



Public Information To-Do List: Manage Your Requests, Hit Your Deadlines, Improve Your Service

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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- ▶ Step 5: Determining if the request has been withdrawn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 (Slide 1 of 2)

- ▶ Remember:
 - A request must be in writing, either typed or handwritten, and
 - A 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.
 - 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 1: Recognizing a request that triggers the Act (Slide 2 of 2)

- ▶ A written request must be delivered to the officer for public information or a person designated by the officer by:
 - United States mail
 - Electronic mail
 - Hand delivery
 - Any other appropriate method approved by a governmental body, including by facsimile transmission and electronic submission through the governmental body's internet website.

- ▶ A governmental body may designate one mailing address and one electronic mail address for receiving written requests for public information.
 - If a governmental body posts these on its website or its sign, the governmental body is not required to respond to a written request unless the request is received at one of those addresses, by hand delivery, or by a method approved by the governmental body.



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 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.
 - A request received after business hours is considered “received” the following business day.
- ▶ 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).
- ▶ Be on the lookout for body-worn camera recordings and third-party information.



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://www2.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.
- ▶ Have a plan to achieve this step and implement it in such a way that enables your governmental body to always be ready for the next 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.

- ▶ Is there any information the requestor would be willing to exclude? If so, reach out and confirm with the requestor. Remember, section 552.222 allows you to ask the requestor to narrow the request. The requestor can review the information with the redactions you wish to make and may be satisfied, thus avoiding the need to request a ruling.



Decisions, decisions...

- ▶ After a governmental body has worked its way through steps 1 through 6, what are the 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 rely on to 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 the information and/or withholding the information that does not require a 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 OAG's website to inform requestors of redactions made under these sections without a ruling.
 - See: <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/responding-pia-request/redacting-public-information>



Step 7a: Releasing the information and/or withholding the information that does not require a 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 the information and/or withholding the information that does not require a ruling (Slide 3 of 3)

- ▶ How much time does a governmental body have to produce information it does not object to releasing?
 - 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 5)

- ▶ 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
 - See: <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/proprietary-information-request>
- Commonly referred to as a “10-day letter.”



Step 7b: Seeking a ruling from the OAG (Slide 2 of 5)

- ▶ 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.
- Commonly referred to as a “15-day letter.”



Step 7b: Seeking a ruling from the OAG (Slide 3 of 5)

- ▶ Common pitfalls when submitting 10-day and 15-day letters:
 - Failing to provide sufficient evidence to establish the date your governmental body received the request at issue.
 - Do the dates listed in your brief and on the request not line up? Provide an explanation for any ambiguity.
 - Failing to provide sufficient evidence to establish when your governmental body placed its 10-day and/or 15-day letters in the mail.
 - We see ambiguous or missing post marks on a regular basis. Clear up any confusion with a clear statement in your letters affirmatively representing the date the letters were placed in the mail.



Step 7b: Seeking a ruling from the OAG (Slide 4 of 5)

- ▶ Common pitfalls (cont.):
 - Send copies, ***not originals***, of the documents at issue
 - Do **not** apply redactions to documents you are submitting for our review. It is okay, for example, to highlight or bracket information, but do not black out or obscure the information you are seeking to withhold.
 - If the OAG can't read it, the OAG 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 5 of 5)

- ▶ Common pitfalls (cont.)
 - 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 the OAG needs 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 OAG needs more time to handle your file.
 - OAG can only extend deadline once.



Step 9: Receiving the ruling

- ▶ Follow the ruling
- ▶ Call the Open Government Hotline
- ▶ 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