



Texas Public Information Act: An Overview

Open Records Division
Office of the Attorney General



Elements of Training

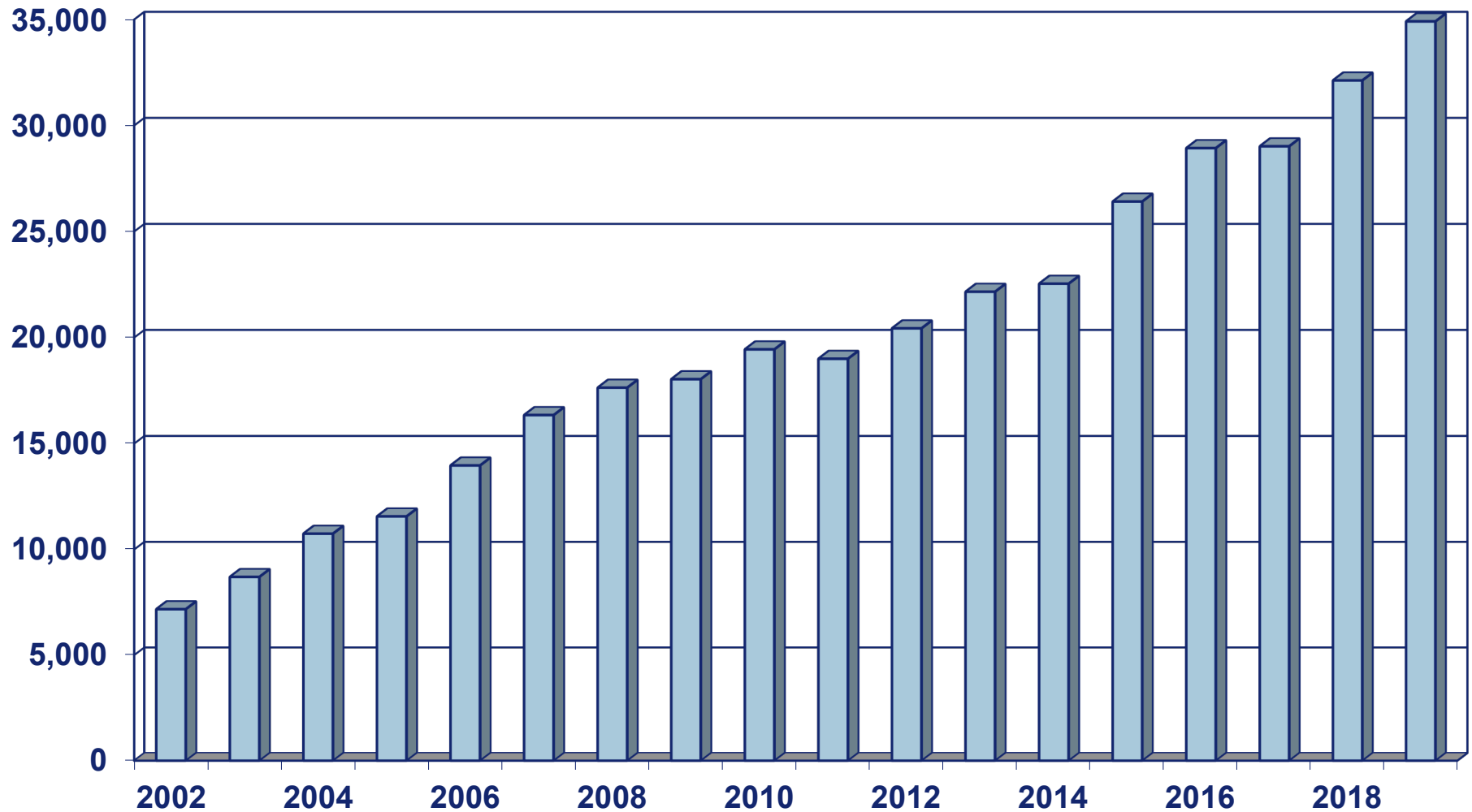
- ▶ Background of the legal requirements for open records and public information
- ▶ Applicability of the Public Information Act
- ▶ Procedures and requirements regarding complying with a public information request
- ▶ The role of the Attorney General under the Public Information Act
- ▶ Penalties and other consequences for failure to comply with the Public Information Act



Background of the Legal Requirements for Open Records and Public Information



Open Records Letter Rulings Issued in Fiscal Years 2001-2019





Public Information by the Numbers

- ▶ Originally Adopted as the Open Records Act in 1973
- ▶ Found in Chapter 552 of the Government Code
- ▶ 34,911 Open Records Letter Rulings issued in fiscal year 2019
- ▶ 688 Open Records Decisions issued since 1973
- ▶ Chapters 63 and 70 of title 1 of the Texas Administrative Code have rules related to administration of the Act



Texas Government Code Chapter 552

Section 552.001. Policy; Construction

- (a) 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 provisions of this chapter shall be liberally construed to implement this policy.
- (b) ***This chapter shall be liberally construed in favor of granting a request for information.***



Applicability of the Public Information Act



Public Information Defined (Slide 1 of 2)

Gov't Code § 552.002(a)

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



Public Information Defined (Slide 2 of 2)

Gov't Code § 552.002(a-1), (a-2)

- ▶ Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.
- ▶ The definition of "public information" provided by Subsection (a) applies to and includes *any electronic communication* created, transmitted, received, or maintained *on any device* if the communication is in connection with the transaction of official business.



Official Business Defined

Gov't Code § 552.003(2-a)

- ▶ “Official business” means any matter over which a governmental body has any authority, administrative duties, or advisory duties.



Temporary Custodian

Gov't Code § 552.003(7)

- ▶ “Temporary custodian” means an officer or employee of a governmental body who, in the transaction of official business, creates or receives public information that the officer or employee has not provided to the officer for public information of the governmental body or the officer's agent[.]

Gov't Code § 552.004(b)

- ▶ Requires current and former officers or employees of a governmental body who maintain public information on a privately owned device to either forward or transfer the public information to the governmental body, or preserve the public information in its original form in a backup or archive.



Forms of Public Information

Gov't Code § 552.002(b)-(c)

- ▶ Information recorded on physical media:
 - Paper, film, or tape
 - Magnetic, optical, or solid state storage

- ▶ And in any form:
 - Audio or video recordings
 - Photographs
 - Maps
 - Drawings
 - Emails, Internet postings, text messages, instant messages, or other electronic communications



Governmental Body Defined

Gov't Code § 552.003

- ▶ The definition of “governmental body” encompasses all public entities supported in whole or in part by public funds, including:
 - State agencies
 - Cities and counties
 - Public school districts and school boards
 - Utility districts
 - Police departments and sheriffs’ offices
 - Public universities
 - County commissioners courts
 - Municipal governing bodies
 - Local workforce development boards
 - **Does not include the judiciary**



Procedures and Requirements Regarding Complying With a Public Information Request



What is a Public Information Request?

- ▶ Must be in writing to trigger the PIA
- ▶ Must ask for information in existence as of the date the request was received
 - No requirement to create new documents
 - No requirement to answer questions
 - No requirement to perform legal research
- ▶ No “magic words” required
- ▶ No requirement to label it as an open records request or public information request
- ▶ Can be typed or handwritten



Proper Methods to Submit a Request

Gov't Code § 552.234

- ▶ Request may be submitted by:
 - U.S. Mail
 - E-mail
 - Hand Delivery
 - Other methods approved by the governmental body

- ▶ Section 552.234(a) clarifies that the request must be delivered to the officer for public information on their designee



How Do Requestors Know

Gov't Code § 552.221

- ▶ Requires a governmental body to post a sign containing:
 - The rights of requestors
 - The responsibilities of governmental bodies
 - Procedures for inspecting and obtaining a copy of information



Public Information Request Form

Gov't Code § 552.235

- ▶ Requires the Office of the Attorney General to create a public information request form that allows a requestor the option of excluding confidential information or information subject to an exception to disclosure that the governmental body would assert.
- ▶ A governmental body that uses the form and maintains an Internet website must post the form on its website.



Sample Requests



What if the Request . . . (Slide 1 of 5)

**Was sent to the designated mailing address and asked for . . .
John Smith's personnel file pursuant to the U.S. Freedom of Information Act.**



What if the Request . . . (Slide 2 of 5)

was handed to the front desk on a napkin?

I want all
records involved in
Report # 225436-96.
Bob Scrawf
P.O. Box 22
Hidden, TX 70008



What if the Request . . .

(Slide 3 of 5)

Was e-mailed to the human resources department and asked for. . . “any and all documents pertaining to Jane Smith, including, but not limited to, communications sent or received by her in the past five years.”



What if the Request . . . (Slide 4 of 5)

Was sent to the designated e-mail and asked for. . . “any and all communications Jane Smith sends or receives over the next 30 days starting tomorrow.”



What if the Request . . . (Slide 5 of 5)

Was submitted through the governmental body's approved online portal and asked for . . . "all of Jane Smith's evaluations because I am considering going into business with her and would like to know about her personal background."



What if the Request is Unclear or Unduly Broad?

Gov't Code § 552.222

- ▶ **Cannot ask** requestors why they want the information
- ▶ Can ask requestor to clarify request and/or discuss with requestor how scope of request might be narrowed
- ▶ When a governmental body, acting in good faith, requests clarification or narrowing of an unclear or over-broad request, the 10-business-day period to request an Attorney General decision is measured from the date the request is clarified or narrowed.
 - *City of Dallas v. Abbott*, 304 S.W. 3d 380, 387 (Tex. 2010)



What Do You Do When You Receive a Request?

Gov't Code § § 552.221, 552.301

- ▶ A governmental body must:
 - Promptly produce information for inspection, duplication or both;

or

- Ask for a decision from the Attorney General about whether the information is excepted from disclosure, unless there has been a previous determination that the information is excepted.



How Much Time Do You Have to Produce Information?

Gov't Code § 552.221

- ▶ “Promptly” means as soon as possible under the circumstances, that is, within a reasonable time, without delay.
- ▶ If you cannot produce information within 10 business days after the date the information is requested, you must certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available.



The Role of the Attorney General Under the Public Information Act



Role of the OAG: Decisions

Gov't Code § 552.011

- ▶ Authorizes the attorney general to prepare, distribute and publish materials, including detailed and comprehensive written decisions and opinions, in order to maintain uniformity in the application, operation and interpretation of the Act.

Gov't Code § 552.306

- ▶ Authorizes the attorney general to issue decisions on whether the requested information is subject to the exceptions to disclosure found in the Act.



Role of the OAG: Education and Enforcement

Gov't Code § § 552.321, 552.3215

- ▶ Authorizes the attorney general to file a writ of mandamus or an action for declaratory judgment or injunctive relief to compel compliance with the Act.

Gov't Code § 552.012

- ▶ Requires the attorney general to ensure training is available.

Gov't Code § 552.269

- ▶ Authorizes the attorney general to issue determinations on costs to provide information.



How Much Time Do You Have to Request a Decision from the Attorney General?

Gov't Code § 552.301(a)-(b)

- ▶ If you wish to withhold information from the requestor, you must request a decision from the OAG not later than 10th business day after the date of receiving the public information request.
- ▶ You must request a decision within 10 business days, unless you have a “previous determination.”



What is a “Previous Determination”?

Open Records Decision No. 673 (2001)

▶ 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



ORD 684

- ▶ Open Records Decision No. 684 (2009) covers several types of information:
 - Direct deposit authorization forms
 - Form I-9 and attachments
 - W-2 and W-4 forms
 - Certified agenda and tape of closed meeting
 - Fingerprints
 - L-2 and L-3 declarations
 - Certain email addresses
 - Military discharge records



Procedures for Requesting a Decision from the OAG (Slide 1 of 3)

Gov't Code § § 552.301, 552.305

- ▶ **Not later than the 10th business day, you must:**
 - Ask the OAG for a ruling and state the exceptions that apply;
 - Notify the requestor in writing that you have asked for a ruling;
 - Provide the requestor a copy of your letter to the OAG 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).



Procedures for Requesting a Decision from the OAG (Slide 2 of 3)

Gov't Code § 552.301(e)-(e-1)

- ▶ **Not later than the 15th business day, you must:**
 - Submit written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld.
 - Submit a copy of the written request for information.
 - Submit a signed statement as to the date on which the request for information was received by the GB or evidence sufficient to establish that date.



Procedures for Requesting a Decision from the OAG (Slide 3 of 3)

Gov't Code § 552.301(e)-(e-1) (continued)

- ▶ **Not later than the 15th business day, you must:**
 - Submit a copy (not your original) of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested.
 - Label that copy of the specific information, or representative samples, to indicate which exceptions apply to which parts of the copy.
 - Send a copy of your written comments to the requestor.



Counting Business Days

General Rules for Counting Business Days

- ▶ Start counting the next business day after receiving a written request.
- ▶ “Received” means when it is physically received, not when it is finally opened or read (this includes email).



What is a Business Day?

Counts as a Business Day	Not a Business Day
Regular Work Day	Schedule Holiday
Office Closed Early	Closed for Bad Weather
Delayed Opening for Inclement Weather	Weekend
Staff on Vacation	Skeleton Crew Day



Counting to 10 Can Be Simple

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



Counting to 10 Can Be Tricky

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
15	16	17	18 Written Request Received	19 1	20 2	21
22	23 3	24 State Closed Christmas Eve	25 State Closed Christmas Day	26 State Closed Day After Christmas	27 Skeleton Crew Day	28
29	30 4	31 Half Skeleton/ Half Holiday	1 State Closed New Year's Day	2 5	3 6	4
5	6 Delayed Open 7	7 8	8 9	9 10	10	11



Consequences for Missing Deadlines

- ▶ Mandatory exceptions are not waived.
- ▶ Permissive exceptions are waived.
- ▶ Potential Criminal Penalties
- ▶ Civil Penalties that may be initiated by either the local district or county attorney's office, the Office of the Attorney General, or the requestor

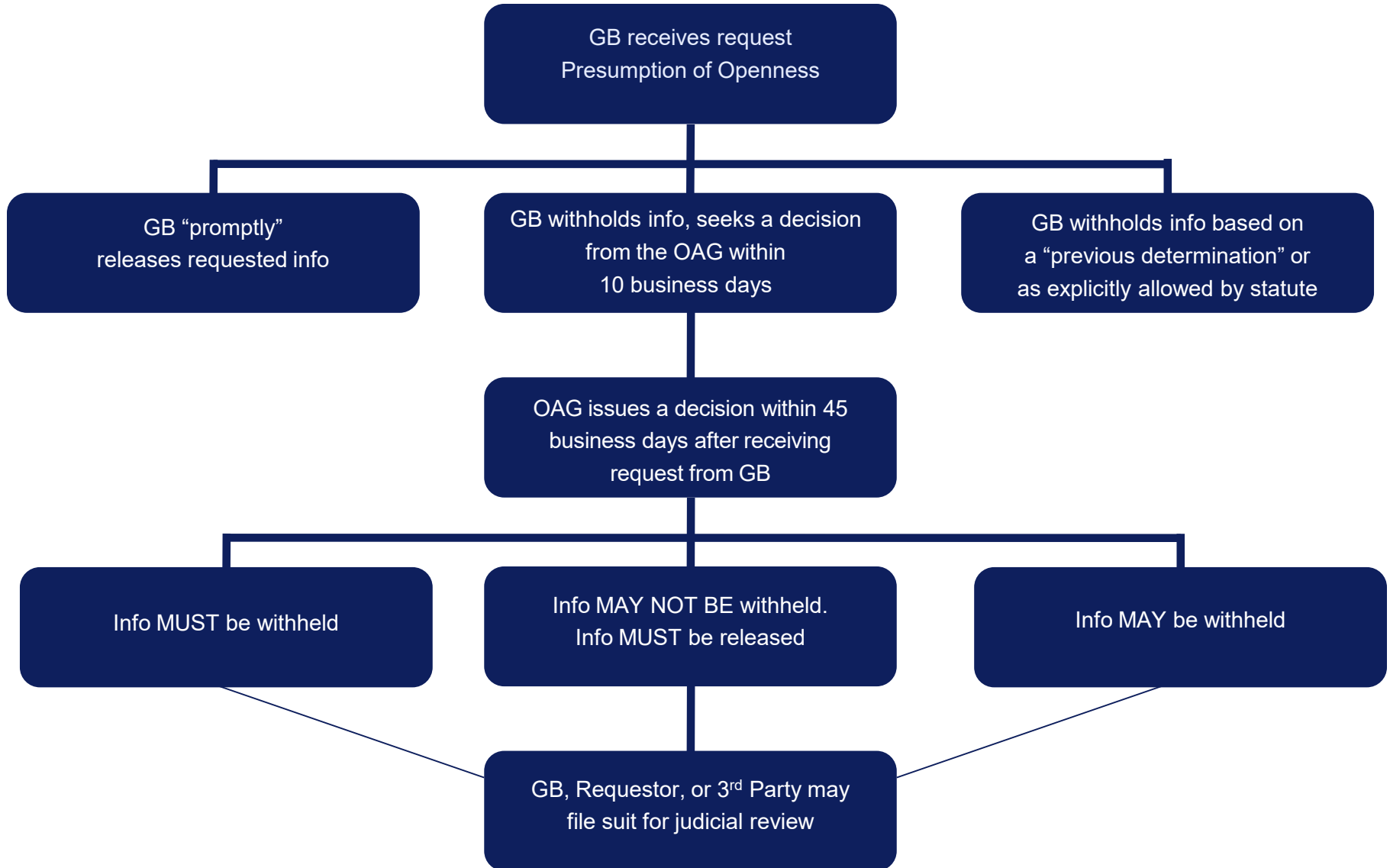


After Requesting a Ruling

- ▶ The Attorney General's Office 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 Attorney General's Office extends the deadline, in which case the ruling will be issued within 55 business-days.
- ▶ The Attorney General's Office 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 and any notified third party.
- ▶ Ruling will determine whether records may be withheld, must be withheld, or must be released.



Basic Process for Governmental Bodies





Challenging a Ruling

- ▶ Section 552.301(f) prohibits a governmental body from requesting a reconsideration.

- ▶ If a governmental body disagrees with the legal interpretation set forth in a ruling, it may file suit against the OAG in accordance with the PIA.
 - No later than the 30th calendar day after the receipt of OAG decision



When Can You Redact Without First Seeking a Ruling?

- ▶ General Rule: If you want to withhold information from the public, you must request a ruling from the Attorney General's Office.

- ▶ Exceptions to the general rule, some specific circumstances allow a governmental body to withhold information without requesting a ruling. Examples:
 - Gov't Code § 552.130
 - Information related to driver's license, motor vehicle title or registration, or personal identification document

 - Gov't Code § 552.136
 - Credit card, debit card and access device numbers

 - Gov't Code § § 552.024, 552.1175 and 552.138
 - Personal information of certain public employees



Penalties and Other Consequences for Failure to Comply With the Public Information Act



Formal Complaints

Gov't Code § 552.3215

Declaratory Judgment or Injunctive Relief

- ▶ Complaint filed by requestor 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



Writ of Mandamus

Gov't Code § 552.321 Writ of Mandamus

- ▶ Used to compel a GB to make information available for public inspection
- ▶ Filed by requestor or Attorney General
- ▶ Examples of potential mandamus situations
 - GB refuses to provide copies or access to information that is clearly public.
 - GB refuses to request an OAG ruling.
 - GB refuses to release information as required by an unchallenged AG ruling.



Failure or Refusal to Provide Access or Copying

Gov't Code § 552.353

- ▶ Fails or refuses to give access, permit copying, or provide copies of public information with criminal negligence
- ▶ Misdemeanor with a fine not more than \$1,000 and/or county jail for not more than six months
- ▶ Constitutes official misconduct



Affirmative Defense for Failure to Provide Access

Gov't Code § 552.353(b)-(d)

- ▶ 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



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.
- ▶ Misdemeanor offense with a fine not less than \$25 or more than \$4,000 and/or county jail not less than three days or more than three months

Gov't Code § 552.352(a)

- ▶ A person commits an offense if the person distributes information considered confidential under the terms of chapter 552 of the Government Code
- ▶ Fine not more than \$1,000 and/or county jail for not more than six months



Distribution or Misuse of Confidential Information

Gov't Code § 552.352(a)

Distribution or Misuse of Confidential Information

- ▶ A person commits an offense if the person distributes information considered confidential under the terms of chapter 552 of the Government Code
- ▶ Fine not more than \$1,000 and/or county jail for not more than six months
- ▶ Constitutes official misconduct



Additional Resources



Available Resources from the OAG

- ▶ The OAG's website
- ▶ The Public Information Act Handbook
- ▶ The Open Government and Cost Hotlines



Additional Resources for Open Government

- ▶ Freedom of Information Foundation (800) 580-6651
 - for questions regarding FOIA

- ▶ State Library and Archives Commission (512) 463-7610
Records Management Assistance
 - for records retention questions

- ▶ U.S. Department of Education (800) 872-5327
Family Policy Compliance Office
 - for questions regarding FERPA and education records

- ▶ U.S. Department of Health and Human Services (800) 368-1019
Office for Civil Rights
 - For questions regarding the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and protected health information



OAG's Website



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Open Government

The State of Texas has many open government laws to help make the work of the state transparent to the public. The primary open government laws are the Texas Public Information Act and the Texas Open Meeting Act. To learn more, click one of the choices below.

Public Information Act

The Public Information Act determines how information is made available to members of the public.

Open Meetings Act

The Open Meetings Act determines how public meetings must operate.

Open Reports & Publications

Access to public data and reports

Public Information and Open Records



Members of the Public >

The Public Information Act protects the ability of the citizens to access information maintained by governmental bodies and obtain a more complete understanding of how their government works.

Governmental Bodies >

The Office of the Attorney General works to ensure governmental bodies in Texas remain open and accountable to the people they serve because open government elevates the public to their proper role as partners in leadership with governmental bodies.

How to Request Public Information >

Requesting public information is simple. Here's what you need to know to make a successful Public Information Act request.

Responding to a Public Information Act Request >

How to properly respond to a request for information.



Resources for Governmental Bodies

[HOME](#) > [OPEN GOVERNMENT](#) > [GOVERNMENTAL BODIES](#)

Governmental Bodies

Here, governmental bodies can find all resources related to the Public Information Act (PIA) and Open Meetings Act (OMA) – including prior rulings, training, guidelines, and requests.

Training Resources

Find training resources for the Public Information Act and the Open Meetings Act

Responding to PIA Requests

Resources for properly responding to PIA requests

Responding to Complaints

How to properly address complaints

Requests for Third-Party Information

How to respond if a third party's information is requested

Decisions and Rulings - Public Information Act

Review prior Attorney General decisions and rulings

Charges for Public Information

How to properly assess costs for responding to a PIA request

Open Records Reports

Information provided online to the OAG by state agencies

Catastrophe Notice Form

Submit notice of catastrophe pursuant to section 552.233 of the Government Code

Open Government Hotline

(512) 478-6736

Toll Free: (877) 673-6859

Public Information Act Handbook

[Download the Handbook \(PDF\)](#)

Open Meetings Act Handbook

[Download the Handbook \(PDF\)](#)



Resources for Requestors

HOME > OPEN GOVERNMENT > MEMBERS OF THE PUBLIC

Members of the Public

The Office of the Attorney General (OAG) is dedicated to educating the public and governmental bodies of their rights and responsibilities under the Public Information Act (PIA). We hope the information presented here is helpful and useful. If you are learning about open records for the first time, here is a brief introduction to the PIA.

Open Records Rulings

The PIA generally requires a governmental body to release information to a requestor. However, if a governmental body determines the information is excepted from disclosure under the PIA, then the request and information must be reviewed by the OAG's Open Records Division (ORD). The ORD will issue a decision on whether the governmental body is permitted to withhold the requested information or if it must release the information to the requestor.

Open Records Education

The OAG sponsors the Open Government Conference, provides online training for officials, and makes training presentations upon invitation.

Every two years, the OAG publishes an updated [Public Information Handbook \(PDF\)](#). The handbook is free and publicly available.

Open Government Hotline

[\(512\) 478-6786](#)

Toll Free: [\(877\) 678-6839](#)

Public Information Act Handbook

[Download the Handbook \(PDF\)](#)

Open Meetings Act Handbook

[Download the Handbook \(PDF\)](#)

[How to Request Public Information](#)

[Public Information Act Overview](#)

[Open Government Resources](#)



PIA Electronic Filing System

<https://apps2.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.



Public Information Cost Estimate Model

<https://www.texasattorneygeneral.gov/og/public-information-cost-estimate-model>

Public Information Cost Estimate Model

This model will calculate costs associated with a request for **COPIES** of information, but not a request to **INSPECT** information. For questions about estimating costs when a requestor asks to **INSPECT** information, please call our toll-free Cost Hotline at 1-888-OR COSTS (1-888-672-6787).

Date request was received: 02/02/2015	
Government Body's Information	Requestor's Information
Agency Name: <input type="text"/>	<input type="radio"/> Mr. <input type="radio"/> Ms.
Contact Name: <input type="text"/>	First/Last Name: <input type="text"/>
Address: <input type="text"/>	Address: <input type="text"/>
City: <input type="text"/>	City: <input type="text"/>
State/Zip: <input type="text"/>	State/Zip: <input type="text"/>

Itemization of costs:

Did the requestor ask for standard paper copies? Yes | No

Did the requestor ask for copies of nonstandard documents (e.g., oversized paper, DVD, or VHS tape)? Yes | No

Add labor costs? Yes | No

Are overhead charges applicable? Yes | No

Are computer resource charges applicable? Yes | No

Are remote document retrieval charges applicable? Yes | No

Will there be charges for miscellaneous supplies? Yes | No

Will there be postage? Yes | No

If the total charges exceed \$100, will you require a prepayment deposit? Yes | No

OR

If the total charges exceed \$100, will you require a prepayment bond? Yes | No

Generate Estimate

Clear Form



Open Records Division Forms



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Redacting Public Information

Rules and Forms for Redacting Public Information

Usually, a governmental body must seek a ruling from the Open Records Division before it can redact information from requested documents.

However, a governmental body can redact without requesting a ruling if:

- The governmental body has a [previous determination](#) for that information.
- The information is subject to:
 - Section 552.114 – student records
 - Section 552.147 – social security numbers.
- The information is subject to one of the following sections, and the governmental body provides the required form:
 - Section 552.024 – public employee's personal information held by governmental body in its capacity as employer
 - Section 552.1175 – public employee's personal information held by governmental body in non-employment capacity
 - Section 552.130 – motor vehicle record information
 - Section 552.136 – account and access device numbers
 - Section 552.138 – family violence shelter center, victims of trafficking shelter center, or sexual assault program.
 - **NOTE:** A requestor can appeal the withholding of information under these sections.

Open Government Hotline

[\(512\) 478-6736](#)

Toll Free: [\(877\) 673-6839](#)

Public Information Act Handbook

[Download the Handbook \(PDF\)](#)

Open Meetings Act Handbook

[Download the Handbook \(PDF\)](#)



Questions?

OAG's Open Government Hotline

(877) OPEN TEX

(512) 478-6736

Cost Questions

OAG Cost Rules Administrator

(888) OR-COSTS

(512) 475-2497

OAG website

<http://www.texasattorneygeneral.gov>