

# The Texas Public Information Act: An Overview



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## Presentation Outline

- Background of the legal requirements for open records and public information
- Applicability of the Public Information Act
- Procedures and requirements regarding complying with a public information request
- Role of the attorney general under the Public Information Act
- Penalties and other consequences



*Public Access  
Guidelines*



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## Policy Underlying the Public Information Act

### Chapter 552 of the Government Code

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



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## What is Public Information?

- **Public information** means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:
  - by a governmental body;
  - for a governmental body and the governmental body owns the information; has a right of access to the information; or spends or contributes public money for the purpose of writing, producing, collecting, assembling or maintaining the information; or
  - by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.



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## What is Public Information?

- **Official Business** means any matter over which a governmental body has any authority, administrative duties, or advisory duties.
  - Public information includes any electronic communication created, transmitted, received or maintained on any device if the communication is in connection with the transaction of official business.



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## Who Is a Temporary Custodian?

- A **Temporary Custodian** is any current or former officer or employee of a city who, in the transaction of official business, creates or receives public information that the officer or employee has not provided to the public information officer or the officer's agent.
- A temporary custodian must either:
  - preserve public information on privately owned devices in its original form in a backup or archive and on the privately owned device as required by the record retention schedule; or
  - forward or transfer the public information to the city or a city server.



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## What are the Duties of a Temporary Custodian?

- A temporary custodian must surrender or return the public information in his/her possession, custody, or control to the city not later than the 10<sup>th</sup> day after the officer for public information or the officer's agent request the public information to be surrender or returned.
  - The request is considered received on the date the public information is surrendered or returned to the city.
- Failure to surrender or return public information is grounds for disciplinary action by the city or any other applicable penalties provided by the PIA or other laws.



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## What are the Duties of the Officer for Public Information?

- The officer is required to make reasonable effort to obtain public information from a temporary custodian if:
  - The information has been requested from the city;
  - The officer is aware of facts sufficient to warrant a reasonable belief that the temporary custodian has possession, custody, or control of the requested information;
  - The officer is unable to comply with their duties without obtaining the information from the temporary custodian; and
  - The temporary custodian has not provided the information to the officer.



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## What Are The Forms of Public Information?

- Information recorded on physical media:
  - Paper, film, or tape
  - Magnetic, optical or solid state storage
- Information in any form, including:
  - Audio or video recording
  - Photographs
  - Maps
  - Drawings
  - Emails, internet postings, text messages, instant messages, or other electronic communications



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## What Are The Forms of Public Information?

- Source code or other computer programming information that has no significance other than its use as a tool for maintenance, manipulation, or protection of public property is *not* public information.
- Tangible physical items are *not* public information. For example:
  - Physical evidence collected at a crime scene
  - Computer hardware



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## Which Entities Are Subject to the PIA?

- The PIA encompasses all public entities supported in whole or in part by public funds including cities and city councils.
- Other entities that are made subject to the PIA by their enabling statute. Example: Economic Development Corporations.
- **The PIA does not apply to the judiciary, including municipal courts.**



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## What Triggers the PIA?

- Only a written request triggers the PIA.
  - No “magic words” are required.
  - No requirement to label the request as an open record request or public information request.
  - The request can be typed or handwritten.
  - No signature is required.
- The request must ask for information in existence as of the date the request is received.
  - No requirement to create new information.
  - No requirement to perform legal research.
  - No requirement to prepare answers to questions.



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## *Request Form*

Can you spot the public information request?



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## Hypothetical A

November 5, 2020

Ms. Sally Strawhouse, City Attorney  
City of Texasville

RE: Request for Records  
Dear Ms. Strawhouse:

We represent Mismanagement Developers, Inc. We are requesting all document relating to Mismanagement Developers, Inc. Please forward those documents to us as soon as possible. We will, of course, be happy to reimburse you for any expenses associated with this request.

Sincerely,  
Harold Cheatem

THE  
LAW  
FIRM  
OF  
**Dewey,  
Cheatem  
& Howe**



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## Hypothetical B

I want all  
records involved in  
Report # 225436-96.  
Bob Scrawf  
P.O. Box 22  
Hidden, TX 70000



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## Hypothetical C

**... John Smith's personnel file pursuant to the U.S. Freedom of Information Act, the First Amendment of the U.S. Constitution and open records laws of the European Union.**



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## Hypothetical D

December 21, 2020

To Whom It May Concern,

Please send me the home address and picture of your city manager, Emily Blunt. I really want to ask her out.

Sincerely,  
John Krasinski



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## Hypothetical E

**... “any and all communications Jane Smith sends or receives over the next 30 days starting tomorrow.”**



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## Hypothetical F

... “How do you determine whether to file an appeal? What are the legal requirements to appeal a court’s ruling? Also, do you think I should appeal my case?”



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**So, You Have Received a  
Written Request...**



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## What Can You Ask The Requestor?

- A city cannot ask a requestor why they want the information.
- A city can ask the requestor to:
  - Clarify the request if it is unclear; or
  - Narrow the scope if its unduly broad.
- The 10 business days to request an attorney general letter ruling **is measured from the date the request is clarified or narrowed** as long as the government body was acting in good faith in requesting a clarification or narrowing of a unclear or unduly broad request. *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010)



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## Written Request for Clarification

If the city sends a written request for clarification, narrowing or additional information and does not receive a written response, the requestor's entire request is considered withdrawn.

- Must wait until the **61<sup>st</sup> day**.
- If the city has the requestor's physical mailing address, it **must** send the written request for clarification by **certified mail**.
- If the request is received request by email, the city can send a request for clarification to the same email address the request came from.
- The city must tell the requestor the consequences of not responding.



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## When Must You Provide A Cost Estimate?

### When Estimated Charges will exceed \$40

#### Gov't Code § 552.2615

- Must provide an itemized statement detailing the estimated charges before undertaking work to process the request.
- Must inform the requestor that the request will be considered withdrawn if the requestor does not respond to the statement in writing within 10 business days informing the city that:
  - The requestor will accept estimated charges;
  - The requestor is modifying the request; or
  - The requestor has filed a complaint with the OAG's Cost Rules Administrator
- If an alternative, less costly method of viewing info is available, the city must include statement that requestor may contact the city about the alternative method.
- If the requestor does not respond within 10 business days, the entire request is withdrawn and city can withdraw its ruling request, if any.
  - Still need to meet all deadlines for seeking a ruling from the OAG



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## When Must You Provide a Cost Estimate?

### When Request Requires Programming or Manipulation

#### Gov't Code § 552.231

- A city is required to provide a statement when it determines that a request will require programming and/or manipulation of data and (1) complying with the request is not feasible or will substantially interfere with the governmental body's ongoing operation, or (2) the request can only be fulfilled at a cost that covers the programming and/or manipulation of data.
- Must provide specific written statement within a certain time frame.
- If the requestor does not respond to written statement within 30 days, the request is considered withdrawn.



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## When May You Require a Deposit or Bond?

### When Estimated Charges will exceed \$100

#### Gov't Code § 552.263

- A city may require a deposit or bond of payment of anticipated costs when estimated charges will exceed \$100 (\$50.00 if a city has fewer than 16 fulltime employees).
- If requestor fails to submit the deposit or bond within 10 business days or modify the request, the request is considered withdrawn by operation of law.
  - It is not enough for requestor to accept charges in writing, the requestor must actually submit payment.
- If you require a deposit, bond or whole payment, then the original request is considered received on the day the requestor pays.
- The city must still provide a written statement required under Section 552.2615



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## So, How Much Can I Charge?



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# Basic Cost Provisions

## Basic Cost Provisions 1 Texas Administrative Code §§ 70.1 – 70.13

**Standard Copies:** \$0.10 per page

**Labor Charge:** \$15

**Overhead Costs:** 20% of labor charge

**Postage/shipping:** Any related postal or shipping expenses which are necessary to transmit via first class mail

(D) Standard paper copy	\$ 0.10 per page
(E) Nonstandard delivery	
(A) Delivery	\$ 1.00 each
(B) Nighttime copy	\$ actual cost
(C) Non-carriage	\$ actual cost
(D) Paper cartridge	\$ actual cost
(E) Removable CD (CD-RW)	\$ 1.00 each
(F) Non-rewritable CD (CD-R)	\$ 1.00 each
(G) Digital video disc (DVD)	\$ 1.00 each
(H) DVD drive	\$ actual cost
(I) Other electronic media	\$ actual cost
(J) USB drive/cable	\$ 2.50 each
(K) Audio cassette	\$ 1.00 each
(L) Oversize paper (e.g. 11 in. by 17 in., glossy, weather, not including large and photo quality special paper)	\$ 30.00 per page
(M) Specialty paper (e.g. 10-lb. Mylar, Mylar, slide, map, photographic)	\$ actual cost
(N) Labor charges	
(A) For programming	\$ 15.00 per hour
(B) For testing, copying and reproduction	\$ 15.00 per hour
(C) Overhead charges (20% of labor charges)	\$ 3.00
(D) Miscellaneous material charges	
(A) Paper copy	\$ 0.10 per page
(B) Toner or film	\$ actual cost
(C) Remit document return charge	\$ actual cost
(D) Computer hardware charges	
(A) Mainframe	\$ 10.00 per CPU minute
(B) Mainframe	\$ 1.00 per CPU minute
(C) Client Server system	\$ 12.00 per disk hour
(D) PC or LAN	\$ 1.00 per disk hour
(E) Miscellaneous Supplies	\$ actual cost
(F) Postage and Shipping Charge	\$ actual cost
(G) Photograph (in accordance with TAC 19.90)	\$ actual cost
(H) Map (in accordance with TAC 19.90)	\$ actual cost
(I) Other costs	\$ actual cost
(J) Outsourced Contracted Services (may not include development costs)	\$ actual cost



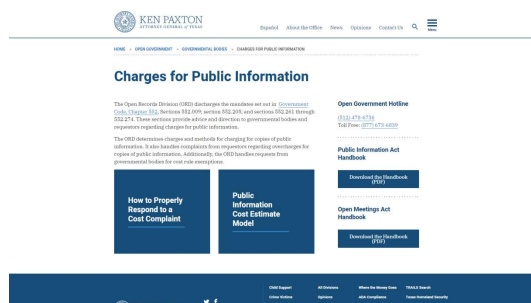
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# OAG Public Information Cost Estimate Model

OAG has created a cost letter generator to assist governmental bodies in creating cost estimates.

The tool is available at:

<https://www.texasattorneygeneral.gov/open-government/governmental-bodies/charges-public-information>



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## So, I am Ready to Release Public Information . . .



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### “Core” Public Information

- The following categories of information are **public information and not excepted from required disclosure unless made confidential under this chapter or other law**:
  - a completed report, audit, evaluation, or investigation made of, for, or by a city, except as provided by Section 552.108;
  - the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a city;
  - information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a city;
  - the name of each official and the final record of voting on all proceedings in a governmental body;
  - all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a city, on completion of the estimate;
  - information that is in a bill for attorney’s fees and that is not privileged under the attorney-client privilege;
  - information that is also contained in a public court record; and
  - a settlement agreement to which a city is a party.



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## How Much Time Do You Have?

If the city is going to release the information requested, how much time does the city have to comply with the request?

- A. 10 business days
- B. Promptly
- C. 72 hours



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## How Much Time Do You Have?

- The city must promptly produce public information for inspection, duplication or both.
  - "Promptly" means as soon as possible under the circumstances, that is, within a reasonable time, without delay.
- The city can refer the requestor to exact internet local or URL address on a website maintained by the city and accessible to the public if the requested information is identifiable and readily available on that website.
  - However, if the requestor prefers a manner other than access through the URL, the city has to supply information in the manner requested.



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## What If Information Cannot Be Released Promptly?

### Additional Time Needed to Produce Records

#### Gov't Code § 552.221 (c), (d)

- If the information cannot be produced within 10 business days, the city must notify the requestor in writing and set a date and hour within a reasonable time when the information will be available.
- The city still must meet all deadlines if seeking a ruling from the OAG.



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**So, I Want to Withhold Public  
Information ...**



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## Exceptions to Disclosure

### Common Exceptions

- **552.101** Information Confidential by Law
- **552.102** Confidentiality of Certain Personnel Information
- **552.103** Information Related to Litigation
- **552.104** Information Related to Competition or Bidding
- **552.107** Certain Legal Matters (Attorney-Client Privilege)
- **552.108** Certain Law Enforcement Records
- **552.110** Confidentiality of Trade Secrets, Commercial or Financial Information
- **552.111** Agency Memoranda (Attorney Work Product)
- **552.111** Agency Memoranda (Attorney Work Product)
- **552.116** Audit Working Papers
- **552.117** Confidentiality of Certain Employee Information
- **552.130** Confidentiality of Certain Motor Vehicle Records
- **552.131** Information Relating to Economic Development Negotiations
- **552.136** Confidentiality of Credit Card, Debit Card, Charge Card, and Access Device Numbers
- **552.137** Confidentiality of Certain E-Mail Addresses
- **552.147** Social Security Numbers



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## Exceptions to Disclosure – New Legislation

- **H.B. 30** (effective September 1, 2023)
  - Amends Section 552.108 to provide that law enforcement records that deal with detection, investigation, or prosecution of a crime that did not result in a conviction or deferred adjudication may not be withheld under the PIA if:
    - The person who is described or depicted in the records, other than a peace officer, is deceased or incapacitated; or
    - Each person who is described or depicted in the records, other than the deceased or incapacitated person, consents to the release of the records.



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## Exceptions to Disclosure – New Legislation

- **H.B. 3033** (effective September 1, 2023)
  - The litigation exception (Section 552.103) does not apply to information requested under the PIA if:
    - The information relates to a general, primary or special election;
    - The information is in the possession of a governmental body that administers elections; and
    - The governmental body is not within or created by the executive or legislative branch of state government.



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## How Can You Withhold Public Information?

### Question

Do I have to request for an AG ruling **every time** I want to withhold information?

- A. Yes, every time
- B. Yes, unless you have a previous determination
- C. Yes, unless it is information that you can withhold without asking for a ruling
- D. Both B & C
- E. No



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## How Can You Withhold Public Information?

- Generally, to withhold requested public information, a city must first obtain a ruling from the attorney general allowing the city to withhold the information.
- **Exceptions:**
  - The attorney general has previously determined the requested information falls under an exception to disclosure.
  - The law allows the information to be withheld without a ruling.
  - The requestor has consented to withholding of the information.



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## Procedures for Requesting an AG Ruling



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## How Do You Request For An AG Ruling?

By the 10th business day, a city must:

- Ask the AG for a ruling
  - Example: The city received a request from Bingo and Rolly for all information related to the arrest of Cupcake.
- State the exceptions that apply
  - ❖ Practice Tip: list ALL exceptions that likely apply. Example: The information is excepted from disclosure under Sections 552.101 through 552.136.
- Provide the requestor a copy of your letter to the AG requesting a ruling; and
- Notify any third parties with proprietary interests in the requested information that they may submit written comments to the OAG stating why the information should be withheld (third party notice must be in the form prescribed by the OAG).



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## How Do You Request For An AG Ruling?

- By the 15th business day, a city must provide the AG with:
  - Written comments stating why its claimed exceptions apply.
  - A copy of the written request for information.
  - A signed statement of the date the request was received or sufficient evidence to establish the date the request was received.
  - A copy of the specific information, or a representative sample.
- Send a copy of your written comments to the requestor.



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## What Is a Business Day?

- A business day means any day other than:
  - A Saturday or Sunday
  - A national or state holiday
  - An optional holiday (days on which Rosh Hashanah, Yom Kippur, or Good Friday falls) if the city's officer for public information observes the holiday.
  - The Friday before or Monday after a national or state holiday if the holiday occurs on a Saturday or Sunday and the city observes the holiday on that Friday or Monday.
  - A designated day on which the city's administrative offices are closed or operating with minimum staffing (maximum 10 days per calendar year).

(Effective September 1, 2023)



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## How Do You Count Business Days?

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2 Written Request Received	3 1	4 2	5 3	6 4	7
8	9 5	10 6	11 7	12 8	13 9	14
15	16 10	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

➤ Start counting the next business day after receiving written request.

➤ "Received" = when the governmental body physically received the PIA request, not when it is opened or read.



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## How Do You Count Business Days?

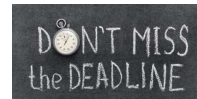
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18 Written Request Received	19 1	20 2	21
22	23 3	24 City Closed Christmas Eve	25 City Closed Christmas Day	26 City Closed Day After Christmas	27 4	28
29	30 5	31 City Closed New Year's Eve*	1 City Closed New Year's Day	2 6	3 7	4
5	6 8	7 9	8 10	9	10	11



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## Consequences for Missing Deadlines

- Mandatory exceptions are **not** waived but permissive deadlines are waived.
- Some examples of ways to waive permissive exceptions.
  - Fail to request a ruling by 10 business day deadline;
  - Fail to raise all applicable exceptions by 10 business day deadline;
  - Fail to submit information or representative sample within 15 business day deadline;
  - Fail to submit arguments within 15 business day deadline; or
  - Fail to submit copy of request within 15 business day deadline.
- Refer to the Public Information Act Handbook for a discussion of mandatory and permissive exceptions



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## How Do You Submit the Request For A Ruling?

### New Legislation – H.B. 3033 (effective September 1, 2023)

- A city that requests an attorney general decision must submit the request through the attorney general's designated electronic filing system unless:
  - The city has less than 16 full-time employees or is located in a county with a population of less than 150,000;
  - The amount or format of responsive information at issue in a particular request makes use of the attorney general's electronic filing system impractical or impossible; or
  - The request is hand-delivered to the attorney general.



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## OAG PIA Electronic Filing System

<https://apps.portal.texas.gov/OAGPIAeFiling/>



Texas Attorney General

### Public Information Act Electronic Filing System



#### Welcome

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

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

You can use this service to:

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

#### Information You Need:

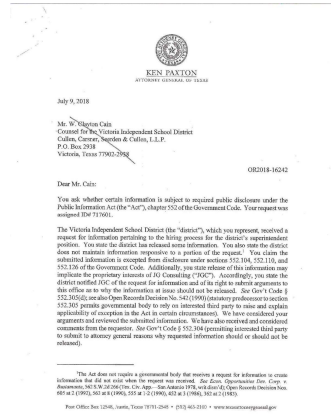
- Name of Governmental Body or Interested Party
- Governmental Body PIC ID (This is the internal tracking number assigned to a public information request by a governmental body. This is not the ID number assigned by Texas.gov. Third parties should contact the Governmental Body for this number or use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



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## How Long Does It Take to Get a Ruling?

- The OAG will issue an informal letter ruling in response to the governmental body's request for a ruling.
- Rulings are issued within 45 business days unless the OAG extends the deadline, in which case the ruling will be issued within 55 business days.
- The OAG will issue the ruling to the governmental body, will return the records at issue to the governmental body, and will provide a copy of the ruling to the requestor.
- All rulings are available for review on the OAG's Open Government webpage: <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/previous-attorney-general-decisions-and-rulings>



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## What Do You Do After Receiving an AG Ruling?

### New Legislation – H.B. 3033 (effective September 1, 2023)

- If an estimate is required, provide an itemized estimate of charges for production of the documents.
- If records are voluminous and can be disclosed in a single batch:
  - provide written certified notice to requestor and attorney general that is impractical or impossible to produce the information within a reasonable time;
  - Include in the notice the date and hour that the city will disclose the information to the requestor, which may not be later than the 15th business day after the date the city provides the notice; and
  - Produce the information at the date and time included in the notice.



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## What Do You Do After Receiving an AG Ruling?

### New Legislation – H.B. 3033 (effective September 1, 2023)

- If the records are voluminous and cannot be disclosed in a single batch:
  - Provide written certified notice to the requestor and the attorney general that it is impractical or impossible to produce the information within a reasonable time and in a single batch;
  - provide a written certified notice to the requestor and the attorney general when each subsequent batch of information is disclosed to the requestor of the date and hour that the city will disclose the next batch of information to the requestor, which may not be later than the 15th business day after the date the city provides the notice; and
  - produce the requested information at each date and time included in a notice;



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## What Do You Do After Receiving an AG Ruling?

### New Legislation – H.B. 3033 (effective September 1, 2023)

- Notify the requestor in writing that the city is withholding the information as authorized by the opinion; or
- Notify the requestor in writing that the city has filed suit against the attorney general regarding the information.



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## Can You Challenge an AG Ruling?

- Requests for reconsiderations are prohibited.
- If the city disagrees with the legal interpretation, it may file suit in accordance with the PIA.
  - The suit must be filed no later than the 30<sup>th</sup> calendar day after the AG decision is issued.



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## Procedures for Withholding Public Information Without a Ruling



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## What is a “Previous Determination”?

### Type 1 (Most Common)

- Applicable to only a particular governmental body
- Applicable only to specific information or records
- Applies when the information previously ruled upon is requested again.

### Type 2

- May be applicable to:
  - All governmental bodies
  - All governmental bodies of a certain type
  - Only a particular governmental body
- Applicable to a precise, clearly delineated category of information or records
- Language of ruling or decision will state it is a previous determination



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## Previous Determination: ORD 684

### Open Records Decision No. 684

Identifies certain types of information a governmental body may withhold without requesting a request for a ruling.

- ✓ Direct deposit authorization forms
- ✓ Form I-9 and attachments
- ✓ W-2 and W-4 forms
- ✓ Certified Agendas and recordings of closed meetings
- ✓ L-2 and I-3 declarations
- ✓ Certain email addresses
- ✓ Military discharge records



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## When Can You Redact Without First Seeking a Ruling?

Information subject to the following exceptions may be redacted without requesting a ruling (city must provide the required OAG form)

- Section 552.024 - public employee's personal information held by the city in its capacity as an employee.
- Section 552.130 - motor vehicle record information (drivers' license number, vehicle title or registration)
- Section 552.136 - access device numbers (credit card numbers)
- Section 552.1175 - public employee's personal information held by the city in non-employment capacity.
- Section 552.147 - social security numbers



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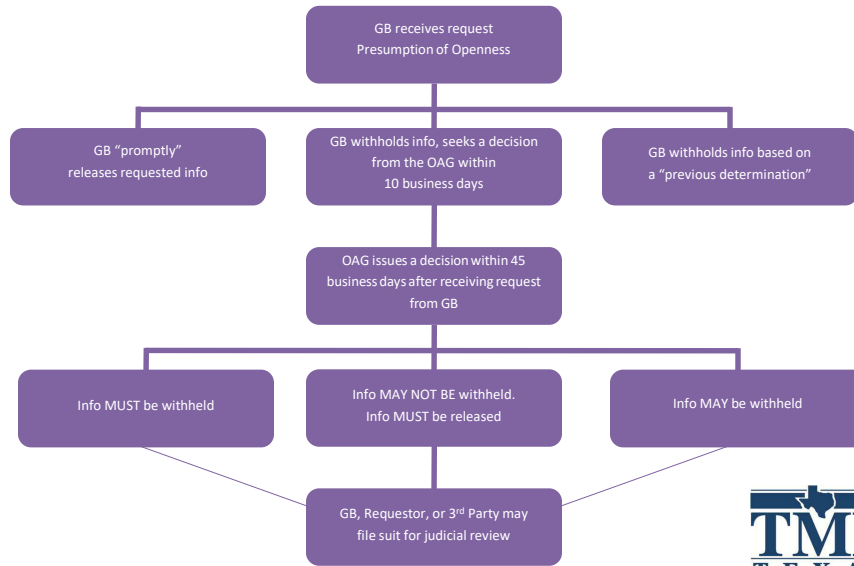
## OAG Open Records Division Forms

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

A screenshot of the Texas Attorney General's website page titled "Redacting Public Information". The page includes a navigation bar with the Ken Paxton logo and links for "Español", "About the Office", "News", "Opinions", "Contact Us", and a search icon. Below the navigation bar, there is a breadcrumb trail: "HOME &gt; OPEN GOVERNMENT &gt; GOVERNMENTAL BODIES &gt; RESPONDING TO A PIA REQUEST &gt; REDACTING PUBLIC INFORMATION". The main heading is "Redacting Public Information" with a sub-heading "Rules and Forms for Redacting Public Information". The text explains that a governmental body must seek a ruling from the Open Records Division before redacting information. It lists exceptions where a governmental body can redact without a ruling, such as public employee personal information in non-employment capacity, motor vehicle records, access device numbers, and bodily violence victims. A "NOTE" states that a requester can appeal the withholding of information under these sections. A section titled "To redact information under one of the sections above, the governmental body must provide the requester with the appropriate form. You can download the forms here:" lists five forms for download: Form Letter Section 552.024 (DOCX), Form Letter Section 552.1175 (DOCX), Form Letter Section 552.130 (DOCX), Form Letter Section 552.136 (DOCX), and Form Letter Section 552.138 (DOCX). On the right side, there are links for "Open Government Hotline" (877.478.4778, Toll Free 877.478.4809), "Public Information Act Handbook" (Download the Handbook PDF), and "Open Meetings Act Handbook" (Download the Handbook PDF). The Texas Municipal League logo is visible in the bottom right corner of the screenshot.

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## Basic Process for Governmental Bodies



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## Are There Penalties ??????



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## Civil Penalties

### Formal Complaints

#### Gov't Code § 552.3215

#### Declaratory Judgment or Injunctive Relief

- Complainant files written complaint with district attorney, or county attorney in county where governmental body is located:
  - *Local governmental bodies:* district attorney or county attorney for the county may bring action only in district court for that county where the governmental body is located
  - *State agencies:* Travis County District Attorney or OAG may bring action only in district court in Travis County
- Before the 31<sup>st</sup> day after the date the complaint was filed, DA or CA shall determine:
  - Whether the violation was committed
  - Whether an action will be brought
  - Notify complainant in writing of the determination
- If DA or CA determines not to bring action or it has been 90 days since the complaint was filed, the complainant can file complaint with the OAG.



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## Civil Penalties

### Writ of Mandamus

#### Gov't Code § 552.321



- Used to compel a GB or an entity to make information available for public inspection
- Filed by requestor or OAG
- Examples of potential mandamus situations
  - GB refuses to provide copies or access to public information
  - GB refuses to request OAG ruling
  - GB refuses to release information as required by an unchallenged OAG ruling



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## Criminal Penalties

### Destruction, Removal, or Alteration of Public Information

#### Gov't Code § 552.351

- A person commits an offense if the person willfully destroys, mutilates, removes without permission as provided by this chapter, or alters public information.
- Fine not less than \$25 or more than \$400 and /or county jail not less than three days or more than three months
- Misdemeanor offense



"I'm quite certain I'm not going to be able to produce that document."



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## Criminal Penalties

### Failure or Refusal of Officer for Public Information to Provide Access to or Copying of Public Information

#### Gov't Code § 552.353

- Fails or refuses to give access, permit copying, or provide copies of public information with criminal negligence
- Fines not more than \$1,000 and/or county jail for not more than six months
- Misdemeanor Offense
- Constitutes official misconduct
- Affirmative defense against prosecution
  - Reasonable belief that public access to information not required and relied on
    - court order
    - court opinion, or
    - OAG decision
  - OAG decision sought and no decision issued
  - Suit filed in Travis County challenging OAG decision and suit pending
  - Officer's agent reasonably relied upon written instruction from the officer of public information



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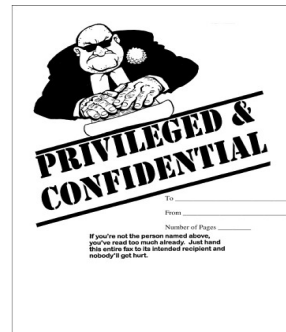
## Criminal Penalties

### Distribution or Misuse of Confidential Information

#### Gov't Code § 552.352(a)

- Officer or employee knowingly:
  - Uses confidential information for a purpose other than the purpose for which the information was received or for a purpose unrelated to the law that permitted the officer or employee to obtain access to the information
  - Permits inspection of the confidential information by a person who is not authorized to inspect the information
  - Discloses the confidential information to a person who is not authorized to receive the information
- Fine not more than \$1,000 and/or county jail for not more than six months
- Constitutes official misconduct

**CONFIDENTIAL  
INFORMATION**



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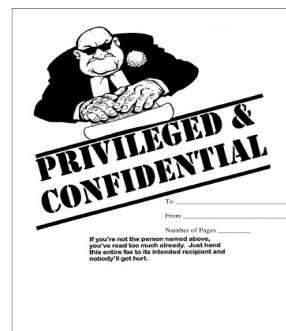
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- Constitutes official misconduct

**CONFIDENTIAL  
INFORMATION**



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## Open Government Training

### Gov't Code § 552.012

- **One-hour minimum requirement:** must have a minimum of one hour of PIA training, but no more than two hours
- **Compliance deadlines:** Officials who are elected or appointed have 90 days within which to complete the required training.
- **Who must obtain the training?** The statute requires the top elected and appointed officials from governmental bodies subject to the PIA to complete a PIA training course.
- Additionally, designated public information coordinators are required to complete a PIA training course.



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## Open Government Training

### New Legislation – H.B. 3033

- The attorney general may require each public official to complete open records training if the attorney general determines that the city has failed to comply with the requirements of the PIA.
- The required training must be completed within 60 days after the date the official receives notice from the attorney general.



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## Resources

### TML

(512) 231-7400

[legalinfo@tml.org](mailto:legalinfo@tml.org)

### Cost Questions

**OAG Cost Rules Administrator**

(888) OR-COSTS

(512) 475-2497

### OAG's Open Government Hotline

(877) OPEN TEX

(512) 478-6736

### OAG website

<http://www.texasattorneygeneral.gov>

**Texas State Library & Archives**

**Record Management**

<https://www.tsl.texas.gov/slrn>

**OAG Open Government Training**

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



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