The Texas Public Information Act & Elections Administrators

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*Materials are not substitute for advice of your legal counsel

The Relevant Statute

The Texas Public Information Act (also called the Open Records Act)

Chapter 552, Texas Government Code

Texas Government Code § 552.001- The "Philosophy"

- The government is "the servant and not the master of the people"
- Unless exception applies, "each person is entitled … to complete information about the affairs of government and the official acts of public officials and employees"
- By law, "liberally construed in favor of granting request for information"
- By law, information is to be provided "promptly"
- Why is this different than the US FOIA or other states?

If I get nothing else from here…….

- OAG's Open Government Hotline at (877) 673-6839 (877-OPEN TEX)
- OAG's Cost Hotline at (888) 672-6787 (888-ORCOSTS)
- Freedom of Information Foundation of Texas Hotline at (800) 580-6651

Texas Public Information Handbook

- Public Information Act Handbook (texasattorneygeneral.gov)

Open Records Required Training- § 552.012

- (b) Each public official shall complete a course of training of not less than one and not more than two hours regarding the responsibilities of the governmental body with which the official serves and its officers and employees under this chapter not later than the 90th day after the date the public official: (1) takes the oath of office, if the person is required to take an oath of office to assume the person's duties as a public official; or (2) otherwise assumes the person's duties as a public official, if the person is not required to take an oath of office to assume the person's duties.
- (c) A public official may designate a public information coordinator to satisfy the training requirements of this section for the public official if the public information coordinator is primarily responsible for administering the responsibilities of the public official or governmental body under this chapter. Designation of a public information coordinator under this subsection does not relieve a public official from the duty to comply with any other requirement of this chapter that applies to the public official…
- (d) The attorney general shall ensure that the training is made available….

Open Records Required Training- § 552.012

- 552.012(h) A certificate of course completion is admissible as evidence in a criminal prosecution under this chapter. However, evidence that a defendant completed a course of training offered under this section is not prima facie evidence that the defendant knowingly violated this chapter
- BUT there is no independent penalty for noncompliance
- Today's training IS NOT sufficient
- Can use OAG training- https://texasattorneygeneral.gov/open-government/governmental-bodies/pia-and-oma-training-resources/public-information-act-training

What is a Request?

- Must be in writing
- Must ask for information in existence
- Does not have to say it's an open records request
- Subpoenas and discovery requests are not PIA requests under the §552.0055 statute

Can I make them use my form?

It Depends…

- Texas Government Code §552.234
- Texas Elections Code §18.067

Texas Election Code § 18.067

Texas Election Code § 18.067. Unlawful Use of Statewide Computerized Voter Registration List

- (a) A person commits an offense if the person uses information in connection with advertising or promoting commercial products or services that the person knows was obtained under Section 18.066.
- (b) An offense under this section is a Class A misdemeanor.

Texas Election Code § 18.066(a)

a) The secretary of state shall furnish information in the statewide computerized voter registration list …

When can we establish a required process?

- A governmental body CANNOT as a rule FORCE a requestor to comply with a singular process for making a request
- US Mail, email and hand delivery are always allowed (can spell out and post a required address)
- §552.234 of the PIA does allow a governmental body to establish a process for requests that are sent via website or by fax if follow this section
- OAG website has a sample format
- Have to put the required address information on governmental body's website and PIA required sign

Do's and Don'ts- Negotiating with Requestors

- You can and should talk to requestors
- You cannot, by law, ask one thing- WHY do you want this information?
- You cannot stop future requests for information even same information
- You can discuss what you have
- You can discuss a narrowing of the request for speed
- You can clarify what is unclear
- You can discuss with and inform requestor of statutory limitations
- You can consult your legal counsel for advice on harassing or vexatious requestors

“Super Public” Information §§ 552.022 & 552.0222

- Some information is made public by law, but can still be confidential by law
- Some examples:

1. Expenditures of public funds
2. Salaries and other employment information of governmental employees
3. Budget estimates when complete
4. Adopted polices, rules and procedures
5. Completed reports, audits, non-law enforcement investigations & evaluations
6. Most contracts

Duty to “Promptly Release” Information

- You have a duty to “promptly release” information that is not confidential by law or for which a ruling will not be or has not been sought
- What does “promptly release” mean?
- You can inform a requestor of an expected date and time
- You can follow “first in, first out” equally applied process

When do I ask for an OAG Ruling?

- The OAG is the decision maker for when you want to withhold information from a requestor
- Under §§552.301, 552.302 & 552.303 of the PIA it's your duty to seek a ruling when withholding information

When do I not have to go to OAG?

- Type 1- exact information previously requested and allowed to be withheld by you
- Type 2-OAG has issued a previous determination to all governmental bodies – see list on OAG website Especially ORD-684 (2009)
- Statutorily allowed redactions- e.g. SSNs
- The requestor has agreed to the redaction(s)

Requesting a Ruling from the OAG Open Records Division

- You have 10 business days from the date of the request to ask OAG Open Records for a ruling
- You can write a 10-day ruling request raising all exceptions of the PIA-§§552.101-552.163
- You have 5 additional days from the request to "flush out" in detail the ruling request and send in the sample of or all information to be ruled on
- Counting to 10 and 15 days- check, check and recheck yourself!
- You need to have OAG open records account for on-line submission- PIA eFiling System
  Submitting Materials for Governmental Bodies | Office of the Attorney General (texasattorneygeneral.gov)
- You must notify and copy the requestor and relevant third parties with the filed comments, but not documents withheld

Mandatory vs. Discretionary Exceptions

- Discretionary Exceptions = waivable/governmental focus
- Mandatory Exceptions = not waivable/third party focus

What do I put in my Ruling Request?

- If you have legal counsel, consult your legal counsel
- If you don't have legal counsel, then consult the OAG website and follow the process to the letter
- Requesting a Ruling - Overview | Office of the Attorney General (texasattorneygeneral.gov)
- Brief Writing Tips | Office of the Attorney General (texasattorneygeneral.gov)

Laws Specific to Elections Administrators & Rulings

- TEC §66.058- ORL 2020-27165 (precinct election records)
- TEC §32.076- ORL 2020-22560 (personal email address/phone number election judge/clerk)
- TEC §65.060- ORL 2015-02936 (SSN, DOL, ID Provisional Ballot affidavit)
- TEC §13.004- ORL 2023-39156, 2014-07591, 2009-04401, 2003-8057 (transcribe telephone number Registrar)
- No rulings found on TEC §101.103- confidentiality of email address when requesting balloting materials, TEC §81.39 on military balloting materials or TEC §121.004 (communications with voting system vendors)

When do I get a Ruling?

- OAG Open Records Division has 45 business days to rule
- OAG Open Records Division has one 10 business day extension to make 55 business days

Rulings by OAG Open Records Pre-2020

Cost of Copies

- Allowed to recover costs for reproducing information over $40
- The Chapter 552 may apply or may be another statute
- Administrative Rules in 1 TAC Chapter 70
- OAG Public Information Cost Model on website- https://texasattorneygeneral.gov/open-government/governmental-bodies/charges-public-information

Questions

Thank You!!