

# **TEXAS OPEN RECORDS LAWS MADE EASY**



**ANSWERS TO THE MOST FREQUENTLY ASKED  
QUESTIONS ABOUT OPEN RECORDS**

**ATTORNEY GENERAL'S  
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STATE OF TEXAS  
G R E G A B B O T T**

# Open Records Made Easy

## Introduction and Scope of Article

Each year, the Municipal Affairs Section of the Attorney General's Office produces a publication that addresses certain key issues that city officials face in their day-to-day operations. This article provides answers in lay person's terms to the most frequently asked questions regarding the Public Information Act.

The stakes are high for city officials that handle open record requests. There are strict time lines for making determinations on what records to release and city officials must make such decisions knowing that there are potential criminal penalties if the city releases information that is considered confidential under state law. Similarly, city officers face criminal penalties if they refuse to release information that is considered open to the public.

In a question-and-answer format, this article will provide guidance to city officials on the most frequently asked questions on the Texas Public Information Act. For example, the article addresses: the types of records and entities that fall under the Act; the time deadlines and mandatory notices that apply when a city handles an open records request; and when a city is required to ask for an Attorney General open record ruling. Additionally, the article covers: what inquiries can be made of a requestor; whether a city must perform research or compile statistics pursuant to open record requests; how a city can deal with requests that may be made for harassment purposes; what information is generally confidential; the ability to release information within police records; information that can be withheld regarding pending or anticipated litigation; the ability to charge for copies of and access to public information; and finally, the penalties and enforcement remedies under the open records laws.

For additional copies of this article or for assistance on other municipal law issues, please do not hesitate to contact the Municipal Affairs Section of the Office of the Attorney General. The Municipal Affairs Section can be reached at (512) 475-4683.<sup>1</sup>

**A complete index noting all of the questions addressed in this article and the page location of the answers follows this introduction.**

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## **I. Application of the Public Information Act**

### **1. What types of information generally fall under the Public Information Act?**

Public information includes any information that is collected, assembled, or maintained by or for a governmental entity. The Act applies to records regardless of their format. It includes information that is maintained in paper, tape, microfilm, video, electronic data held in a computer memory, as well as other mediums specified under law.<sup>2</sup>

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

The Public Information Act applies to information that is held by or for any “governmental body.” The term governmental body has a broad definition that includes, in applicable part:

1. City governmental bodies;
2. Other governmental bodies;
3. Deliberative bodies that have rule-making or quasi-judicial power and that are classified as a department, agency, or political subdivision of a city or county;
4. 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;<sup>3</sup>
5. Local workforce development board;<sup>4</sup>
6. Non-profit corporations that are eligible to receive funds under the federal community services block grant program and that are authorized by this state to serve a geographic area of the state;<sup>5</sup>
7. Certain property owners’ associations.<sup>6</sup>

In other words, governmental entities and certain non-governmental entities are subject to the Public Information Act. Additionally, entities that are considered departments, agencies, or political subdivisions of a city or county are also subject to the Public Information Act if the involved entity has rule-making or quasi-judicial powers.<sup>7</sup> 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 Public Information Act.

### **3. Are the records of nonprofit and for-profit entities that receive city funds subject to the Public Information Act?**

Records in the hands of non-governmental entities may also be covered by the Public Information

Act to the extent the entity spends or is supported by public funds, or to the extent that a governmental body has a right of access to the records. For example, when governmental bodies make unrestricted grants of funds to nonprofit and for-profit entities, the records relating to the part of the entity that is publicly funded would be subject to the Public Information Act.<sup>8</sup>

Rulings in this regard have held that the records of volunteer fire departments and records of certain chambers of commerce that involve expenditures of public funds are subject to the Public Information Act. However, the portion of the entity that is not supported by public funds is not necessarily subject to the Public Information Act.

Finally, it should be noted that certain entities are specifically made subject to the open records laws under the state law that governs that entity. For example, economic development corporations are specifically made subject to the provisions of the Public Information Act under the Development Corporation Act of 1979 found in Texas Revised Civil Statutes Article 5190.6.

#### **4. Are records that are kept or owned by a consultant to the city subject to the Public Information Act?**

The fact that a private entity may own or retain a record does not prevent the record from being subject to release under the Public Information Act. For example, if a consultant maintains or holds records for a city, the documents are still considered public information if the city owns the information or has a right of access to it.<sup>9</sup>

It is important to note that a city usually cannot contract away its right to access documents that are held by a consultant if the information would otherwise be considered public. For example, an open record decision has held that a city manager could not contract away the city'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.<sup>10</sup>

#### **5. Are municipal court records subject to the Public Information Act?**

Records of the judiciary, including municipal court records, are not subject to the Public Information Act.<sup>11</sup> Municipal courts must look to the rules adopted by the Texas Supreme Court to determine the municipal court's duty to provide access to court records.<sup>12</sup> Additionally, municipal 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 to preserve justice. In other words, the public's right of access to court documents is not an absolute right.<sup>13</sup>

Many requests to municipal courts seek copies of traffic-related citations or copies of requests for defensive driving. The public usually has a right to access court records relating to traffic citations. Although these records often may also be obtained through a request for the same document from the police department, the requestor can choose which entity it will ask for the document. Upon receipt of the request, that entity must apply the law that is applicable to its operations regarding such

a release.

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 requests for information under the Public Information Act.<sup>14</sup> 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. The magistrate who issued the warrant must make the affidavits available for public inspection in the court clerk's office.<sup>15</sup>

**6. Does the mayor or other elected members of the city council have a special right of access to city records?**

The mayor or a city council member has an inherent right of access to city records if the member is requesting the records in his/her official capacity. The transfer of information to members of the city council is not necessarily considered a release to the public for purposes of the Public Information Act.<sup>16</sup> However, the ability to release such information to elected officials may be limited by the state or federal law that pertains to such documents.

**7. Do city staff have a special right of access to city records?**

An employee whose job requires or permits access to certain public records would have a special right of access to those records.<sup>17</sup> The transfer of information to city staff is not considered a release to the public and would not constitute selective disclosure.<sup>18</sup>

**8. Do outside governmental agencies have a special right of access to city records?**

Outside governmental agencies whose function under state or federal law requires access to certain records generally have a special right of access to such records.<sup>19</sup> The transfer of information to such outside government agencies is not considered a release to the public and would not constitute selective disclosure.<sup>20</sup> For example, upon request, cities must release certain salary and other personnel information to the Texas Attorney General's Office to enable collection of court-ordered child support payments.

**9. Does information disclosed to a municipality-appointed citizen advisory board constitute a voluntary disclosure to the public under the Public Information Act?**

The Texas Attorney General has concluded information that was disclosed to a municipally-appointed citizen advisory board pertaining to a municipally - owned power utility did not constitute a voluntary disclosure under the Public Information Act.<sup>21</sup> Citizen advisory boards were created by city code or ordinance to advise the city council or public power utility governing body on matters



relating to the public power utility. Accordingly, disclosure of information to the citizen advisory board was considered an intra-agency transfer of information. Thus, the release of information to the citizen advisory board would not prevent the city from thereafter asserting an exception to the public disclosure under the Public Information Act.

## **II. What Constitutes an Open Records Request**

### **10. To what city officer must an open records request be directed?**

Except in the case of faxed and e-mailed requests, the Public Information Act does not require that the public direct its open records requests to any specific city employee or officer.<sup>22</sup> Generally, the deadlines involved in handling an open records request are not put on hold merely because the wrong city staff member received the request. For this reason, it is important that a city clearly inform all of its employees what to do if they receive a request for city records.

### **11. What is the city's duty to respond to e-mailed or faxed requests for copies of records?**

The city has a duty to respond to any written requests for open records including those that are made through e-mail or by fax. However, state law provides that the city can designate a person that is authorized to receive e-mail or faxed requests for open records. If the city makes such a designation, the Public Information Act is only activated if the request is directed to the assigned individual.<sup>23</sup> If the city has not made such a designation, the e-mail or faxed request can be directed to any city official or city staff member.

### **12. Must a city respond to verbal requests for copies of records?**

State law allows a city to require that all requests for copies of city records be made in writing. In fact, the Public Information Act is only activated by a written request for the documents.<sup>24</sup> Cities often develop forms for the public to use to request public records. However, the city's duty to provide the record would apply to any written request for the information, regardless of the format of the document used by the requestor. For example, an open records request is often contained within a complaint letter or within other citizen correspondence sent to a city.

If a city provides copies of records upon a verbal request, the city must be consistent in its treatment of all requestors. In other words, if the city doesn't require a written request from certain individuals, it should not insist on a written request from others.

### III. Administration of Open Records Requests

#### Timing Issues Under the Public Information Act

**13. How much time does a city generally have to comply with an open records request?**

There is often a misconception that the Public Information Act requires that copies of public information must be produced within ten days of the written request to the city for the record. However, the standard under the Public Information Act is actually that the city must “promptly produce” the public information.<sup>25</sup> Further, the Act states that all open records requests must be handled with good faith and must be accomplished within a reasonable time period.<sup>26</sup> 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 days. However, requests for a substantial number of documents may take several weeks to produce.

If it will take a city longer than ten business days to provide the records, the city must certify that fact in writing to the requestor. In the 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.<sup>27</sup>

**14. When is a city under a timing deadline to take a particular action when handling an open records request?**

The amount of time that cities have to produce copies of city 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 an open records request. These six situations are described below:

**1. Notice to Requestor that City Needs Additional Time to Produce Records.**

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.<sup>28</sup>

**2. Notice to Requestor that City Needs Additional Time to Produce Records That Are in Active Use or in Storage.**

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. The notice must set a date and hour within a reasonable time that the information will be available for inspection or duplication.<sup>29</sup> It should be noted that the fact that a document has not been formally approved by the city council usually would not justify a delay of the document’s release under the “active use” provision.<sup>30</sup>

**3. Notice to Requestor of Programming or Manipulation Costs.** 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: (1) that the information is not available in the requested format; (2) a description of the forms in which the information is available; (3) a description of any contract or services that would be required to provide the information in the requested form; (4) an estimated cost of providing the information in the requested form; and (5) the time that it would take to provide the information in that format<sup>31</sup>. Generally, this notice must be provided to the requestor within 20 days after the city's receipt of the request.<sup>32</sup>

**4. Request by City for an Open Record Ruling from the Attorney General.** If a city plans to withhold certain documents or information, it usually must request an Attorney General's ruling on the ability to withhold such information.<sup>33</sup> The written request for an Attorney General's ruling must be made within ten business days after the date the city receives the written request for information.<sup>34</sup> However, the ten business day deadline is tolled during the time that the city and the requestor are actively clarifying or narrowing the scope of the information requested.<sup>35</sup>

**5. Notice to Requestor that City Sought an Attorney General Open Record Ruling.** The city must give written notice to a requestor if the city seeks an Attorney General open record ruling on the request. This notice must be given within ten business days after the city's receipt of the request for the documents.<sup>36</sup>

**6. Notice to Person or Entity with Proprietary Interest in Information of Attorney General Open Record Ruling Request.** If an open records 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 record ruling request. The written notice must be sent by the city within ten business days after the date the city received the original request for the information.<sup>37</sup>

This notice must include: (1) a copy of the written request for the information; and (2) a statement that the person is entitled to submit a letter, brief, or memorandum to the Attorney General in support of withholding the information. 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 their brief within ten business days after the date the person receives the written notice from the city.<sup>38</sup> Also, the person who submits a brief to withhold the information must provide a copy of their brief to the requestor.<sup>39</sup>

**15. 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 request for information is unclear or that the scope of the information being asked for is unduly broad, the city may ask the requestor to clarify or narrow the scope of a request.<sup>40</sup> The time used in clarifying or narrowing the scope of a request does not

count as part of the governmental body's statutory allotment of ten business days to request an open records decision.<sup>41</sup>

The Texas Attorney General has concluded that the Public Information Act allows a tolling of the statutory ten days during the interval in which the city and a requestor is communicating in good faith to clarify or narrow a request. However, this does not give the city an additional ten full business days from the date the requestor responds to the request for clarity. Once the requestor's clarification or narrowing response is received, the original ten business days resumes.<sup>42</sup>

## **16. When is a city required to ask for an open records ruling from the Attorney General?**

A city is required to ask the Attorney General for an open record ruling in almost all cases if the city wants to withhold requested documents or information.<sup>43</sup> The fact that a particular document request may arguably fall within one of the statutory exceptions to disclosure does not in itself eliminate the need to ask for an open records ruling. Unless the city can point to a specific previous determination that addresses the exact information that the city now wants to withhold, the city must request a ruling to withhold the information.<sup>44</sup>

A request for an Attorney General open records ruling must be made within ten business days after the date the city received the written request. Such a request can only be made by the governmental body.<sup>45</sup> If the governmental body does not make such a request within the deadline, the information is presumed as a matter of law to be open to the public and the information must be released. The presumption of openness and the duty to release the information can only be overcome by a compelling reasoning that the information should not be released.<sup>46</sup> A compelling reasoning may in certain cases involve a showing that the information is deemed confidential by some other source of law or that third-party interests are at stake.<sup>47</sup> 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. The city can seek advice on any of these issues from the Attorney General's Open Records Hotline at (512) 478-6736.

## **17. Can a city request an Attorney General decision when the city has determined the requested information is not subject to one of the Act's exceptions?**

The Texas Attorney General has concluded a city may not request an open records decision from the Attorney General if the governmental body reasonably believes the requested information is not excepted from required disclosure. Instead, the governmental body must promptly produce the requested public information to the requestor.<sup>48</sup>

## **18. Can a city withhold information because of a previous determination?**

The Public Information Act provides that a city must request an Attorney General open records ruling if the city wishes to withhold requested information unless there has been a previous determination about that particular information.<sup>49</sup> The Public Information Act does not define previous determination. However, the Attorney General has concluded there are two types of “previous determinations.”<sup>50</sup>

The first type of previous determination exists so long as 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; the ruling is addressed to the same governmental body; and 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 the elements of law, fact, and circumstances are met to support the previous decision’s conclusion, the decision concludes that a specific, clearly delineated category of information is or is not excepted from disclosure, and 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 governmental bodies may withhold the home address, home telephone number, personal cellular phone number, personal pager number, social security number, and information that reveals whether the individual has family members, of any individual who meets the definition of “peace officer” or “security officer” without the necessity of requesting an Attorney General decision as to whether the applicable exception applies.<sup>51</sup>

## **19. What information must be provided with a request for an Attorney General open records ruling?**

A city must submit four items to the Attorney General with any open record ruling request:

- 1. The City’s Legal Rationale for Withholding the Information.** Written comments stating the reasons why the stated statutory or common law exceptions allow the information to be withheld.
- 2. A Copy of the Open Records Request.** A copy of the actual written request to the city for the information.
- 3. A Signed Statement or Other Evidence of When the City Received the Open Records Request.** The city must provide a signed statement or other evidence of when the city received the open records request.
- 4. A Marked Copy of the Requested City Records.** A copy of the specific documents or information requested or a representative sample if a voluminous amount of information was requested. The city must mark or label the copy to indicate which statutory or common law exceptions apply to which parts of the

copy.<sup>52</sup>

In summary, if a city wants to withhold a record, it has ten business days from the date it receives the request to ask for an open records ruling from the Attorney General. It is important to note that the initial deadline for requesting an Attorney General open record ruling is put on hold during the time the city and the requestor are actively discussing the scope of the information requested.<sup>53</sup> If the city contends that the ten business-day deadline has been tolled while the city and the requestor have been narrowing or clarifying the request, the city must explain this fact in its request for an open records ruling. In its explanation, the city should include all dates relevant to the calculation of the ten business day deadline.

The original request for a ruling must indicate the specific exceptions that the city is relying on to withhold the information. If the city fails to cite the applicable exceptions in its original request, the city will generally be barred from raising them in any additional briefing that it may provide. The city has an additional five business days (a total of fifteen business days from the date the city received the original request for the record) to provide the Attorney General with a signed statement that indicates when the city received the request, or other evidence that establishes that date.<sup>54</sup> During the additional five business days, the city may also provide additional written documentation that supports withholding the requested information. This additional information may only address the exceptions noted in the original open record ruling request. If the city fails to supply the four items noted above to the Attorney General within the applicable deadlines, the information is presumed to be public as a matter of law and must be released to the public.<sup>55</sup> The Attorney General may also ask the city for additional information. The city must respond to an Attorney General's request of additional information within seven calendar days.<sup>56</sup> If the city fails to respond, the information is presumed to be open and must be released unless there is a compelling reason to withhold the information.<sup>57</sup>

**20. Is a city required to provide notice to the requestor that the city has asked for an Attorney General open records ruling?**

A city must provide notice to the requestor if the city seeks an Attorney General open records ruling on the request. The city must provide this written notice to the requestor within ten business days from the date the city received the open record request.<sup>58</sup> This notice must include a copy of the written communication that outlines the city's rationale for withholding the information. If providing the requestor with the written communication would disclose the information that is alleged to be confidential, the city may include a redacted copy (omitting the confidential information).<sup>59</sup>

**21. How long does the Attorney General have to respond to a request for an open records ruling?**

The Attorney General has forty-five (45) working days after the date the request was received from the city. However, if the Attorney General is unable to issue the decision within the forty-five day period, the Attorney General may extend the time to respond for an additional ten working days.

Such an extension may only 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 forty-five day time period.<sup>60</sup>

**22. Can a city take longer than fifteen (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 the city with an extension of time to seek an open record 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 making an open record ruling request to the Attorney General. As noted earlier, this request must include the legal arguments that support withholding the information, a marked-up representative sample of the requested information (marked to show which legal arguments apply to what portion of the sample documents), a copy of the open records request, and a signed statement or other evidence of when the city received the request.<sup>61</sup>

**23. May a city seek a reconsideration of an open record ruling that was 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, the city must release the information and is prohibited from seeking a reconsideration of that issue from the Attorney General.<sup>62</sup> If the city wants to challenge an Attorney General ruling, the city must appeal by filing suit in Travis County within thirty (30) calendar days.<sup>63</sup>

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

The Local Government Records Act requires that all Texas local governments have a records retention schedule that meets the approval of the State Library and Archives Commission.<sup>64</sup> The schedule must detail how long a city will keep various types of city records. A city may not destroy records prior to the time set for the destruction of those records in the city's retention schedule. For more information on the requirements of the Local Government Records Act and how to comply, contact the Texas State Library and Archives Commission, State and Local Records Management Division. The division's phone number is (512) 452-2705. The address is P.O. Box 12927, Austin, TX 78711-2927, and the website is <http://www.tsl.state.tx.us/>.

It is important to remember that a record remains public information even after the expiration of the retention period for that record. That is, if a city has not destroyed a record, it is still subject to the Public Information Act even though it has been kept beyond the time period specified in the city's retention schedule.

## **Rights and Duties of the City and of the Open Records Requestor**

### **25. 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.<sup>65</sup> The sign must be displayed in the city's administrative offices. The Texas Building and Procurement Commission (formerly the General Services Commission) is responsible for determining what specific information must be displayed on the sign. For more information, a city may contact the Building and Procurement Commission by phone at (512) 463-3035, or at their website, [www.gsc.state.tx.us](http://www.gsc.state.tx.us).

### **26. What inquiries can a city make of an open records requestor?**

Generally, there are only two permissible lines of inquiry that can be made of a record requestor. First, the city can ask a requestor for proper identification, but may not inquire into the motives or use that a requestor may have for public information that has been requested.<sup>66</sup> This identification requirement is generally imposed by a city when a state statute limits who may gain access to certain information (e.g., certain state statutes limit who can receive copies of ambulance run information). It should be noted that 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. It should also be noted that certain statutes regulate who can gain access to information within motor vehicle records such as copies of drivers' licenses. These statutes contain specific rules on what inquiries can be made to determine if the requestor is eligible to receive the information.<sup>67</sup> If an open records request involves such information, the city should visit with its local legal counsel regarding the applicable law.

Second, a city may ask the requestor for a clarification of what type of information is actually being requested. Often, an initial open records request may involve the production of more documents than the requestor intended. Similarly, many open records requests ask for information that is not kept by the city in the requested format. In either case, the city can ask the requestor whether a potential narrowing or variation of the request would meet the requestor's needs.<sup>68</sup> In this way, the city can potentially save its resources and the requestor can avoid receiving unnecessary information.

### **27. Does the name and address of an open records requestor become public information?**

In certain cases, an open records requestor can be required to provide identification, which may include his or her name or address.<sup>69</sup> If the city receives this information and it becomes part of a city record, there is no statutory provision that would except it from disclosure.

### **28. 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. For example, if a requestor wants a copy of information on a computer floppy disc, 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, the city is not required to buy additional hardware or software to accommodate an open records request.<sup>70</sup>

**29. What duty does the city have to provide a copy of a record that is in active use or in storage?**

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 within ten business days of the city's receipt of the open records request. The notice must set a date and hour within a reasonable time that the information will be available for inspection or for duplication.<sup>71</sup> The fact that a document has not been formally approved by the city council would not allow the city to delay the document's release under the "active use" provision.<sup>72</sup> For example, the minutes of an open meeting would not be excepted from disclosure under the "active use exception" merely because the minutes had not yet been approved by the city council. However, during the time that the city is typing or actively using the record, this exception may be applicable. Additionally, it is possible that such documents may be excepted under other provisions under the Act such as the exception for legislative drafts.

**30. Can an open records request require a city to create a record if none exists?**

An open records request does not generally require the city to produce information which is not in existence. Thus, a city is not required to create new information in response to a request. However, a request for public information that requires the city to program or manipulate existing data is not a request for the creation of new information.<sup>73</sup> In such a case, the city is required to provide the requestor with a written statement describing the form in which the information is available, a description of what would be required to provide the information in the requested form, and a statement of the cost and time to provide the information in the requested form.<sup>74</sup> The city then has no obligation to provide the information in the requested form until the requestor responds in writing.<sup>75</sup>

**31. Does a city have to comply with standing requests for copies of records?**

A city has no duty to comply with standing requests for copies of records.<sup>76</sup> 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. The city also has no duty to notify the requestor in the future that the information has come into existence.<sup>77</sup> 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.

**32. Can an open records request require the city to compile statistics, perform research, or provide answers to questions?**

An open records request only requires a city to provide copies of documents that relate to the information sought by the requestor. The Public Information Act does not require a city to calculate statistics, to perform legal research, or to prepare answers to questions.<sup>78</sup>

**33. Does an open records request require a city to locate information that is not organized or retrievable by the type of information that is requested?**

Sometimes an open records request will ask for certain documents or information that is not organized or retrievable by the type of information that is requested. For example, a requestor could ask for a list of all of the out-of-state contractors that a city had hired. However, it is unlikely that the city would have its files or computer data organized by whether a contractor's business was located inside or outside of the state.

If providing the information in the requested format would require programming or manipulation of existing data, the city should notify the requestor of the format in which the information is currently available, and include a cost estimate for providing the information in the format that meets the requestor's preferences.<sup>79</sup> If the information cannot be provided in the requested format, the city should offer to make available all city documents that involve city contractors. The requestor could then review the records to determine which contractor businesses were located outside of the state.

**34. 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 an open records request.<sup>80</sup> 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.<sup>81</sup> 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 an open records 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.<sup>82</sup>

**35. Can requestors insist on the right to personally use city equipment to access public information?**

The Texas 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.<sup>83</sup> 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 city computer terminals to access information, but the public cannot demand that such a policy be implemented.

**36. Do requestors have a right to bring in their own copier to make copies of public records?**

A governmental body 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 excised.<sup>84</sup>

**37. Can requestors require the city to copy information onto supplies provided by the requestor?**

The Texas Public Information Act specifically provides that a governmental body is not required to copy information onto material provided by an open records requestor. 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 governmental body may choose to use its own materials.<sup>85</sup>

**38. Does the city have to release information that is also available commercially?**

Generally, a city is not required to allow access to or to make a copy of information from a commercial book or publication that the city holds for research purposes. If the publication was purchased by the governmental body and it is still available commercially, the city can alert requestors of this fact. However, a city is under a duty to allow inspection of the commercial book or publication if portions of the publication are specifically made a part of, incorporated into, or referred to in a city rule or city policy.<sup>86</sup>

**39. Does a city have to release information that is copyrighted?**

If a request is made for documents that are copyrighted, the 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.<sup>87</sup> Instead, the city should provide the requestor access to the information; the requestor bears the duty of compliance with federal copyright law.

**40. Must a city respond to repeated requests for the same information?**

If a city has previously provided copies of certain information, the city has no duty to provide the same information to the requestor again.<sup>88</sup> 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.<sup>89</sup> The city's public information officer or his agent must provide the requestor a letter or form which certifies that all or part of requested information was previously furnished to the requestor, or was made available upon payment of costs. Additionally, 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 agent who is making the certification.<sup>90</sup> A city may not charge the requestor for the preparation of the certification.<sup>91</sup>

Of course, a city may choose to provide the requested information, which makes providing a certification to the requestor unnecessary.<sup>92</sup> 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 to the requestor.<sup>93</sup>

#### **41. How can a city deal with a requestor that may use open records requests as a form of harassment?**

Cities are prohibited from inquiring into the motives of a requestor of an open record. The city's duty to provide access and copies of public records applies regardless of the requestor's possible intent.<sup>94</sup> Nonetheless, cities may promulgate rules that promote the efficient, safe, and speedy inspection and copying of such records.<sup>95</sup> For example, a city may provide a form for requestors to use when making a written request for public information. However, there is no statutory authority for requiring a requestor to use the form provided by the city. That is, a city may provide such forms for the convenience of the requestor, but any written request for records should be accepted as an open records request.

If a person requests only the opportunity to review city records, it is possible that city staff may want to schedule a convenient time for providing access to the information. However, such access must be provided within a reasonable time period. State law requires that access to review open records should be provided to the public during the normal business hours of the city.<sup>96</sup> If providing access to the documents requires considerable city staff time to compile the information or involves the production of a great deal of information, the city may want to review the statutory authority of the city to charge for providing access to public information.

## **IV. Statutory Exceptions That Allow Information To Be Withheld**

### **Information Which is Presumed Public**

#### **42. Is there a list of items which are presumed to be public information?**

The Public Information Act lists items which are presumed to be public information. Texas Government Code section 552.022 (a) states that “(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 under this chapter unless they are expressly confidential under other law.” For example, completed reports,<sup>97</sup> public court record information,<sup>98</sup> and settlement agreements to which a governmental body is a party<sup>99</sup> are just a few of the items that are presumed public information.

#### **43. Is a discretionary exception considered “other law” for the purpose of withholding information presumed public under section 552.022?**

Information that is considered public information cannot be withheld because of an exception in the Public Information Act (PIA). The PIA states that the information that is considered public is “not excepted from required disclosure under this chapter.” Most of the exceptions listed in Subchapter C of the Public Information Act are considered discretionary exceptions.<sup>100</sup> Discretionary exceptions are designed to protect the interests of the governmental body and are not considered “other law” for purposes of section 552.022 of the Texas Government Code.<sup>101</sup> Public information can only be withheld if it is “expressly confidential under other law.”<sup>102</sup> However, there are three exceptions to this general rule. As of June 15, 2001, sections 552.104 and 552.133 of the Government Code were amended to allow a city to withhold information under these sections even if the information falls within one of the categories of information listed in section 552.022 (a).<sup>103</sup> Additionally, information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code.

#### **44. Are discovery privileges considered “other law” for the purpose of withholding information presumed public under section 552.022 of the Texas Government Code?**

The Texas Supreme Court has concluded the term “other laws” as it is used in section 552.022 of the Government Code does include the Texas Rules of Civil Procedure and Texas Rules of Evidence.<sup>104</sup> Accordingly, the attorney-client privilege and work-product privilege are considered “other law” for the purpose of withholding information subject to section 552.022.<sup>105</sup>

## Procedural Issues Regarding Confidential Records

### **45. Is there a laundry list of items that are confidential under the Public Information 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 city will want to review the Attorney General's *Public Information Handbook* and consult closely with its city attorney regarding what records that state or federal law specifically require to be withheld from the public.

### **46. Can city staff promise confidentiality for certain records that are provided to the city?**

A promise of confidentiality from city staff or a related promise within a city 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.<sup>106</sup>

### **47. Can a city substitute a new document or produce a redacted copy of a record in response to an open records request?**

The city is required to make copies of the actual records that exist. The city can cross through or otherwise excise information that is determined to be excepted from public disclosure. However, a city may not substitute a new document in which only the publicly available information is presented, unless the requestor consents to the substitution.<sup>107</sup>

## What City Records are Confidential

### Certain Executive Session Records

### **48. Can a city release copies of certified agendas or the tapes of executive sessions?**

A certified agenda is accomplished by either making an actual tape recording of the closed meeting or by producing a written document that summarizes each of the issues that were discussed at the executive session. The certified agenda is considered confidential under state law and generally may not be released except under order of a district court.<sup>108</sup> If an official releases the actual tape or certified agenda document, such a release can be prosecuted as a Class B misdemeanor.

A prior Attorney General ruling, however, has allowed the review of the certified agenda by a member of a city council who attended the executive session.<sup>109</sup> Also, elected city council members that were absent from the executive session can review the tape of the closed meeting. The city would want to adopt procedures for reviewing the recording, but it can not absolutely prohibit the

review by a member of the governmental body. The city may not provide the absent council member with a copy of the tape recording of the executive session. Additionally, the city council may not allow a member to review the tape of an executive session once the member has left the office.<sup>110</sup>

#### **49. Can a city official publicly discuss what occurred in an executive session?**

State Law does not specifically prohibit a council member from discussing or making statements about what occurred in an executive session.<sup>111</sup> However, as noted above, a city official is prohibited from disclosing to the public a copy of the actual certified agenda or tape of an executive session.<sup>112</sup> Of course, the fact that a person may legally discuss what occurred in an executive session does not mean that it is advisable to do so. For instance, it is possible that such a discussion could waive the city's claim of attorney-client privilege if a council member revealed attorney-client communications that occurred during an executive session.

It is not clear whether a city council could affirmatively prohibit council members from publically discussing what takes place in executive session. Attorney General Opinion No. JM-1071 (1989) implies that such a restriction may violate the First Amendment of the United States Constitution.<sup>113</sup> Additionally, in certain home rule cities, the city charter and/or city ethics ordinance prohibits the council members from taking any actions that may be detrimental to the interests of the city. A city will want to carefully review this issue with its local legal counsel before attempting to enact any such policy.

### **Information about City Officials/Employees**

#### **50. Can a city disclose a public official or public employee's home address, home phone, social security number, or family information?**

City employees may request that the city not reveal their home address, home phone number, social security number, or information about family members. In fact, cities are required to ask each city employee whether they want such information to be treated as confidential. This inquiry to each city employee must be made within fourteen days of the employee being hired or ending service with the city. If the employee indicates in writing a preference for such confidentiality, the personal information is excepted from public disclosure.<sup>114</sup>

Although the city is required to make this inquiry to employees at the time of their starting or leaving 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 this 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.

It is important to note that a peace officer is not required to file a written request to keep his/her personal information confidential. A peace officer's home address, home phone number, social security number, and any information about family members are all automatically confidential.<sup>115</sup>

Additionally, the home address, home phone number, 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.<sup>116</sup> Such information is automatically confidential, and the exception applies to all peace officers regardless of the date of his or her death.<sup>117</sup>

**51. Can a city refuse to disclose cellular phone and pager records of public officials?**

There is no special protection for cellular phone or pager records of public officials except in certain cases in which the phones were installed and paid for personally by the official.<sup>118</sup> The Public Information Act, does not except from disclosure cellular phone numbers or pager numbers that are provided to city employees for work purposes.<sup>119</sup> To the extent, however, records contain the personal cellular telephone numbers or pager numbers of current or former city employees, that information may be excepted from disclosure provided the employees timely elected to keep their personal information confidential. For those employees who timely elected to keep their personal information confidential, the city may withhold the employee's home addresses and telephone numbers, personal cellular telephone numbers, social security numbers, and any information that reveals whether these employees have family members.

For city police officers the Texas Attorney General has concluded all governmental bodies covered by the Public Information Act may withhold certain information concerning individuals who meet the definition of "peace officer" or "security officer." The peace officer or security officer information cities can withhold includes home addresses, home telephone numbers, personal cellular phone numbers, personal pager numbers, social security numbers, and information which reveals whether the individual has family members. This information may be withheld without the necessity of requesting an Attorney General decision as to whether the exception under section 552.117 (2) of the Government Code applies.<sup>120</sup>

**52. Are personal notes kept by a city official subject to the Public Information Act?**

Personal notes that are made by a city official often are considered a public record. 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; (5) whether the document is used in conducting the business of the governmental body; and (6) whether public funds were expended in creating or maintaining the document.<sup>121</sup>

**53. What information is protected from disclosure under the exception for private correspondence of public officials?**

Section 552.109 of the Government Code protects from public disclosure private correspondence of an elected official if the disclosure would constitute an unwarranted invasion of that official's privacy. However, this exception only applies to correspondence sent out by the city official, not to correspondence that is received by the official. This exception also only protects the privacy interests of the public official, not the privacy interests of the person discussed in the communication or the privacy of the recipient of the communication.<sup>122</sup> For example, a ruling has held that



performance evaluations that were produced by elected officials regarding city council appointees were not protected from disclosure.

**54. Are e-mail addresses protected from disclosure under the Public Information 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. However, the member of the public can allow their e-mail address to be disclosed if the member of the public affirmatively consents to its release.<sup>123</sup>

Similar to home addresses and home telephone numbers, the Texas Attorney General has concluded home e-mail addresses are confidential and are excepted from disclosure if the city employee or city official has elected to keep their home telephone number confidential in accordance with section 552.024 of the Government Code.<sup>124</sup>

## **General Exceptions That May Permit Withholding Records**

**55. What information is protected from disclosure under the exception for legislative drafts?**

The Public Information Act allows a city to withhold from the public a “draft or working paper involved in the preparation of proposed legislation.”<sup>125</sup> This exception protects drafts of proposed legislation, or working papers that reflect policy judgments, recommendations, and proposals. The drafts must have been prepared by a person with some official responsibility to prepare them.<sup>126</sup> The Attorney General has concluded that this exception would protect drafts of city ordinances and resolutions.<sup>127</sup> For example, a city manager’s proposed budget may be protected under this exception prior to its presentation to the city council.<sup>128</sup> This exception does not protect purely factual information, and it does not protect information that is incorporated into materials that have already been disclosed to the public.<sup>129</sup>

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

The Public Information Act allows a city, in limited circumstances, to withhold certain information that is contained in an inter-agency or intra-agency memorandum or letter.<sup>130</sup> This exception has been held to only apply to internal city staff communications consisting of advice, recommendations, or opinions that reflect the policymaking process.<sup>131</sup> This exception does not apply, however, 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 issues of a broad scope.<sup>132</sup> For example, the evaluation of an individual employee would probably not be protected from disclosure under this exception.<sup>133</sup> On the other hand, a university report addressing systematic discrimination against minorities has been found to be protected by this exception.<sup>134</sup> 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.<sup>135</sup>

## **Personnel Information**

### **57. What information within a city employee's personnel file is an open record?**

The vast majority of information within a city employee's personnel file is considered an open record and accessible to the public. For example, information about a public employee's job performance, dismissal, demotion, promotion, resignation, and salary information are generally considered open.<sup>136</sup> Similarly, job-related test scores of public employees or applicants for public employment are generally treated as open records,<sup>137</sup> as are letters of recommendation, and opinions and recommendations concerning other routine personnel matters.<sup>138</sup> However, Attorney General rulings have required information about an employee's withholding information on a federal tax form to be withheld, as well as information about an employee's beneficiary under city life insurance programs. Information in a personnel file is excepted from disclosure under the "personnel exception" if its release would constitute an unwarranted invasion of the employee's privacy.<sup>139</sup> Release of the information would constitute an invasion of privacy if:

1. the information contains highly intimate or embarrassing facts about the person;  
and
2. there is no legitimate public interest in the release of or access to this information.

Under the above two part-test, a court has held that a city did not have to release the names and statements of victims and witnesses alleging sexual harassment.<sup>140</sup> 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.

### **58. 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.<sup>141</sup> However, the employee's right to access the information may be limited by certain statutory exceptions to disclosure that may apply to the information. For example, under some circumstances, the city may be able to refuse to release information to an employee from his personnel file if the information relates to issues that are currently under civil or criminal litigation.<sup>142</sup>

### **59. What information regarding city employee medical records can be released?**

Information that the city collects regarding an employee's medical condition and medical history is generally confidential under state law, in conjunction with provisions of the Americans with

Disabilities Act and the Texas Medical Practice Act.<sup>143</sup> For example, state law makes medical information generated by a physician confidential if it relates to the physician-client relationship.<sup>144</sup> Similarly, most mental health records are confidential by statute.<sup>145</sup> However, there are exceptions to the ability of a city to withhold this type of information. For example, the city can not withhold the names of employees who took sick leave. Similarly, information regarding the amount of disability payments to a former city employee is not excepted from disclosure. Cities should visit with local legal counsel prior to releasing any medical information about an employee. Cities must also be sure to maintain this type of medical information separately from other information in the city personnel files.

**60. Are the records within city departments that have adopted civil service treated differently under the Public Information Act?**

Local Government Code section 143.089 prohibits a city civil service fire or police department from releasing information from the department's personnel file. Instead, the department is required to refer someone who requests information from a civil service personnel file to the city's director of civil service.<sup>146</sup> Under Texas law, the civil service director maintains a separate set of personnel files. The files of the civil service director do 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.<sup>147</sup>

## **Law Enforcement Information**

**61. What information within the records of a police department 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 city to withhold four types of information:

- 1) Information That If Released Would Affect the City's Ability to Investigate or Prosecute:** Information that is held by a law enforcement agency or prosecutor that, if disclosed, would interfere with the city's ability to investigate or prosecute a crime;
- 2) Information About Failed Prosecutions:** Information that deals with the prosecution of crimes, but 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 Government Code section 411.048; or
- 4) Criminal Litigation Information:** Information that the city attorney prepared for use in criminal litigation or information reflecting the mental impressions or legal reasoning of the city attorney regarding such litigation.

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.<sup>148</sup> Information that has been held to be open includes:

1. The name, age, address, race, sex, occupation, and condition of an arrested person.
2. The date and time of the arrest.
3. The offense charged and the booking information.
4. The location of the crime and the involved property.
5. The names of the arresting and investigating officers.
6. A detailed description of the offense.

The public can access this information before, during, or after a prosecution of a criminal offense. Additionally, a probable cause affidavit for a search warrant is a public record once the warrant has been executed. The magistrate who issued the warrant must make the affidavit available for public inspection in the court clerk's office.<sup>149</sup>

It is also important to note that the law enforcement exception may apply to city 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.<sup>150</sup>

## **62. May a city withhold information about the identity of witnesses or informants?**

The identity of witnesses, informants, and persons interviewed in the course of a police investigation may be withheld if the police demonstrate specific facts showing that disclosure might subject these individuals to possible intimidation or harassment or might harm the prospect of future cooperation.<sup>151</sup>

## **63. Can motor vehicle accident report information be disclosed under the Public Information Act?**

The disclosure of motor vehicle accident reports are governed by the Texas Transportation Code.<sup>152</sup> 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 city with two or more of the following information:

- (a) the date of the accident;
- (b) the specific address or the highway or street where the accident occurred; or

(c) the name of any person involved in the accident.<sup>153</sup>

**64. Can a city release police or municipal court records regarding juveniles?**

The law governing the release of juvenile records is different for records held by the police than for records held by a municipal court. Section 58.007 of the Family Code does not protect juvenile records that are held by municipal courts.<sup>154</sup> Municipal court records that relate to juveniles are generally considered open to the public under the open courts doctrine. In addition, juvenile records that relate to traffic offenses that are maintained by the police department are generally considered open.

However, juvenile records (other than traffic offenses) kept by a police department may or may not be confidential depending on when the alleged offense occurred. Juvenile law enforcement records concerning conduct that occurred before January 1, 1996 are confidential. A police record concerning a juvenile offender is not confidential if the record involves conduct that occurred on or after January 1, 1996, and before September 1, 1997. Juvenile records within a police department that concern conduct that occurred on or after September 1, 1997 are considered confidential.<sup>155</sup> State law also requires that juvenile records that are kept by a police department must be kept separate from adult files.<sup>156</sup>

**65. Can a city refuse to release information about the identity of crime victims?**

Basic information about a crime, including the identification of the victim, is generally considered public information. However, prior open records rulings have provided confidentiality for the identity of victims of aggravated sexual assault, child victims of sexual abuse, and child victims of certain other serious sexual offenses.<sup>157</sup> Under Texas case law, there is also privacy protection for some of the details regarding such offenses.<sup>158</sup> Otherwise, state law does not necessarily except from disclosure the names of crime victims or participants unless the details are inextricably intertwined with the identifying information.<sup>159</sup> For example, records held by the police regarding violence between family members are generally considered open unless it can be shown that the information is highly intimate and embarrassing and is of no legitimate public interest.<sup>160</sup> It should be noted, however, that records regarding the identity of victims of crime who are juveniles (other than for serious sexual offenses or for certain investigations of child abuse or neglect) are not automatically protected from disclosure under state law or under common law privacy.<sup>161</sup>

**66. What information maintained by an emergency 9-1-1 system is confidential?**

For most 911 districts, state law makes confidential the originating telephone numbers and addresses furnished in a call to the 911 district. However, state law does not protect other information that may be entered into the system by emergency dispatch staff during a 911 call. The city could, however, possibly assert other exceptions to disclosure that may apply to this information.<sup>162</sup>

**67. What emergency medical services records must be kept confidential?**

Texas law generally prohibits the disclosure of most records of communications between certified emergency medical services personnel and a patient.<sup>163</sup> However, as set forth in Chapter 773 of the Health and Safety Code, certain parties have a special right of access to this information. In addition, state law provides that certain information within emergency medical services documents is not confidential such as: information indicating the presence of a patient who is receiving emergency medical services, the nature of the patient's injury or illness, and the age, sex, occupation, and city of residence of the patient.<sup>164</sup>

## **City Utility Information**

**68. What information about city utility customers can be disclosed?**

Certain personal information about government-operated utility customers is confidential if the customer makes a written request that the information not be disclosed.<sup>165</sup> A government-operated utility would include governmental entities that for compensation provide water, wastewater, sewer, gas, garbage, electricity, or drainage service.<sup>166</sup> Personal information is defined to include a customer's address, telephone number, and social security number.<sup>167</sup> The government utility is responsible for giving customers a notice of their right to request confidentiality of this personal information. The notice must be included with a bill that is sent to each customer.<sup>168</sup> This confidentiality 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.<sup>169</sup>

Although the utility has a duty to notify customers of their right to confidentiality of such information, the ultimate duty to request confidentiality remains with the customer. If the utility customer does not make such a written request, much of the personal information within the utility records is considered open to the public. If a member of the public requests access to this personal information, it would be too late for the utility to seek a written confidentiality request from that customer. If the customer subsequently files a written request that this information be kept confidential, the customer's request for confidentiality would apply only to later-received open records requests.

**69. What information about a city-owned electric or gas utility service may be confidential?**

If the governing body of a city which operates an electric or gas utility service wants to withhold certain competitive information, the following determinations must be made. First, the governing body must determine that the requested information is related to the utility's competitive activity, including commercial information. Second, the city must determine that disclosure of such information would give an advantage to the utility's possible competitors.<sup>170</sup> If the governing body makes such determinations in good faith, it may request a decision from the Attorney General as to whether the competitive information may be withheld. Section 552.133 was amended to include

subsection (d), which allows a city to withhold information under section 552.133 (a)(3) even if the information falls within one of the categories of information listed in section 552.022(a).<sup>171</sup>

## **City Purchasing / Public Works Information**

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

State law allows cities to withhold information that is submitted for competitive bids if its disclosure would give advantage to a competitor or bidder.<sup>172</sup> This exception does not apply, however, if there is only one entity that is bidding on the project.<sup>173</sup> Additionally, this exception does not apply to bid information after the bidding is completed and the contract has been awarded.<sup>174</sup> Section 552.104 was amended to include subsection (b) which allows a city to withhold information under section 552.104(a) even if the information falls within one of the categories of information listed in section 552.022(a).<sup>175</sup> It is possible that certain information that is not protected under the bidding exception may still be withheld if it meets the test for trade secrets or is confidential under other statutory or common law provisions.<sup>176</sup>

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

State law provides cities with limited authority to withhold information that relates to the city's acquisition of real estate or personal property.<sup>177</sup> The authority to withhold this information generally ends once the city acquires the involved property.<sup>178</sup> This exception also has equal application to information pertaining to a lease of real or personal property.<sup>179</sup> Similarly, the information about the lease is considered an open record once the city enters into the lease agreement.

### **72. 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?**

Certain information within bids and other city documents may be protected under the exception for trade secrets and the exception for commercial or financial information that would give an advantage to competitors. A "trade secret" that is privileged or confidential by court order or by statute must be withheld.<sup>180</sup> There is a six factor test the Attorney General uses to determine whether information is considered a trade secret. These factors are:

- (1) the extent to which the information is known in the market place;
- (2) the extent to which the information is known by employees and others involved in the business;
- (3) the measures taken to guard the secrecy of the information;
- (4) the value of the information to the company and to its competitors;
- (5) the amount of effort or money spent to develop the information; and

(6) the ease or difficulty with which the information could be properly acquired or duplicated by others.<sup>181</sup>

Alternatively, commercial or financial information is confidential if its release would cause substantial harm to the competitive position of the entity that provided the information. To qualify under this exception, it must be shown with specific factual evidence that disclosure of the commercial or financial information would cause substantial competitive harm to the person or business that supplied the information to the city.<sup>182</sup> The substantial injury or harm must be more than speculative, it must be likely to occur if disclosure is made.<sup>183</sup>

It should be noted that information submitted to a city is not automatically protected from disclosure just because the company submitting that information claims the information is a trade secret or is “proprietary.” It must meet the requirements of at least one of the above-described tests.

## **Economic Development Information**

### **73. What information is protected under the exception for economic development negotiations?**

Cities are allowed to withhold certain information related to economic development negotiations between a governmental entity and a business that the city is seeking to have locate, stay or expand within or near the city. Under this provision, the city could withhold trade secrets of the business prospect that were related to economic development negotiations.<sup>184</sup> Similarly, cities may withhold certain commercial and financial information about the business prospect that was acquired during economic development negotiations if release of the information would result in substantial competitive harm to the business prospect.<sup>185</sup>

Additionally, until an agreement is made with the business prospect, the city may withhold information about a financial or other incentive being offered to the business prospect if the incentive directly or indirectly results in the expenditure of public funds or in a reduction of funds received by a city.<sup>186</sup> Any information about a financial or other incentive that is withheld under this provision would have to be released after an agreement is executed with the business prospect.<sup>187</sup>

### **74. Must a third-party be notified if an open records request would require the release of proprietary information that affects the rights of that third party?**

If a city requests an Attorney General ruling on whether the city may release a third party’s proprietary information, the city must notify the third party.<sup>188</sup> Specifically, the city has ten (10) days from the date it receives the open records request to send the third party notice of the city’s request for the Attorney General’s decision.<sup>189</sup> The notice must include a copy of the original open records request.<sup>190</sup> Additionally, the notice must inform the third party of their right to submit to the Attorney General a statement detailing each reason that the information should be withheld.<sup>191</sup> Should the third party choose to submit such a statement, it must do so within 10 days of the third-party’s receipt of the notice from the city. The third party is also required to send a copy of its letter,



memo or brief to the open records requestor.<sup>192</sup> If the letter, brief, or memo sent to the requestor contains the information that the third party is trying to withhold, the third party may redact that information from the document sent to the requestor.

## **Lawsuit or Other Legal Information**

### **75. What type of information is excepted from disclosure under the attorney/client privilege?**

The Public Information Act allows a city to withhold information that is protected by the attorney-client privilege.<sup>193</sup> The Attorney General has ruled that this exception only protects information that reveals client confidences or contains legal advice or legal opinions.<sup>194</sup> It does not protect communications with a government attorney who is acting strictly in a non-legal capacity.<sup>195</sup> The fact that a document is held by an attorney does not necessarily mean that it is confidential. For example, the following items have all been held to be public information: an attorney's fee bill for services rendered to the city;<sup>196</sup> a lawyer's account of factual events in a lawsuit; a letter from a city attorney to a third party; and a document listing what meetings were attended by the city attorney.<sup>197</sup> However, a city may be able to withhold such items from public disclosure if the city can show how the document would reveal attorney-client confidences, legal advice, or legal opinions. Thus, cities that face a request for such information should consult with their local legal counsel prior to any disclosure of the information.

### **76. Can a city withhold information that relates to pending or anticipated litigation?**

Under the "litigation exception," a city can withhold information about pending or reasonably anticipated civil or criminal litigation. The litigation must be pending or reasonably anticipated as of the date the open records request is received by the city.<sup>198</sup> The city, its officials, or its staff must be a party to such litigation.

Whether litigation is reasonably anticipated is a question that involves both factual and legal issues.<sup>199</sup> There must be concrete evidence that litigation is likely; it must be more than mere conjecture. The city should timely seek an Attorney General open records ruling to approve the withholding of information under this exception.

When a city requests an open records ruling to withhold information under the litigation exception, the city's request must identify the issues that are involved in the litigation and explain how the information to be withheld relates to those issues. The city should also provide a copy of the relevant pleadings if the case has been filed. If the city claims this exception, the city is also under a continuing duty to notify the Attorney General's Office of any change in the status of the litigation. Information that falls under the litigation exception generally can be withheld until the litigation has concluded or is no longer anticipated.<sup>200</sup> 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.<sup>201</sup> State law does not specifically define when civil litigation is considered to be concluded. Generally, civil litigation is considered to be concluded when all rights of appeal have been exhausted and/or a final judgment has been entered. However, if the parties to

civil or criminal litigation have inspected the records under discovery or through other means, the litigation exception would no longer apply.

## **V. Ability to Recover Costs for Providing Copies of Open Records**

### **77. What is the general ability of a city to charge for documents?**

The Public Information Act allows cities to set a charge for providing copies of public information.<sup>202</sup> The Texas Building and Procurement Commission (formerly the General Services Commission) has set a charge of 10 cents per page for making simple photocopies. A city may not charge more than 25% above the charges set by the Texas Building and Procurement Commission. If a city's actual cost for producing copies of open records exceeds the Texas Building and Procurement Commission charges by more than 25%, the city may apply to the Texas Building and Procurement Commission for permission to charge more. In no case may the charge by the city exceed the actual cost of producing the requested copies.

### **78. Can a city charge a requestor for simply providing access to public records?**

In most situations, a city may not charge a requestor for simply providing access to public records.<sup>203</sup> There are several situations, however, in which a city may charge for providing access. First, a city can recover the cost of the labor to provide access to electronic records if providing such access requires programming or manipulation of data.<sup>204</sup> In such a case, the city must provide the requestor written notice and may only assess charges as provided by the Texas Building and Procurement Commission.<sup>205</sup>

Second, a city may recover the photocopying costs of providing access to paper records if the city must remove confidential information from the records.<sup>206</sup> A city is not permitted to impose this charge, however, if the information is only covered by a permissive exception to the Public Information Act. A city should consult with its local legal counsel regarding what constitutes a mandatory versus a permissive exception for confidentiality.

Third, a city with 16 or more full-time employees may charge labor costs to provide access to public records only if both of the following criteria are met: 1) the requested documents are more than 5 years old or the requested documents fill or will fill six or more archival boxes and 2) the city's public records officer estimates that it will take more than 5 hours to provide access to the requested documents.<sup>207</sup>

A city with fewer than 16 full-time employees may charge labor costs to provide access to public records only if both of the following criteria are met: 1) the requested documents are more than 3 years old or the requested documents fill or will fill 3 or more archival boxes and 2) if the estimated time it will take the city to provide access to the requested information is more than 2 hours.<sup>208</sup>

It should be noted that in assessing charges, the city is required to follow the guidelines established by the Texas Building and Procurement Commission (formerly the General Services Commission).<sup>209</sup>

**79. When can a city recover labor charges for an open records request?**

**Labor to Produce Paper Copies:** A city may recover labor charges to handle an open records request for paper copies in three circumstances: 1) If the city has copied over fifty pages of paper records; 2) If the records to be copied are located in more than one building or in a remote storage facility;<sup>210</sup> or 3) If the city provides access to paper documents that meet certain specifications as noted above.<sup>211</sup> The Texas Building and Procurement Commission presently allows a maximum labor charge of \$15 per hour.

**Labor to Produce Electronic or Microfilm Copies:** Charges for copies of records that are stored in other formats such as electronic information or microfilm may include reasonable costs of materials, labor, and overhead. 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.<sup>212</sup>

A city can also recover labor charges for providing access to electronic records if providing such access requires programming or manipulation of data. In such a case, the city must provide a special written notice to the requestor as provided under the Public Information Act.<sup>213</sup> The city must also obey the rules of the Texas Building and Procurement Commission in determining how much to charge for the labor.<sup>214</sup>

**80. Can a city charge for the labor cost to retrieve materials from remote locations?**

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 in a remote storage facility.<sup>215</sup> Buildings are considered to be "separate" if they are not connected by a covered or open sidewalk, or by an elevated or underground walkway.<sup>216</sup> The charge for labor can be recovered in such a situation even if the requestor seeks fewer than 50 pages of copies.

**81. When and how much can a city charge for overhead when handling an open records request?**

A city may impose a charge for overhead whenever a personnel (labor) charge is applicable to an open records request. Any overhead charge cannot exceed 20% of the personnel charge.<sup>217</sup>

**82. Can a city recover costs for any modifications to its computer program that are necessary to respond to an open records request?**

A city may charge a requestor for the cost of any programming or manipulation of data that is necessary to answer an open records request.<sup>218</sup> 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. 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.<sup>219</sup>

**83. Can a city require a requestor to 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.<sup>220</sup> A city is not required to provide public information by mail until the requestor pays all applicable charges.

**84. 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 an open records request are likely to exceed forty dollars.<sup>221</sup> The city must do the following:

1. Furnish the requestor, an itemized estimate of the expected costs. The city is required to keep a record of the statement;
2. Inform the requestor if there is an alternative method for supplying the requested records that is less costly;
3. Tell the requestor he has 10 days to provide the city with a written response to the itemized statement. The requestor's response may be made by hand delivery, mail, fax or e-mail, and must specify the method by which the requestor wants the information supplied;<sup>222</sup>
4. The notice must tell the requestor that failure to respond to the statement within 10 days results in the automatic withdrawal of the open records request;<sup>223</sup>
5. 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. The requestor again has 10 days to provide the city with a written response to the updated statement, or the request will be considered to be withdrawn.<sup>224</sup>

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. However, if the city did not provide the requestor with an updated itemized statement, the city is limited to charging no more than 20% more than the amount of the original itemized statement.<sup>225</sup>

**85. Can a city require a monetary deposit in order to comply with an open records request?**

A city must provide the requestor with an estimated itemized statement before the city can require a deposit or bond. 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. 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.<sup>226</sup>

Additionally, a city may in certain situations require a deposit for providing access to public records if the costs of providing access would exceed the above noted thresholds. Cities are required to follow applicable state law and the guidelines established by the Texas Building and Procurement Commission for any charges that they would impose for providing access.<sup>227</sup>

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

A city is allowed to reduce or waive the normal charge for copies of public information if providing a reduced or no-cost copy would benefit the public. The city may also waive a charge for such copies if the cost of collecting the fee would exceed the amount of the charge.<sup>228</sup>

**87. Can a city charge for the cost of a lawyer to address any legal issues raised by a particular open records request?**

Many cities have an attorney review requested information to determine if the city should withhold information under an exception under the Public Information Act. However, Texas Building and Procurement Commission rules prohibit a city from charging an open records requestor for the cost of having an attorney review the request.<sup>229</sup>

**88. Can a city adopt a different set of costs for providing copies of municipal court records?**

Charges for copies of municipal court records are not subject to the rules set forth by the Public Information Act or by the Texas Building and Procurement Commission. Most cities, however, use the same cost schedule for copies of municipal court records as they use for other city records. If cities adopt a separate ordinance that indicates different copy charges for municipal court records, such charges should not exceed the actual cost of copying the records.<sup>230</sup>

## **VI. Enforcement of the Public Information Act**

### **89. Is a requestor allowed to sue a city for failure to comply with the Public Information Act?**

A requestor is allowed to bring certain actions against a city for violations of the Public Information Act. The requestor may file a complaint against a city with the local county or district attorney.<sup>231</sup> The complaint must meet the following requirements:

- 1) Be in writing and signed by the complainant;
- 2) State the name of the governmental body 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.<sup>232</sup>

Within thirty one (31) days of receiving such a 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.<sup>233</sup>

If the local prosecutor declines to proceed with an action against a city, the complainant has thirty-one (31) days to file a complaint with the Attorney General. The Attorney General must notify the complainant within thirty-one (31) days of his decision whether to proceed with an action against the city.<sup>234</sup>

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. The city has three days to remedy the problem.<sup>235</sup>

### **90. What civil remedies can be brought against a city for failure to comply with the Public Information Act?**

If a city refuses to release public information or refuses to request an Attorney General Opinion, either the requestor or the Attorney General may bring a lawsuit to force the release of the records in question.<sup>236</sup> Even if the Attorney General has determined that the city may withhold the requested information, the requestor may file a lawsuit challenging the Attorney General's ruling.<sup>237</sup> Under certain circumstances, a third party may also file litigation to prevent the release of records that implicate that person's privacy interests.<sup>238</sup> In a lawsuit brought to compel the release of public information or in a lawsuit by a governmental body seeking relief from compliance with an Attorney General ruling, a court may order the losing side to pay litigation costs and attorneys' fees.<sup>239</sup>

In addition to a lawsuit of the type just discussed, a requestor that feels he or she has been

overcharged for copies of public information may file a complaint with the Texas Building and Procurement Commission. The Texas Building and Procurement Commission may require the city to pay the requestor the amount of any overcharge. If the Texas Building and Procurement Commission finds that the overcharge was due to bad faith on the part of the city, the Texas Building and Procurement Commission may also order the city to pay the requestor up to three times the amount of the overcharge.<sup>240</sup>

## **91. What are the criminal penalties for noncompliance with the Public Information Act?**

There are three provisions of the Public Information Act which have criminal penalties if violated:

**Failure to Give Access to Public Information.** A person responsible for releasing public information commits a crime if he fails to give access to or fails to permit copying of public information as required by the Public Information Act. This violation is a misdemeanor punishable by a fine of up to \$1,000, a six-month jail term, or both. The Public Information Act also states that this sort of violation constitutes official misconduct.<sup>241</sup>

**Release of Confidential Information.** A person commits a crime if he or she distributes information considered confidential under the Public Information Act. Such a violation is a misdemeanor punishable by a fine of up to \$1,000, a six-month jail term, or both. The Open Records Act also states that this sort of violation constitutes official misconduct. Thus, a public official may be subject to removal from office for such an offense.<sup>242</sup>

**Illegal Destruction or Alteration of Public Information.** Finally, a person commits a crime if that person, in violation of the Public Information Act, willfully destroys, mutilates, or alters public information or removes such information without permission. An offense of this type is a misdemeanor and is punishable by a fine of between \$25 and \$4,000, three days to three months of jail time, or both.<sup>243</sup> It is important to note that there are provisions of Texas law outside of the Public Information Act that also criminalize tampering with a governmental record, and an offense under one of those provisions may constitute a felony.<sup>244</sup>

## **VII. Sources for Additional Information on the Public Information Act**

### **92. Where can a city get more information about the Public Information Act?**

For additional copies of this article, a city may contact the Municipal Affairs Division of the Attorney General's Office at (512) 475-4683. Additionally, the Office of the Attorney General produces the *Public Information Handbook*, an in-depth publication about the Public Information Act and its interpretation by Attorney General rulings and court cases. That publication may be ordered by calling (512) 936-1730. Finally, the Open Records Division of the Attorney General's Office sponsors an open records hotline where public officials and concerned citizens can get answers to basic questions about the Public Information Act. The phone number for the Open Government Hotline is (512) 478-6736.

## ENDNOTES

1. This article was written by Scott Joslove, and Robert Ray, and revised for 2002 by Zindia Thomas and Jeff Moore of the Municipal Affairs Section. Much of the material in the article is drawn from the Texas Attorney General's *2002 Public Information Handbook*. In addition, this article was reviewed by Nathan Bowden of the Open Records Division.
2. Texas Government Code section 552.002 (Vernon Supp. 2002).
3. Texas Government Code section 552.003 (1) (Vernon Supp. 2002).
4. Act of May 22, 2001, H.B. 936, § 2, 77<sup>th</sup> Leg., R.S. (Codified at Texas Government Code section 552.003(1)(ix) (Vernon Supp. 2002)).
5. Act of May 17, 2001, H.B. 371, § 2, 77<sup>th</sup> Leg., R.S. (Codified at Texas Government Code section 552.003(1)(xi) (Vernon Supp. 2002)).
6. Texas Government Code section 552.0036 (Vernon Supp. 2002).
7. Texas Government Code section 552.003 (1)(A) (Vernon Supp. 2002) (governmental bodies).
8. Texas Government Code section 552.003 (5) (Vernon Supp. 2002); *see, e.g.*, Texas Attorney General Opinion Nos. JM-821 (1987), ORD-621 (1993), and ORD-602 (1992).
9. Texas Government Code section 552.002 (a) (Vernon Supp. 2002), *see also* Texas Attorney General Opinion No. ORD-363 (1983).
10. Texas Attorney General Opinion No. ORD-585 (1991).
11. Texas Government Code section 552.003 (1)(B) (Vernon Supp. 2002).
12. Texas Government Code section 552.0035 (Vernon Supp. 2002); *see also* Texas Rules of Judicial Administration Rule 12, *reprinted in* Texas Government Code, title 2, subtitle F appendix (Vernon Supp. 2002).
13. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 98 S.Ct. 1306, 55 L.Ed. 2d 570 (1978); *Ashpole v. Millard*, 778 S.W.2d 169 (Tex. App. – Houston [1<sup>st</sup> Dist.] 1989, no writ); Texas Attorney General Opinion Nos. DM-166 (1992) and ORD-25 (1974).
14. Texas Government Code section 552.0055 (Vernon Supp. 2002).
15. Texas Code of Criminal Procedure article 18.01 (b) (Vernon Supp. 2002); *see also Houston Chronicle Publishing Co. v. Woods*, 949 S.W.2d 492, 499 (Tex. App. -- Beaumont 1997, no writ).
16. Texas Attorney General Opinion Nos. JM-119 (1983) and LO-93-89 (1993); *see also*, Texas Open Records Letter Ruling No. OR99-2237 (1999).
17. Texas Attorney General Opinion No. ORD-468 (1987).
18. Texas Attorney General Opinion Nos. JM-119 (1983) and LO-93-89 (1993). If a city employee has such a special right of access, state law arguably does not require the employee to make a written request for the records since the employee is not accessing the records as a



member of the public. Generally, though, it appears that a city council may set out reasonable procedural requirements for access to such records by city employees.

19. Texas Attorney General Opinion No. H-917 (1976). *But see* Texas Attorney General Opinion No. JM-590 (1986) (information may not be transferred if information is made confidential by statute and governmental body seeking information is not amongst the entities to whom disclosure is explicitly allowed under the statute).
20. Texas Attorney General Opinion Nos. JM-119 (1983) and LO-93-89 (1993).
21. Texas Attorney General Opinion No. ORD-666 (2000).
22. Texas Attorney General Opinion Nos. ORD-497 (1988) and ORD-44 (1974).
23. Texas Government Code section 552.301 (c) (Vernon Supp. 2002).
24. Texas Government Code section 552.301 (a) (Vernon Supp. 2002) and Texas Attorney General Opinion No. ORD-304 (1982).
25. Texas Government Code section 552.221 (a) (Vernon Supp. 2002), *see also* Texas Attorney General Opinion No. ORD-664 (2000).
26. Texas Attorney General Opinion Nos. ORD-664 (2000) and ORD-467 (1987).
27. Texas Government Code section 552.221 (d) (Vernon Supp. 2002).
28. *Id.*
29. Texas Government Code section 552.221 (c) (Vernon Supp. 2002).
30. Texas Attorney General Opinion No. ORD-148 (1976) (faculty member's file is not in active use the entire time the promotion is under consideration). *But see* Texas Attorney General Opinion No. ORD-225 (1979) (secretary's handwritten notes are in active use while the secretary is typing minutes of the meeting from them).
31. Texas Government Code section 552.231 (b) (Vernon Supp. 2002).
32. Texas Government Code section 552.231 (c) (Vernon Supp. 2002).
33. Texas Government Code section 552.301 (a) (Vernon Supp. 2002).
34. Texas Government Code section 552.301 (b) (Vernon Supp. 2002).
35. Texas Attorney General Opinion Nos. ORD-663 (1999) and ORD-333 (1982).
36. Texas Government Code section 552.301 (d) (Vernon Supp. 2002).
37. Texas Government Code section 552.305 (d)(1) (Vernon Supp. 2002).
38. Texas Government Code section 552.305 (d)(2)(B) (Vernon Supp. 2002).
39. Texas Government Code section 552.305 (e) (Vernon Supp. 2002).
40. Texas Government Code section 552.222 (b) (Vernon Supp. 2002).
41. Texas Attorney General Opinion No. ORD-663 (1999).

42. *Id.*
43. Texas Government Code section 552.301 (a) (Vernon Supp. 2002).
44. Texas Attorney General Opinion No. ORD-673 (2001) (what constitutes a “previous determination”); *see also 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.”) and Texas Attorney General Opinion No. ORD-435 (1986) (city cannot unilaterally decide that material fits within exception unless the city has previously requested a determination involving the exact same material).
45. Texas Attorney General Opinion No. ORD-542 (1990).
46. Texas Government Code section 552.302 (Vernon Supp. 2002).
47. Texas Attorney General Opinion No. ORD-150 (1977).
48. Texas Attorney General Opinion No. ORD-665 (2000).
49. Texas Government Code section 552.301(a) (Vernon Supp. 2002).
50. Texas Attorney General Opinion No. ORD-673 (2001).
51. Texas Attorney General Opinion No. ORD-670 (2001).
52. Texas Government Code section 552.301 (e)(1)(A)-(D) (Vernon Supp. 2002).
53. Texas Attorney General Opinion Nos. ORD-663 at 5 (1999) and ORD-333 (1982).
54. Texas Government Code section 552.301 (e) (Vernon Supp. 2002).
55. Texas Government Code section 552.303 (e) (Vernon Supp. 2002).
56. Texas Government Code section 552.303 (d) (Vernon Supp. 2002).
57. Texas Government Code section 552.303 (e) (Vernon Supp. 2002).
58. Texas Government Code section 552.301 (d)(1) (Vernon Supp. 2002).
59. Texas Government Code section 552.301 (d)(2) (Vernon Supp. 2002).
60. Texas Government Code section 552.306 (a) (Vernon Supp. 2002).
61. Texas Government Code section 552.301 (e)(1)(A)-(D) (Vernon Supp. 2002).
62. Texas Government Code section 552.301 (f) (Vernon Supp. 2002).
63. Texas Government Code section 552.324 (b) (Vernon Supp. 2002).
64. Texas Local Government Code, subtitle C (chapters 201 *et seq.*) (Vernon 1994 & Supp. 2002).
65. Texas Government Code section 552.205 (Vernon Supp. 2002).
66. Texas Government Code section 552.222 (a) (Vernon Supp. 2002).
67. Texas Government Code section 552.222 (c) (Vernon Supp. 2002).

68. Texas Government Code section 552.222 (b) (Vernon Supp. 2002).
69. Texas Government Code section 552.222 (a) (Vernon Supp. 2002).
70. Texas Government Code section 552.228 (Vernon Supp. 2002).
71. Texas Government Code section 552.221 (c) and (d) (Vernon Supp. 2002).
72. Texas Attorney General Opinion No. ORD-148 (1976) (faculty member's file is not in active use the entire time the promotion is under consideration). *But see* Texas Attorney General Opinion No. ORD-225 (1979) (secretary's handwritten notes are in active use while the secretary is typing minutes of the meeting from them).
73. *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681-82 (Tex. App. – Eastland 2000, pet. denied); *see* Texas Government Code Section 552.231 (Vernon Supp. 2002).
74. Texas Government Code Section 552.231 (a), (b) (Vernon Supp. 2002).
75. Texas Government Code Section 552.231 (d) (Vernon Supp. 2002).
76. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. -- San Antonio 1978, writ dismissed); Texas Attorney General Opinion Nos. ORD-476 at 1 (1987) and ORD-452 at 3 (1986).
77. Texas Attorney General Opinion Nos. JM-48 (1983), ORD-452 (1986) and ORD-476 (1987).
78. Texas Attorney General Opinion Nos. ORD-563 at 8 (1990) and ORD-555 at 1 (1990).
79. Texas Government Code section 552.231 (b) (Vernon Supp. 2002).
80. Texas Government Code section 552.228 (b)(2) (Vernon Supp. 2002).
81. Texas Government Code section 552.228 (c) (Vernon Supp. 2002).
82. Texas Government Code section 552.231 (Vernon Supp. 2002).
83. Texas Attorney General Opinion No. ORD-571 (1990).
84. Texas Attorney General Opinion No. JM-757 (1987).
85. Texas Government Code section 552.228 (c) (Vernon Supp. 2002), *see also* Texas Government Code section 552.230 (governmental body may promulgate rules for efficient, safe, and speedy inspection and copying if not inconsistent with Public Information Act).
86. Texas Government Code section 552.027 (Vernon Supp. 2002).
87. Texas Attorney General Opinion Nos. JM-672 (1987) and ORD-550 (1990).
88. Texas Government Code section 552.232 (a) (Vernon Supp. 2002).
89. *Id.*
90. Texas Government Code section 552.232 (b) (Vernon Supp. 2002).
91. Texas Government Code section 552.232 (c) (Vernon Supp. 2002).

92. Texas Government Code section 552.232 (a)(1-2) (Vernon Supp. 2002).
93. Texas Government Code section 552.232 (d) (Vernon Supp. 2002).
94. Texas Government Code section 552.222 (a) (Vernon Supp. 2002) and Texas Attorney General Opinion No. ORD-512 (1988).
95. Texas Government Code section 552.230 (Vernon Supp. 2002).
96. Texas Government Code section 552.021 (Vernon Supp. 2002).
97. Texas Government Code section 552.022 (a)(1) (Vernon Supp. 2002).
98. Texas Government Code section 552.022 (a)(17) (Vernon Supp. 2002).
99. Texas Government Code section 552.022 (a)(18) (Vernon Supp. 2002).
100. Texas Attorney General Opinion No. OR2001-4147 (2001).
101. *Id.*
102. Texas Government Code section 552.022(a) (Vernon Supp. 2002).
103. Act of May 28, 2001, 77<sup>th</sup> Leg., R.S., S.B. 1458, §§ 7.01 and 7.02 (codified at Texas Government Code sections 552.104 (b) and 552.133 (d) (Vernon Supp. 2002)).
104. *In re City of Georgetown*, 53 S.W.3d 328, 332 (Tex. 2001).
105. *Id.*
106. Texas Attorney General Opinion Nos. JM-672 (1987), H-258 (1974) and ORD-455 (1987).
107. Texas Attorney General Opinion Nos. ORD-633 (1995) and ORD-606 (1992).
108. Texas Government Code sections 551.104 & 551.146 (Vernon 1994).
109. Texas Attorney General Opinion Nos. DM-227 (1993), LO 98-033 (1998) and JC-120 (1999).
110. Texas Attorney General Opinion No. JC-120 (1999).
111. Texas Attorney General Opinion No. JM-1071 (1989).
112. Texas Government Code sections 551.104 & 551.146 (Vernon 1994).
113. *See also* Texas Attorney General Opinion No. MW-563 (1980) at 5 (city ordinance attempting to prohibit public discussion of the contents of an executive session may raise First Amendment concerns but does not violate the Open Records Act).
114. Texas Government Code section 552.024 & 552.117 (1) (Vernon 1994 & Supp. 2002).
115. Texas Government Code section 552.117 and 552.1175 (Vernon 1994 & Supp. 2002).
116. Texas Government Code section 552.117 (4) (as amended by Texas Senate Bill 247, 77<sup>th</sup> Legislature, Regular Session (2001)).

117. Texas Government Code section 552.117 (4) (as amended by Texas Senate Bill 247, 77<sup>th</sup> Legislature, Regular Session (2001)).
118. Texas Attorney General Opinion Nos. ORD-670 (2001) and ORD-506 (1988).
119. Texas Attorney General Opinion No. ORD-506 (1988).
120. Texas Attorney General Opinion No. ORD-670 (2001).
121. *See, e.g.*, Texas Attorney General Opinion Nos. ORD-635 (1995) (public official's or employee's appointment calendar may be subject to Act) and ORD-626(1994) (handwritten notes taken during D.P.S. promotion board oral interviews are subject to Act).
122. Texas Attorney General Opinion No. ORD-473 (1987).
123. Act of May 14, 2001, S.B. 694, § 1, 77<sup>th</sup> Leg., R.S. (Codified at Texas Government Code section 552.137 (Vernon Supp. 2002)).
124. Texas Open Records Letter Ruling Nos. OR2001-1790 (2001) and OR2000-2016 (2000).
125. Texas Government Code section 552.106 (Vernon Supp. 2002).
126. Texas Attorney General Opinion No. ORD-429 at 5 (1985).
127. Texas Attorney General Opinion No. ORD-248 (1980).
128. Texas Attorney General Opinion No. ORD-460 (1987).
129. Texas Attorney General Opinion No. ORD-482 (1987).
130. Texas Government Code section 552.111 (Vernon 1994).
131. Texas Attorney General Opinion No. ORD-615 (1993); *see also* Texas Attorney General Opinion ORD-631 (1995) (report addressing systematic discrimination against minorities and the educational mission of the university in question was not open to public).
132. Texas Attorney General Opinion No. ORD-631 (1995).
133. Texas Attorney General Opinion No. ORD-615 (1993).
134. Texas Attorney General Opinion No. ORD-631 (1995).
135. Texas Attorney General Opinion No. ORD-462 (1987).
136. Texas Government Code section 552.022 (Vernon Supp. 2002); *see also* Texas Attorney General Opinion Nos. ORD-444 (1986) and ORD-405 (1983).
137. Texas Attorney General Opinion No. ORD-441 (1986).
138. Texas Government Code section 552.111 (Vernon Supp. 2002); *see also* Texas Attorney General Opinion No. ORD-615 (1993).
139. Texas Government Code section 552.102 (a) (Vernon Supp. 2002).
140. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. - El Paso 1992, no writ).

141. Texas Government Code sections 552.023 (a) and 552.102 (Vernon Supp. 2002) and Texas Attorney General Opinion No. ORD-288 (1981).
142. Texas Attorney General Opinion No. 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.
143. Texas Government Code section 552.101 (Vernon Supp. 2002); *see also* Texas Occupations Code section 159.002 (Vernon Supp. 2002).
144. Texas Occupations Code section 159.002 (Vernon Supp. 2002).
145. *Id.*
146. Texas Local Government Code section 143.089 (g) (Vernon 1999).
147. Texas Local Government Code section 143.089 (c) (Vernon 1999); *see also City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App. – Austin 1993, writ denied) and Texas Attorney General Opinion No. ORD-642 (1996).
148. Texas Government Code section 552.108 (c) (Vernon Supp. 2002); *see also* Texas Attorney General Opinion No. ORD-127 (1976).
149. Texas Code of Criminal Procedure article 18.01(b) (Vernon Supp. 2002); *see also Houston Chronicle Publishing Co. v. Woods*, 949 S.W.2d 492, 489-499 (Tex. App. -- Beaumont 1997).
150. Texas Attorney General Opinion No. ORD-127 (1976).
151. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. – Houston [14<sup>th</sup> Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court explains law enforcement interests that are present in active cases).
152. Texas Transportation Code section 550.065 (Vernon Supp. 2002).
153. Texas Transportation Code section 550.065 (c)(4) (Vernon Supp. 2002).
154. Texas Family Code section 58.007 (a)(2) (Vernon Supp. 2002).
155. Texas Family Code section 58.007 (b) (Vernon Supp. 2002); *see also* Texas Attorney General Opinion No. ORD-644 (1996) and former Texas Family Code section 51.14 (concerning juvenile conduct which occurred before January 1, 1996).
156. Texas Family Code section 58.007 (c)(1) (Vernon Supp. 2002).
157. Texas Attorney General Opinion Nos. ORD-339 (1982) and ORD-393 (1983); *see also* Texas Family Code section 261.201 (Vernon Supp. 2002) (pertaining to the confidentiality of the identity of a juvenile assault victim if the assault is investigated as child abuse).
158. Texas Attorney General Opinion Nos. ORD-628 (1994) and ORD-440 (1986).

159. Texas Attorney General Opinion Nos. ORD-409 (1984) & ORD-393 (1983).
160. Texas Attorney General Opinion No. ORD-611 (1992).
161. Texas Attorney General Opinion Nos. ORD-628 (1994) & ORD-409 (1984).
162. Texas Health and Safety Code sections 772.118 ( c ), 772.218 (c) & 772.318 ( c ) (Vernon Supp. 2002) and Texas Attorney General Opinion No. ORD-649 (1996); *see also* Texas Health and Safety Code section 772.406 (Vernon Supp. 2002) (911 districts created pursuant to Texas Health and Safety Code chapter 772, subchapter E is not covered by the statutes that make such information confidential for other 911 districts).
163. Texas Health and Safety Code section 773.091 (Vernon Supp. 2002).
164. Texas Health and Safety Code section 773.092 (Vernon Supp. 2002).
165. Texas Utility Code section 182.052 (a) (Vernon Supp. 2002).
166. Texas Utility Code section 182.051 (3) (Vernon 1998).
167. Texas Utility Code section 182.051 (4) (Vernon 1998).
168. Texas Utility Code section 182.052 ( c ) (Vernon Supp. 2002).
169. Texas Utility Code section 182.054 (Vernon 1998).
170. Texas Government Code section 552.133 (a)(3) (Vernon Supp. 2002).
171. Act of May 28, 2001, 77<sup>th</sup> Leg., R.S., S.B. 1458, § 7.02 (codified at Texas Government Code section 552.133 (d) (Vernon Supp. 2002)).
172. Texas Government Code section 552.104 (Vernon Supp. 2002).
173. Texas Attorney General Opinion No. ORD-331 (1982).
174. Texas Attorney General Opinion No. ORD-541 (1990).
175. Act of May 28, 2001, 77<sup>th</sup> Leg., R.S., S.B. 1458, § 7.01 (codified at Texas Government Code section 552.104(b) (Vernon Supp. 2002)).
176. Texas Attorney General Opinion No. ORD-319 (1982).
177. Texas Government Code section 552.105 (Vernon 1994).
178. Texas Attorney General Opinion No. ORD-222 (1979). The Attorney General has extended this protection to information about the appraisal of land parcels that were acquired in advance of other land for the same project.
179. Texas Attorney General Opinion No. ORD-348 (1982).
180. Texas Government Code section 552.110 (a) (Vernon Supp. 2002).
181. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), *cert. denied*, 358 U.S. 898 (1958).
182. Texas Government Code section 552.110 (b) (Vernon Supp. 2002).
183. Texas Attorney General Opinion No. ORD-639 (1996).

184. Texas Government Code section 552.131 (a)(1) (Vernon Supp. 2002).
185. Texas Government Code section 552.131 (a)(2) (Vernon Supp. 2002).
186. Texas Government Code section 552.131 (b) (Vernon Supp. 2002).
187. Texas Government Code section 552.131 (c) (Vernon Supp. 2002).
188. Texas Government Code section 552.305 (d) (Vernon Supp. 2002).
189. Texas Government Code section 552.305 (d)(1) (Vernon Supp. 2002).
190. Texas Government Code section 552.305 (d)(2)(A) (Vernon Supp. 2002).
191. Texas Government Code section 552.305 (d)(2)(B) (Vernon Supp. 2002).
192. Texas Government Code section 552.305 (e) (Vernon Supp. 2002).
193. Texas Government Code section 552.107 (Vernon Supp. 2002) (protects information that an attorney to a political subdivision must withhold under Rules of Evidence, Rules of Criminal Evidence, or Disciplinary Rules).
194. Texas Attorney General Opinion Nos. ORD-574 at 2-5 (1990) and ORD-462 at 9-14 (1987).
195. *Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328 (Tex. App. – Austin 2000, pet. Denied) and Texas Attorney General Opinion No. ORD-462 (1987).
196. Texas Attorney General Opinion No. ORD-589 (1991). However, depending on the circumstances, portions of an attorney’s fee bill may sometimes be excepted from required disclosure under section 552.103, 552.107, or 552.111 of the Texas Government Code.
197. Texas Attorney General Opinion No. ORD-574 (1990).
198. Texas Government Code section 552.103 (c) (Vernon Supp. 2002).
199. *See University of Texas Law School v. Texas Legal Foundation*, 958 S.W.2d 479 (Tex. App. – Austin 1997, no pet.).
200. Texas Attorney General Opinion No. ORD-647 (1996).
201. Texas Government Code section 552.103 (b) (Vernon Supp. 2002).
202. Texas Government Code section 552.262 (Vernon Supp. 2002). *See, generally*, Texas Government Code sections 552.261 - 552.272.
203. Texas Government Code section 552.271 (a) (Vernon Supp. 2002).
204. Texas Government Code section 552.231 (Vernon Supp. 2002).
205. Texas Government Code sections 552.231 and 552.272 (Vernon Supp. 2002).
206. Texas Government Code section 552.271 (b) (Vernon Supp. 2002).
207. Texas Government Code section 552.271 (c) (Vernon Supp. 2002).
208. Texas Government Code section 552.271 (d) (Vernon Supp. 2002).



209. Texas Government Code section 552.262 (Vernon Supp. 2002) and 1 Tex. Admin. Code sections 111.61 - 111.71.
210. Texas Government Code section 552.261 (Vernon Supp. 2002).
211. Texas Government Code section 552.271 (c) and (d) (Vernon Supp. 2002).
212. Texas Government Code section 552.261 (b) (Vernon Supp. 2002).
213. Texas Government Code sections 552.231 and 552.272 (c) (Vernon Supp. 2002).
214. Texas Government Code sections 552.262 (Vernon Supp. 2002).
215. Texas Government Code section 552.261 (a) (Vernon Supp. 2002).
216. Texas Government Code section 552.261 (b) (Vernon Supp. 2002).
217. 1 Texas Administrative Code section 111.63 (Vernon Supp. 2002) (Texas Building and Procurement Commission rules for charging for providing copies of public information).
218. Texas Government Code section 552.272 (Vernon Supp. 2002); *see also* 1 Texas Administrative Code section 111.63 (c) (Vernon Supp. 2002).
219. Texas Government Code section 552.231 (Vernon Supp. 2002).
220. Texas Government Code section 552.221 (b) (Vernon Supp. 2002).
221. Texas Government Code section 552.2615 (Vernon Supp. 2002).
222. Texas Government Code section 552.2615 (a) (Vernon Supp. 2002).
223. Texas Government Code section 552.2615 (b) (Vernon Supp. 2002).
224. Texas Government Code section 552.2615 (c) (Vernon Supp. 2002).
225. Texas Government Code section 552.2615 (d) (Vernon Supp. 2002).
226. Texas Government Code section 552.263 (Vernon Supp. 2002).
227. Texas Government Code section 552.262 (Vernon Supp. 2002).
228. Texas Government Code section 552.267 (Vernon Supp. 2002).
229. 1 Texas Administrative Code section 111.63 (d)(3) (Vernon Supp. 2002); *see also* Texas Government Code section 552.262 (Vernon Supp. 2002) (Texas Building and Procurement Commission [formerly the General Services Commission] has authority to promulgate rules regarding charges for public information).
230. Texas Government Code section 552.266 (Vernon Supp. 2002).
231. Texas Government Code section 552.3215 (Vernon Supp. 2002).
232. Texas Government Code section 552.3215 (e) (Vernon Supp. 2002).
233. Texas Government Code section 552.3215 (g) (Vernon Supp. 2002).
234. Texas Government Code section 552.3215 (i) (Vernon Supp. 2002).

235. Texas Government Code section 552.3215(j)(Vernon Supp. 2002).
236. Texas Government Code section 552.321 (Vernon Supp. 2002).
237. *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App. – Austin 1992, no writ).
238. *See, e.g., Morales v. Ellen*, 840 S.W. 2d 519 (Tex. App. – El Paso 1992, writ denied).
239. Texas Government Code section 552.323 (Vernon Supp. 2002).
240. Texas Government Code section 552.269 (Vernon Supp. 2002).
241. Texas Government Code section 552.353 (Vernon Supp. 2002).
242. Texas Government Code section 552.352 (Vernon 1994).
243. Texas Government Code section 552.351 (Vernon Supp. 2002).
244. *See, e.g., Texas Penal Code section 37.10* (Vernon Supp. 2002).