



No Decision Needed: How, and What, to Redact Without an Attorney General Decision

Office of the Attorney General



Overview

- ▶ General Rule: If you want to withhold information from the public, you must request a ruling from the Attorney General's Office.

- ▶ Withholding information without requesting a ruling
 - Certain sections of the PIA permit redaction without a ruling
 - Previous determinations
 - Requestor agrees to redaction



PIA Sections That Permit Redaction (Slide 1 of 10)

- ▶ Five sections of the PIA permit redaction without a ruling and give the requestor the right to seek a ruling:
 - Gov't Code § 552.130
 - Gov't Code § 552.136
 - Gov't Code § 552.024
 - Gov't Code § 552.1175
 - Gov't Code § 552.138

- ▶ Two sections of the PIA permit redaction without a ruling and do not require notice to the requestor:
 - Gov't Code § 552.147
 - Gov't Code § 552.114



PIA Sections That Permit Redaction (Slide 2 of 10)

- ▶ Gov't Code § 552.130 permits you to redact:
 - Motor vehicle operator's or driver's license issued by Texas or another state or country
 - Motor vehicle title or registration issued by Texas or another state or country
 - Personal identification document issued by Texas, another state or country, or authorized local agency



PIA Sections That Permit Redaction (Slide 3 of 10)

- ▶ Gov't Code § 552.136 permits you to redact:
 - Credit card numbers
 - Debit card numbers
 - Bank account numbers
 - Insurance policy numbers
 - Other access device numbers



PIA Sections That Permit Redaction (Slide 4 of 10)

- ▶ Gov't Code § 552.024, in conjunction with Gov't Code § 552.117(a)(1) permits you to redact the following information for a current or former employee or official:
 - Home address
 - Home telephone number (includes cell phone number, if cell phone service paid for by the employee)
 - Emergency contact information
 - Social security number
 - Family member information



PIA Sections That Permit Redaction (Slide 5 of 10)

- ▶ Gov't Code § 552.024, in conjunction with Gov't Code § 552.117(a)(1), protects this personal information only if the employee or official elected confidentiality in writing **before** you received a request for information.
- ▶ An employee or official can elect confidentiality for all, some, or none of these categories of personal information.



PIA Sections That Permit Redaction (Slide 6 of 10)

- ▶ Gov't Code § 552.1175 applies to fourteen categories of individuals if they are not your employees. These include:
 - Peace officers and county jailers
 - Employees of the Texas Department of Criminal Justice
 - Commissioned security officers
 - Employees of a district, county or municipal attorney's office whose jurisdiction includes any criminal law or child protective services matters
 - Officer and employees of a community supervision and corrections department
 - Federal and state judges
 - Current or former employees of the Texas Civil Commitment Office



PIA Sections That Permit Redaction (Slide 7 of 10)

- ▶ Gov't Code § 552.1175 permits you to redact:
 - Home address
 - Home telephone number (includes cell phone number, if cell phone service paid for by the employee)
 - Emergency contact information
 - Date of birth
 - Social security number
 - Family member information

- ▶ This personal information is confidential if the individual elects confidentiality in writing **at any time.**



PIA Sections That Permit Redaction (Slide 8 of 10)

- ▶ Gov't Code § 552.138 applies to the following:
 - Family violence shelter center
 - Sexual assault program
 - Victims of trafficking shelter center

- ▶ These centers/programs are specifically defined in Gov't Code § 552.138(a).



PIA Sections That Permit Redaction (Slide 9 of 10)

- ▶ Gov't Code § 552.138 permits you to redact the following information for an employee or volunteer:
 - Home address
 - Home telephone number (includes cell phone number, if paid for by the employee or volunteer)
 - Social security number

- ▶ This personal information is automatically protected. No written election is required for confidentiality.



PIA Sections That Permit Redaction (Slide 10 of 10)

- ▶ When you redact without a ruling under Gov't Code § 552.024, .1175, .130, .136 or .138, you must use the form letter on the OAG website to notify the requestor.
- ▶ If the requestor disagrees with your redactions, the requestor can ask the OAG to rule on your redactions.
- ▶ When the requestor asks the OAG to rule, the process is called a request for review.



Request for Review

- ▶ The deadlines and procedures for a request for review are similar to the deadlines and procedures a governmental body must follow when requesting a ruling.
- ▶ The deadlines and procedures are found in Texas Administrative Code, Title 1, Chapter 63, Public Information Subchapter B, Review of Public Information Redactions.
- ▶ If a requestor files a request for review, the OAG will notify you and require you to respond.



Social Security Numbers

- ▶ Gov't Code § 552.147 permits you to redact the social security number of any living individual without requesting a ruling.
- ▶ Although Gov't Code § 552.147 does not require you to use an OAG form letter to notify the requestor, you should give the requestor written notice.
- ▶ Gov't Code § 552.147 does not give the requestor the right to file a formal request for review.



Certain Education Records

- ▶ Gov't Code § 552.114 permits educational institutions to redact confidential information in student records without requesting a ruling.
- ▶ Pursuant to the Family Educational Rights and Privacy Act (FERPA), the U.S. Department of Education already requires you to remove personally identifiable information from education records you send to the OAG for a ruling.
- ▶ The definition of student record in Gov't Code § 552.114 has been amended to include information in the record of "an applicant for admission to an educational institution."
- ▶ FERPA does not extend confidentiality to applicants for admission who do not enroll, but section 552.114 does.



PIA Sections That Permit Redaction

- ▶ Although Gov't Code § 552.114 does not require you to use an OAG form letter to notify the requestor, you should give the requestor written notice.
- ▶ Gov't Code § 552.114 does not give the requestor the right to file a formal request for review.
- ▶ If the requestor disagrees with the redactions, then the requestor may file a written complaint with the OAG.
- ▶ Written complaints are handled through the OAG's informal complaints process.



Previous determinations

- ▶ A previous determination is a prior ruling or decision that permits you to withhold information in the future without requesting another ruling or decision.

- ▶ There are 2 types:
 - Type 1 – information at issue is precisely the same information that was previously requested and received a ruling from the OAG
 - Type 2 – information at issue falls within a specific, clearly delineated category of information

- ▶ Exercise caution when relying on a previous determination to withhold information. Most rulings and decisions are not previous determinations for records not specifically at issue in the ruling or decision.



ORD 684

- ▶ Open Records Decision No. 684 (2009) is a previous determination that explicitly grants permission to all governmental bodies to withhold several types of information:
 - Direct deposit forms
 - Form I-9 and attachments
 - W-2 and W-4 forms
 - Certified agenda and tape of closed meeting
 - Fingerprints
 - L-2 and L-3 declarations
 - Certain email addresses
 - Military discharge records



ORD 684: Direct Deposit Authorization Forms

- ▶ What are these forms?
 - Forms that authorize employee paychecks to be deposited directly into banks or credit unions

- ▶ Where do we find these forms?
 - Personnel files

- ▶ Why do we withhold these forms?
 - Common-law privacy



ORD 684: Form I-9 and Attachments

- ▶ What are these forms?
 - Forms used to verify an employee's eligibility to work in the United States

- ▶ Where do we find these forms?
 - Personnel files

- ▶ Why do we withhold these forms?
 - Federal law



ORD 684: W-2 and W-4 Forms

- ▶ What are these forms?
 - Federal income tax forms

- ▶ Where do we find these forms?
 - Personnel files

- ▶ Why do we withhold these forms?
 - Federal law



ORD 684: Certified Agenda and Tape of Closed Meeting

- ▶ What is this information?
 - A governmental body's certified agenda or tape recordings of its closed meetings

- ▶ Where do we find this information?
 - Maintained in the offices of the governmental body

- ▶ Why do we withhold this information?
 - Gov't Code § 551.104(c)



ORD 684: Fingerprints

- ▶ What is this information?
 - Fingerprints are considered “biometric identifiers”

- ▶ Where do we find this information?
 - Records of law enforcement and licensing agencies
 - Personnel files

- ▶ Why do we withhold this information?
 - Gov’t Code Chapter 560



ORD 684: Certain Email Addresses (Slide 1 of 2)

- ▶ What is this information?
 - Email address of a member of the public, including, in most cases, the private email address of a government employee

- ▶ Where do we find this information?
 - Communications between government employees and members of the public
 - Many types of files



ORD 684: Certain Email Addresses (Slide 2 of 2)

- ▶ Why do we withhold this information?
 - Gov't Code § 552.137, but do not withhold:
 - Government employees' work email addresses
 - Email addresses of individuals who have contracts or seek to contract with a governmental body
 - Email addresses contained in bid proposals
 - Email addresses provided to a governmental body on letterhead or other document available to the public
 - Email addresses provided to a governmental body for the purpose of providing public comment or receiving notices, orders or decisions
 - Private email addresses used to conduct official government business (*Austin Bulldog v. Leffingwell*)



ORD 684 Overview (Slide 1 of 2)

- ▶ You should give the requestor written notice when you redact information based on ORD 684.
- ▶ The requestor does not have the right to file a formal request for review of information redacted under ORD 684.
- ▶ If the requestor disagrees with the redactions, then the requestor may file a written complaint with the OAG.
- ▶ Written complaints are handled through the OAG's informal complaints process.



ORD 684 Overview (Slide 2 of 2)

- ▶ ORD 684 also covered some information subject to Gov't Code §§ 552.130 and 552.136 before those sections were amended to permit redaction without a ruling.
- ▶ Do not rely on ORD 684 to withhold information subject to Gov't Code §§ 552.130 and 552.136.
- ▶ If you are redacting information under Gov't Code §§ 552.130 and 552.136, you must use the form letter on the OAG website to notify the requestor, and the requestor has the right to file a request for review.



108 Previous Determination

- ▶ The 552.108(a)(1) previous determination applies to law enforcement information from a pending investigation or prosecution.

- ▶ Most often used by police departments, but any law enforcement agency in the state can request to participate in the program.

- ▶ In order to use a 108 PD, you must meet specific requirements:
 - Must release basic information within 5 business days after receipt of request; and
 - Must provide notice form that explains the types of records withheld.



Requestor agreement

- ▶ You may ask a requestor for permission to redact information without requesting a ruling.
 - If the requestor agrees, get it in writing.
 - Specify the types of information you will redact.
 - Exercise caution when asking a requestor to agree to redactions based on discretionary exceptions.
- ▶ Requestor may also select this option if OAG form is used



Questions

OAG Open Government Hotline

(877) OPEN-TEX

OAG Website

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