

Overview of the Texas Public Information Act

The Texas A&M University System Office of
General Counsel



Topics

- Scope of the Texas Public Information Act and Statutory Deadlines
- Exceptions to Disclosure
- Case Study
- Strategies to Protect Your Information and Reduce Risk



Scope of the Texas Public Information Act (Chapter 552, Government Code) and Statutory Deadlines



Definition of Public Information

The Definition of “Public Information” in Chapter 552 of the Texas Government Code, also known as the Texas Public Information Act (PIA), has 3 parts. What is the information? What is it about? Who has it?

“Public information” can be found in any recorded medium, in forms such as paper, electronic documents and communications, and microfilm.

“Public information” under the PIA means information that is written, produced, collected, assembled, or maintained in connection with the transaction of official business...

by a governmental body or by an officer or employee of the governmental body in the individual’s official capacity and the information pertains to official business of the body.



Definition of Public Information

“**Public information**” under the PIA also means information that is written, produced, collected, assembled, or maintained in connection with the transaction of official business for a governmental body and the body:

-owns the information;

-has a right of access to the information; or

-spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information.



Deadlines

The Act imposes mandatory **statutory deadlines** on both the requestor and the governmental body as well as the Attorney General's office.

What is the deadline for providing public information to the requestor? **PROMPTLY**

“An officer for public information of a governmental body shall promptly produce public information for inspection, duplication, or both on application by any person to the officer. In this subsection, ‘promptly’ means as soon as possible under the circumstances, that is, within a reasonable time, without delay.”

- Tex. Gov't Code § 552.221(a).



Deadlines (cont'd)

The 10-business day deadline. Within 10 days after the receipt of a request, a governmental body must do one of the following:

- **Provide the requested information to the requestor**
- **Inform the requestor that the requested information is being gathered and will be available to him by a specific date.**
- **Request an open records decision from the Attorney General (AG) and provide the requestor with a copy of the request to the AG. The System Office of General Counsel (OGC) prepares and submits this correspondence.**



Deadlines (cont'd)

If the request to the AG is not made by the 10- business day deadline, the information is presumed to be subject to disclosure and must be released to the requestor unless there is a compelling reason to withhold the information.

Generally, the only acceptable “compelling reason” that the AG will consider is that the information involves confidential information, and the privacy or proprietary interests of third parties.



More Deadlines

- **The 15-day deadline.** Within 15 business days after the receipt of a request for which an AG decision has been requested, the governmental body must submit
 - Written comments stating the reasons the information should be withheld
 - A copy of the public information request
 - Copies of the requested records, or representative samples if a voluminous amount of material has been requested.
- AG's office provides decision, usually within 45 business days of receiving a request for a decision.



General Process Recommendations

When your department receives a request...

- If received **in person or by mail**, send it to your institution's public information officer/coordinator (PIO) ASAP. Your department must always be on the lookout for these requests.
- If request received by **fax or email**, have the requestor send it directly to PIO (do not forward to PIO). A request submitted by fax or email is not a request under the PIA until received by the PIO.



Key Questions to Ask

- Is the requested information “public information”?
- Does the university or a third party on the university’s behalf have the requested information?
- Is the information responsive to the request?
- Does an exception to disclosure apply?
- Is this information “core public information”?
- Does this requestor have a special right of access?



Exceptions to Disclosure



Key Points

- The PIA provides many exceptions to disclosure (around 60). Exceptions to disclosure are either permissive or mandatory (confidential). Core public information is generally subject only to mandatory exceptions.
- A governmental body cannot decide to disclose confidential information, unless through a special right of access.
- Usually, confidential information relates to a person's privacy.
- Usually, an AG decision is required. Some exceptions allow withholding/redaction without a decision.



Core Public Information (Section 552.022)

“Core Public Information” is information that is **always public unless confidential** under the PIA or other law. As a result, **permissive exceptions usually do not apply** to such items. A few examples listed in the PIA follow.

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;
- (2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body;
- (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

- (5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate;



Special Right of Access

(Sections 552.023, 552.229, 552.307)

- A person (and the person's authorized representative) has a special right of access to information that is protected by a law that is intended to protect that person's privacy.
- A governmental body cannot deny the person access to the information, UNLESS the information can/must be withheld under other provisions of the Act not related to the person's privacy interests.
- If another exception applies not related to the person's privacy, the governmental body must request an AG decision prior to disclosure. If no such exception applies, the information must be provided within 10 business days.



Special Right of Access: What type of consent is necessary?

- The requestor's disclosure to others is subject to the conditions of the consent to release the information (if someone else has the special right of access).
- The consent must be in writing and signed by the person with the special right of access or their authorized representative.
- An individual under 18 may consent only with the written authorization of a parent or guardian.
- A person adjudicated to be incompetent may consent only with the written authorization of the designated legal guardian or attorney ad litem.



Notable Exceptions

- Information that is considered to be **confidential** under other law, either constitutional, statutory, or by a judicially-recognized (common law) right to privacy or safety. (common law privacy includes information regarding personal financial decisions, medical conditions, mental health, etc.). **Section 552.101**
- Certain **confidential** information in a personnel file (**an employee date of birth**). **Section 552.102**
- Information relating to litigation or settlement negotiations involving state/political subdivision. **Section 552.103**
- Information giving an advantage to a competitor or bidder (Pending bid, contract, or competitive situation). **Section 552.104**
- Attorney/client privileged communications. **Section 552.107**



Exceptions (cont'd)

- Information held by law enforcement agency or prosecutor dealing with detection, investigation, prosecution of crime if release would interfere with pending investigation or prosecution. **Section 552.108**
- Third party trade secrets, and commercial or financial information the disclosure of which would cause substantial competitive harm to the third party (**Confidential**). **Section 552.110**
- Intra- and interagency memoranda or letters that would not be available to a party in litigation with your university (advice, opinions, recommendations on policymaking matters). **Section 552.111**



Exceptions (cont'd)

- Audit working papers (not including final report). **Section 552.116**
- A current/former official or employee's home address, home telephone number, SSN, and whether the person has family members **(IF individual chooses not to allow access, Confidential and NO AG decision required)**. **Section 552.117** and **552.024**
- Name/identifying information of donor of money or property to institution of higher education (not amount and similar info) **(Confidential)**. **Section 552.1235**
- Certain motor vehicle information, DL info and numbers, license plate numbers, etc. **(Confidential, NO AG decision required)**. **Section 552.130**



Exceptions (cont'd)

- Credit card, debit card, bank account numbers, etc. that can be used on their own or with other information to access and obtain money, goods and services (**Confidential, NO AG decision required**). **Section 552.136**
- Certain e-mail addresses of members of the public that have been provided for the purpose of communicating with a governmental body (**Confidential, NO AG decision**). **Section 552.137**



Exceptions (cont'd)

- Information relating to an employee or officer is excepted IF, “under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm” **(Confidential). Section 552.152**



Examples of “Confidential Under Other Law” (statutes)

Texas Education Code provisions (chapter 51)

- **Section 51.914** - information related to our research data/products/devices/processes with potential to be commercialized, or similar info from research sponsor.
- Information that “would reveal the institution's plans or negotiations for commercialization or a proposed research agreement, contract, or grant, or that consists of unpublished research or data that may be commercialized, is not subject to Chapter 552, Government Code, unless the information has been published, is patented, or is otherwise subject to an executed license, sponsored research agreement, or research contract or grant.”



Examples of “Confidential Under Other Law” (statutes)

Texas Education Code provisions (chapter 51) – cont’d

- **Sections 51.917** and **51.918** – Personal identifying information maintained for institution’s emergency alert system (includes email address, telephone numbers).



Examples of “Confidential Under Other Law” (statutes)

Section 51.971 – Certain information related to institution/system compliance program.

- Information revealing identity of person making report/seeking guidance/participating in investigation under compliance program is **confidential**.
- Information revealing identity of person who is the subject of allegation if report found to be unsubstantiated or without merit is **confidential**.
- Pending investigation exception
- Information gathered or produced by system compliance office in review of system member compliance processes.



Examples of “Confidential Under Other Law” (statutes)

FERPA (The Family Educational Rights and Privacy Act of 1974)

- FERPA generally makes education records confidential without the prior consent of the student. *See* 20 U.S.C.A. § 1232g(b)(1); 34 C.F.R. § 99.30.
- Absent an election to the contrary, directory information can be released without a student’s prior consent. *See* 20 U.S.C.A. § 1232g(b)(1); 34 C.F.R. § 99.37.
- FERPA provides instances in which education records may be provided to certain individuals without a student’s consent, such as “other school officials...who have been determined...to have legitimate educational interests...” *See* 20 U.S.C.A. § 1232g(b)(1)(A).



How Does FERPA Relate to the PIA?

- A student's request for his or her own education records is NOT a public information request, and should NOT be sent through the university's open records process. These requests should be directed to the custodian of records, such as the registrar's office or the respective academic department.
- An individual who requests a student's education records and who does not have authority to obtain the records without the student's consent should be sent through the university's open records process.



How Does FERPA Relate to the PIA?

- In 2006, the U.S. Department of Education's Family Policy Compliance Office notified the Office of the Attorney General that the OAG is not authorized to review personally identifiable information contained in education records without parental consent. Therefore, the OAG no longer determines the application of FERPA in the open records decision process.

See <https://www.oag.state.tx.us/open/20060725usdoe.pdf>.

- System universities have authority to withhold or redact FERPA-protected information w/o an OAG decision.



Note: Applicant Information

Recent Texas Office of the Attorney General (OAG) letter rulings

-The OAG has determined in an open records letter ruling that information identifying applicants to a university that is not otherwise protected by FERPA is CONFIDENTIAL.

-The A&M System recently received an open records letter ruling from the OAG finding this same result.

-Recommendation: Until the Office of General Counsel notifies otherwise, an applicant's identifying information not protected by FERPA is CONFIDENTIAL and should not be released to other individuals. This ruling is limited to individuals who have applied to the university but have not attended. Key question is "who is an applicant?" Individuals who have accepted an offer of enrollment and have taken action to secure their slot are reasonably considered to no longer be applicants.



Case Study



Sample PIA Request #1

“I request all emails to or from Dr. Smith from September 1, 2010 to the present.” Is this “public information”?

- Personal emails (to/from friends/family members, re: community service, religious issues, local/state/national politics)? **No**. These are not sent/received in employee’s official capacity and do not relate to the transaction of official business. See definition of “public information.”
- Emails re: Promotion & tenure/employment issues (Hiring documents, evaluations)? **Yes**, and some of this will be core public information.
- Emails Sent/Received from Employee’s Private Email Account (Gmail, etc.)? **Yes**, if sent/received in employee’s official capacity and relate to official business.



Sample PIA Request #2

“I request a list of all full-time university employees, including the employee’s name, title, ethnicity, salary and home address.”

Is this information subject to disclosure? **Yes and No.**

-**Yes.** Employee names, titles, ethnicities and salaries are core public information. Home addresses of employees are **public** if the employee HAS NOT elected to prevent access to personal contact information.

-**No.** Home addresses of employees are **confidential** if the employee HAS elected not to allow access to personal contact information.



Sample PIA Request #3

“I request a copy of the transcript and all disciplinary proceedings for university student X.” The requestor is not the student or the student’s authorized representative.

Is this information subject to disclosure? **NO**. This information is confidential under FERPA unless the listed student consents to the disclosure.

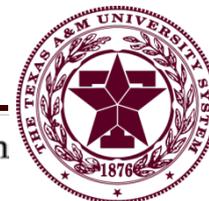
What if the request only sought “all directory information for university student X”? **MAYBE**. Directory information designated by the university is **public** UNLESS the listed student has elected to keep her directory information private, in which case it is **confidential**.



Sample PIA Request #4

“I request a copy of the investigation report of the complaint filed by university employee A against employee B.” The university’s equal employment office investigated the complaint, and issued a final report prior to receipt of the request. The report found the allegations were not substantiated.

Is this information subject to disclosure? **Yes and No.** Since this is a completed compliance investigation report, the identities of the complainant and respondent are **confidential**. The remainder of the report is **public**. If the requestor is the complainant or respondent, the requestor’s identifying information would not be redacted.



Sample PIA Request #5

“I request a copy of all proposals for the university’s dining services contract.”

Is this information subject to disclosure?

-Situation 1: The university is currently negotiating a contract with the winning bidder. **No.** The university may be allowed to withhold this information if disclosure would hurt its ability to negotiate the best terms with the bidder.

-Situation 2: The university has already signed a contract with the winning bidder. **Maybe.** The university will request an AG decision, notify the bidders that their information has been requested, and provide them an opportunity to submit arguments directly to the AG. The AG’s decision will govern whether the information is disclosed.

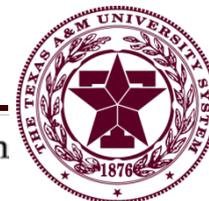


Key Strategies to Protect Information and Reduce Risk



Key Strategies

- 1) Ask yourself: should I put this in writing (Would I want to see this published in print or online)?
- 2) Manage your email **on an ongoing basis to avoid excess volume** (reviewing a large number of emails in the PIA process is VERY time consuming).
- 3) Avoid using personal email account(s) for official business.
- 4) Segregate information with a high probability of containing confidential information, such as FERPA information, or research with commercial potential (including potential to be published).
- 5) Learn your institution or agency's process for responding to PIA requests, and develop a plan for quickly providing information in response to a PIA request.



Resources

- List of A&M System Public Information Officers, <http://www.tamus.edu/offices/legal/openrecords-officers/>
- Texas Government Code, Chapter 552 (Public Information), <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm>
- [System Policy 61.01](#), Public Information Act Compliance
- [System Regulation 61.01.02](#), Public Information
- Attorney General of Texas, [Open Government web site](#) and [Public Information Handbook](#)



Questions?

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