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ATTORNEY GENERAL *of* TEXAS

Identifying a Request and the First Steps

Starting at the Beginning

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What's On the Menu?

1. What Constitutes Public Information?
2. Entities Subject to the Act
3. Recognizing a Public Information Act Request
4. Communicating with the Requestor
5. Calculating 10-Day and 15-Day Deadlines



1. What Constitutes Public Information?



Definition of Public Information (1 of 2)

- 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 it, 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.

§ 552.002(a)



Definition of Public Information (2 of 2)

- Official Business
 - any matter over which a governmental body has any authority, administrative duties, or advisory duties.
- Temporary Custodian
 - 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[.]
 - The Act 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.

§§ 552.003(2-a), (7), .004(b)



Forms of Public Information (1 of 2)

- 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

§ 552.002(b),(c)



Forms of Public Information (2 of 2)

- Source code and other computer programming information that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not public information
- Tangible physical items are not public information.
Examples:
 - Physical evidence collected in criminal investigations
 - Personal belongings taken into custody by the police
 - Computer hardware
- The Public Information Act does not require a governmental body to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public. However, a governmental body is required to allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

ORD 581, §§ 552.002, 552.027



Hypothetical (1 of 3)

Which of the following does not constitute public information?

- (a) handwritten notes taken by a city councilperson on an agenda item during a city council meeting
- (b) a draft of a press release written by the staff of a county commissioner
- (c) an e-mail from Arby's advertising its meat mountain sandwich to the university e-mail address of the president of the university
- (d) text messages sent by an assistant district attorney from his personal cellular telephone to defense counsel offering a plea deal in a pending criminal prosecution



Hypothetical (2 of 3)

Which of the following does not constitute public information?

- (a) police report for theft
- (b) recording of a 9-1-1 call reporting the break in
- (c) witness statement
- (d) shards of glass collected from a crime scene



Hypothetical (3 of 3)

Which of the following does not constitute public information?

- (a) a complaint submitted by a concerned citizen to the city about the amount of “his hard-earned tax dollars” being spent on sticky notes at city hall
- (b) a spreadsheet created by an office manager in the city secretary’s office tabulating the number of sticky notes used by city employees for city business and for personal business
- (c) the auditing software utilized by the city auditor’s office to track errant spending
- (d) a report written by a city auditor about the expenditure of city funds on sticky notes



2. Entities Subject to the Act



Government Body Defined

- 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**



Hypothetical

Which of the following is not a governmental body subject to the Act?

- (a) City of San Antonio
- (b) Travis County District Attorney's Office
- (c) The Lieutenant Governor's Office
- (d) The 72nd District Court of Lubbock County



3. Recognizing a Public Information Act Request



Recognizing a Public Information Act Request (1 of 2)

- Must be in writing to trigger the Act
- 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
- However, remember, a governmental body must make a good faith effort to relate a request to any responsive information that is within its possession or control.
- No “magic words” required
- No requirement to label it as an open records request or public information request
- Can be typed or handwritten



Recognizing a Public Information Act Request (2 of 2)

A written request must be delivered to the officer for public information, or a person designated by the officer by:

- United States mail
- Electronic mail
- Hand delivery
- Any other appropriate method approved by a governmental body, including by facsimile transmission and electronic submission through the governmental body's internet website.

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

- If a governmental body posts these on its website or its sign, the governmental body is not required to respond to a written request unless the request is received at one of those addresses, by hand delivery, or by a method approved by the governmental body.



Hypothetical (1 of 4)

Which of the following requests triggers the Act?

- (a) A verbal request by a motorist to a police officer for copies of all citations the officer has issued during the past week
- (b) A handwritten request by a motorist hand delivered to a police officer requesting copies of all citations the officer has issued during the past week
- (c) A handwritten request by a motorist hand delivered to a police department's officer for public information, requesting, pursuant to the official rules and regulations of NASCAR, copies of all citations issued by an officer during the past week.
- (d) An e-mail request by a motorist sent to the designated e-mail address of a police department requesting copies of all citations that are issued by an officer next week.



Hypothetical (2 of 4)

Does the following request trigger the Act?

A typed request submitted through a city's web portal for all invoices reflecting city expenditures for sticky notes from an individual named Clippy Microsoft with the e-mail address anthropomorphic_clip@gmail.com

What if the same request, instead of being submitted through the internet portal, is faxed to the city?

What if the same request is sent via the USPS to the physical address of the city's recycling plant?



Hypothetical (3 of 4)

Does the following request trigger the Act?

A reporter e-mails the public information officer for a police department, asking for

- (1) a quote from the police chief for the reporter's upcoming story on a recent rash of stolen bicycles,
- (2) a copy of all incident reports relating to stolen bicycles for the past month, and
- (3) a map highlighting the location of each address from which a bicycle has been reported stolen in the past month.



Hypothetical (4 of 4)

Does the following request trigger the Act?

A napkin with writing, in what appears to be crayon, hand delivered to a person designated by the public information officer for a school district requesting the procedures for removing the superintendent from office.



4. Communicating with the Requestor



Requesting Clarification

Pursuant to section 552.222 of the Government Code, a government body:

- may not ask a requestor why he/she wants the information;
- may ask the requestor to narrow the scope of the request; and
- may ask the requestor to clarify what information the requestor is seeking.

Pursuant to *City of Dallas v. Abbott*, 304 S.W. 3d 380, 387 (Tex. 2010), the deadlines to request an attorney general decision are measured from the date the governmental body receives a response to its request to clarify or narrow the request.



Cost Estimates

Pursuant to section 552.2615 of the Government Code, if a governmental body plans on charging the requestor, and the cost for complying with the request will exceed \$40, then the governmental body must give the requestor a cost estimate letter before it complies with the request.

Pursuant to section 552.263 of the Government Code, if the cost for complying with the request will exceed \$100 dollars for a governmental body with more than 15 full-time employees or \$50 for a governmental body with fewer than 16 full-time employees, then a government body may require a deposit or bond for payment before complying with the request.

More detailed information to come!



Requestor's Rights

- (A) Prompt access to information that is not confidential or otherwise protected;
- (B) Receive treatment equal to all other requestors, including accommodation in accordance with the [ADA] requirements;
- (C) Receive certain kinds of information without exceptions. . . ;
- (D) Receive a written itemized statement of estimated charges, when charges will exceed \$40, in advance of work being started and opportunity to modify the request in response to the itemized statement;
- (E) Choose whether to inspect the requested information. . . receive copies of the information, or both;
- (F) A waiver or reduction of charges if the governmental body determines that access to the information primarily benefits the general public;
- (G) Receive a copy of the communication from the governmental body asking the Attorney General for a ruling on whether the information can be withheld under one of the accepted exceptions, or if the communication discloses the requested information, a redacted copy;
- (H) Lodge a written complaint about overcharges for public information with the Attorney General. Complaints of other possible violations may be filed with the county or district attorney of the county where the governmental body, other than a state agency, is located. If the complaint is against the county or district attorney, the complaint must be filed with the Attorney General.

Governmental Body's Responsibilities

- (A) Establish reasonable procedures for inspecting or copying public information and inform requestors of these procedures;
- (B) Treat all requestors uniformly and shall give to the requestor all reasonable comfort and facility, including accommodation in accordance with ADA requirement;
- (C) Be informed about open records laws and educate employees. . . ;
- (D) Inform requestors of the estimated charges greater than \$40 and any changes in the estimates above 20 percent of the original estimate, and confirm that the requestor accepts the charges, has amended the request, or has sent a complaint of overcharges to the Attorney General. . . ;
- (E) Inform the requestor if the information cannot be provided promptly and set a date and time to provide it within a reasonable time;
- (F) Request a ruling from the Attorney General regarding any information the governmental body wishes to withhold, and send a copy of the request for ruling, or a redacted copy, to the requestor;
- (G) Segregate public information from information that may be withheld and provide that public information promptly;
- (H) Make a good faith attempt to inform third parties when their proprietary information is being requested from the governmental body;
- (I) Respond in writing to all written communications from the Attorney General regarding complaints about the charges for the information and other alleged violations of the Act.

5. Calculating 10-Day and 15-Day Deadlines



Learning to Count

Start counting the next business day after receiving a valid request.

Remember:

- “Received” means when it is physically received, not when it is finally opened or read.
- If governmental body requests clarification or narrowing, start counting the next business day after receiving a response from the requestor.
- A request received after business hours is considered “received” the following business day.
- Only count business days.

Remember:

- Do not count Saturdays, Sundays, and any other day a governmental body is closed or operating with a skeleton crew (e.g. holidays, inclement weather days).
- Be on the lookout for body-worn camera recordings. These have 20-day and 25-day deadlines.



Hypotheticals (1 of 2)

If you received a request at 2PM on Monday, what will be day 1 for purposes of calculating your deadlines?

If you received a request at 2PM on Friday, what will be day 1 for purposes of calculating your deadlines?

If you've designated an e-mail address and a request is received in that e-mail address's inbox at 7PM on Monday, what will be day 1 for purposes of calculating your deadlines?

If you've designated an e-mail address and a request is received in that e-mail address's inbox at 7PM on Friday, what will be day 1 for purposes of calculating your deadlines?



Hypotheticals (2 of 2)

If you received a request on 2PM on Monday, send a request for clarification at 2PM on Tuesday, received a response to the request for clarification at 2PM on Thursday, what will be day 1 for purposes of calculating your deadlines?

If you received a request at 2PM on Monday, send a request for clarification at 2PM on Tuesday, received a response to the request for clarification at 7PM on Friday, what will be day 1 for purposes of calculating your deadline?



NOVEMBER 2021 - DECEMBER 2021

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
7	8	9 Request received	10 1	11 Veterans Day (closed)	12 2	13
14	15 3	16 4	17 5	18 6	19 7	20
21	22 8	23 9	24 (skeleton crew)	25 Thanksgiving (closed)	26 (closed)	27
28	29 10	30 11	1 12	2 13	3 14	4
5	6 15	7	8	9	10	11



DECEMBER 2021 - JANUARY 2022

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
19	20 Request received	21 1	22 2	23 (skeleton crew)	24 Christmas Eve (closed)	25
26	27 (closed)	28 (skeleton crew)	29 (skeleton crew)	30 (skeleton crew)	31 New Year's Eve (closed)	1
2	3 3	4 4	5 5	6 6	7 7	8
9	10 8	11 9	12 10	13 11	14 12	15
16	17 MLK Day (closed)	18 13	19 14	20 15	21	22



Cost Estimate with a Request for a Deposit or Bond

If you properly submit a cost estimate with a request for a deposit or bond to the requestor, then the request will not be considered received until the day the requestor pays the deposit or bond.

Hypothetical:

If you received a request at 2PM on Monday, send the requestor a cost estimate with a request for a deposit or bond on Wednesday, and the requestor pays the deposit on Thursday, what will be day 1 for purposes of calculating your deadlines?



Catastrophes (1 of 2)

In the event of a catastrophe (e.g., hurricane, snowstorm, epidemic, civil unrest) that directly interferes with the ability of a governmental body to comply with the requirements of the Act, a governmental body may suspend the applicability of the requirements of the Act for an initial suspension period not exceeding seven consecutive calendar days and may extend this time period only once for an additional period not exceeding seven consecutive calendar days.

- Combined, the suspension periods may not exceed fourteen consecutive calendar days.
- A governmental body may invoke a suspension period, and one subsequent extension, only once per catastrophe.

Proper notice must be provided to the OAG.

Proper notice also must be posted by the governmental body in a manner that is readily accessible to the public and in each other location notice is required to be posted by the Open Meetings Act.

See <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/catastrophe-notice>.

- general guidance on catastrophe notices
- a link to the catastrophe form you will need to file with the OAG
- a link for submitting the completed form
- a link to the page where the OAG posts the catastrophe notices



Catastrophes (2 of 2)

How do catastrophe suspension periods effect the calculation of 10-day and 15-day deadlines?

- A request for public information received by a governmental body before the date an initial suspension period begins are tolled until the first business day after the date the suspension period ends.
- A request for public information received by a governmental body during a suspension period is considered to have been received by the governmental body on the first business day after the date the suspension period ends.

§ 552.2325



Hypotheticals

It's Monday. A catastrophe suspension period starts Wednesday and runs through Thursday. You receive a request at 2PM. What will be day 1 for purposes of calculating your deadlines?

What will be day 2 for purposes of calculating your deadlines?

It's Monday. You're in the middle of a catastrophe suspension period that ends Wednesday. You receive word that a request came in at 2PM. What will be day 1 for purposes of calculating your deadlines?



Questions?

OAG's Open Government Hotline
(877) OPEN TEX
(512) 478-6736

OAG website
www.texasattorneygeneral.gov

