TEXAS PUBLIC INFORMATION ACT

LAWS MADE EASY

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Texas Public Information Act Made Easy

This “made easy” publication provides answers in easy-to-understand language to the most frequently asked questions regarding the Public Information Act (“PIA” or “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 Act. For example, this 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 a PIA request; and when a governmental body is required to ask for an attorney general open records letter ruling.

The stakes are high for public officials who handle PIA 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.

TML is available to answer questions regarding the Act from city officials, who should nonetheless consult with their local legal counsel regarding the application of the law to the facts of each particular situation. Additionally, government entities, and their elected officials and employees, and members of the public, can seek advice on the PIA from the Attorney General’s Open Government Hotline at (877) 673-6839 or (512) 478-6736, or by visiting its website.

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 written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

1) by a governmental body;
2) for a governmental body and the governmental body:
    a. Owns the information;
    b. Has a right of access to the information; or
    c. Spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.[1]

Also, information is considered to be "in connection with the transaction of official business" if: (1) the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body; and (2) the information pertains to official business of the governmental body.[2] Additionally, any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business is public information.[3]

The Act applies to records regardless of their format. It includes information that is maintained in: paper; film; a magnetic, optical, solid state, or other device that can store an electronic signal; tape; Mylar; any physical material on which information may be recorded, including linen, silk, and vellum, as well as other mediums specified under law.[4] The general forms in which the media containing public information exist include a book, paper, letter, document, e-mail, Internet posting, text message, instant message, other electronic communication, printout, photograph, film, tape, microfiche, microfilm,

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1 Tex. Gov't Code § 552.002(a).
2 *Id*. § 552.002(a-1).
3 *Id*. § 552.002(a-2).
4 *Id*. § 552.002(b).

photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory.[5]

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

The Act applies to a "governmental body."[6] 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) A city governing body;

3) A deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a city or county;

4) A county commissioners court;

5) A school district board of trustees;

6) A local workforce development board;

7) The governing board of a special district;

8) Nonprofit corporations that are eligible to receive funds under the federal community services block grant program and that are authorized by the state to serve a geographic area of the state;

9) A confinement facility operated under a contract with any division of the Texas Department of Criminal Justice;

10) A civil commitment housing facility owned, leased, or operated by a vendor under contract with the Texas Civil Commitment Office;

11) Entities that receive public funds in the current or preceding state fiscal year to manage the daily operations or restoration of the Alamo, or an entity that oversees such an entity;

12) 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; and

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5 *Id*. § 552.002(c).

6 *Id*. § 552.003(1)(A). Although the term "governmental body" is defined by the Act, for purposes of this handbook the phrase "governmental body" is used interchangeably with the words "city", "town" or "village".

13) Certain property owners' associations.[7]

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.[8] 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 there certain entities that are excluded from the definition of "governmental body" under the Act?

There are two entities that are excluded from the definition of governmental body under the Act. The first entity is the judiciary.[9] (See Question 6 for more detail.) The second is an economic development entity whose mission or purpose is to develop and promote the economic growth of a state agency or political subdivision with which the entity contracts if:

- the entity does not receive $1 million or more in public funds from a single state agency or political subdivision in the current of preceding state fiscal year; or
- the entity does not have the authority to make decisions or recommendations on behalf of a state agency or political subdivision regarding tax abatements or tax incentives; or
- the entity:
    - does not require an officer of the state agency or political subdivision to hold office as a member of the board of directors of the entity;
    - does not use staff or office space of the state agency or political subdivision for no or nominal consideration, unless the space is available to the public;
    - track the entity's receipt and expenditure of public funds separately from the entity's receipt and expenditure of private funds to a responsible degree; and
    - provides, at least quarterly, public reports to the state agency or political subdivision regarding work performed on behalf of the state agency or political subdivision.[10]

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7 *Id*. §§ 552.003(1)(A); .0036.
8 *Id*. § 552.003(1)(A)(iv).
9 *Id*. § 552.003(1)(B)(i).
10 *Id*. § 552.003(1)(B)(ii).

4. Are the records of an entity that receives public funds subject to the Public Information Act?

An entity that is supported in whole or in part by public funds or that spends public funds is a governmental body under the Act.[11] Public funds are defined as "funds of the state or of a governmental subdivision of the state."[12] The Texas Supreme Court has determined that entities that are "'supported in whole or part by public funds' […] include only those private entities or their sub-parts sustained, at least in part, by public funds, meaning they could not perform the same or similar services without the public funds."[13] Thus, only those private entities that are the functional equivalent of the government and that are dependent on public funds to operate as a going concern are subject to the Act.

Finally, it should be noted that certain entities are specifically made subject to the Act under the state law that governs that entity. For example, economic development corporations are specifically made subject to the provisions of the PIA under the Development Corporation Act found in Chapters 501 through 507 of the Local Government Code.[14]

5. Are records that are kept or owned by a consultant on behalf of a city subject to the Public Information Act?

The fact that a private entity may own or retain a record does not mean the record is not subject to release under the Act. For example, if a consultant maintains or holds records for a city, the documents are still considered public information, provided that the city owns the information or has a right of access to it.[15]

It is important to note that a city usually cannot contract the right to access documents that are held by a consultant if the information would otherwise be considered public. For example, the attorney general held that a city manager could not contract away the public'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 and the contract provided that the ownership and control of the list remained with the consultant.[16]

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

Judicial records, including municipal court records, are not subject to the Act.[17] Courts must look to the rules adopted by the Texas Supreme Court to determine the court's duty

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[11] *Id*. § 552.003(1)(A)(xv)
[12] *Id*. § 552.003(5).
[13] *Greater Houston P'ship v. Paxton*, 468 S.W.3d 51, 63 (Tex. 2015).
[14] Tex. Loc. Gov't Code § 501.072.
[15] Tex. Gov't Code § 552.002(a)(2)(A)-(B). *See also* Tex. Att'y Gen. ORD-363 (1983).
[16] Tex. Att'y Gen. ORD-585 (1991).
[17] Tex. Gov't Code § 552.003(1)(B)(i).

to provide access to court records.[18] 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.[19]

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 Act.[20] 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.[21] The magistrate who issued the warrant must make the affidavits available for public inspection in the court clerk's office.

7. Do members of city council have a special right of access to the city's records?

A current member of city council who requests information from the city in his/her official capacity has a special right of access to the requested information. The Act is not implicated when such request is made as the release of the documents is not viewed as a release to the general public.[22]

The exceptions to disclosure that might otherwise apply to an open records request from a member of the public would generally not apply to such request.[23] In other words, information that would typically be considered confidential under the Act would be releasable. However, the ability to release said information to elected officials may be limited by the state or federal law that pertains to such documents. Furthermore, charges for expenses associated with fulfilling the request that are usually assessed to members of the public under the Act would not be imposed upon a member of council.

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18 *Id*. § 552.0035. See Tex. R. Jud. Admin. 12 reprinted in Tex. Gov't Code, tit. 2, subtit. F app.

19 *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); Tex. Att'y Gen. Op. No. DM-166 (1992), Tex. Att'y Gen. ORD-25 (1974).

20 Tex. Gov't Code § 552.0055.

21 Tex. Code Crim. Proc. Art 18.01(b). *See also Houston Chronicle Publishing Co. v. Woods*, 949 S.W.2d 492, 499 (Tex. App. — Beaumont 1997, no writ).

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

23 Tex. Att'y Gen. Op. No. JM-119 (1983).

Because a release of information to a mayor or councilmember requesting such information in their official capacity is not a release to the public, the recipient must be cautious in maintaining the documents in the same way they are maintained by the governmental body as a whole. The Act imposes criminal provisions for the release of confidential information.[24] As a result, a member of the governing body who receives confidential information must ensure that it remains confidential. Disclosing confidential information would constitute official misconduct, and would be considered a misdemeanor punishable by either a fine of up to $1,000, confinement in county jail for up to six months, or both.[25]

If, however, a member of the governing body requests city records in his/her individual capacity for personal use, then the request would be treated like any other open records request from a member of the public. The exceptions to disclosure under the Act would apply, and the custodian of records is prohibited from releasing otherwise protected information to the individual member of council. Additionally, PIA charges could be assessed against the mayor or councilmember if the information is requested in an individual capacity.

II. What Constitutes a Public Information Request

8. How may a person make a written request for public information?

A person can make a written request for public information under the Act only by delivering the request by one of the following methods to the public information officer:

- United States mail;
- e-mail;
- hand delivery; or
- any other appropriate method approved by the governmental body, including fax and electronic submission through the governmental body's website.[26]

[24] Tex. Gov't Code § 552.352.
[25] *Id.* § 552.352.
[26] *Id.* § 552.234(a).

9. May a city designate a mailing address or an e-mail address that a request for public information must be sent to in order for the request to be considered received by the city?

A city may designate one mailing address and one e-mail address for receiving requests for public information.[27] The city shall post the designated mailing address and e-mail address on the city's website and on its required PIA informational sign, and provide the addresses to any person on request.[28]

Once the city has posted the designated mailing address and e-mail address on its website and PIA sign, the governmental body is not required to respond to a request for public information unless the request is received at the designated mailing address, designated email address, and/or hand delivered. In addition, the governmental body may create additional methods to submit, but those methods may not eliminate any of the methods in the previous sentence. [29] (*See next question*.)

10. How does a city approve other appropriate methods for receiving a request for public information?

A city is considered to have approved other appropriate methods for receiving a request for public information only if the city includes a statement that a request for public information may be made by these other appropriate methods on the required PIA sign or on the city's website.[30]

11. Is the office of the attorney general required to create a PIA request form?

The office of the attorney general (OAG) is required to create a PIA request form that will provides a requestor with the option of excluding from a request, information that the governmental body determines is confidential or subject to an exception to disclosure that the governmental body would assert if the information were subject to the request.[31] The PIA request form can be obtained from the OAG's website.

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27 *Id*. § 552.234(c).
28 *Id*. § 552.234(c); (d).
29 *Id*. § 552.234(d).
30 *Id*. § 552.234(b).
31 *Id*. § 552.235(a).

12. Is a city required to allow requestors to use the OAG's PIA request form?

A city is not required to allow requestors to use the OAG's PIA request form. However, if the city does allow a requestor to use the OAG's PIA request form, the city is required to post the OAG's PIA request form on its website, if it maintains a website.[32]

13. Is a city required to respond to verbal requests for copies of records?

A governmental body may respond to a verbal request for information, but the Act is only triggered when the requestor requests for information in writing.[33] If a city provides copies of records upon a verbal request, the city must be consistent in its treatment of all requestors.[34] In other words, if a city does not require a written request from certain individuals, it should not insist on a written request from others.

III. Administration of Public Information Requests

A. Timing Issues under the Public Information Act

14. How much time does a city generally have to release requested information?

There is often a misconception that the Act requires that public information be produced within ten business days of a written request for information . The standard under the Act is actually that the city must "promptly produce" the public information.[35] Further, the Act defines "promptly" as "as soon as possible under the circumstances, that is within a reasonable time, without delay".[36] 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 the city more than ten business days to provide the records, the city must certify that fact in writing to the requestor.[37] In its notice to the requestor, the city must indicate a set date and hour within a reasonable time that the information will be available for inspection or duplication.[38]

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[32] *Id*. § 552.235(b).
[33] *Id*. §§ 552.234, .301(a). *See also* Tex. Att'y Gen. ORD-304 (1982).
[34] Tex. Gov't Code § 552.223.
[35] *Id*. § 552.221(a). *See also* Tex. Att'y Gen. ORD-664 (2000).
[36] Tex. Gov't Code § 552.221(a), Tex. Att'y Gen. ORD-467 (1987), ORD-664 (2000).
[37] Tex. Gov't Code § 552.221(d).
[38] *Id.*

15. What happens if after informing the requestor that the PIA request has been completed, and the requestor fails to inspect, pick up, or pay postage and other fees?

If the requestor fails to inspect or duplicate public information in the governmental body's office on or before the 60th day after the date the information is made available, or fails to pay postage and any other Act charges on or before the 60th day after the date the requestor is informed of the charges, then the request is considered withdrawn.[39]

16. What are the deadlines to take a particular action when handling a public information request?

The amount of time that a city has to produce copies of governmental records will vary depending on the amount of information that is requested. However, there are six situations that present a timing deadline for cities to take a particular action when handling a public information request.

1) **Notice to Requestor that the Governmental Body Needs Additional Time to Produce Records.**[40] If the city is unable to produce a requested record within ten business days for inspection or for duplication, the city 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.**[41] If the city needs additional time to produce a record because it is in active use or because it is in storage, the city must notify the requestor of this fact in writing. This notice must be given within ten business days of the city's receipt of the request for the documents.[42] 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 city usually would not justify a delay of the document's release under the "active use" provision.[43]

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39 *Id*. § 552.221(e).
40 *Id*. § 552.221(d)
41 *Id*. § 552.221(c).
42 *Id*. § 552.221(d).
43 Tex. Att'y Gen. ORD-148 (1976) (faculty member's file 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).

3) **Notice to Requestor of Programming or Manipulation Costs.**[44] If production of the requested information in a particular format would require additional computer programming or manipulation of data, the city must provide a written notice of this fact to the requestor. The notice must indicate:

   a. that the information is not available in the requested form;

   b. a description of the forms in which the information is available;

   c. a description of any contract or services that would be required to provide the information in the requested form;

   d. as estimated cost providing the information in the requested form; and

   e. the time that it would take to provide the information in that form.[45]

   Generally, this notice must be provided to the requestor within 20 days of the city's receipt of the request.[46]

4) **Request by the Governmental Body for an Open Records Letter Ruling from the Attorney General.**[47] If a city plans to withhold certain documents or information, it usually must request a ruling from the attorney general on the ability to withhold such information. The written request for an attorney general ruling must be made within ten business days after the date the city receives the written request for information. Also, certain notices must be sent:

   a. Notice to Requestor that the Governmental Body Sought an Attorney General's Open Records Letter Ruling.[48] A city must give written notice to a requestor if the city seeks an attorney general ruling on the request. A copy of the city's communication to the attorney general must be provided to the requestor, though it may be redacted if the copy itself discloses the requested information. Both must be given within ten business days of the city's receipt of the request for the documents.

   b. Notice to Person or Entity with Proprietary Interest in Information of Attorney General's Open Records Letter Ruling Request.[49] If a PIA

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44 Tex. Gov't Code § 552.231(a).
45 *Id*. § 522.231(b).
46 *Id*. § 552.231(c).
47 *Id*. § 552.301(a).
48 *Id*. § 552.301(d).
49 *Id*. § 552.305(d)(1).

request may result in the release of proprietary information, the city must make a good faith attempt to notify the person or entity that has such an interest in the open records letter ruling request. The written notice must be sent by the city within ten business days of the date the city received the original request for the information. This notice must include:

i. a copy of the written request for the information; and

ii. 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.[50]

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 city. Also, the person who submits a brief to withhold the information must provide a copy of his/her brief to the requestor.[51]

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

If a city in good faith has determined that the PIA request is unclear or that the scope of the information being asked for is unduly broad, the governmental body may ask the requestor to clarify or narrow the scope of the request.[52] If the city asks the requestor to clarify or narrow a request, the ten business day deadline to request an attorney general's open records letter ruling is measured from the date the request is clarified or narrowed as long as the governmental body is acting in good faith.[53] In other words, the city has ten business days from the day that the requestor clarifies or narrows his/her request to ask for a ruling from the attorney general's office.

The written request for clarification, discussion or additional information to the requestor must contain a statement as to the consequence of failing to timely respond to the request for clarification, discussion or additional information.[54] If the city sends such written request to the requestor and the requestor does not send a written response by the 61st

50 *Id*. § 552.305(d)(2).
51 *Id*. § 552.305(e).
52 *Id*. § 552.222(b)
53 *City of Dallas v. Abbott*, 304 S.W.3d 390, 384 (Tex. 2010).
54 Tex. Gov't Code § 552.222(e).

day, the requestor's PIA request is considered withdrawn.[55] 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 city has the requestor's physical or mailing address.[56] If the PIA request is received by e-mail, the city can send the written request for clarification, discussion or additional information by e-mail.[57] Also, if the requestor does not send an e-mail written response by the 61st day to the e-mail requesting clarification or narrowing, the request is considered withdrawn.[58]

18. When is a city required to ask for an open records letter ruling from the attorney general?

In almost all cases, a city is required to ask the attorney general for a ruling if the city wants to withhold requested information.[59] The fact that a particular responsive document may arguably fall within one of the statutory exceptions to disclosure does not in itself eliminate the need to ask for an open records letter ruling. Unless the city can point to a previous determination that addresses the exact information that the city now wants to withhold[60] or to a section of the Act that allows a city to withhold information without asking for a ruling,[61] the city must request a ruling to withhold the information. In addition, if determining whether a particular record may be withheld under a statutory exception requires a review and consideration of applicable facts, the city should request an attorney general ruling before it withholds the record.

A request for an attorney general ruling must be made, in most cases, within ten business days from the date the city receives the PIA request.[62] Such a request, in most cases, can only be made by the city.[63] If the city 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.[64] 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

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55 *Id*. § 552.222(d).
56 *Id*. § 552.222(f).
57 *Id*. § 552.222(g)(1).
58 *Id*. § 552.222(g)(2).
59 *Id*. § 552.301(a).
60 *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.").
61 *See, e.g*., Tex. Gov't Code §§ 552.130(c); .136(c), .147(b).
62 Tex. Gov't Code § 552.301(b). *See id*. §§ 552.371(d), .371(e)(3); Tex. Occup. Code § 1701.662.
63 Tex. Att'y Gen. ORD-542 (1990). *See* Tex. Gov't Code §§ 552.1101(c), .131(b-1).
64 Tex. Gov't Code § 552.302. *See id* § 552.371(e)(1)-(2). *See* Tex. Att'y Gen. ORD-319 (1982).

interests are at stake.[65] It should be noted that if the city is going to release all of the requested information, there is no need to ask for a ruling.

19. Can a city request an attorney general ruling when the city has determined the requested information is not subject to one of the Act's exceptions?

The attorney general has concluded that a city may not request an open records letter ruling from the attorney general if the city reasonably believes the requested information is not excepted from required disclosure. Instead, the city must promptly produce the requested public information to the requestor.[66]

20. Can a city withhold information that is the subject of a previous determination?

The Act provides that a city must request an attorney general open records letter ruling if the governmental body wishes to withhold requested information unless there has been a previous determination about that particular information.[67] The Act does not define previous determination. However, the attorney general has concluded there are two types of "previous determinations."[68]

The first type of previous determination exists so long as: (1) the law, facts, and circumstances on which the ruling was based have not changed and where the requested information is precisely the same information which was addressed in a prior attorney general ruling; (2) the ruling is addressed to the same governmental body; and (3) the ruling concludes that the information is or is not excepted from disclosure.

The second type of previous determination is an attorney general decision which may be relied upon so long as: (1) the elements of law, facts, and circumstances are met to support the previous decision's conclusion; (2) the decision concludes that a specific, clearly delineated category of information is or is not excepted from disclosure; and (3) the decision explicitly provides that the governmental body or type of governmental body from which the information is requested, in response to future requests, is not required to seek a decision from the attorney general in order to withhold the information. For example, all cities may withhold direct deposit authorizations; Form I-9s and attachments; W-2 and W-4 forms; certified agendas and tapes (recordings) of closed meetings; and fingerprints without the necessity of requesting an attorney general ruling as to whether the applicable exception applies.[69]

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65 Tex. Att'y Gen. ORD-150 (1977).
66 Tex. Att'y Gen. ORD-665 (2000).
67 Tex. Gov't Code § 552.301(a).
68 Tex. Att'y Gen. ORD-673 (2001).
69 Tex. Att'y Gen. ORD-684 (2009).

21. Can a city withhold information without asking for an open record letter ruling?

Certain provisions of the Act allow a city to withhold information without asking for an open records letter ruling from the attorney general's office. These sections include:

1) Information related to driver's license, motor vehicle title or registration, or personal identification documents;[70]
2) Credit cards, debit cards and access device numbers;[71]
3) Certain information maintained by a family violence shelter center, victim of trafficking shelter center, and sexual assault program;[72]
4) Personal information of current or former public employees and officials;[73] and
5) Social security numbers of any living individual.[74]

All of these sections, except for social security numbers, require the city to send a specific letter to the requestor that explains that certain information has been redacted without asking for a ruling, but that the requestor has the right to appeal to the attorney general's office for a ruling on the withheld information.[75] The attorney general's office has form letters for those sections that require these letters that can be found on its website. If the requestor chooses to appeal to the attorney general's office, then the city will receive a notice from the attorney general's office and will have to submit the required information for a review of the redacted information.[76]

22. What must a city do if it wants to request an open records letter ruling?

If a city wants to withhold information, it has ten business days from the date it receives the request to ask for an open records letter ruling from the attorney general. By the tenth business day, the city must do the following:

1. **Write the attorney general requesting an open records letter ruling and state which exceptions apply to the requested information.**[77] The original request for a ruling must indicate the specific exception(s) that the city is relying on to withhold the information. If the city fails to cite the

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70 Tex. Gov't Code § 552.130.
71 *Id*. § 552.136(c).
72 *Id*. § 552.138(c).
73 *Id*. §§ 552.024(c); .117(a)(17); .1175(a)(17); .1175(f).
74 *Id*. § 552.147.
75 *Id*. §§ 552.024(c-1)-(c-2); .1175(g) - (h); .130(d)-(e); .136(d)-(e); .138(d)-(e).
76 1 Tex. Admin. Code §§ 63.11-63.16.
77 Tex. Gov't Code § 552.301(b).

applicable exceptions in this request, the city generally will be barred from raising the exceptions in any additional briefing that it may provide.

2. **Provide the requestor with a written statement that the city wishes to withhold the information and that it has asked the attorney general for a ruling**.[78]
3. **Provide the requestor with a copy of the city's correspondence to the attorney general**.[79]
4. **Make a good faith attempt to notify any affected third parties of the request**.[80]

If in its original request for a ruling the city does not provide comments explaining how the specific exceptions apply to the requested information, the city has an additional five business days (a total of 15 business days from the date the city body received the PIA request f) to provide the attorney general with additional written documentation that supports withholding the requested information.[81] By the 15th business day, the city must submit to the attorney general:

1. **Written comments explaining how the claimed exceptions apply.**[82]
2. **A copy of the written request for information.**[83]
3. **A signed statement or evidence sufficient to establish the date the request for information was received.**[84] It is important to note that if the city requests the requestor clarify or narrow an unclear or unduly broad request, the ten business day deadline for requesting an open records letter ruling is measured from the date the request is clarified or narrowed as long as the city is acting in good faith in requesting a clarification or narrowing of the request.[85] If the city contends that the ten business day deadline started the date the request was clarified or narrowed, the city must explain this fact in its request for an open records ruling. Also, the city must explain if there were holidays, natural disasters, and any other days the city was officially closed. In its explanation, the city should include all dates relevant to the calculation of the ten-business day deadline.

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78 *Id*. § 552.301(d)(1).
79 *Id*. § 552.301(d)(2).
80 *Id*. § 552.305(d).
81 *Id*. § 552.301(e).
82 *Id*. § 552.301(e)(1)(A).
83 *Id*. § 552.301(e)(1)(B).
84 *Id*. § 552.301(e)(1)(C).
85 *City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010).

4. **Submit copies of documents requested or a representative sample of the documents**.[86] The documents must be labeled to show which exceptions apply to which parts of the documents.[87] 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**.[88] The city 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. However, cities are cautioned against redacting more than that which would reveal the requested information to the requestor.

The attorney general may ask the city for additional information.[89] The governmental body must respond to the attorney general's request of additional information within seven calendar days.[90] 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.[91]

23. How does a city calculate business days?

Generally, business days are those days that a city is open for business and to the public. If the city is closed, with no employees working remotely, then those days do not count as business days. Specifically, the following are not considered business days:

- Weekends;
- Holidays observed by the governmental body;
- Skeleton crew days; and
- A day on which a city's administrative offices are closed with no employees working, including remotely.[92]

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86 Tex. Gov't Code § 552.301(e)(1)(D).
87 *Id*. § 552.301(e)(2).
88 *Id*. § 552.301(e-1).
89 *Id*. § 552.303(c).
90 *Id*. § 552.303(d).
91 *Id*. § 552.303(e).
92 *Id.* § 552.2211(a).

However, if a city closes its physical offices, but requires staff to work, including remotely, then the city shall make a good faith effort to continue responding to applications for public information, to the extent staff have access to public information responsive to an application, while its administrative offices are closed.[93] Failure to respond to requests under this provision may constitute a refusal to request an attorney general's decision as provided by the Act or a refusal to supply public information or information that the attorney general has determined is public information that is not excepted from disclosure[94]

24. How long does the attorney general have to respond to a request for an open records letter ruling?

The attorney general has 45 business days from the date the request for ruling is received from the city.[95] 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 city and the requestor of the reason for the delay. This notification must take place within the original 45 business-day time period.

25. Can a city 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 a city with an extension of time to seek an open records letter ruling from the attorney general's office. Even if the request is for an excessive amount of information, the city must still meet the fifteen-business day deadline for requesting a ruling from the attorney general. However, if applicable, a city may provide the attorney general with a marked-up representative sample of the requested information (marked to show which exceptions apply to what portion of the sample documents).[96]

26. May a city seek a reconsideration of an open records letter ruling that is 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, a city must release the information and is prohibited from seeking a reconsideration of that issue from the attorney general.[97] If

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93 *Id.*
94 *Id*. § 552.2211(b)
95 *Id.* § 552.306(a).
96 *Id*. § 552.301(e).
97 *Id*. § 552.301(f).

the city wants to challenge the ruling, the city must file, within 30 calendar days of receiving the ruling, suit in Travis County district court.[98]

B. Public Information Requests During a Catastrophe

27. May a city temporarily suspend the requirements of the Act during a disaster?

A city that is currently significantly impacted by a catastrophe such that the catastrophe directly causes the inability of the city to comply with the requirements of the Act may suspend the applicability of the requirements of the Act.[99] For purposes of the suspension of the Act, a "catastrophe" is defined as a condition or occurrence that directly interferes with the ability of a governmental body to comply with the requirements of the Act, including:

(1) a fire, flood, earthquake, hurricane, tornado, or wind, rain or snow storm;

(2) power failure, transportation failure, or interruption of communication facilities;

(3) epidemic; or

(4) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.[100]

However, "catastrophe" does not mean a period when staff is required to work remotely and can access information responsive to an application for information electronically, although the physical office of the governmental body is closed.[101] A governmental body that elects to suspend the requirements of the Act must provide notice to the office of the attorney general that the governmental body is currently impacted by a catastrophe and has elected to suspend the applicability of the Act during the initial suspension period and the extension period.[102] Notice must be provided in a form promulgated by the attorney general.[103]

28. What is the city required to do if it elects to suspend the Act because it has been impacted by a catastrophe?

The city is required to:

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98 *Id*. § 552.324(b).
99 *Id.* § 552.2325(b).
100 *Id*. § 552.2325(a)(1)(A) - (D).
101 *Id*. § 552.2325(a)(2).
102 *Id*. § 552.2325(e).
103 *Id*. § 552.2325(c), (h).

1) Submit a catastrophe notice to the attorney general's office. The notice has to be on the form created by the attorney general's office. The form (first page) requires the following information:

    a. Name of the city;

    b. Identification and description of the catastrophe;

    c. The dates for the beginning and end of the suspension period (only a seven-calendar day period); and

    d. Name, title, phone number, and signature of the city's contact person.

2) Post notice of the PIA suspension in the same places the city would post notice of an open meeting. This would be at the bulletin board or electronic bulletin board at city hall and on the city's website, if the city has a website.[104]

29. For how long can the requirements of the Act be suspended?

A city may suspend the applicability of the Act only once for each catastrophe.[105] The initial suspension period may not exceed seven consecutive days.[106] The initial suspension period must occur during the period that:

(a) begins not earlier than the second day before the date the city submits the notice to the office of the attorney general; and

(b) ends not later than the seventh day after the city submits the notice.[107]

A city may extend an initial suspension period, one time, if the governing body determines that the city is still impacted by the catastrophe on which the initial suspension period was based.[108] The initial suspension period may be extended for not more than seven consecutive days that begin on the day following the day the initial suspension period ends.[109] Accordingly, the combined suspension period may not exceed a total of 14 consecutive calendar days with respect to any single catastrophe.[110]

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104 *Id.* §§ 552.2325(c), (h), (l); *see id*. §§ 551.050, .056.
105 *Id*. § 552.2325(d).
106 *Id*. § 552.2325(d).
107 *Id*.
108 *Id*. §552.2325(e).
109 *Id*.
110 *Id*. §552.2325(g).

30. What happens to requests for public information that are received before or during a suspension period(s)?

The requirements of the Act related to a request for public information that is received before the initial suspension period begins are tolled until the first business day after the date the suspension period ends.[111] A request that is received during a suspension period is considered to have been received by the city on the first business day after the date the suspension period ends.[112]

31. What is the city required to do if the city decides to extend the initial suspension period?

The attorney general's office has promulgated an extension catastrophe notice form (second page) for the extension of the initial suspension of the Act for a period not to exceed seven calendar days.. The following information is required for the extension form:

1. Name of the city;
2. The dates of the initial suspension;
3. Identification of the catastrophe;
4. Dates of the extension suspension period (only seven calendar days); and
5. Name, title, phone number, and signature of the city's contact person.[113]

As with the initial catastrophe notice, the extension has to be submitted to the attorney general's office and posted where open meetings notice are required to be posted.[114]

32. How does the city submit the catastrophe notice forms to the attorney general's office?

A city can submit its catastrophe notice form to the attorney general's office either electronically or via US mail to:

Attn: Public Information Act Catastrophe Notice
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

111 *Id*. § 552.2325(j).
112 *Id*. § 552.2325(i).
113 *Id.* §§ 552.2325(e), (l).
114 *Id*. § 552.2325(h); *see id*. §§ 551.050, 551.056.

33. Is the attorney general's office required to post these catastrophe forms on its website?

The attorney general's office is required to post submitted catastrophe notice forms to its website.[115] These notices will be continuously posted until the first anniversary of the date the attorney general's office received the form. Submitted notice can be seen here.

34. If the offices are closed, working with a skeleton crew, or working remotely, does the city have to fill out a catastrophe notice form and submit it to the attorney general's office?

If the city is closed, working with a skeleton crew, or its employees are working remotely, the city does not have to fill out a catastrophe notice form.).

C. Rights and Duties of the Governmental Body and of the Public Information Requestor

35. Is a city required to post information regarding the Public Information Act?

A city's public information officer is responsible for posting a sign which informs the public about its right to access public information.[116] 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.

36. What inquiries can a city make of a public information requestor?

Generally, there are only two permissible lines of inquiry that can be made of a requestor. First, a city can ask a requestor for proper identification.[117] This inquiry for proper identification should be done only if necessary, 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, e-mail, or by fax.

This identification requirement is generally imposed 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 drivers' licenses.[118] 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, a city should visit with its legal counsel regarding the applicable law.

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115 *Id*. § 552.2325(k).
116 *Id*. § 552.205.
117 *Id*. § 552.222(a).
118 *Id*. § 552.222(c).

Second, as discussed earlier in this handbook, a city 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.[119] It should be noted that a city cannot ask the requestor the purpose for which the information will be used.[120]

37. Does the name and address of an individual who requests public information become public information?

In certain cases, a requestor may be required to provide identification, which may include his or her name or address.[121] If the city receives this information and it becomes part of a city record, there is no statutory provision that would except such information from disclosure.

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

If the city has the technological ability to produce the information in the requested format, it is usually required to do so.[122] For example, if a requestor wants a copy of information on a computer disk, he can ask that it be provided in that format. The city cannot insist on providing the information in only a paper format if the city has the ability to provide it in the requested format. However, a city is not required to buy additional hardware or software to accommodate a PIA request. A city can provide requested information on another medium that is acceptable to the requestor if the city is unable to provide the requested information in the requested medium because: (1) it does not have the technological ability to do so; (2) the city would be required to buy additional software or hardware; or (3) doing so would violate copyright agreements between the city and a third party.

39. Is a city required to create a record if none exists?

A PIA request generally does not require a city to produce information which is not in existence.[123] The Act does not require a city to prepare new information in response to a request.

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119 *Id*. § 552.222(b).
120 *Id*. § 552.222(a).
121 *Id*. § 552.222(a).
122 *Id*. § 552.228.
123 *Id*. § 552.002(a). *See also* Tex. Att'y Gen. ORD-87 (1975), ORD-342 (1982), ORD-452 (1986); *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dism'd).

40. Does a city have to comply with standing requests for information?

A city has no duty to comply with standing requests for records.[124] If a requestor seeks documents that are not in existence at the time of the request, the city 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 city has no duty to notify the requestor in the future that the information has come into existence.[125] However, some cities have chosen to accommodate standing requests for certain records. Whether to enter into such agreements is at the city's discretion. Nonetheless, if such an arrangement is made, it should be available to any requestor on an equal basis.[126]

41. Is a city required to compile statistics, perform research, or provide answers to questions in response to a PIA request?

A city is only required to provide copies of documents that relate to the information sought by a requestor. The Act does not require a governmental body to calculate statistics, perform legal research, or prepare answers to questions.[127]

42. Is a city required to locate information that is not organized or retrievable by the type of information that is requested?

Sometimes a PIA request will ask for certain documents or information that is not organized or retrievable by the type of information that is requested. If a city can provide this information by making a simple computer search or by some other basic task, it should make such an effort.[128] The city may notify the requestor of the format in which the information is currently available.[129] However, if providing the information would require extensive research, the city has no duty to take such action.[130]

If providing the requested information would require programming or manipulation of data, the city shall send the requestor a written notice explaining that the requested information is not in the format requested and to provide the information would require programming and manipulation of data at a cost to the requestor. [131] The notice must include a cost estimate for providing the information in the format that meets the requestor's

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124 Tex. Att'y Gen. ORD-465 (1987), ORD-476 (1987).
125 Tex. Att'y Gen. Op. No. JM-48 (1983).
126 *See* Tex. Gov't Code § 552.223.
127 Tex. Att'y Gen. ORD-342 (1982), ORD-555 at 1 (1990), ORD-563 at 8 (1990).
128 Tex. Gov't Code § 552.002(a). *See also* Tex. Att'y Gen. ORD-87 (1975), ORD-342 (1982), ORD-452 (1986); *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dism'd).
129 Tex. Gov't Code § 552.228(c).
130 Tex. Gov't Code § 552.002(a). *See also* Tex. Att'y Gen. ORD-87 (1975), ORD-342 (1982), ORD-452 (1986); *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dism'd).
131 Tex. Gov't Code § 552.231.

preferences. Also, the notice must be sent to the requestor within 20 days after the date the city receives the PIA request.[132] If the requestor does not respond to the written notice within 30 days, the request is considered withdrawn.[133]

43. Must a city buy new software or equipment to accommodate a request for information in a certain format?

A city has no duty to purchase new software or hardware to accommodate a public information request.[134] If the city 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.[135] In certain cases, a city 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 a PIA request would require such manipulation of data or programming, the city 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.[136]

44. 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.[137] Instead, the city may require that searches of public information be conducted by city personnel who then provide the requestor with access to or copies of the requested items. Of course, a city 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.

45. 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 city 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.[138]

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132 *Id*. § 552.231(c).
133 *Id*. § 552.231(d-1).
134 *Id*. § 552.228(b)(2).
135 *Id*. § 552.228(c).
136 *Id*. § 552.231.
137 Tex. Att'y Gen. ORD-571 (1990).
138 Tex. Att'y Gen. Op. No. JM-757 (1987). *See also* Tex. Att'y Gen. Op. No. GA-400 (2006).

46. Can requestors require a city copy information onto supplies provided by the requestor?

The Act specifically provides that a city is not required to copy information onto material provided by a requestor.[139] For example, a city does not have to copy information onto paper or onto a computer disk that is provided by the requestor. Instead, the city may choose to use its own materials.[140]

47. Does a city have to provide information that is also available commercially?

Generally, a city is not required to allow access to or to provide a copy of information in a commercial book or publication purchased or acquired by the city for research purposes if the book or publication is commercially available to the public.[141] However, the city is under a duty to allow inspection of the commercial book or publication if portions of the book or publication are specifically made a part of, incorporated into, or referred to in a city rule or policy.[142]

48. Does a city have to provide information that is copyrighted in response to a PIA request?

If a request is made for documents that are copyrighted, a city will have to provide access to those records, unless there is an applicable exception that would allow those records to be withheld. However, the city is not required to make copies of copyrighted material for a requestor.[143] Instead, the city should provide the requestor access to the information. The requestor bears the duty of compliance with federal copyright law.

49. Is a city required to respond to repeated requests for the same information?

If a city has previously provided copies of certain information to a requestor, the city has no duty to provide the same information to the requestor again.[144] Similarly, if a city has previously made the information available and the requestor has not paid the costs associated with the prior request, the city may respond to a second request for such documents by providing a special notice to the requestor.[145] The city's public information officer or his or her agent must provide the requestor a letter which certifies that all or part

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139 Tex. Gov't Code §552.228(c).

140 *Id*. *See also id*. § 552.230 (governmental body may promulgate rules for efficient, safe, and speedy inspection and copying if not inconsistent with Public Information Act).

141 *Id*. §552.027(a).

142 *Id*. § 552.027(c).

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

144 Tex. Gov't Code § 552.232(a).

145 *Id*.

of the requested information was previously furnished to the requestor or was made available upon payment of costs.[146] The certification must include:

1. a description of the information that was previously furnished or made available;
2. the date the city received the previous request;
3. the date the city previously furnished or made available the information to the requestor;
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.[147]

A city may not charge the requestor for the preparation of the certification.[148]

Of course, a city may choose to provide the requested information.[149] It is important to note that a city must furnish or make available upon payment of applicable charges any information that has not been previously supplied or made available to the requestor.[150]

D. Temporary Custodian

50. Who is a "temporary custodian"?

A temporary custodian is a current or former officer or employee of a city who, in the transaction of official business, creates or receives public information that the officer or employee has not provided to the public information officer of the city or the public information officer's agent.[151]

51. Does a temporary custodian have a personal or property right to public information that was created or received while acting in their official capacity?

A temporary custodian does not have a personal or property right to public information that was created or received while acting in their official capacity.[152]

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146 *Id*. § 552.232(b).
147 *Id*.
148 *Id*. § 552.232(c).
149 *Id*. § 552.232(a)(1)-(2).
150 *Id*. § 552.232(d).
151 *Id*. § 552.003(7).
152 *Id.* § 552.233(a).

52. Is a temporary custodian required to retain public information on his/her privately owned device?

A temporary custodian who has public information on a privately owned device is required to either:

(1) forward or transfer the public information to the city or a city server to be preserved for the required record retention schedule; or

(2) preserve the public information in its original form on the privately owned device and in a backup or archive for the required record retention schedule.[153]

53. What is a temporary custodian required to do if the city receives a request for public information that includes public information in the custodian's possession, custody, or control?

A temporary custodian is required to surrender or return public information that is in his/her possession, custody, or control not later than the 10th day after the date the public information officer requests that the temporary custodian surrender or return the public information.[154] If the temporary custodian fails to surrender or return the public information requested by the public information officer, the city may discipline an employee who is a temporary custodian.[155] Also, the temporary custodian may be subject to any penalties provided by the PIA or other laws. For example, a temporary custodian can be subject to a writ of mandamus under section 552.321 of the Government Code or criminally charged with failure to provide access to public information under section 552.353 of the Government Code.

54. When is a request for public information considered received by the city if a request to surrender or return public information is requested from a temporary custodian?

The city is considered to have received the request for public information on the date the information is surrendered or returned to the city by the temporary custodian.[156]

55. What is the public information officer's duty concerning retrieving public information from a temporary custodian?

The public information officer is required to make a reasonable effort to obtain public information from a temporary custodian if:

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153 *Id*. § 552.004(b) - (c).
154 *Id*. § 552.233(b).
155 *Id*. § 552.233(c).
156 *Id*. § 552.233(d).

1. The information has been requested from the city;
2. The public information officer is aware of facts sufficient to warrant a reasonable belief that the temporary custodian has possession, custody, or control of the requested information;
3. The public information officer is unable to comply with their duties without obtaining the information from the temporary custodian; and
4. The temporary custodian has not provided the information to the public information officer.[157]

E. Contracting Entities Required to Provide Contracting Information

56. What entities are required to provide contracting information to a city when the city receives a PIA request concerning information in the custody or possession of the entity?

When a city receives a PIA request concerning information not maintained by the city but in the custody or possession of a non-governmental entity, such entity is required to provide contracting information to the city if the entity has executed a contract with the city that:

1. Has a stated expenditure of at least $1 million in public funds for the purchase of goods or services by the city; or
2. Results in the expenditure of at least $1 million in public funds for the purchase of goods or services by the city in a fiscal year of the city.[158]

When a city receives a written PIA request for such contracting information, the city shall send, to the contracting entity, a written request for the contracting entity to provide the requested contracting information to the city not later than the third business day after the date the city receives the written PIA request.[159] The contracting entity is required to promptly provide to the city any contracting information related to the contract that is in its custody or possession.[160]

57. What is required of a contracting entity that has custody or possession of contracting information(PIA contracting entity requirements)?

The contract between the city and the contracting entity requires the contracting entity to:

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157 *Id*. § 552.203(4).
158 *Id*. § 552.371(a). [Note: for the rest of this section, these entities will be referred to as “contracting entities”.]
159 *Id*. § 552.371(c).
160 *Id*. § 552.372(a)(2).

1. Preserve all contracting information related to the contract as provided by the record retention requirements applicable to the city for the duration of the contract;
2. Promptly provide to the city any contracting information related to the contract that is in its custody or possession on the city's request; and
3. On completion of the contract, either:
    a. Provide, at no cost to the city, all contracting information related to the contract that is in its custody or possession; or
    b. Preserve the contracting information related to the contract as provided by the record retention requirements applicable to the city.[161]

Also, the contract must include the following statement:

> The requirements of Subchapter J, Chapter 552, Government Code, may apply to this (include "bid" or "contract" as applicable) and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.[162]

58. What are the deadlines to request an open records letter ruling when a city receives a PIA request that includes contracting information that must be obtained from a contracting entity?

A city must request an open records letter ruling from the attorney general's office concerning contracting information that is in the custody or possession of a contracting entity within 13 business days of the date the city receives a request for the contracting information, as well as provide a copy of the request for the open records letter ruling to the requestor.[163] A city must submit its brief and a copy of the information requested (or representative samples of such information) to the attorney general's office within 18 business days of the date the city receives a request for the contracting information in the custody or possession of the contracting entity, as well as provide a copy of the brief to the requestor.[164] Note that these deadlines do not apply to contracting information that is maintained by the city.[165]

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161 *Id*. § 552.372(a).
162 *Id*. § 553.372(b).
163 *Id*. § 552.371(d)(1) - (2).
164 *Id.* § 552.371(d)(3) - (4).
165 *Id*. § 552.371(f).

59. If the city does not receive the requested contracting information from the contracting entity in time to request an open records letter ruling, does the information become public?

If the governmental body does not receive the requested contracting information from the contracting entity in time to request an open records letter ruling, the requested contracting information does not become public if the governmental body:

1. complies with the requirements to send a written request to the contracting entity in a good faith effort to obtain the contracting information from the contracting entity;
2. is unable to meet the deadline to request an open records letter ruling because the contracting entity failed to provide the contracting information to the city before the 13th business day after the date the city receives the request for the contracting information; and
3. complies with the requirements of requesting an open records letter ruling from the attorney general not later than the eighth business day after the date the city receives the information from the contracting entity.[166]

60. May a city accept bids or contract with a contracting entity that does not comply with the PIA contracting entity requirements?

A city may not accept a bid for a contract or award a contract to a contracting entity that the governmental body has determined has knowingly or intentionally failed, in a previous bid or contract, to comply with preserving contracting information and providing it to the city upon request, unless the city determines and documents that the contracting entity has taken adequate steps to ensure future compliance with these requirements.[167]

61. What is a city required to do if a contracting entity is not in compliance with the PIA contracting entity requirements?

If a contracting entity fails to comply with the PIA contracting entity requirements, the city shall provide, to the contracting entity, written notice that describes the PIA contracting entity requirement that was violated, and advises the contracting entity that the contract may be terminated without further obligation to the contracting entity if the entity does not cure the violation on or before the 10th business day after the date the city provides the notice.[168]

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166 *Id.* § 552.371(e).
167 *Id*. § 552.372(c).
168 *Id*. § 552.373.

62. May a city terminate its contract with a contracting entity?

Yes. A city may terminate a contract with a contracting entity if:

- the city provides the above-described noncompliance notice to the contracting entity;
- the contracting entity does not cure the violation on or before the 10th business day after it has received the noncompliance notice;
- the city determines that the contracting entity has intentionally or knowingly failed to comply with the PIA contracting entity requirements; and
- the city determines that the contracting entity has not taken adequate steps to ensure future compliance with the requirements.[169]

63. What is considered "adequate steps to ensure future compliance" for the purpose of not terminating a contract with a contracting entity?

A contracting entity is considered to be taking adequate steps to ensure future compliance with the PIA contracting entity requirements if the contracting entity: (1) produces contracting information requested by the city not later than the 10th business day after the date the city makes the request; and (2) establishes a records management program to enable the entity to comply with the PIA contracting entity requirements.[170]

64. Are there certain contracts that a city may not terminate for not complying with the PIA contracting entity requirements?

Yes. A city may not terminate the following contracts for noncompliance of the PIA contracting entity requirements:

- contracts that relate to the purchase of a public security;
- contracts that are or may be used as collateral on a loan; or
- contracts whose proceeds are used to pay debt service of a public security or loan.[171]

169 *Id*. § 552.374(a).
170 *Id*. § 552.374(b).
171 *Id*. § 552.374(c).

65. May a city include and enforce more stringent requirements than the PIA contracting entity requirements in its contracts with contracting entities?

A city may include and enforce more stringent requirements in its contracts with contracting entities in order to increase accountability or transparency.[172]

66. Do the PIA contracting entity requirements create a cause of action?

The PIA contracting entity requirements do not create a cause of action to contest a bid for or the award of a contract with a city.[173]

67. May a requestor file a suit for a writ of mandamus to force a city or contracting entity to comply with the PIA contracting entity requirements?

A requestor may file a suit for a writ of mandamus to compel a city or a contracting entity to comply with the PIA contracting entity requirements.[174]

IV. Statutory Exceptions That Allow Information to Be Withheld

A. Information that Is Presumed Public

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

Yes. The 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."[175] For example, completed reports,[176] public court record information,[177] and settlement agreements to which a city is a party[178] are just a few of the items that are considered public information.

69. What "contracting information" is presumed to be public information?

"Contracting information" means the following information maintained by a city or sent between a city and a vendor, contractor, potential vendor, or potential contractor:

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172 *Id*. § 553.375.
173 *Id*. § 552.376.
174 *Id.* § 552.321(c).
175 *Id*. § 552.022(a).
176 *Id*. § 552.022(a)(1).
177 *Id*. § 552.022(a)(17).
178 *Id*. § 552.022(a)(18).

- Information in a voucher or contract relating to the receipt or expenditure of public funds by a city;
- Solicitation or bid documents relating to a contract with a city;
- Communications sent between a city and a vendor, contractor, potential vendor or potential contractor during the solicitation, evaluation, or negotiation of a contract;
- Documents, including bid tabulations, showing the criteria by which a governmental body evaluates each vendor, contractor, potential vendor, or potential contractor responding to a solicitation and, if applicable, an explanation of why the vendor or contractor was selected; and
- Communications and other information sent between a city and a vendor or contractor related to the performance of a final contract with the city or work performed on behalf of the city.[179]

70. Is a discretionary exception considered "other law" for the purpose of withholding public information?

Discretionary exceptions are designed to protect the interests of the city 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 Act] or other law."[180] However, sections 552.104 (Information Related to Competition or Bidding) and 552.133 (Public Power Utility Competitive Matters) are two exceptions to this general rule.[181]

71. Is there "other law" which may be relied upon to withhold information presumed to be public 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 includes the Texas Rules of Civil Procedure and Texas Rules of Evidence.[182] Accordingly, the attorney-client privilege and work-product doctrine could be considered "other law" for the purpose of withholding public information.[183]

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179 *Id.* § 552.003(1-a).
180 *Id*. § 552.022(a).
181 *Id*. §§ 552.104(b); .133(c).
182 *In re City of Georgetown,* 53 S.W.3d 328, 332 (Tex. 2001); Tex. Att'y Gen. ORD-676 (2002).
183 *Id.; See also Paxton v. City of Dallas*, 509 S.W.3d 247, 262, 271 (Tex. 2017).

B. General Issues Regarding Confidential Records

72. Is there a laundry list of items that are confidential under the 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.

73. Can staff promise confidentiality for certain records that are provided to the city?

A promise of confidentiality from staff or a related promise within a governmental contract generally does not give the city the right to withhold certain information from public disclosure. Such promises are only enforceable if a state statute specifically allows the city to guarantee the confidentiality of the information.[184]

74. Can a city substitute a new document or produce a redacted copy of a record in response to a public information request?

The city 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 city may not substitute a new document in which only the non-confidential information is presented, unless the requestor consents to the substitution.[185]

C. Information about Public Officials/Employees

75. 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?

A public official or public employee may request in writing that the city not reveal his/her home address, home phone number, emergency contact information, social security number, or information about family members. In fact, a city is required to ask each employee or official whether they want such information to be treated as confidential. This inquiry must be made within 14 days of the employee being hired, appointed, elected or ending service with the city.[186] If the employee indicates in writing a preference for such confidentiality, the city cannot release the personal information.[187]

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184 Tex. Att'y Gen. Op. Nos. H-258 (1974), JM-672 (1987); Tex. Att'y Gen. ORD-455 (1987).
185 Tex. Att'y Gen. ORD-633 (1995), ORD-606 (1992).
186 Tex. Gov't Code § 552.024(a)-(b).
187 *Id*. §§ 552.024(c), .117.

Although the city is required to make this inquiry at the start or end of the employee's employment with the city, the ultimate duty to make a written request for confidentiality rests with the employee. If the city receives a request for the employee's information and no confidentiality request has been filed by the employee, it is too late for the city to ask the employee whether such confidentiality is preferred. In such a case, the city would have to release the personal information to the requestor.[188]

It is important to note that an elected public officer's personal information is excepted from disclosure whether or not the officer affirmatively elects to have his or her information kept confidential.[189] Moreover, a peace officer, including a current or honorably retired peace officer, is not required to file a written request to keep his/her personal information confidential.[190] As such, an elected public officer's and a peace officer's home address, home phone number, emergency contact information, social security number, and any information about family members are automatically confidential.[191] 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 death. The section also covers certain other state employees whose duties involve law enforcement.[192]

76. Can a city 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 city may 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.[193] If a city withholds the public employee's information, the city must provide the requestor, on a form prescribed by the attorney general, with:

1) a description of the information redacted or withheld;
2) the citation to section 552.024 of the Government Code; and
3) instructions regarding how the requestor may seek an attorney general ruling regarding whether the withheld information is excepted from disclosure.[194]

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188 *Id.* § 552.024(d).
189 *Id.* § 552.117(a)(17).
190 *Id.* § 552.117(a)(2), (4).
191 *Id*. §§ 552.117(a), .1175. *See id.* § 552.1175(b) (also protects date of birth).
192 *Id*. § 552.117(a)(4).
193 *Id*. § 552.024(c)(2).
194 *Id*. § 552.024(c-2).

The requestor has the ability to ask for an attorney general's ruling regarding whether the withheld information is excepted from disclosure.[195] The attorney general's office has established procedures and deadlines for receiving information necessary to decide the ruling and briefs from the requestor, the city, and any other interested party.[196] Like any other request for an attorney general ruling, the attorney general has 45 business days to render a ruling.

77. Are personal notes kept by an official subject to the Act?

Personal notes pertaining to official business that are made by an official are generally subject to the Act. A city 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 city; and (5) whether public funds were expended in creating or maintaining the document.[197]

D. Personnel Information

78. What information within a public employee's personnel file is considered public information?

The vast majority of information within a public employee's personnel file is considered public information 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.[198] Similarly, job-related test scores of public employees or applicants for public employment are generally treated as public information,[199] as are letters of recommendation, and opinions and recommendations concerning other routine personnel matters.[200] However, attorney general rulings have required information about an employee's withholding on a federal tax form be withheld, as well as information about an employee's beneficiary under a city life insurance program.[201] A city may refuse to reveal certain information under common law privacy through Section 552.101 of the Government Code. To make such a determination, the city should consider:

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195 *Id*. § 552.024(c-1).
196 *See* 1 Tex. Admin. Code §§ 63.11 – 63.16.
197 *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).
198 Tex. Gov't Code § 552.022(a)(2). *See also* Tex. Att'y Gen. ORD-405 (1983), ORD-444 (1986).
199 Tex. Att'y Gen. ORD-441 (1986).
200 Tex. Att'y Gen. ORD-615 (1993).
201 Tex. Att'y Gen. ORD-600 (1992).

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

2) whether there is any legitimate public interest in the release of or access to this information.[202]

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.[203] 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.

79. Can a city disclose the dates of birth of public employees?

The dates of birth of public employees are excepted from disclosure under section 552.102(a).[204] However, only those public employee's birth dates that are contained in records maintained by the city in a personnel context are protected. Also, this exception applies to former, as well as, current public employees.[205] However, it does not apply to applicants for employment,[206] nor to private employees or private individuals.

80. 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.[207] However, it is possible for a city to withhold the employee's personnel information from the employee under some other exception. For example, a city may deny an employee information in the employee's personnel file if the information relates to issues that are currently under civil or criminal litigation.[208]

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202 *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.).

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

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

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

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

207 Tex. Gov't Code § 552.023(a). *See* Tex. Att'y Gen. ORD-288 (1981).

208 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.)

81. Are the personnel files of police officers and/or firefighters in a city that has adopted civil service treated differently under the Act?

Section 143.089 of the Local Government Code prohibits a city's civil service fire or police department from releasing information from the department's personnel file (the "g" file). Instead, the department is required to refer someone who requests information from the "g" file to the city's director of civil service, who maintains the civil service file.[209] The civil service file does not contain information about complaints against civil service police officers or firefighters if no departmental disciplinary action was taken or if the disciplinary action was determined to have been taken without just cause.[210] However, if there is disciplinary action taken against a police officer or firefighter, then all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity are required to be placed in the civil service file.[211] Note that a law enforcement agency hiring a police officer is entitled to view the contents of the officer's "g" file.[212]

82. Are there certain work schedules or time sheets considered confidential under the Act?

The work schedules or time sheets of a firefighter, volunteer firefighter, or certain emergency medical services personnel[213] are confidential and excepted from public disclosure.[214]

E. General Exception to Withholding Information

83. Can a city withhold social security numbers without requesting an attorney general's ruling?

A city can withhold the social security number of a living person without requesting an attorney general ruling.[215] A city must release the requestor's social security number to the requestor or an authorized representative of the requestor.[216]

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209 Tex. Loc. Gov't Code § 143.089(g).

210 *Id*. § 143.089(c). *See also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.— San Antonio 2000, pet. denied); *City of San Antonio v. Tex. Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied); Tex. Att'y Gen. ORD-642 (1996).

211 Tex. Loc. Gov't Code § 143.089(a)(2). *See also Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.).

212 Tex. Loc. Gov't Code § 143.089(h);Tex. Occ. Code § 1701.454 (providing requirements for law enforcement agency to hire persons licensed under chapter 1701).

213 *See* Tex. Health & Safety Code § 773.003. (Definition of "emergency medical services personnel".)

214 Tex. Gov't Code § 552.159.

215 Tex. Gov't Code § 552.147(b).

216 *See id*. § 552.023.

84. Can a city withhold the dates of birth of members of the public?

A city can withhold the dates of birth of members of the public.[217] Dates of birth of members of the public are protected by common-law privacy pursuant to section 552.101 of the Government Code.

85. Are e-mail addresses protected from disclosure under the Act?

A city cannot release the e-mail address of a member of the public that is provided for the purpose of communicating electronically with the city.[218] The member of the public can allow his/her e-mail address to be disclosed if the member of the public affirmatively consents to its release. Under certain circumstances, an e-mail address is public if the city is provided with the e-mail address:

1) by a person who has a contractual relationship with the city;
2) by a vendor who seeks a contract with the city;
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 city.[219]

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

The Act allows a city, in limited circumstances, to withhold certain information that is contained in an inter-agency or intra-agency memoranda or letter.[220] This exception has been held to only apply to internal staff communications consisting of advice, recommendations, or opinions that reflect the policymaking process.[221] 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

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217 *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin, May 22, 2015, pet. denied) (memo op.).

218 Tex. Gov't Code § 552.137.

219 *Id*. § 552.137(c).

220 *Id*. § 552.111.

221 *City of Garland V. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); *Lett v. Klein Indep. Sch. Dist*., 917 S.W.2d 455, 456 (Tex. App.—Houston [14th Dist.] 1996, writ denied); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 412-13 (Tex. App.—Austin 1992, no writ); 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).

issues of a broad scope.[222] For example, the evaluation of an individual employee would probably not be protected from disclosure under this exception.[223] On the other hand, a university report addressing systematic discrimination against minorities has been found to be protected by this exception.[224] It should be noted that information created by outside consultants acting on the city's behalf may in certain cases be covered by this exception.[225]

87. Can a city release copies of certified agendas or recording of closed meetings (executive sessions)?

A certified agenda is a written document that summarizes each of the issues that were discussed at a closed meeting or the minutes of the closed meeting. The Open Meeting Act requires a governmental body have a certified agenda or recording of its closed meetings.[226] The certified agenda or recording of the closed meeting is considered confidential[227] and may not be released except under order of a court.[228] Therefore, a certified agenda or recording of a closed meeting cannot be obtained through a PIA request. Actually, the unlawful release of a certified agenda or recording of a closed meeting is a class B misdemeanor.[229] Moreover, person who releases a certified agenda or recording of a closed meeting may be liable to a person injured or damaged by the disclosure for:

(1) actual damages, including damages for personal injury or damage, lost wages, defamation, or mental or other emotional distress;

(2) reasonable attorney fees and court costs; and

(3) at the discretion of the jury or judge, as the case may be, exemplary damages.[230]

Governmental bodies can withhold the certified agenda or recording of a closed meeting without asking for an attorney general's ruling.[231] However, the certified agenda or recording of a closed meeting can be reviewed by members of the governmental body who attended the closed meeting.[232] Also, elected members that were absent from the

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222 Tex. Att'y Gen. ORD-631 at 3 (1995); *City of Garland V. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000).
223 Tex. Att'y Gen. ORD-615 (1993).
224 Tex. Att'y Gen ORD-631 (1995).
225 *Id*.
226 Tex. Gov't Code § 551.103.
227 Tex. Att'y Gen. ORD-495 (1988).
228 Tex. Gov't Code § 551.104.
229 *Id*. § 551.146(a)(1).
230 *Id*. § 551.146(a)(2).
231 Tex. Att'y Gen. ORD-684 (2009).
232 Tex. Att'y Gen. Op. No. JC-120 (1999), DM-227 (1993).

closed meeting can review the certified agenda or recording.[233] But, a member of governmental body cannot have a copy or make a copy of the certified agenda or recording whether they were present for or absent from the closed meeting.[234] Additionally, a governmental body may not allow a member to review the certified agenda or recording of a closed meeting once the member has left the office.[235] The governmental body may adopt procedures for reviewing the certified agenda or recording, but it cannot absolutely prohibit the review by a member of the governmental body.

F. Law Enforcement Information

88. 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 that, if released, would affect investigations or prosecutions**: Information that is held by a law enforcement agency or prosecutor that, if 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.[236]

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.[237] Information that has been held to be open includes:

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233 Tex. Att'y Gen. Op. No. JC-120 (1999).
234 *Id*.; Tex. Att'y Gen. LO-98-033 (1998).
235 Tex. Att'y Gen. Op. No. JC-120 (1999).
236 Tex. Gov't Code § 552.108(a).
237 *Id*. § 552.108(c); *See also* Tex. Att'y Gen. ORD-127 (1976); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976).

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 officers.[238]

Section 552.108 only applies to criminal investigations and prosecutions. Section 552.108 is inapplicable when no criminal investigation or prosecution results from an administrative investigation of a police officer's alleged misconduct.[239]

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.[240]

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238 Tex. Att'y Gen. ORD-127 at 3-5 (1976).

239 *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).

240 Tex. Att'y Gen. ORD-127 (1976).

89. Can a city request a previous determination for records under the "law enforcement exception"?

Yes. The attorney general announced at the 2015 Open Government Conference a new previous determination program whereby the attorney general's office would issue a section 552.108(a)(1) Previous Determination ("108 PD"), which once granted, would allow a governmental body to withhold some law enforcement records related to pending criminal cases without needing to request a ruling from the attorney general, so long as the governmental body complied with the specific requirements of the 108 PD program, including the requirement that at least basic information be released within five business days of receiving the request. Pursuant to the 108 PD program, records may be withheld under section 552.108(a)(1) in the following circumstances:

1. The city makes a good faith determination that the information at issue relates to the detection, investigation, or prosecution of crime;

2. The release of such information would interfere with the detection, investigation or prosecution of crime;

3. The city will release at least the basic information from the information at issue (it may release more);

4. The city will release such information within five business days of receiving the request;

5. The city will provide the requestor with the required notice form promulgated by the attorney general, which describes the requestor's rights and the types of information withheld; and

6. The city has not previously received a request for the same information from the same requestor after the governmental body has provided the requestor with the information described above.

A city may request the 108 PD by seeking a ruling from the attorney general's office in response to an open records request. The city should request the 108 PD in conjunction with the kind of file to which the city will apply the 108 PD. For example, the city should request the 108 PD in relation to a file that

1. pertains to law enforcement records related to an open criminal case;

2. the release of the information would interfere with the detection, investigation, or prosecution of crime;

3. portions of the basic information are not confidential (e.g., the name of a sexual assault victim who is also a complainant); and

4. the information is not otherwise confidential in its entirety pursuant to other statutes (e.g., juvenile records subject to section 58.008 of the Family Code, or child abuse records subject to section 261.201 of the Family Code.)

Even if a city has been granted a previous determination of this type, the city may still request an open records decision on any records. When in doubt, the city should consult with the city attorney or seek a ruling from the attorney general's office. Misapplication of the 108 PD may result in the presumption that the information at issue is public. Additionally, misuse of the 108 PD may result in the attorney general's office revoking the 108 PD from the city.

Additional information regarding the 108 PD program can be obtained from the attorney general's office or here.

90. Can motor vehicle accident report information be disclosed under the Act?

The disclosure of motor vehicle accident reports, also known as ST-3, CRB-3 or CR-3 forms, is governed by the Transportation Code.[241] In general, motor vehicle accident reports are privileged and for the confidential use of the Department of Public Safety (DPS), an agency of the United States, the state of Texas, or a Texas local government that uses the information for accident prevention purposes.[242] However, certain people and entities can obtain an unredacted copy of a motor vehicle accident report. With a written request and payment of any required fee, the following requestors can obtain the unredacted report:

1) DPS;
2) An agency of the United States, state of Texas, or a local government of Texas that uses the information for accident prevention purposes;
3) Law enforcement agency that employs the peace officer who investigated the accident and sent to DPS, including an agent of the law enforcement agency authorized by contract to obtain the information;
4) The court in which a case involving a person involved in the accident is pending if the report is subpoenaed; or
5) any person directly concerned in the accident or having a proper interest therein, including:
    a) any person involved in the accident;
    b) the authorized representative of any person involved in the accident;

[241] Tex. Transp. Code § 550.065.
[242] *Id*. § 550.065(b).

c) a driver involved in the accident;

d) an employer, parent, or legal guardian of a driver involved in the accident;

e) the owner of a vehicle or property damaged in the accident;

f) a person who has established financial responsibility for a vehicle involved in the accident in a manner described by section 601.051 of the Transportation Code; including a policyholder of a motor vehicle liability insurance policy covering the vehicle;

g) an insurance company that issued an insurance policy covering a vehicle involved in the accident;

h) an insurance company that issued a policy covering any person involved in the accident;

i) a person under contract to provide claims or underwriting information to a person described above in f, g, or h;

j) a radio or television station that holds a license issued by the Federal Communication Commission;

k) a newspaper that is:

   i) a free newspaper of general circulation or qualified under section 2051.044 of the Government Code to publish legal notices;

   ii) published at least once a week; and

   iii) available and of interest to the general public in connection with the dissemination of news; or

l) any person who may sue because of death resulting from the accident.[243]

Any person, with a written request and payment of the required fee, can receive a redacted version of the motor vehicle accident report.[244] The following information must be withheld in the redacted version of the accident report:

1) personal information as defined by section 730.003 of the Transportation Code[245];

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[243] *Id*. §§ 550.065(b), (c).

[244] *Id*. § 550.065(c-1).

[245] *Id*. § 730.003(6) ("Personal information" means information that identifies a person, including an individual's photograph or computerized image, social security number, driver identification number, name, address, but not the zip code, telephone number, and medical or disability information. The term does not include:

2) the first, middle, and last name of any person listed in an accident report, including a vehicle driver, occupant, owner, or lessee, a bicyclist, a pedestrian, or a property owner;

3) the number of any driver's license, commercial driver's license, or personal identification certificate issued to any person listed in an accident report;

4) the date of birth, other than the year, of any person listed in an accident report;

5) the address, other than zip code, and telephone number of any person listed in an accident report;

6) the license plate number of any vehicle listed in an accident report;

7) the name of any insurance company listed as a provider of financial responsibility for a vehicle listed in an accident report;

8) the number of any insurance policy issued by an insurance company listed as a provider of financial responsibility;

9) the date the peace officer who investigated the accident was notified of the accident;

10) the date the investigating peace officer arrived at the accident site;

11) the badge number or identification number of the investigating officer;

12) the date on which any person who died as a result of the accident died;

13) the date of any commercial motor vehicle report; and

14) the place where any person injured or killed in an accident was taken and the person or entity that provided the transportation.[246]

91. Can a city release a body worn camera recording?

Chapter 1701 of the Occupations Code provides the procedures a requestor must follow when seeking a body worn camera recording. A member of the public is required to

(A) information on vehicle accidents, driving or equipment-related violations, or driver's license or registration status; or
(B) information contained in an accident report prepared under:
(i) Chapter 550; or
(ii) former Section 601.004 before September 1, 2017.)

[246] *Id*. § 550.065(f).

provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

1) The date and approximate time of the recording;
2) The specific location where the recording occurred; and
3) The name of one or more persons known to be a subject of the recording.[247]

Failure to provide this information does not preclude a requestor from requesting the same information again.[248] However, even if the requestor provides the proper information to obtain the body worn camera recording, chapter 1701 provides for the confidentiality of the recordings under certain circumstances.

A body worn camera recording is confidential if it was not required to be made under a law or policy adopted by the appropriate law enforcement agency and does not relate to a law enforcement purpose.[249] Also, any recording that documents the use of deadly force or related to an administrative or criminal investigation of an officer is considered confidential and remains confidential until all criminal matters are finally adjudicated and all administrative investigations are complete.[250] However, a law enforcement agency may choose to release such information if doing so furthers a law enforcement purpose.[251] Before releasing a body worn camera recording that was made in a private place or in connection with a fine-only misdemeanor, the law enforcement agency must receive authorization from the person who is the subject of the recording, or if the person is deceased, from the person's authorized representative.[252] A city may continue to raise section 552.108 (law enforcement exception) or other applicable exception to disclosure or law for body-worn camera recordings.[253]

Also, for body worn cameras, the ten and 15 business day deadlines associated with requesting a ruling from the attorney general are extended to 20 and t25 business days, respectively.[254] Additionally, a city that receives a "voluminous request" for body worn camera recording is considered to have complied with the request if it provides the information not later than the 21st business day after it receives the request.[255]

A "voluminous request" is one that includes:

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247 Tex. Occup. Code § 1701.661(a).
248 *Id*. § 1701.661(b).
249 *Id*. § 1701.661(h).
250 *Id*. § 1701.660(a).
251 *Id*. § 1701.660(b)
252 *Id*. § 1701.661(f).
253 *Id*. § 1701.661(e).
254 *Id*. § 1701.662.
255 *Id*. § 1701.663.

(1) a request for body worn camera recordings from more than five separate incidents;

(2) more than five separate requests for body worn camera recordings from the same person in a 24-hour period, regardless of the number of incidents included in each request; or

(3) a request or multiple requests from the same person in a 24-hour period for body worn camera recordings that, taken together, constitute more than five total hours of video footage.

92. Is certain crime victim information confidential?

Certain crime victim information is confidential and excepted from disclosure if the information identifies an individual as a victim of: (1) human trafficking, sexual abuse of a young child or disabled individual, indecency with a child, including sexual performance by a child, sexual assault, including aggravated sexual assault, compelling prostitution; (2) an offense that is part of the same criminal episode; or (3) a victim of any criminal offense, if the victim was younger than 18 years of age when any element of the offense was committed.[256]

Information may be disclosed: (1) to any victim identified by the information, or to the parent or guardian of a victim identified by the information who was younger than 18 years of age when the offense was committed; (2) to a law enforcement agency for investigative purposes; or (3) in accordance with a court order requiring the disclosure.[257]

G. Lawsuit or Other Legal Information

93. 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 city has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue.[258] The elements are as follows:

1) A city must demonstrate that the information constitutes or documents a communication.[259]

2) The communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental

[256] Tex. Gov't Code § 552.1315(a).
[257] *Id*. § 552.1315(b).
[258] Tex. Att'y Gen. ORD-676 at 6-11 (2002).
[259] *Id*. at 7.

body.[260] 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 city.[261] 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.[262] Thus, a city 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,[263] 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."[264]

Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated.[265] Moreover, because the client may elect to waive the privilege at any time, a city 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.[266] Also, if a city fails to timely seek an open records letter ruling to withhold information subject to the attorney-client privilege, the privilege is not waived and constitutes a compelling reason to withhold information under section 552.302 of the Government Code.[267]

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260 *Id.; See* Tex. R. Evid. 503(b)(1).

261 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).

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

263 Tex. Att'y Gen. ORD-676 at 10 (2002). *See* Tex. R. Evid. 503(b)(1).

264 Tex. Att'y Gen. ORD-676 at 10 (2002). *See* Tex. R. Evid. 503(a)(5).

265 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).

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

267 *Paxton v. City of Dallas*, 509 S.W.3d 247, 262, 271 (Tex. 2017).

94. When is information that relates to pending or anticipated litigation protected from disclosure?

Under Section 552.103 of the Government Code, a city may withhold information about pending or reasonably anticipated civil or criminal litigation. The litigation must be pending or reasonably anticipated as of the date the PIA request is received by the city.[268] The city, its officials, or its staff must be a party to such litigation.[269]

Whether litigation is reasonably anticipated is a question that involves both factual and legal issues.[270] There must be concrete evidence that litigation is likely. It must be more than mere conjecture. The city 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.[271] 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.[272] 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.

95. When can a city withhold attorney work product?

Section 552.111 encompasses the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure.[273] Rule 192.5 defines work product as:

1) material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or

2) a communication made in anticipation of litigation or for trial between a party and the party's representatives or among a party's representatives,

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268 Tex. Gov't Code § 552.103(c).
269 *Id*. § 552.103(a).
270 *See University of Texas Law School v. Texas Legal Foundation*, 958 S.W.2d 479 (Tex. App.— Austin 1997, no pet.).
271 Tex. Att'y Gen. ORD-647 (1996).
272 Tex. Gov't Code § 552.103(b).
273 *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Tex. Att'y Gen. ORD-677 at 4-8 (2002).

including the party's attorneys, consultants, sureties, indemnitors, insurers, employees or agents.[274]

For a city to use this exception, the city body bears the burden of demonstrating that the information was created or developed for trial or in anticipation of litigation by or for a party or a party's representative.[275] To show that the information was made or developed in anticipation of litigation, the city has to prove that:

a) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue; and

b) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and [created or obtained the information] for the purpose of preparing for such litigation.[276]

A "substantial chance" of litigation does not mean a statistical probability, but rather "that litigation is more than merely an abstract possibility or unwarranted fear."[277]

Also, the city has to prove that the materials or mental impressions must have been prepared or developed by or for a party or party's representatives, as well as, the communication was between a party and the party's representatives.[278] Therefore, the city must identify the parties and potential parties to the litigation, the person that prepared the information, and any individual with whom the information was shared in order to claim the work product privilege.[279]

H. Government-Operated Utility Information

96. Can a city-operated utility disclose customers' personal information?

Personal information in a customer's account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, may not be disclosed by a city-operated utility unless the customer elects to make the information public or certain exceptions to this prohibition of disclosure apply.[280] Also excluded from public disclosure is information: (1) that reveals whether an account is delinquent or eligible for disconnection; and (2) collected as part of an advanced

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274 Tex. R. Civ. P. 192.5(a).
275 *Id*.; Tex. Att'y Gen. ORD-677 at 6-8 (2002).
276 *Nat'l Tank Co. v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993).
277 *Id*. at 204; Tex. Att'y Gen. ORD-677 at 7 (2002).
278 Tex. R. Civ. P. 192.5(a); Tex. Att'y Gen. ORD-677 at 7-8 (2002).
279 Tex. Att'y Gen. ORD-677 at 8 (2002).
280 Tex. Util. Code § 182.052(a). (The 87th Texas Legislature passed H.B. 872. essentially reversing the prior law's requirements. Before H.B. 872, utility customers had to fill out a form to request their information remain confidential. Failure to do so made the customer's information public. Now, a customer's information is protected unless the customer opts to make it public).

metering system.[281] A city-operated utility would include a city-entity that, for compensation, provides water, wastewater, sewer, gas, garbage, electricity, or drainage service.[282] Personal information is defined to include a customer's address, telephone number, and social security number.[283] The city-operated utility must include, with a bill sent to each customer, or post on the utility's Internet website, a notice of a customer's right to request disclosure of his or her personal information and a form[284] by which the customer may request disclosure by marking an appropriate box on the form and returning it to the utility.[285] A customer may rescind a request for disclosure by providing the city-operated utility a written request to withhold the customer's personal information beginning on the date the utility receives the request.[286] This prohibition of disclosure does not affect the ability of the utility to release such information to other governmental agencies for official purposes, to consumer reporting agencies, or to another entity providing utility service.[287]

Although the utility has a duty to notify customers of their right to disclose such information, the ultimate duty to request disclosure remains with the customer. If the utility customer does not make such a written request, the utility may not disclose the personal information within the utility records. If a member of the public requests access to this personal information, and the customer has not given the utility permission to disclose his or her information, the utility will be able to withhold the customer's personal information without asking for an open records ruling.[288] When in doubt, the city may submit a request for a ruling to the attorney general's office.

97. What information about a public power utility[289] is confidential?

Section 552.133 of the Government Code excepts from disclosure a public power utility's information related to a competitive matter. The exception defines "competitive matters" as a utility-related matter that is related to the public power utility's competitive activity.[290] In order to be "utility-related,", the matter must relate to the following six enumerated categories of information:

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281 Tex. Gov't Code § 552.1331(b).
282 Tex. Util. Code § 182.051(3).
283 *Id*. § 182.051(4).
284 The League's legal department prepared an example form for customers to request disclosure of their records. This is just an example, and each city should have its city attorney review the form prior to its use.
285 Tex. Util. Code § 182.052(c).
286 *Id*. § 182.052(d).
287 *Id*. § 182.054.
288 *Id*. § 182.052(e).
289 Tex. Gov't Code § 552.133(a).
290 *Id*. § 552.133(a-1).

1) generation unit specific and portfolio fixed and variable costs, including forecasts of those costs, capital improvement plans for generation units, and generation unit operating characteristics and outage scheduling;

2) bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies;

3) effective fuel and purchased power agreements and fuel transportation arrangements and contracts;

4) risk management information, contracts, and strategies, including fuel hedging and storage;

5) plans, studies, proposals, and analyses for system improvements, additions, or sales, other than transmission and distribution system improvements inside the service area for which the public power utility is the sole certificated retail provider; and

6) customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies.[291]

Also, there is a list of sixteen categories of information that may not be deemed competitive matters and therefore cannot be withheld under this exception.[292] Information or records of a city-operated utility that operates a chilled water program are subject to disclosure under the Act if the information or records are reasonably related to:

> (1) a city-operated utility's rate review process;
>
> (2) the method a city-operated utility uses to set rates for retail electric service; or
>
> (3) the method a city-operated utility uses to set rates for a chilled water program defined as: (A) a program to produce chilled water at a central plant and pipe that water to buildings for air conditioning, including a district cooling system or chilled water service; or (B) any other program designed to used chilled water to provide air conditioning, reduce peak electric demand, or shift electric load.[293]

Additionally, a city may disclose information pertaining to a city-owned power utility to a city-appointed citizen advisory board without waiving its right thereafter to assert an

[291] *Id*. § 552.133(a-1)(1).
[292] *Id*. § 552.133(a-1)(2).
[293] *Id*. § 552.133(b-1); Tex. Util. Code § 11.03(3-a).

exception under the Act in response to a future public information request for this information.[294]

I. Purchasing/Procurement Information

98. What information must be disclosed if there is a public information request regarding a competitive bid?

Section 552.104 of the Government Code allows a city to withhold information that is submitted in response to a competitive bid if disclosure of the information would give advantage to a competitor or bidder.[295] This exception can only be asserted by the city. This exception applies when the city demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the city establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future. Even if the information falls within one of the categories of information listed in section 552.022(a) of the Government Code, this exception allows the city to withhold that information under this exception.[296]

However, any expenditure for a parade, concert, or other types of entertainment events paid for in whole or in part with public funds is prohibited from being withheld under this exception.[297] A city or other entity cannot include a provision in a contract that would prohibit disclosure of these expenditures. Any contract provision that does prevent disclosure of these expenditures is void.[298]

99. 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 secrets or the exception for commercial or financial information that would give an advantage to competitors. First, information may be withheld if it is demonstrated based on specific factual evidence that the information is a trade secret.[299] The term "trade secret" includes all forms and types of information, including business, scientific, technical, economic, or engineering information, and any formula, design, prototype, pattern, plan, compilation, program device, program, code, device, method, technique, process, procedure, financial

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294 Tex. Att'y Gen. ORD-666 (2000).
295 Tex. Gov't Code § 552.104(a).
296 *Id*. § 552.104(b).
297 *Id*. § 552.104(c).
298 *Id*.
299 *Id*. § 552.110(b).

data, or list of actual or potential customers or suppliers, whether tangible or intangible and whether or however stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

- the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by another person who can obtain economic value from the disclosure or use of the information.[300]

Second, commercial or financial information may be withheld if it is demonstrated, based on specific factual evidence, that disclosure would cause substantial competitive harm to the person from whom that information was obtained.[301]

Note that certain contracting information may not be withheld under this section[302] (See Question 100 for information on contracting information). Also, the Act requires a city to inform third parties when their proprietary information may be subject to this exception.[303] The city must make a good faith attempt to notify the third party of the request for an open records letter ruling by sending a notice statement on a form promulgated by the attorney general's office and a copy of the PIA request to the third party within a reasonable time not later than the 10th day after the date the city received the PIA request.[304] Also, the city may decline to release the requested information for the purpose of requesting an open records letter ruling from the attorney general's office.[305]

100. What information is protected under the exception for proprietary information submitted to a city?

Information submitted to a city by a vendor, contractor, potential vendor, or potential contractor in response to a request for bids, proposals, or qualifications is excepted from disclosure under the Act if the vendor, contractor, potential vendor, potential contractor that the information related to demonstrates based on specific factual evidence that disclosure of the information would:

1. reveal an individual approach to:
    a. work;

300 *Id.* § 552.110(a).
301 *Id*. § 552.110(c).
302 *See id.* § 552.0222.
303 *Id*. § 552.305(d).
304 *Id.* § 552.305(d)(2).
305 *Id*. § 552.305(a).

b. organizational structure;

c. staffing;

d. internal operations;

e. processes; or

f. discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

2. give advantage to a competitor.[306]

However, this exception does not apply to: (1) information in a voucher or contract relating to the receipt or expenditure of public funds by a city; or (2) communications and other information sent between a city and a vendor or contractor related to the performance of a final contract with the city or work performed in behalf of the city.[307] Also, this exception does not apply to certain contracting information.[308] [See Question 100 for information on contracting information.]

This exception can only be asserted by a vendor, contractor, potential vendor, or potential contractor.[309] The PIA requires a city to inform third parties when their proprietary information may be subject to this exception.[310] The city must make a good faith attempt to notify the third party of the request for an open records letter ruling by sending a notice statement on a form promulgated by the attorney general's office and a copy of the PIA request to the third party within a reasonable time not later than the 10th day after the date the city received the PIA request. The city must decline to release information to the extent necessary to allow a vendor, contractor, potential vendor, or potential contractor to assert the exception to disclosure.[311]

101. Which type of contracting information may not be withheld as a trade secret and certain commercial or financial information (section 552.110 of the Government Code) or proprietary information (section 552.1101 of the Government Code)?

Sections 552.110 and 552.1101 do not apply to the following types of contracting information:

306 *Id*. § 552.1101(a).
307 *Id*. § 552.1101(b).
308 *Id*. 552.1101(a); *see id.* § 552.0222.
309 *Id*. § 552.1101(c).
310 *See id*. § 552.305(d).
311 *Id*. § 552.1101(c); *see id*. § 552.305(a).

1. A state agency's contract for goods and services from a private vendor excluding any information that is confidential under law; excepted by an attorney general's open record decision; and an individual's social security number;
2. A major contract of a state agency posted on the Legislative Budget Board's website excluding information that is not subject to disclosure under the Act;
3. The following contract or offer terms or their functional equivalent:
    a. Any term describing the overall or total price a city will or could potentially pay, including overall or total value, maximum liability, and final price;
    b. A description of the items or services to be delivered with the total price for each if a total price is identified for the item or service in the contract;
    c. The delivery and service deadlines;
    d. The remedies for breach of contract;
    e. The identity of all the parties to the contract;
    f. The identity of all subcontractors in a contract;
    g. The affiliate overall or total pricing for a vendor, contractor, potential vendor, or potential contractor;
    h. The execution dates;
    i. Effective dates; and
    j. The contract duration terms, including any extension options; or
4. Information indicating whether a vendor, contractor, potential vendor, or potential contractor performed its duties under a contract, including information regarding:
    a. A breach of contract;
    b. A contract variance or exception;
    c. A remedial action;
    d. An amendment to a contract;
    e. Any assessed or paid liquidated damages;
    f. A key measures report;
    g. A progress report; and

h. A final payment checklist.[312]

102. What information regarding the acquisition of real estate or personal property by a city may be withheld?

Section 552.105 of the Government Code provides a city with limited authority to withhold information that relates to the city's acquisition of real estate or personal property.[313] Specifically, this exception is designed to protect a city's planning and negotiating position with respect to particular transactions.[314] The authority to withhold this information generally ends once the city acquires the involved property.[315] However, this exception is not limited solely to transactions not yet finalized. The attorney general's office has concluded that information about specific parcels of land obtained in advance of other parcels to be acquired for the same project could be withheld where release of the information would harm the city's negotiating position with respect to the remaining parcels.[316] As long as the city makes a good faith determination that the release of information would damage its negotiating position with respect to the acquisition of property, the attorney general will generally accept the determination, unless the records or other information show the contrary as a matter of law.[317]

Also, this exception has equal application to information pertaining to a lease of real or personal property.[318] Similarly, the information about the lease is considered public once the city enters into the lease agreement. It should be noted that if the information is considered public under section 552.022, the governmental body cannot withhold it under this exception.

J. Economic Development Information

103. Is information related to economic development negotiations is public?

Section 552.131 of the Government Code allows a city to withhold certain information related to economic development negotiations between a city and a business that the city is seeking to have locate, stay or expand within or near the territory of the city. Under this provision, the city may withhold trade secrets of the business prospect that are related to economic development negotiations.[319] Similarly, a city may withhold certain commercial and financial information about the business prospect that was acquired during economic

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312 *Id*. § 552.0222(b). *See id*. §§ 322.020(c) – (d); 2261.253(a), (e).
313 *Id*. § 552.105. *See* Tex. Att'y Gen. ORD-222 (1979)
314 Tex. Att'y Gen. ORD-564 (1982); ORD-310 (1982).
315 Tex. Att'y Gen. ORD-348 (1982).
316 Tex. Att'y Gen. ORD-564 at 2 (1982).
317 *Id*.
318 Tex. Att'y Gen. ORD-348 (1982).
319 Tex. Gov't Code. § 552.131(a)(1).

development negotiations if release of the information would result in substantial competitive harm to the business prospect.[320] The test for which 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 entered into with the business prospect, the city may withhold financial or other incentive information being offered to the business prospect by the city or another person.[321] Such financial or other incentive information that is withheld under this provision is releasable after an agreement is executed with the business prospect.[322]

104. May an economic development entity withhold information related to economic development negotiations under section 552.131 of the Government Code?

An economic development entity whose mission or purpose is to develop and promote the economic growth of a state agency or political subdivision, including a city, with which the entity contracts may assert Section 552.131 with respect to information that is in the entity's custody or control.[323] Like a city, the economic development entity must make a good faith attempt to notify any third party of the request for an open records letter ruling by sending a notice statement on a form promulgated by the attorney general's office and a copy of the PIA request to the third party within a reasonable time, but not later than the 10th day after the date the economic development entity receives the PIA request.[324]

K. Health Information

105. What is "protected health information"?

Protected health information is any information that reflects that an individual received health care from a covered entity as defined by Section 181.001(b)(2) of the Health & Safety Code.[325] Examples of covered entities include hospitals and medical centers.

A more specific definition of "protected health information" is individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium.[326]

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320 *Id*. § 552.131(a)(2).
321 *Id*. § 552.131(b).
322 *Id*. § 552.131(c).
323 *Id*. § 552.131(b-1).
324 *See id*. § 552.305(d).
325 *Id*. § 552.002(d); Tex. Health & Safety Code § 181.006(1).
326 *Id.* § 181.001(a). *See* 45 C.F.R §160.103. (Chapter 181 of the Health and Safety Code borrows definitions from the Health Insurance Portability and Accountability Act and Privacy Standards (HIPAA)

106. Is protected health information considered public information under the PIA?

Protected health information is not considered public information and is not subject to disclosure under the PIA.[327]

107. Is information provided by an out-of-state health care provider protected from disclosure under the PIA?

Information provided to a city by an out-of-state health care provider in connection with a quality management, peer review, or best practice program that the out-of-state health care provider pays for is considered confidential and excepted from disclosure under the PIA.[328]

108. Is information regarding communicable diseases protected from disclosure under the PIA?

Protected health information does not include information that: (1) identifies the name or location of a facility in which residents have been diagnosed with a communicable disease; or (2) the number of residents who have been diagnosed with a communicable disease in a facility.[329] Facility is defined as a licensed nursing facility, continuing care facility, and an assisted living facility.[330] Unless made confidential under other law, certain information regarding communicable diseases in specific facilities is not confidential and is subject to disclosure under the Act.[331]

L. Transit Authority or Department Held Information

109. Is information held by a transit authority or department protected from disclosure under the PIA?

Personal identifying information collected by a transit authority or department is confidential and not subject to disclosure under the Act, including a person's:

(1) name, address, e-mail address, and phone number;

(2) account number, password, payment transaction activity, toll or charge record, or credit, debit, or other payment card number;

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for terms not defined by this chapter. This Chapter borrows the HIPAA definitions of "protected health information" and "individually identifiable health information".)

327 Tex. Gov't Code § 552.002(d). *See also* Tex. Health & Safety Code § 181.006(2).

328 Tex. Gov't Code § 552.162.

329 Tex. Health & Safety Code § 181.060(b).

330 *Id*. § 181.060(a)(2).

331 *Id*. § 181.060(c).

(3) trip data, including the time, date, origin, and destination of a trip, and demographic information collected when the person purchases a ticket or schedules a trip; and

(4) other personal information, including financial information.[332]

Notwithstanding the foregoing, information identified in (3) above may be disclosed to a governmental agency or institution of higher education by a transit authority if the requestor confirms in writing that the use of the information will be strictly limited to use in research or in producing statistical reports, but only if the information is not published, redisclosed, sold, or used to contact any individual.[333]

V. Ability to Recover Costs for Providing Copies of Public Information

110. What is the general ability of a city to charge for documents?

The Act allows a city to set a charge for providing copies of public information.[334] However, a city may not charge more than 25 percent above the charges set by the attorney general's office.[335] The attorney general's office has set a charge of 10 cents per page for making simple photocopies or printouts. If a city's actual cost for producing copies of public information exceeds the attorney general's office charges by more than 25 percent, the city may apply to the attorney general's office for permission to charge more.[336] In no case may the charge exceed the actual cost of producing the requested copies.[337]

111. When can a city recover labor charges for a public information request?

Labor to Produce Paper Copies: A city may recover labor charges in response to a public information request for paper copies in three circumstances:

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

2) if the records to be copied are located in more than two separate buildings or in a remote storage facility;[338] or

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[332] Tex. Transp. Code §§ 451.061(f); 452.061(e); 453.104(b); 460.109(e).
[333] *Id.* §§ 451.061(g); 452.061(f); 453.104(c); 460.109(f).
[334] Tex. Gov't Code § 552.262. *See generally id*. §§ 552.261 - .275.
[335] *See generally* 1 Tex. Admin. Code §§ 70.1-.13. (cost rules promulgated by the attorney general's office).
[336] Tex. Gov't Code § 552.262(c).
[337] *Id*. § 552.262(a).
[338] *Id*. § 552.261(a).

3) if the city provides access to paper documents that meet certain specifications.[339]

Presently, the attorney general's office allows a maximum labor charge of $15 per hour.[340] If the city assesses a charge for labor, the requestor may require the city 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 city is not permitted to charge for providing this statement.[341]

Labor to Produce Copies from Electronic Records: Charges for copies of records that are stored electronically may include reasonable costs of materials, labor, and overhead if the records result in more than 50 pages.[342]

If the city assesses a charge for labor, the requestor may require the governmental body 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 city is not permitted to charge for providing this statement.[343]

A city can recover labor charges for providing access to electronic records if providing such access requires programming or manipulation of data.[344] In such a case, the city must provide a special written notice to the requestor as provided under the Act.[345] Additionally, the city must obey the rules of the attorney general's office in determining how much to charge for the labor.[346]

112. Can a city charge for the labor cost to retrieve materials from a remote location?

A city 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.[347] Buildings are considered to be "separate" if they are not connected by a covered or open sidewalk, or by an elevated or underground walkway.[348] The charge

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339 *Id*. § 552.271(c) - (d).
340 1 Tex. Admin. Code § 70.3(d)(1).
341 Tex. Gov't Code § 552.261(b).
342 *Id*. § 552.261(a).
343 *Id*. § 552.261(b).
344 *Id*. § 552.231.
345 *Id*.
346 *Id*. § 552.262(b). *See generally* 1 Tex. Admin. Code §§ 70.1-.13 (cost rules promulgated by the attorney general's office).
347 Tex. Gov't Code § 552.261(a)(1)-(2).
348 *Id*. § 552.261(c).

for labor can be recovered in such a situation even if the requestor seeks fewer than 50 pages of copies.[349]

113. When and how much may a city charge for overhead when handling a public information request?

A city may impose a charge for overhead whenever a personnel (labor) charge is applicable to a PIA request. Any overhead charge cannot exceed 20 percent of the personnel charge.[350]

114. Can a city recover costs for any modifications to its computer program that are necessary to respond to a public information request?

A city may charge a requestor for the cost of any programming or manipulation of data that is necessary to respond to a PIA request.[351] Presently, the attorney general's office allows a maximum programming charge of $28.50 per hour.[352] 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.[353] However, before a city may impose such a charge, it must provide the requestor with certain written information in advance, including a statement of the estimated charges.[354]

115. Can a city require a requestor pay the costs for producing the records prior to the city mailing out the requested information?

If a requestor asks the city to mail the information, the city 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.[355] A city is not required to provide public information by mail until the requestor pays all applicable charges.

116. Can a city refer a requestor to the city's website if the public information being requested is available on the city's website?

A city complies with the Act when it refers a requestor to the city's website if the information being requested is available on the city's website.[356] The city will have to refer the requestor to the exact Internet location or uniform resource locator (URL) address on its website. The information has to be accessible to the public and the requested information must be identifiable and readily accessible. However, if the requestor prefers

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349 *Id*. § 552.261(a).
350 1 Tex. Admin. Code § 70.3(e)(3).
351 Tex. Gov't Code § 552.231.
352 1 Tex. Admin. Code § 70.3(c)(1).
353 Tex. Gov't Code § 552.272(a).
354 *Id. See also id*. § 552.231.
355 *Id*. § 552.221(b)(2).
356 *Id*. § 552.221(b-1).

to receive the requested information in a manner other than access through the URL, the city must supply the information in the manner requested. Also, if the city provides by e-mail an Internet location or URL address for requested information, the e-mail must contain a statement in a conspicuous font clearly indicating that the requestor may nonetheless access the requested information by inspection or duplication or by receipt through U.S. mail.[357]

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

A city is required to provide detailed information to the requestor if the charges for a public information request are likely to exceed $40.[358] If the charges will likely exceed $40, the city must provide the requestor with a written statement that contains:

1) an itemized estimate of the expected cost;[359]
2) inform the requestor about contacting the city about an alternative method for supplying the requested records if an alternative method exists and it would be less costly;[360]
3) inform the requestor that he or she has ten business days to provide the city with a written response stating whether:
    a. the charges are accepted,
    b. the request is modified, or
    c. a complaint has been lodged with the Attorney General's office alleging overcharges for providing the copies;[361] and
4) notify the requestor that failure to respond to the statement within ten business days results in the automatic withdrawal of the public information request.[362]

If the city finds that the costs will exceed more than 20 percent of the original estimate, the city must provide the requestor with an updated itemized statement.[363] The requestor again has ten business days to provide the city with a written response to the updated statement, or the request will be considered to be withdrawn.

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357 *Id*. § 552.221(b-2).
358 *Id*. § 552.2615.
359 *Id*. § 552.2615(a).
360 *Id*.
361 *Id*. § 552.2615(a) - (b).
362 *Id*. § 552.2615(a)(2), (b).
363 *Id*. § 552.2615(c).

If the actual charges are more than $40, a city may only charge the amount estimated in the latest itemized statement that was provided to the requestor.[364] However, if the city did not provide the requestor with an updated itemized statement, the city is limited to charging no more than 20 percent more than the amount of the original itemized statement.[365]

118. Can a city require a monetary deposit or bond in order to comply with a public information request?

A city can require a deposit or bond to comply with a public information request if the city provides the requestor with an appropriate estimated itemized statement.[366] If such a statement is provided, a city 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.[367] A city with fewer than 16 full-time employees may require a deposit if the estimated charges for producing copies of information are more than $50.[368] If the requestor modifies the request, then the modified request is considered a separate request.[369] This separate modified request is considered received on the date the city receives the written modified request. If the requestor does not make a deposit by the 10th business day after the date the deposit is required, then the public information request is considered withdrawn.[370]

119. Can a city reduce or waive the cost for making copies of public information?

A city shall reduce or waive the normal charge for copies of public information if providing the copies would benefit the public.[371] The city may waive a charge for such copies if the cost of collecting the fee would exceed the amount of the charge.[372]

120. Can a city count multiple public information requests from the same requestor as a single request for the purpose of calculating cost?

Section 552.261 of the Act allows a city that receives multiple requests from the same requestor in one calendar day to treat those requests as a single request for the purposes of calculating cost.[373] However, if a city receives the same request from different

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364 *Id*. § 552.2615(d)(1).
365 *Id*. § 552.2615(d)(2).
366 *Id*. § 552.263(a)(1).
367 *Id*. § 552.263(a)(2)(A).
368 *Id*. § 552.263(a)(2)(B).
369 *Id*. § 552.263(e-1).
370 *Id*. § 552.263(f).
371 *Id*. § 552.267(a).
372 *Id*. § 552.267(b).
373 *Id*. § 552.261(e).

individuals on behalf of an organization, it will not be able to combine those requests for the purpose of calculating cost.

VI. Redundant Requests and Vexatious Requestors

121. What can a city do to deal with redundant or repetitive PIA requests?

If a city receives a redundant or repetitive PIA request from the same requestor for information that has already been provided, Section 552.232 allows the city to send a letter to the requestor explaining: (1) that the information was already provided, (2) when that information was provided, and (3) that no new information has been generated by the city since the last request.[374]

122. What is a vexatious requestor?

A vexatious requestor is a person who abuses the Act by sending frequent and/or voluminous public information requests to a city, especially small governmental bodies, to disrupt the operations of the city's business.

123. How can a city deal with vexatious requestors who ask for voluminous amounts of information?

Section 552.275 allows a city to establish a reasonable monthly or annual time limit on the amount of personnel time spent to produce a PIA request for inspection or to prepare copies for a requestor.[375] For cities, this would be done by ordinance. Here are the specifics:

1) If the city establishes an annual time limit, the limit may not be less than 36 hours for a requestor during a 12-month period starting at the beginning of the city's fiscal year.[376]

2) If the city establishes a monthly time limit, the limit may not be less than 15 hours per requestor per month.[377]

3) Every time a requestor submits a public information request, the city must keep track of the amount of time spent to compile the information for the request. (This means for *every requestor*, not just the alleged vexatious requestor.)

4) When responsive information is sent, the city is required to send a letter to the requestor informing him of the amount of personnel time spent on

[374] *Id*. § 552.232.
[375] *Id*. § 552.275(a).
[376] *Id*. § 552.275(b).
[377] *Id*.

the request and how much personnel time has cumulatively been spent on his requests.[378]

5) Once the requestor has surpassed the established time limit, the city can impose certain costs on the requestor and provide a written cost estimate for any public information request received thereafter.[379]

6) The written cost estimate must be sent to the requestor on or before the 10th day after the date on which the public information was requested.

7) If the city needs more time to prepare the written cost estimate, the city must provide a letter to the requestor explaining it needs additional time to provide the written cost estimate.[380]

8) After sending the additional time letter, the city must send the written cost estimate as soon as possible, but either on or before the 10th day after the city provided the additional time letter.

9) A requestor must pay the amount in the city's written cost estimate before the city will process the request if the city has sent a written cost estimate and the requestor has exceed the monthly or annual time limit.[381]

10) If the requestor fails or refuses to pay the amount in the cost estimate, the request is considered withdrawn.[382]

Also, if the requestor has made previous PIA requests in which the city: (1) has located and compiled documents in response to those requests; (2) sent written cost estimates that remain unpaid; and (3) the requests have not be withdrawn on the date the requestor submits a new request, the city is not required to locate, compile, produce or provide copies of documents or prepare a written cost estimate until the date the requestor pays each unpaid cost estimate in connection with any previous requests or the previous requests are withdrawn.[383]

124. Are any requestors exempted from Section 552.275?

Yes. The law does not apply if a requestor is an individual who, for a substantial portion of the individual's livelihood or for substantial financial gain, gathers, compiles, prepares, collects, photographs, records, writes, edits, reports, investigates, processes, or publishes news or information for and is seeking the information for:

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[378] *Id*. § 552.275(d).
[379] *Id*. § 552.275(e).
[380] *Id*. § 552.275(f).
[381] *Id*. § 552.275(g).
[382] *Id*. § 552.275(h).
[383] *Id*. § 552.275(e-1).

1) dissemination by a news medium[384] or communication service provider[385], including:
    a. an individual who supervises or assists in gathering, preparing, and disseminating the news or information; or
    b. an individual who is or was a journalist, scholar, or researcher employed by an institution of higher education at the time the person made the request for information; or
2) creation or maintenance of an abstract plant (i.e., title records).[386]

Also, elected officials of the United States, Texas, or a political subdivision of Texas, and representatives of a publicly-funded legal service organization that is a 501(c)(3) exempt organization are exempted from section 552.275.[387]

VII. Enforcement of the Public Information Act

125. May a requestor sue a city for failure to comply with the Act?

A requestor may bring a declaratory judgment or injunctive relief action against a city for violations of the Act. The requestor may file a complaint against a city with the local county or district attorney.[388] The complaint must meet the following requirements:

1) be in writing and signed by the complainant;
2) state the name of the city 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.[389]

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 city, and notify the person who filed the complaint of that decision.[390]

If the local prosecutor declines to proceed with an action against a city, the complainant can file a complaint with the attorney general before the 31st day after the date the

384 *Id*. § 552.275(m)(2) (definition of “news medium”).
385 *Id*. § 552.275(m)(1) (definition of “communication service provider”).
386 *Id*. § 552.275(j).
387 *Id*. § 552.275(k) - (l).
388 *Id*. § 552.3215(e).
389 *Id*.
390 *Id*. § 552.3215(g).

complaint is returned to the complainant by the local prosecuting attorney.[391] Also, if the local prosecutor does not bring any action on or after the 90th day after the date the complaint is filed, the complainant can file a complaint with the attorney general. The attorney general must determine if a violation has been committed, decide whether to take action against the city, and notify the person who filed the complaint of that decision. The attorney general's office must notify the complainant of its determination before the 31st day after receiving the complaint.[392]

If either the local prosecuting attorney or the attorney general decides to bring a lawsuit against a city, the city must be notified prior to the filing of the lawsuit.[393] The city has three days to remedy the problem.

126. What civil remedies can be brought against a city for failure to comply with the Act?

If a city 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.[394] Even if the attorney general has determined that the city may withhold the requested information, the requestor may still file a lawsuit against the city to seek disclosure of the requested information.[395] Under certain circumstances, a third party may file litigation to prevent the release of records that implicate that person's privacy or proprietary interests.[396]

In a writ of mandamus[397], declaratory judgment or injunctive relief[398] lawsuit, a plaintiff that substantially prevails in their suit is entitled to an award of attorney fees and costs[399] However, a court may not assess cost and attorney fees against a city if the court finds that the city acted in reasonable reliance on:

1) a judgment or an order of a court applicable to the city;
2) the published opinion of an appellate court; or
3) a written decision or opinion of the attorney general.[400]

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391 *Id*. § 552.3215(i).
392 *Id*.
393 *Id*. § 552.3215(j).
394 *Id*. § 552.321.
395 *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App. — Austin 1992, no writ).
396 *See, e.g., Morales v. Ellen*, 840 S.W. 2d 519 (Tex. App. — El Paso 1992, writ denied). *See also* Tex. Gov't Code. § 552.325.
397 *See* Tex. Gov't Code § 552.321.
398 *See id*. § 552.3215.
399 *Id*. § 552.323(a).
400 *Id*.

In a lawsuit by a city seeking relief from compliance with an attorney general ruling, a court may not order the losing side to pay litigation costs and attorneys' fees, unless the court finds the action or defense of the action was groundless in fact or law.[401]

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.[402] The attorney general's office may require the city 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 city, the requestor who is overcharged may recover up to three times the amount of the overcharge from the city.[403]

127. What are the criminal penalties for noncompliance within the Act?

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

Failure to Give Access to Public Information.[404] 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 Act. This violation is a misdemeanor punishable by a fine of up to $1,000, a six-month jail term, or both. Also, the Act states that this violation constitutes official misconduct. Thus, a public official may be subject to removal from office for such an offense. However, there are affirmative defenses to this violation.[405] The affirmative defenses are:

1) Reasonable belief that public access to information not required and relied on a court order, court opinion, or ruling by the attorney general's office;[406]
2) A ruling from the attorney general's office has been sought and no decision has been issued;[407]
3) A suit filed in Travis County district court challenging ruling by the attorney general's office and suit is pending;[408] or
4) Officer's agent reasonably relied upon written instruction from the officer of public information.[409]

Release of Confidential Information.[410] A person commits a crime if he or she distributes information considered confidential under the Act. This violation is a

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401 *Id*. § 552.323(b). *See id*. § 552.324. (Suit by governmental body).
402 *Id*. § 552.269.
403 *Id*. § 552.269(b).
404 *Id*. § 552.353.
405 *Id*. § 552.353(b)-(d).
406 *Id*. § 552.353(b)(1).
407 *Id*. § 552.353(b)(2).
408 *Id*. § 552.353(b)(3); (c).
409 *Id*. § 552.353(d)
410 *Id*. § 552.352.

misdemeanor punishable by a fine of up to $1,000, a six-month jail term, or both. This violation also constitutes official misconduct.

Illegal Destruction or Alteration of Public Information.[411] 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.

It is important to note that there are provisions of Texas law outside of the Act that criminalize tampering with a governmental record which may constitute a felony.[412]

VIII. Additional Information on the Public Information Act

128. How long must a city retain various types of records?

All governmental bodies must follow a record retention schedule that requires preservation of records for a certain amount of time.[413] The Local Government Records Act (LGRA) is codified in Chapters 201 through 205 of the Local Government Code. The LGRA provides that, on or before June 1, 1990, the governing body of each local government should have designated a records management officer.[414] The LGRA further provides that, by January 1, 1991, the governing body should have established a records management program.[415] On or before January 4, 1999, all cities were required to prepare a records control schedule and file with the Director of the Texas State Library and Archives Commission (TSLAC) a written certification of compliance that the local government has adopted records control schedules that comply with the minimum requirements established on records retention schedule issued by TSLAC.[416] A governmental body may not destroy records prior to the time set for the destruction of those records in the governmental body's retention schedule.[417]

TSLAC has promulgated model records retention schedules, which are available on the TSLAC's website. For more information concerning record retention, including the Local Government Record Act, and how to comply, contact the State and Local Records Management Division of the Texas State Library and Archives Commission either at its website: https://www.tsl.texas.gov/slrm, by phone at (512) 463-7610, or by email at slrminfo@tsl.texas.gov.

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411 *Id*. § 552.351.
412 *See, e.g*., Tex. Pen. Code. § 37.10.
413 *See* Tex. Loc. Gov't Code, subtitle C (Chap. 201 *et seq*.) (Local Government Record Act); Tex. Gov't Code §§ 441.180 - .205 (state agency record retention).
414 Tex. Loc. Gov't Code § 203.025(a).
415 *Id.* § 203.026(a).
416 *Id*. § 203.041(a).
417 *Id.* § 202.001.

129. Are all elected or appointed governmental officials required to take PIA training?

Elected and appointed officials must have a minimum of one hour but no more than two hours of training.[418] Newly elected or appointed officials have 90 days from the date they take the oath of office or otherwise assume their duties, if not required to take an oath, to complete the required training. If the city 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 who completes the required PIA training should receive a certificate of completion. The city shall maintain the certificates and make them available for public inspection upon request.

130. Where can a city get more information about the Public Information Act?

The Office of the Attorney General produces a *Public Information Act Handbook*, an in-depth publication about the Act and its interpretation through attorney general rulings and court cases. That publication can be found on the attorney general's website. Also, the Open Records Division of the Office of the Attorney General sponsors an Open Record Hotline where public officials and concerned citizens can get answers to basic questions about the Act and an Open Records Cost Hotline where staff can answer questions about charges relating to the Act. The phone number for the Open Government Hotline is (512) 478-OPEN (6736) or (877) OPEN-TEX (673-6839) and for the Open Government Cost Hotline is (512) 475-2497 or (888) OR-COSTS (672-6787).

[418] Tex. Gov't Code § 552.012.

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