



Litigation Under the Public Information Act

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Litigation Under the PIA

Three Ways Your Governmental Body Might End Up in PIA Litigation

- You file suit to challenge an OAG open records letter ruling
- A third party files suit against the OAG and your governmental body
- The Attorney General or a requestor files suit against your governmental body



Lawsuit Filed by a Governmental Body



Lawsuit Filed by a Governmental Body (Slide 1 of 6)

- Must be filed within 30 days*
- Must be filed in Travis County
- Must be filed against the Attorney General



Lawsuit Filed by a Governmental Body (Slide 2 of 6)

Be sure to notify the requestor...

- ✓ Cause number and court
- ✓ Right to intervene or not participate
- ✓ Suit is against the Attorney General only
- ✓ Attorney General's address & phone number



Lawsuit Filed by a Governmental Body (Slide 3 of 6)

How are these suits resolved?

- Summary judgment
- Settlement
- Dismissal due to withdrawal or abandonment of request



Lawsuit Filed by a Governmental Body (Slide 4 of 6)

The OAG will probably need to see the information again.

- Agreed Protective Order
- In camera inspection by Court



Lawsuit Filed by a Governmental Body (Slide 5 of 6)

You are limited to exceptions raised before the OAG at the letter ruling phase, unless...

- *Based on a requirement of federal law*
- *Involves property or privacy interest of a 3rd party*



Lawsuit Filed by a Governmental Body (Slide 6 of 6)

Beware of attorney's fees:

- Besides the usual court costs & filing fees...
 - Tex. Gov't Code § 552.323(b)
 - “Court may assess costs of litigation and reasonable attorney’s incurred by a plaintiff or defendant who substantially prevails.”



Lawsuit Filed by a Third Party



Third Party Litigation (Slide 1 of 7)

Third party describes a person or entity who may have a privacy or property interest in information subject to a Public Information Act request received by a governmental body.



Third Party Litigation (Slide 2 of 7)

Best Practice to Avoid Litigation

- Identify third party information
- Consider requesting a letter ruling
- Notify third parties when a letter ruling is requested
- Submit a copy of the requested information to the Attorney General
- Retain the marked copy of the information returned by the Attorney General



Third Party Litigation (Slide 3 of 7)

Requesting a Letter Ruling is Optional

- A governmental body *may* decline to release the information for the purpose of requesting an attorney general decision.
- “The governmental body *may*, but is not required to, submit its reasons why the information should be withheld or released.”
- Requesting a letter ruling gives the third party an opportunity to explain to the Attorney General why the information may be excepted from disclosure.



Third Party Litigation (Slide 4 of 7)

When a Letter Ruling is Requested

- Comply with PIA section 552.301(e)(1)(D) and submit the requested information at issue to the Attorney General.
- The third party should not submit a different set of documents. Only information held by the governmental body is subject to the PIA. If possible, provide the third party with an exact copy of the requested information.
- Keep all documents and correspondence sent and received during letter ruling process.



Third Party Litigation (Slide 5 of 7)

When a Letter Ruling is Requested

- Notify third parties in compliance with PIA section 552.305(d).
- A governmental body ***shall*** make a good faith attempt to notify a third party of the request for an Attorney General decision if the information may be subject to exception under sections 552.101, 552.110, 552.113, and 552.131.
- Notify third party within 10 business days (sample letter is on the Attorney General's website).



Third Party Litigation (Slide 6 of 7)

A Third Party May...

- Submit in writing to the Attorney General the reasons why the information should be withheld or released.
- File a lawsuit against the Attorney General in Travis County, challenging a letter ruling.
- File a lawsuit any time **before** the requested information is released to the requestor.



Third Party Litigation (Slide 7 of 7)

What to Expect of a Third Party Lawsuit

- Third party will often also sue the governmental body to prevent it from complying with a Letter Ruling until the lawsuit is resolved.
- The Attorney General may ask the governmental body to produce the information at issue under a protective order or subpoena.
- Governmental bodies are expected to release or withhold the requested information in compliance with the final judgment.



Mandamus



Mandamus Actions

- The Attorney General or the requestor can file a mandamus action to compel a governmental body to make information available for public inspection.
- Suit by requestor is valid even if you have already received an Attorney General ruling, if a requested ruling is pending, or even if you have not yet had an opportunity to request a ruling.
- Attorneys fees are ***mandatory*** for substantially prevailing party unless the governmental body acted in reasonable reliance on a judgment, appellate decision, or attorney general decision.



Thank You

Questions?