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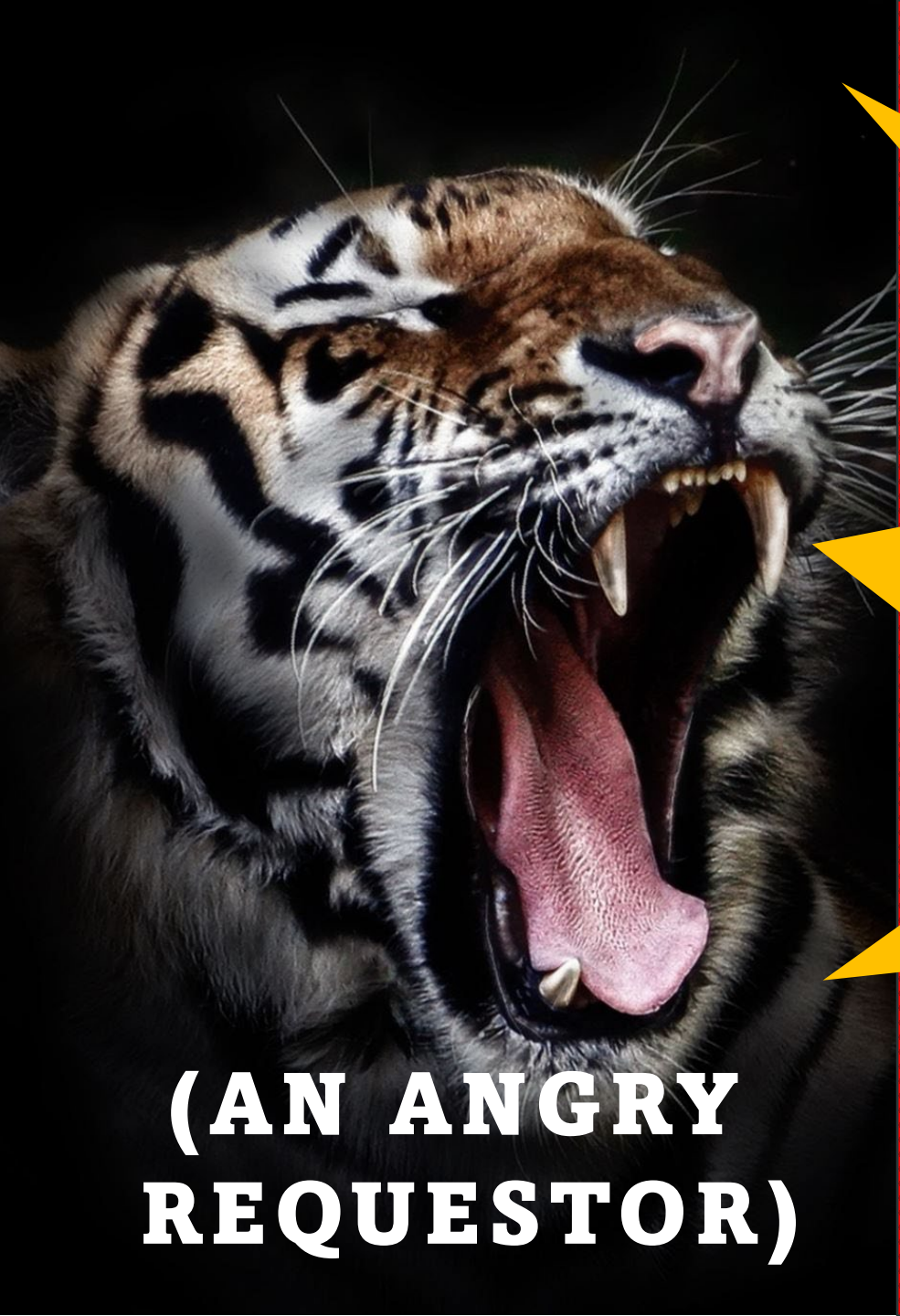
# TAMING THE TPIA TIGER:

Grab Challenging  
Requests by the Tail









**(AN ANGRY  
REQUESTOR)**

Open Records Request Form

In accordance with the Texas Public Information Act, Texas Government Code Annotated Section 552.001 et seq., I am requesting inspection of and/or duplication of the following records maintained by or for the office.

Name: BARBIE DAHL  
Street: 135 Charming Court City: Brownsville  
State: TX Zip: 78526 Phone: 956-421-4904  
Email: Iluvken66@yahoo.com

I understand that I am to receive a statement of estimated charges in advance of work being started when charges are expected to exceed \$40. I understand that I may be required to post a cash bond prior to inspecting or receiving copies of the requested information should the estimated cost of complying with the request exceed \$100.00. I certify that I am the individual listed above and understand the statement's contain herein.

Records requested: Any and all emails between the City Manager and the Police Chief from 1972-2023  
I DEMAND YOU GIVE ME WHAT I WANT TOMORROW OR I WILL SUE YOU AND YOUR FAMILY AND YOUR PETS AND I PAY TAXES AND YOU ARE COMMUNISTS!

The Office will seek a Texas Attorney General's opinion to exclude legally confidential information contained in the documents requested. This process will take no less than an additional 45 days. However, if you agree to exclusion of the confidential information from you request, the opinion will not be required, and the 45 day minimum delay will be avoided.

I agree to exclude confidential information from my request.

Mail to: NO  
Signature: [Signature] Date: 7/28/23

or fax to: NO  
Signature: [Signature] Date: [Signature]

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**The Texas Public Information Act  
presumes that governmental records  
are open to the public**

unless the records are subject to any of the exceptions

This presumption is based on the language of section 552.021, which makes virtually all information in the custody of a governmental body available to the public.





# THE BASICS



# **APPLICABILITY OF THE ACT – WHAT IS PUBLIC INFORMATION?**

§552.002 states in part.....(a) In this chapter, "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:
  - (A) owns the information;
  - (B) has a right of access to the information; or
  - (C) 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.



# Form of Requests:

Must be in writing to trigger the Act

Must ask for information in existence as of the date the request was received

No “magic words” required

No requirement to label it as an open records request

Can be typed or handwritten







## **Every form of information is covered**

Paper, microfilm, video, e-mails, audiotapes, computer data, text messages, etc.

## **It does not matter where the information is located**

E-mails and documents located at home regarding official city business may be considered public information

**Information sent to storage, or a third party may be considered public information**

# DEADLINES UNDER THE PUBLIC INFORMATION ACT



## 10 Business Day Deadline

### **To Attorney General:**

Must ask for attorney general decision and state which exceptions apply to the information

### **To Requestor:**

- Must provide written statement that the governmental body wishes to withhold the requested information and that the governmental body has asked for an Attorney General decision
- Must provide a copy of the governmental body's written communication to the attorney general in which the governmental body asks for a decision (If the governmental body's written communication to the attorney general discloses the requested information, a redacted copy must be provided)

### **To Third Party:**

- Must make "good faith attempt" to notify affected parties
- Notice must be in writing and in the form prescribed by the Attorney General



# DEADLINES UNDER THE PUBLIC INFORMATION ACT

## 15 Business Day Deadline

### To Attorney General:

- Must provide written legal arguments stating why the stated exceptions apply
- Must provide copy of written request of information
- Must provide signed statement stating the date the request for information was received by the governmental body or evidence sufficient to establish the date the request was received
- Must provide copies of the documents at issue or a representative sample of the documents at issue
- Must label the documents to indicate which exceptions apply to which parts of the documents

### To Requestor:

- Must provide a copy of the written comments submitted to the attorney general (redacted if necessary)



A ruling on whether information may or must be withheld is issued within 45-business days.



# THE COMPLEX



# **Promptly providing public information to a requestor**



**Must promptly produce public information that cannot be withheld under the PIA – “as soon as possible, without delay, which means a reasonable time under the circumstances” – can depend on amount and location of information**



# Vexatious:

- vex·a·tious  
*adjective*

causing or tending  
to cause annoyance,  
frustration, or worry.





## **Sec. 552.275. REQUESTS THAT REQUIRE LARGE AMOUNTS OF EMPLOYEE OR PERSONNEL TIME. .**

A governmental body may establish **reasonable monthly and yearly limits** on the amount of time that personnel of the governmental body are required to spend producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, **without recovering its costs attributable to that personnel time.**

**A yearly time limit may not be less than**

- **36 hours during 12-month fiscal year of the governmental body**
- **No less than 15 hours for a requestor for a one-month period.**



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I agree to exclude confidential information from my request.

NO Signature \_\_\_\_\_ Date \_\_\_\_\_

Option A

**I hereby agree to limit the scope of my request.**

- ❖ You can redact what the City believes is confidential.
- ❖ Requestors not satisfied with this request can submit another request and select Option B.
- ❖ Can eliminate need for an Attorney General Ruling.

Option B

**I do not agree to limit the scope of my request.**

- ❖ Requestor wants everything.
- ❖ You can release basic information to the Requestor and send the rest to the Attorney General.

## **Sec. 552.232. RESPONDING TO REPETITIOUS OR REDUNDANT REQUESTS.**

If a requestor requests information for which the governmental body has already responded/furnished copies/made copies available for inspection....

The governmental body can furnish or make the information available to the requestor again; or

The governmental body can certify to the requestor that the requested information was previously furnished or made available to the requestor by providing:

- (1) a description of the information
- (2) the date the governmental body received the requestor's original request for that information;
- (3) the date that the governmental body previously furnished copies or made information available to the requestor;
- (4) a certification that no subsequent additions, deletions, or corrections have been made to that information; and
- (5) the name, title, and signature of the officer for public information or the officer's agent making the certification.



(Not really a tiger)



# A CASE STUDY

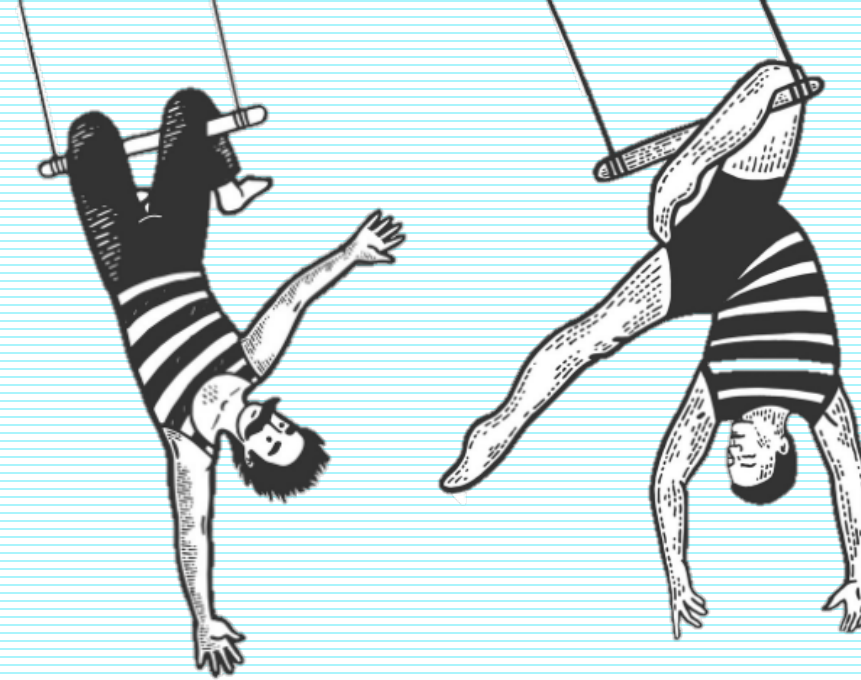
## **Case Study: Backstory**

1. Requestor is an attorney for an “adverse party” who has not (yet) sued the City, and has submitted a 50-page public information request.
2. The items requested span multiple City departments
3. Request is for “any and all” emails to and from multiple city council members for a three-year time span
4. Request is also for “any and all” notes, documents, written communications (formal or informal), memoranda, facsimiles, emails, text messages and the like which were generated, prepared, received, and/or sent, applicable to multiple council members, which “in any way” pertain to specified subject(s)
5. Requestor asks the City “produce copies of all documentation, photographs, audio recordings, video recordings, writings, statements, evidence and/or other ‘proof’ within the possession of specified council members which pertain to, document, evidence or otherwise support specific or presumed assertions by specified council members that certain actions were illegal, improper, unethical, "slimy," secretive and/or done "behind" the commissioners' backs.
6. All of the numbered items within the request are just as long and detailed as these.
7. Submitted cost estimate (\$14,000.00)

## **Case Study: Considerations**

1. The Act does not require a governmental body to create new information, to conduct research, or to answer questions.
2. However, a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds.
3. When a governmental body is presented with a broad request for information rather than for specific records, a governmental body may ask the requestor to clarify the request. It should advise the requestor of the types of information available so that they may narrow or clarify their request.
4. The administrative inconvenience in responding to a request for information is not grounds for refusing to comply with a request under the Act. (*Indus. Found. v. Tex. Indus. Accident Bd*, 540 S.W.2d 668,687 [Tex. 1976]); see also Open Records Decision No. 497 at 4 (1988) (fact that submitting copies for review may be burdensome does not relieve governmental body of its responsibility to do so).
5. The PIA requires governmental bodies to promptly release public information requested under the PIA within a reasonable time, without delay (new legislation addresses “batches”).
6. The officer for public information or the officer's agent shall treat all requests for information uniformly without regard to the position or the occupation of the requestor, the person on whose behalf the request is made, or the status of the individual as a member of the media.





## **Case Study: Actions**

1. Request for clarification; advised the requestor in the request for clarification that the City is not obligated to do research for them (“evidence” or “proof”)
2. Raised the speculative nature of request (i.e. “presumed assertions” that certain actions were illegal, improper, unethical, "slimy," secretive and/or done "behind" the commissioners' backs"); suggest requestor use more objective language and still find what they seek.
3. Held City-wide meeting with directors of affected departments
4. Provided specific deadlines to each department for representative samples

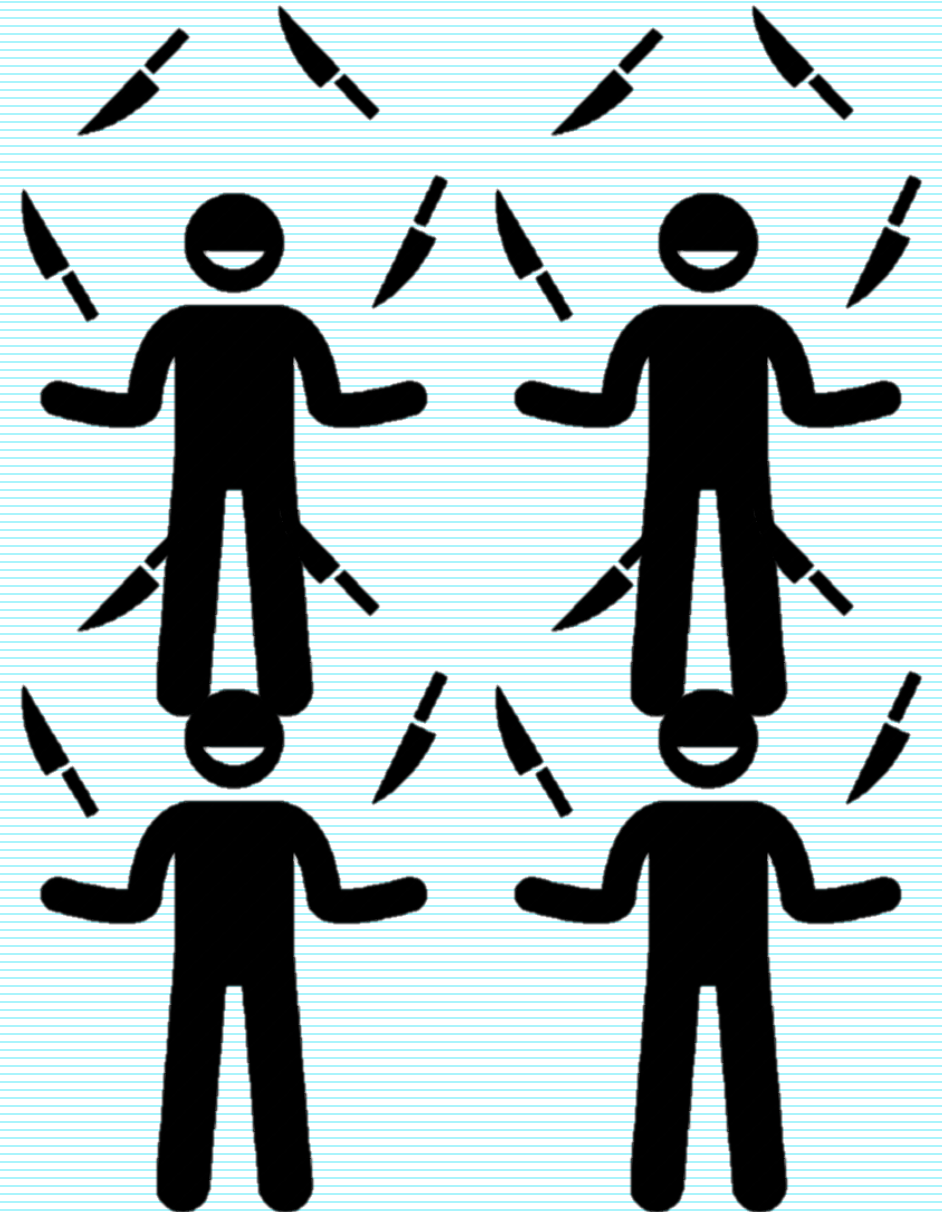
## **Case Study: Tips**

1. Begin to address FAST. TPIA has quick and mostly unforgiving turnaround.
2. Keep a calendar/timeline of correspondence to and from requestor.
3. Hold in-person meeting with affected departments (follow up with e-mail)
4. Provide specific deadlines in writing to each department for responsive documents/representative samples
5. Calendar/timeline TPIA deadlines and responses from departments. Allow enough cushion time to copy/scan/sort/redact.
6. Assign someone to track responsive documents/representative samples
7. Stay in contact with AG (“promptly” and “without delay” standard for document production).



## Other Tips

1. Monitor your intake system (GovQA, etc.) regularly
2. Make sure enough personnel have access and ability to quickly monitor
  - Coverage for sick/vacationing/former employees
  - Skeleton crews
3. Don't assume! Ask for clarification. (Even if you think you know what they want, beware creating precedent.)
4. Ensure consistent communication (whether City or legal counsel)
5. Communicate in writing or document following phone calls
6. Stay objective and neutral!





(Still not really a tiger)



# ANOTHER CASE STUDY

## **Case Study: Backstory**

- 1. Requestor is a community watchdog and knows the City is always hiding important matters from its citizens and therefore a diligent eye is needed to keep City staff in line and make sure the City complies.**
- 2. Requestor has submitted an exhaustive list of 32 items to the City**
- 3. City pulled responsive documents, reviewed for exceptions and submitted a request for ruling to the AG. The City also submitted a representative sample of responsive documents.**
- 4. AG ruling allowed City to withhold some information under the exceptions and provided their marked-up redactions for the City to use on the remaining responsive documents. The ruling also only allowed redactions for some of the arguments contained in the submittal from the City but not all.**
- 5. The City redacted the responsive documents according to the representative sample and timely provided them to the Requestor. The Requestor believed that the City did not follow the ruling and filed a complaint with the AG.**
- 6. The AG provided notice to the City of the complaint and provided the required certification of release. The City identified that it had released the documents in accordance with the ruling. The AG closed out the complaint and notified Requestor.**
- 7. Requestor was not satisfied and filed a complaint with the County Attorney and then the District Attorney.**

# **Case Study: Considerations, Actions and Tips**

- 1. The Act does not require a Requestor to pick one avenue for redress of a complaint. A complaint can be filed with the AG, the County Attorney and the District Attorney and each one will conduct their own investigation.**
- 2. However, a Requestor does have to file any complaint within the time-frame allowed for retention of public records based on the Texas State Library guidelines – which is 2 years.**
- 3. When a Requestor files a complaint with the County Attorney or District Attorney, they will review and provide written notice to the governmental entity of the complaint and the process that will need to be followed in order to respond. This process typically will require the production of responsive documents and communications with the Requestor and the AG’s office.**
- 4. The governmental entity needs to retain the responsive documents from all phases or stages of work. As an example – the County Attorney or District Attorney can request the original batch pulled, the brief and representative sample of responsive documents sent to the AG, the ruling and marked up documents from the AG and what was released to the Requestor.**
- 5. The governmental entity also needs to retain any and all communications both with staff and with the Requestor to substantiate the actions taken in response to any allegations made in the complaint.**
- 6. Ensure that the point of contact for the governmental entity and the County Attorney’s or District Attorney’s office are able to communicate openly and that legal counsel is kept apprised of any issues or concerns as needed. Legal counsel may be the best point of contact since the investigation could lead to potential liability for the governmental entity and/or employees, as well as criminal charges.**





**When you have  
a conflict with a  
requestor  
(or vice versa):**

**Open Records Division Informal  
Dispute Resolution Process**

**Offers hotlines for questions,  
handles cost complaints under  
§552.269, and complaints  
informally.**

**(877) 673-6839**

# NEW LEGISLATION

**Law Enforcement Records**  
**Business Days/Holidays**  
**Training Requirements**

**Election Information**  
**Release of Information**  
**Online Filing**





# QUESTIONS?

## TAMING THE TPIA TIGER:

Grab Challenging  
Requests by the Tail