

2023

PUBLIC INFORMATION ACT

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PUBLIC INFORMATION ACT¹

THE GENERAL POLICY

People are Entitled to Information About the Government. The Public Information Act is a Texas statute codified as Chapter 552 of the Texas Government Code.² It declares that it is the public policy of Texas that people are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.

The Freedom of Information Act, Open Records Act, Sunshine Law, etc. You may hear people refer to the “Freedom of Information Act,” and you may see the Freedom of Information Act invoked by name in a request for access to county records. Strictly speaking, the Freedom of Information Act is the federal equivalent of the Public Information Act and applies to information in the possession of a federal agency. However, the Public Information Act is certainly a freedom of information law, and people often will use the federal name when they mean to refer to the state law. This is of no consequence to the validity of a request for access to records.

Similarly, the Public Information Act may be referred to by different names. Since the 1995 session of the Legislature, the official name of the Act has been the "Public Information Act." However, the Act is often referred to as the Open Records Act, its former name. Open government laws like the Public Information Act and the Open Meetings Act are sometimes generically referred to as "Sunshine Laws." It doesn't matter what someone calls it so long as their request is in writing and reasonably identifies the information sought.

Information is Presumed Open to the Public. The Public Information Act makes all “public information” open to the public unless the information is specifically excepted from disclosure by the Public Information Act or other law. “Public information” is defined very broadly to include information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction

¹This publication includes changes adopted by the 88th Legislature through the Fourth Called Session (2023). Portions of this handbook were adapted with permission from the City of Austin’s Public Information Handbook.

²The office of the Texas Attorney General publishes a comprehensive Public Information Handbook. You may obtain a copy from that office or access it through the attorney general’s website, texasattorneygeneral.gov/og/open-government-related-publications. A link to attorney general opinions are also available on the same website.

of official business by a “governmental body.”³ “Official business” is defined as any matter over which a governmental body has any authority, administrative duties, or advisory duties.⁴ A county officer’s or employee’s e-mails made in the transaction of county business are public information that must be produced, even if they are made on a personally-owned mobile communications device.⁵ Employees, former employees, officials, and former officials who retain public information on their personal devices and who have not forwarded public information to the appropriate public information officer for their county are “temporary custodians” of the public information on their personal devices.⁶ Public information also includes information that is created for a governmental body by a third party if the governmental body either owns or has access to the information.⁷

Under the Public Information Act, information is presumed to be open. The Act provides a nonexclusive list of types of public information that are not excepted from disclosure under the Act and that are public unless the Act or “another law” makes the information confidential.⁸ These records are sometimes referred to as “super” public. Examples include: a *completed* report, audit, evaluation, or investigation (except for law enforcement or prosecutor information); the names, sex, ethnicity, salary, title, and dates of employment of governmental officers and employees; and the name of each official and the final record of voting on all proceedings of a governmental body. Other examples of “super” public information include categories of contracting information, including, but not limited to the total overall price the county will or could pay under a contract, a description of the items or services and associated cost for the item or services if identified in the contract, the delivery and service deadlines, remedies for a breach of contract, the identity of all parties and subcontractors to a contract, the execution and effective dates, the contract duration terms plus extension options, and information regarding progress reports, milestones, amendments, and contract variances.⁹

The attorney general does not consider the exceptions to disclosure in the Act itself to be “another law,” if the exceptions may be waived by the governmental body. In other words, the fact that one part of the Act allows a governmental body to withhold

³Access to records of the judiciary is governed by rules of the Texas Supreme Court or other law, not the Public Information Act. Tex. Gov’t. Code §552.0035; Tex. Rules of Judicial Administration Rule 12.

⁴Tex. Gov’t Code §552.003(2-a)

⁵ Tex. Gov’t Code §552.002(a-1) and (a-2); See Tex. Att’y Gen. Open Records Letter Nos. 2005-06753, 2005-01126, 2003-1890, 2003-0951; *Adkisson v. Paxton*, 459 S.W.3d 761, 765 (Tex. App. – Austin 2015, no pet.).

⁶ Tex. Gov’t Code §552.003(7)

⁷ Tex. Gov’t Code §552.002(a)(2)

⁸ Tex. Gov’t Code §552.022

⁹Tex. Gov’t Code §552.0222

information under certain circumstances does not mean that the governmental body may always withhold the information.

A county commissioners court is one of the entities specifically listed in the Public Information Act as a “governmental body.”¹⁰ The attorney general has determined that the records maintained in the offices of individual county officers are also subject to the Public Information Act, reasoning that county offices are funded wholly or partly with public funds. The boards and commissions created by the county, as well as that part of most corporations or other organizations that are funded in whole or in part with public funds, are also covered by the Act.¹¹

The Act Lists Specific Exceptions to Required Public Release. If a governmental body wishes to withhold requested information from public release, the governmental body has the burden of overcoming the presumption of openness by establishing that the information is within an exception to disclosure listed in the Public Information Act, another statute, case law, or other law. The Act provides a specific process for determining whether information is within an exception, discussed in more detail below. Because the intent of the law is to encourage prompt disclosure of requested public information, this process is extremely time sensitive.

Some Information Cannot Be Disclosed. The Public Information Act protects confidential information in the custody of a governmental body. As discussed below, it is unlawful for a county officer or employee to disclose confidential information. Examples of information that the attorney general has determined to be confidential are: reports of allegations of child abuse; communications between a patient and a mental health professional; certain information relating to emergency medical services; and certain medical records.

Protected Health Information is Not Public Information. Protected health information as defined by Section 181.006 of the Health and Safety Code is not public information and therefore is not subject to disclosure under the Act.¹²

You Work for the Public. It is important to remember that you are public officers and employees. The government belongs to the public. In making a request for public information, a requestor is not attacking you, your office, or the county. The requestor is exercising a specific statutory right, and it is appropriate and legitimate for them to do

¹⁰ Tex. Gov’t Code §552.003(1)(A)(ii)

¹¹ Tex. Gov’t Code §552.003(1)(A)(xv)

¹² Tex. Gov’t Code §552.002(d)

so. A requestor should always be treated with respect, and the request should be taken seriously and handled promptly.

Don't Promise Confidentiality. Keep in mind that under the Public Information Act, information may only be withheld if a specific exception to disclosure permits the information to be withheld. The county may not confer confidentiality on information or on a particular record by promising to keep it confidential. Disappointment and unhappiness will result if someone is promised confidentiality and the county is later required to release the information to the public.

THE ROLE OF THE ATTORNEY GENERAL

The Texas Attorney General's Office plays an important role in the administration of the Public Information Act. If the county wishes to withhold information or believes information must be withheld, it must seek a decision from the attorney general that one or more exceptions to required disclosure set out in the Act applies to the information in question, unless the attorney general has issued a previous determination that encompasses the exact information sought in a request.¹³ A governmental body does not need to request an attorney general decision if the Open Records Division of the Texas Attorney General's Office has previously determined the requested information falls under an exception to disclosure.¹⁴ The attorney general oversees the information withholding decisions of the county to ensure compliance with and uniformity of application of the Act. This is important to understand when your office wishes to withhold requested information.

The attorney general's office must be provided with copies of the information in question in order to perform its oversight role.¹⁵ In the case of records that are voluminous or repetitive, the attorney general will accept representative samples of the records. The attorney general is prohibited by the Public Information Act from releasing records submitted to it by the county for review under the Act. If the attorney general finds that records must be released, that office will return the records to the county along with a

¹³ Tex. Gov't Code §552.301

¹⁴ For more information about Attorney General previous determinations, *see generally*.

<https://www.texasattorneygeneral.gov/open-government/governmental-bodies/previous-determinations-overview>. For a list of previous determinations by governmental body, *see* <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/previous-determinations-governmental-body>.

¹⁵ Tex. Gov't Code §552.303, Tex. Gov't Code §552.3031, added by HB 3033, 88th (R) Leg., Effective September 1, 2023

finding that the records must be released. This gives the county an opportunity to seek judicial relief, should that be appropriate.

The Role of Your Attorney. If your office wishes to withhold information, your attorney should assist you in seeking a decision from the attorney general. *The Public Information Act is time sensitive.* Generally, when the county wishes to withhold information that has been requested, you must seek a determination from the attorney general within 10 business days of receiving the request or from constructive receipt of the request if there is reason to believe the requested information may be in the custody of a temporary custodian.¹⁶ For this reason, prompt attention to requests for public records is essential.

Your Role. Each county office should design and implement information management practices that permit compliance with the Public Information Act.

OFFICER FOR PUBLIC INFORMATION

Elected County Officer. The Public Information Act designates each elected county officer as the officer for public information and as the custodian of the information created or received by that person's office.¹⁷ For example, the county clerk is the officer/custodian of records maintained in the clerk's office. But the clerk is not the officer/custodian for records maintained by the sheriff, county judge, county attorney, or other elected county official. Each elected officer is responsible for the records of his or her office.

Request Made to Wrong Officer. When one county officer receives a request for information that is not kept by that officer, the officer may want to advise the requestor to redirect the request to the appropriate county officer.

Department Heads. The Public Information Act states that each department head serves as an agent of the officer for public information for the purpose of complying with the Public Information Act.¹⁸ This means that receipt of a request within a department of a county officer is considered receipt by the officer. The officer should take necessary steps to ensure that all department heads understand the time sensitive nature of the Public Information Act and their respective duties under the Act.

¹⁶ Tex. Gov't Code §§552.301(b), 552.233(d)

¹⁷ Tex. Gov't Code §552.201(b)

¹⁸ Tex. Gov't Code §552.202

Duties of Officer for Public Information. Each officer for public information must make public information available for inspection and copying.¹⁹ The officer must keep the records safe and properly maintained.²⁰ The officer must make reasonable efforts to obtain public information from a temporary custodian if the officer is aware of facts sufficient to warrant a reasonable belief that the temporary custodian has possession, custody or control of the information and the officer is unable to comply with the duties imposed by the Public Information Act without obtaining the information from the temporary custodian.²¹

Temporary Custodian. Employees, former employees, officials, and former officials who retain public information on their personal devices and who have not forwarded public information to the appropriate public information officer for their county are “temporary custodians” of the public information on their personal devices.²²

Temporary Custodian Does Not Own Public Documents. A temporary custodian does not have, by virtue of the custodian’s position or former position, a personal or property right to public information the officer or employee created while acting in an official capacity.²³

Responsibility of Temporary Custodian to Preserve Public Information. A temporary custodian is required to forward or transfer the public information to the county or a county server to be preserved or preserve the public information in its original form in a backup or archive and on the privately owned device for the appropriate preservation period.²⁴

A temporary custodian is required to forward or transfer the public information in his or her possession to the county not later than the 10th day after the officer of public information requests the temporary custodian to surrender or return the information. Failure to do so is grounds for disciplinary action by the county or other penalties provided by law.²⁵

¹⁹ Tex. Gov’t Code §552.203(1)

²⁰ Tex. Gov’t Code §552.203(2) & (3)

²¹ Tex. Gov’t Code §552.203(4)

²² Tex. Gov’t Code §552.003(7)

²³ Tex. Gov’t Code §552.233(a)

²⁴ Tex. Gov’t Code §552.004(b)

²⁵ Tex. Gov’t Code §552.233(b) & (c)

Receipt Date of Request for Public Information Possessed by Temporary Custodian. The county is considered to have received the request for information in possession of a temporary custodian on the date the public information is surrendered or returned to the county.²⁶

Preservation Period of Records Held by Temporary Custodian. Records held by a temporary custodian are subject to the same preservation, destruction, and disposition requirements as appropriate for the type of record.²⁷

Officer to Display Notice Regarding Public Information. The officer for public information is required to prominently display a sign that contains basic information about the rights of a requestor of information, the responsibilities of the governmental body, and the procedures for inspecting or obtaining copies of public information.²⁸ The attorney general prescribes the form, content, and size of the sign.²⁹ The officer for public information must place the sign in one or more locations in the administrative offices where the sign will be clearly visible to the public and to the employees who receive and respond to public information requests.

TRAINING REQUIRED FOR COUNTY OFFICIALS

All elected and appointed county officials must complete a training course on the Public Information Act.³⁰ The attorney general makes the training available at no cost on video and on his website. The one-time course must be at least one hour and may not exceed two hours.

A county official must complete the training not later than 90 days after taking office. The statute does not impose a penalty for failure to complete the required training.



The attorney general may require county officials to complete the course of training if the attorney general determines that the county has failed to comply with a requirement of the Act. The attorney general must notify each county official in writing of the

²⁶ Tex. Gov't Code §552.233(d)

²⁷ Tex. Gov't Code §552.004(b) & (c)

²⁸ Tex. Gov't Code §552.205(a)

²⁹ A free, downloadable copy of the required Public Information Act poster is available at <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/pia-poster>.

³⁰ Tex. Gov't Code §552.012. A county official may designate a "public information coordinator" to complete the training on the official's behalf, if the designee is primarily responsible for administering the public official's duties under the Act.

determination and the requirement to complete the training, which must be completed not later than the 60th day after the date the official receives the notice.³¹

A REQUEST FOR RECORDS

Routine or Over-the-Counter Records Requests. Many county employees process routine or over-the-counter requests for records as part of their ordinary duties. These transactions do not ordinarily raise issues under the Public Information Act because no written request is made for the records or because no real issue exists about whether the records must be, or may be, released.

Some examples of records routinely requested from county offices include property records maintained by the county clerk and voter registration records maintained by the voter registrar.

Written Request Triggers the Public Information Act. The Public Information Act is triggered when a person submits a written request for information to the county.³² While the request must be in writing to trigger the Public Information Act, it need not be in any special form, and it need not invoke or mention the Public Information Act. A request is valid so long as it is in writing (including e-mail) and reasonably identifies the information sought. A requestor may not know exactly what a county office calls specific documents or know exactly how they might be stored. If you can't be sure what information is being sought, you must contact the requestor to clarify the issue.³³ However, keep in mind that you may **not** ask the requestor WHY the requestor wants the information.³⁴

Method of Making Written Request for Public Information. A request may be submitted to the applicable public information officer or a person designated by that officer by (1) United States mail, (2) electronic mail, (3) hand delivery, or (4) any other delivery method approved by the governmental body--including facsimile transmission or electronic submission through the county's internet website. To approve an alternate delivery method, the county must include the method on its website and on its posted public information signs.³⁵

³¹ Tex. Gov't Code, §552.012, added by HB 3033, 88th (R) Leg., Effective September 1, 2023

³² A subpoena duces tecum or a request for discovery is not a request under the Public Information Act. Tex. Gov't Code §552.0055

³³ Tex. Gov't Code §552.222

³⁴ Tex. Gov't Code §552.222(a)

³⁵ Tex. Gov't Code §552.234(a) & (b)

Designation of Addresses for Public Information Requests. A county may designate one mailing address and one email address for receipt of written public information requests. If the county does so and includes the addresses on its PIA posters and the county website, it is not required to respond to a request for information unless the request is received at one of the addresses, by hand delivery, or by another appropriate method that has been approved by the county.³⁶

Public Information Request Form. The Attorney General has created a public information request form for use by governmental bodies. The PIA requires governmental bodies who allow requestors to use this form, to post the form on their website.³⁷ The form is available for download on the Attorney General's website.³⁸

Request Considered Withdrawn. To obtain clarification, discussion, or additional information about a request you receive, you must send a letter, by certified mail, to the address the requestor provided in the underlying request for information, or to the requestor's e-mail address if no mailing address is provided.³⁹ You must include in your letter a statement of the consequence if the requestor fails to timely respond to your letter. The requestor must respond to you in writing by the 61st day or the request is considered to have been withdrawn.⁴⁰

If the request for public information was sent by e-mail, you must send the request for clarification or discussion or the written request for additional information by e-mail to the same e-mail address from which the original request was sent or to another e-mail address provided by the requestor. You may consider the request withdrawn if you do not receive a written response or response by e-mail from the requestor by the 61st day.⁴¹

As discussed below, a request may also be considered to have been withdrawn if the requestor does not respond to a cost estimate letter from the county within 10 business days after the requestor has received it. Additionally, a request is considered withdrawn if the requestor fails to inspect or duplicate public information by the 60th day after it is made available or fails to pay postage and other applicable charges by the 60th day after the date the requestor is informed of the charges.⁴²

³⁶ Tex. Gov't Code §552.234(c) & (d)

³⁷ Tex. Gov't Code §552.235(b)

³⁸ <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/responding-pia-request/public-information-request-form>

³⁹ Tex. Gov't Code §552.222(f) & (g)

⁴⁰ Tex. Gov't Code §552.222(d)

⁴¹ Tex. Gov't Code §552.222(g)

⁴² Tex. Gov't Code §552.221(e)

WHAT THE PUBLIC INFORMATION ACT REQUIRES

Access to Records. The Public Information Act requires the county to provide access to information that exists at the time of the request, or to seek a determination from the attorney general that the information may or must be withheld. Access to requested information must be provided promptly.⁴³ If the requested information cannot be produced for inspection or duplication within 10 business days after the request is received, the governmental body must certify that fact in writing to the requestor, and must set a date and hour within a “reasonable time” when the information will be available.⁴⁴ If the information is in active use or in storage, the governmental body must also certify this fact in writing, and arrange for the information to be available to the requestor within a reasonable amount of time.⁴⁵ All requests for information must be treated uniformly.⁴⁶ The requestor may choose merely to inspect records or to seek copies of them. When a record may be partially withheld, unless the requestor agrees otherwise, the requestor is entitled to a copy of the actual record with the confidential or non-disclosable parts excised. A requestor may request that records be sent by mail. The county may charge for copies or access in certain circumstances.

A county may refer a requestor to an exact Internet location or URL address on a website maintained by the county and accessible to the public if the requested information is identifiable and readily available on that website.⁴⁷ If the requestor prefers a manner other than access through the URL, the county must supply the information as required by §552.221(b). If the county provides by e-mail an Internet location or URL address, the e-mail must contain a statement in a conspicuous font clearly indicating that the requestor may nonetheless access the requested information by inspection or duplication or by receipt through United States mail.

What the Public Information Act Doesn’t Require. The Public Information Act applies only to information in existence at the time the request is made. The Public Information Act does not require the county to prepare new information in response to a request.⁴⁸ The Public Information Act does not require the county to provide access to records that did not exist at the time of the request, or to advise a requestor about new information that comes into existence after the request has been made.⁴⁹ The county need not comply

⁴³Tex. Gov’t Code §552.221(a)

⁴⁴ Tex. Gov’t Code §552.221(d)

⁴⁵ Tex. Gov’t Code §552.221(c)

⁴⁶ Tex. Gov’t Code §552.223

⁴⁷ Tex. Gov’t Code §552.221(b-1)

⁴⁸ *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995, reh. overruled); ORD-624 (1994)

⁴⁹ Tex. Gov’t Code §552.002; ORD-452 (1986)

with a “standing” request for information that may come into existence in the future, or that comes into existence periodically.⁵⁰ The county need not do legal research for a requestor or answer questions or interrogatories.⁵¹ The requestor is entitled to copies of the actual records as they exist. Generally, the Public Information Act does not require that information be prepared or organized in a particular way to suit the needs of the requestor. *However*, if the information is available in an electronic or magnetic medium, the county must comply with a request for information in those formats if it has the technological ability to do so.⁵²

Repetitious or Redundant Requests.⁵³ The Public Information Act addresses the reality that counties and other governmental bodies sometimes experience redundant or repetitive requests for the same information by the same requestor. If a person requests information that the county has previously provided to that person, the county *may* certify that fact to the requestor rather than producing the information again.⁵⁴ This procedure is not available if there have been additions, deletions, or corrections to the information since the earlier request was received by the county.

However, the Public Information Act does not allow a governmental body to sue a requestor who files repetitive or redundant requests for information for common law claims of public nuisance and abuse of governmental process.⁵⁵

ACCESS TO COMPUTER AND ELECTRONIC INFORMATION

If a requestor asks for it, the county must provide information that is available in an electronic or magnetic medium in the requested format if it has the technological ability to do so, but it does not have to purchase software or hardware to accommodate the request.⁵⁶ The county does not have to produce electronic information protected by copyright.

If providing electronic information asked for in a request will involve programming or manipulation of data that will substantially interfere with the county’s ongoing

⁵⁰ Tex. Att’y Gen. Op. No. JM-0048 (1983); ORD-476 (1987); ORD-465 (1987)

⁵¹ ORD-563 (1990); ORD-555 (1990)

⁵² Tex. Gov’t Code §552.228(b)

⁵³ See also, “CHARGING FOR COPIES OR INSPECTION,” “The County May Charge for Copies” and “Limiting Personnel Time Spent on Requests,” below.

⁵⁴ Tex. Gov’t Code §552.232

⁵⁵ *Lake Travis ISD v. Lovelace*, 243 S.W.3d 244 (Tex. Civ. App – Austin, 2007, no pet.); Tex. Gov’t Code §552.324.

⁵⁶ Tex. Gov’t Code §552.228(b)

operations, or will include a cost for programming and manipulation, the county is required to provide the requestor with a written statement explaining this.⁵⁷ The notice must explain to the requestor: (1) the form in which the information is available; (2) what is required to provide the information in the requested form; and (3) the estimated cost and time to provide the information in the requested form.

If the county provides the notice related to electronic information, it must be sent within 20 days of the date the request for information was received.⁵⁸ If additional time is needed to calculate the costs and timing, the county may wait and send the statement within 30 days of receiving the request, but only if notice is sent to the requestor within the 20-day response period that more time is needed. The requestor must notify the county in writing whether the requestor chooses to obtain the information in the format that is already available or will pay to have it put in the requested format. If the requestor does not respond within 30 days, the request is considered to be withdrawn.⁵⁹

The county need not provide untrammelled access to its files or premises or provide a computer terminal for the use of a requestor.⁶⁰ The county is not required to purchase hardware or software to comply with a request.⁶¹

The county is not required to copy the information on a diskette or other materials supplied by the requestor, such as a thumb drive or CD, but may use and charge for its own materials.⁶² This is intended to protect against the introduction of viruses into the county's computer system.

TEMPORARY SUSPENSION OF REQUIREMENTS FOR COUNTIES IMPACTED BY CATASTROPHE

Suspension of PIA in Catastrophe. The requirements of the Act do not apply to a county during the suspension period determined by the commissioners court if the county is currently impacted by a catastrophe and the commissioners court complies with the requirements of Section 552.2325 of the Code⁶³ and elects to suspend the requirements of Chapter 552.

⁵⁷Tex. Gov't Code §552.231(b). The Attorney General's Office has an on-line cost-estimate calculator located at <https://texasattorneygeneral.gov/og/public-information-cost-estimate-model>

⁵⁸ Tex. Gov't Code §552.231(c)

⁵⁹ Tex. Gov't Code §552.231(d-1)

⁶⁰ Tex. Att'y Gen. Op. No. JM-0757 (1987); ORD-571 (1990).

⁶¹ Tex. Gov't Code §552.228(b)

⁶² Tex. Gov't Code §552.228(c)

⁶³ Tex. Gov't Code §552.2325.

Definition of Catastrophe. A catastrophe is defined as a condition or occurrence that interferes with the ability of a county to comply with the Act, including fire, flood, earthquake, hurricane, tornado, wind, rain, or snowstorms, power failure, transportation failure, interruption of communications facilities, epidemics, riot, civil disturbance, enemy attack, or other actual or threatened acts of lawlessness or violence. A catastrophe does not mean a period in which staff is required to work remotely and can access information responsive to an application for information electronically but the physical office of the governmental body is closed.⁶⁴

Initial Suspension Period. The commissioners court in a county impacted by a catastrophe may suspend the applicability of the Act for an initial suspension period which may not exceed seven consecutive days and must occur during a period that begins not earlier than the second day before the date the county submits the prescribed notice to the attorney general and ends not later than the seventh day after the date the notice was submitted.⁶⁵

Extension of Suspension Period. The initial suspension period may be extended one time for not more than seven consecutive days beginning on the day following the day the initial suspension period concludes if the commissioners court determines that the county is still impacted by the catastrophe upon which the initial suspension period was based.⁶⁶ Notice of the extension must be forwarded to the attorney general on the prescribed form. The combined suspension period for any single catastrophe may not exceed 14 days.⁶⁷

Notice to Public. Notice of a suspension of the applicability of the PIA in a county due to catastrophe must be provided to the public in a place readily accessible to the public and in each other location the county is required to post notice under Subchapter C, Chapter 551.⁶⁸ The notice must be maintained during the entire suspension period.

Effective Date of Request Submitted During Suspension Period. A request for public information submitted during a suspension period is treated as though it was received by the county on the first business day after the date the suspension period ends.⁶⁹

⁶⁴ Tex. Gov't Code §552.2325(a)

⁶⁵ Tex. Gov't Code §552.2325(d)

⁶⁶ Tex. Gov't Code §552.2325(e)

⁶⁷ Tex. Gov't Code §552.2325(g)

⁶⁸ Tex. Gov't Code §552.2325(f)

⁶⁹ Tex. Gov't Code §552.2325(g)

Finally, the office of attorney general is required to post on its website a list of the governmental bodies that have submitted notices of suspension and prescribe the required notice forms.

RECORDS FROM LAW ENFORCEMENT BODY WORN CAMERAS⁷⁰

Policy Required. A sheriff's department of a county that operates a body worn camera program must comply with specific guidelines related to the records produced by the program. The videos generated by body worn cameras are subject to specific retention and open records guidelines. The department must adopt a policy for the use of videos including guidelines for public access, through open records requests, to recordings that are public information.⁷¹

The authority of a law enforcement agency to withhold information related to a closed criminal investigation that did not result in a conviction or a grant of deferred adjudication community supervision is not affected by this law.⁷²

The Request. A member of the public is required to provide the date and approximate time of the recording, the specific location where the recording occurred, and the name of one or more persons known to be a subject of the recording when submitting a written request for information recorded by a body worn camera.⁷³ The requestor's failure to provide all of the information does not preclude the requestor from making a future request for the same recorded information. The attorney general has set a fee to be charged to members of the public who seek to obtain a copy of a recording.⁷⁴

Restrictions on Release of Records. The county is not required to make publicly available information recorded by a body worn camera unless that information is or could be used as evidence in a criminal prosecution.⁷⁵ If the information is or could be used as evidence in a criminal prosecution, the county may request an attorney general's opinion and assert any exceptions to disclosure in the Act or other law or it may release the information requested after redacting any information made confidential under the Act or other law.⁷⁶

⁷⁰ Tex. Occupations. Code, Ch. 1701, Subchap. N

⁷¹ Tex. Occupations. Code §1701.655(b)(4)

⁷² Tex. Gov't Code §552.108; Tex. Occupations Code §1701.660(c)

⁷³ Tex. Occupations Code §1701.661

⁷⁴ 1 Tex. Admin. Code Rule 70.13. See Appendix A for the current text of the rule (as of publication time)

⁷⁵ Tex. Occupations Code §1701.661(d)

⁷⁶ Tex. Occupations Code §1701.661(e)

The county may not release any portion of a recording made in a private space or involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, without the written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person's authorized representative.⁷⁷

Additionally, the recording is confidential and excepted from the Public Information Act if it was not required to be made under the county's policy or other law and it does not relate to a law enforcement purpose.⁷⁸

Request for Attorney General Decision. It is important to note that different deadlines apply to a county's request for a decision from the attorney general about whether a requested recording falls within an exception to public disclosure.⁷⁹ A request and the county's response to a requestor are considered timely if they are made not later than the 20th business day after the date of receipt of the written request.

A county's submission to the attorney general of written comments and the recording is considered timely if it is made not later than the 25th business day after the date of receipt of the written request.⁸⁰ A county's submission to a requestor of the information required by §552.301(e-1) of the Act is also considered timely if it is made not later than the 25th business day after the date of receipt of the written request.⁸¹

Voluminous Requests. The law regarding production of records from a law enforcement body worn camera program includes specific provisions related to frequent or lengthy requests.⁸² A voluminous request for body worn camera recordings is defined as (1) a request for more than five separate incidents, (2) more than five separate requests for recordings from the same person in a 24-hour period (regardless of the number of incidents included in each request), or (3) a request or multiple requests from the same person in a 24-hour period for recordings that, taken together, constitute more than five total hours of video footage.⁸³

A public information officer who receives a voluminous request for recordings from body worn cameras is considered to have promptly produced the information if the officer

⁷⁷ Tex. Occupations Code §1701.661(f)

⁷⁸ Tex. Occupations Code §1701.661(h)

⁷⁹ Tex. Occupations Code §1701.662

⁸⁰ Tex. Occupations Code §1701.662(c)

⁸¹ Tex. Occupations Code §1701.662(d)

⁸² Tex. Occupations Code §1701.663

⁸³ Tex. Occupations Code §1701.663(b)

provides the information or communicates with the requestor as required under §552.221 of the Act before the 21st business day after the date of receipt of the written request.⁸⁴

THE REQUESTOR

The Motives of the Requestor Don't Matter. Obviously, the Public Information Act is an important tool for journalists and attorneys, and many requests for public information will come from members of these professions. However, the county is prohibited from making any inquiry of the requestor beyond establishing the requestor's identity, identifying the records sought, and, if a large amount of information is sought, discussing how the request might be narrowed. Therefore, the motives, occupation, or status of the person requesting the information does not determine whether the information must be disclosed.

Selective Release. The general rule is that all members of the public have equal access to public information. Accordingly, if you voluntarily release a record to one person, you will usually waive any privilege the county has to withhold that record from another requestor.⁸⁵ There are some exceptions to this rule. First, keep in mind that, for these purposes, the county is a single entity. Information may be shared among county offices.⁸⁶ That is not considered a release to the public. Generally speaking, when the county is working with another unit of government, including the federal government, information may be shared with the other governmental body without waiving any privilege to withhold it from the public.⁸⁷ For example, information shared by local law enforcement agencies with the prosecuting attorney is not subject to disclosure.⁸⁸ When information is required to be released to a specific individual by law, or in discovery in a lawsuit (even if the discovery is cooperative), the release will not be considered voluntary and any remaining privileges under the Public Information Act will not be waived. A permitted viewing of a medical examiner's report or video evidence under §552.108(d) is not a voluntary disclosure of information.⁸⁹

Special Right of Access. A person or the person's authorized representative has a special right of access to confidential information that relates to the person and is protected from public disclosure by laws intended to protect that person's privacy interests.⁹⁰ For

⁸⁴Tex. Occupations Code §1701.663(a)

⁸⁵Tex. Gov't Code §552.007

⁸⁶Tex. Att'y Gen. Op. No. JC-0283 (2000)

⁸⁷ORD-678 (2003)

⁸⁸Tex. Gov't Code §411.0258

⁸⁹Tex. Gov't §552.108(f), added by SB 435, 88th Leg., Effective May 24, 2023.

⁹⁰Tex. Gov't Code §552.023

example, a county employee is entitled to copies of confidential information in the employee's personnel file.

Inmate Requests. The Public Information Act relieves the state and its political subdivisions of the duty to respond to requests for information from incarcerated individuals and a person acting as the agent of the incarcerated individual, unless the requestor is the inmate's lawyer.⁹¹ It is not uncommon for a county to be bombarded with rather burdensome requests from persons confined in jail or their agents asking for extremely voluminous materials. More often than not, the requestors are unable to pay for the information. The county may comply with the request from an inmate or the inmate's non-lawyer agent, but it is not required to do so.

INFORMATION SUBJECT TO THE PUBLIC INFORMATION ACT

Generally. The Public Information Act applies to information that exists in some form of record. It does not reach information that exists only in your head. The Act does not require you to prepare new information or answer questions. However, the Act reaches information that exists in any kind of medium: paper, audio tape, video tape, microfilm, microfiche, drawings, photographs, photostats, charts, graphs, Mylar, linen, silk, vellum, electronic signals, including e-mail, Internet posting, text message, other electronic communication, or any other form of storage medium.

Information Stored in a Computer or Other Electronic Device. Information stored in a computer or electronic mobile device, including e-mail, is subject to the Public Information Act even if the information has never been printed out. This includes information related to the transaction of county business stored on a county officer's or employee's personal computer or mobile communication device, such as an iPhone, which the officer or employee is required to retain as a temporary custodian.⁹²

Information in the Possession of a Consultant or Contractor. It is difficult to avoid the Public Information Act by leaving information in the hands of a consultant or contractor. Where the consultant or contractor has prepared information on behalf of a governmental body, the information has been held to be subject to the Public Information Act even though it is not in the governmental body's physical custody.⁹³ Information on a device owned by a third party that is produced in connection with the transaction of official

⁹¹ Tex. Gov't Code §552.028. This rule applies whether the individual is confined in Texas, another state, or a federal facility.

⁹² See Tex. Gov't Code §§552.002, 552.004(b)

⁹³ Tex. Gov't Code §552.002(a-1)

business by a governmental body is also public information.

Copyrighted Materials. Copyrighted materials in the possession of the county are subject to the Public Information Act and must be made available for inspection unless otherwise excepted.⁹⁴ However, the attorney general has opined that the Act does not require the county to provide copies of copyrighted material, and the county should not violate the copyright by making copies (either photocopies of copyrighted information or copies of copyrighted information stored on a computer), or by aiding the requestor in doing so.⁹⁵ In addition, materials and publications that are available commercially need not be reproduced by the county.⁹⁶

THE TEN-DAY RULE

One of the most widely misunderstood provisions of the Public Information Act is the ten-day rule. The Public Information Act establishes a deadline of 10 business days for the county to request a ruling from the attorney general once the county receives a written request for information.⁹⁷ These are *county business days*, not calendar days.



The Act defines a business day⁹⁸ as a day *other than* a Saturday or Sunday, a national holiday or state holiday⁹⁹, the Friday before or Monday after a national or state holiday if the holiday occurred on the weekend and is observed on that Friday or Monday, and an optional holiday¹⁰⁰ if the officer for public information observes the optional holiday. A county may designate a day on which the administrative offices are closed or operating with minimum staffing as a nonbusiness day. The designation of a nonbusiness day for a county must be made by the “executive director or other chief administrative officer”¹⁰¹. A county may not designate more than 10 nonbusiness days each calendar year. The fact that an employee works from an alternative work site does not affect whether a day is considered a business day.

The ten-day rule is *not* a deadline for the production of records. If the county is not seeking to withhold information by obtaining a ruling from the attorney general, and if

⁹⁴ ORD-660 (1999)

⁹⁵ ORD-505 (1988)

⁹⁶ Tex. Gov’t Code §552.027. This means, for example, that a county official may decline to make a copy of a map, a book, or a pamphlet that the county obtained commercially. Also, a requestor seeking copies of published cases or statutes may be directed to the county law library or other appropriate library facility.

⁹⁷ Tex. Gov’t Code §552.301(b)

⁹⁸ Tex. Gov’t Code, §552.0031, added by HB 3033, 88th (R) Leg., Effective September 1, 2023

⁹⁹ See Tex. Gov’t Code §662.003(a)-(b)

¹⁰⁰ See Tex. Gov’t Code §662.003(c)

¹⁰¹ Consult with your county attorney regarding your county’s procedure for designating nonbusiness days.

the information cannot be produced (for inspection, duplication or both) within 10 business days of the date the request is received, the county is required to certify this fact in writing to the requestor and establish a date and hour (within a “reasonable time”) when the information will be available.¹⁰² Many requestors will use a form letter that contains a recitation that the records must be produced for inspection within 10 days according to the Public Information Act. This, however, is incorrect. The Act does not require that information be produced within 10 days. Instead, it requires that requested information be produced “promptly.” What is prompt depends on the circumstances.¹⁰³ For records that are archived in off-site storage, “promptly” may mean one thing, while for readily available records it could mean another.

Generally, the clock starts when the **written** request is received by the county office that maintains the record being requested. So, it is important that each department in your office communicate quickly if one department receives a request that should be handled by another department of your office. The 10 days do not begin to run against the Sheriff’s office, for example, on a request that was originally misaddressed to the voter registrar. If you receive a request that does not relate to records maintained in your office, you may want to communicate that fact to the requestor.

On occasion, the county may receive a request that does not clearly identify the information being sought or that appears to be overly broad in scope. If so, it is appropriate to seek clarification from the requestor on the meaning and scope of the request.¹⁰⁴ It is advisable to ask for the clarification in writing, or to follow-up any discussion with the requestor in writing to confirm your mutual understanding of the information that is actually being requested. The Public Information Act requires specific information to be included in a request for clarification.¹⁰⁵

If a requestor modifies a request in response to the requirement of a deposit or bond, the modified request is considered a separate request that is received by the county on the date that the written modified request is received.¹⁰⁶ The county’s deadlines for seeking an attorney general’s determination run from the date of receipt of the modified request.

An overly broad or unclear request for information does not trigger the start of the 10-day period. Rather, the written request is considered received, and the clock begins to run, once the requestor’s clarification is received. For several years, the attorney general

¹⁰² Tex. Gov’t Code §552.221(c)

¹⁰³ Tex. Gov’t Code §552.221(a)

¹⁰⁴ Tex. Gov’t Code §552.222(b)

¹⁰⁵ Tex. Gov’t Code §552.222(e)

¹⁰⁶ Tex. Gov’t Code §552.263(e-1)

ruled that the initial request triggers the start of the 10 days, that the period is tolled while the governmental body awaits clarification, and the counting of the remainder of the 10 days begins once the clarification to the request is received.¹⁰⁷ The Texas Supreme Court rejected the attorney general’s counting methodology. The court reasoned that the purposes of the Act are best served by measuring the statutory deadline from the date that an unclear or over broad request has been clarified or narrowed and counting forward ten business days from that date.¹⁰⁸ Thus, a county that seeks clarification in **good faith**, not merely to delay production of the information, may calculate the 10-day deadline from the date it receives the requestor’s clarification.

If the county does not submit a written request for a ruling to the attorney general within 10 county business days, the information is presumed open to the public, and only a compelling interest can overcome that presumption.¹⁰⁹ The only interests that the attorney general has found to be “compelling” are those belonging to third parties or those relating to confidential information protected by other law. It is not compelling that the county would have been permitted to withhold the information had it sought a ruling within the allotted time frame.

CHARGING FOR COPIES OR INSPECTION

The County May Charge for Copies. The Public Information Act limits the amount that the county may charge for providing copies of public information.¹¹⁰ All requests received in one calendar day from an individual may be treated as a single request for the purposes of calculating costs.¹¹¹ Multiple requests from separate individuals on behalf of an organization may not be combined. The county may require advance payment. The attorney general must adopt rules that set the amounts that may be charged for copies obtained under the Act, and it is important for the county to follow these rules.¹¹² The requestor is entitled to recover three times the amount of an overcharge if the governmental body did not act in good faith in computing the costs.¹¹³ The county may not charge a member of the Legislature for copies requested in connection with the

¹⁰⁷ ORD-663 (1999)

¹⁰⁸ See *City of Dallas v. Greg Abbott*, 304 S.W.3d 380 (Tex. 2010) (The court concluded that the 10-day period is not triggered until a governmental body receives the clarified request.).

¹⁰⁹ Tex. Gov’t Code §552.302

¹¹⁰ Tex. Gov’t Code §552.261

¹¹¹ Tex. Gov’t Code §552.261(e)

¹¹² Tex. Gov’t Code §552.262. The rules are codified at 1 Tex. Admin. Code Rule §70.10. A copy of the current rules (as of publication time) is attached as Appendix A. The Attorney General’s Office has an on-line cost-estimate calculator located at <https://texasattorneygeneral.gov/og/public-information-cost-estimate-model>

¹¹³ Tex. Gov’t Code §552.269

member's duties.¹¹⁴ The county may not charge sales tax on copies of public information.¹¹⁵

Waiver of Charges. The county may waive charges or reduce charges for copies if it determines that release of the information benefits the general public.¹¹⁶ Be careful to treat requestors uniformly in this regard. In any case, discretion should be exercised in charging for labor and overhead, even when permitted by the attorney general rules.

Charging for Inspection of Records. If the requestor simply wants to inspect information that is available on paper, the county may impose a charge for copying those pages that must be edited for confidential information.¹¹⁷

Itemized Statement Required. When the county intends to impose a charge for inspection or copies that exceeds \$40, the county must provide to the requestor an itemized written statement of the estimated charges.¹¹⁸ The county must also notify the requestor of any less costly method of viewing the records. Furthermore, the county must inform the requestor that the *request is considered to be automatically withdrawn* unless the requestor responds in writing within 10 business days that the requestor will accept the estimate, is modifying the request, or has sent a complaint to the attorney general alleging that the county is overcharging for the copies. The Public Information Act includes specific information that must be included in a cost estimate letter.

Requiring a Deposit or Bond for Inspection of Records. A county with 16 or more full-time employees may also require payment or a deposit or cash bond for anticipated personnel cost associated with making paper records available for inspection if the officer for public information estimates that more than five hours will be required to make the information available for inspection and the information is either older than five years or it will fill six or more archival boxes once assembled.¹¹⁹ A county with fewer than 16 full-time employees may charge anticipated personnel costs if the officer for public information estimates that more than two hours will be required to gather the information and the information is either older than three years or will fill three or more archival boxes once assembled.

¹¹⁴ Tex. Gov't Code §552.264

¹¹⁵ 1 Tex. Admin. Code §70.10(14)

¹¹⁶ Tex. Gov't Code §552.267(a)

¹¹⁷ Tex. Gov't Code §552.271(b)

¹¹⁸ Tex. Gov't Code §552.2615(a)

¹¹⁹ Tex. Gov't Code §552.271

If the requestor wants to inspect information that exists in an electronic medium (but is not available on-line to the requestor), the county may not impose a charge unless complying with the request will require programming or manipulation of data.¹²⁰ In that case, the county must notify the requestor of the estimated charges.

Requiring a Deposit or Bond for Copies. A county with 16 or more full-time employees may require a deposit or bond for payment of anticipated costs if the estimated charge for the copy exceeds \$100.¹²¹ A county with fewer than 16 full-time employees may require a deposit or bond if the estimated charge for the copy exceeds \$50. The county must certify this in writing to the requestor but is not required to produce the information until such deposit or bond has been satisfied. However, a cash deposit or bond cannot be required as a down payment for future requests. If a requestor fails to make the deposit or bond before the 10th day after the county requires it, the request for the information is considered withdrawn.

Limiting Personnel Time Spent on Requests. The commissioners court may establish monthly and yearly limits on the amount of time that county personnel are required to spend in producing information for inspection or copying or in providing copies of information to the same requestor without recovering its costs.¹²² The county may not set a time limit that is less than 36 hours in each county fiscal year or less than 15 hours for a one-month period. All county officers who have designated the same officer for public information may collectively calculate the amount of time that personnel are required to spend for purposes of the limits.

A county that imposes time limits must provide a statement to a requestor of the personnel time spent on a specific request and the cumulative time spent on that person's requests during the fiscal year. If a requestor submits a request that individually or collectively will exceed the time limits, the county must provide a written estimate of the total personnel cost. If a requestor has made a previous request that is not withdrawn and the statement for that request is unpaid at the time of a subsequent request, the county is not required to locate, compile, produce, or provide copies of information responsive to the new request until the requestor pays each unpaid statement in connection with a previous request or withdraws the previous request. If requests by an individual exceed the time limits, the requestor must pay the related costs by the 10th day after the county provides the written statement, or the request is considered

¹²⁰ Tex. Gov't Code §552.272

¹²¹ Tex. Gov't Code §552.263

¹²² Tex. Gov't Code §552.275.

withdrawn.¹²³ A requestor who has exceeded the time limit established may not inspect public information on behalf of another requestor unless the requestor who exceeded the limit has paid each statement issued by the county.¹²⁴



A county may request photo identification from a requestor to establish that the requestor has not exceeded the time limits set by commissioners court and that the requestor has not concealed their identity.¹²⁵ Request for photo identification must include a statement of the personnel time spent on a specific request and the cumulative time spent on that person's requests during the fiscal year, and a statement that describes specifically why



the photo identification is being requested. The requestor may decline to provide identification and obtain the requested information by paying the charge assessed in the statement.¹²⁶

Requiring a Deposit or Bond for Unpaid Amounts. An officer for public information may require a deposit or bond for payment of unpaid amounts owing to the county for previous requests from a requestor before preparing documents in response to a new request if the unpaid amounts exceed \$100.¹²⁷ The county is prohibited by the Public Information Act from seeking payment of the unpaid amounts through any other means. The county must fully document the existence and amount of the unpaid sum.

Charges for Shipping and Postage. The County may charge for shipping and postage at the actual cost. The costs for shipping and postage may be added to the other reproduction costs the county charges the requestor.¹²⁸

Cost Provisions outside of the Public Information Act. The cost provisions of the Public Information Act do not apply if charges for copies are established by another statute.¹²⁹ For example Local Government Code §118.011 establishes the charge for a non-certified copy of information obtained from the county clerk and Local Government Code §118.144 establishes the charge for copies from the county treasurer. Additionally, the

¹²³ The time limits do not apply to requests from specified representatives of the press or media, elected officials, or representatives of a publicly funded legal services organization. Tex. Gov't Code §552.275(j), (k) and (l).

¹²⁴ Tex. Gov't Code, §552.271(e),(f), added by HB 3033, 88th (R) Leg., Effective September 1, 2023

¹²⁵ Tex. Gov't Code, §552.275(n), added by HB 3033, 88th (R) Leg., Effective September 1, 2023

¹²⁶ Tex. Gov't Code, §552.275(o), added by HB 3033, 88th (R) Leg., Effective September 1, 2023

¹²⁷ Tex. Gov't Code §552.263(c)

¹²⁸ 1 Tex. Admin. Code §70.10(9)

¹²⁹ Tex. Gov't Code §§552.262(a), 552.265

commissioners court can set charges regarding access to certain information held by the county under Local Government Code §191.008.¹³⁰

GUIDELINES FOR CHARGING FOR PUBLIC INFORMATION¹³¹

Legal or letter size paper copies. Under the attorney general's rules, there are permissible charges for standard paper copies reproduced by means of an office machine copier or a computer printer. Each side that has a printed image is considered a page.

Fifty or Fewer pages of standard paper copies. The county may charge the requestor \$.10 per page. The county may not charge for materials, labor, or overhead, and the cost is limited to the charge for each page of paper record that is photocopied, unless the documents to be copied are located in two or more separate buildings or at a remote storage facility.¹³²

More than 50 pages of standard paper copies. In addition to the charge of \$.10 per page, the county may charge the requestor for labor, overhead, and document retrieval, if applicable, and the actual cost of miscellaneous supplies.¹³³

Information requiring programming or manipulation of data. If it provides the required notice, the county may charge a requestor the cost of the copy plus labor, overhead, computer resource charge, programming time, document retrieval charge, if applicable, and actual cost of miscellaneous supplies.¹³⁴

Labor Costs and Overhead. If applicable, the county may charge for labor at the rates specified in the attorney general's rules for programming or locating, compiling and reproducing public information.¹³⁵ The county may also assess an overhead charge based on the labor charge.¹³⁶

¹³⁰ ORD-688 (2000)

¹³¹ A copy of the current rules adopted by the attorney general (as of publication time) are attached as Appendix B.

¹³² Buildings that are connected by a covered or open sidewalk or an elevated or underground passageway are *not* considered to be separate buildings. Tex. Gov't Code §552.261(c).

¹³³ Tex. Gov't Code §552.261

¹³⁴ Tex. Gov't Code §552.231

¹³⁵ 1 Tex. Admin. Code §70.10(3)

¹³⁶ 1 Tex. Admin. Code §70.10(4)

Copies on a medium other than standard size paper. Permissible charges for copies on various media, including CD, thumb drive, photographs, and various types of paper, are specified in the attorney general's rules.¹³⁷

SEEKING A DETERMINATION FROM THE ATTORNEY GENERAL

Generally. Once you have identified the information sought by the requestor, you must consider the nature of the information. Basically, there are three types of information: (1) information that *must* be released; (2) information that *may* be withheld; and (3) information that *must* be withheld.

Information that *must* be withheld is confidential by law; the law forbids its public release. Often this information will concern privacy interests of an individual or concern the trade secrets or commercial interests of a business. If you think information falls in a category that must be withheld, contact your attorney. Some examples of information made confidential by law are: medical records; mental health records, HIV or AIDS test results; polygraph exam results; certain income tax return information; certain property tax appraisal photographs;¹³⁸ and handgun license information.

Information that *may* be withheld is information that may be released or withheld at the county's discretion. Typically, this information will concern criminal investigations, ongoing or expected litigation, pending bids, or advice from legal counsel. Some advice and recommendations in internal memoranda may be withheld, as may drafts of the county budget before it is made public.

As more fully discussed below, the Public Information Act provides that certain information may be redacted from records being produced or withheld without the need to request a determination from the attorney general. This includes motor vehicle records and credit card information. If you decide to redact or withhold this type of information you must provide the requestor with instructions on how to seek a determination from the attorney general on whether the information was properly redacted or withheld.¹³⁹

If you think that requested records *may* be withheld, you must then decide what to do. Most of the time, openness is the best response to a request for public information. If possible, release the records to the requestor. Under the Public Information Act, information is presumed to be open. In order to withhold information, the county must

¹³⁷ Reproduced in Appendix B

¹³⁸ Tex. Gov't Code §552.155

¹³⁹ The rules related to this process are at 1 Tex. Admin. Code 63, §63.11-63.16

overcome the presumption of openness by convincing the attorney general that the Act permits the information to be withheld.

Contact your Attorney. If you feel that you should withhold the records, time is of the essence. It is imperative that you get the request to your attorney as soon as possible so the attorney may seek a determination from the attorney general that you may withhold the records. The county has 10 business days (20 business days if the request is for body worn camera information) to seek an attorney general’s determination that the records may be withheld.

Your attorney will have to prepare a written argument for the attorney general explaining why the law permits the county to withhold the information at issue. This takes some time, even in the best of cases. The attorney also needs to review the records, or if the records are voluminous, at least a representative sample of the records. The information to be withheld must be marked or highlighted to indicate which exception applies to which part of the copy before you send the records to your attorney. The reason for this is twofold: First, it is often difficult for your attorney to write a convincing case to the attorney general if the attorney doesn’t have some idea what the records look like. Second, the attorney general’s office requires the documents for their review in connection with processing the county’s request, so the attorney will need the records to send to the attorney general for review.

The county’s initial letter to the attorney general must be submitted not later than the 10th business day after the request was received. However, the county is permitted some additional time to complete its request and provide documents.¹⁴⁰ All written comments and marked copies of the records must be submitted to the attorney general not later than the 15th business day (25th business day if a body worn camera recording is being submitted) after the date the records were requested. The county’s first submission must also include a copy of the written request and information establishing the date the request for information was received by the county.

The Public Information Act requires the submission of documents through the attorney general’s designated electronic filing system, unless the county has fewer than 16 full-time employees, the county’s population is under 150,000, the format or amount of information makes use of the filing system impractical or impossible, or if the request is hand-delivered to the office of the attorney general.¹⁴¹ The attorney general may also transmit a notice, decision or other document electronically.



¹⁴⁰ Tex. Gov’t Code §552.301(e-1)

¹⁴¹ Tex. Gov’t Code §552.3031, added by HB 3033, 88th (R) Leg., Effective September 1, 2023

Notice to Requestor. When the county seeks a determination from the attorney general, the county must send a written statement to the requestor indicating its decision to seek the ruling. The notice must include a copy of the county’s letter to the attorney general. The copies must be edited if they contain the information at issue in the request. The notice to the requestor *must* be provided by the county no later than the 10th business day (20th business day if the requestor is seeking a body worn camera recording) after the county receives the request.¹⁴² A failure to provide the notice to the requestor timely creates the presumption that the information is public.¹⁴³

Comments to Requestor. The county must provide a copy of its written comments (redacted as necessary) to the requestor by the 15th business day (25th day if the requestor is seeking a body worn camera recording) after the county receives the request for information.

Notice to Third Party. When the county receives a request for proprietary information relating to a *third party*, the county must make a good faith effort to notify the third party of the county’s request for an attorney general’s determination.¹⁴⁴ The county’s written notice to the third party must be sent no later than the 10th business day after the county receives the request for information, and it must include a copy of the request for information. The notice must inform the third party that it is entitled to submit a statement to the attorney general explaining why the requested information should be withheld from the requestor. The county’s notice must also inform the third party that its letter to the attorney general must be sent no later than the 10th business day after receipt of the county’s notice.

Previous Determinations. Under certain limited circumstances, a governmental entity may withhold information without first seeking a ruling from the attorney general that the requested information is excepted from disclosure under the Act. The attorney general has identified two types of previous determination decisions on which the governmental entity may rely to withhold information.

First, an entity that has previously obtained a ruling from the attorney general related to the **specific** information that is the subject of a subsequent request may rely on the earlier decision and need not seek another ruling on the same information from the attorney general. However, a county should be very cautious about relying on a prior attorney

¹⁴² Tex. Gov’t Code §552.301

¹⁴³ Tex. Gov’t Code §552.302

¹⁴⁴ Tex. Gov’t Code §552.305

general decision under these circumstances because the attorney general may later decide the information in question is not covered by an earlier ruling. The county should always seek legal advice before withholding information under this rationale, because the law, facts, or circumstances under which the previous ruling was based may have changed. **Do not** rely on a previous determination without seeking legal advice.

The second type of previous determination decisions is broader in scope. These rulings relate to clearly delineated categories of information that the attorney general explicitly identifies as information that certain governmental bodies may withhold without seeking a decision.¹⁴⁵ The attorney general has also issued an Open Records Decision that serves as a previous determination for 10 categories of information that may be withheld by all governmental entities.¹⁴⁶

Notice of Redaction. The county can redact information without seeking an attorney general decision for confidential information that may be contained in commonly requested records, including home and e-mail addresses. It must, however, also provide the requestor with information on how to appeal the withholding of information. The attorney general's office has created form letters for several categories of commonly redacted confidential information that the county may use when it has redacted confidential information without requesting an attorney general decision.¹⁴⁷

Prohibited Requests for Determinations. Except under the limited circumstance discussed below, a county is prohibited from seeking a determination from the attorney general about whether specific information is excepted from disclosure under the Public

¹⁴⁵ While now codified in Tex. Gov't Code §552.1175, in ORD-670 (2000) the attorney general concluded that the home phone numbers and addresses of peace officers and security officers, in addition to social security numbers and information that reveals whether the officers have family members may be withheld without requesting an attorney general decision. The attorney general held that ORD-670 is a "previous determination" for purposes of the Act. Likewise, ORD-670 serves as a "previous determination" for personal cellular phone numbers and personal pager numbers of peace officers.

¹⁴⁶ ORD-684 (2009) excepts from disclosure the following: a direct deposit authorization form; employment eligibility verification form I-9; W-2 and W-4 forms; certified agendas and tapes of closed meetings; fingerprints; L-2 and L-3 declarations required for the issuance of a license to an officer or county jailer; motor vehicle record information (including Texas driver's license, license numbers, license plate numbers) (codified in Tex. Gov't Code §552.130) ; access device information (including credit and debit card numbers, charge card and insurance policy numbers, and bank account and bank routing numbers) (codified in Tex. Gov't Code §552.136); certain e-mail addresses provided to a governmental body by a member of the public (codified in Tex. Gov't Code §552.137); and military discharge records that came into the possession of a governmental body on or after September 1, 2003 (codified in Tex. Gov't Code §552.140).

¹⁴⁷ <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/responding-pia-request/redacting-public-information>

Information Act if: (a) the county has previously received a determination from the attorney general on the precise information at issue in the pending request; and (b) either the attorney general or a court has determined that the information is public and must be released.¹⁴⁸ To avoid accusations that you are intentionally violating this provision, you should make certain that your record keeping includes measures for noting whether specific information has already been determined to be public.

A county may ask for another decision from the attorney general about the specific information if: (a) a suit challenging the prior decision was timely filed against the attorney general concerning the precise information; (b) the attorney general determines that the requestor has voluntarily withdrawn the request in writing or has abandoned the request; and (c) the parties agree to dismiss the lawsuit.



Attorney General Determination Rendered. Once a determination has been made by the attorney general’s office, not later than the 30th day after the opinion is issued, the county must either produce the required information, notify the requestor in writing that the county is withholding the information as authorized by the opinion, notify the requestor in writing that the county has filed suit against the attorney general, or provide the requestor with an itemized estimate of charges for production of the information.¹⁴⁹ If the information is voluminous, there are specific notices and disclosure timelines that must be met by the county.¹⁵⁰

THE EXCEPTIONS

There are more than 60 exceptions to required public disclosure of records listed in the Public Information Act. Not all of these are of interest to county officers and employees. The following list is not meant to be exhaustive or to completely explain how the exceptions work. It is simply intended to give you an idea of the kinds of things that may be excepted from disclosure under the Act. The exceptions are discussed at length in the attorney general’s Public Information Handbook.

Confidential Personal Information and Privacy. The Act excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹⁵¹ This is the most sweeping and important of the exceptions, and is unique in that: (1) most of the information it excepts from public

¹⁴⁸ Tex. Gov’t Code §552.301(f)

¹⁴⁹ Tex. Gov’t Code, §552.306(c)(1)(3)-(5) and (d), amended by HB 3033, 88th (R) Leg., Effective September 1, 2023

¹⁵⁰ Tex. Gov’t Code, §552.306(c)(2), amended by HB 3033, 88th (R) Leg., Effective September 1, 2023

¹⁵¹ Tex. Gov’t Code §552.101

disclosure *may not* be released, even if the county wants to release it; and (2) many of the interests it protects belong to *third parties* who may be the subjects of information kept by the county.

Information may be considered "private" under the law if it contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person or if it concerns the more intimate aspects of human affairs, such as medical matters, marriage, procreation, and family relationships.¹⁵² For example, the name, address and other identifying information of any person who participates in an execution procedure is confidential.¹⁵³ Sensitive crime scene photographs or videos depicting a deceased person in particular states are also made expressly confidential.¹⁵⁴ Always contact your attorney before releasing information of this nature.

County employees and county officials shall choose whether to allow public access to their home addresses, home phone numbers, emergency contact information, social security numbers, and information revealing whether they have family members.¹⁵⁵ The election must be made in writing not later than the 14th day after employment with the county begins. Always check to see whether an employee has exercised this right before releasing such information. To be effective, the confidentiality election must occur before a request is received. If the county receives a request for this information on an officer or employee who has elected to keep it confidential, the county may withhold the information without requesting a decision from the attorney general. However, the requirement that this information be kept confidential does not apply to documents filed with a county or district clerk.¹⁵⁶

This same information is confidential without the requirement to take affirmative action for an increasing number of officials under Section 552.117 of the Code. These include elected public officers¹⁵⁷, current and honorably retired peace officers¹⁵⁸, current and former state, federal, and county judges, current and former federal, state, and county prosecutors and their employees along with other categories of employees mostly in the

¹⁵² See Tex. Att'y Gen. Op. No. GA-0138 (2004) (Individual county commissioner is entitled to access employee insurance records as necessary to effectively perform the commissioner's official duties as a member of the court subject to privacy constraints imposed by state or federal law.)

¹⁵³ Tex. Gov't Code §551.1081; Code of Criminal Procedure Art. 43.14

¹⁵⁴ Tex. Gov't Code §552.1085

¹⁵⁵ Tex. Gov't Code §552.024

¹⁵⁶ Tex. Gov't Code §552.117(e)

¹⁵⁷ Tex. Gov't Code §552.1175(a)(1).

¹⁵⁸ Tex. Gov't Code §552.1175(a)(1).

law enforcement sphere the Legislature has identified as needing protection from public access to their personal information, including information that might reveal whether the person has family members.

Except as discussed below, the information may not be released. Nor may this information be released when it relates to a peace officer, reserve law enforcement officer, commissioned deputy game warden, or correctional officer if the person was killed in the line of duty.¹⁵⁹ Again, the requirement that this information be kept confidential does not apply to documents filed with a county or district clerk.

Additionally, the social security numbers and driver's license numbers of a peace officer, a jailer, a current or former county or district judge, and a justice of the peace listed in voter registration applications are expressly made confidential.¹⁶⁰

However, if a county official or employee uses his or her personal e-mail address to conduct county business, the personal e-mail address becomes public and may not be redacted under Public Information Act §552.137.¹⁶¹ This section protects the personal e-mail of "members of the public" who provide their e-mail for the purpose of communicating electronically with a governmental body.

Additionally, home addresses, telephone numbers and other information contained on campaign finance reports, lobby reports and financial statements filed with the Texas Ethics Commission may be subject to disclosure despite Public Information Act §552.1175, based on the attorney general's interpretation of laws that appear to conflict with the Act.¹⁶² Except that the home address of a current or former federal or state judge or justice, including a county court at law, district court or constitutional county court judge, or his or her spouse, must be removed from financial statements before they are released to the public.¹⁶³

The e-mail address and phone number of an election judge or clerk is considered confidential and is not considered public information.¹⁶⁴ The residence address of an

¹⁵⁹ See Tex. Att'y Gen. Op. No. GA-1086 (2014) (A governmental entity may photocopy and retain evidence verifying a person's employment status as a current or former law enforcement individual; this information is likely confidential under Tex. Gov't Code §552.139(b)(3) protecting a copy of an identification badge of a public employee.)

¹⁶⁰ Tex. Election Code §13.004(c)

¹⁶¹ *The Austin Bulldog v. Leffingwell, et al.*, 490 S.W.3d 240 (Tex. Civ. App. – Austin, 2016 [no pet.]).

¹⁶² Tex. Att'y Gen. Op. No. KP-0151 (2017), overruled in part by Tex. Gov't Code §§572.032(a-1) and 572.035 (see next footnote)

¹⁶³ Tex. Gov't Code §§572.032(a-1), 572.035.

¹⁶⁴ Tex. Election Code §32.076

applicant to be an election judge may also be confidential under certain circumstances.¹⁶⁵ However, the registrar shall forward to the county chair of each county executive committee the information necessary to contact applicants interested in working as an election judge.¹⁶⁶

As a general rule, other kinds of information in the personnel files of county employees are only subject to the protection they are afforded under the privacy doctrine and must be released. Certain information in personnel files may be subject to specific confidentiality statutes (e.g., medical records) or other exceptions from required disclosure available to the county under the Public Information Act.

As discussed earlier, the privacy right belongs to the individual and not to the county. The Public Information Act does not permit information to be withheld from a requestor if the only reason for withholding the information is to protect the requestor's own privacy.

Attorney-Client Privilege. The Public Information Act incorporates the attorney-client privilege and protects legal advice that the county's attorney is prohibited from disclosing under the Rules of the State Bar of Texas.¹⁶⁷ Attorney-client privilege is considered confidential "under law" and may be exempted from disclosure even if the county fails to timely request an attorney general's opinion.¹⁶⁸ However, the county may waive this exception if it discloses legal advice to any third party.

Audit Working Papers. The audit working papers of county and municipal auditors are exempted from disclosure.¹⁶⁹ The exception applies regardless of the date the working papers were created.

Commercial Information. Certain commercial and financial information, particularly trade secrets, are protected by both the common law and statutory law. This kind of information may come into the county's possession in a number of ways; often it is received in bids or proposals, or in regard to licensing or regulation. Protection of this kind of information is usually of more concern to the business from which it was received than it is to the county. Certain information related to the evaluation and negotiation of

¹⁶⁵ Tex. Election Code §13.004(c)(6)

¹⁶⁶ Tex. Election Code §13.004(c-1)

¹⁶⁷ Tex. Gov't Code §552.107

¹⁶⁸ *Paxton v. City of Dallas*, 509 S.W.3d 247 (Tex. 2017)

¹⁶⁹ Tex. Gov't Code §552.116

proposals for development of a facility through a public-private partnership may also be withheld by the county.¹⁷⁰

In the case of information that may be considered proprietary business or commercial information, the county must attempt to notify the business of the request for information.¹⁷¹ If the business objects to the release, your attorney can seek an attorney general determination on their behalf and allow them to make their arguments directly to the attorney general. In this way, the attorney can make sure the county doesn't violate the rights of a third party and protect the county from potential liability.

A trade secret is defined as "all forms and types of information, including business, scientific, economic, or engineering information, and any formula, design, prototype, pattern, compilation, program device, program, code, device method, technique, process, procedure, financial data, or list of actual or potential customers or suppliers so long as the owner of the trade secret has taken reasonable measures to keep the information secret and the information derives value from not being generally known or readily ascertainable by a person who can obtain economic benefit from disclosure or use of the information."¹⁷²

Similarly, proprietary information is information submitted to a county by a vendor, contractor, potential vendor or potential contractor in response to a request for bid, proposal, or qualification that would give advantage to a competitor and reveal an individual approach to work, organizational structure, staffing, internal operations, processes, or discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents.¹⁷³

Contract Information. Contracting information is public and required to be released unless exempted from disclosure.¹⁷⁴ The exceptions provided in the Act for trade secrets and proprietary information do not apply to basic elements of the contract, including: (1) the overall or total price the county will or could potentially pay, (2) descriptions of the items or services to be delivered with the total price for each if a total price is identified in the contract, (3) delivery and service deadlines, (4) remedies for breach of contract, (5) the identity of all parties to the contract, (6) identity of all subcontractors, (7) the execution

¹⁷⁰ Tex. Gov't Code §552.131

¹⁷¹ Tex. Gov't Code §552.305

¹⁷² Tex. Gov't Code §552.110

¹⁷³ Tex. Gov't Code §552.1101

¹⁷⁴ Tex. Gov't Code §552.0222(A)

dates, (8) the effective date of the contract, and (9) the contract duration terms, including extension options.¹⁷⁵

Also considered public information are documents indicating whether a party to the contract performed its duties. This includes items such as contract amendments, any assessed or liquidated damages, key measure reports, progress reports, a final payment checklist, a contract variance or exception, or a breach of contract.¹⁷⁶

County’s Negotiating Position. The Public Information Act generally permits bids and proposals to be withheld until a contract has been awarded. An exception to this authority to withhold is information related to receipt or expenditure of public or other funds by a county for a parade, concert, or other entertainment events.¹⁷⁷

To protect the county’s bargaining, planning, and negotiating position with respect to the purchase of property, it also excepts “information pertaining to” the location, appraisals, and purchase price of property.¹⁷⁸

Court Orders. Although the Act contains an exception from disclosure for information subject to a court order, the attorney general’s office is interpreting new language related to ‘super public’ documents as prohibiting a court from sealing these types of documents under the permissive exceptions in the Act.¹⁷⁹ A court order may still prohibit disclosure of information that is expressly made confidential under the Act or other law, which includes other statute, judicial decisions and rules.

Credit Card, Debit Card, or Charge Card. The Public Information Act makes confidential information on a credit, debit, or charge card number, and any other “access device number” which may be used to obtain money, goods, services or to initiate certain transfers of funds.¹⁸⁰

Economic Development Information. Under the Public Information Act, certain information about a business prospect with whom the county or other governmental body is negotiating to locate, expand, or remain in the territory is excepted from disclosure.¹⁸¹ This is intended to support the efforts of governmental entities regarding

¹⁷⁵ Tex. Gov’t Code §552.0222(B)(3)

¹⁷⁶ Tex. Gov’t Code §552.0222(B)(4)

¹⁷⁷ Tex. Gov’t Code §552.104(C)

¹⁷⁸ Tex. Gov’t Code §552.105

¹⁷⁹ Tex. Gov’t Code §§552.107(2), 552.022

¹⁸⁰ Tex. Gov’t Code §552.136

¹⁸¹ Tex. Gov’t Code §552.131

economic development within the entities' territories. If the business prospect is being offered any financial or other incentive by the governmental body or any incentive by another person that may result in the expenditure of public funds or a reduction in revenue to the governmental body, information about the incentive is excepted from disclosure until an agreement is reached with the business prospect.

Homeland and Network Security. A county may withhold its emergency plan under Public Information Act §552.101 excepting information considered confidential under other law. The Texas Homeland Security Act protects information related to emergency response providers, a tactical plan, and related contact information.¹⁸²

It also makes confidential information collected, assembled or maintained to prevent, detect, respond to, or investigate acts of terrorism or related criminal activity.

Information related to network security, including passwords, personal identification numbers, access codes, encryption or other components of the security system of a governmental entity is confidential.¹⁸³ Also, information directly arising from a governmental body's routine efforts to prevent, detect, investigate, or mitigate a computer security incident, including an information security log, is confidential.¹⁸⁴

Intra-County Memoranda. The Public Information Act protects certain inter-agency and intra-agency memoranda to encourage frank and open discussion within government agencies.¹⁸⁵ This provision has been one of the most relied upon sections of the Act since the Act's inception. However, this exception will only protect internal advice, opinion, or recommendation related to policymaking matters. It will not usually except information related to routine internal administrative or personnel matters.

Law Enforcement. The Public Information Act excepts from required public disclosure any records relating to the detection, investigation, or prosecution of a crime for which there has been no conviction or deferred adjudication, unless a person who is described by or depicted in the record, other than a peace officer, is deceased or incapacitated; or if each person who is described by or depicted in the record, other than a person who is deceased or incapacitated, consents to the release of the record.¹⁸⁶ Offense reports, other than the information normally released to the public on the front page of an offense report, and prosecutor's records are excepted from required public disclosure by the



¹⁸² ORD 2013-12776 (2013)

¹⁸³ Tex. Gov't Code §2059.055(B)

¹⁸⁴ Tex. Gov't Code §552.139(B)(4)

¹⁸⁵ Tex. Gov't Code §552.111

¹⁸⁶ Tex. Gov't Code §552.108(d), added by HB 30, 88th (R) Leg., Effective September 1, 2023

Act.¹⁸⁷ A search warrant affidavit is not public until the related search warrant is executed.¹⁸⁸



A county must promptly release basic information responsive to a request for information regarding basic information about an arrested person, an arrest, or a crime unless the county seeks to withhold the information as provided by another exception under the Act, regardless of whether the county requests an attorney general decision regarding other information subject to the request.¹⁸⁹

Because a county's law enforcement records are some of the most requested county records, you may want to ask your attorney to pay close attention to judicial developments relating to this exception.

Litigation. The Public Information Act protects a governmental body's position in litigation by forcing parties seeking information relating to the litigation to obtain it through court processes known as "discovery."¹⁹⁰ However, the litigation exception to disclosure does not apply to information related to a general, primary, or special election that is in the possession of the county.¹⁹¹ As this provision protects the county, it may be voluntarily waived by the county, or waived by failure to seek an attorney general's determination within 10 days.



Personal Safety. Information relating to an employee or officer that, under certain circumstances, would subject the person to substantial threat of physical harm is excepted from disclosure under the Act.¹⁹² In addition, the Supreme Court has held that the common law protects information if its disclosure would create a substantial threat of physical harm to a person.¹⁹³

Social Security Numbers. The social security number of a living person is excepted from disclosure but is not considered confidential under the Public Information Act.¹⁹⁴ The county may redact the social security number of a living person from any information the county discloses under the Act without requesting a decision from the attorney general. Before this exception was added to the Act in 2005, virtually all political subdivisions were required to wander a maze of federal and state laws to determine

¹⁸⁷ Tex. Gov't Code §552.108

¹⁸⁸ Tex. Code of Criminal Procedure Art. 18.01(b); overruling Tex. Att'y Gen. Op. No. KP-0145 (2017)

¹⁸⁹ Tex. Gov't Code §552.108(c), amended by HB 3033, 88th (R) Leg., Effective September 1, 2023

¹⁹⁰ Tex. Gov't Code §552.103

¹⁹¹ Tex. Gov't Code §552.103(d), added by HB 3033, 88th (R) Leg., Effective September 1, 2023

¹⁹² Tex. Gov't Code §552.151

¹⁹³ *Texas Dept. of Public Safety v. Cox Texas Newspapers, L.P.*, 343 S.W.3d 112 (Tex. – 2011)

¹⁹⁴ Tex. Gov't Code §552.147(A)

whether the disclosure of social security numbers was required, permitted, or prohibited in a particular situation.

However, the Public Information Act authorizes a county or district clerk to disclose social security numbers that appear in the clerk's records and provides that such a disclosure is not official misconduct and does not subject the clerk to civil or criminal liabilities. The Act also requires the clerk to redact all but the last four digits of a person's social security number from the clerk's records if the person identifies the specific records from which the partial redaction is to be made.¹⁹⁵

By contrast, a social security number on an application for a marriage license or on a document submitted with the application is confidential. If the county clerk receives a request to inspect or obtain a copy of a marriage license application, the clerk must redact the social security number before releasing the information.¹⁹⁶

VIOLATIONS AND PENALTIES

Criminal Violations. Under the Penal Code, penalties for intentional destruction of a government record range from a class A misdemeanor to a second degree felony, depending on the circumstances.¹⁹⁷ The Penal Code permits the destruction of a government record in accordance with the Local Government Records Act.¹⁹⁸ However, no record can be legally destroyed under the Public Information Act or the Local Government Records Act if there is a pending request for public information with respect to the record.¹⁹⁹

Criminal Penalties. A county officer or employee who willfully destroys, mutilates, removes without permission or alters public information commits a misdemeanor offense punishable by a fine of not less than \$25 or more than \$4,000, confinement in county jail for not less than three days or more than three months, or both the fine and confinement.²⁰⁰

A county officer or employee who distributes or misuses confidential information commits a misdemeanor offense punishable by a fine of up to \$1,000, confinement in

¹⁹⁵ Tex. Gov't Code §552.147(C)

¹³⁴ Tex. Gov't Code §552.141

¹⁹⁷ Tex. Penal Code §37.10

¹⁹⁸ Tex. Penal Code §37.10(B); Tex. Local Gov't Code Ch. 201

¹⁹⁹ See Tex. Gov't Code §552.351; Tex. Local Gov't. Code §202.002

²⁰⁰ Tex. Gov't Code §552.351

county jail for up to six months, or both the fine and confinement.²⁰¹ An offense under this section is also official misconduct.

A county officer or employee who acts with criminal negligence and fails or refuses to give access to public information commits a misdemeanor offense punishable by a fine of not more than \$1,000, confinement in the county jail for not more than six months, or both the fine and confinement.²⁰²

Official Misconduct. The Public Information Act makes it official misconduct to disclose confidential information.²⁰³ Under Chapter 87 of the Local Government Code, a county officer is subject to removal from office for official misconduct. Obviously, a county officer should be extremely careful about releasing information that may be confidential. The wisest course of action to follow if a requestor seeks information that may be confidential is to seek an attorney general opinion.²⁰⁴

Civil Enforcement. A requestor or the attorney general may file suit for a writ of mandamus to compel the county to make information available for public inspection.²⁰⁵ A suit for declaratory judgment or injunctive relief may also be filed against the county.²⁰⁶ If the county or district attorney determines not to bring an action for declaratory judgment or injunctive relief, the complainant may file a complaint with the attorney general.²⁰⁷ If a court rules against the county or if the county voluntarily releases the requested information after filing an answer to the suit in either type of action, a court can assess costs of litigation and attorney fees against the county.²⁰⁸

In determining if a governmental entity “refused” to provide public information to a requestor, a court has held that because the governmental entity could not compel the disclosure of public information e-mails located on private e-mail accounts and had made available all the information at its disposal, it did not violate the Public Information Act.²⁰⁹

²⁰¹ Tex. Gov’t Code §552.352

²⁰² Tex. Gov’t Code §552.353

²⁰³ Tex. Gov’t Code §552.352(C)

²⁰⁴ *See also* Tex. Penal Code Ch. 39

²⁰⁵ Tex. Gov’t Code §552.321

²⁰⁶ Tex. Gov’t Code §552.3215

²⁰⁷ Tex. Gov’t Code §552.3215(I)

²⁰⁸ Tex. Gov’t Code §552.323

²⁰⁹ *City of El Paso v. Abbott*, 444 S.W.3d 315 (Tex. Civ. App. – Austin 2014, review den’d)

BEST PRACTICES

Set Up a System for Reviewing Your Mail. How can you plan for a request for public information? Your office may have a mail intake system that screens for public information requests. All incoming mail (and for this purpose you should consider “mail” to include faxes, e-mail, hand deliveries, federal express, and the like) should be reviewed by someone who knows how to identify a public information request when they see one. Remember that a public information request is any writing that asks for records or information; it does not have to mention the Public Information Act. Of course, plan for vacations and absences, and make sure you have a backup for checking your mail and e-mail and handling public information requests.

Consider Creating a Dedicated Mailing Address and/or Email address for Public Information Requests. A county is authorized to designate a single mailing address and a single email address for receiving written requests for public information. If this is done and the county posts the mailing address and e-mail address on its website or prints the addresses on its PIA sign, it is not required to respond to written public information requests unless the request is received at one of the designated addresses, by hand delivery, or by some other county approved method, such as by fax or submission on the county’s website. Among the benefits of creating a single address for PIA submissions is that it alleviates some of the vacation and absence issues noted above and makes where to submit requests clearer to the requestors.

Date Stamp Your Mail. All incoming mail (again, including faxes etc.) should be date stamped when received. This is very important as the 10 days starts ticking when the request is received. Often a letter dated on the 10th, for example, will not be received until the 15th. An established business practice of date stamping mail when received will ensure you have as much of the allotted 10 business days to work in as possible. This is important because if you cannot adequately establish the actual date you received a request, it is considered received on the third business day after the postmark on the envelope. If you decide to seek a determination from the attorney general, a statement of the date your office received a request must be included in your letter to the attorney general.

When You Should Contact Your Attorney. Decide whether you need legal assistance. If the requested information is routinely released, if your office has no objection to the release of the information, and if no one's privacy or property interests seem to be at issue, there is probably no reason to contact your attorney.

If your office does not want to release the information, or you are concerned that there may be a reason that the information should be withheld, get the request to your attorney as soon as possible. In some instances, you may want to call your attorney and then fax or e-mail the request to him or her. Do not wait until you have gathered the requested documents before you contact your attorney. Once you have the requested documents together, send them over to the attorney as soon as possible as well. ***Remember that the Public Information Act is extremely time sensitive.*** Legal review must also be completed within the 10-day period if you are seeking a determination from the attorney general.

If you anticipate difficulty or delay in getting the documents together, talk to your attorney about this. Sometimes, when documents are voluminous or difficult to compile, you may find it necessary to send your request to the attorney general without the documents to meet the 10-day deadline and provide the documents later under separate cover. You have only an additional five days to follow the request with the documents or a representative sample of voluminous documents.

Never Destroy Records That Have Been Requested. The Public Information Act, the Local Government Records Act, and the Penal Code all prohibit the destruction of government records. The Public Information Act applies to public information, that is, to government records. If records don't exist, you don't have to be concerned about the Act. It follows that if you want to be 100 percent sure that a record will never be released to the public, don't create it in the first place. It does ***not*** follow, however, that you can avoid the provisions of the Act by destroying a record that already exists, or by taking some other action to impair the record's availability.

APPENDIX A

Cost of Copies of Public Information

TEXAS ADMINISTRATIVE CODE
TITLE 1. ADMINISTRATION
PART 3. OFFICE OF THE ATTORNEY GENERAL
CHAPTER 70. COST OF COPIES OF PUBLIC INFORMATION

§ 70.9. Examples of Charges for Copies of Public Information

The following tables present a few examples of the calculations of charges for information:

(1) TABLE 1 (Fewer than 50 pages of paper records): \$.10 per copy x number of copies (standard-size paper copies); + Labor charge (if applicable); + Overhead charge (if applicable); + Document retrieval charge (if applicable); + Postage and shipping (if applicable) = \$ TOTAL CHARGE.

(2) TABLE 2 (More than 50 pages of paper records or nonstandard copies): \$.10 per copy x number of copies (standard-size paper copies), or cost of nonstandard copy (e.g., diskette, oversized paper, etc.); + Labor charge (if applicable); + Overhead charge (if applicable); + Document retrieval charge (if applicable); + Actual cost of miscellaneous supplies (if applicable); + Postage and shipping (if applicable) = \$ TOTAL CHARGE.

(3) TABLE 3 (Information that Requires Programming or Manipulation of Data): Cost of copy (standard or nonstandard, whichever applies); + Labor charge; + Overhead charge; + Computer resource charge; + Programming time (if applicable); + Document retrieval charge (if applicable); + Actual cost of miscellaneous supplies (if applicable); + Postage and shipping (if applicable) = \$ TOTAL CHARGE.

(4) TABLE 4 (Maps): Cost of paper (Cost of Roll/Avg. # of Maps); + Cost of Toner (Black or Color, # of Maps per Toner Cartridge); + Labor charge (if applicable); + Overhead charge (if applicable) + Plotter/Computer resource Charge; + Actual cost of miscellaneous supplies (if applicable); + Postage and shipping (if applicable) = \$ TOTAL CHARGE.

(5) TABLE 5 (Photographs): Cost of Paper (Cost of Sheet of Photographic Paper/Avg. # of Photographs per Sheet); + Developing/Fixing Chemicals (if applicable); + Labor charge (if applicable); + Overhead charge (if applicable); + Postage and shipping (if applicable) = \$ TOTAL CHARGE.

Source: The provisions of this § 70.9 adopted to be effective September 18, 1996, 21 TexReg 8587; amended to be effective February 11, 2004, 29 TexReg 1189; transferred effective September 1, 2005, as published in the Texas Register September 29, 2006, 31 TexReg 8251.

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TEXAS ADMINISTRATIVE CODE

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 70. COST OF COPIES OF PUBLIC INFORMATION

§ 70.10. The Attorney General Charge Schedule

The following is a summary of the charges for copies of public information that have been adopted by the Attorney General.

- (1) Standard paper copy--\$.10 per page.
- (2) Nonstandard-size copy:
 - (A) Diskette: \$1.00;
 - (B) Magnetic tape: actual cost;
 - (C) Data cartridge: actual cost;
 - (D) Tape cartridge: actual cost;
 - (E) Rewritable CD (CD-RW)--\$1.00;
 - (F) Non-rewritable CD (CD-R)--\$1.00;
 - (G) Digital video disc (DVD)--\$3.00;
 - (H) JAZ drive--actual cost;
 - (I) Other electronic media--actual cost;
 - (J) VHS video cassette--\$2.50;
 - (K) Audio cassette--\$1.00;
 - (L) Oversize paper copy (e.g.: 11 inches by 17 inches, greenbar, bluebar, not including maps and photographs using specialty paper)--\$.50;
 - (M) Specialty paper (e.g.: Mylar, blueprint, blueline, map, photographic)--actual cost.
- (3) Labor charge:
 - (A) For programming--\$28.50 per hour;
 - (B) For locating, compiling, and reproducing--\$15 per hour.
- (4) Overhead charge-- 20% of labor charge.
- (5) Microfiche or microfilm charge:
 - (A) Paper copy--\$.10 per page;
 - (B) Fiche or film copy--Actual cost.
- (6) Remote document retrieval charge--Actual cost.
- (7) Computer resource charge:

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- (A) mainframe--\$10 per CPU minute;
- (B) Midsize--\$1.50 per CPU minute;
- (C) Client/Server system--\$2.20 per clock hour;
- (D) PC or LAN--\$1.00 per clock hour.
- (8) Miscellaneous supplies--Actual cost.
- (9) Postage and shipping charge--Actual cost.
- (10) Photographs--Actual cost as calculated in accordance with §70.9(5) of this title.
- (11) Maps--Actual cost as calculated in accordance with §70.9(4) of this title.
- (12) Other costs--Actual cost.
- (13) Outsourced/Contracted Services--Actual cost for the copy. May not include development costs.
- (14) No Sales Tax--No Sales Tax shall be applied to copies of public information.

Source: The provisions of this §70.10 adopted to be effective September 18, 1996, 21 TexReg 8587; amended to be effective January 16, 2003, 28 TexReg 439; amended to be effective February 11, 2004, 29 TexReg 1189; transferred effective September 1, 2005, as published in the Texas Register September 29, 2006, 31 TexReg 8251; amended to be effective February 22, 2007, 32 TexReg 614

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TEXAS ADMINISTRATIVE CODE

TITLE 1. ADMINISTRATION

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CHAPTER 70. COST OF COPIES OF PUBLIC INFORMATION

§ 70.13. Fee for Obtaining Copy of Body Worn Camera Recording

(a) This section provides the fee for obtaining a copy of body worn camera recording pursuant to §1701.661 of the Government Code.

(1) Section 1701.661 of the Government Code is the sole authority under which a copy of a body worn camera recording may be obtained from a law enforcement agency under the Public Information Act, Chapter 552 of the Government Code, and no fee for obtaining a copy of a body worn camera recording from a law enforcement agency may be charged unless authorized by this section.

(2) This section does not apply to a request, or portions of a request, seeking to obtain information other than a copy of a body worn camera recording. Portions of a request seeking information other than a copy of a body worn camera recording are subject to the charges listed in §70.3 of this chapter.

(b) The charge for obtaining a copy of a body worn camera recording shall be:

(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.

(c) A law enforcement agency may provide a copy without charge, or at a reduced charge, if the agency determines waiver or reduction of the charge is in the public interest.

(d) If the requestor is not permitted to obtain a copy of a requested body worn camera recording under §1701.661 of the Government Code or an exception in the Public Information Act, Chapter 552 of the Government Code, the law enforcement agency may not charge the requestor under this section.

Source: The provisions of this §70.13 adopted to be effective November 24, 2016, 41 TexReg 9099