes to request in writing
- develop a policy and procedure

Governmental bodies may contact requestor to:

- clarify ambiguous requests
- narrow request if the amount of information might be voluminous (narrowing is not required and the governmental body cannot make the requestor narrow their request)

GOVERNMENTAL BODIES RESPONSE TO OPEN RECORD REQUESTS

Must treat all requests
uniformly – no
preferential treatment

Must make a good faith
effort to relate a
request to information
held by the
governmental body

Must make available
during business hours

GOVERNMENTAL BODIES RESPONSE TO OPEN RECORD REQUESTS

Should provide public information in medium requested, if possible

- If information is located on Web site, can refer to Internet address of the requested information, but the governmental body must provide either copies or access in accordance with the PIA unless the requestor agrees to utilize the information on the Web

Repetitious or redundant requests are handled in accordance with §552.232 – Cannot Ignore

Can charge reasonable fees consistent with cost rules

GOVERNMENTAL
BODIES
RESPONSE TO
OPEN RECORD
REQUESTS

Promptly providing public
information to a requestor

- Must promptly produce public information that cannot be withheld under the PIA – “as soon as possible, without delay, which means a reasonable time under the circumstances” – can depend on amount and location of information
- Send a letter detailing charges
- Send a letter detailing why additional time is needed to compile the request
- The Act requires the governmental body to certify the date and time when the information will be available if the governmental body cannot produce the information within 10 business days
552.221 (d).

FEES
ASSOCIATED
WITH PIA
REQUESTS

Must follow rules established by the Attorney General (see attorney general's website)

Allowed to charge the amount of time it takes to gather the information in some circumstances

Allowed to charge for copies

AG Opinion JM-757: Governmental body may refuse to allow public to use their own equipment, i.e. copy machine, under certain circumstances

COST ESTIMATES

- \leq \$40.00 – Invoice or bill the requestor upon completion of work.
- $>$ \$40.00 and \leq \$100.00 – Must provide a cost estimate prior to the work being completed.
- $>$ \$100.00 – Must provide a cost estimate prior to the work being completed and may request a deposit.
- You must inform the requestor that he or she may contact you regarding a less costly alternative (inspection is almost always less costly).
- You must inform a requestor that they must respond within 10 business days and the manners in which they may respond.
- OAG's Open Government Hotline 1-877-OPEN-TEX or 1-512-478-6736
- OAG Cost Estimate Model - <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/charges-public-information/public-information-cost-estimate-model>

ALLOWABLE CHARGES

- \$0.10 per page for paper copies
- \$1.00 per CD
- \$3.00 per DVD
- Actual Costs for a USB or hard drive
- \$15.00 per hour for labor (locate, compile, manipulate data, reproduce information)
- 20% of the labor as overhead



TOP SECRET

WHEN TO REQUEST AN ATTORNEY GENERAL RULING

- What should a governmental body do if it believes information may be confidential or should not be released?
- A governmental body is required to ask the AG for a ruling anytime it wants to withhold information, with two exceptions:
 - Previous determination
 - Statutory authorization to withhold without requesting a ruling

ATTORNEY GENERAL RULING PROCESS

Must request a ruling within 10 business days of receipt of the request

- Send a letter to AG detailing what exceptions apply
- Ten business days starts the day after the day you receive the request
- Weekends and holidays (including skeleton crew days) when your office is closed do not count

Submit arguments and sample materials within 15 business days of receipt of the request

- Must include a copy of the original PIA request
- Must include evidence of the date the request was received
- Sample materials must be bracketed and labeled showing what exceptions apply

Only governmental bodies can request AG rulings – Requestor may appeal withholding under §§ .024, .130, .136, .138, and .1175

ATTORNEY GENERAL RULING PROCESS

Must notify requestors that
AG Ruling has been sought

Must send a copy of AG
ruling request letter (10-
day letter) to requestor

Must send a copy of the
written arguments (15-day
letter) to requestor,
redacted if necessary

Must notify any third
parties who have a trade
secret interest or
commercial financial
interest in the information
requested

AG required to respond
within 45 business days –
can be extended by AG
(once) by ten business days
(requires written notice
from AG)

DEADLINES UNDER THE PUBLIC INFORMATION ACT

10 Business Day Deadline

To attorney general:

- Must ask for attorney general decision and state which exceptions apply to the information

To requestor:

- Must provide written statement that the governmental body wishes to withhold the requested information and that the governmental body has asked for an Attorney General decision
- Must provide a copy of the governmental body's written communication to the attorney general in which the governmental body asks for a decision (If the governmental body's written communication to the attorney general discloses the requested information, a redacted copy must be provided)

To third party:

- Must make "good faith attempt" to notify affected parties
- Notice must be in writing and in the form prescribed by the Attorney General



DEADLINES UNDER THE PUBLIC INFORMATION ACT



15 Business Day Deadline

- To attorney general:
 - Must provide written legal arguments stating why the stated exceptions apply
 - Must provide copy of written request of information
 - Must provide signed statement stating the date the request for information was received by the governmental body or evidence sufficient to establish the date the request was received
 - Must provide copies of the documents at issue or a representative sample of the documents at issue
 - Must label the documents to indicate which exceptions apply to which parts of the documents
- To requestor:
 - Must provide a copy of the written comments submitted to the attorney general (redacted if necessary)

A ruling on whether information may or must be withheld is issued within 45-business days.

DEADLINES
UNDER THE
PUBLIC
INFORMATION
ACT

May

2021

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
26	27	28	29	30	1	2
3	4	5	6	7	8	9
10	11	12	13 City receives PIA request	14 Start Counting – Day 1	15 DO NOT count weekends	16
17	18	19	20	21	22	23
Day 2	Day 3	Day 4	Day 5	Day 6		
24	25	26	27	28	29	30
Day 7	Day 8	Day 9	Day 10	Day 11		
31 DO NOT count holidays	1 Day 12	2 Day 13	3 Day 14	4 Day 15	5	6



20- AND 25-DAY DEADLINES - BODY WORN CAMERA VIDEO

- A. The request **must** contain the following:
 - 1. Date **and** approximate time of recording; and
 - 2. Specific location where recording occurred; and
 - 3. Name of one or more persons known to be a subject of the recording.
- B. You can still raise additional exceptions if it's a proper request.
- C. Requests only for BWC video - deadlines extend to 20 and 25 business days.
- D. Charges for obtaining a body worn camera recording:
 - 1. \$10.00 per recording responsive to the request for information; and
 - 2. \$1.00 per full minute of body worn camera video or audio footage responsive to the request for information, if identical information has not already been obtained by a member of the public in response to a request for information.



WHAT HAPPENS IF I MISS THE DEADLINE?

- If a governmental body does not request an attorney general decision as provided by Section 552.301 and provide the requestor with the information required by Sections 552.301(d) and (e-1), the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.
- Compelling Reasons – e.g. .101, .107

TRENDING - REQUESTS FOR DWI RECORDINGS

Code of Criminal Procedures Art. 2.1396 – a person stopped or arrested on suspicion of an offense under:

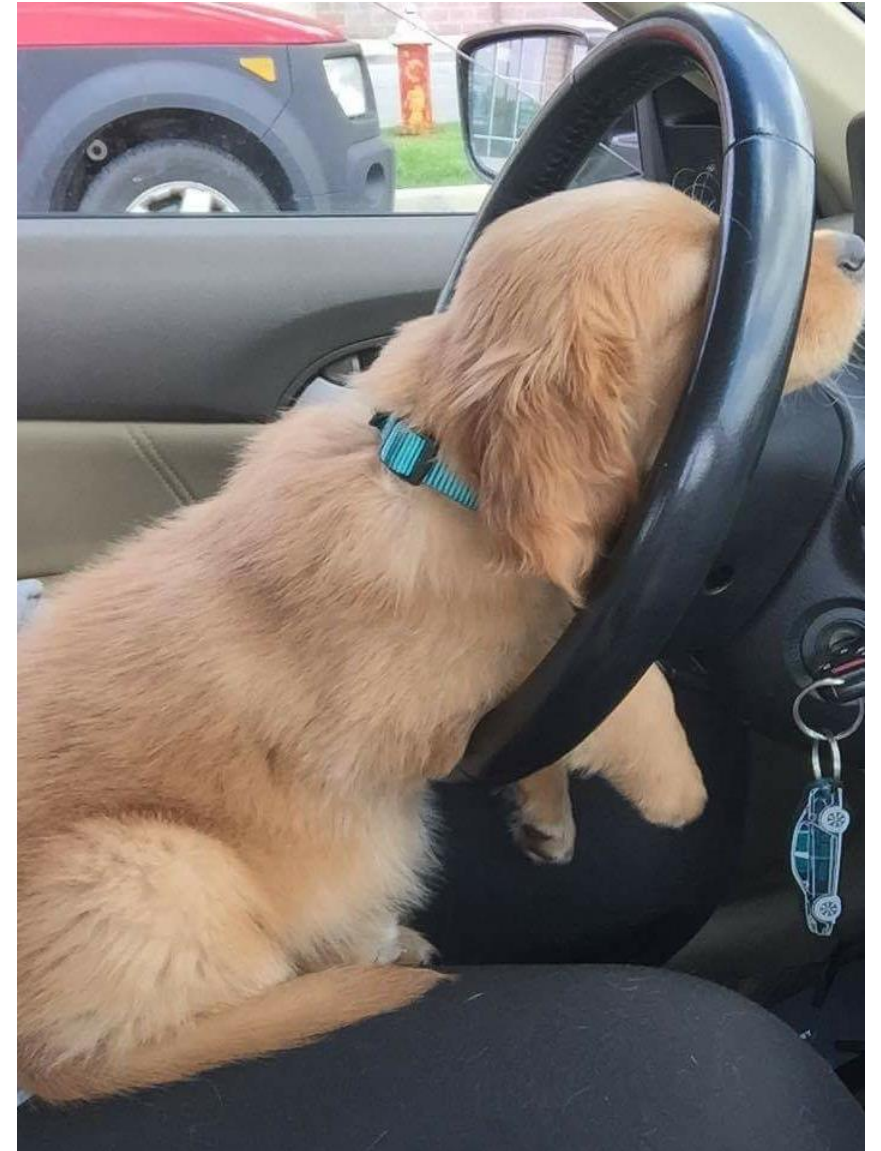
- Section 49.04 – Driving while Intoxicated
- Section 49.045 – Driving while Intoxicated with Child Passenger
- Section 49.07 – Intoxication Assault
- Section 49.08 – Intoxication Manslaughter

Are entitled to receive any video made by or at the direction of the officer that contains footage of:

- The stop;
- The arrest;
- The conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test; or
- A procedure in which a specimen of the person's breath or blood is taken.

Reports and other responsive information could possibly still be argued.

Can be tricky!!





ENFORCEMENT AND PENALTIES

Where to start when you have a conflict with a requestor (or vice versa):

Open Records Division Informal Dispute Resolution Process

The Open Records Division offers hotlines for questions, handles cost complaints under §552.269, and complaints informally.

A request for reconsideration of an attorney general ruling is prohibited

ENFORCEMENT AND PENALTIES

- Civil Remedies
 - Requestor or AG may file suit for writ of mandamus to compel governmental body to make information available if governmental body:
 - Refuses to provide copies or access to information;
 - Refuses to request an AG ruling; or
 - Refuses to release information as required by an unchallenged AG ruling
- Requestor can file a written complaint with the AG's office if they do not wish to file the suit themselves, but AG does not represent individuals as their attorney
- The requestor cannot be sued, but may intervene
- Prevailing party can recover attorney fees and court costs



ENFORCEMENT AND PENALTIES

- Injunctive/Declaratory Relief §552.3215
 - Amended in 2017 by HB 3107 to read:
 - (i) If the district or county attorney determines not to bring an action under this section, the complainant is entitled to file the complaint with the attorney general before the 31st day after the date the complaint is returned to the complainant. A complainant is entitled to file a complaint with the attorney general on or after the 90th day after the date the complainant files the complaint with a district or county attorney if the district or county attorney has not brought an action under this section. On receipt of the written complaint, the attorney general shall comply with each requirement in Subsections (g) and (h) in the time required by those subsections. If the attorney general decides to bring an action under this section against a governmental body located only in one county in response to the complaint, the attorney general must comply with Subsection (c).

ENFORCEMENT AND PENALTIES

- Challenging an AG ruling
 - Governmental body may file suit in Travis County
 - Must be filed within 10 calendar days to preserve affirmative defense to prosecution
 - Must be filed within 30 calendar days from date the ruling is received
 - Requestor may file suit seeking declaratory judgment or injunctive relief





ENFORCEMENT AND PENALTIES

- Criminal Penalties
 - Refusing to provide public information: up to 6 months in jail and/or up to \$1,000 (also constitutes official misconduct which may result in removal from office)
 - Defense to prosecution if officer reasonably believed that access was not required and relied on court order, opinion of court, or open records decision
 - Defense to prosecution if official filed suit in Travis County to challenge an attorney general's opinion
 - Providing, distributing or, misusing confidential information: up to 6 months in jail and/or up to \$1,000 (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

THINGS TO CONSIDER

Public Option – Option
A and Option B

Councilmember right of
access

Certified Crash Reports
from City PD not State

Subpoenas

OPTION A
VS.
OPTION B

Option A

- I hereby agree to limit the scope of my request.
- You can redact what the City believes is confidential.
- Requestors not satisfied with this request can submit another request and select Option B.
- No need for an Attorney General Ruling.

Option B.

- I do not agree to limit the scope of my request.
- Requestor wants everything.
- You can release basic information to the Requestor and send the rest to the Attorney General.

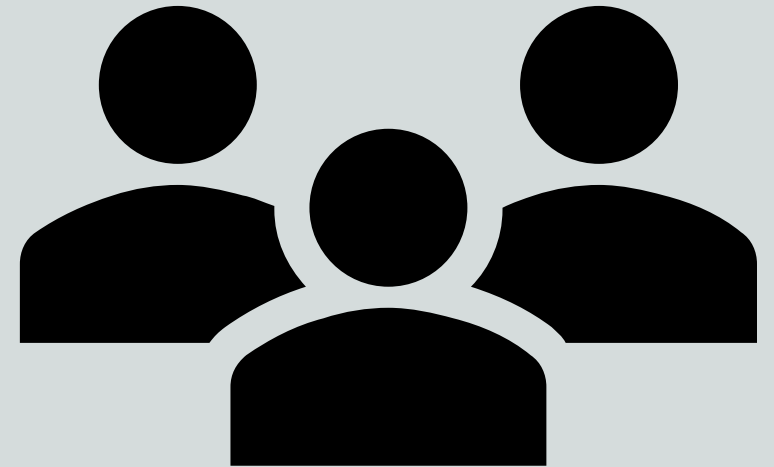
COUNCILMEMBER RIGHT OF ACCESS

An official of a governmental body who, in an official capacity, requests information held by the governmental body is not acting as a member of the public in doing so.

Therefore, exceptions to public disclosure under the Act do not control the official's right of access to information maintained by the governmental body.

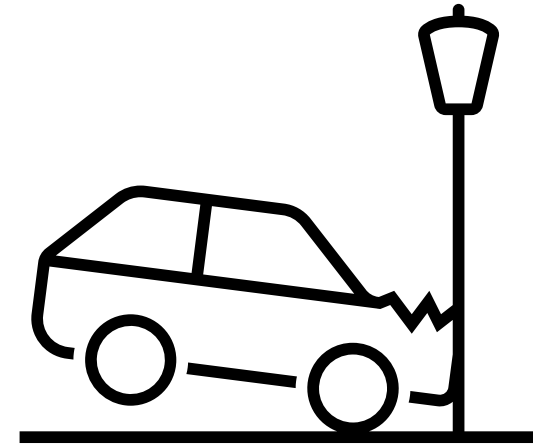
Information must be released, unless the governing body has adopted a special provision in an Ordinance or Order that states otherwise.

When in doubt.....request a ruling.



CERTIFIED CRASH REPORTS FROM CITY POLICE DEPARTMENT NOT STATE

- §552.130 does not apply to motor vehicle record information found in a CR-3 accident report form. Access to a CR-3 accident report is specifically governed by §550.065 of the Transportation Code, not §552.130 of the Government Code.
- The provisions of §552.262 of the Government Code do not apply if charges for copies are established by another statute for specific kinds of information. For example, §550.065 of the Transportation Code establishes a charge of \$6.00 for an accident report (CR-3 report NOT PD accident report) maintained by a governmental entity.
- Can direct them to the TxDOT website at:
<https://cris.dot.state.tx.us/public/Purchase/app/home>



SUBPOENAS

§ 552.0055 provides that a *subpoena duces tecum* or request for discovery issued in compliance with a statute or rule of civil or criminal procedure is not considered to be a request for information under the Public Information Act.

TEMPORARY CUSTODIANS



Affirmative duty for current or former public officers or employees to preserve and/or transfer information held on private devices



References the Records Retention Act



No personal or property right in public information created or received by an officer or employee while acting in official capacity

TEMPORARY CUSTODIANS

- Public information officer must make reasonable efforts to obtain public information from a temporary custodian
- Temporary custodian's failure to comply subjects them to discipline, if they are an employee, and/or penalties under the Act if they are an employee or official
- Extensive amendments to provisions on contracting and proprietary information

2021 LEGISLATIVE CHANGES

HB872 – Adds §552.1331 – Certain Government-Operated Utility Customer Information

- A government-operated utility shall provide notice and the form in which a customer can request a disclosure by including it on the customer's bill or by posting it on the utility's internet website.

SBI225 - §552.233 modifies “catastrophe” to mean an event or occurrence that directly interferes with a governmental body's ability to comply with Chapter 552.

- Failure to put forth a good faith effort may constitute a refusal to request an attorney general's opinion or a refusal to supply public information.

2021 LEGISLATIVE CHANGES

SBI 134 - Amends § 552.117(a)(15), a federal bankruptcy judge, a marshal of the United States marshal Service, a United States Attorney, or a family member of one of the three above are now included as a “federal judge.”


HB1082 – §§552.117 and 552.1175, Government Code and §25.025, Tax Code, a “state officer [elected statewide or a member of legislature” is replaced with “an elected public officer.”

HB2357 – Adds §552.1315, an exception for confidentiality of identifying information from certain crime victim records from the requirements of §552.021.

Family member, for purposes of §552.117, is defined as a spouse, minor child, or adult child who resides in the person's home. *Cf. id.* § 552.117(c) (providing that “family member” has meaning assigned by Fin. Code § 31.006(d)).

RESOURCES

Keep current by using these resources:



www.tml.org
(512-231-7400)



<https://www.texasattorneygeneral.gov/>
(877-OPEN-TEX)

QUESTIONS?

DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.

San Antonio Office

2517 North Main Avenue
San Antonio, Texas 78212-4685
Phone (210) 227-3243
Fax (210) 225-4481

Rio Grande Valley Office

701 East Harrison
Suite 100
Harlingen, Texas 78550-9165
Phone (956) 421-4904
Fax (956) 421-3621

Austin Office

2500 W William Cannon Drive
Suite 609
Austin, Texas 78745-5320
Phone (512) 279-6431
Fax (512) 279 6438

Texas Gulf Coast Office

549 N. Egret Bay Blvd.
Suite 200
League City, TX 77573
Phone (832) 632-2102

