

NEWLY ELECTED OFFICIALS WORKSHOP 2012

Public Information and Open Meetings

Habib Erkan,
Denton Navarro, Rocha & Bernal, P.C. - San Antonio, TX

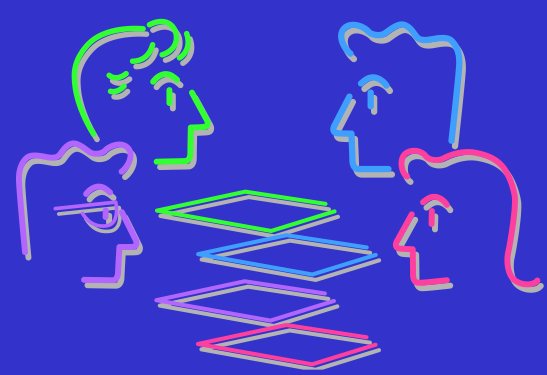


Public Information Act

Public Information means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business

By a Governmental Body; or

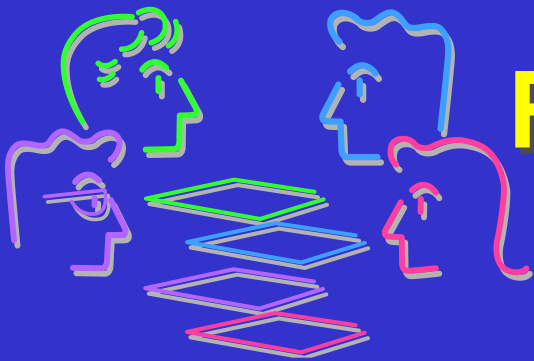
For a Governmental Body and the governmental body owns the information or has a right of access to it



Public Information Act

- Every form of information covered
- Only information in existence at the time
- Compilation and manipulation of data may be necessary
- Caution with e-mail
- Protect privileged and confidential information





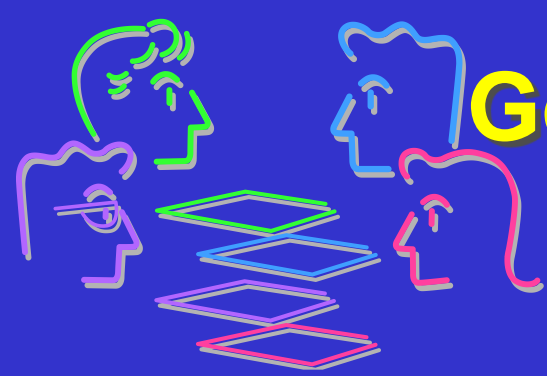
Requests for Information

- ***The Public Can:***
 - request copies of information
 - request to inspect information on-site



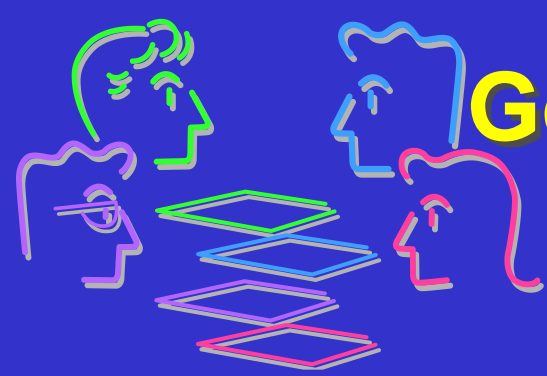
Requests for Information

- ***Governmental Bodies Can't:***
 - inquire into the requestor's motives
- ***Governmental Bodies Should:***
 - date stamp the request
 - require that requests be made in writing
 - develop a policy and procedure



Governmental Body Responses

- **Must** treat all requests uniformly.
- **Must** make available during business hours.
- **Must** provide copies within reasonable time (10 days).



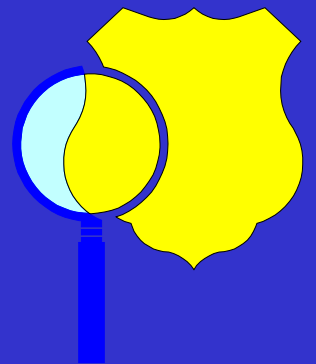
Governmental Body Responses

- **Can** charge reasonable fees.
- **Should** carefully document expenses
- **Should** provide information in medium requested, if possible.
- **Can** refuse to process repetitious or redundant requests.
- **Must** usually get Attorney General Opinion to withhold information



Violations

- Criminal Penalties.
- Refusing to provide public information: up to 6 months in jail and/or up to \$1,000.
- Providing confidential information: up to 6 months in jail and/or up to \$1,000.

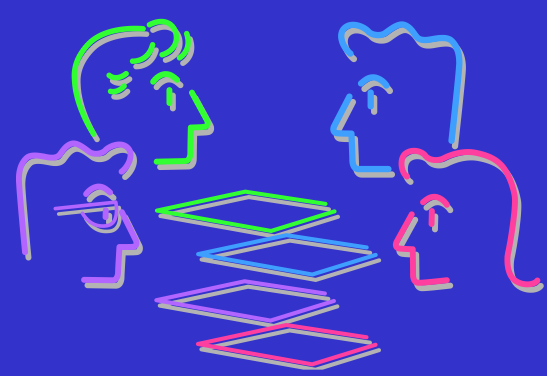




Violations

- Destroying governmental information: up to 3 months in jail and/or up to \$4,000.
- Civil Remedies.
 - Requestor or AG can file suit for writ of mandamus or declaratory judgment action.
 - Winner can recover attorney fees and court costs.

Violations

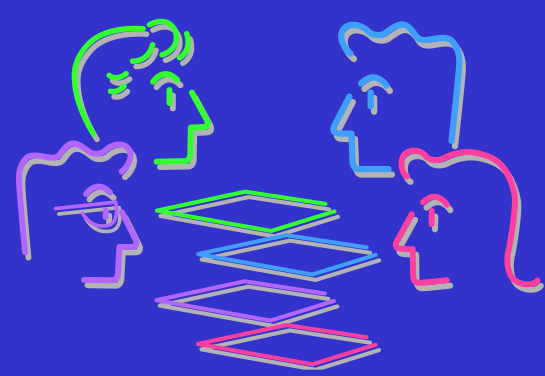


SB 677

- Violators of the PIA can now be assessed fines up to \$500 per each written request to which the violation applies
- **Plus** up to \$100/day after the 10th day if the violation is not cured
- Requestor must notify the governmental body in writing the governmental body is in violation of specific provision

Right of Access

- Section 552.022 - Super Public Information
- Section 552.0225 – Investment Information
- Section 552.023 – Special Right of Access
 - Individuals and their representatives
- Section 552.024 – Election to Disclose
 - Home Address; home telephone number, social security number; whether the person has family members; emergency contact information (SB 1638)
 - Signed in writing within 14 days





Exceptions from Release

- Section 552.101 Information Confidential by Law
 - Statutory
 - Medical Records
 - Child Abuse Records
 - Certain EMS Records
 - Doctor/Patient Communications



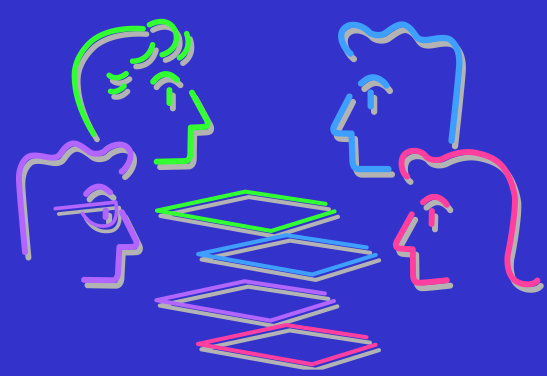
Exceptions from Release

- Section 552.101 Information Confidential by Law
 - Judicial Decision
 - Common Law Privacy
 - Highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and be of no legitimate concern to the public
 - Certain Financial Information
 - Constitutional Privacy
 - Facts must contain "most intimate aspects of human affairs."

Exceptions from Release

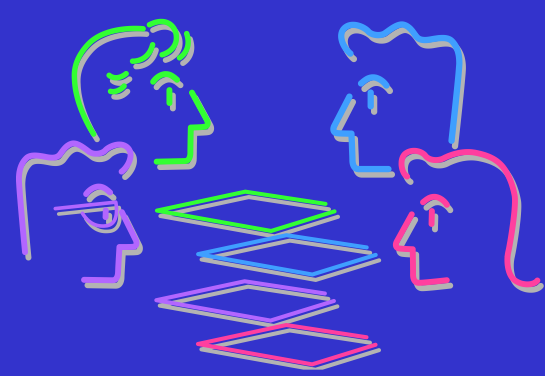
- Section 552.102 Certain Personnel Information
 - Very Limited

Exceptions from Release



- Section 552.103 Information Related to Litigation
 - Information relating to civil or criminal litigation to which the City is a party or may be a party.

Exceptions from Release



- Section 552.104 Information relating to Competition or Bidding
 - Information which if released would give advantage to a competitor or bidder
 - Designed to protect the City
- Section 552.105 Information Relating to Location or Price of Property



Exceptions from Release

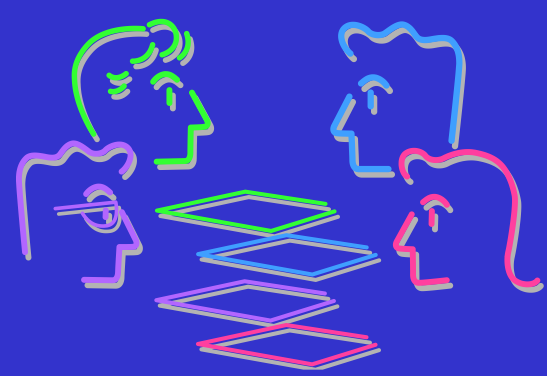
- Section 552.107 Certain Legal Matters
 - Attorney/Client Privilege
 - Work Product Privilege
 - Attorney Bills



Exceptions from Release

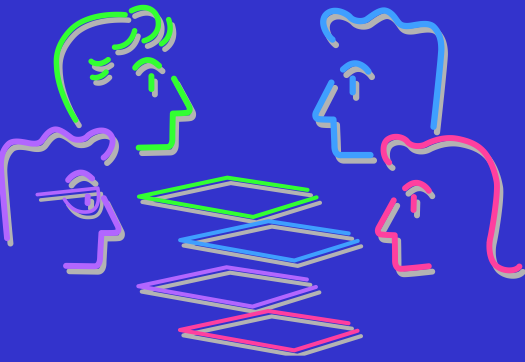
- Section 552.108 Certain Law Enforcement Records
 - Interference with investigation, detection and prosecution of a crime
 - Basic information must be released
 - No conviction or deferred adjudication
 - Complaints against Police Officers (civil service)
 - Juvenile Records

Exceptions from Release

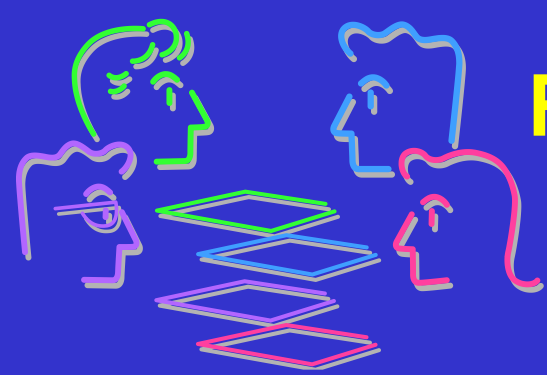


- Section 552.117 Certain Addresses, Telephone numbers, social security numbers and personal family information
 - Information revealing whether a person has family members
 - Current or former official or employee of City – But see Section 552.024

Exceptions from Release



- Section 552.130 Motor Vehicle Records
 - Driver's License Number
 - Title or registration
 - This state, another state or country (SB 1638)

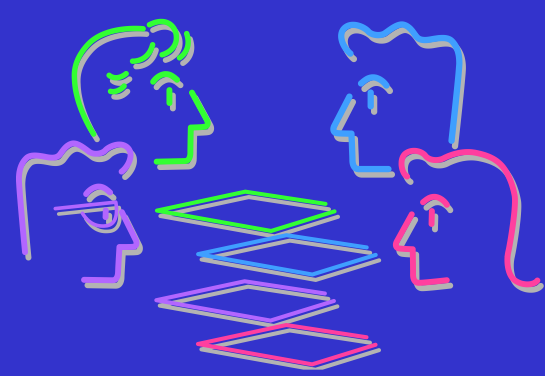


Recent Court Decisions

Texas Comptroller of Public Accounts v. Attorney General of Texas

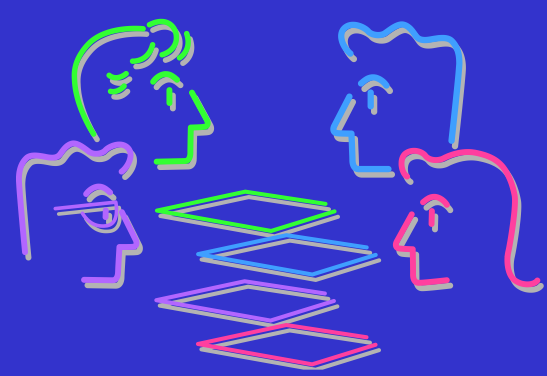
- Dallas Morning News requested State's payroll database
- Request included dates of birth
- Comptroller stated dates of birth are confidential as a matter of law (552.101)
- Attorney General said dates of birth were public
- Comptroller **WON** at Texas Supreme Court
- Dates of birth may only be withheld for State employees

New Legislation Eff. 9/01/11



SB 602

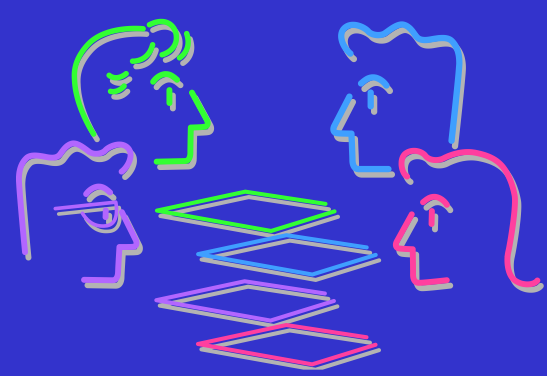
- Numerous changes
- Requires notification letter be provided to requestor notifying them of automatic redactions Texas Government Code Section 552.130 regarding driver's license numbers, license plate, VIN ... and process to challenge automatic redactions with Attorney General's Office



New Legislation Eff. 9/01/11

SB 602

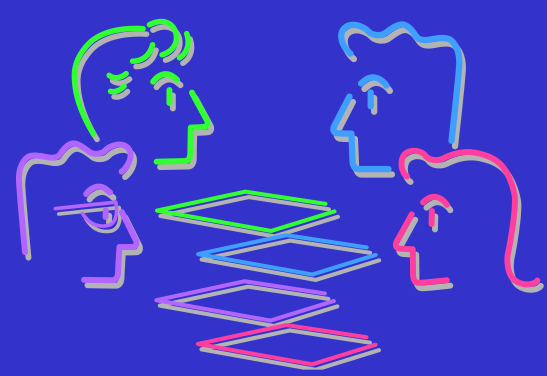
- Added term “Confidential” to all exceptions of act. Records will now either be Confidential or Public under the Act
- Added special requirements when redacting motor vehicle information and special disclosures to the requestor
- Codified pre-determination letter by Attorney General
- Added a 3 business day post mark rule to determine receipt of a request by mail



New Legislation Eff. 9/01/11

SB 1613

- Expanded definition of “competitive matters” not subject to public disclosure
 - To huge to detail ...
 - Capital improvement plans for generation units
 - Bidding and pricing for fuel
 - Distribution plans
 - Customer billing, contract, usage information



New Legislation Eff. 9/01/11

SB 1638

- Adopted emergency contact info as elected confidential information for public employees
- Added vehicle registration information of vehicles registered in other states or countries as confidential
- Added a photocopy of an official ID badge as confidential

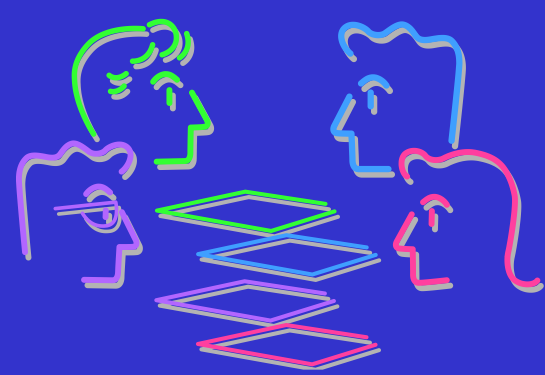


New Legislation Eff. 9/01/11

HB 2866

- **H.B. 2866 (Harper-Brown/Ellis) – Public Information**: this bill: (1) authorizes the attorney general to charge and collect a nonrefundable administrative convenience fee for the electronic submission of a document to the attorney general; (2) allows open records letter ruling requests, notices, and other documents to be filed electronically with the attorney general's office; (3) allows the attorney general's office to electronically transmit open records notices, decisions, and other documents; and (4) does not, under the Public Information Act, affect the right of a person or governmental body to submit information to the attorney general by United States mail or common or contract carrier. (Effective immediately.)

References



Office of the Attorney General Website

Public Information 2012 Handbook:

https://www.oag.state.tx.us/AG_Publications/pdfs/publicinfo_hb.pdf

2010 Public Information Act Made Easy:

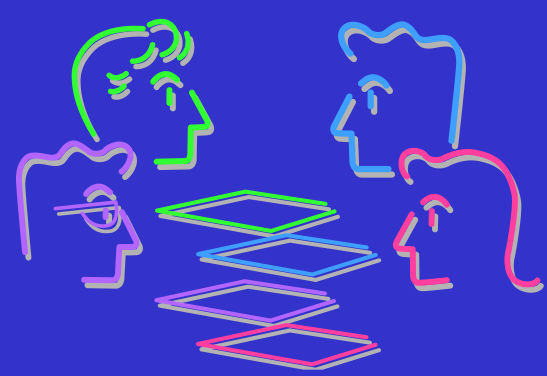
https://www.oag.state.tx.us/AG_Publications/pdfs/pia_easy.pdf

Statutes:

<http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.552.htm>

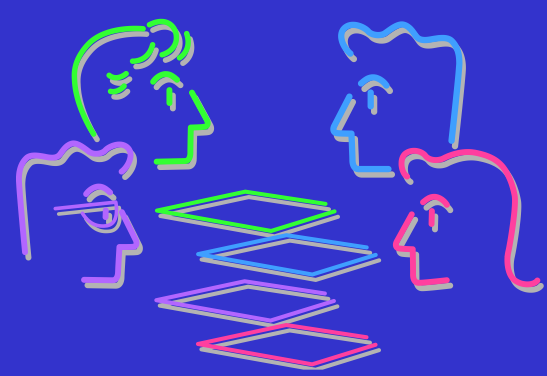
TEXAS OPEN MEETINGS ACT





Open Meetings

- Public business should be conducted in public.
- The general rule is **every** meeting is open to the public.
- Citizens have the right to observe deliberations and votes.
 - No right to choose subject matter
 - No right to speak



Open Meetings

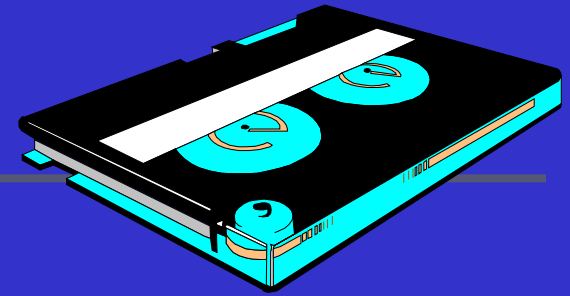
- Meeting
- Quorum
- Social Gatherings & Seminars

Agendas

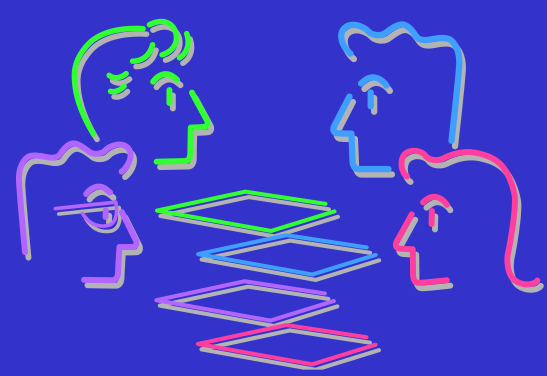


- Who, what, where, when and why
- Notice 72 hours in advance
- Notice must be accessible
- Individual notice not required
- Specificity of notice
- Notice of executive sessions
- Recess

Minutes



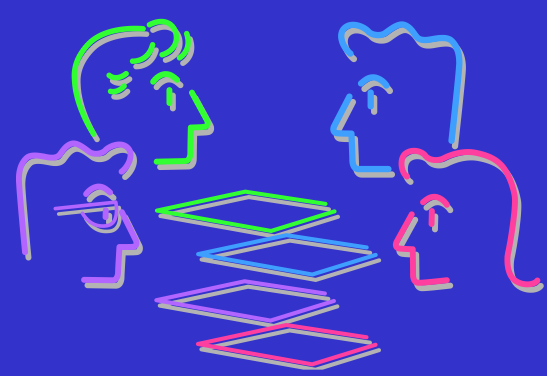
- Must keep certified copy of written minutes or a tape recording for all meetings (both open and closed)
- A brief summary is all that is required
- A verbatim transcript is not necessary



Executive Sessions

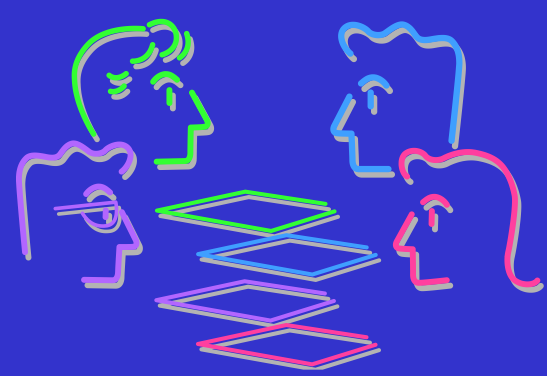
- Real Property Deliberations
- Security Measures
- Receipt of Gifts
- Personnel Matters
- Economic Development
- Consultation with Attorney
- Individual notes and recordings

Violations



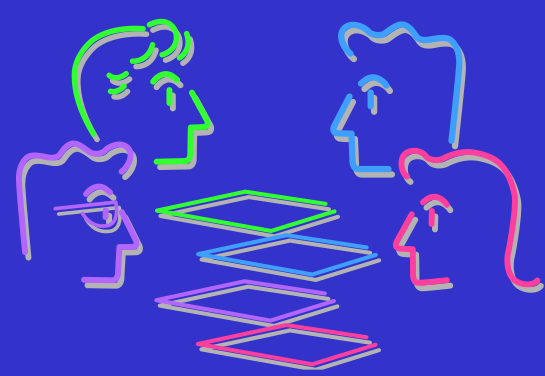
- Conspiracy to circumvent the OMA – Class B
- Calling/participating in an illegal closed session – Class B
- Closed meeting without agenda or tape recording – Class C
- Disclosure of certified agenda or tape recording of closed meeting – Class B + Civil Damages

Violations



- Punishment can include fines and/or jail
- Might create liability for civil damages
- Actions taken are **voidable**
- **Affirmative Defense**

References



Office of the Attorney General Website

Open Meetings 2012 Handbook:

https://www.oag.state.tx.us/AG_Publications/pdfs/openmeeting_hb.pdf

2012 Texas Open Meetings Act Made Easy:

https://www.oag.state.tx.us/AG_Publications/pdfs/openmeetings_easy.pdf

Statutes:

<http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.551.htm>

Questions?

Habib Erkan, Denton, Navarro, Rocha & Bernal, P.C.

Habib.erk@rampage-sa.com

2517 N. Main Ave, San Antonio, TX 78212-3111, (210) 227-3243