



Rights of Access

Gerald Arismendez
Assistant Attorney General
Open Records Division



Summary

- ▶ Rights of Access within the PIA
 - Gov't Code § 552.023
 - Gov't Code § 552.137(b)

- ▶ Statutory Access outside of the PIA

- ▶ Gov't Code § 552.007

- ▶ Gov't Code § 552.008



Section 552.023 (Slide 1 of 2)

- ▶ (a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.
- ▶ (b) A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.



Section 552.023 (Slide 2 of 2)

- ▶ Prevents a governmental body from asserting an individual's own privacy as a reason for withholding records from that individual.
- ▶ Does not override exceptions to disclosure in the Act or confidentiality laws protecting some interest other than that individual's privacy.



Hypotheticals (Slide 1 of 6)

- ▶ Tom e-mails the following request to the city: “I would like a copy of the note that I dropped off at city hall last week regarding the damage to my car from a pothole on Main Street. I need a copy for insurance purposes.”



Hypotheticals (Slide 2 of 6)

Dear City Secretary,

While driving down Main Street last week, my car was damaged due to the city's negligence in repairing potholes. My total bill was \$400.00, and I have attached a copy. Please transfer money to my insurance company; my policy number is # 32331.

Sincerely,
Tom



Hypotheticals (Slide 3 of 6)

- ▶ Can the city release the note to Tom?
 - Yes, although an insurance policy number is typically confidential pursuant to section 552.136, Tom has a right of access to this information under section 552.023.



Hypotheticals (Slide 4 of 6)

- ▶ Two weeks later, Tom followed up with the city and made the following written request: “Please send a copy of the e-mail request that I made a couple of weeks ago.”



Hypotheticals (Slide 5 of 6)

To: citysecretary@TexasTown.gov

From: Tom@gmail.com

Re: Request For Information

I would like a copy of the note that I dropped off at city hall last week regarding the damage to my car from a pothole on Main Street. I need a copy for insurance purposes.

Sincerely,

Tom



Hypotheticals (Slide 6 of 6)

- ▶ Can the city release Tom's previous request to him?
 - Yes, although an e-mail address of a member of the public is generally confidential pursuant to section 552.137(a), the requestor has a right of access to his own e-mail address pursuant to section 552.137(b).



Section 552.137

- ▶ (a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

- ▶ (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.



Statutory Access Outside of the PIA

- ▶ Always read the full section or chapter making information confidential.
- ▶ This typically only applies to specific individuals listed in the section at issue.
- ▶ Be careful if there are conflicting provisions.



Hypotheticals (Slide 1 of 8)

- ▶ The city's police department received the following request by e-mail: “Please provide me a copy of all police reports related to me, Ron Miller, for the last five years.”



Hypotheticals (Slide 2 of 8)

- ▶ The police department has the following responsive information:
 - Report listing Ron Miller as the suspect in an assault as a juvenile
 - Report listing Ron Miller as the suspect in a theft as an adult
 - Report listing Ron Miller as the victim of identity theft



Hypotheticals (Slide 3 of 8)

- ▶ Does Mr. Miller have a right of access to these reports that is greater than a general member of the public?
 - Yes . . .



Hypotheticals (Slide 4 of 8)

- ▶ The request itself implicates Mr. Miller's right to privacy because it asks for unspecified law enforcement records.
 - Section 552.101 in conjunction with common-law privacy
 - Right of access under section 552.023



Hypotheticals (Slide 5 of 8)

- ▶ Report listing Ron Miller as the suspect in an assault as a juvenile
 - Typically would be confidential pursuant to section 58.008 of the Family Code.
 - (d) Law enforcement records concerning a child may be inspected or copied by:
 - (1) a juvenile justice agency, as defined by Section 58.101;
 - (2) a criminal justice agency, as defined by Section 411.082, Government Code;
 - (3) the child;
 - (4) the child's parent or guardian; or
 - (5) the chief executive officer or the officer's designee of a primary or secondary school where the child is enrolled only for the purpose of conducting a threat assessment or preparing a safety plan related to the child.



Hypotheticals (Slide 6 of 8)

- ▶ Report listing Ron Miller as the victim of identity theft
- ▶ Article 2.29 of the Code of Criminal Procedure
 - (b) On the victim's request, the law enforcement agency shall provide the report created under Subsection (a) to the victim. In providing the report, the law enforcement agency shall redact any otherwise confidential information that is included in the report, other than the information described by Subsection (a).
- ▶ Only confidential information may be withheld from an offense report that is subject to release pursuant to article 2.29.



Hypotheticals (Slide 7 of 8)

- ▶ The school district received a request for a copy of Ms. Sawyer's personnel file, including any evaluations. The requestor states that she is an attorney representing Ms. Sawyer.



Hypotheticals (Slide 8 of 8)

- ▶ Can the school district release the evaluations to the requestor?
 - Yes
 - Evaluations are generally confidential under section 21.355 of the Education Code
 - Pursuant to section 21.352(c) a teacher is entitled to receive a written copy of the evaluation



Things To Keep In Mind

- ▶ Sometimes statutory rights of access may conflict
- ▶ Even if a requestor has a right of access under one statute, a second exception may apply
- ▶ Always let the OAG know if the requestor has a right of access



Section 552.007 (Slide 1 of 2)

- ▶ (a) This chapter does not prohibit a governmental body or its officer for public information from voluntarily making part or all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law.
- ▶ (b) Public information made available under Subsection (a) must be made available to any person.



Section 552.007 (Slide 2 of 2)

- ▶ Only applies to discretionary exceptions.
- ▶ Does not apply when information has been made available pursuant to a specific right of access.
- ▶ Must treat all requestors the same.



Hypothetical (Slide 1 of 2)

- ▶ The city is involved in a dispute with one of its contractors on a bridge project. The city chose to release an internal memo discussing the ongoing issues to a member of the local media after it received a request. The contractor involved has now made a written request for the memo.



Hypothetical (Slide 2 of 2)

- ▶ Can the city raise section 552.103 based upon its belief that there is anticipated litigation?
 - No, because the information has previously been released to a member of the public, the city is now prohibited from raising a discretionary exception by section 552.007(b).



Section 552.008 (Slide 1 of 2)

- ▶ (a) This chapter does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.
- ▶ (b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with this chapter if the requesting member, agency, or committee states that the public information is requested under this chapter for legislative purposes.



Section 552.008 (Slide 2 of 2)

- ▶ Disclosure of excepted or confidential information to a legislator does not waive or affect the confidentiality of the information or the right to assert exceptions in the future regarding that information.
- ▶ There are specific procedures for treatment of confidential information.
- ▶ An individual who obtains confidential information under section 552.008 commits an offense if that person misuses the information or discloses it to an unauthorized person.



Questions

OAG Open Government Hotline

(877) OPEN-TEX

OAG Website

<https://www.texasattorneygeneral.gov/open/index.shtml>