



# **Purchasing 'in Light of' the Texas Public Information Act**

Rosalind Hunt  
Assistant Attorney General  
Administrative Law Division



# Presentation Overview

(Slide 2 of 44)

- ▶ Overview of the Public Information Act
- ▶ Higher Scrutiny of Government Contracts
- ▶ How to Respond to Requests for Public Information
- ▶ How to Communicate with the Public, Requestors, and Third Parties (Vendors)
- ▶ How to Request Attorney General Decisions to Withhold Public Information
- ▶ Consequences for Failure to Comply with the Act



# Purpose of the Act

(Slide 3 of 44)

## Tex. Gov't Code § 552.001. Policy; Construction

- (a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that ***each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees . . . .*** The people insist on remaining informed so that they may retain control over the instruments they have created.
- (b) This chapter shall be liberally construed in favor of granting a request for information.



# **“Public Information” Defined**

**(Slide 4 of 44)**

## **Tex. Gov’t Code § 552.002(a)**

- ▶ “Public Information” means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:
  - 1) by a governmental body;
  - 2) for a governmental body and the governmental body owns the information, has a right of access to it, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
  - 3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.



# “Transaction of Official Business”

(Slide 5 of 44)

## Tex. Gov’t Code § § 552.002(a-1), (a-2), .003(2-a)

- ▶ Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer’s or employee’s official capacity . . .
- ▶ The definition of “public information” provided by Subsection (a) applies to and includes any electronic communication created, transmitted, received, or maintained **on any device** if the communication is in connection with the transaction of official business
- ▶ “Official business” means any matter over which a governmental body has any authority, administrative duties, or advisory duties.



# Forms of Public Information

(Slide 6 of 44)

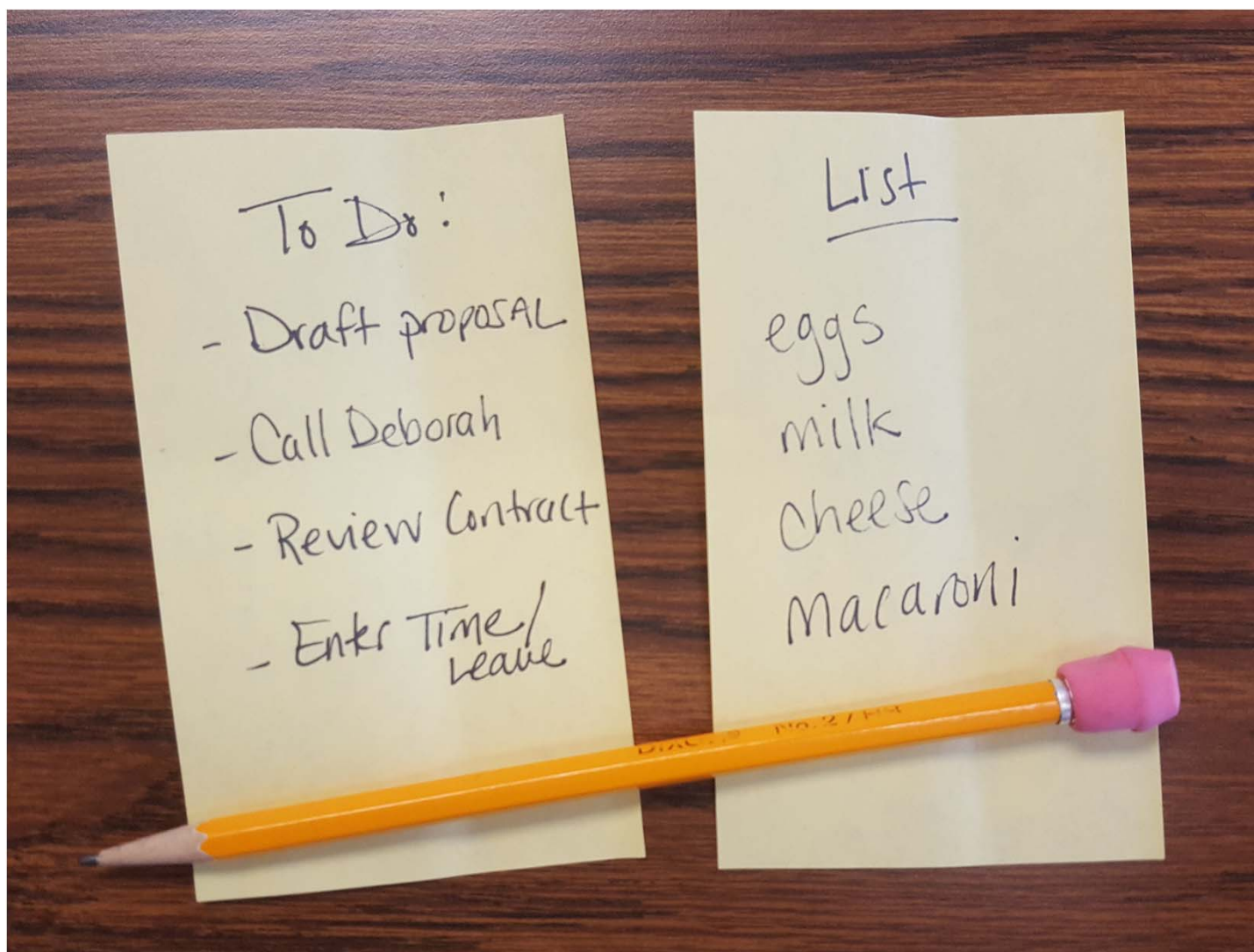
## Tex. Gov't Code § 552.002(b)-(c)

- ▶ Information recorded on physical media:
  - Paper, film, or tape
  - Magnetic, optical, or solid state storage
  
- ▶ And in any form:
  - Audio or video recordings
  - Photographs
  - Maps
  - Drawings
  - Emails, Internet postings, text messages, instant messages, or other electronic communications



# Which List is "Public Information"?

(Slide 7 of 44)





# A Contract is “Core Public Information”

(Slide 8 of 44)

## Tex. Gov’t Code § 552.022(a)

- ▶ The following categories of information are public information and not excepted from required disclosure ***unless*** made confidential under this chapter or other law:
  - (1) a completed report, audit, evaluation, or investigation made of, for, or by a GB, except as provided by Section 552.108;
  - (3) ***information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a GB;***
  - (5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a GB, on completion of the estimate;





# Required Posting of Contracts

(Slide 9 of 44)

## Tex. Gov't Code § 2261.253

- ▶ For each contract for the purchase of goods or services from a private vendor, each state agency ***shall post on its Internet website:***
  - each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed;
  - the statutory or other authority under which a contract that is not competitively bid; and
  - the request for proposals related to a competitively bid contract until the contract expires or is completed.
  
- ▶ Be careful what you ***attach to*** and reference in the contract.



# “Governmental Body” Defined

(Slide 10 of 44)

## Tex. Gov’t Code § 552.003

- ▶ The definition of “governmental body” encompasses all public entities supported in whole or in part by public funds, including:
  - State agencies
  - Cities and counties
  - Public school districts and school boards
  - Utility districts
  - Police departments and sheriffs’ offices
  - Public universities
  - County commissioners courts
  - Municipal governing bodies
  - Local workforce development boards
  - **Does not include the judiciary**



# “Quasi” Governmental Bodies

(Slide 11 of 44)

## Tex. Gov’t Code § 552.003(1)(A)(xii)

- ▶ What does “the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or is ***supported in whole or in part*** by public funds” mean?
  - *Greater Houston Partnership v. Paxton*, 468 S.W.3d 51 (Tex. 2015).
  - 85th Regular Session Legislation to Watch: SB 408 & HB 793



# Public Information Request or Not?

(Slide 12 of 44)

I want all documents  
related to RFD # 1001-07

Rick Grimes  
P.O. Box 22  
Zombie, GA 70000



## Public Information Request Must Haves (Slide 13 of 44)

- ▶ Must be in writing to trigger the PIA
- ▶ Must ask for information in existence as of the date the request was received
  - No requirement to create new documents
  - No requirement to answer questions
  - No requirement to perform legal research
- ▶ No “magic words” required. No requirement to label it as an open records request or public information request.
- ▶ Can be typed or handwritten
- ▶ Cannot require the use of a specific form to submit request



## Receipt by Email or Fax (Slide 14 of 44)

### Tex. Gov't Code § 552.301(c)

- ▶ A governmental body (GB) may designate a person who is authorized to receive requests by email or fax.
- ▶ If the GB makes such a designation, the PIA is triggered only if the email or fax request is directed to the designated person.
- ▶ Written requests that are not sent by email or fax do not have to be directed to any specific employee or officer of the GB.
- ▶ “Received” means when it is physically received, not when it is finally opened or read (this includes email).

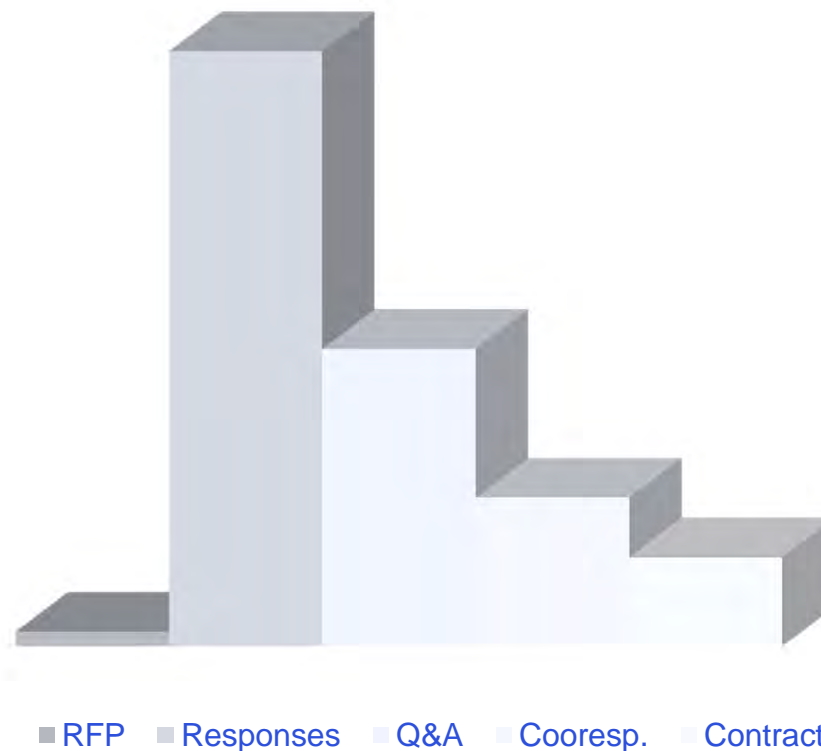


# What is Responsive to Rick's Request?

(Slide 15 of 44)

## All documents related to RFP #1001-07:

- ▶ Request for Proposal #1001-07 (Posting is Required)
- ▶ Responses to RFP
- ▶ Questions & Answers
- ▶ Correspondence
- ▶ Contract (Core PI & Posting is Required)





# Dos and Don'ts of Talking to Requestors

(Slide 16 of 44)

## Tex. Gov't Code § § 552.221, .222

- ▶ DO (GB must) post a sign containing the rights of requestors, the responsibilities of GBs, and procedures for inspecting and obtaining copies.
- ▶ DON'T ask requestors why they want the information.
- ▶ DO (GB may) ask requestors to clarify a request and/or discuss with requestor how scope of request might be narrowed. When a governmental body, acting in good faith, requests clarification or narrowing of an unclear or over-broad request, the 10-business-day period to request an Attorney General decision is measured from the date the request is clarified or narrowed. *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010).
- ▶ DON'T ask for clarification purely to delay.





# Two Ways to Respond to a Request

(Slide 17 of 44)

## Tex. Gov't Code § § 552.221, 552.301

- ▶ A governmental body must:
  - Promptly produce information for inspection, duplication or both;

OR

- Ask for a decision from the Attorney General about whether the information is excepted from disclosure, unless there has been a previous determination that the information is excepted.



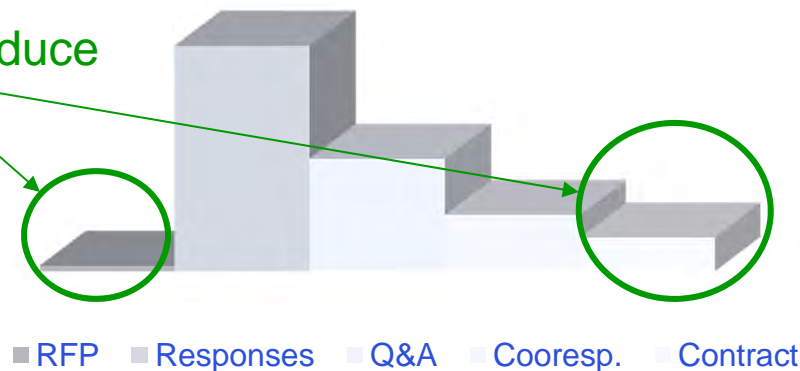
# Promptly Produce the Information

(Slide 18 of 44)

## Tex. Gov't Code § 552.221

- ▶ “Promptly” means as soon as possible under the circumstances, that is, within a reasonable time, without delay.
- ▶ If you cannot produce information within 10 business days after the date the information is requested, you must certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available.

i.e., Promptly Produce





# Charges for Copies

(Slide 19 of 44)

## Tex. Gov't Code § § 552.261, .2615, .269

- ▶ A governmental body may recover costs related to reproducing public information. Refer to the Public Information Act Handbook for costs rules.
- ▶ If estimated charges exceed \$40, the GB must provide the requestor with a written itemized statement of charges before work is undertaken.

<https://www.texasattorneygeneral.gov/og/public-information-cost-estimate-model>

- ▶ If the GB does not act in good faith computing costs, a requestor can recover three times the amount of overcharge.



# Requesting a Decision from the OAG

(Slide 20 of 44)

## Tex. Gov't Code § 552.301(a)-(b)

- ▶ If you wish to withhold information from the requestor, you must request a decision from the OAG not later than 10th business day after the date of receiving the public information request.
- ▶ You must request a decision within 10 business days, unless you have a “previous determination.”



# **“Previous Determination” Defined**

**(Slide 21 of 44)**

## **Open Records Decision No. 673 (2001)**

### **▶ Type 1**

- Applies when the precise information previously ruled upon is requested again.
- Applicable to only a particular governmental body and only to specific information or records.

### **▶ Type 2**

- Language of the decision will state it is a previous determination.
- Applies to a precise, clearly delineated category of information or records.
- May be applicable to all governmental bodies, all governmental bodies of a certain type, or only a particular governmental body.



# “Previous Determination” Defined

(Slide 22 of 44)

## Example

- ▶ Open Records Decision No. 684 (2009) covers several types of information:
  - Direct deposit authorization forms
  - Form I-9 and attachments
  - W-2 and W-4 forms
  - Certified agenda and tape of closed meeting
  - Fingerprints
  - L-2 and L-3 declarations
  - Certain email addresses
  - Military discharge records



## When Can You Redact Without First Seeking a Ruling? (Slide 23 of 44)

- ▶ Only when a law or previous determination expressly says so.
- ▶ **552.130.** Information related to driver's license, motor vehicle title or registration, or personal identification document.
  - “[A] governmental body may redact information described by Subsection (a)(1) and (3) from any information the governmental discloses under section 552.021 without the necessity of requesting a decision from the attorney general under Subchapter G.” Tex. Gov't Code § 552.130(c).
- ▶ **552.136.** Credit card, debit card and access device numbers.
- ▶ **552.024, 552.1175 and 552.138.** Personal information of certain public employees.



# Open Records Division Forms (Slide 24 of 44)

<https://www.texasattorneygeneral.gov/og/redacting-public-information-rules-and-forms>

OPEN GOVERNMENT | OPEN RECORDS DIVISION | REDACTING PUBLIC INFORMATION RULES AND FORMS



OPEN RECORDS DIVISION

ORDS: OVERRULED, MODIFIED, AFFIRMED,  
WITHDRAWN

OPEN RECORDS QUESTIONS (ORQS)

OPEN RECORDS MEMORANDUM RULINGS

LIST OF PREVIOUS DETERMINATIONS BY  
GOVERNMENTAL BODY

PUBLIC INFORMATION COST ESTIMATE  
MODEL

**REDACTING PUBLIC INFORMATION RULES  
AND FORMS**

AMENDMENTS TO THE PUBLIC  
INFORMATION ACT: 2013 TEXAS  
LEGISLATIVE SESSION

OPEN GOVERNMENT RESOURCES

OPEN GOVERNMENT CONFERENCES

EFILING

FAQ OPEN GOVERNMENT TRAINING

QUESTIONS REGARDING OPEN RECORDS  
LETTER RULINGS

STATUTES

OPEN GOVERNMENT – OTHER PIA RULES

## Redacting Public Information Rules and Forms

A governmental body that wishes to redact information from data or documents it is releasing to the public must generally seek the decision of the attorney general.

A governmental body need not request an attorney general decision if it is relying on a [previous determination](#) to redact information. For more information about previous determinations, please see [Open Records Decision No. 673 \(2001\)](#) and pages 35-38 of the [2014 Public Information Handbook](#).

A governmental body need not request an attorney general decision if it is redacting information pursuant to one of the five sections of the Public Information Act that give a governmental body explicit permission to redact information without requesting an attorney general decision. Those five sections are 552.024, 552.130, 552.136, 552.138 and 552.1175. The Rules and Forms applicable to redaction under those sections of the Public Information Act are provided below.

### Rules

- Texas Administrative Code, Title 1, Chapter 63, Public Information Subchapter B, Review of Public Information Redactions

### Forms

The following documents are provided in MS Word.

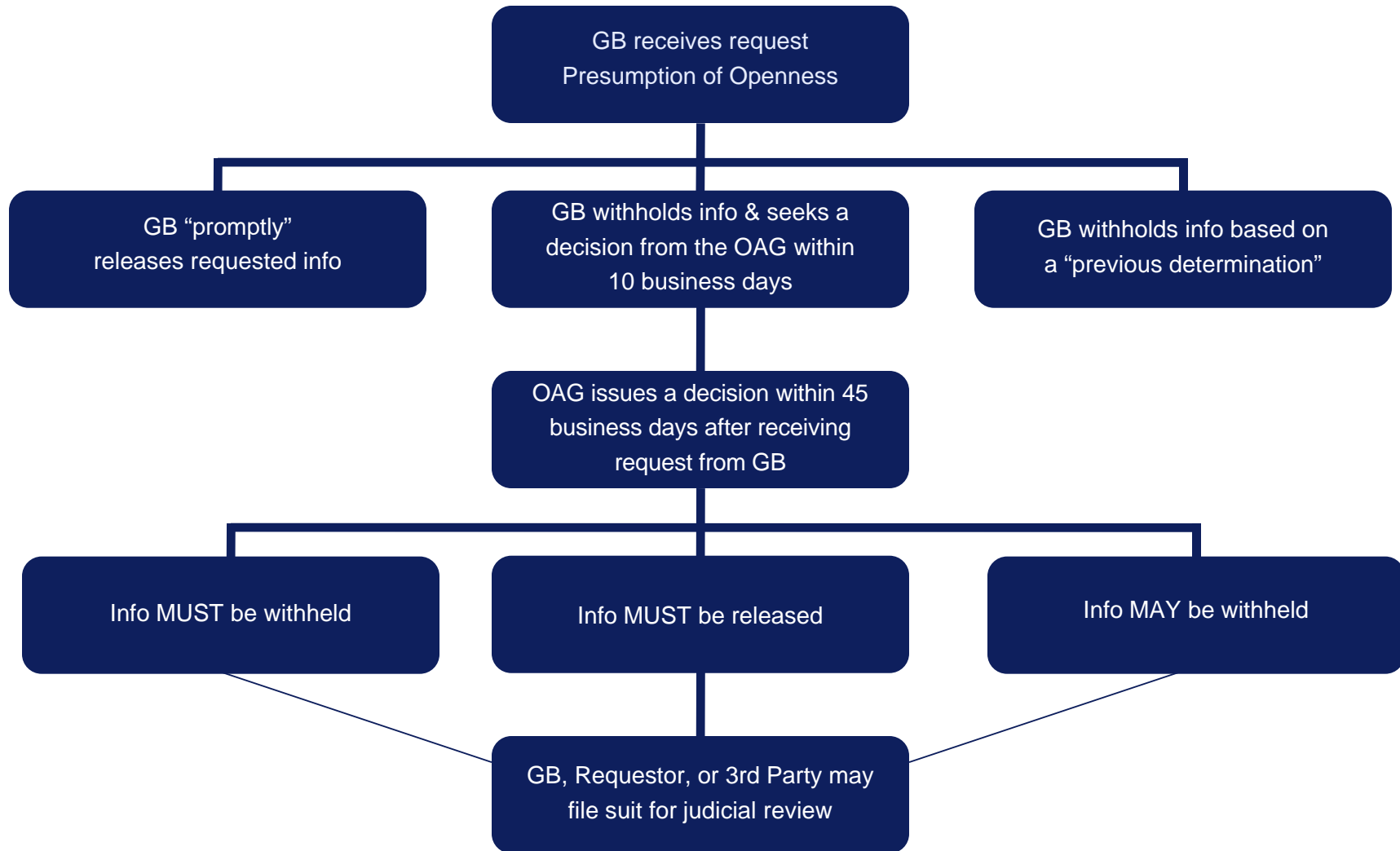
- Form Letter for Section 552.024 (public employee's personal information held by governmental body in its capacity as employer)
- (Effective 05/18/2013) Form Letter for Section 552.130 (motor vehicle records)
- Form Letter for Section 552.136 (account and access device numbers)
- (Effective 06/14/2013) Form Letter for Section 552.138 (family violence shelter center, victims of trafficking shelter center, or sexual assault program)
- (Effective 09/01/2014) Form Letter for Section 552.1175 (public employee's personal information held by governmental body in non-employment capacity)





# Requesting a Decision from the OAG

(Slide 25 of 44)





# Procedures for Requesting a Decision from the OAG (Slide 26 of 44)

## Tex. Gov't Code § § 552.301, 552.305

- ▶ **Not later than the 10th business day, you must:**
  - Ask the OAG for a ruling and state the exceptions that apply;
  - Notify the requestor in writing that you have asked for a ruling;
  - Provide the requestor a copy of your letter to the OAG requesting a ruling; and
  - ***Notify any third parties with proprietary interests*** in the requested information that they may submit written comments to the OAG stating why the information should be withheld (third party notice must be in the form prescribed by the OAG)  
<https://texasattorneygeneral.gov/og/notice-statement-to-persons-whose-proprietary-information-is-requested>



## Procedures for Requesting a Decision from the OAG (Slide 27 of 44)

### Tex. Gov't Code § § 552.301, 552.305 (continued)

- ▶ Third parties (i.e. vendors) may:
  - Submit in writing to the Attorney General the reasons why the information should be withheld or released. 552.305(b).
  - File a lawsuit against the Attorney General and the GB in Travis County to challenge a letter ruling any time **before** the requested information is released to the requestor. 552.325(a).
  - Raise exceptions in district court that were not asserted during the letter ruling phase. 552.326(b)(2).



# Procedures for Requesting a Decision from the OAG (Slide 28 of 44)

**Tex. Gov't Code § 552.301(e)-(e-1)**

- ▶ **Not later than the 15th business day, you must:**
  - Submit written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld.
  - Submit a copy of the written request for information.
  - Submit a signed statement as to the date on which the request for information was received by the GB or evidence sufficient to establish that date.



# Procedures for Requesting a Decision from the OAG (Slide 29 of 44)

## Tex. Gov't Code § 552.301(e)-(e-1) (continued)

- ▶ **Not later than the 15th business day, you must:**
  - Submit a copy (not your original) of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested.
  - Label that copy of the specific information, or representative samples, to indicate which exceptions apply to which parts of the copy.
  - Send a copy of your written comments to the requestor.



# Counting Business Days

(Slide 30 of 44)

## General Rules for Counting Business Days

- ▶ Start counting the next business day after receiving a written request.
- ▶ “Received” means when it is physically received, not when it is finally opened or read (this includes email).
- ▶ Saturdays, Sundays and holidays do not count.
- ▶ Skeleton crew days and days the GB is closed do not count, but make sure you notify the OAG of such days in writing if you are requesting a decision.



# Counting to 10 Can Be Simple

(Slide 31 of 44)

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2 Written Request Received	3 <b>1</b>	4 <b>2</b>	5 <b>3</b>	6 <b>4</b>	7
8	9 <b>5</b>	10 <b>6</b>	11 <b>7</b>	12 <b>8</b>	13 <b>9</b>	14
15	16 <b>10</b>	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				



# Counting to 10 Can Be Tricky

(Slide 32 of 44)

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18 Written Request Received	19 <b>1</b>	20 <b>2</b>	21
22	23 <b>3</b>	24 State Closed Christmas Eve	25 State Closed Christmas Day	26 State Closed Day After Christmas	27 Skeleton Crew Day	28
29	30 <b>4</b>	31 Half Skeleton/ Half Holiday	1 State Closed New Year's Day	2 <b>5</b>	3 <b>6</b>	4
5	6 <b>7</b>	7 <b>8</b>	8 <b>9</b>	9 <b>10</b>	10	11





# PIA Electronic Filing System (Slide 33 of 44)

<https://apps2.portal.texas.gov/OAGPIAeFiling/>



Texas Attorney General

## Public Information Act Electronic Filing System



### Welcome

Welcome to the Office of the Attorney General's Public Information Act Electronic Filing System. The OAG uses this system to accept a governmental body's request for an attorney general open records decision under the Public Information Act, Texas Government Code Chapter 552. Interested parties can also use this system to submit comments or materials for review by the OAG during the open records decision process.

**Please Note:** This system cannot be used to request public information from the OAG or any other governmental body. Requests for public information must be submitted directly to the governmental body from whom you are seeking information.

You can use this service to:

- Request an attorney general open records decision and submit new material for review; or
- Submit supplemental documents or comments related to an existing request for decision.

#### Information You Need:

- Name of Governmental Body or Interested Party
- Governmental Body PIC ID (This is the internal tracking number assigned to a public information request by a governmental body. This is not the ID number assigned by Texas.gov. Third parties should contact the Governmental Body for this number or use the name of the Governmental Body for this data field.)
- Texas.gov Request ID (if you are submitting additional material to an existing request)
- Credit card (Visa, MasterCard, Discover, or American Express) or Electronic Check information
- Microsoft® Silverlight® Plugin (This software is not required; however, it makes it easier to upload multiple files.) If you don't have Silverlight, you can install it now.



# Consequences for Missing Deadlines

(Slide 34 of 44)

## Tex. Gov't Code § 552.302

- ▶ If a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.
- ▶ Generally means permissive exceptions are waived and mandatory exceptions are not, and
- ▶ Exceptions asserted by third parties are not waved.
- ▶ Refer to the Public Information Act Handbook for a discussion of mandatory and permissive exceptions.



# Common Exceptions

(Slide 35 of 44)

## Common Exceptions

- ▶ **552.101.** Information Confidential by Law
- ▶ **552.102.** Confidentiality of Certain Personnel Information
- ▶ **552.103.** Information Related to Litigation
- ▶ **552.104.** Information Related to Competition or Bidding
- ▶ **552.107.** Certain Legal Matters (Attorney-Client Privilege)
- ▶ **552.108.** Certain Law Enforcement Records
- ▶ **552.110.** Confidentiality of Trade Secrets, Commercial or Financial Information



# Common Exceptions

(Slide 36 of 44)

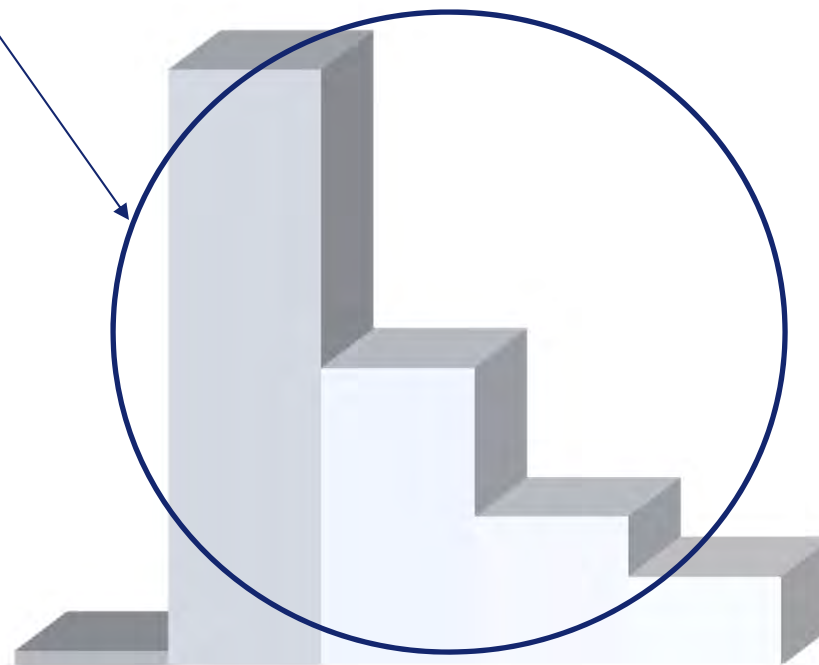
## Common Exceptions

- ▶ **552.111.** Agency Memoranda (Attorney Work Product)
- ▶ **552.116.** Audit Working Papers
- ▶ **552.117.** Confidentiality of Certain Employee Information
- ▶ **552.130.** Confidentiality of Certain Motor Vehicle Records
- ▶ **552.136.** Confidentiality of Credit Card, Debit Card, Charge Card, and Access Device Numbers
- ▶ **552.137.** Confidentiality of Certain E-Mail Addresses
- ▶ **552.147.** Social Security Numbers



## Which exceptions might apply to Rick's request? (Slide 37 of 44)

- ▶ **552.104.** Information Related to Competition or Bidding (does not apply to information posted under § 2261.253)
  - *Boeing Company v. Paxton*, 466 S.W.3d 831 (Tex. 2015)
  - 85th Regular Session Legislation to Watch: SB 407

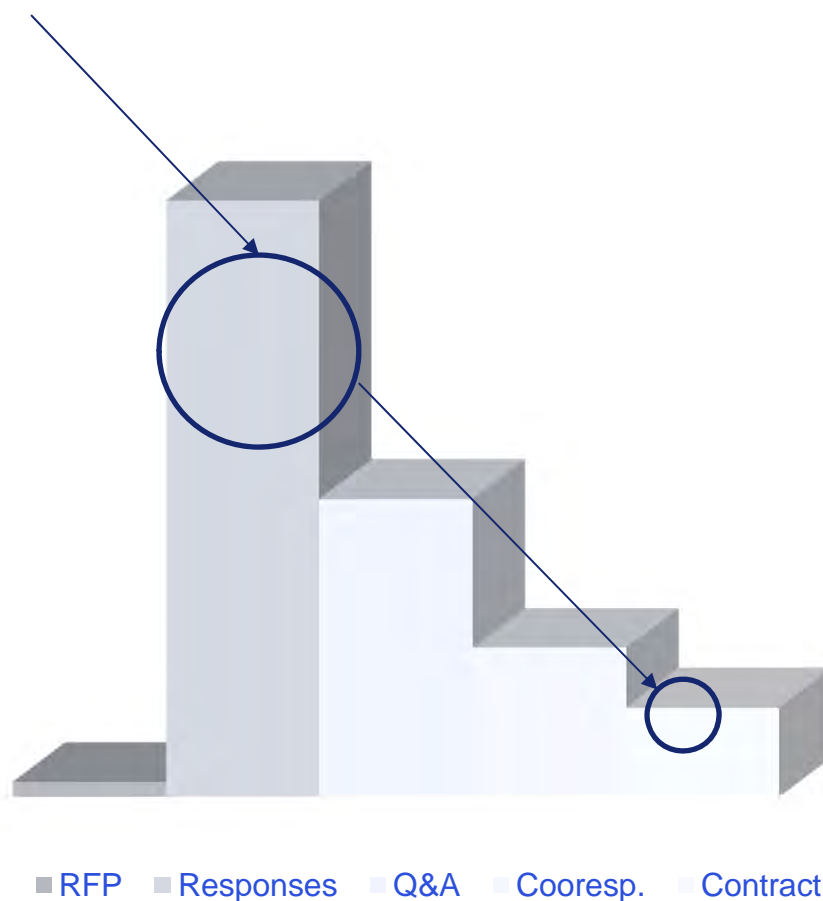


■ RFP ■ Responses ■ Q&A ■ Cooresp. ■ Contract



## Which exceptions might apply to Rick's request? (Slide 38 of 44)

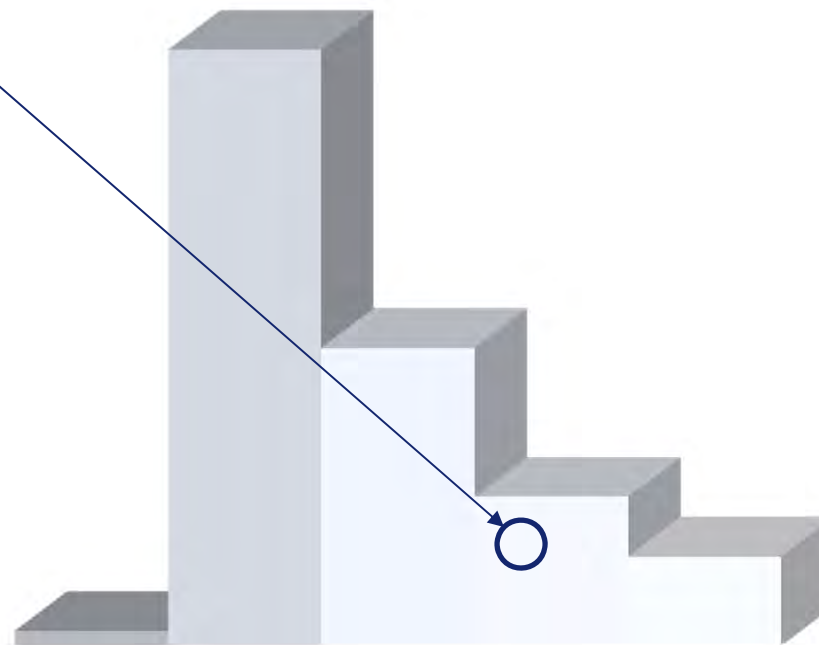
- ▶ **552.110.** Confidentiality of Trade Secrets, Commercial or Financial Information (does not apply to information posted under § 2261.253)





## Which exceptions might apply to Rick's request? (Slide 39 of 44)

- ▶ **552.107. Certain Legal Matters (Attorney-Client Privilege)**  
*See Paxton v. City of Dallas, 15-0073, 2017 WL 469597, at \*1 (Tex. Feb. 3, 2017)*
- ▶ **552.111. Agency Memoranda (Deliberative Process Privilege & Attorney Work Product)**



■ RFP ■ Responses ■ Q&A ■ Coresp. ■ Contract



## Letter Ruling from the Office of the Attorney General (Slide 40 of 44)

- ▶ The OAG will issue a letter ruling in response to the governmental body's request for a ruling:
  - Within 45 business-days unless the Attorney General extends the deadline, in which case the ruling will be issued within 55 business-days,
  - Return the records at issue to the governmental body, and
  - Provide a copy of the ruling to the requestor.
- ▶ A governmental body should retain a copy of all documents sent to and received by the Attorney General pursuant to its records retention schedule.
- ▶ All rulings are available for review on the Attorney General's Open Government webpage.
- ▶ Requests for reconsideration are prohibited.





# Challenging a Ruling

(Slide 41 of 44)

## **552.324. Suit by a Governmental Body**

## **552.325. Parties to Suit Seeking to Withhold Information**

- ▶ If a governmental body disagrees with the legal interpretation set forth in a ruling, it may file suit against the OAG in accordance with the PIA.
  - No later than the 30th calendar day after the receipt of OAG decision
  - Must be filed in Travis County
  - Must be filed against the Attorney General (not the requestor)
  - Requestor has a right to intervene
  
- ▶ A third party may also file suit to challenge an OAG ruling under section 552.325 any time before the GB releases the documents.



# Enforcement of the Act

(Slide 42 of 44)

## 552.321. Writ of Mandamus

- ▶ A requestor or the Attorney General may file a suit to compel a GB to make information available for public inspection when a GB refuses access, refuses to request a ruling, or refuses to comply with a ruling.

### 552.3215. Declaratory Judgment or Injunctive Relief

- ▶ Complaint filed by requestor with district attorney or county attorney in county where governmental body is located.
  - Local governmental bodies: district attorney or county attorney for the county may bring action only in district court for that county where the governmental body is located.
  - State agencies: Travis County District Attorney or OAG may bring action only in district court in Travis County.



# **Criminal Violations**

**(Slide 43 of 44)**

## **552.351. Destruction, Removal, or Alteration of Public Information.**

- ▶ Fine not less than \$25 or more than \$4,000 and/or county jail not less than three days or more than three months.

## **552.352. Distribution or Misuse of Confidential Information.**

- ▶ Fine not more than \$1,000 and/or county jail for not more than six months.
- ▶ Constitutes official misconduct.

## **552.353. Failure or Refusal of Officer for Public Information to Provide Access to or Copying of Public Information.**

- ▶ Fine not more than \$1,000 and/or county jail for not more than six months.
- ▶ Constitutes official misconduct
- ▶ This section sets out several affirmative defenses.



# Resources

(Slide 44 of 44)

## **OAG's Open Government Hotline**

(877) OPEN TEX

(512) 478-6736

## **Cost Questions**

OAG Cost Rules Administrator

(888) OR-COSTS

(512) 475-2497

## **Public Information Act Handbook**

<https://www.texasattorneygeneral.gov/og/open-government-related-publications>

## **OAG website**

<https://www.texasattorneygeneral.gov>