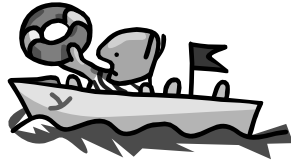


## Open Records for Texas Central Appraisal District's

Protecting Your District in a Sea of Transparency



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## Open Records Resources

- Everything you need to know can be found through the Office of the Attorney General ("OAG").
- Go to [www.oag.state.tx.us](http://www.oag.state.tx.us) and search under the "Open Government & Related Publications" link for the following:
  1. "2010 Public Information Act Handbook"
  2. "2006 Public Information Act Made Easy"
  3. "2010 Open Meetings Act Handbook"

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## Open Records Resources

3. "2008 Open Meetings Act Made Easy"
4. "2006 Public Officers: Traps for the Unwary"

The website also provides a link for the **mandatory open government training** concerning public information and open meetings. All elected and appointed officials, including the chief appraiser, are required to complete this training.

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## Texas Public Information Act

- Chapter 552, TEX GOV'T CODE, is the Texas Public Information Act.
- The Texas Public Information Act is also referenced as the "Public Information Act" or the "Act".
- The Act covers all types of information that a governmental body collects, assembles, or maintains which relates to the official business of the governmental body.

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## What is Public Information?

- Public Information includes paper records, audio recordings, compact disks, e-mails, maps or any other record in use or storage, regardless of the medium on which it exists.
- There are three categories of information:
  - Public – must be made available to the requestor upon a proper request.
  - Optional Public – the governmental body has the option to make the information public, but is not required to do so.
  - Confidential – the governmental body must withhold the information from the public except in special circumstances.

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## What is NOT Public Information?

- The Act does not require a governmental body to create new information in response to a request, perform research or to answer legal questions.
- Information that is confidential by law, constitutional, statutory, or by judicial decision is not public information under the Act.

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**Basic Procedures, Rights & Responsibilities Under the Act**

- The Act is triggered when a person submits a written request.
- A requestor may ask to inspect information, obtain copies or both.
- A governmental body may charge for copies, however if the request is only for inspection then usually no charges may be imposed on the requestor.

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**Basic Procedures, Rights & Responsibilities Under the Act**

- There are certain instances when a governmental body may charge for access to requested information.
- Any and all charges imposed by a governmental body must be in compliance with the rules prescribed by the OAG unless another statute authorizes a governmental body to set its own charges.

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**Basic Procedures, Rights & Responsibilities Under the Act**

- While most government information is subject to public disclosure, some exceptions do exist.
- If the appraisal district believes any information requested must be withheld, the appraisal district must, within ten business days, of receiving the Public Information Act ("PIA") request, seek a ruling by the attorney general.

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## Basic Procedures, Rights & Responsibilities Under the Act

- If the attorney general agrees that the exception claimed applies to the specific situation, the appraisal district will not have to release the information.
- If however, the attorney general rules that the information must be released and the appraisal district fails to do so, the requestor or the attorney general are authorized to file a civil suit under the Act to compel the appraisal district to release the information.

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## Open Government Hotline

- The Office of the Attorney General ("OAG") has implemented a hotline to address questions or complaints concerning the Act.
- 1-877-OPEN TEX or (877) 673-6839
- Hotline staff can answer general questions about the proper procedures for using and complying with the Act.
- They provide assistance for both governmental bodies and people requesting information from a governmental body.

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## Open Government Hotline

- Hotline staff also reviews written complaints regarding alleged violations of the Act.
- Recently the OAG implemented a new hotline to deal with complaints regarding charges imposed by governmental bodies in response to a PIA request.
- The OAG Cost Rules Administrator can be reached at 1-888-ORCOSTS or (888) 672-6787.

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**Rights of Requestors**

- All individuals that request public information from your appraisal district have the right to:
  - Receive equal treatment.
  - Receive a statement of estimated charges in advance.
  - Choose whether to inspect information, receive a copy, or both.

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**Rights of Requestors**

- Be copied on the communication between your appraisal district and the OAG stating the reason(s) why the stated exceptions apply.
- Lodge a complaint with the OAG Cost Rules Administrator regarding any improper charges imposed for responding to a PIA request.
- Lodge a complaint with the OAG Hotline, county attorney, or criminal district attorney, regarding any alleged violations of the Act.

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**Responsibilities of Requestors**

- All individuals that request public information have the responsibility to:
  - Submit a written request according to your appraisal district's reasonable procedures.
  - Include enough description and detail of the requested information so that you can accurately identify and locate the items they have requested.

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## Responsibilities of Requestors

- Cooperate with your appraisal district's reasonable request to clarify the type or amount of information requested.
- Respond promptly in writing to all written communications you send, including any written estimate of charges.
- Make 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

- In responding to a PIA Request, your appraisal district has the right to:
  - Establish reasonable procedures for inspecting and copying information.
  - Request and receive clarification of requests that are vague or overly broad.
  - Request an OAG ruling regarding whether any information may be withheld from a requestor.

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## 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 any additional requests from the same requestor.
- Request a bond, prepayment or deposit if the estimated costs associated with a PIA request exceed \$100 (or \$50 if your appraisal district has fewer than 16 fulltime employees).

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## Responsibilities of Governmental Bodies

- In responding to a PIA request, your appraisal district has the following responsibilities:
  - Treat all requestors equally.
  - Go through the open records training required by law.
  - Be informed of open records laws and educate employees on the requirements of those laws.

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## Responsibilities of Governmental Bodies

- Inform the requestor of cost estimates and any changes in the estimates.
- Confirm that the requestor agrees to pay the costs before proceeding with the request and incurring the applicable charges.
- Provide requested information **promptly**.
- Inform the requestor if the information will not be provided within ten business days and certify the date and time when the records will be made available.

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## Responsibilities of Governmental Bodies

- Cooperate with the requestor to schedule reasonable times for inspection or copying of information.
- Follow the OAG regulations on charges; do not overcharge on any items; do not bill for items that must be provided at no charge.
- Inform third parties if their proprietary information is being requested from your office.
- Inform the requestor when the OAG has been asked to rule on whether the information may or must be withheld.

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## Responsibilities of Governmental Bodies

- Copy the requestor on any written comments submitted to the OAG stating the reason why the stated exception(s) apply.
- Comply with the 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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## The Request for Public Information

- The request must be in writing to trigger the Act.
- No special language or legal cite to Chapter 552, TEX GOV'T CODE is required in order to make it "officially" a Public Information Act ("PIA") request.
- If a written communication can be reasonably judged to be a request for public information it is a request for information under the Act.

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## The Request for Public Information

- A request made by electronic mail or facsimile must be sent to the officer for public information or the officer's designee for the Act to be triggered.
- A governmental body must make a good faith effort to relate a request to information that it holds.

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### Vague and Overly Broad Requests

- Section 552.222(b), TEX GOV'T CODE provides that a governmental body may discuss with a requestor how the scope of the request might be narrowed.
- A governmental body **may not** inquire into the purpose for which the information will be used.

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### Vague and Overly Broad Requests

- Section 552.222, TEX GOV'T CODE provides that a PIA request is considered withdrawn if the requestor does not respond in writing to a governmental body's written request for clarification or additional information within 61 days.
  - The written request for clarification under this section must include a statement of the consequences for failure to respond timely.
  - If the request includes the requestor's mailing address, a governmental body is required to send the request for clarification by certified mail.

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### The Information Requested MUST Already Exist!!

- The Act **does not** require a governmental body to create new information in response to a request.
- Several provisions of the Act are very clear about the Act only applying to information already in existence.
- A governmental body is not required to inform a requestor if the requested information comes into existence after the request has been made.
- A governmental body is also not required to comply with a continuing request (aka "standing request") to provide information on a periodic basis as information becomes available.

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### Prompt Service

- Section 552.221, TEX GOV'T CODE states that an officer for public information shall **promptly** produce public information for inspection, duplication, or both on application by any person to the officer.
- "Promptly" is defined within this section as being "as soon as possible under the circumstances", within a reasonable time, without delay.

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### Prompt Service

- What is considered to be a "reasonable time" depends on the facts in each individual case and also depends on the volume of information being requested.
- If however, the information cannot be provided to the requestor within ten business days after the date the PIA Request is received, the public information officer must certify in writing the date and time when the information will be made available for inspection or duplication. The date and time set must be within a reasonable time.

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### Chief Appraiser Responsibility

- The Chief Appraiser is responsible for the information, even if a records management officer has day-to-day authority, and must ensure that the Act is followed.
  - Failure to comply by destroying, mutilating, removing without permission, or altering public information is a misdemeanor punishable by a fine ranging from \$25 to \$4,000, jail time from 3 days to 3 months, or both.
  - Disclosing confidential information, failing to provide public information, or violating other provisions of the Public Information Act can also result in fines, jail time, or both.

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## GET OUT OF JAIL FREE!!

- If the public information officer believed that public access was not required because he or she acted in reasonable reliance on a court order or written interpretation of the Attorney General or took action specified in Section 552.353, TEX GOV'T CODE, it is an affirmative defense to prosecution.

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## Exceptions to Disclosure

- Subchapter C of the Act, Sections 552.101 through 552.151, TEX GOV'T CODE consist of exceptions to disclosure under the Act.
- There are two types of exceptions: mandatory and discretionary.
  - Mandatory exceptions are those that protect someone other than the governmental body.
  - Discretionary or permissive exceptions protect the governmental body.

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## Exceptions to Disclosure

- The law under which information may be considered confidential is not limited to statutes and judicial decisions that expressly make information confidential.
  - The Texas Supreme Court has held that discovery privileges included in the Texas Rules of Civil Procedure and the Texas Rules of Evidence are considered "other law" and may make information confidential under the Act.
  - As a result, even if information is considered to be super public under the Act, the information may still be protected from disclosure if the governmental body can demonstrate to the OAG that the information is privileged under the Texas Rules of Evidence or the Texas Rules of Civil Procedure.

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## Exceptions to Disclosure

- A governmental body's promise to keep information confidential is not a basis for exception information from disclosure to the public under the Act unless a governmental body has express statutory authority to make such a promise.
- Example: Sales Information Obtained from a Property Owner
  - Section 22.27, TEX GOV'T CODE provides that information voluntarily disclosed to an appraisal office about real or personal property sales prices **AFTER** a promise it will be held confidential may not be disclosed to anyone except as authorized by Subsection (b).

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## Sales Obtained from Private Entity

- Section 552.149, TEX GOV'T CODE provides that information about real property sales prices, descriptions, characteristics, and other related information received by an appraisal district from a "private entity" is **NOT** considered public information.
- Exception – a protesting property owner or the owner's agent may upon request inspect or obtain copies of:
  - Information the chief appraiser intends to use in the protest
  - Information the chief appraiser considered but chose not to use for a hearing
  - A reasonable number of sales of comparable property
- Information obtained under this section remains confidential in the possession of the property owner or agent and **may not** be disclosed for any purpose except as evidence at the hearing.

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## Briefing the OAG

- When a governmental body wishes to withhold information from public disclosure that it considers to be within one of the exceptions under Subchapter C, the governmental body must ask for a decision from the OAG.
  - Section 552.301(b), TEX GOV'T CODE states that the governmental body must ask for a decision and state the exceptions that apply no later than 10 business days after receiving the PIA request.

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## Briefing the OAG

- Section 552.301(e), TEX GOV'T CODE requires that no later than 15 business days after receiving the PIA request, a governmental body submit to the OAG:
  - Written comments stating why the stated exceptions claimed apply;
  - A copy of the PIA request;
  - A signed statement as to the date of the PIA request was received or provide evidence sufficient to establish the date received; and
  - A copy of the specific information requested or a representative sample if a large volume of information was requested.
    - The information provided must be clearly labeled to indicate which exceptions apply to which parts of the copies submitted to the OAG.

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## Common Mistakes When Briefing the OAG

- The most common errors governmental body's make in briefing the OAG are:
  - Missing the 10 and 15 day deadlines under Section 552.301, TEX GOV'T CODE.
  - Failing to notify a third party of a request that involves privacy or property interests of a third party in the manner prescribed under Section 552.305, TEX GOV'T CODE.
  - Redacting information prior to submitting the documents to the OAG for review – they can't rule on what they can't see!!

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## Common Mistakes When Briefing the OAG

- Failing to meet the burden of proving an exception to disclosure applies to the information at issue.
- Spelling and grammar errors – it is imperative to ensure you have proofread your brief to the OAG; make sure you have asserted the correct exceptions and not inadvertently asserted Section 552.301 when you mean to assert the litigation exception 552.103, TEX GOV'T CODE.
  - REMEMBER – in most cases if you fail to raise an exception, you waive it.

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**Electronic Data**

- Computer and Electronic Information
  - Section 552.228(b), TEX GOV'T CODE was amended by the 81<sup>st</sup> Legislature to provide that if public information exists in an electronic or magnetic medium, a requestor may request a copy in an electronic medium.
  - A governmental body shall provide it in the requested medium, if:
    - The governmental body has the technological ability to provide the requested information in the requested medium;
    - The governmental body is not required to purchase any software or hardware to accommodate the request; and
    - Providing a copy of the information in the specific medium will not violate any copyright agreement between the governmental body and a third party.

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**Electronic Data**

- If a governmental body cannot provide the information in the requested format for any reason allowed under this section, the governmental body shall provide the information in an alternate medium that is acceptable to the requestor.

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**Programming and Manipulation of Data**

- "Programming" is defined under the Act as the actual process of producing a sequence of coded instructions that can be executed by a computer.
- "Manipulation" is defined under the Act as the process of modifying, reordering, or decoding of information with human intervention.
- If a request for public information will require programming and/or manipulation of existing data it is not considered a request for the creation of new information.

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### Programming and Manipulation of Data

- Within 20 days after the governmental body receives the request, a written estimate shall be provided to the requestor in the manner prescribed in Section 552.231, TEX GOV'T CODE.
- Once the statement has been furnished to the requestor, the governmental body has no further obligation to provide the requested information in the requested form **unless** within 30 days the requestor responds to the governmental body in writing.
- If no response is received within 30 days, the request is considered withdrawn by operation of law.

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### E-mail

- With very few exceptions, most e-mail sent and/or received by an employee of a governmental body is public information.
- Watch what you say in your e-mail messages! Do not write anything you wouldn't want to see on the front page of your local newspaper.

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### Social Media Sites – Facebook, Myspace, and Twitter

- If a governmental body creates a Facebook or Myspace page or maintains a Twitter account for providing information to the general public in an official business capacity, the information on the site **may** be considered public information under the Act.
- In posting information on social media sites, governmental bodies should remember that the information on the sites are subject to records retention laws. Like e-mail the retention period is content driven.

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## Contact Information

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