

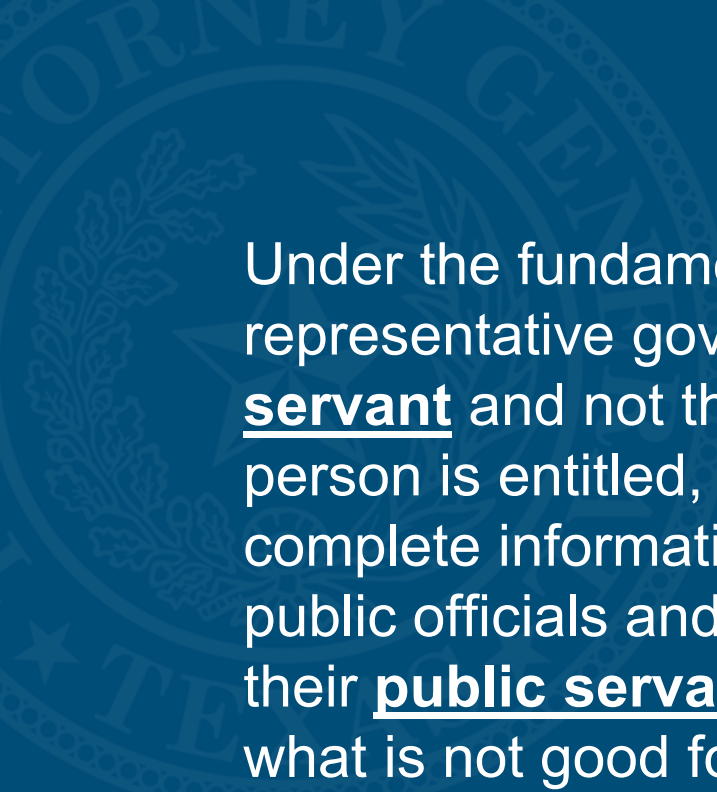


KEN PAXTON  
ATTORNEY GENERAL *of* TEXAS

# Ethics and the PIA

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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 provisions of this chapter shall be liberally construed to implement this policy.

**Gov't Code § 552.001**

# Ethical Responsibilities

- The Public Information Act is the applicable law.
- Ethical responsibilities apply in addition to the law.
- What ethical standards apply to you?

# Revision to Lawyer's Oath

- Section 82.037(a) of the Government Code.
- “Each person admitted to practice law shall . . . ***conduct oneself with integrity and civility in dealing and communicating with the court and all parties.***”

# The Texas Lawyer's Creed

- Professional standard set by the Texas Supreme Court and Texas Court of Criminal Appeals
- “I will advise my client that we will not pursue tactics which are intended primarily for delay.”
- “I will advise my client that we will not pursue any course of action which is without merit.”

# A Lawyer's Ethical Responsibility

- Preamble to Texas Disciplinary Rules of Professional Conduct (“TDRPC”):
  - As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of *honest dealing with others*.
  - A lawyer should use the law’s procedures only for legitimate purposes and *not to harass or intimidate others*.
  - A lawyer should demonstrate *respect for the legal system* and for those who serve it, including judges, other lawyers and public officials.

# Timeliness – Ethical Requirement

- In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person. TDRPC Rule 4.04.

# Representations to the OAG – Ethical Requirements

- In representing a client, a lawyer shall not:
  - Neglect a legal matter entrusted to the lawyer; or
  - Frequently fail to carry out completely the obligations that the lawyer owes to a client or clients. TDRPC 1.01
- In the course of representing a client a lawyer shall not knowingly:
  - Make a false statement of material fact or law to a third person[.] TDRPC 4.01



# Representing Your Client – Ethical Requirements

- A client is entitled to straightforward advice expressing the lawyer's honest assessment . . . It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. TDRCP 2.01
- When a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, duty to the client may require that the lawyer act if the client's course of action is related to the representation. TDRCP 2.01
- A lawyer shall be subject to discipline because of another lawyer's violation of these rules of professional conduct if:
  - The lawyer is a partner or supervising lawyer and orders, encourages, or knowingly permits the conduct involved[.] TDRPC 5.01

# Acting as a Lawyer's Representative

- TDRPC Rule 5.03
  - A lawyer who has direct supervision over a non-lawyer must take reasonable steps to ensure the employee's conduct is compatible with the professional obligations of the lawyer.
  - A lawyer can be subject to discipline if an employee engages in behavior that would be considered a violation of the rules.
  - Comment: "A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment[.]"

# Texas Police Chiefs Association

- Code of Ethics established for members
- Members of TPCA represent that the primary function of the police executive is to serve the best interests of the community and the law enforcement profession.
- Members of TPCA shall encourage friendly and courteous service and strive to improve communications with all members of the community, at all times seeking improvement in the quality and image of public service.
- Members shall not disclose to others or use to further the personal interest of themselves or others, confidential information acquired by them in the course of their official duties.

# Texas City Management Association

- Code of Ethics established for members
- **Tenet 1** -- Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.
- **Tenet 2** -- Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward urban affairs and a deep sense of social responsibility as a trusted public servant.
- **Tenet 9** -- Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.

# Texas Municipal Clerks Association

- Code of Ethics established for members
- To be ever mindful of my neutrality and impartiality, rendering equal service to all and to extend the same treatment I wish to receive myself.
- To record that which is true and preserve that which is entrusted to me as if it were my own.

# “Big City” Ethics Ordinance

- City officials shall act and conduct themselves, both inside and outside the city’s service, so as to give no occasion for distrust of their integrity, credibility or devotion to the best interests of the city and the public trust that it holds.
- It shall be unlawful for any city official to disclose confidential information or use such confidential information to advance the personal interests of said official or others.

# "Small City" Ethics Ordinance

- Public service is a public trust, built on respect for all people requiring that our elected officials obey the law and place ethical principles above private gain. The public should have confidence in the integrity of government.
- Government decisions and policy should be made within the proper channels of government structure, and citizens should be kept informed and educated about the issues facing their city.
- The city council shall keep the public informed through compliance with the spirit and intent of the Public Information Act and the Open Meetings Act of the Texas Government Code.

# Texas Attorney General

- Compact with Texans
- “The Office of the Attorney General promotes the highest ethical and professional standards applicable to all the lawyers who practice here, and is committed to the highest standards of customer service.”



# The Golden Rule

- Treat others as you would like to be treated.

# Requirements of Public Service

- “... government is the servant and not the master of the people ...”
- No one can serve two masters.

The seal of the Attorney General of Texas is visible in the background on the left side of the slide. It features a five-pointed star in the center, surrounded by a wreath. The words "ATTORNEY GENERAL" are written in a circle around the star, and "TEXAS" is written at the bottom.

The civil and criminal penalties are  
minimum compliance.

# Every Decision under the Act is affected

- When to release information
- What exceptions to raise
- What to charge

# When should information be released?

- Under the Public Information Act?
- Promptly
- What does promptly mean?
- As soon as possible under the circumstances

# What is part of the circumstances?

- The request itself
- Other pending requests
- Other work of the governmental body
- External factors?

# How do you balance all of the factors in ethical way?

- Treating everyone fairly
- Ensuring resources aren't wasted
- There is not always an answer that is crystal clear





# Is there anything to consider even before you receive a request?

- Is your system set up in a user friendly manner?
- Are your records labeled and well organized?
- Do you have a system to notify employees or officials who may maintain records?

# Hypothetical

- The city receives a request for all e-mails between the City Secretary and the public for the last three years. The city conducted a search and determined that there would be about 15,000 e-mails. After sending a cost estimate and request for deposit, the requestor paid. How long does the city have to provide the information?

# Promptly

- But, how do we determine promptly in this case?
- Do you release all of the records at once?
- How do you prioritize this request and other requests?
- How do you prioritize this request and other tasks?

# Considerations After a Request or Response

- The PIA doesn't require any action on governmental bodies part once information has been provided.
  - A governmental body is not responsible for how a requestor uses the information
- But what if a mistake was made:
  - Costs were too high
  - Costs were too low
  - A third party wasn't notified
  - Additional information was found

# Hypothetical

- A city received a request for all comments submitted in response to a proposed city ordinance. The city secretary asks the department responsible for the proposal for any comments it has received and provides them to the requestor. The city secretary then receives a second request for comments related to the proposed ordinance and the second requestor specifies specific employees who may have received comments. When searching and providing information responsive to this request, the city secretary realizes that there was additional information responsive to the first request. What should the city secretary do now?

It Depends . . .

# Hypothetical

- The city receives a request for the video from the city council meeting last April. The city secretary goes to the folder on the computer where these are stored in order to make a copy. However, she discovers that the videos are missing from last April and May. How should she proceed?

- What can she do now?
- What can she do to prevent this from happening in the future?



# Hypothetical

- The city recently had an event that made the national news. The city received 43 requests for information related to this event the next day. Some of the requests only asked for one item, and some asked for a broad range of information related to the event. How does the city ensure everyone is treated fairly?

- Start with organization.
- A governmental body knows its records better than anyone else.
- There is not a point at which a city can stop responding.
- Don't forget to communicate!
  - With the requestors, departments, and any potential third parties.

# Questions?

OAG's Open Government Hotline

(877) OPEN TEX

(512) 478-6736

OAG website

[www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov)

