

Public Information Act

Open Records

Democratic Foundation (Greg Abbot: Texas Attorney General)

Openness Mandated by State and Federal Law

Introduction (Nancy Fuller: Chair, Opinion Committee OAG)

General Background

- Information is presumed to be open to the public, unless specifically excepted
- Exceptions: Information withheld from requestor must be shown how it is confidential or excepted from disclosure.
- Definition: What is **Public Information**?
Information that is collected, assembled or maintained under law, ordinance or in connection with official business by a governmental body or officer is subject to the Public Information Act

What information is subject?

Information can occur in virtually all formats:

- Paper
- Microfilm (microfiche)
- Videotapes (CDs. DVDs)
- Audiotapes (CDs)
- Email and other computer data
- Any format created through official act
- Information from an outside source that is now maintained at governmental office
- Includes official acts that occur at home, including emails
- Public Information is not reliant on where the information is stored or kept

The following governmental bodies generate Public Information:

- Executive and Legislative Branches, and their agencies/entities
- County Commissioners Courts
- Municipalities
- School Districts
- Counties
- Nongovernmental entities or parts of such entities supported by public funds
- Exception: Judicial Branch (but requests may still be made to the court custodian of record)

What is a Public Information Request?

(Scenario of Clerk and Requestors)

- There exist two requirements to qualify as a Public Information request:
 - **Requests must be in writing**
 - **Requests must ask for records or information already in existence**

- Oral requests:
 - Does not trigger a response under the PIA
 - Can be answered as a public service (Best Practice)
 - All requesters must receive fair and equitable treatment

Who gets the written requests?

- Requests do not have to be addressed to a particular person
- Agency can designate a specific person to fulfill requests.
- Then, requests must be addressed to this person

- What information is subject to PIA?
 - Information that is already in existence
 - Do not have to:
 - Create new information
 - Do legal research
 - Answer questions

Things to Do or Not Do when receiving a request:

(Examples of Requests)

Do

- Make a good faith effort
- Determine validity of request (2 part test)
 - Is it in writing?
 - Typed or Handwritten
 - No letterhead necessary
 - No specific word or phrase necessary
 - Doesn't have to cite law
 - Does the information exist
- Promptly produce information

Don't:

- Be Hyper-technical
- Ask why a requestor wants the information or how it will be used

(Scenario of Clerk and Requestors)

Law Prohibits...

- Asking requestors why they want the information
- Asking requestors what they plan to do with the information

Law allows...

- Asking a requestor for additional clarification of the request
- Asking the requestor to narrow a request for voluminous amounts of information
- **Best Practice:** Document in writing any changes to the original request as agreed to by both the requestor and the agency
- All requestors must be treated equally.

- o NOTE: *Government bodies are not responsible under the law for a requestor's later use of the information that has been provided to them. This is not a reason to deny or delay a response to a request.*

Use of Websites to Fulfill PIA Requests:

- o A public information officer **does not** fulfill obligations by directing requestor to a website.
- o Requestor can agree to get information from website.
- o Government body must inform requestor of website address.

May I charge for my time and costs?

(Scenario of Clerk and Requestors)

- o Yes, within guidelines established by the Texas Attorney General
- o Guidelines available from the Office of Texas Attorney General
 - o Website: www.oag.state.tx.us
 - o **Open Government Hotline:** 1-877-673-6839 or 1-877-OPEN TEX
- o Use of requestor's own copying equipment
 - o Generally, requestors have this right.
 - o Exceptions: Consider reasonableness and safety of each individual request
 - Is it disruptive to working conditions?
 - Do the records contain confidential information?
 - Would this cause safety hazards?
 - Will it interfere with access to records?

Prompt Response

- o Prompt response to requestor
 - o Send a letter detailing changes requestor needs to pay, or
 - o Release the information, or
 - o Send a letter detailing why extra time is needed to process the request.
- o What should I do when I believe information should not be given to a requestor?
 - o Refer request to Texas Attorney General's office for an Open Records ruling within 10 business days of the original request or,
 - o Speak to requestor about the information that you believe should be withheld and come to an agreement, if possible

10-Day Rule

- o Requests must be fulfilled within 10 working days beginning on the first day following the receipt of the request.
- o Do not count Saturday or Sunday.
- o Do not count days that the agency was closed for holidays.
- o Do not count optional holidays, skeleton crew days or days when the office is closed for other reasons.

Requesting a Ruling from the Office of the Attorney General:

- o **10th Business Day Rules**
 - o Send letter to Open Records Division by the 10th day
 - o Ask for ruling
 - o Detail exceptions to disclosure that may apply
 - o Send letter (or copy of request for ruling) to the requestor by 10th business day
 - o Send letter (or copy of request for ruling) to any 3rd party who has a trade secret or commercial/financial interest in the request for ruling.

- o **15th Business Day Rules**
 - o Submit legal arguments to the OR Division
 - o Submit copy of original request to the OR Division
 - o Proof of exact date that your office received the request (statement in request or date-stamp)
 - o Copy of the 10th day letter indicating that a copy was sent to the requestor
 - o Copies of documents at issue or a representative sample thereof
 - o Label documents clearly and/or bracket information in question
 - o Copy of any written comments already made to the requestor
 - o Copy of 15th day letter goes to requestor without enclosure of excepted documents

(Scenario of Two clerks Preparing 15th Day Mailing)

- o Withholding Information without a Ruling
 - o Information is presumed to be open unless confidential by law.
- o **OAG Response Time**
 - o OAG has 45 days to issue a ruling
 - o Can extend one time by 10 days and will notify agency
 - o Government body is required to act on ruling
 - o If OAG rules against the exception, then provide documents
 - o If OAG rules in favor of the exception, notify requestor of ruling

Enforcement and Penalties

(Scenario with Harry White)

- o Informal Dispute Resolution through:
 - o Education
 - o Investigation
 - o Mediation
- o Legal Action
- o Challenging a Ruling Request to reconsider rulings prohibited by law
 - o Factual mistakes can be discussed
 - o OAG rulings challenged in Travis County within 30 days of ruling receipt
- o Remedies for violating Open Information
 - o Formal Complaints
 - o In writing to the appropriate prosecuting officer
 - o Filed with the appropriate prosecuting officer (local DA, Travis Co DA, OAG)
 - o Procedures in § 552.3215
 - o Requestor cannot be sued but may intervene in suit against OAG

- Criminal Non-Compliance regarding public information
 - Failure to provide access with criminal negligence – misdemeanor (fine and/or jail)
 - Willfully removing, mutilating, destroying or altering – misdemeanor (fine and/or jail)
 - Distribution or misuse of confidential information – misdemeanor (fine and/or jail)

Assistance with the PIA Process for Agencies and Requestors

- Office of Texas Attorney General (OAG)
 - **Open Government Hotline:**
 - 1-877-673-6839 or 1-877-OPEN-TEX
 - **Address:**
Office of the Attorney General
Open Records Division
P. O. Box 12548
Austin, Texas 78711-2548
 - **Website:**
 - www.oag.state.tx.us
 - ***Public Information Handbook***