



KEN PAXTON  
ATTORNEY GENERAL *of* TEXAS

# What To Do After a Ruling

## Practical Tips and Next Steps

Jahnna Ward

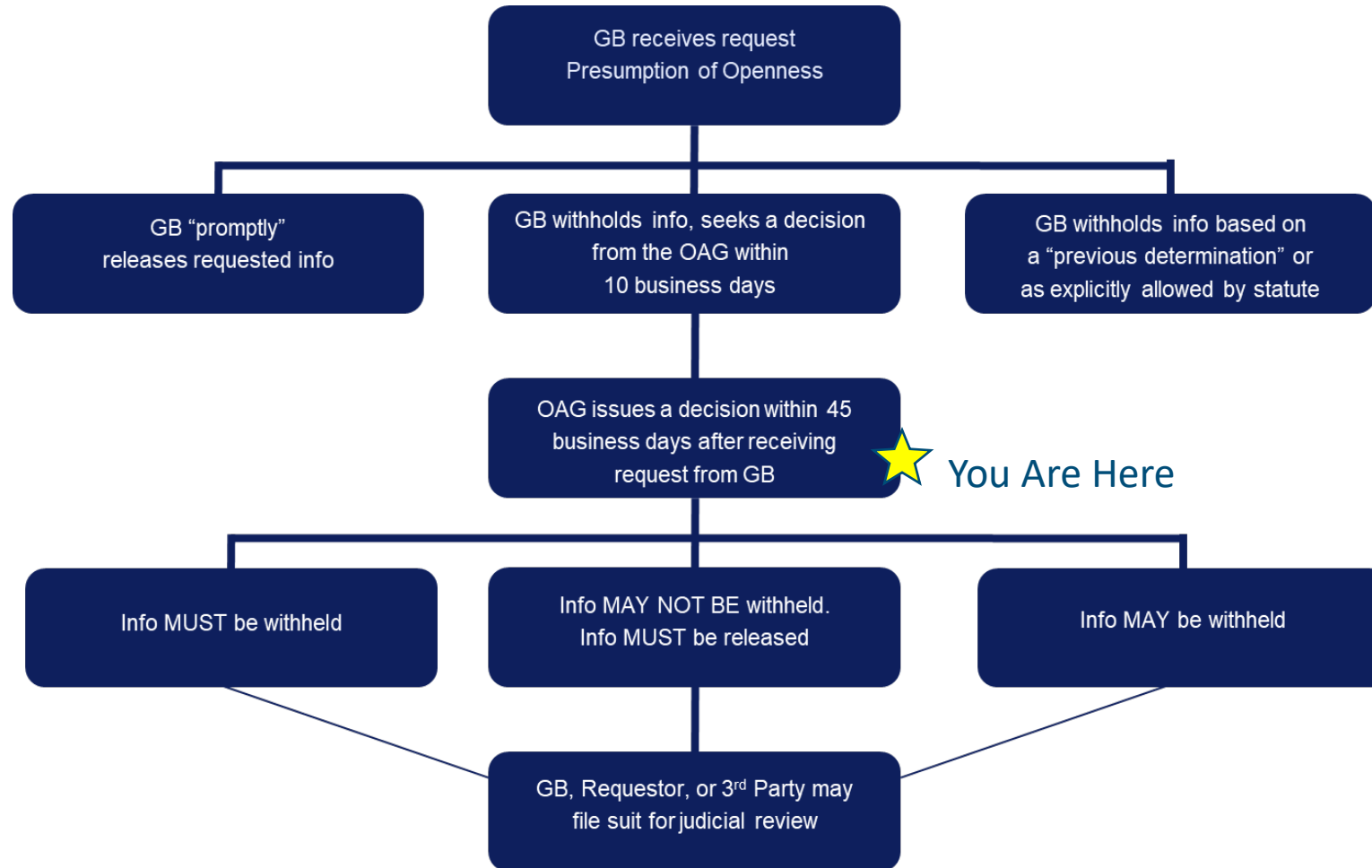
Assistant Attorney General, Open Records Division

# Next Steps

- Understanding a letter ruling decision.
- What to do if you have concerns or disagree with the decision.
- Penalties and consequences for failure to comply with a decision.
- Resources available to governmental bodies and requestors.



# Issuing a Letter Ruling (Slide 1 of 2)



# Issuing a Letter Ruling (Slide 2 of 2)

- The Attorney General's Office will issue a letter ruling decision 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.



# What Should You Do First?

- Record the date your agency receives a copy of the ruling.
  - Remember: The deadline for a governmental body to challenge the ruling in court is 30 calendar days after the date the governmental body receives the decision from the OAG determined that the requested information must be disclosed to the requestor.



# OR2021-25777



September 20, 2021

Ms. Jessica Farrias  
Open Records Coordinator  
City of Carrollton  
P.O. Box 11053  
Carrollton, Texas 75011-0535



OR2021-25777

Dear Ms. Farrias:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 905559 (City ID #01668).

The City of Carrollton (the "city") received a request for information pertaining to a specified incident. You state you have released some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The city states the information you marked pertains to a pending criminal investigation. Based upon this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536

<sup>1</sup> Although you do not cite to section 552.130 of the Government Code in your brief to this office, we understand you to raise this section based on your markings.

S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information you marked. Accordingly, the city may withhold the information you marked under section 552.108(a)(1) of the Government Code.<sup>2</sup>

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the doctrine of the common-law privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the city must withhold the public citizens’ dates of birth you marked and the additional public citizen’s date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov’t Code § 552.130. Accordingly, with the exception of the information we marked for release, the city must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code. However, we find the information we marked for release does not consist of motor vehicle record information subject to section 552.130. Thus, the city may not withhold the information we marked for release under section 552.130 of the Government Code.

In summary, the city may withhold the information you marked under section 552.108(a)(1) of the Government Code. The city must withhold the public citizens’ dates of birth you marked and the additional public citizen’s date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we marked for release, the city must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code. The city must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open

<sup>2</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information. In addition, we do not address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).



Ms. Jessica Farias - Page 3

Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/mo

Ref: ID# 905559

Enc. Submitted documents

c: Requestor  
(w/o enclosures)



# Reviewing the Ruling

- The governmental body may withhold the information at issue.
- The governmental body must withhold the information at issue.
- The governmental body must release the information at issue.



# Information Marked or Indicated to be Withheld

- The OAG will mark or indicate which information a governmental body must withhold or may withhold.
  - Brackets [ ]
  - Sticky notes/yellow paper with description of the information to be withheld
  - Textually within the ruling



# Marking or Indicating Information with Brackets

The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

101/CLP, 130, 137

Midnight Police Department  
14 Justice St  
Midnight, Texas 78000

INCIDENT REPORT #19-02842

REPORT DATE	OFFENSE	PREPARED BY
9/28/21	UNAUTHORIZED USE OF MOTOR VEHICLE	Sgt. P. ADAMS

OFFENSE SUMMARY

RP reports her vehicle is missing. RP believes her friend has taken the vehicle without her consent. RP is very concerned because she is 8 months pregnant and needs her vehicle for to get to her doctor's appointment tomorrow.

INVOLVED PARTIES

CODE	NAME	ADDRESS/PHONE NUMBER	DRIVER'S LICENSE	STATE	E-MAIL ADDRESS
RP	Amanda Buckman	123 Scout Lane 512-123-4567	15678623	TX	cookiequeen33@hotmail.com

VEHICLE DESCRIPTION

MAKE	MODEL	YEAR	LP NUMBER	LP STATE
MINI	COOPER	2021	XYZ 1234	TX

With the exception of the information we marked for release, the department may withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

[Withhold 552.101, 552.130, 552.137]

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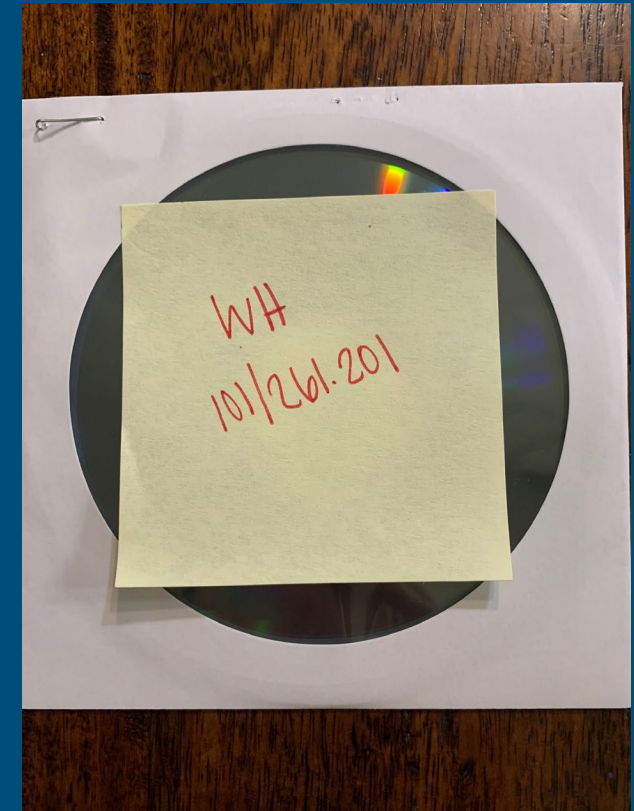
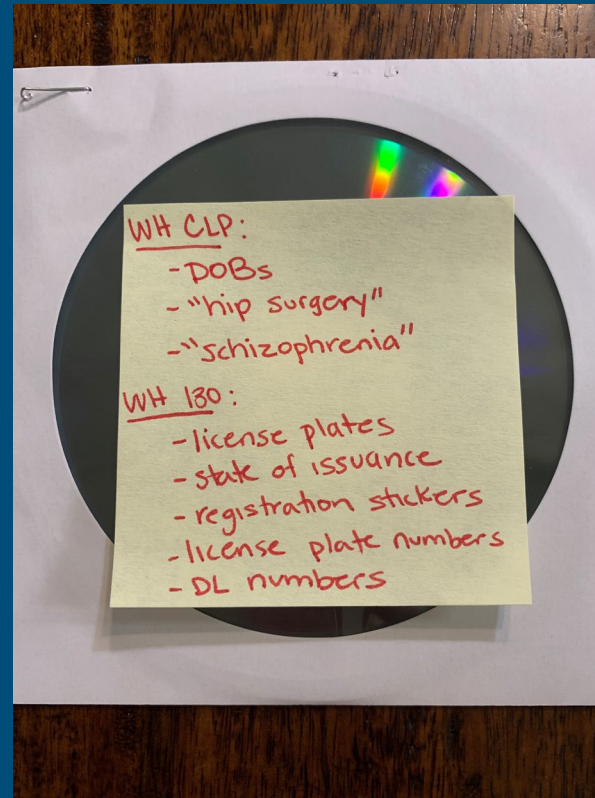
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# Yellow Sticky Notes or Yellow Paper

The city must withhold the information we indicated...



# Textually Within the Ruling

- The department may withhold Exhibit C under section 552.107 of the Government Code.
- The city must withhold the personal e-mail address of members of the public under section 552.137 of the Government Code, unless the owners affirmatively consents to their public disclosure.
- With the exception of basic information, which must be released, the city may withhold the submitted information under section 552.108 of the Government Code.
- The town must withhold the submitted information in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code.



# Concerns with Letter Ruling

- Potential error in ruling or questions regarding letter ruling or markings.
  - Call the Open Government Hotline: 1-877-OPEN TEX
- If you disagree with OAG's legal interpretation, you must challenge the ruling in court.



# Challenging a Ruling in Court

- **Governmental Bodies**
  - The deadline for a governmental body to challenge the ruling in court is 30 calendar days after the date the governmental body receives the decision from the OAG determined that the requested information must be disclosed to the requestor. [See Gov't Code § 552.324]
  - If a governmental body wishes to preserve an affirmative defense for its officer for public information as provided by section 552.353(b)(3), suit must be filed within the deadline provided in section 552.353(b)(3).
- The Act does not provide a deadline for requestors or third parties to challenge a ruling in court.



# Penalties

- Informal Complaints
- Writ of Mandamus
- Formal Complaints
- Criminal Violations



# Informal Complaints

- A requestor may submit written complaints to the OAG if the requestor believes a governmental body is not complying with the Act.
- Common complaints:
  - No response from the governmental body.
  - Governmental body did not release all responsive information.
  - Governmental body is improperly withholding the information.
- OAG will reach out to the governmental body to attempt to resolve the complaint without filing a lawsuit.
- OAG will also provide education to governmental bodies as necessary.



# Writ of Mandamus

## Gov't Code § 552.321

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



# Formal Complaint

## Gov't Code § 552.3215

- 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.



# Failure of Refusal to Provide Access

## 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 Failure of Refusal 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.



# Distribution or Misuse of Confidential Information

## 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.
- Constitutes official misconduct.



# Available Resources from the OAG

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





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ATTORNEY GENERAL *of* TEXAS

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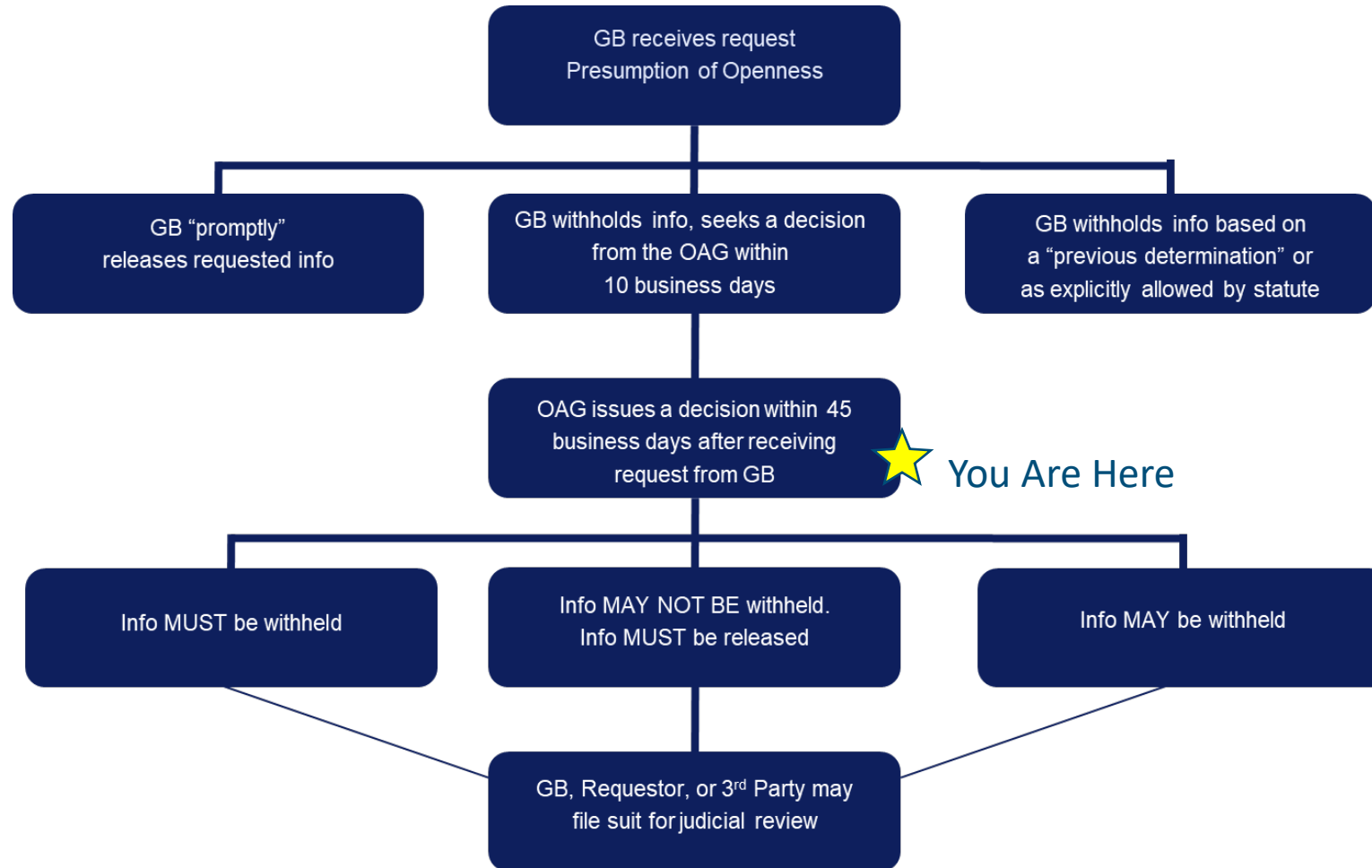
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Ms. Jessica Farias - Page 3

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Sincerely,

Kimbell Kesling  
Assistant Attorney General  
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Ref: ID# 905559

Enc. Submitted documents

c: Requestor  
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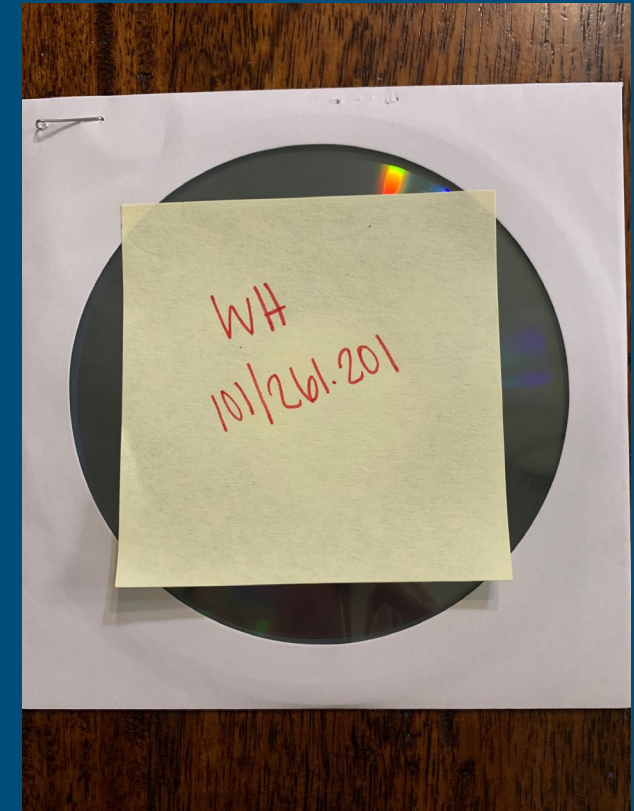
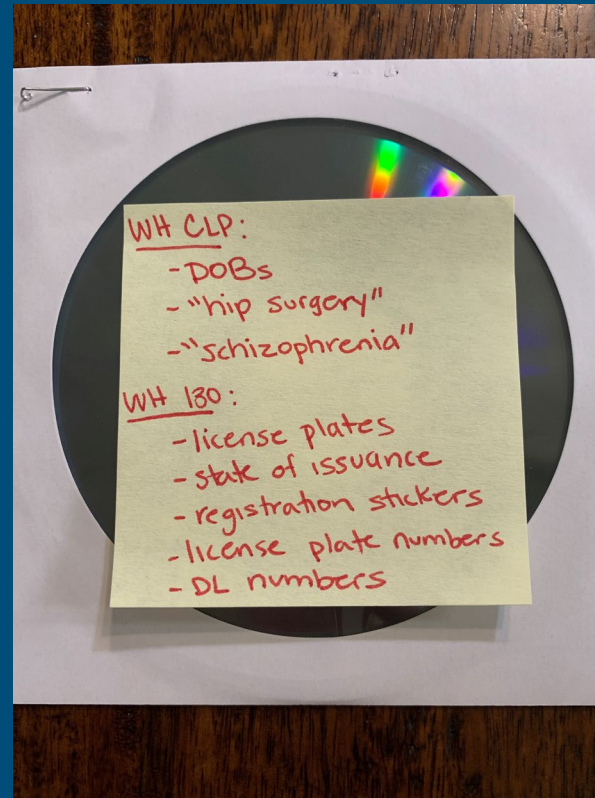
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# Failure of Refusal to Provide Access

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  - OAG decision.
- OAG decision sought, and no decision issued.
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- Officer's agent reasonably relied upon written instruction from the officer of public information.



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# 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

<https://www.texasattorneygeneral.gov/open-government>



**KEN PAXTON**  
ATTORNEY GENERAL of TEXAS

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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 Act

### General Background Information about the Public Information Act

- [Public Information Act Overview](#)
- [How to Request Information](#)
- [Decisions and Rulings](#)
- [Previous Determinations](#)

### Information about the Public Information Process

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# Resources for Governmental Bodies

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

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

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Toll Free: (877) 678-6889

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# Resources for Requestors

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HOME > OPEN GOVERNMENT > MEMBERS OF THE PUBLIC

## Members of the Public

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### *Open Records Rulings*

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**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	
<b>Government Body's Information</b>	<b>Requestor's Information</b>
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

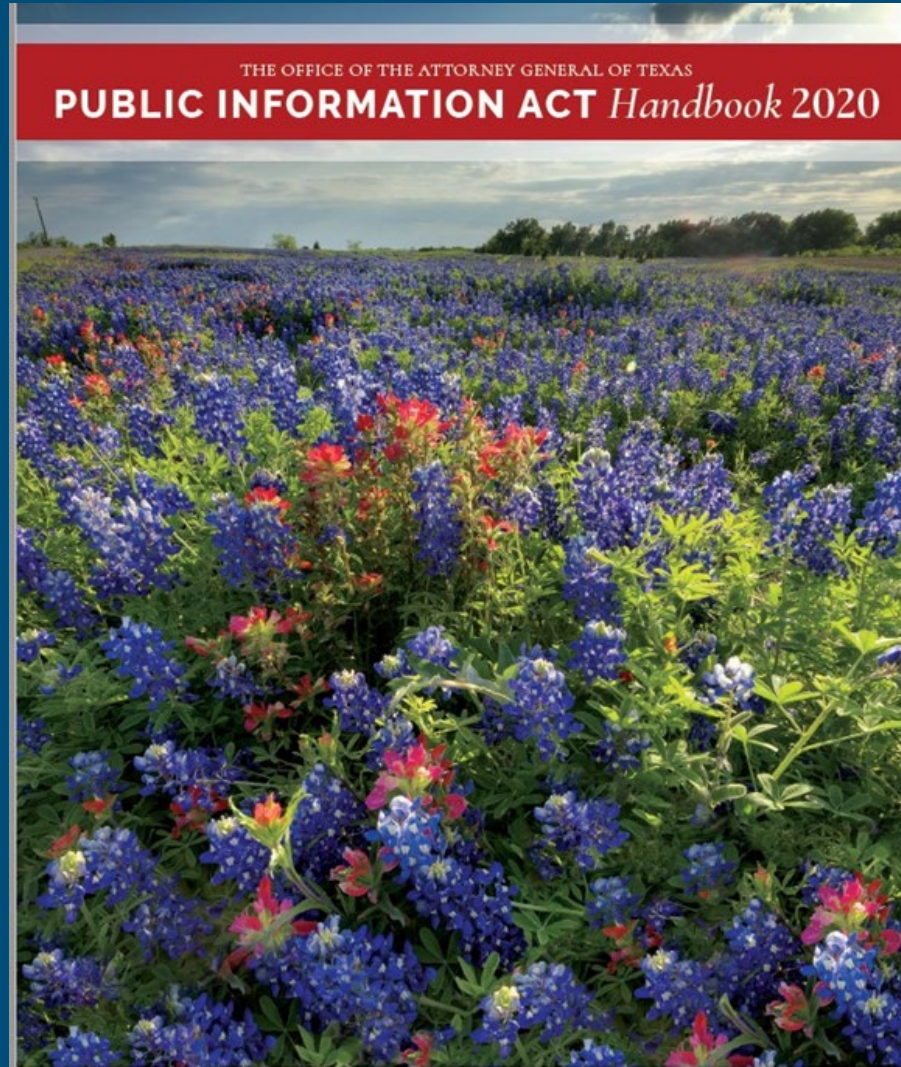
If the total charges exceed \$100, will you require a prepayment bond? Yes ☐ | No ☒

Generate Estimate

Clear Form



# Public Information Act Handbook



# Open Records Division Forms

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

[HOME](#) > [OPEN GOVERNMENT](#) > [GOVERNMENTAL BODIES](#) > [RESPONDING TO A PIA REQUEST](#) > [REDACTING PUBLIC INFORMATION](#)

## 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.

To redact information under one of the sections above, the governmental body must provide the requestor with the appropriate form. You can download the forms here:

- [Form Letter Section 552.024 \(DOCX\)](#)
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# Questions?

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OAG website

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



# 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

<https://www.texasattorneygeneral.gov/open-government>



**KEN PAXTON**  
ATTORNEY GENERAL of TEXAS

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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 Act

### General Background Information about the Public Information Act

- [Public Information Act Overview](#)
- [How to Request Information](#)
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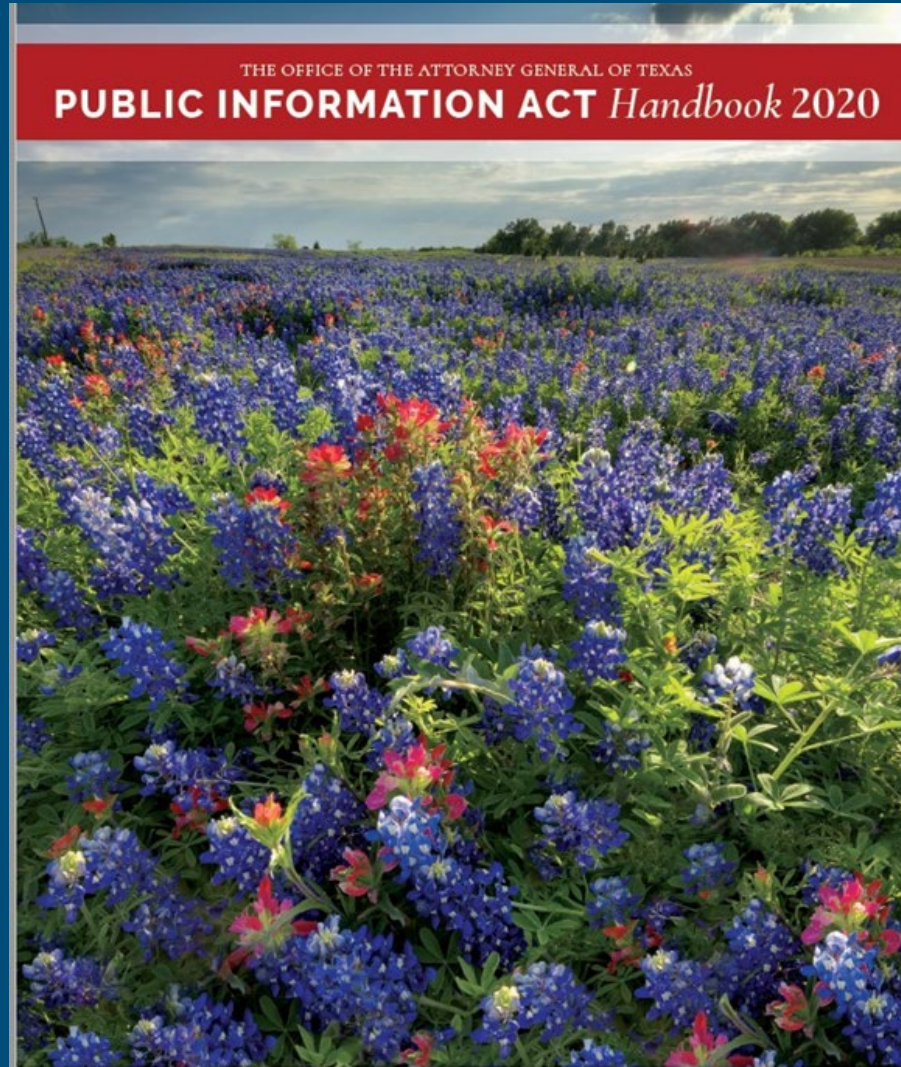
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