

PUBLIC INFORMATION ACT TRAINING



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PUBLIC INFORMATION ACT

- Texas Public Information Act (the “Act”) found in Chapter 552, Texas Government Code
 - formerly the Open Records Act
- Applies to governmental bodies
- Attorney General-approved training required within 90 days of taking office
- Public Information Act Handbook
 - <https://texasattorneygeneral.gov/open-government/office-attorney-general-and-public-information-act>



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PUBLIC INFORMATION ACT TRAINING TOPICS

Required training must include instruction in:

- The general background of the legal requirements for open records and public information;
- The applicability of the Act to governmental bodies;
- Procedures and requirements regarding complying with a request for information under the Act;
- The role of the attorney general under the Act; and
- Penalties and other consequences for failure to comply with the Act.



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RIGHTS OF REQUESTORS

- Receive treatment equal to all other requestors
- Receive a statement of estimated charges in advance
- Choose whether to inspect the requested information, receive a copy of the information, or both
- Be notified when the governmental body asks the Office of Attorney General (“OAG”) for a ruling on whether the information may or must be withheld

RIGHTS OF REQUESTORS

- Be copied on the governmental body's written comments to the OAG stating the reason why the stated exceptions apply
- Lodge a complaint with the OAG regarding any improper charges for responding to a public information request
- Lodge a complaint with the OAG or the county attorney or criminal district attorney, as appropriate, regarding any alleged violation of the Act



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RESPONSIBILITIES OF REQUESTORS

- Submit a written request according to a governmental body's reasonable procedures
- Include enough description and detail so the governmental body can accurately identify and locate the requested items
- Cooperate with the governmental body's reasonable requests to clarify the type or amount of information requested

RESPONSIBILITIES OF REQUESTORS

- Respond promptly in writing to all written communications from the governmental body (including any written estimate of charges)
- Make a timely payment for all valid charges
- Keep all appointments for inspection of records or for pick-up of copies



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RIGHTS OF GOVERNMENTAL BODIES

- Establish reasonable procedures for inspecting or copying information
- Request and receive clarification of vague or overly broad requests
- Request an OAG ruling regarding whether any information may or must be withheld

RIGHTS OF GOVERNMENTAL BODIES

- Receive timely payment for all copy charges or other charges
- Obtain payment of overdue balances exceeding \$100 or obtain a security deposit before processing additional requests from the same requestor
- Request a bond, prepayment or deposit if estimated costs exceed \$100 (or, if the governmental body has fewer than 16 employees, \$50)



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RESPONSIBILITIES OF GOVERNMENTAL BODIES

- Treat all requestors equally
- Complete open records training as required by law
- Be informed of open records laws and educate employees on the requirements of those laws
- Inform the requestor of cost estimates and any changes in the estimates
- Confirm the requestor agrees to pay the costs before incurring the costs



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RESPONSIBILITIES OF GOVERNMENTAL BODIES

- Provide requested information promptly
- Inform the requestor if the information will not be provided within ten business days and give an estimated date on which it will be provided
- Cooperate with the requestor to schedule reasonable times for inspecting or copying information



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RESPONSIBILITIES OF GOVERNMENTAL BODIES

- Follow OAG rules on charges
 - do not overcharge on any items
 - do not bill for items that must be provided without charge
- Inform third parties if their proprietary information is being requested from the governmental body
- Inform the requestor when the OAG has been asked to rule on whether information may or must be withheld

RESPONSIBILITIES OF GOVERNMENTAL BODIES

- Copy the requestor on written comments submitted to the OAG stating the reasons why the stated exceptions apply
- Comply with any OAG ruling on whether an exception applies or file suit against the OAG within 30 days
- Respond in writing to all written communications from the OAG regarding complaints about violations of the Act



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GOVERNMENTAL BODIES

- The Act applies to information of every “governmental body”
- “Governmental body” is defined in section 552.003(1)(A)
 - Includes special districts (like ESDs)
- Sec. 552.003(1)(B) lists entities that are **not** included as governmental bodies under the Act
 - Including the judiciary and certain economic development entities

GOVERNMENTAL BODY

Under the Act, a “governmental body” means:

- a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;
- a county commissioners court in the state;
- a municipal governing body in the state;
- a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;
- a school district board of trustees;
- a county board of school trustees;
- a county board of education;
- the governing board of a special district;



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GOVERNMENTAL BODY

Under the Act, a “governmental body” means:

- a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;
- a county commissioners court in the state;
- a municipal governing body in the state;

GOVERNMENTAL BODY

- a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;
- a school district board of trustees;
- a county board of school trustees;
- a county board of education;
- the governing board of a special district;

GOVERNMENTAL BODY

- the governing body of a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code;
- a local workforce development board created under Section 2308.253;
- a nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state;
- a confinement facility operated under a contract with any division of the Texas Department of Criminal Justice;



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GOVERNMENTAL BODY

- a civil commitment housing facility owned, leased, or operated by a vendor under contract with the state as provided by Chapter 841, Health and Safety Code;
- an entity that receives public funds in the current or preceding state fiscal year to manage the daily operations or restoration of the Alamo, or an entity that oversees such an entity; and
- the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by **public funds**.

PUBLIC INFORMATION

- Information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:
 - by a governmental body;
 - for a governmental body and the governmental body:
 - owns the information;
 - has a right of access to the information; or

PUBLIC INFORMATION

- or...
 - spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
 - by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

PUBLIC INFORMATION

- Information is in connection with the transaction of 'official business' if the information is created by, received by, or maintained by
 - an officer or employee of the governmental body in the officer's or employee's official capacity; or
 - a person or entity performing official business or a governmental function on behalf of a governmental body, and
- pertains to official business of the governmental body

PUBLIC INFORMATION

- Public information includes any electronic communication transmitted, received, or maintained on **any device** if the communication is in connection with the transaction of official business



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PUBLIC INFORMATION

- Recorded information in practically any medium, including:
 - Paper
 - Film
 - A magnetic, optical, solid state or other device that can store an electronic signal
 - Tape
 - Mylar
 - Any physical material on which information may be recorded, including linen, silk, and vellum



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PUBLIC INFORMATION

General rule -- public information is subject to disclosure and available to the public unless specifically excluded from disclosure under the Act or other law, or otherwise designated as confidential

- The Act does not affect the scope of civil discovery under the Texas Rules of Civil Procedure or create new privileges from discovery
 - a *subpoena duces tecum* or request for discovery issued under a statute or rule of civil or criminal procedure is not a request under the Act

PUBLIC INFORMATION

- Tangible items (tools, keys, etc.) are not “information” within the Act
- Protected health information is **not public information** under the Act and is **not subject to disclosure**
 - Protected health information means any information that reflects that an individual received health care from a covered entity

PUBLIC INFORMATION

Common categories of public information, unless made confidential under the Act or other law, include:

- a completed report, audit, evaluation or investigation made of, for, or by a governmental body
- information about each employee and official of a governmental body
- information about a governmental body's receipt or expenditure of funds
- name of each official and voting record of all proceedings of the governmental body
- Minutes, Orders, Resolutions, etc.



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PUBLIC INFORMATION

Typically public information -- Correspondence

- Letters, Electronic Mail, Text Messages, Instant Messages, and Social Media Postings



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PUBLIC INFORMATION

Personal Notes and E-Mail in Personal Accounts or Devices

- The OAG cautions against relying on earlier decisions finding certain personal notes of public employees not “collected, assembled, or maintained by governmental bodies...in connection with the transaction of official business” and thus not subject to disclosure under the Act.
- Now, the Act doesn’t distinguish between personal or employer-issued devices, but rather focuses on the nature of the communication or document.

PUBLIC INFORMATION

- The OAG has determined in several informal letter rulings that e-mails concerning official business in a public official's personal e-mail account are subject to the Act when the official uses the e-mail account to conduct official business of the governmental body
- Current and former employees and officials that maintain public information on a private device must:
 - Transfer that information to the governmental body for preservation
 - Preserve the information in its original form in a backup or archive and on the device

COMPLYING WITH REQUESTS



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REQUESTS

- Receipt of a request triggers the governmental body's duties to produce information or request a ruling from the OAG
- Requests must be sent to the governmental body's officer for public information or designee and may be made by U.S. mail, e-mail, hand delivery, or a method approved by the governmental body
 - Governmental body may designate one email address and one mailing address for receiving requests and require verbal requests to be submitted in writing

REQUESTS

- Governmental body may, but is not required to, use public information request form created by OAG
 - If used, form must be available on governmental body's website
 - Link to form: <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/responding-pia-request/public-information-request-form>

REQUESTS

- Request must include enough description and detail of the requested information so the governmental body can accurately identify and locate the requested items
 - Governmental body must make a good faith effort to relate a request to responsive information that is within its possession or control
- A governmental body may not destroy records or information, even if authorized by statute, while they are subject to a request under the Act.

RESPONDING TO REQUESTS

- The Act requires the governmental body to produce requested information “promptly” for inspection or copying, or provide copies if sought by the requestor
 - Sec. 552.221 defines “promptly” to mean as soon as possible under the circumstances, or within a reasonable time, without delay

RESPONDING TO REQUESTS

- If requested information is identifiable and available on the governmental body's website, the governmental body may comply with the Act by referring the requestor to the URL address
 - Governmental body must still produce information for inspection, duplication, or provide copies if specified by the requestor

RESPONDING TO REQUESTS

- Generally, within ten business days of receiving the request, the governmental body must either
 - make requested information available for inspection or duplication by the requestor, or provide the requestor with copies
 - certify to the requestor in writing that the requested information is unavailable at the time of the request and set a date and hour within a reasonable time that the information will be available; or
 - ask the OAG for a decision about whether the information is within an exception to disclosure under the Act.

REQUESTING AN OAG RULING

A governmental body requesting an OAG ruling must submit the request through the OAG's e-filing system, unless

- the governmental body requesting an OAG decision has fewer than 16 full time employees or is located in a county with a population of less than 150,000;
- the amount or format of the responsive information at issue in a request making the use of the OAG's e-filing system impractical or impossible; or
- the request is hand delivered to the OAG.



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RESPONDING TO REQUESTS

- A “business day” means
 - a day other than a Saturday or a Sunday; or
 - a national or state holiday under Gov’t Code sec. 662.003(a)-(b).



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RESPONDING TO REQUESTS

- Sec. 552.0031 of the Act also establishes that
 - an optional holiday under sec. 662.003(c) is not a business day if observed by the officer for public information;
 - a holiday established by an institution of higher education under sec. 662.011(a) is not a business day for the institution;
 - the Friday before or Monday after a national or state holiday is not a business day if the holiday occurs on a Saturday or Sunday and the governmental body observes the holiday on that Friday or Monday; and
 - a governmental body may designate a day where the administrative offices are closed or operating with minimum staffing as a nonbusiness day.



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RESPONDING TO REQUESTS

A governmental body is not required to:

- prepare new information in response to a request – the Act applies only to information already in existence
- conduct legal research
- answer questions; or
- inform a requestor if the requested information comes into existence after the request has been made.

RESPONDING TO REQUESTS

Governmental body may reasonably request clarification or narrowing of an unclear or overbroad request but may NOT inquire into the requestor's purpose for making the request or intended use of the information.

- When a governmental body, acting in good faith, requests clarification or narrowing of a request, the ten-business day period to request an OAG ruling is measured from the date of receiving the requestor's clarified or narrowed response.

CHARGES

The Act allows a governmental body to recover costs related to reproducing public information.

- All charges must be calculated in accordance with the OAG's rules
- Requests to View or Inspect
 - Generally, no charges allowed to view or inspect records

CHARGES

- Requests to View or Inspect
 - Charges permitted if partial redactions required before inspecting, records are older than 5 years, completely fill 3 or more archival boxes, and preparing records for inspection will take over 5 hours
- Requests for Copies
 - Generally, for labor, overhead, and materials if request for over 50 pages of paper records

ESTIMATED CHARGES OVER \$40

The governmental body must provide the requestor with a written itemized statement of estimated charges when the estimated charges exceed \$40.

- Statement must:
 - inform the requestor if a less costly method of viewing the records is available
 - note that request will be automatically withdrawn if the requestor doesn't respond within 10 business days accepting the charges, modifying the request, or sent/is sending a cost complaint to the OAG



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REQUESTS REQUIRING A LARGE AMOUNT OF PERSONNEL TIME

Governmental body can establish a limit, not less than 15 hours for a one-month period or 36 hours in a 12-month period, on the amount of time personnel must spend producing public information without recovering costs



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REQUESTS REQUIRING A LARGE AMOUNT OF PERSONNEL TIME

- requestor must compensate the governmental body for all costs incurred after exceeding the time limit
- governmental body must provide the requestor with a written statement estimating costs even if less than \$40, and governmental body not required to respond until requestor submits payment

EXCEPTIONS TO DISCLOSURE

When a governmental body receives a request for information it wishes to withhold, it must ask the OAG for a decision within 10 business days and state the exceptions it believes are applicable

- Unless there has been a previous determination that the requested information falls within an exception to disclosure
- Failure to comply with procedural requirements to request a ruling results in presumption that the information is public

EXAMPLES OF EXCEPTIONS

- Information Confidential Under Specific Statutes.
- Information Confidential by Judicial Decision.
- Information Confidential Under Common Law or Constitutional Privacy Doctrine.
- Dates of Birth of Public Employees.
- Litigation or Settlement Negotiations Involving the State or a Political Subdivision.
- Certain Legislative Documents.



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EXAMPLES OF EXCEPTIONS

- Certain Legal Matters.
- Information Protected by Court Order.
- Certain Law Enforcement, Corrections, and Prosecutorial Information.
- Confidentiality of Trade Secrets and Confidentiality of Certain Commercial or Financial Information.
- Confidentiality of Certain Addresses, Telephone Numbers, Social Security Numbers, and Personal Family Information.



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CATASTROPHE EXCEPTION

- Allows the Act to be suspended for governmental bodies affected by emergencies, urgent public necessity, or catastrophic event. An emergency or an urgent public necessity is:
 - An imminent threat to public health and safety; or
 - A reasonably unforeseeable situation including:
 - Fire, flood, earthquake, hurricane, tornado, or wind, rain, or snowstorm;
 - Power failure, transportation failure, or interruption of communication facilities;
 - Epidemic; OR
 - Riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

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ROLE OF THE ATTORNEY GENERAL

- Makes determination on release of information that is subject of request on request of the governmental body
 - Within 45 business days of receipt of referral (may be extended)
- Provide training regarding the Act
- Establish rules for costs of access to public information

ROLE OF THE ATTORNEY GENERAL

- Issue determinations on costs to provide information
- Maintain uniformity in the application, operation, and interpretation of the Act
 - Performed by preparing, distributing, and publishing materials including detailed and comprehensive written decisions and opinions



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REFERRAL TO ATTORNEY GENERAL

- A governmental body that wishes to withhold information from the public on the ground of an exception must seek the decision of the OAG within **ten business days** of receipt and
 - state the exceptions that apply
 - provide the requestor with a written statement that the governmental body has requested a ruling from the OAG and a copy of the governmental body's communication to the OAG

REFERRAL TO ATTORNEY GENERAL

Not later than the 15th business day after receiving the written request, the governmental body must submit to the OAG:

- written comments stating the reasons why the stated exceptions apply
- a copy of the written request for information;
- a signed statement as to the date the governmental body received the request or evidence sufficient to establish that date; and
- a copy of the specific information requested, or representative samples if a voluminous amount of information was requested labeled to indicate which exceptions apply.



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REFERRAL TO ATTORNEY GENERAL

- A governmental body that submits written comments to the OAG must send a copy of those comments to the requestor not later than the 15th business day after the date of receiving the written request.
- If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the requestor must be a redacted copy.



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REFERRAL TO ATTORNEY GENERAL

- If a governmental body does not timely request an OAG decision and does not provide the requestor with the required information, the **information requested in writing is presumed to be subject to required public disclosure and must be released** unless there is a compelling reason to withhold the information.



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OUTCOME OF OAG'S RULING

- The OAG shall promptly render a decision, not later than the 45th business day
 - May be extended by an additional 10 business days if necessary
- The OAG can determine that additional information is necessary to render a decision and if so, the governmental body must submit the necessary additional information to the OAG within 7 calendar days

POST RULING PROCEDURES

- Upon issuance of the OAG's decision, the governmental body shall as soon as practicable but within a reasonable time:
 - provide the requestor an itemized estimate of charges for production of the information;
 - communicate with the requestor if the requested information is voluminous;

POST RULING PROCEDURES

- Upon issuance of the OAG's decision, the governmental body shall as soon as practicable but within a reasonable time:
 - produce the information if it is required to be produced;
 - provide the requestor written notice that the governmental body is withholding the information if authorized by the OAG's opinion; or
 - notify the requestor in writing that the governmental body has filed suit against the OAG.

FAILURE TO COMPLY



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PENALTIES

- The Act establishes criminal penalties for both
 - the release of information that must not be disclosed, AND
 - the withholding of information that must be released.
- A violation constitutes official misconduct and is a misdemeanor punishable by:
 - confinement in a county jail for not more than six months,
 - a fine not to exceed \$1,000, OR
 - both confinement and the fine.

PENALTIES

- The Act also criminalizes the willful destruction, mutilation, removal without permission, or alteration of public records as a misdemeanor, which can result in
 - a fine of not less than \$25.00 or more than \$4,000;
 - confinement in county jail for a minimum of 3 days and a maximum of 3 months; and
 - or both confinement and the fine.
- The OAG may require each public official of a governmental body to complete a training course within 60 days if the OAG finds that the governmental body has failed to comply with a requirement of the Act.

PENALTIES

- The Act authorizes the requestor or the OAG to seek a writ of mandamus to force release of information.
- The court shall assess costs of litigation and reasonable attorney's fees incurred by a plaintiff who substantially prevails.
 - a requestor who is an attorney representing himself in a suit to require a governmental body to disclose requested information under the Act is not entitled to attorney's fees because the requestor did not incur attorney's fees

FORMAL COMPLAINT

- A person who claims to be a victim of a violation of the Act may file a complaint with the district or county attorney for the county where the governmental body accused of the violation is located
- To be valid, the complaint must be written; signed; name the governmental body accused of the violation; state the time and place of the alleged violation; and describe the violation in general terms



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FORMAL COMPLAINT

- The district attorney, county attorney, or the OAG, may bring an action for declaratory judgment or injunctive relief against the governmental body for violation of the Act
 - If the governmental body is a state agency, only the Travis County district attorney or the OAG may bring an action under sec. 552.3215



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FORMAL COMPLAINT

- Within 31 days of receiving a complaint, the district or county attorney will determine whether the alleged violation occurred
- If the result of the county or district attorney's investigation of the complaint is not to file suit against the governmental body, the complainant may then file the complaint with the OAG



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FORMAL COMPLAINT

- The governmental body must receive written notice of the violation and have the opportunity to cure within 4 days before suit is filed
- An action authorized under sec. 552.3215 is in addition to other remedies under the Act or other law



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QUESTIONS?



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DEADLINE: March 31



SAFE-D 2025 ANNUAL CONFERENCE

**FOR
CONFERENCE
CREDIT**



SCAN ME

**DEADLINE
MARCH 31**