



Start to Finish: Handling a Public Information Request from Receipt through the AG Ruling Process

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Step by Step...

- ▶ Step 1: Recognizing a request that triggers the Public Information Act (the “Act”)
- ▶ Step 2: Identifying the responsive information
- ▶ Step 3: Calculating the deadlines
- ▶ Step 4: Determining whether a cost estimate is needed
- ▶ Step 5: Determining if the request has been withdrawn
- ▶ Step 6: Gathering the responsive information
- ▶ Step 7a: Releasing the information and/or withholding the information that does not require a ruling
- ▶ Step 7b: Seeking a ruling from the Office of the Attorney General (“OAG”)
- ▶ Step 8: Waiting for the ruling
- ▶ Step 9: Receiving the ruling



Step 1: Recognizing a Request that Triggers the Act

- ▶ Remember:
 - Request must be in writing, either typed or handwritten, and
 - Request 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



Step 1 Hypotheticals (Slide 1 of 3)

- ▶ Ann Perkins is outraged at the City of Pawnee (the “city”) after her boyfriend falls into a pit on city property. She calls the city’s administrative offices on her cell phone and demands she be allowed to review any city communications discussing the pit. Does Ann’s request trigger the Act?
 - No. To trigger the Act, a request must be submitted in writing.



Step 1 Hypotheticals (Slide 2 of 3)

- ▶ April Ludgate submits an e-mail to the city's public information coordinator asking the city to provide her with any future police reports involving Ann Perkins. Does April's request trigger the Act?
 - No. To trigger the Act, the request must ask for information in existence as of the date the request was received. Governmental bodies are not required to comply with a standing request to supply information prepared in the future.



Step 1 Hypotheticals (Slide 3 of 3)

- ▶ Ron Swanson is suing the city to recover the cost of repairing damage to his vehicle caused by a pothole in a city parking lot. He submits a request for discovery to the city attorney's office asking for any parking lot maintenance records for the past two years. Does Ron's request trigger the Act?
 - No. Pursuant to section 552.0055 of the Government Code, a request for discovery issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under the Act.



Step 2: Identifying the Responsive Information

- ▶ If there is no responsive information, let the requestor know as soon as possible. However, if the request is unclear or overly broad...

- ▶ Remember:
 - 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 10-business-day period to request an attorney general decision is measured from the date the request is clarified or narrowed.



Step 2 Hypothetical

- ▶ The city receives a request for all e-mails to or from Tom Haverford for the past ten years. Should we contact the requestor to seek clarification of the request or to see if the requestor wishes to narrow the request?
 - Is there even an individual named Tom Haverford who works for the city? If not, then we'd need to seek clarification to know if there was a typo or some other misunderstanding.
 - Is the requestor interested in narrowing the request to all emails discussing a particular topic or containing specific terms?



Step 3: Calculating the Deadlines

- ▶ 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.

- ▶ 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).



Step 3 Hypotheticals (Slide 1 of 2)

- ▶ Donna Meagle, the city's designated official for receiving public information requests via e-mail or fax, receives a handwritten request for information on Monday at 2:30 PM. On what day should the city start counting to calculate its deadlines under the Act?
 - The city should start counting on Tuesday, the next business day after receiving the request.

- ▶ What if Donna seeks clarification from the requestor on Tuesday, and receives the requestor's clarification on Thursday?
 - The city should start counting on Friday, the next business day after receiving the requestor's clarification.



Step 3 Hypotheticals (Slide 2 of 2)

- ▶ On Monday evening, at 7:30 PM, Mark Brandanowitz submits an e-mail to Donna Meagle asking for any information pertaining to the raising of a specific speed bump. On what day should the city start counting?
 - The request was received after business hours on Monday, so it will be considered received the following business day, Tuesday. The city should start counting on Wednesday, the next business day after the day the request was received.



Step 4: Determining Whether a Cost Estimate is Necessary

- ▶ 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.

- ▶ Cost letter generator available at:
 - <https://www.texasattorneygeneral.gov/og/public-information-cost-estimate-model>



Step 5: Determining if the Request Has Been Withdrawn (Slide 1 of 2)

- ▶ A request may be withdrawn by a requestor voluntarily.
- ▶ A request may be withdrawn by operation of law:
 - Pursuant to section 552.222 of the Government Code, if a governmental body sends a written request for clarification or narrowing of a public information request and does not receive a response by the 61st calendar day after the governmental body sent the written request, the public information request is considered to have been withdrawn by the requestor.
 - Remember:
 - The written request for clarification or narrowing must contain a statement as to the consequences for failing to timely respond.
 - If the public information request included the requestor's physical or mailing address, the governmental body generally must send the written request for clarification or narrowing to that address by certified mail, however...
 - If the public information request was sent by e-mail, the written request for clarification or narrowing may be sent to the requestor's e-mail address or another e-mail address provided by the requestor.



Step 5: Determining if the Request Has Been Withdrawn (Slide 2 of 2)

- ▶ A request may be withdrawn by operation of law (cont.)
 - If a governmental body issues a cost estimate letter pursuant to section 552.2615 of the Government Code, and the requestor does not respond in one of the prescribed methods laid out in subsections (b)(1)-(3) within 10 business days after the date the letter is sent to the requestor, the request is considered to be withdrawn by operation of law.
 - If a governmental body requires a deposit or bond for payment pursuant to section 552.263 of the Government Code, and the requestor fails to make the deposit or post the bond before the 10th business day after the date the deposit or bond is required, the request is considered to be withdrawn by operation of law.



Step 6: Gathering the Responsive Information (Slide 1 of 2)

- ▶ The methods governmental bodies use to gather the responsive information is going to vary from governmental body to governmental body, and from request to request.

- ▶ General guidelines:
 - Set internal deadlines
 - For a governmental body with multiple departments, the public information coordinator can appoint public information liaisons within each department to help gather any responsive information
 - IT departments can help you search large amounts of electronic data



Step 6: Gathering the Responsive Information (Slide 2 of 2)

- ▶ Review the gathered information to make a final determination on whether it is responsive to the request.
 - Right individual?
 - Right date range?
 - Right terms?
 - Right report number or incident?
 - Right RFP?

- ▶ Any information that is not responsive can be set aside; it is no longer relevant for purposes of complying with the Act.



Step 7 Hypothetical (Slide 1 of 2)

- ▶ The city receives a request on July 1, 2015, from Shauna Malwae-Tweep for
 - Garry Gergich's personnel file
 - All e-mails sent between December 1, 2012, and March 31, 2013, containing any of these terms:
 - Garry Gergich
 - Jerry Gergich
 - Larry Gergich
 - Terry Gergich
 - Barry Gergich
 - Burrito
 - Pawnee Animal Control
 - Mural
 - Murinal



Step 7 Hypothetical (Slide 2 of 2)

- ▶ What are a governmental body's options at this point?
 - Pursuant to sections 552.221 and 552.301 of the Government Code, a governmental body must:
 - Promptly produce information for inspection, duplication or both;
 - Ask for a decision from the OAG about whether the information is excepted from disclosure, unless there is statutory authority the governmental body may withhold the information without seeking a ruling or there has been a previous determination that the information is excepted; or
 - Some combination of both.



Step 7a: Releasing Information and/or Withholding Information that Does Not Require Ruling (Slide 1 of 3)

- ▶ Withholding information without requesting a ruling
 - 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

- ▶ A governmental body must use the form letters available on the Attorney General's website to inform requestors of redactions made under these sections without a ruling.



Open Records Division Forms

www.texasattorneygeneral.gov/open/ord_forms.shtml

OPEN GOVERNMENT / OPEN RECORDS DIVISION / REDACTING PUBLIC INFORMATION RULES AND FORMS



OPEN RECORDS DIVISION

ORDS: OVERRULED, MODIFIED, AFFIRMED,
WITHDRAWN

OPEN RECORDS QUESTIONS (ORQS)

OPEN RECORDS MEMORANDUM RULINGS

LIST OF PREVIOUS DETERMINATIONS BY
GOVERNMENTAL BODY

PUBLIC INFORMATION COST ESTIMATE
MODEL

**REDACTING PUBLIC INFORMATION RULES
AND FORMS**

AMENDMENTS TO THE PUBLIC
INFORMATION ACT: 2013 TEXAS
LEGISLATIVE SESSION

OPEN GOVERNMENT RESOURCES

OPEN GOVERNMENT CONFERENCES

EFILING

FAQ OPEN GOVERNMENT TRAINING

QUESTIONS REGARDING OPEN RECORDS
LETTER RULINGS

STATUTES

OPEN GOVERNMENT – OTHER PIA RULES

Redacting Public Information Rules and Forms

A governmental body that wishes to redact information from data or documents it is releasing to the public must generally seek the decision of the attorney general.

A governmental body need not request an attorney general decision if it is relying on a [previous determination](#) to redact information. For more information about previous determinations, please see [Open Records Decision No. 673 \(2001\)](#) and pages 35-38 of the [2014 Public Information Handbook](#).

A governmental body need not request an attorney general decision if it is redacting information pursuant to one of the five sections of the Public Information Act that give a governmental body explicit permission to redact information without requesting an attorney general decision. Those five sections are 552.024, 552.130, 552.136, 552.138 and 552.1175. The Rules and Forms applicable to redaction under those sections of the Public Information Act are provided below.

Rules

- Texas Administrative Code, Title 1, Chapter 63, Public Information Subchapter B, Review of Public Information Redactions

Forms

The following documents are provided in MS Word.

- Form Letter for Section 552.024 (public employee's personal information held by governmental body in its capacity as employer)
- (Effective 05/18/2013) Form Letter for Section 552.130 (motor vehicle records)
- Form Letter for Section 552.136 (account and access device numbers)
- (Effective 06/14/2013) Form Letter for Section 552.138 (family violence shelter center, victims of trafficking shelter center, or sexual assault program)
- (Effective 09/01/2014) Form Letter for Section 552.1175 (public employee's personal information held by governmental body in non-employment capacity)



Step 7a: Releasing Information and/or Withholding Information that Does Not Require Ruling (Slide 2 of 3)

- ▶ Withholding information without requesting a ruling (cont.)
 - Previous determinations
 - Open Records Decision No. 684 (2009) allows all governmental bodies in the state to withhold several types of information typically found in personnel files



Step 7a: Releasing Information and/or Withholding Information that Does Not Require Ruling (Slide 3 of 3)

- ▶ How much time does a governmental body have to produce information it does not object to the release of?
 - Pursuant to section 552.221 of the Government Code, a governmental body must produce the information “promptly,” which means as soon as possible under the circumstances; that is, within a reasonable time, without delay.
 - If a governmental body 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.



Step 7b: Seeking a Ruling from the OAG (Slide 1 of 4)

- ▶ Pursuant to sections 552.301 and 552.305 of the Government Code, not later than the 10th business day, a governmental body 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).



Step 7b: Seeking a Ruling from the OAG (Slide 2 of 4)

- ▶ Pursuant to section 552.301(e) and (e-1), not later than the 15th business day, a governmental body 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.
 - 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.



Step 7b: Seeking a Ruling from the OAG (Slide 3 of 4)

- ▶ Send copies, ***not originals***, of the documents at issue
 - Do **not** apply redactions to documents you are submitting for our review.
 - If we can't read it, we can't rule on it.
- ▶ Mark all submissions clearly, carefully and consistently.
 - Make sure all exhibit numbers on documents match up with exhibit numbers in the brief.
 - Make clear what has been released to the requestor and what hasn't.
 - Reference all previous correspondence with ORD on all future, related correspondence.
 - If you have previously received a ruling on the same or very similar information, let ORD know.



Step 7b: Seeking a Ruling from the OAG (Slide 4 of 4)

- ▶ Please provide adequate background information on the documents submitted. Do not take anything for granted.
 - How are these documents responsive?
 - How are they related to the pending investigation, litigation, etc.?
 - Who are the parties mentioned in the documents?
 - What is their relationship to the governmental body?
 - What, if anything, has already been released?
 - Do you have a pending cost estimate or complaint?
 - What does your governmental body do? If you have a law enforcement function, please tell us.



Step 8: Waiting for a Ruling

- ▶ Acknowledgement fax
 - Acknowledges receipt of a ruling request and lays out what information the governmental body still needs to submit to comply with section 552.301(e).

- ▶ Section 552.303(c)-(e): 7-day letter
 - Receiving one of these letters means we need more information to issue a ruling.
 - Failure to respond in a timely fashion may result in the legal presumption the information subject to the open records request is subject to required public disclosure and must be released.

- ▶ Section 552.306: 10-day letter
 - This means we need more time to handle your file.
 - We can only extend our deadline once.



Step 9: Receiving the Ruling

- ▶ Follow the ruling
- ▶ Call the Open Government Hotline
- ▶ Gov't Code § 552.301(f): requests for reconsideration are prohibited
- ▶ Challenge the ruling in court



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

www.texasattorneygeneral.gov