

The Public Information Act

Texas Government Code, Chapter 552, gives you the right to access government records; and an officer for public information and the officer's agent may not ask why you want them. All government information is presumed to be available to the public. Certain exceptions may apply to the disclosure of the information. Governmental bodies shall promptly release requested information that is not confidential by law, either constitutional, statutory, or by judicial decision, or information for which an exception to disclosure has not been sought.

Rights of Requestors

You have the right to:

- Prompt access to information that is not confidential or otherwise protected;
- Receive treatment equal to all other requestors, including accommodation in accordance with the Americans with Disabilities Act (ADA) requirements;
- Receive certain kinds of information without exceptions, like the voting record of public officials, and other information;
- Receive a written statement of estimated charges, when charges will exceed \$40, in advance of work being started and opportunity to modify the request in response to the itemized statement;
- Choose whether to inspect the requested information (most often at no charge), receive copies of the information or both;
- A waiver or reduction of charges if the governmental body determines that access to the information primarily benefits the general public;
- Receive a copy of the communication from the governmental body asking the Office of the Attorney General for a ruling on whether the information can be withheld under one of the accepted exceptions, or if the communication discloses the requested information, a redacted copy;
- Lodge a written complaint about overcharges for public information with the Office of the Attorney General. Complaints of other possible violations may be filed with the county or district attorney of the county where the governmental body, other than a state agency, is located. If the complaint is against the county or district attorney, the complaint must be filed with the Office of the Attorney General.

Responsibilities of Governmental Bodies

All governmental bodies responding to information requests have the responsibility to:

- Establish reasonable procedures for inspecting or copying public information and inform requestors of these procedures;
- Treat all requestors uniformly and shall give to the requestor all reasonable comfort and facility, including accommodation in accordance with ADA requirements;
- Be informed about open records laws and educate employees on the requirements of those laws;
- Inform requestors of the estimated charges greater than \$40 and any changes in the estimates above 20 percent of the original estimate, and confirm that the requestor accepts the charges, or has amended the request, in writing before finalizing the request;
- Inform the requestor if the information cannot be provided promptly and set a date and time to provide it within a reasonable time;
- Request a ruling from the Office of the Attorney General regarding any information the governmental body wishes to withhold, and send a copy of the request for ruling, or a redacted copy, to the requestor;
- Segregate public information from information that may be withheld and provide that public information promptly;
- Make a good faith attempt to inform third parties when their proprietary information is being requested from the governmental body;
- Respond in writing to all written communications from the Office of the Attorney General regarding charges for the information. Respond to the Office of the Attorney General regarding complaints about violations of the Act.

Procedures to Obtain Information

- ✓ Submit a request by mail, fax, e-mail or in person according to a governmental body's reasonable procedures.
- ✓ Include enough description and detail about the information requested to enable the governmental body to accurately identify and locate the information requested.
- ✓ Cooperate with the governmental body's reasonable efforts to clarify the type or amount of information requested.

A. Information to be released

- You may review it promptly, and if it cannot be produced within 10 working days the public information officer will notify you in writing of the reasonable date and time when it will be available.
- Keep all appointments to inspect records and to pick up copies. Failure to keep appointments may result in losing the opportunity to inspect the information at the time requested.

Cost of Records

- You must respond to any written estimate of charges within 10 days of the date the governmental body sent it or the request is considered automatically withdrawn.
- If estimated costs exceed \$100.00 (or \$50.00 if a governmental body has fewer than 16 full time employees) the governmental body may require a bond, prepayment or deposit.
- You may ask the governmental body to determine whether providing the information primarily benefits the general public, resulting in a waiver or reduction of charges.
- Make a timely payment for all mutually agreed charges. A governmental body can demand payment of overdue balances exceeding \$100.00, or obtain a security deposit, before processing additional requests from you.

B. Information that may be withheld due to an exception

- By the 10th business day after a governmental body receives your written request, a governmental body must:
 1. request an Attorney General opinion and state which exceptions apply;
 2. notify the requestor of the referral to the Attorney General; and
 3. notify third parties if the request involves their proprietary information.
- Failure to request an Attorney General opinion and notify the requestor within 10 business days will result in a presumption that the information is open unless there is a compelling reason to withhold it.
- Requestors may send a letter to the Attorney General arguing for release, and may review arguments made by the governmental body. If the arguments disclose the requested information, the requestor may obtain a redacted copy.
- The Attorney General must issue a decision no later than the 45th working day from the day after the attorney general received the request for a decision. The Attorney General may request an additional 10 working day extension.
- Governmental bodies may not ask the Attorney General to "reconsider" an opinion.

To request information from this governmental body, please contact.

By mail to: Reg Hargrove, Public Information Coordinator
P.O. Box 12548
Austin, TX 78711-2548

By e-mail to: publicrecords@cap.state.tx.us

By fax to: (512) 494-8017

In person at: Price Daniel Building
209 W 14th Street, Room G01
Austin, TX 78701

For complaints regarding failure to release public information please contact your local county or district attorney.

- You may also contact the Office of the Attorney General, Open Government Hotline, at (512) 478-6736 or toll-free at 1-877-673-6839.
- For complaints regarding overcharges, please contact the Office of the Attorney General's Cost Rules Administrator at (512) 475-2497.

If you need special accommodation pursuant to the Americans With Disabilities Act (ADA), please contact our ADA coordinator, _____ at _____.

Law Enforcement Information

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

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

1. **Information If Released Would Affect Investigation or Prosecution:** Information that is held by a law enforcement agency or prosecutor that, if 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.¹³¹

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.¹³² Information that has been held to be open includes:

1. The name, age, address, race, sex, occupation, alias, Social Security number, police department identification number, and physical condition of an arrested person
2. The date and time of the arrest
3. The place of the arrest
4. The offense charged and the booking information
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

¹³¹ TEX. GOV'T CODE ANN. § 552.108(a) (Vernon Supp. 2009).

¹³² *Id.* § 552.108(c). See also Tex. Att'y Gen. ORD-127 (1976).

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.¹³³

Section 552.108 only applies to criminal investigations and prosecutions. Where no criminal investigation or prosecution results from an investigation of a police officer for alleged misconduct, section 552.108 is inapplicable.¹³⁴

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.¹³⁵

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

The disclosure of motor vehicle accident reports, also known as ST-3, CRB-3 or CR-3 forms, are governed by the Transportation Code.¹³⁶ In order to obtain a copy of a motor vehicle accident report, the requestor must: (1) make the request in writing, (2) pay any required fee, and (3) provide the governmental body with two or more of the following pieces of information:

1. the date of the accident;
2. the specific address or the highway or street where the accident occurred; or
3. the name of any person involved in the accident.¹³⁷

Purchasing / Public Works Information

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

Section 552.104 of the Government Code allows governmental bodies to withhold information that is submitted for competitive bids if its disclosure would give advantage to a competitor or bidder.¹³⁸ This exception does not apply if there is only one entity that is bidding on the project.¹³⁹

¹³³ Tex. Att'y Gen. ORD-127 at 4-5 (1976).

¹³⁴ *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).

¹³⁵ Tex. Att'y Gen. ORD-127 (1976).

¹³⁶ TEX. TRANSP. CODE ANN. § 550.065 (Vernon Supp. 2009).

¹³⁷ *Id.* § 550.065(c)(4).

¹³⁸ TEX. GOV'T CODE ANN. § 552.104 (Vernon 2004).

¹³⁹ Tex. Att'y Gen. ORD-331 (1982).

Rights of Requestors

All people who request public information have the right to:

- Receive treatment equal to all other requestors
- Receive a statement of estimated charges in advance
- Choose whether to inspect the requested information, receive a copy of the information, or both
- Be notified when the governmental body asks the OAG for a ruling on whether the information may or must be withheld
- Be copied on the governmental body's written comments to the OAG stating the reason why the stated exceptions apply
- Lodge a complaint with the OAG cost rules administrator regarding any improper charges for responding to a public information request
- Lodge a complaint with the OAG Hotline or the county attorney or criminal district attorney, as appropriate, regarding any alleged violation of the Act

Responsibilities of Requestors

All people who request public information have the responsibility to:

- Submit a written request according to a governmental body's reasonable procedures
- Include enough description and detail of the requested information so that the governmental body can accurately identify and locate the requested items
- Cooperate with the governmental body's reasonable requests to clarify the type or amount of information requested
- Respond promptly in writing to all written communications from the governmental body (including any written estimate of charges)
- Make a timely payment for all valid charges
- Keep all appointments for inspection of records or for pick-up of copies

Rights of Governmental Bodies

All governmental bodies responding to information requests have the right to:

- Establish reasonable procedures for inspecting or copying information
- Request and receive clarification of vague or overly broad requests
- Request an OAG ruling regarding whether any information may or must be withheld
- Receive timely payment for all copy charges or other charges
- Obtain payment of overdue balances exceeding \$100.00 or obtain a security deposit before processing additional requests from the same requestor
- Request a bond, prepayment or deposit if estimated costs exceed \$100.00 (or, if the governmental body has fewer than 16 employees, \$50.00)