



GUIDE TO

Texas

Open Records and Open Meetings Laws

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Texas Bar Foundation

Freedom of Information Foundation of Texas

Dear Reader,

The Freedom of Information Foundation of Texas has advocated for open government and the First Amendment rights of free speech and free press since 1978.

Public access to government information is essential for full participation in our democracy. A free flow of information allows citizens to use their free speech rights to hold government accountable.

Fortunately, Texans have strong state laws that allow access to information. Most notable are the Texas Public Information Act and the Texas Open Meetings Act. Other state laws and the Texas Constitution govern citizen access to courtrooms and judicial records. The Reporter's Privilege law assists journalists and whistleblowers who may divulge critical government information.

This *Guide to Texas Open Records and Open Meetings Laws* provides highlights of these public access laws. It is intended to be a user-friendly resource for everyone. For more details and related articles, go to the FOI Foundation of Texas website at www.foift.org.

Join us as we continue to protect the public's right to know.

Sincerely,

Freedom of Information Foundation of Texas



The Freedom of Information Foundation of Texas is a non-profit 501(c)(3) organization that strives to ensure the public's business is conducted in public and works to protect the free speech and free press liberties guaranteed by the First Amendment. The foundation is supported by grants, events and tax-deductible contributions. Donations can be made online at www.foift.org or by check mailed to:

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Guide to Texas Open Records and Open Meetings Laws

DISCLAIMER

This document is provided as a public service for informational purposes only. In no way should it be construed as legal advice.

Texas Public Information Act

The Texas Public Information Act, originally known as the Texas Open Records Act, is addressed in Chapter 552 of the Texas Government Code.

Scope and covered entities. Information held by state and local governmental bodies in Texas is deemed to be open to the public, but certain records are off limits under about 50 exceptions. Public information is defined as that which is “written, produced, collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business.”

The Texas Public Information Act covers the executive and legislative branches of state and local government. It applies to elected and appointed officers, boards, commissions, departments, institutions and agencies. That includes the governor and other statewide officials, state legislators, county commissioners, school boards, special utility districts and local workforce development boards.

Federal records. The law does not apply to the federal government, which is covered by the federal Freedom of Information Act.

Categories of public information. These include, but aren’t limited to, reports, audits and evaluations; salaries, names, sex and ethnicity of employees and officers; contracts; tax information; organizational information; staff manuals; official votes; working papers and research used to calculate taxes; and settlement agreements to which a government entity is a party.

While certain investigative details in pending law enforcement cases may be kept from public view, the public has access to basic information about a crime, such as arrest sheets, a description of the alleged offense, the complainant, investigating officers and mug shots.

Records in nearly any medium are accessible under the act and can include books, papers, letters, emails, Internet posts, texts, photos and video. Notes and emails of government officials and employees are considered public if “the communication is in connection with the transaction of official business,” regardless of whether they are in a personal or government account.

Exceptions to the Public Information Act. The exceptions, many of which have been added by legislators since the 1973 enactment of the law, include competitive bid information, trade secrets, birth and death records, Social Security numbers, motor vehicle inspection records, prescription records, private correspondence of elected officials and certain email addresses of private citizens.

Judiciary exclusion. The judicial branch is excluded from the Public Information Act to maintain its independence from the executive and legislative branches. However, the Texas Constitution guarantees “all courts shall be open,” giving the public access to information from civil and criminal cases before the courts. Administrative records dealing with court operations are publicly available, with some exceptions, under a process outlined in the state’s Judicial Administration Rule 12. Grand jury proceedings, part of the judicial system, are closed, but grand jury decisions are public.

Obtaining public records. Anyone may file a written Public Information Act request to a governmental agency’s designated records custodian. The government body must release the information promptly. Otherwise, it has up to 10 business days to certify in writing the date when the information will be available or to inform the requestor if the governmental agency is seeking to withhold information under an exception in the act.

Attorney general ruling. Unless the governmental body is withholding information allowed under a previous attorney general determination, the entity must send a request to the Attorney General’s Office for a ruling on whether the agency may withhold information. The request must state which exceptions in the law are believed to apply. If the attorney general agrees with the governmental body, and the information is withheld, the requestor’s last recourse is to challenge the ruling in court.

Costs. A governmental body is allowed to charge a reasonable fee for reproducing information. Government officials have the option of waiving or reducing fees if they determine that releasing the information is in “the public interest,” which might include an inquiry from the news media. There is no charge for a request to simply inspect information, except in limited circumstances.

Governmental entities are required to notify requestors in advance if it's determined that charges will exceed \$40. A written itemized statement must be provided before work begins to assemble the records. The entity can require a bond or deposit if the cost is estimated to exceed \$100, or if it's estimated to exceed \$50 and the governmental entity has fewer than 16 full-time employees.

Charges are calculated under rules established by the Attorney General's Office. A basic charge for paper copies of records is 10 cents per page. Labor costs of \$15 an hour can be assessed. A charge of \$28.50 an hour can be levied if a computer programmer is required. In some cases an "overhead charge" can apply.

Those who feel they were overcharged may file a complaint with the attorney general. A governmental entity may be required to pay three times the overcharge if the attorney general determines that the requestor overpaid and officials acted in "bad faith" in overcharging the requestor and failed to follow the state cost rules. ★

Texas Open Meetings Act

The Texas Open Meetings Act is addressed in Chapter 551 of the Texas Government Code. It declares that every "regular, special, or called meeting of a governmental body shall be open to the public," except for specifically permitted closed or executive sessions.

Covered entities. Boards, commissions, departments, committees or agencies within the executive or legislative branches of government are subject to the Texas Open Meetings Act. For example, the act includes county commissions, city councils, school boards, special districts, water boards and workforce development boards. An advisory committee that does not control or supervise public business or policy is not subject to the act. The Texas Legislature operates under its own open meetings rules.

Judiciary. The Open Meetings Act does not apply to the judiciary, which is governed by other laws and public access rules.

Definition of public meeting. The law defines a meeting as deliberations among a quorum - usually a majority, unless specified otherwise - of members to discuss public business or public policy or to take official action. The definition also includes deliberations between a quorum and a third party, such as a staff member.

So-called "walking quorums," or serial meetings in which members improperly discuss business by meeting privately in small groups or one-on-one before gathering officially to act on the matter, is a violation of the law.

The meeting definition does not include a gathering of a quorum at a social function, convention, workshop or a press conference when there is no formal action and discussion of official business is only incidental to the event.

Public notice. Governmental bodies must give written public notice of the time, place and subject of open meetings and closed executive sessions at least 72 hours in advance. The posting requirement for state boards and commissions is seven days before the meeting.

Posting requirements vary for the types of government body, but the notice must be at a place readily accessible to the public, such as the secretary of state's office, county courthouses, city halls and school administration buildings. Notices are also posted on the governmental entity's website in addition to physical locations.

Emergency meetings. A maximum notice of only two hours is required for emergency meetings, defined as a meeting to address an imminent threat to public safety or a reasonably unforeseen circumstance. The governmental body is expected to notify the news media and to identify the reason for the meeting.

Open meetings. Governmental bodies must discuss business and agenda items in open meetings unless the subject necessitates a closed, or "executive," session allowed by law. All votes and final decisions must be made in public, even on matters that may have been discussed in a closed session.

Citizens are often given the opportunity to speak at public meetings, but the governing members can limit the time and number of speakers. The governing body cannot discriminate among speakers for or against a particular point of view.

Spectators may use audio recorders or video cameras to record part or all of the open session. The governing body may set rules to maintain order.

Closed meetings. The act outlines specific exceptions that allow governmental bodies to meet in an executive session after first meeting in open session. Meeting notices must list the subjects that will be discussed in executive session. Only deliberations are allowed in closed session - no votes or official actions.

Closed-session discussions may include contract negotiations, personnel matters, security and prospective donations and real estate purchases that might be jeopardized by public discussion. School boards are permitted to go into closed session to discuss individual cases of student discipline.

The governing body is required to keep a certified agenda or recording of the executive session. The documentation would be publicly available only by court order if someone legally maintains that the session violated the Open Meetings Act.

Enforcement. Any "interested person" can seek a civil court order to void actions taken by governmental bodies that violate the act. Citizens can also ask the courts for a temporary restraining order to keep a government body from conducting an illegal meeting.

Public officials also face the possibility of criminal sanctions for violations of the act. Those who conspire to circumvent the act by deliberately meeting with less than a quorum for the purpose of a secret meeting could be charged with a misdemeanor, punishable by a \$100 to \$500 fine and up to six months in jail.

The same penalty can apply to a governmental body member who knowingly aids in organizing an impermissible closed meeting or participates in that meeting.

Misdemeanor charges can also result for knowingly not making a recording or certified agenda in a closed meeting or making public the closed meeting recording and agenda without legal authority. ★

Courts and Public Disclosure

Although the judicial system is not governed by the Texas Public Information Act, the public has broad access to court proceedings and legal records under constitutional guarantees, common law and well-established legal precedent. The operational inner workings of Texas' courts are also largely open to the public under judicial administrative rules, although a number of exceptions place some material out of reach.

LEGAL PROCEEDINGS

Public trials. Both the Sixth Amendment of the U.S. Constitution and the state Bill of Rights in Article One of the Texas Constitution use almost identical wording in protecting the right to a “speedy and public trial” in criminal cases, a standard that helps form the cornerstone for general access to court records and proceedings.

Additionally, the Texas Code of Criminal Procedure states: “The proceedings and trials in all courts shall be public.”

Access to legal records. The U.S. Supreme Court ruled in 1978 that the “courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.” The Texas Supreme Court, in a 1992 ruling, held that court records become public records once they are filed with the court.

Civil rules. Rule 76a of the Texas Rules of Civil Procedure asserts that civil court records are “presumed to be open to the general public.” The rule allows for the sealing of records only upon showing a “specific, serious and substantial interest which clearly outweighs” 1) the presumption of openness and 2) any probable adverse effect that sealing the records will have on the general public health or safety. A request for sealing the records must also show that no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted. Records can be sealed only after a hearing in open court.

COURT ADMINISTRATION

Administrative records. Rule 12 in the state’s Rules of Judicial Administration, which proclaims that “public interests are best served by open courts and by an independent judiciary,” outlines the steps for obtaining so-called non-adjudicative records maintained by courts and judicial agencies through their regular course of business.

Court records open to the public. The types of judicial records open to public inspection under Rule 12 are basically the same as those available from government agencies under the Texas Public Information Act: Essentially all the documents amassed in the day-to-day running of a court or judicial agency. That includes e-mails, personnel files, organizational charts, schedules, employee lists, salaries and administrative reports.

Exempt records. A dozen exemptions in Rule 12 bar the release of such materials as judicial work products and drafts; security plans; employment applications; confidential information; and settlement negotiations.

The exemptions also forbid the release of any personnel information, such as Social Security numbers and home addresses that could result in an unwarranted invasion of privacy. The release of an investigation into character or conduct is also prohibited unless the requestor is the person being investigated.

The past calendars of judges and other judicial officers are generally open, but the exemptions prohibit the release of a future appointment or engagement or a disclosure that constitutes “an invasion of personal privacy.” Internal deliberations on court or judicial administration matters are also barred from disclosure.

Making requests. Judicial records are generally available for inspection and copying by the public during regular business hours. The request must be made in writing to a designated record custodian - not the court clerk - who has up to 14 days to notify the requestor that the material is available for inspection or that more time is needed to locate it. The records custodian is required to make the record available at a “convenient, public area,” but he or she can mail a copy to a requestor who has prepaid the postage.

Costs. As with governmental entities under the Texas Public Information Act, charges can also be assessed for judicial records, though records custodians may waive or reduce the fee if releasing the material is “in the public interest” and “benefits the general public.” Requestors who believe they are being overcharged can appeal the assessment.

Denying judicial records. Judicial records custodians can deny the request under two conditions – upon determining that records fall under one or more of the exemptions or that compliance with the request would substantially and unreasonably impede the routine operation of the court or judicial agency.

Appealing denials. Requestors can appeal the denial in a petition to the administrative director of the state’s Office of Court Administration, who in turn is required to notify the records custodian who blocked the request and the presiding judges of all nine administrative judicial regions.

Five of the presiding judges are appointed to a committee that reviews the denial and returns a decision within 60 days from the time the review petition was filed. The committee has the option of overturning the denial or rejecting all or part of the records request. ★

Juvenile Records and Proceedings

Simply put, and with notable exceptions, court hearings involving juveniles 14 years old or older are open to the public in Texas, but juvenile records are generally closed.

Open proceedings. Section 54.08(a) of the Texas Family Code states that proceedings involving juveniles 14 or older are open to the public “unless the court, for good cause shown, determines that the public should be excluded.”

If a child is under 14 at the time of the hearing, the court is required to close the hearing “unless the court finds that the interests of the child or the interests of the public would be better served by opening the hearing to the public.”

Closed records. Conversely, all law enforcement files and records concerning juveniles generally may not be disclosed to the public, according to the Attorney General’s Office. The law also requires juvenile records to be kept separate from adult criminal files and records.

In keeping with that policy, records of juvenile offenders housed at facilities run by the Texas Juvenile Justice Department are sealed, although the records of older juvenile offenders who complete their sentences in an adult facility become open to the public after they leave the juvenile justice system. ★

Reporter's Privilege Law

The Free Flow of Information Act, also known as the Reporter's Privilege or shield law, was signed into Texas law and became effective in May 2009. Its purpose is to preserve a "free and active press" while protecting "the right of the public to effective law enforcement and the fair administration of justice."

Confidential sources. News organizations pressed for enactment of the law to strengthen protections for confidential sources and assure potential whistleblowers that they would be legally shielded if they stepped forward with sensitive disclosures.

The act is codified in the Texas Civil Practices and Remedies Code and the Texas Code of Criminal Procedure. The law prohibits government bodies with subpoena powers, including prosecutors, and others, from compelling journalists to reveal their sources or turn over confidential or non-confidential material used in assembling their stories.

Exceptions. The qualified privilege can be overcome under specific exceptions. In criminal cases, journalists can be forced to testify to prevent a death or substantial physical harm. They can also be compelled to identify a confidential source if they observed the informant committing a felony, if the source confessed to a felony, or if probable cause existed to believe a felony had been committed and reasonable efforts to obtain the source of information from alternate sources have been exhausted.

Judges in civil cases can compel a journalist to identify a source or turn over information if the party seeking the disclosures can make a "clear and specific showing" on a number of basic requirements for why the information must be released.

Those requirements include showing that all "reasonable efforts" to obtain the information from other sources have been exhausted and that "the interest of the party subpoenaing the information outweighs the public interest in gathering and dissemination of news, including the concerns of the journalist." The party also must prove that the subpoena is not overly broad and is not designed to obtain non-essential or peripheral information. ★

TPIA Letter Template

(Note: This is a sample letter. Wording does not need to replicate this example. There are no "magic words" required when making a Texas Public Information Act request. Requests can be mailed or emailed.)

Your Name

Return Address

Telephone Number (business hours)

Date

Name of Government Agency

Address of Government Agency

Dear Officer for Public Records:

This request is made under the Texas Public Information Act, Chapter 552, Texas Government Code, which guarantees the public's access to the information of governmental agencies. I respectfully request the following information:

(List here as specifically as possible the information you are seeking: documents, letters, memos, reports, emails, etc. Include dates if you know them.)

In the interest of expediency, and to minimize the research and/or duplication burden on your staff, I would be pleased to personally examine the relevant records if you would grant me immediate access to the requested material. Additionally, and since time is a factor, please communicate with me by telephone or email rather than by mail. My telephone number is **xxxxxx** and my email address is **xxxxxx**.

(If applicable add:) Disclosure of this information is in the public interest because providing a copy of the information primarily benefits the general public. I therefore request a waiver of all fees and charges.

I shall look forward to hearing from you promptly, as specified in the law.

Thank you for your cooperation.

Sincerely,

Signature

Your name

Tips, reminders

A records request must be in writing to trigger the Texas Public Information Act. It can be typed or handwritten.

The act covers only information in existence at the time the request is received.

No “magic language” or eloquent prose is required for a records request, nor is there a specific government form a requestor must use. Some governments may provide a request form, but it doesn’t have to be used to make a request.

Governmental bodies aren’t required to create new documents, answer questions or perform legal research.

Government officials cannot ask the reason for the records request.

The more precise and specific the request, the easier and quicker it will be to find the documents. A government body can request a clarification for overly broad requests.

Check first to see if the information is online. Many agency websites have tabs such as “reports,” “statistics” and “FAQs” that might expedite your search, or, in some cases, provide just what you’re looking for.

Be aware of possible costs. The state’s cost rules are outlined on the FOI Foundation of Texas website and the Texas Attorney General’s Office website. Instead of receiving copies of the material, you can usually view it in person for free.

If you believe release of the records is in the public interest, note it in your request to seek a waiver or reduction of charges.

If you are not getting a prompt response to the request, check with the governmental agency. You also can complain to the Attorney General’s Office if necessary.

A governmental entity has up to 10 business days from the time of the request to ask for a ruling from the Attorney General’s Office on withholding information. The entity also must notify the requestor that it is seeking a ruling. Within 15 days from receiving the request, the governmental entity must explain how exceptions in the law apply.

The Attorney General’s Office has up to 45 business days to issue a decision, though the deadline can be extended by 10 days if more time is needed.

In certain cases, a “previous determination” by the attorney general may apply, meaning the governmental body is not required to seek an attorney general’s ruling on withholding the information. ★

Notes

Resources

Freedom of Information Foundation of Texas

www.foift.org

FOI Hotline: 800-580-6651

FOI Foundation office: 512-377-1575

Texas Attorney General's Office

www.texasattorneygeneral.gov

Open Government Hotline: 877-673-6839

Open Government Cost Hotline: 888-672-6787

National Freedom of Information Coalition

www.nfoic.org

Open the Government

www.openthegovernment.org

Texas Legislature Online

www.capitol.state.tx.us

Reporters Committee for Freedom of the Press

www.rcfp.org

Investigative Reporters and Editors Inc.

www.ire.org





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