

TEXAS PUBLIC INFORMATION ACT

Summary Outline

- A. Section 552.101 excepts from disclosure information deemed confidential by constitutional, statutory or judicial decision.
1. Items that regularly come up that are specifically made confidential by law (not an exhaustive list):
 - a. Medical records, Section 159.002 Occupations Code
 - b. Juvenile Law Enforcement Records, Section 58.007 Family Code
 - c. Identity of sexual assault victims, Chapter 57 Code of Criminal Procedure
 - d. Polygraph questions, answers, graphs and examiner's opinions, Section 1703.306 Occupations Code
 - e. Psychological reports, Chapter 611 Health & Safety Code
 - f. NCIC and TCIC computer based Criminal History information
 - g. Child abuse records, Section 261.201 Family Code
 - h. Family and Medical Leave Act Records, 29 U.S.C. Section 2564
 - i. Mental health records, Section 611.002 Health and Safety Code
 - j. Certain information contained on utility bills, Section 182.052 Utility Code
 - k. Minutes of executive sessions or certified agendas or tapes of executive sessions are excepted from disclosure, Section 551.146 Texas Open Meetings Act
 2. Section 552.101 incorporates the "informer's privilege" - the government's privilege to withhold the identity of persons who furnish information of violations of the law to officers enforcing the law. The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege applies only to illegal acts reported to law enforcement authorities or administrative officials charged with enforcing the law. The informer's privilege does not protect information about lawful conduct. The privilege protects not only the informer's identity, but also any portion of the informer's statement that might tend to reveal the informer's identity. Since the privilege exists to protect the governmental body's interest, the privilege may be waived by the governmental body.
 3. Common-law privacy
 - a. Protects from disclosure information that contains highly intimate or embarrassing facts about someone's private matters such that its release would be highly objectionable to a reasonable person and the information is of no legitimate concern to the public. Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668 (Tex. 1976) cert denied, 430 U.S. 931.

- b. Protects from disclosure the statements and names of witnesses to and victims of sexual harassment.
 - c. Protects from disclosure certain financial information pertaining to an individual. "Background" financial information of an individual is generally protected from disclosure. Protects from disclosure taxation information - W-2 and W-4 form information and FICA taxes and wages. ORD 226 (1979).
 - d. Common-law privacy rights lapse upon the death of the subject.
- B. Section 552.102 excepts from disclosure information in personnel files if the disclosure of the information would constitute a clearly unwarranted invasion of personal privacy.
- 1. The test for an invasion of privacy is the same as that articulated in Industrial Foundation of the South v. the Texas Industrial Accident Board; Hubert v. Hart-Hanks Texas Newspaper, Inc., 652 S.W.2d 546, 550 (Tex.App.-Austin 1983, writ ref'd).
 - 2. Employees are not granted a special right of access to their personnel file if the information is covered by other exceptions. ORD-288 (1981).
 - 3. Information covered by this exception does not necessarily need to be in the employee's personnel file to be covered by this exception. ORD-356 (1982); ORD-332 (1982). The litmus test is whether the information bears on the qualifications for employment, terms of employment, separation from employment, or anything else bearing on the employment relationship.
 - 4. Employee evaluations, even though highly subjective, are not covered by this exception. Tex. Att'y Gen. Op. JM-36 (1983).
 - 5. The name, position, salary, age, education, experience, licenses, certificates, professional awards and recognition generally cannot be withheld under this section.
 - 6. Retirement records are personnel records. Calvert v. Employees Retirement System of Texas, 648 S.W.2d 418, 420 (Tex. App.-Austin 1983, writ ref'd n.r.e.).
- C. Sections 552.024 and 552.117 except from disclosure the home address and home telephone number, the social security number, and information identifying the family members of governmental officials and employees, if the government official or employee has indicated such desire to the main personnel officer of the governmental unit. If the official or employee fails to make such election, the information is public information. However, the home address and home telephone number, the social security number, and information identifying the family members of peace officers and prosecutors (including municipal attorneys whose jurisdiction include any criminal law or child protective services matters) is always excepted from disclosure.

- D. Section 552.103 excepts from disclosure information relating to civil or criminal litigation, to which the governmental entity or its officers or employees, as a consequence of their office or employment is or may be a party.
1. Pending or “reasonably anticipated litigation” is included. Heard v. Houston Post Co., 684 S.W.2d 210 (Tex. App.-Houston [1st Dist.] 1984, writ ref’d n.r.e.).
 2. The litigation must be pending or reasonably anticipated on the date that the request for information is made.
 3. This exception is discretionary (waived if time periods are not met).
 4. To invoke the exception, the entity must show litigation is pending by submitting a copy of the pleadings or petition, or “reasonably anticipated” by providing concrete evidence that litigation on a specific matter is anticipated, not just verbal threats.
- E. Section 552.107(1) excepts from disclosure attorney-client information revealing client confidences or containing legal advice or opinion (“privileged information”); does not protect basic factual communications from the attorney to the client or among attorneys for the same client when those factual communications do not reveal client confidences (“unprivileged information”). ORD 574 (1990), ORD 462 (1987), Texas Disciplinary Rules of Professional Conduct Rule 1.05, and Texas Rules of Evidence Rule 503(b). This exception is discretionary.
- F. Section 552.108 excepts from disclosure records of law enforcement agencies and prosecutors that deal with the detection investigation and prosecution of crime and internal records and notations of law enforcement agencies and prosecutors maintained for internal use in matters relating to law enforcement and prosecution. This exception is discretionary.
- G. Section 552.111 excepts from disclosure inter- or intra-agency memorandums or letters which would not be available to a party in litigation with the entity.
1. This exception is discretionary.
 2. The purpose of the exception is to protect advice and opinion on policy matters and encourage frank and open discussions. Austin v. City of San Antonio, 630 S.W.2d 391, 394 (Tex. Ct. App.-San Antonio 1982, writ ref’d n.r.e.).
 3. Applies only to internal communications consisting of advice, recommendations, or opinions reflecting the policymaking processes of the governmental body at issue. Does not protect information relating solely to internal administration, such as the evaluation of personnel job performance. ORD 615 (1993).
 4. Does not include purely factual information that is severable from the opinion portions of the information. ORD 615 (1993). Where facts and observations are inextricably intertwined with opinion, advice and recommendation, the entire document is excepted from disclosure. ORD-213 (1978); ORD-295; ORD-298 (1981).

5. Incorporates the privilege for work product found in Texas Rules of Civil Procedure 192.5. The test for work product is: (1) the information must have been made or developed for trial or in anticipation of litigation; and (2) material or mental impression must have been prepared or developed by or for a party or a party's representatives. ORD 677 (2002). The privilege is absolute and perpetual in duration.

H. Other Exceptions:

1. Section 552.104 - Information related to competitive bidding, if released, would give a competitive advantage to a competitor of bidder (see also Sections 552.110 and 552.305)
2. Section 552.105 - Information related to location (until project is announced) or purchase price (prior to formal award) of real or personal property
3. Section 552.109 - Information related to private correspondence or communications of elected office holders, release of which would constitute an invasion of privacy
4. Section 552.110 - Information related to trade secrets, commercial information or financial information (see also Sections 552.104 and 552.305)
5. Section 552.114 - Student Records
6. Section 552.115 - Birth (75 years after filed) and death (25 years after filed) records maintained by the Texas Department of Health
7. Section 552.116 - Audit working papers of a municipal auditor if the audit was authorized or required by a Texas or United States statute or the charter or an ordinance of a municipality
8. Section 552.119 - Photographs of peace officers
9. Section 552.122 - "Test Items"
10. Section 552.124 - Records of Library or Library System
11. Section 552.127 - Information related to participants in a neighborhood crime watch organization
12. Section 552.128 - Information submitted by a potential vendor or contractor in connection with an application for certification as a historically underutilized or disadvantaged business
13. Section 552.129 - Certain motor vehicle inspection information

14. Section 552.130 - Information related to a driver's license or permit, motor vehicle title or registration, and personal identification document (controlled by Chapter 730, Texas Transportation Code)
15. Section 552.131 - Certain information related to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body (until an agreement is made)
16. Section 552.132 - Information relating to crime victims
17. Section 552.1325- Crime victim impact statements
18. Section 552.136 - Credit card, debit card, charge card, and access device numbers
19. Section 552.137 - An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body unless that member of the public affirmatively consents to its release. However, an e-mail address of a vendor, contractor, or anyone wanting to do business with a governmental body is public information.
20. Section 552.139 - Government information related to security issues for computers
21. Section 552.140 - Certain military discharge records that first come into the possession of a governmental body on or after September 1, 2003
22. Section 552.142 - Records of certain deferred adjudications
23. Section 552.147- Social security number of a living person
24. Section 552.305 - Information relating to the property or privacy rights of third parties (governmental body must provide third party with written notice of request within ten business days)

I. Time

1. Section 552.301 - If a governmental body believes that requested information is excepted from public disclosure, it must submit a request for opinion to the Texas Attorney General by no later than the 10th business day after the governmental body receives the request for information.
2. Section 552.302 - The governmental body's failure to meet this deadline may constitute a waiver of its rights under the Public Information Act.
3. Section 552.221 - Public information must be produced PROMPTLY. Promptly is defined to mean "as soon as possible, without delay." An open records request should be answered as quickly as possible; preferably well before the 10th business day. If the information cannot be produced within 10 business days after the request was received, the officer for public information shall certify this in

writing to the requestor and set a date and time within a reasonable time when the information will be available.

J. Costs

1. Section 552.2615 - if the cost of producing paper records exceeds \$40 a written itemized statement of costs shall be provided to the requestor.
 - a. If a less expensive alternative is available, the requestor must be notified of this alternate. The governmental body must also inform the requestor that if the requestor does not respond to this itemized statement in writing within 10 business days, the request shall be considered withdrawn. The information should be not be prepared until the requestor responds in writing to the itemized statement
 - b. If the actual cost of producing the paper records will exceed 120% of the itemized statement, the requestor must be notified in writing of this; the requestor must respond within 10 business days or the request will be considered withdrawn. Costs may not exceed 120% of the original statement, or the amount specified in the revised statement.
2. Section 552.262 - The attorney general shall adopt rules for use by each governmental body in determining the costs for providing information to requestors.