



What's Public? What's Not?

An overview of the
Texas Public Information Act (TPIA)

Basic Presumption: Information is presumed open and accessible to the public. **Public Information:** Anything created, assembled or maintained by an entity subject to the TPIA. This includes information in any format (i.e. printed paper, microfilm, audio, E-mail, computer data)

In order to invoke the Public Information Act, a request must be:

- 1) made in writing; and
- 2) indicate specifically the records being requested.

The request does not have to:

- 1) cite a law or mention the TPIA;
- 2) be addressed to a specific individual;
- 3) be typed; or
- 4) indicate the reason for the request.

NOTE: It is against the law for you to ask the requestor why the information is being sought!

Two-part TPIA test:

- 1) Is the request in writing? (it can be e-mailed, handwritten, typed, faxed, mailed or delivered in person)
- 2) Does the request ask for information in existence?

NOTE: The TPIA does not require an entity to answer questions or create a document or report.

All requestors must be treated equally. Handle requests in the order they are received.

NOTE: Remember to operate from the standpoint that the information is openly accessible to the public, unless it meets a statutory exception for confidentiality.

The governmental entity must "promptly" produce the information for the requestor. This means as soon as possible, without delay. The promptness in producing the materials, however, may depend on the amount/volume of the request and where the documents are located and/or stored.

A governmental entity must promptly produce readily available public documents, but the entity has **10 business days from the date of the request** to either 1) provide a response in writing as to when the information will be available or 2) seek an Attorney General opinion on information the entity believes is a legal exception from public disclosure under state law.

*NOTE: The 10-day deadline begins on the first business day **AFTER** the request is received and ends on the tenth business day (excluding non-workdays-weekends/holidays).*

A governmental entity may not decide on its own that information is confidential.

The entity must seek an opinion from the Open Records Division of the Texas Attorney General's Office. A new law, however, allows the governmental entity to redact (blacken out) social security numbers.

Common Legal Exceptions:

- 1) information confidential by law (medical/financial information or judicial decisions);
- 2) certain personnel information (clearly unwarranted invasion of personal privacy); (Examples of closed personnel file information are teacher/administrator's evaluations, social security number, grades on transcript. Examples of open personnel file information are name, position, assignment, hire date, termination date, salary, higher ed classes taken and degree obtained);
- 3) information related to student records (FERPA)—prohibits release of personally identifiable information without written parental consent— FERPA is not governed by the Texas Attorney General.
- 4) certain e-mail addresses (prevents school districts from releasing e-news subscription lists)
- 5) test protocols
- 6) information related to competition or bidding;
- 7) information related to the location or price of property;
- 8) certain legislative documents and law enforcement records;
- 9) information related to litigation or within attorney-client privilege;
- 10) private communications of an elected official;
- 11) the name of applicants for the position of Superintendent (except 21 days before hiring)
- 12) information pertaining to financial, credit card and debit card accounts

A governmental entity must make the records available for free public inspection during regular business hours. The entity may charge a reasonable cost for the reproduction of materials, but may not "overcharge". Charges for the collection and dissemination of the materials may be assessed only if the request includes more than 50 pages.

Violations of the TPIA

It is a crime to destroy, remove or alter public information or to knowingly release confidential information. An individual who violates the TPIA could face misdemeanor and/or misconduct charges. The misdemeanor charge carries a fine of up to \$1,000 and up to six months in jail, or both. The misconduct charges could result in removal from office/position or a fine from \$25 to \$4,000 and from three days up to three months in a county jail, or both.