

2012 Texas Public Information Act **MADE EASY**

Answers to the most frequently asked questions about
the Texas Public Information Act



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Texas Public Information Act Made Easy

This “made easy” article provides answers in easy to understand language to the most frequently asked questions regarding the Public Information Act. In a question-and-answer format, this article provides guidance to public officials and members of the public on the most frequently asked questions on the Public Information Act (Act). For example, the article addresses: the types of records and entities that fall under the Act; the time deadlines and mandatory notices that apply when a governmental body handles an open records request; and when a governmental body is required to ask for an open records ruling from the Attorney General.

The stakes are high for public officials who handle open records requests. There are strict time lines for making determinations on what records to release, and public officials must make such decisions knowing that there are potential criminal penalties if the governmental body releases information that is considered confidential under state law. Similarly, public officers face criminal penalties if they refuse to release information that is considered open to the public.

Local government officials should consult with their legal counsel regarding the application of the law to the facts of each particular situation.

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I. Application of the Public Information Act

1. What types of information are subject to the Public Information Act?

Public information includes any information that is collected, assembled, or maintained by or for a governmental entity in connection with the transaction of official business.¹ The Public Information Act (hereinafter the Act) applies to records regardless of their format. It includes information that is maintained in paper, tape, microfilm, video, electronic data held in a computer memory, as well as other mediums specified under law.

2. What types of entities are subject to the Public Information Act?

The Act applies to information that is held by or for any “governmental body.”² The term “governmental body” has a broad definition that includes in applicable part:

1. Boards, commissions, departments, committees, institutions, agencies, or offices that are within or are created by the executive or legislative branch of state government and that are directed by one or more elected or appointed members;
2. City governmental bodies;
3. County governmental bodies;
4. Deliberative bodies that have rule-making or quasi-judicial power and that are classified as a department, agency, or political subdivision of a city or county;
5. The part, section or portion of a public or private entity that spends or that is supported in whole or in part by public funds;
6. Local workforce development boards;
7. Nonprofit corporations that are eligible to receive funds under the federal community services block grant program and that are authorized by this state to serve a geographic area of the state;
8. Certain property owners’ associations.³

In other words, all governmental entities and certain non-governmental entities are subject to the Act. Additionally, entities that are considered departments, agencies, or political subdivisions of a city or county are also subject to the Act if the involved entity has rule-making or quasi-judicial powers.⁴ For example, zoning boards of adjustment have rule-making or quasi-judicial powers and are considered agencies or departments of a city. Therefore, the records of such entities would be subject to the Act.

3. Are the records of nonprofit and for-profit entities that receive public funds subject to the Public Information Act?

Records in the hands of non-governmental entities may also be covered by the Act to the extent that they reflect the expenditure or support of public funds, or to the extent that a governmental

¹ TEX. GOV'T CODE ANN. § 552.002 (West 2004).

² *Id.* § 552.003(1).

³ *Id.* § 552.0036 (West Supp. 2011).

⁴ *Id.* § 552.003(1)(A)(iv) (West 2004).

body has a right of access to the records. For example, when governmental bodies make unrestricted grants of funds to nonprofit and for-profit entities, the records relating to the part of the entity that is publicly funded would be subject to the Act.⁵

Rulings in this regard have held that the records of volunteer fire departments and records of certain chambers of commerce that involve expenditures of public funds are subject to the Public Information Act. However, the portion of the entity that is not supported by public funds is not necessarily subject to the Act.

Finally, it should be noted that certain entities are specifically made subject to the open records laws under the state law that governs that entity. For example, economic development corporations are specifically made subject to the provisions of the Public Information Act under the Development Corporation Act found in Chapters 501 through 507 of the Local Government Code.⁶

4. Are records that are kept or owned by a consultant to a governmental body subject to the Public Information Act?

The fact that a private entity may own or retain a record does not prevent the record from being subject to release under the Public Information Act. For example, if a consultant maintains or holds records for a governmental body, the documents are still considered public information if the governmental body owns the information or has a right of access to it.⁷

It is important to note that a governmental body usually cannot contract away its right to access documents that are held by a consultant if the information would otherwise be considered public. For example, an open record decision has held that a city manager could not contract away the city's right to inspect a list of applicants for a city job even though the list was developed by a private consultant for the city.⁸

5. Are court records subject to the Public Information Act?

Judicial records are not subject to the Public Information Act.⁹ Courts must look to the rules adopted by the Texas Supreme Court to determine the court's duty to provide access to court records.¹⁰ Additionally, courts must consider court rulings, Attorney General opinions and certain state statutes that give the public a right to obtain copies of court records. For example, higher courts have held that there is an "open courts" concept that must guide judges in giving public access to court documents. This legal concept provides that the public has a right to inspect and copy judicial records subject to the court's inherent power to control access to such records in order to preserve justice. In other words, the public's right of access to court documents is not an absolute right.¹¹

⁵ *Id.* § 552.003(1)(A)(xii). See Op. Tex. Att'y Gen. No. JM-821 (1987), Tex. Att'y Gen. ORD-602 (1992), ORD-621 (1993).

⁶ TEX. LOC. GOV'T CODE ANN. § 501.072 (West Supp. 2011).

⁷ TEX. GOV'T CODE ANN. § 552.002(a)(2) (West 2004). See also Tex. Att'y Gen. ORD-363 (1983).

⁸ Tex. Att'y Gen. ORD-585 (1991).

⁹ TEX. GOV'T CODE ANN. § 552.003(1)(B) (West 2004).

¹⁰ *Id.* § 552.0035. See TEX. R. JUD. ADMIN. 12, reprinted in TEX. GOV'T CODE ANN., tit. 2, subtit. F app. (West 2005).

¹¹ *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978); *Ashpole v. Millard*, 778 S.W.2d 169 (Tex.App. – Houston [1st Dist.] 1989, no writ); Op. Tex. Att'y Gen. No. DM-166 (1992), Tex. Att'y Gen. ORD-25 (1974).

It should be noted that the public's right to access court records is in addition to the right of parties to a lawsuit to obtain information through discovery or through other court procedures. Legislation has clarified that subpoenas and motions for discovery are not considered a request for information under the Public Information Act.¹² Such requests should be handled as required by the applicable civil or criminal procedural statutes. Additionally, state law has been amended to indicate that probable cause affidavits for a search warrant are considered public records once the warrant has been executed. The magistrate who issued the warrant must make the affidavits available for public inspection in the court clerk's office.¹³

6. Do the elected officials of a governmental body have a special right of access to a governmental body's records?

The ability to release information to elected officials may be limited by the state or federal law that pertains to the particular information. Or, these elected officials may have an inherent right of access to a governmental body's records if the official is requesting the records in his/her official capacity. The transfer of information to officials of the governmental body is not considered a release to the public as long as the official is asking for the information in his/her official capacity.¹⁴

II. What Constitutes an Open Records Request

7. To what governmental officer must an open records request be directed?

Except in the case of faxed and emailed requests, the Public Information Act does not require that the public direct its open records requests to any specific public employee or officer.¹⁵ Generally, the deadlines involved in handling an open records request are not put on hold merely because the wrong staff member received the request. For this reason, it is important that a governmental body clearly inform all of its employees what to do if they receive a request for records. The public official must be careful about what they do with these requests.

8. What is a governmental body's duty to respond to emailed or faxed requests for copies of records?

The governmental body has a duty to respond to any written requests for open records including those that are made through email or by fax. However, state law provides that the governmental body can designate a person who is authorized to receive email or faxed requests for open records. If the governmental body makes such a designation, the Act is only activated for emails and fax requests if the request is directed to the assigned individual.¹⁶ If the governmental body has not made such a designation, the email or faxed request can be directed to any official or staff member.

¹² TEX. GOV'T CODE ANN. § 552.0055 (West 2004).

¹³ TEX. CODE CRIM. PROC. ANN. art. 18.01(b) (West Supp. 2011). *See also Houston Chronicle Publishing Co. v. Woods*, 949 S.W.2d 492, 499 (Tex. App. – Beaumont 1997, no writ).

¹⁴ Op. Tex. Att'y Gen. No. JM-119 (1983), Tex. Att'y Gen. LO-93-69.

¹⁵ Tex. Att'y Gen. ORD-44 (1974), ORD-497 (1988).

¹⁶ TEX. GOV'T CODE ANN. § 552.301(c) (West Supp. 2011).

9. Must a governmental body respond to verbal requests for copies of records?

State law allows a governmental body to require that all requests for copies of governmental records be made in writing. In fact, the Act is only activated by a written request for the documents.¹⁷ Governmental bodies often develop forms for the public to use to request public records, but the governmental body cannot require the requestor to use that form. The governmental body's duty to provide the record would apply to any written request for the information, regardless of the format of the document used by the requestor. For example, an open records request is often contained within a complaint letter or within other citizen correspondence sent to a governmental body.

If a governmental body provides copies of records upon a verbal request, the governmental body must be consistent in its treatment of all requestors.¹⁸ In other words, if the governmental body does not require a written request from certain individuals, it should not insist on a written request from others.

III. Administration of Open Records Requests

Timing Issues under the Public Information Act

10. How much time does a governmental body generally have to comply with an open records request?

There is often a misconception that the Public Information Act requires that copies of public information must be produced within ten business days of the written request to the governmental body for the record. However, the standard under the Act is actually that the governmental body must “promptly produce” the public information.¹⁹ Further, the Act states that all open records requests must be handled with good faith and must be accomplished within a reasonable time period.²⁰ What is considered reasonable and prompt will vary depending on the number of documents sought by the requestor. In certain circumstances, the records can be produced in less than ten business days. However, requests for a substantial number of documents may take several weeks to produce.

If it will take a governmental body longer than ten business days to provide the records, the governmental body must certify that fact in writing to the requestor.²¹ In the notice to the requestor, the governmental body must indicate a set date and hour within a reasonable time that the information will be available for inspection or duplication.

11. When is a governmental body under a timing deadline to take a particular action when handling an open records request?

The amount of time that governmental bodies have to produce copies of governmental records will vary depending on the amount of information that is requested. However, there are six

¹⁷ *Id.* § 552.301(a). *See also* Tex. Att’y Gen. ORD-304 (1982).

¹⁸ TEX. GOV’T CODE ANN. § 552.223 (West 2004).

¹⁹ TEX. GOV’T CODE ANN. § 552.221(a) (West 2004). *See also* Tex. Att’y Gen. ORD-664 (2000).

²⁰ TEX. GOV’T CODE ANN. § 552.221(a) (West 2004), Tex. Att’y Gen. ORD-467 (1987), ORD-664 (2000).

²¹ TEX. GOV’T CODE ANN. § 552.221(d) (West 2004).

situations that present a timing deadline for governmental bodies to take a particular action when handling an open records request.

1. **Notice to Requestor that the Governmental Body Needs Additional Time to Produce Records.**²² If the governmental body is unable to produce a requested record within ten business days for inspection or for duplication, the governmental body must certify that fact in writing to the requestor and set a date and hour within a reasonable time that the information will be available for inspection or for duplication.
2. **Notice to Requestor that the Governmental Body Needs Additional Time to Produce Records That Are in Active Use or in Storage.**²³ If the governmental body needs additional time to produce a record because it is in active use or because it is in storage, the governmental body must notify the requestor of this fact in writing. This notice must be given within ten business days of the governmental body's receipt of the request for the documents.²⁴ The notice must set a date and hour within a reasonable time that the information will be available for inspection or duplication. It should be noted that the fact that a document has not been formally approved by the governmental body usually would not justify a delay of the document's release under the "active use" provision.²⁵
3. **Notice to Requestor of Programming or Manipulation Costs.**²⁶ If production of the requested information in a particular format would require additional computer programming or manipulation of data, the governmental body must provide a written notice of this fact to the requestor. The notice must indicate:
 - (1) that the information is not available in the requested form;
 - (2) a description of the forms in which the information is available;
 - (3) a description of any contract or services that would be required to provide the information in the requested form;
 - (4) an estimated cost of providing the information in the requested form; and
 - (5) the time that it would take to provide the information in that form.²⁷Generally, this notice must be provided to the requestor within 20 days of the governmental body's receipt of the request.²⁸
4. **Request by the Governmental Body for an Open Records Ruling from the Attorney General.**²⁹ If a governmental body plans to withhold certain

²² *Id.*

²³ *Id.* § 552.221(c).

²⁴ *Id.* § 552.221(d).

²⁵ Tex. Att'y Gen. ORD-148 (1976) (faculty member's file is not in active use the entire time the promotion is under consideration). *But see* Tex. Att'y Gen. ORD-225 (1979) (secretary's handwritten notes are in active use while the secretary is typing minutes of the meeting from them).

²⁶ TEX. GOV'T CODE ANN. § 552.231(a) (West Supp. 2011).

²⁷ *Id.* § 552.231(b).

²⁸ *Id.* § 552.231(c).

²⁹ *Id.* § 552.301(a) (West Supp. 2011).

documents or information, it usually must request an Attorney General's ruling on the ability to withhold such information. The written request for an Attorney General's ruling must be made within ten business days after the date the governmental body receives the written request for information.³⁰

5. **Notice to Requestor that the Governmental Body Sought an Attorney General's Open Records Ruling.**³¹ The governmental body must give written notice to a requestor if the governmental body seeks an Attorney General's ruling on the request. This notice must be given within ten business days of the governmental body's receipt of the request for the documents.
6. **Notice to Person or Entity with Proprietary Interest in Information of Attorney General's Open Records Ruling Request.**³² If an open records request may result in the release of proprietary information, the governmental body must make a good faith attempt to notify the person or entity that has such an interest in the open records ruling request. The written notice must be sent by the governmental body within ten business days of the date the governmental body received the original request for the information.

This notice must include: (1) a copy of the written request for the information; and (2) a statement, in a form prescribed by the Attorney General, that the person is entitled to submit a letter, brief, or memorandum to the Attorney General in support of withholding the information.³³ The notice must inform the person that any briefing must include each reason why the person believes the information should be withheld. The person with a proprietary interest must submit his/her brief within ten business days of the date the person receives the written notice from the governmental body. Also, the person who submits a brief to withhold the information must provide a copy of his/her brief to the requestor.³⁴

12. What can a governmental body do if it is unclear about what information is being requested or that the scope of the information is unduly broad?

If a governmental body in good faith has determined that the request for information is unclear or that the scope of the information being asked for is unduly broad, the governmental body should ask the requestor to clarify or narrow the scope of the request.³⁵ The ten business days to request an Attorney General's open records ruling is measured from the date the request is clarified or narrowed as long as the governmental body is acting in good faith.³⁶ In other words from the day that the requestor clarifies or narrows his/her request to the governmental body, the governmental body has ten business days to ask for a ruling from the Attorney General's office.

The written request for clarification to the requestor must contain a statement as to the consequence of failing to timely respond to the request for clarification, discussion or additional

³⁰ *Id.* § 552.301(b).

³¹ *Id.* § 552.301(d).

³² *Id.* § 552.305(d)(1) (West 2004).

³³ *Id.* § 552.305(d)(2).

³⁴ *Id.* § 552.305(e).

³⁵ *Id.* § 552.222(b) (West Supp. 2011).

³⁶ *City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010).

information.³⁷ If the governmental body sends a written request for clarification, discussion or additional information to the requestor and the requestor does not send a written response by the 61st day, the requestor's open records request is considered withdrawn.³⁸ For the request to be considered withdrawn, the governmental body must send the request for clarification, discussion or additional information to the requestor by certified mail if the governmental body has a physical or mailing address for the requestor.³⁹

13. When is a governmental body required to ask for an open records ruling from the Attorney General?

A governmental body is required to ask the Attorney General for an open records ruling in almost all cases if the governmental body wants to withhold requested documents or information.⁴⁰ The fact that a particular document request may arguably fall within one of the statutory exceptions to disclosure does not in itself eliminate the need to ask for an open records ruling. Unless the governmental body can point to a previous determination that addresses the exact information that the governmental body now wants to withhold, the governmental body must request a ruling to withhold the information.⁴¹ In addition, if determining whether a particular record may be withheld under a statutory exception requires a review and consideration of the applicable facts, the governmental body should request an Attorney General ruling before it withholds the record.

A request for an Attorney General ruling must be made within ten business days of the date the governmental body received the written request.⁴² Such a request can only be made by the governmental body.⁴³ If the governmental body does not make such a request within the deadline, the information is presumed to be open to the public as a matter of law and the information must be released.⁴⁴ The presumption of openness and the duty to release the information can only be overcome by a compelling reason that the information should not be released. A compelling reason may in certain cases involve a showing that the information is deemed confidential by some other source of law or that third-party interests are at stake.⁴⁵ It should be noted that if the governmental body is going to release all of the requested information, there is no need to ask for a ruling. The governmental body can seek advice on any of these issues from the Attorney General's Open Government Hotline at (877) 673-6839 or (512) 478-6736.

³⁷ TEX. GOV'T CODE ANN. § 552.222(e) (West Supp.2011).

³⁸ *Id.* § 552.222(d).

³⁹ *Id.* § 552.222(f).

⁴⁰ *Id.* § 552.301(a).

⁴¹ See Tex. Att'y Gen. ORD-673 (2001) (what constitutes a "previous determination"); Tex. Att'y Gen. ORD-435 (1986) (school district cannot unilaterally decide that material fits within exception unless the school district has previously requested a determination involving the exact same material); *Houston Chronicle Publishing Co., v. Mattox*, 767 S.W.2d 695, 698 (Tex. 1989) (specifying that Attorney General is authorized to determine what constitutes "previous determination.").

⁴² TEX. GOV'T CODE ANN. § 552.301(b) (West Supp. 2011).

⁴³ Tex. Att'y Gen. ORD-542 (1990).

⁴⁴ TEX. GOV'T CODE ANN. § 552.302 (West Supp. 2011). See Tex Att'y Gen. ORD-319 (1982).

⁴⁵ Tex. Att'y Gen. ORD-150 (1977).

14. Can a governmental body request an Attorney General ruling when the governmental body has determined the requested information is not subject to one of the Act's exceptions?

The Attorney General has concluded a governmental body may not request an open records ruling from the Attorney General if the governmental body reasonably believes the requested information is not excepted from required disclosure. Instead, the governmental body must promptly produce the requested public information to the requestor.⁴⁶

15. Can a governmental body withhold information because of a previous determination?

The Public Information Act provides that a governmental body must request an Attorney General open records ruling if the governmental body wishes to withhold requested information unless there has been a previous determination about that particular information.⁴⁷ The Act does not define previous determination. However, the Attorney General has concluded there are two types of "previous determinations."⁴⁸

16. What must a governmental body do if it wants to request an Attorney General open records ruling?

If a governmental body wants to withhold a record, it has ten business days from the date it receives the request to ask for an open records ruling from the Attorney General. On the tenth business day, the governmental body must do the following:

- 1. Write the Attorney General requesting an open records ruling and state which exceptions apply to the requested information.**⁴⁹ The original request for a ruling must indicate the specific exception that the governmental body is relying on to withhold the information. If the governmental body fails to cite the applicable exceptions in this request, the governmental body generally will be barred from raising them in any additional briefing that it may provide.
- 2. Provide the requestor with a written statement that the governmental body wishes to withhold the information and that it has asked the Attorney General for a ruling.**⁵⁰
- 3. Provide the requestor with a copy of the governmental body's correspondence to the Attorney General.**⁵¹
- 4. Make a good faith attempt to notify any affected third parties of the request.**⁵²

The governmental body has an additional five business days (a total of 15 business days from the date the governmental body received the original request for the record) to provide the Attorney

⁴⁶ Tex. Att'y Gen. ORD-665 (2000).

⁴⁷ TEX. GOV'T CODE ANN. § 552.301(a) (West Supp. 2011).

⁴⁸ Tex. Att'y Gen. ORD-673 (2001).

⁴⁹ TEX. GOV'T CODE ANN. § 552.301(b) (West Supp 2011).

⁵⁰ *Id.* § 552.301(d)(1).

⁵¹ *Id.* § 552.301(d)(2).

⁵² *Id.* § 552.305(d) (West 2004).

General with additional written documentation that supports withholding the requested information.⁵³ By the 15th business day, the governmental body must:

1. **Submit written comments explaining how the claimed exceptions apply.**⁵⁴
2. **Submit a copy of the written request for information.**⁵⁵
3. **Submit a signed statement or evidence sufficient to establish the date the request for information was received.**⁵⁶ It is important to note that the ten business day deadline for requesting an Attorney General open records ruling is measured from the date the request is clarified or narrowed as long as the governmental body is acting in good faith in requesting a clarification or narrowing of an unclear or unduly broad request.⁵⁷ If the governmental body contends that the ten business day deadline started the date the request was clarified or narrowed, the governmental body must explain this fact in its request for an open records ruling. Also, the governmental body must explain if there were holidays, natural disasters, and any other days the governmental body was officially closed. In its explanation, the governmental body should include all dates relevant to the calculation of the ten business day deadline.
4. **Submit copies of documents requested or a representative sample of the documents.**⁵⁸ The documents must be labeled to show which exceptions apply to which parts of the documents.⁵⁹ Representative samples are not appropriate when each document sought to be withheld contains substantially different information or when third-party proprietary information is at issue.
5. **Provide the requestor with a copy of the written comments submitted to the Attorney General.**⁶⁰ The governmental body must provide a copy of its comments to the requestor not later than the 15th business day after the date the request for information was received. This does not mean that the governmental body has to send the requestor a copy of the information that they are trying to withhold. If the written comments disclose or contain the substance of the information requested, the copy provided to the requestor should be redacted. Governmental bodies are cautioned against redacting more than that which would reveal the requested information to the requestor.

The Attorney General may ask the governmental body for additional information.⁶¹ The governmental body must respond to an Attorney General's request of additional information within seven calendar days.⁶² If the governmental body fails to respond, the information is presumed to be open and must be released unless there is a compelling reason to withhold the information.⁶³

⁵³ *Id.* § 552.301(e) (West Supp. 2011).

⁵⁴ *Id.* § 552.301(e)(1)(A).

⁵⁵ *Id.* § 552.301(e)(1)(B).

⁵⁶ *Id.* § 552.301(e)(1)(C).

⁵⁷ *City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010).

⁵⁸ TEX. GOV'T CODE ANN. § 552.301(e)(1)(D) (West Supp. 2011).

⁵⁹ *Id.* § 552.301(e)(2).

⁶⁰ *Id.* § 552.301(e-1).

⁶¹ *Id.* § 552.303(c) (West 2004).

⁶² *Id.* § 552.303(d).

⁶³ *Id.* § 552.303(e).

17. How long does the Attorney General have to respond to a request for an open records ruling?

The Attorney General has 45 business days from the date the request for ruling was received from the governmental body.⁶⁴ However, if the Attorney General is unable to issue the decision within the 45 business-day period, the Attorney General may extend the time to respond for an additional ten business days. Such an extension may be taken if the Attorney General notifies the governmental body and the requestor of the reason for the delay. This notification must take place within the original 45 business-day time period.

18. Can a governmental body take longer than 15 business days to determine whether the requested information is confidential if the request is for an excessive amount of information?

There is no statutory provision that provides the governmental body with an extension of time to seek an open records ruling from the Attorney General's office. Even if the request is for an excessive amount of information, the governmental body must still meet the 15 business-day deadline for making an open record ruling request to the Attorney General. As noted earlier, this request must include the legal arguments that support withholding the information, a marked-up representative sample of the requested information (marked to show which exceptions apply to what portion of the sample documents), a copy of the open records request, and a signed statement or other evidence of when the governmental body received the request.⁶⁵

19. May a governmental body seek a reconsideration of an open records ruling that was issued by the Attorney General?

If the Attorney General or a court has already ruled that the exact information that is at issue in a particular request is open to the public, the governmental body must release the information and is prohibited from seeking a reconsideration of that issue from the Attorney General.⁶⁶ If the governmental body wants to challenge the ruling, the governmental body must file suit in Travis County district court within 30 calendar days of receiving the ruling.⁶⁷

Rights and Duties of the Governmental Body and of the Open Records Requestor

20. Is a governmental body required to post information regarding the Public Information Act?

A governmental body's public information officer is responsible for posting a sign which informs the public about its right to access public information.⁶⁸ The sign must be displayed in the governmental body's administrative offices. The Attorney General's Office is responsible for determining what specific information must be displayed on the sign. For more information, a governmental body may contact the Open Government Hotline at (512) 478-6736 or (877) 673-6839 or our website: www.texasattorneygeneral.gov.

⁶⁴ *Id.* § 552.306(a) (West Supp. 2011).

⁶⁵ *Id.* § 552.301(e).

⁶⁶ *Id.* § 552.301(f).

⁶⁷ *Id.* § 552.324(b).

⁶⁸ *Id.* § 552.205.

21. What inquiries can a governmental body make of an open records requestor?

Generally, there are only two permissible lines of inquiry that can be made of a requestor. First, the governmental body can ask a requestor for proper identification.⁶⁹ This inquiry for proper identification should be done if needed, but if the information can be given without any identification, then the inquiry is not necessary. State law does not indicate how such identification could be accomplished if the request is completely handled through the mail, email, or by fax.

This identification requirement is generally imposed by a governmental body when a state statute limits who may gain access to certain information. For example, certain statutes regulate who can gain access to information within motor vehicle records such as copies of driver's licenses.⁷⁰ These statutes contain specific rules on what inquiries can be made to determine if the requestor is eligible to receive the information. If an open records request involves such information, the governmental body should visit with its legal counsel regarding the applicable law.

Second, as discussed earlier in this article, a governmental body may ask the requestor for a clarification if the request is unclear or ask the requestor to narrow the scope of the request if the request is unduly broad.⁷¹ It should be noted that the governmental body cannot ask the requestor the purpose for which the information will be used.

22. Does the name and address of an open records requestor become public information?

In certain cases, an open records requestor can be required to provide identification, which may include his or her name or address.⁷² If the governmental body receives this information and it becomes part of a governmental record, there is no statutory provision that would except it from disclosure.

23. Can a requestor choose the format (paper, computer disc, etc.) in which the governmental body must provide requested information?

If the governmental body has the technological ability to produce the information in the requested format, it is usually required to do so.⁷³ For example, if a requestor wants a copy of information on a computer disc, he can ask that it be provided in that format. The governmental body cannot insist on providing the information in only a paper format if the governmental body has the ability to provide it in the requested format. However, the governmental body is not required to buy additional hardware or software to accommodate an open records request.

⁶⁹ *Id.* § 552.222(a).

⁷⁰ *Id.* § 552.222(c).

⁷¹ *Id.* § 552.222(b).

⁷² *Id.* § 552.222(a).

⁷³ *Id.* § 552.228.

24. Can an open records request require a governmental body to create a record if none exists?

An open records request generally does not require the governmental body to produce information which is not in existence.⁷⁴ The Act does not require a governmental body to prepare new information in response to a request.

25. Does a governmental body have to comply with standing requests for copies of records?

A governmental body has no duty to comply with standing requests for copies of records.⁷⁵ If a requestor seeks documents that are not in existence at the time of the request, the governmental body may notify the requestor of this fact and ask the requestor to resubmit the request at a later time when such a record may be available. Also, the governmental body has no duty to notify the requestor in the future that the information has come into existence.⁷⁶ However, some governmental bodies have chosen to accommodate standing requests for certain records. Whether to enter into such agreements is at the governmental body's discretion. Nonetheless, if such an arrangement is made, it should be available to any requestor on an equal basis.

26. Can an open records request require the governmental body to compile statistics, perform research, or provide answers to questions?

An open records request only requires a governmental body to provide copies of documents that relate to the information sought by the requestor. The Public Information Act does not require a governmental body to calculate statistics, to perform legal research, or to prepare answers to questions.⁷⁷

27. Does an open records request require a governmental body to locate information that is not organized or retrievable by the type of information that is requested?

Sometimes an open records request will ask for certain documents or information that is not organized or retrievable by the type of information that is requested. For example, a requestor could ask for a list of all of the out-of-state contractors that a governmental body had hired. However, it is unlikely that the governmental body would have its files or computer data organized by whether a contractor's business was located inside or outside of the state.

If the governmental body could provide this information by making a simple computer search or by some other basic task, it should make such an effort.⁷⁸ However, if providing the information would require extensive research or considerable manipulation of data, the governmental body has no duty to take such action. Instead, the governmental body may notify the requestor of the format in which the information is currently available. Additionally, the notice must include a cost estimate for providing the information in the format that meets the requestor's preferences.⁷⁹

⁷⁴ *Id.* § 552.002(a) (West 2004). *See also* Tex. Att'y Gen. ORD-342 (1982), ORD-452 (1986); *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismissed).

⁷⁵ Tex. Att'y Gen. ORD-465 (1987), ORD-476 (1987).

⁷⁶ Op. Tex. Att'y Gen. No. JM-48 (1983).

⁷⁷ Tex. Att'y Gen. ORD-555 at 1 (1990), ORD-563 at 8 (1990).

⁷⁸ *Id.* § 552.002(a) (West 2004). *See also* Tex. Att'y Gen. ORD-342 (1982), ORD-452 (1986); *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismissed).

⁷⁹ TEX. GOV'T CODE ANN. § 552.231 (West Supp. 2011).

In the preceding example, the governmental body could offer to make available all governmental documents that involve government contractors. The requestor could then review the records to determine which contractor businesses were located outside of the state.

28. Must a governmental body buy new software or equipment to accommodate a request for information in a certain format?

A governmental body has no duty to purchase new software or hardware to accommodate an open records request.⁸⁰ If the governmental body is unable with existing resources to provide the information in the requested format, the record should be provided in a paper format or in another medium that is acceptable to the requestor.⁸¹ In certain cases, a governmental body can provide the information in the requested format by manipulating the data within a computer system or by making a programming change that allows access to the information. If an open records request would require such manipulation of data or programming, the governmental body can notify the requestor of the applicable cost of putting the information together in that format and require the requestor to agree to pay the cost of production of the material.⁸²

29. Can requestors insist on the right to personally use the governmental body's equipment to access public information?

The Attorney General has concluded that a member of the public does not have the right to personally use a government computer terminal to search for public information.⁸³ Instead, the governmental body may require that searches of public information be conducted by government personnel who then provide the requestor with access to or copies of the requested items. Of course, a governmental body may adopt a policy to allow the public to use its computer terminals to access information, but the public cannot demand that such a policy be implemented.

30. Do requestors have a right to bring in their own copier to make copies of public records?

A requestor is allowed to bring his or her own copier to make copies of public records. However, a governmental body may refuse to allow the use of a requestor's portable copier if such activity would: (1) be unreasonably disruptive, (2) cause a safety hazard, (3) interfere with others' right to inspect and copy records, or (4) if the requested records contain confidential information that needs to be redacted.⁸⁴

31. Can requestors require the governmental body to copy information onto supplies provided by the requestor?

The Public Information Act specifically provides that a governmental body is not required to copy information onto material provided by an open records requestor. For example, a governmental body does not have to copy information onto paper or onto a computer disk that is

⁸⁰ *Id.* § 552.228(b)(2).

⁸¹ *Id.* § 552.228(c).

⁸² *Id.* § 552.231.

⁸³ Tex. Att'y Gen. ORD-571 (1990).

⁸⁴ Op. Tex. Att'y Gen. No. JM-757 (1987). *See also* Op. Tex. Att'y Gen. No. GA-400 (2006).

provided by the requestor. Instead, the governmental body may choose to use its own materials.⁸⁵

32. Does the governmental body have to release information that is also available commercially?

Generally, a governmental body is not required to allow access to or to make a copy of information from a commercial book or publication that is in the governmental body's possession. If the publication was purchased by the governmental body and it is still available commercially, the governmental body can alert requestors of this fact. However, a governmental body is under a duty to allow inspection of the commercial book or publication if portions of the publication are specifically made a part of, incorporated into, or referred to in a governmental body rule or policy.⁸⁶

33. Does a governmental body have to release information that is copyrighted?

If a request is made for documents that are copyrighted, the governmental body will have to provide access to those records, unless there is an applicable exception that would allow those records to be withheld. However, the governmental body is not required to make copies of copyrighted material for a requestor.⁸⁷ Instead, the governmental body should provide the requestor access to the information. The requestor bears the duty of compliance with federal copyright law.

34. Must a governmental body respond to repeated requests for the same information?

If a governmental body has previously provided copies of certain information, the governmental body has no duty to provide the same information to the requestor again.⁸⁸ Similarly, if a governmental body has previously made the information available and the requestor has not paid the costs associated with the prior request, the governmental body may respond to a second request for such documents by providing a special notice to the requestor.⁸⁹ The governmental body's public information officer or his or her agent must provide the requestor a letter which certifies that all or part of requested information was previously furnished to the requestor or was made available upon payment of costs.⁹⁰ The certification must include:

1. a description of the information that was previously furnished or made available;
2. the date the governmental body received the previous request;
3. the date the governmental body previously furnished or made available the information to the requestor;

⁸⁵ TEX. GOV'T CODE ANN. § 552.228(c) (West Supp. 2011). *See also* TEX. GOV'T CODE ANN. § 552.230 (West 2004) (governmental body may promulgate rules for efficient, safe, and speedy inspection and copying if not inconsistent with Public Information Act).

⁸⁶ *Id.* § 552.027.

⁸⁷ Op. Tex. Att'y Gen. No. JM-672 (1987), Tex. Att'y Gen. ORD-550 (1990).

⁸⁸ TEX. GOV'T CODE ANN. § 552.232(a) (West 2004).

⁸⁹ *Id.*

⁹⁰ *Id.* § 552.232(b).

4. a statement that no further additions, deletions, or corrections have been made to that information; and
5. the name, title, and signature of the public information officer or his or her agent who is making the certification.⁹¹

A governmental body may not charge the requestor for the preparation of the certification.⁹²

Of course, a governmental body may choose to provide the requested information.⁹³ It is important to note that a governmental body must furnish or make available upon payment of applicable charges any information that has not been previously supplied or made available to the requestor.⁹⁴

IV. Statutory Exceptions That Allow Information to Be Withheld

Information that is Presumed Public

35. Is there a list of items that are presumed to be public information?

The Public Information Act lists items that are presumed to be public information. Section 552.022(a) of the Government Code states “(w)ithout limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law.” For example, completed reports,⁹⁵ public court record information,⁹⁶ and settlement agreements to which a governmental body is a party⁹⁷ are just a few of the items that are considered public information.

36. Is a discretionary exception considered “other law” for the purpose of withholding public information?

Discretionary exceptions are designed to protect the interests of the governmental body and are not considered “other law” for purposes of section 552.022 of the Government Code. Public information can only be withheld if it is “made confidential under [the Public Information Act] or other law.”⁹⁸ However, sections 552.104 (Information Related to Competition or Bidding)⁹⁹ and 552.133 (Public Power Utility Competitive Matters) are two exceptions to this general rule.

37. Is there “other law” which may be relied upon to withhold information under section 552.022 of the Government Code?

The Texas Supreme Court has concluded the term “other law” as it is used in section 552.022 of the Government Code does include the Texas Rules of Civil Procedure and Texas Rules of

⁹¹ *Id.*

⁹² *Id.* § 552.232(c).

⁹³ *Id.* § 552.232(a)(1)-(2).

⁹⁴ *Id.* § 552.232(d).

⁹⁵ *Id.* § 552.022(a)(1) (West Supp. 2011).

⁹⁶ *Id.* § 552.022(a)(17).

⁹⁷ *Id.* § 552.022(a)(18).

⁹⁸ *Id.* § 552.022(a).

⁹⁹ *Id.* §§ 552.104(b) (West 2004), .133(c) (West Supp. 2011).

Evidence.¹⁰⁰ Accordingly, the attorney-client privilege and work-product doctrine could be considered “other law” for the purpose of withholding public information.¹⁰¹

General Issues Regarding Confidential Records

38. Is there a laundry list of items that are confidential under the Public Information Act and other state laws?

At this time, there does not appear to be an entity that publishes a single, comprehensive list of all the types of information that are confidential under state law. A governmental body should consult closely with its attorney and/or public information coordinator regarding records that state or federal law specifically require or allow to be withheld from the public.

39. Can staff promise confidentiality for certain records that are provided to the governmental body?

A promise of confidentiality from staff or a related promise within a governmental contract generally does not give the governmental body the right to withhold certain information from public disclosure. Such promises are only enforceable if a state statute specifically allows the governmental body to guarantee the confidentiality of the information.¹⁰²

40. Can a governmental body substitute a new document or produce a redacted copy of a record in response to an open records request?

The governmental body is required to make copies of the actual records that exist. If authorized by law, the city can cross through or otherwise redact the confidential information. However, a governmental body may not substitute a new document in which only the non-confidential information is presented, unless the requestor consents to the substitution.¹⁰³

Information about Public Officials/Employees

41. Can a governmental body disclose a public official or public employee's home address, home phone number, emergency contact information, Social Security number, or family information?

Public officials and public employees may request in writing that the governmental body not reveal his/her home address, home phone number, emergency contact information, Social Security number, or information about family members. In fact, governmental bodies are required to ask each employee whether they want such information to be treated as confidential. This inquiry to each employee must be made within fourteen days of the employee being hired, appointed, elected or ending service with the governmental body.¹⁰⁴ If the employee indicates in writing a preference for such confidentiality, the governmental body must refuse to release the personal information.¹⁰⁵

¹⁰⁰ *In re City of Georgetown*, 53 S.W.3d 328, 332 (Tex. 2001).

¹⁰¹ *Id.*

¹⁰² Op. Tex. Att’y Gen. Nos. H-258 (1974), JM-672 (1987); Tex. Att’y Gen. ORD-455 (1987).

¹⁰³ Tex. Att’y Gen. ORD-633 (1995), ORD-606 (1992).

¹⁰⁴ TEX. GOV’T CODE ANN. § 552.024(a)-(b) (West Supp. 2011).

¹⁰⁵ *Id.* §§ 552.024(c)(1), .117.

Although the governmental body is required to make this inquiry to employees at the time of his/her starting or leaving employment with the governmental body, the ultimate duty to make a written request for confidentiality rests with the employee. If the governmental body receives a request for this information and no confidentiality request has been filed by the employee, it is too late for the governmental body to ask the employee whether such confidentiality is preferred. In such a case, the governmental body would have to release the personal information to the requestor.¹⁰⁶

It is important to note that a peace officer is not required to file a written request to keep his/her personal information confidential. A peace officer's home address, home phone number, emergency contact information, Social Security number, and any information about family members are automatically confidential.¹⁰⁷ Additionally, the home address, home phone number, emergency contact information, Social Security number, and any information about family members relating to a peace officer killed in the line of duty will remain confidential after his or her death.¹⁰⁸

42. Can a governmental body withhold a public official or public employee's home address, home phone number, emergency contact information, Social Security number, or family information without requesting an Attorney General ruling?

A governmental body can withhold a public official or public employee's home address, home phone number, emergency contact information, Social Security number, or family information without requesting an Attorney General's ruling.¹⁰⁹ If a governmental body does withhold the public employee's information, the governmental body must provide the requestor, on a form prescribed by the Attorney General, with:

1. a description of the information withheld,
2. the citation to section 552.024 of the Government Code, and
3. instruction regarding how the requestor may seek an Attorney General's ruling regarding whether the withheld information is excepted from disclosure.¹¹⁰

The requestor has the ability to ask for an Attorney General's ruling regarding whether the withheld information is excepted from disclosure.¹¹¹ The Attorney General's office has established procedures and deadlines for receiving information necessary to decide the ruling and briefs from the requestor, the governmental body, and any other interested party.¹¹² Like any other request for an Attorney General's ruling, the Attorney General has 45 business days to render a ruling.

¹⁰⁶ *Id.* § 552.024(d).

¹⁰⁷ *Id.* §§ 552.117, .1175.

¹⁰⁸ *Id.* § 552.117(a)(4).

¹⁰⁹ *Id.* § 552.024(c)(2).

¹¹⁰ *Id.* § 552.024(c-2).

¹¹¹ *Id.* § 552.024(c-1).

¹¹² *See* 1 TEX. ADMIN. CODE §§ 63.11 – 63.16 (West 2012).

43. Can a governmental body withhold Social Security numbers without requesting an Attorney General ruling?

A governmental body can withhold the Social Security number of a living person from any information without requesting an Attorney General ruling.¹¹³ Governmental bodies must release the requestor's Social Security number to the requestor or an authorized representative of the requestor.

44. Are personal notes kept by an official subject to the Public Information Act?

Personal notes pertaining to official business that are made by an official are generally subject to the Act. A governmental body should consider the following factors if it receives a request for such information: (1) who prepared the notes; (2) who possesses or controls the document; (3) who has access to it; (4) the nature of its contents; (4) whether the document is used in conducting the business of the governmental body; and (5) whether public funds were expended in creating or maintaining the document.¹¹⁴

45. Are email addresses protected from disclosure under the Public Information Act?

A governmental body cannot release the email address of a member of the public that is provided for the purpose of communicating electronically with the governmental body.¹¹⁵ The member of the public can allow his/her email address to be disclosed if the member of the public affirmatively consents to its release. Under certain circumstances, some email addresses are not excepted by section 552.137 of the Government Code. These circumstances are when the governmental body is provided with the email address:

1. by a person who has a contractual relationship with the governmental body;
2. by a vendor who seeks a contract with the governmental body;
3. during the bidding process;
4. on a letterhead, coversheet, printed document or other document made available to the public; or
5. for the purpose of providing public comment on or receiving notices related to an application for a license as defined by section 2001.003(2) of the Government Code or receiving orders or decisions from a governmental body.¹¹⁶

¹¹³ TEX. GOV'T CODE ANN. § 552.147(b) (West Supp. 2011).

¹¹⁴ See, e.g., Tex. Att'y Gen. ORD-626 (1994) (handwritten notes taken during D.P.S. promotion board oral interviews are subject to Act), ORD-635 (1995) (public official's or employee's appointment calendar may be subject to Act).

¹¹⁵ TEX. GOV'T CODE ANN. § 552.137 (West Supp. 2011).

¹¹⁶ *Id.* § 552.137(c).

Agency Memoranda

46. What information is protected from disclosure under the exception for intra-agency and inter-agency memoranda or letters?

The Public Information Act allows a governmental body, in limited circumstances, to withhold certain information that is contained in an inter-agency or intra-agency memoranda or letter.¹¹⁷ This exception has been held to only apply to internal staff communications consisting of advice, recommendations, or opinions that reflect the policymaking process.¹¹⁸ This exception does not apply to purely factual information that could be severed from the opinion portions of the document. Additionally, this exception does not protect routine memoranda or letters on administrative and personnel matters, unless those matters involve policy issues of a broad scope.¹¹⁹ For example, the evaluation of an individual employee would probably not be protected from disclosure under this exception.¹²⁰ On the other hand, a university report addressing systematic discrimination against minorities has been found to be protected by this exception.¹²¹ It should be noted that information created by outside consultants acting on the governmental body's behalf may in certain cases be covered by this exception.¹²²

Personnel Information

47. What information within a public employee's personnel file is an open record?

The vast majority of information within a public employee's personnel file is considered an open record and accessible to the public. For example, information about a public employee's job performance, dismissal, demotion, promotion, resignation, and salary information is generally considered open.¹²³ Similarly, job-related test scores of public employees or applicants for public employment are generally treated as open records,¹²⁴ as are letters of recommendation, and opinions and recommendations concerning other routine personnel matters.¹²⁵ However, Attorney General rulings have required information about an employee's withholding on a federal tax form to be withheld, as well as information about an employee's beneficiary under governmental body life insurance programs.¹²⁶ A governmental body may refuse to reveal certain information under common law privacy through Section 552.101 of the Government Code. To make such a determination, the governmental body should consider:

1. whether the information contains highly intimate or embarrassing facts about the person; *and*

¹¹⁷ *Id.* § 552.111 (West 2004).

¹¹⁸ Tex. Att'y Gen. ORD-615 (1993). *See also* Tex. Att'y Gen. ORD-631 (1995) (report addressing systematic discrimination against minorities and the educational mission of the university in question was not open to public).

¹¹⁹ Tex. Att'y Gen. ORD-631 (1995).

¹²⁰ Tex. Att'y Gen. ORD-615 (1993).

¹²¹ Tex. Att'y Gen. ORD-631 (1995).

¹²² *Id.*

¹²³ TEX. GOV'T CODE ANN. § 552.022(a)(2) (West Supp. 2011). *See also* Tex. Att'y Gen. ORD-405 (1983), ORD-444 (1986).

¹²⁴ Tex. Att'y Gen. ORD-441 (1986).

¹²⁵ Tex. Att'y Gen. ORD-615 (1993).

¹²⁶ Tex. Atty Gen. ORD-600 (1992).

2. whether there is any legitimate public interest in the release of or access to this information.¹²⁷

Under the above two-part test, a court has held that a governmental body did not have to release the names and statements of victims and witnesses alleging sexual harassment.¹²⁸ The court found that the information at issue was intimate or embarrassing and that the public had no legitimate interest in the release of that information.

48. Can a governmental body disclose the dates of birth of public employees?

The dates of birth of public employees are excepted from disclosure under Section 552.102(a).¹²⁹ Only those public employee's birth dates that are contained in records maintained by the governmental body in a personnel context are protected. Also, it applies to former as well as current public employees.¹³⁰ However, it does not apply to applicants for employment,¹³¹ nor to private employees or private individuals.

49. Do employees have a special right of access to information contained in their own personnel file?

Most information within an employee's personnel file can be accessed by the involved employee or the employee's designated representative.¹³² However, it is possible for the governmental body to withhold the employee's personnel information from the employee under some other exception. For example, the governmental body may be able to refuse to release information to an employee from his/her personnel file if the information relates to issues that are currently under civil or criminal litigation.¹³³

Law Enforcement Information

50. What information within the records of a law enforcement entity may be withheld?

Section 552.108 of the Government Code contains what is generally referred to as the "law enforcement exception." This exception allows the governmental body to withhold four types of information:

1. **Information If Released Would Affect Investigation or Prosecution:**
Information that is held by a law enforcement agency or prosecutor that, if

¹²⁷ See *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977); *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex.App.-Austin 1983, writ ref'd n.r.e.).

¹²⁸ See *Morales v. Ellen*, 840 S.W.2d 519 (Tex.App.-El Paso 1992, no writ).

¹²⁹ See *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010).

¹³⁰ Op. Tex. Att'y Gen. No. JM-229 at 2 (1984).

¹³¹ Tex. Att'y Gen. ORD-455 at 8 (1987).

¹³² TEX. GOV'T CODE ANN. § 552.023(a) (West 2004). See Tex. Att'y Gen. ORD-288 (1981).

¹³³ Tex. Att'y Gen. ORD-288 (1981). (The Attorney General generally does not allow a governmental body to withhold information pursuant to the litigation exception if the opposing party has had previous access to the information. Thus, if a governmental body is engaged in litigation with its own employee, the litigation exception generally would not protect any information in the employee's personnel file to which the employee had previously had access.).

disclosed, would interfere with the law enforcement agency or prosecutor's ability to detect, investigate or prosecute a crime;

2. **Information About Certain Prosecutions:** Information that deals with the prosecution of crimes that did not result in a conviction or a deferred adjudication;
3. **Threats Against Peace Officers:** Information that deals with threats against peace officers collected or disseminated under section 411.048 of the Government Code; or
4. **Attorney Work-Product:** Information that the attorney of the governmental body prepared for use in criminal litigation or information reflecting the mental impressions or legal reasoning of the attorney regarding such litigation.¹³⁴

It is important to note that the law enforcement exception does not except from disclosure basic information about an arrested person or basic information within a criminal citation or police offense report.¹³⁵ Information that has been held to be open includes:

1. The name, age, address, race, sex, occupation, alias, Social Security number, police department identification number, and physical condition of an arrested person
2. The date and time of the arrest
3. The place of the arrest
4. The offense charged and the court in which it is filed
5. The details of the arrest
6. Booking information
7. The notation of any release or transfer
8. The location of the crime
9. The identification and description of the complainant
10. The premises involved
11. The time of occurrence of the crime
12. The property involved, if any
13. The vehicle involved, if any
14. A description of the weather
15. A detailed description of the offense, and
16. The names of the arresting and investigating officers¹³⁶

Section 552.108 only applies to criminal investigations and prosecutions. Where no criminal investigation or prosecution results from an investigation of a police officer for alleged misconduct, section 552.108 is inapplicable.¹³⁷

¹³⁴ TEX. GOV'T CODE ANN. § 552.108(a) (West Supp. 2011).

¹³⁵ *Id.* § 552.108(c). *See also* Tex. Att'y Gen. ORD-127 (1976).

¹³⁶ Tex. Att'y Gen. ORD-127 at 4-5 (1976).

It is also important to note that the law enforcement exception may apply to departments other than the police department if those departments are, by law, charged with the detection, investigation, or prosecution of crime. For example, the Attorney General has determined that the arson investigation unit of a fire department may cite the law enforcement exception to protect some of its records.¹³⁸

51. Can motor vehicle accident report information be disclosed under the Public Information Act?

The disclosure of motor vehicle accident reports, also known as ST-3, CRB-3 or CR-3 forms, are governed by the Transportation Code.¹³⁹ In order to obtain a copy of a motor vehicle accident report, the requestor must: (1) make the request in writing, (2) pay any required fee, and (3) provide the governmental body with two or more of the following pieces of information:

1. the date of the accident;
2. the specific address or the highway or street where the accident occurred; or
3. the name of any person involved in the accident.¹⁴⁰

Purchasing / Public Works Information

52. What information must be disclosed if there is an open records request regarding a competitive bid?

Section 552.104 of the Government Code allows governmental bodies to withhold information that is submitted for competitive bids if its disclosure would give advantage to a competitor or bidder.¹⁴¹ This exception does not apply if there is only one entity that is bidding on the project.¹⁴² Additionally, this exception does not apply to bid information after the bidding is completed and the contract has been awarded.¹⁴³

However, section 552.104(b) allows a governmental body to withhold information under section 552.104(a) even if the information falls within one of the categories of information listed in section 552.022(a).¹⁴⁴ It is also possible that certain information that is not protected under the bidding exception may still be withheld if it meets the test for trade secrets or is confidential under other statutory or common law provisions.¹⁴⁵ This exception can be used only by governmental bodies, not third parties.¹⁴⁶

¹³⁷ *Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App. – El Paso 1992, writ denied) (Gov't Code § 552.108 not applicable where no criminal investigation or prosecution of police officer resulted from investigation of allegation of sexual harassment); Tex. Att'y Gen. ORD-350 (1982) (predecessor provision of Gov't Code § 552.108 not applicable to IAD investigation file when no criminal charge against officer results from investigation of complaint against police officer).

¹³⁸ Tex. Att'y Gen. ORD-127 (1976).

¹³⁹ TEX. TRANSP. CODE ANN. § 550.065 (West Supp. 2011).

¹⁴⁰ *Id.* § 550.065(c)(4).

¹⁴¹ TEX. GOV'T CODE ANN. § 552.104 (West 2004).

¹⁴² Tex. Att'y Gen. ORD-331 (1982).

¹⁴³ Tex. Att'y Gen. ORD-541 (1990).

¹⁴⁴ TEX. GOV'T CODE ANN. § 552.104(b) (West 2004).

¹⁴⁵ Tex. Att'y Gen. ORD-319 (1982).

¹⁴⁶ Tex. Att'y Gen. ORD-592 (1991).

53. What information may be withheld regarding the acquisition of real estate or personal property by a governmental body?

Section 552.105 of the Government Code provides governmental bodies with limited authority to withhold information that relates to the governmental body's acquisition of real estate or personal property.¹⁴⁷ The authority to withhold this information generally ends once the governmental body acquires the involved property.¹⁴⁸ This exception also has equal application to information pertaining to a lease of real or personal property.¹⁴⁹ Similarly, the information about the lease is considered an open record once the governmental body enters into the lease agreement. It should be noted that if the information falls under section 552.022, the governmental body cannot withhold it under this exception.

54. What information is protected under the exception for trade secrets or the exception for commercial or financial information that would give an advantage to competitors?

Section 552.110 of the Government Code provides that certain information within bids and other documents may be protected under the exception for trade secrets¹⁵⁰ or the exception for commercial or financial information that would give an advantage to competitors.¹⁵¹

A "trade secret" that is privileged or confidential by court order or by statute must be withheld.¹⁵² In determining whether particular information constitutes a trade secret, the Attorney General's office considers the Restatement of Torts' definition of trade secret which includes a list of six trade secret factors.¹⁵³ These factors are:

1. the extent to which the information is known outside of [the company's] business;
2. the extent to which it is known by employees and other involved in [the company's business];
3. the extent of measures taken by [the company] to guard the secrecy of the information;
4. the value of the information to [the company] and to [its] competitors;
5. the amount of effort or money expended by [the company] in developing the information; [and]
6. the ease or difficulty with which the information could be properly acquired or duplicated by others.

Alternatively, there are varying standards that determine whether information is protected under the exception for commercial or financial information. The information is confidential if its release is likely to cause substantial harm to the competitive position of the entity that provided

¹⁴⁷ TEX. GOV'T CODE ANN. § 552.105 (West 2004).

¹⁴⁸ Tex. Att'y Gen. ORD-222 (1979).

¹⁴⁹ Tex. Att'y Gen. ORD-348 (1982).

¹⁵⁰ TEX. GOV'T CODE ANN. § 552.110(a) (West 2004).

¹⁵¹ *Id.* § 552.110(b).

¹⁵² *Id.* § 552.110(a).

¹⁵³ Restatement of Torts § 757 cmt. b (1939). *See Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), *cert. denied*, 358 U.S. 898 (1958).

the information. To qualify under this exception, it must be shown with specific factual evidence that disclosure of the commercial or financial information would cause substantial competitive harm to the person or business that supplied the information to the governmental body.¹⁵⁴ The substantial injury or harm must be more than speculative; it must be likely to occur if disclosure is made.¹⁵⁵

Information submitted to a governmental body is not automatically protected from disclosure just because the company submitting that information claims the information is a trade secret or is “proprietary.” The Office of the Attorney General cannot conclude that section 552.110(a) applies unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim.¹⁵⁶

Economic Development Information

55. What information is protected under the exception for economic development negotiations?

Section 552.131 of the Government Code allows governmental bodies to withhold certain information related to economic development negotiations between a governmental entity and a business that the governmental body is seeking to have locate, stay or expand within or near the territory of the governmental body. Under this provision, the governmental body could withhold trade secrets of the business prospect that were related to economic development negotiations.¹⁵⁷ Similarly, governmental bodies may withhold certain commercial and financial information about the business prospect that was acquired during economic development negotiations if release of the information would result in substantial competitive harm to the business prospect.¹⁵⁸ The test for which this information may be withheld under this section is the same as the test for trade secrets under section 552.110 of the Government Code.

Additionally, until an agreement is made with the business prospect, the governmental body may withhold information about a financial or other incentive being offered to the business prospect by the governmental body or another person.¹⁵⁹ Any information about a financial or other incentive that is withheld under this provision would have to be released after an agreement is executed with the business prospect.¹⁶⁰

Lawsuit or Other Legal Information

56. What type of information is excepted from disclosure under the attorney/client privilege?

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has

¹⁵⁴ TEX. GOV'T CODE ANN. § 552.110(b) (West 2004). *See National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

¹⁵⁵ Tex. Att'y Gen. ORD-639 (1996).

¹⁵⁶ *See* Tex. Att'y Gen. ORD-402 (1983).

¹⁵⁷ TEX. GOV'T CODE ANN. § 552.131(a)(1) (West 2004).

¹⁵⁸ *Id.* § 552.131(a)(2).

¹⁵⁹ *Id.* § 552.131(b).

¹⁶⁰ *Id.* § 552.131(c).

the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue.¹⁶¹ The elements are as follows:

1. A governmental body must demonstrate that the information constitutes or documents a communication.¹⁶²
2. The communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body.¹⁶³ The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body.¹⁶⁴ Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element.
3. The privilege applies only to communications between or among clients, client representatives, lawyers and lawyer representatives.¹⁶⁵ Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made.
4. The attorney-client privilege applies only to a confidential communication,¹⁶⁶ meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication."¹⁶⁷

Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated.¹⁶⁸ Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body.¹⁶⁹

57. When can a governmental body refuse to release information that relates to pending or anticipated litigation?

Under Section 552.103 of the Government Code, a governmental body can withhold information about pending or reasonably anticipated civil or criminal litigation. The litigation must be pending or reasonably anticipated as of the date the open records request is received by the

¹⁶¹ Tex. Att'y Gen. ORD-676 at 6-11 (2002).

¹⁶² *Id.* at 7.

¹⁶³ *Id.* See TEX. R. EVID. 503(b)(1).

¹⁶⁴ Tex. Att'y Gen. ORD-676 at 7 (2002). See *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App. – Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney).

¹⁶⁵ Tex. Att'y Gen. ORD-676 at 8 (2002). See TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E).

¹⁶⁶ Tex. Att'y Gen. ORD-676 at 10 (2002). See TEX. R. EVID 503(b)(1).

¹⁶⁷ Tex. Att'y Gen. ORD-676 at 10 (2002). See TEX. R. EVID 503(a)(5).

¹⁶⁸ Tex. Att'y Gen. ORD-676 at 10 (2002). See *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.---Waco 1997, no writ).

¹⁶⁹ See *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

governmental body.¹⁷⁰ The governmental body, its officials, or its staff must be a party to such litigation.¹⁷¹

Whether litigation is reasonably anticipated is a question that involves both factual and legal issues.¹⁷² There must be concrete evidence that litigation is likely. It must be more than mere conjecture. The governmental body must identify the issues that are involved in the litigation and explain how the information to be withheld relates to those issues. The governmental body should provide a copy of the relevant pleadings if the case has been filed.

Information that falls under the litigation exception generally can be withheld until the litigation has concluded or is no longer anticipated.¹⁷³ Criminal litigation is considered concluded once the statute of limitations has expired or when the defendant has exhausted all appellate and post-conviction remedies in state and federal court.¹⁷⁴ State law does not specifically define when civil litigation is considered to be concluded. Generally, civil litigation is considered to be concluded when all right of appeal has been exhausted and/or a final judgment has been entered. However, generally if the parties to civil litigation have inspected the records under discovery or through other means, the litigation exception would no longer apply.

V. Ability to Recover Costs for Providing Copies of Open Records

58. What is the general ability of a governmental body to charge for documents?

The Public Information Act allows governmental bodies to set a charge for providing copies of public information.¹⁷⁵ However, a governmental body may not charge more than 25% above the charges set by the Attorney General's Office.¹⁷⁶ The Attorney General's Office has set a charge of 10 cents per page for making simple photocopies or printouts. If a governmental body's actual cost for producing copies of open records exceeds the Attorney General's Office charges by more than 25%, the governmental body may apply to the Attorney General's Office for permission to charge more.¹⁷⁷ In no case may the charge by the governmental body exceed the actual cost of producing the requested copies.¹⁷⁸

59. When can a governmental body recover labor charges for an open records request?

Labor to Produce Paper Copies: A governmental body may recover labor charges to handle an open records request for paper copies in three circumstances:

1. if the responsive records will result in over 50 pages of paper copies;

¹⁷⁰ TEX. GOV'T CODE ANN. § 552.103(c) (West 2004).

¹⁷¹ *Id.* § 552.103(a).

¹⁷² *See University of Texas Law School v. Texas Legal Foundation*, 958 S.W.2d 479 (Tex. App. – Austin 1997, no pet.).

¹⁷³ Tex. Att'y Gen. ORD-647 (1996).

¹⁷⁴ TEX. GOV'T CODE ANN. § 552.103(b) (West 2004).

¹⁷⁵ *Id.* § 552.262 (West Supp. 2011). *See generally, id.* §§ 552.261-.272 (West 2004 & Supp. 2011).

¹⁷⁶ *See generally* 1 TEX. ADMIN. CODE §§ 70.1-.12 (West 2012) (cost rules promulgated by the Attorney General's office).

¹⁷⁷ TEX. GOV'T CODE ANN. § 552.262(c) (West Supp. 2011).

¹⁷⁸ *Id.* § 552.262(a).

2. if the records to be copied are located in more than two separate buildings or in a remote storage facility;¹⁷⁹ or
3. if the governmental body provides access to paper documents that meet certain specifications.¹⁸⁰

Presently, the Attorney General's office allows a maximum labor charge of \$15 per hour.¹⁸¹ If the governmental body assesses a charge for labor, the requestor may require the governmental body to provide a statement of the amount of time that was needed to prepare the requested copies. This statement must be signed by the officer for public information or the agent of that officer with the signer's name clearly typed below the signature. The governmental body is not permitted to charge for providing this statement.¹⁸²

Labor to Produce Copies from Electronic or Microfilm Records: Charges for copies of records that are stored electronically or on microfilm may include reasonable costs of materials, labor, and overhead if it results in more than 50 pages.¹⁸³

If the governmental body assesses a charge for labor, the requestor may require the governmental body to provide a statement of the amount of time that was needed to prepare the requested copies. This statement must be signed by the officer for public information or the agent of that officer with the signer's name clearly typed below the signature. The governmental body is not permitted to charge for providing this statement.¹⁸⁴

A governmental body can recover labor charges for providing access to electronic records if providing such access requires programming or manipulation of data.¹⁸⁵ In such a case, the governmental body must provide a special written notice to the requestor as provided under the Public Information Act.¹⁸⁶ Additionally, the governmental body must obey the rules of the Attorney General's office in determining how much to charge for the labor.¹⁸⁷

60. Can a governmental body charge for the labor cost to retrieve materials from remote locations?

A governmental body may charge for the labor cost of retrieving records that are located in two or more separate buildings that are not connected to each other or that are located in a remote storage facility.¹⁸⁸ Buildings are considered to be "separate" if they are not connected by a covered or open sidewalk, or by an elevated or underground walkway.¹⁸⁹ The charge for labor can be recovered in such a situation even if the requestor seeks fewer than 50 pages of copies.¹⁹⁰

¹⁷⁹ *Id.* § 552.261(a) (West 2004).

¹⁸⁰ *Id.* § 552.271(b)-(d).

¹⁸¹ 1 TEX. ADMIN. CODE § 70.3(d)(1) (West 2012).

¹⁸² TEX. GOV'T CODE ANN. § 552.261(b) (West 2004).

¹⁸³ *Id.* § 552.261(a).

¹⁸⁴ *Id.* § 552.261(b).

¹⁸⁵ *Id.* § 552.231 (West Supp. 2011).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* § 552.262(b). *See generally* 1 TEX. ADMIN. CODE §§ 70.1-.12 (West 2012) (cost rules promulgated by the Attorney General's office).

¹⁸⁸ TEX. GOV'T CODE ANN. § 552.261(a)(1)-(2) (West 2004).

¹⁸⁹ *Id.* § 552.261(c).

¹⁹⁰ *Id.* § 552.261(a).

61. When and how much can a governmental body charge for overhead when handling an open records request?

A governmental body may impose a charge for overhead whenever a personnel (labor) charge is applicable to an open records request. Any overhead charge cannot exceed 20% of the personnel charge.¹⁹¹

62. Can a governmental body recover costs for any modifications to its computer program that are necessary to respond to an open records request?

A governmental body may charge a requestor for the cost of any programming or manipulation of data that is necessary to answer an open records request.¹⁹² Presently, the Attorney General's office allows a maximum programming charge of \$28.50 per hour.¹⁹³ Unlike most other charges for public information, this charge may be imposed even if the requestor only wants access to the requested information and does not request any copies.¹⁹⁴ However, before a governmental body may impose such a charge, it must provide the requestor with certain written information in advance, including a statement of the estimated charges.¹⁹⁵

63. Can a governmental body require a requestor to pay the costs for producing the records prior to the governmental body mailing out the requested information?

If a requestor asks the governmental body to mail the information, the governmental body can send the information by first class mail and can require that the requestor pay in advance for postage, along with other permitted charges related to producing the information.¹⁹⁶ A governmental body is not required to provide public information by mail until the requestor pays all applicable charges.

64. What duty does a governmental body have to inform a requestor of the estimated charges for copies of or access to public information?

A governmental body is required to provide detailed information to the requestor if the charges for an open records request are likely to exceed \$40.¹⁹⁷ The governmental body must provide the requestor with a written statement that contains:

1. an itemized estimate of the expected cost;¹⁹⁸
2. inform the requestor about contacting the governmental body about an alternative method for supplying the requested records if an alternative method exists and it would be less costly;¹⁹⁹

¹⁹¹ 1 TEX. ADMIN. CODE § 70.3(e)(3) (West 2012).

¹⁹² TEX. GOV'T CODE ANN. § 552.231 (West Supp. 2011).

¹⁹³ 1 TEX. ADMIN. CODE § 70.3(c)(1) (West 2012).

¹⁹⁴ TEX. GOV'T CODE ANN. § 552.272(a) (West 2004).

¹⁹⁵ *Id.* See also *id.* § 552.231 (West Supp. 2011).

¹⁹⁶ *Id.* § 552.221(b)(2) (West 2004).

¹⁹⁷ *Id.* § 552.2615 (West Supp. 2011).

¹⁹⁸ *Id.* § 552.2615(a).

¹⁹⁹ *Id.*

3. inform the requestor that he or she has ten business days to provide the governmental body with a written response stating whether: 1) the charges are accepted, 2) the request is modified, or 3) a complaint has been lodged with the Attorney General's office alleging overcharges for providing the copies;²⁰⁰ and
4. notify the requestor that failure to respond to the statement within ten business days results in the automatic withdrawal of the open records request.²⁰¹

If the governmental body finds that the costs will exceed more than 20% of the original estimate, the governmental body must provide the requestor with an updated itemized statement.²⁰² The requestor again has ten business days to provide the governmental body with a written response to the updated statement, or the request will be considered to be withdrawn.

If the actual charges are more than \$40, a governmental body may only charge the amount estimated in the latest itemized statement that was provided to the requestor.²⁰³ However, if the governmental body did not provide the requestor with an updated itemized statement, the governmental body is limited to charging no more than 20% more than the amount of the original itemized statement.²⁰⁴

65. Can a governmental body require a monetary deposit or bond in order to comply with an open records request?

A governmental body can require a deposit or bond to comply with an open records request if the governmental body provides the requestor with an appropriate estimated itemized statement. If such a statement is provided, a governmental body that has 16 or more full-time employees may require a deposit or bond if the estimated charge for producing copies of the requested records exceeds \$100. A governmental body with fewer than 16 full-time employees may require a deposit if the estimated charges for producing copies of information are more than \$50.²⁰⁵ If the requestor does not make a deposit by the 10th business day after the date the deposit is required, then the open records request is considered withdrawn.²⁰⁶

66. Can a governmental body reduce or waive the cost for making copies of public information?

A governmental body shall reduce or waive the normal charge for copies of public information if providing the copies would benefit the public. The governmental body may waive a charge for such copies if the cost of collecting the fee would exceed the amount of the charge.²⁰⁷

²⁰⁰ *Id.* § 552.2615(a)-(b).

²⁰¹ *Id.* § 552.2615(a)(2), (b).

²⁰² *Id.* § 552.2615(c).

²⁰³ *Id.* § 552.2615(d)(1).

²⁰⁴ *Id.* § 552.2615(d)(2).

²⁰⁵ *Id.* § 552.263(a).

²⁰⁶ *Id.* § 552.263(f).

²⁰⁷ *Id.* § 552.267 (West 2004).

VI. Enforcement of the Public Information Act

67. Is a requestor allowed to sue a governmental body for failure to comply with the Public Information Act?

A requestor is allowed to bring certain actions against a governmental body for violations of the Public Information Act. The requestor may file a complaint against a governmental body with the local county or district attorney.²⁰⁸ The complaint must meet the following requirements:

1. be in writing and signed by the complainant;
2. state the name of the governmental body that allegedly committed the violation, as accurately as can be done by the complainant;
3. state the time and place of the alleged commission of the violation, as definitely as can be done by the complainant; and
4. describe the violation, in general terms.²⁰⁹

Before the 31st day after receiving the complaint, the local prosecuting attorney must determine if a violation has been committed, decide whether to take action against the governmental body, and notify the person who filed the complaint of that decision.²¹⁰

If the local prosecutor declines to proceed with an action against a governmental body, the complainant can file a complaint with the Attorney General before the 31st day after the date the complaint is returned to the complainant by the local prosecuting attorney.²¹¹ The Attorney General also must determine if a violation has been committed, decide whether to take action against the governmental body, and notify the person who filed the complaint of that decision. The Attorney General Office must notify the complainant of its determination before the 31st day after receiving the complaint.²¹²

If either the local prosecuting attorney or the Attorney General decides to bring a lawsuit against a governmental body, the governmental body must be notified prior to the filing of the lawsuit.²¹³ The governmental body has three days to remedy the problem.

68. What civil remedies can be brought against a governmental body for failure to comply with the Public Information Act?

If a governmental body refuses to release public information or refuses to request an Attorney General ruling, either the requestor or the Attorney General may bring a lawsuit to force the release of the records in question.²¹⁴ Even if the Attorney General has determined that the governmental body may withhold the requested information, the requestor may still file a lawsuit against the governmental body to seek disclosure of the requested information.²¹⁵ Under certain

²⁰⁸ *Id.* § 552.3215(e).

²⁰⁹ *Id.*

²¹⁰ *Id.* § 552.3215(g).

²¹¹ *Id.* § 552.3215(i).

²¹² *Id.*

²¹³ *Id.* § 552.3215(j).

²¹⁴ *Id.* § 552.321.

²¹⁵ *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App. – Austin 1992, no writ).

circumstances, a third party may file litigation to prevent the release of records that implicate that person's privacy or proprietary interests.²¹⁶

In a lawsuit brought to compel the release of public information, a requestor or the Attorney General is entitled to an award of attorney fees and costs if they prevail in their suit.²¹⁷ In a lawsuit by a governmental body seeking relief from compliance with an Attorney General ruling, a court may order the losing side to pay litigation costs and attorneys' fees, but is not required to.

Additionally, a requestor who feels he or she has been overcharged for copies of public information may file a complaint with the Attorney General's office.²¹⁸ The Attorney General's office may require the governmental body to pay the requestor the amount of any overcharge. If the Attorney General's office finds that the overcharge was due to bad faith on the part of the governmental body, the requestor who is overcharged may recover up to three times the amount of the overcharge from the governmental body.²¹⁹

69. What are the criminal penalties for noncompliance with the Public Information Act?

There are three provisions of the Public Information Act that have criminal penalties if violated:

Failure to Give Access to Public Information. A person responsible for releasing public information commits a crime if he or she fails to give access to or fails to permit copying of public information as required by the Public Information Act. This violation is a misdemeanor punishable by a fine of up to \$1,000, a six-month jail term, or both. Also, the Public Information Act states that this violation constitutes official misconduct.²²⁰ Thus, a public official may be subject to removal from office for such an offense.

Release of Confidential Information. A person commits a crime if he or she distributes information considered confidential under the Public Information Act. This violation is a misdemeanor punishable by a fine of up to \$1,000, a six-month jail term, or both. This violation also constitutes official misconduct.²²¹

Illegal Destruction or Alteration of Public Information. A person commits a crime if that person willfully destroys, mutilates, or alters public information or removes such information without permission. This offense is a misdemeanor and is punishable by a fine between \$25 and \$4,000, three days to three months of jail time, or both.²²²

It is important to note that there are provisions of Texas law outside of the Public Information Act that criminalize tampering with a governmental record which may constitute a felony.²²³

²¹⁶ See, e.g., *Morales v. Ellen*, 840 S.W. 2d 519 (Tex. App. – El Paso 1992, writ denied). See also TEX. GOV'T CODE ANN. § 552.325 (West Supp. 2011).

²¹⁷ TEX. GOV'T CODE ANN. § 552.323 (West Supp. 2011).

²¹⁸ *Id.* § 552.269.

²¹⁹ *Id.* § 552.269(b).

²²⁰ *Id.* § 552.353.

²²¹ *Id.* § 552.352 (West 2004).

²²² *Id.* § 552.351.

²²³ See, e.g., TEX. PEN. CODE ANN. § 37.10 (West 2011).

VII. Additional Information on the Public Information Act

70. Are all elected or appointed governmental officials required to take training about the Act?

Elected and appointed officials must have a minimum of one hour but no more than two hours of training.²²⁴ Newly elected or appointed officials have 90 days to complete the required training. If the governmental body has designated a public information coordinator, then the officials can opt out of taking the training provided that they designate their public information coordinator to receive the training in their place. The public information coordinator must be the person who is primarily responsible for the processing of open records requests for the governmental body. The official or public information coordinator should receive a certificate of completion. The governmental body shall maintain the certificates and make them available for public inspection.

71. Where can a governmental body get more information about the Public Information Act?

The Office of the Attorney General produces the *Public Information Handbook*, an in-depth publication about the Act and its interpretation through Attorney General rulings and court cases. That publication may be ordered by calling (512) 475-4413 or (800) 252-8011. This article and the *Public Information Handbook* can also be found on the Attorney General's website at www.texasattorneygeneral.gov.

Finally, the Open Records Division of the Attorney General's Office sponsors an Open Records Hotline where public officials and concerned citizens can get answers to basic questions about the Public Information Act and an Open Records Cost Hotline where staff can answer questions about charges relating to the Public Information Act. The phone number for the Open Government Hotline is (512) 478-6736 or (877) 673-6839 and for the Open Government Cost Hotline is (512) 475-2497 or (888) 672-6787.

²²⁴ TEX. GOV'T CODE ANN. § 552.012 (West Supp. 2011).