

# Texas State University System Office of General Counsel

## ***FREQUENTLY ASKED QUESTIONS BY INDIVIDUALS RESPONDING TO PUBLIC INFORMATION REQUESTS***

*These FAQs are offered as general guidance and are not designed to address the complexities of every fact situation that might arise. If in doubt, administrators are advised to contact the Office of General Counsel, for legal advice before proceeding. Please use the usual campus channeling for communicating with OGC.*

***November 3, 2020***

### ***1. What is a Public Information Request, also known as an open records request, and what records are considered public?***

**RESPONSE:** A Public Information Request (“PIR”) is a written request for records maintained by a governmental body, including public institutions of higher education. Public records include information stored electronically, letters, hand-written notes, photographs, CDs, DVDs, audio recordings, maps, microfiche, microfilm, emails, and text messages. If it has to do with the official business of the college or university, even emails in your personal email or text messages on your personal cell phone can be considered public information. (*Texas Public Information Act, Government Code Chapter 552*) If a current or former student requests access to their education records, that request is handled in accordance with the Family Educational Rights and Privacy Act (FERPA), not the Public Information Act.

### ***2. Do I have to respond to a verbal request for records, and can requests be submitted to any campus employee?***

**RESPONSE:** No, and no. Public information requests must be in writing. A person may make a request for public information only by delivering the request by one of the following methods to the governmental body’s public information officer or the officer’s designee:

1. United States mail;
2. electronic mail;
3. hand delivery; or
4. any other method approved by the governmental body (*e.g.*, fax, electronic form, web portal).

It is best to designate one mailing address, email address, and physical address for the receipt of requests and publish that information on your website. The Attorney General's Office has

created a form that may be used, as long as the form is published on your website; however, you cannot *require* a requestor to use the form. The form may be found on the Attorney General's Office's website at <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/responding-pia-request/public-information-request-form>.

### **3. Are there any exceptions to disclosure of public records?**

**RESPONSE:** Yes, there are many. While the purpose of the Texas Public Information Act is to provide the public with “complete information about the affairs of government and the official acts of public officials and employees,” not all records have to or can be released in response to a PIR. Many records, or portions of records, are confidential by law and cannot be released, such as dates of birth, driver’s license numbers, personal email addresses, medical information, and personal financial information. Other exceptions are discretionary, such as attorney-client communications, some internal discussions, responses and evaluations of open contract solicitations, and ongoing criminal investigations.

All current and former employees can protect certain personal information – home address, home and personal cell phone number, social security number, information about family members, and emergency contact information – if they have elected to restrict access to this information. Please contact your campus Human Resources Office or Faculty Records Office to make or change this election.

Student education records are governed by FERPA and are usually withheld in response to a PIR unless the records can be sufficiently de-identified.

### **4. What are the deadlines for responding to a PIR?**

**RESPONSE:** Generally, we must respond to a PIR *promptly* - as soon as possible under the circumstances. If the records cannot be produced within ten (10) business days from receipt of the request, then we must let the requestor know when the records will be available. Requests submitted after 5pm or on a weekend, holiday, or energy conservation/skeleton crew day are considered received on the next business day. The first business day after the PIR is received is counted as the first day of the 10-business-day period for a response.

If records need to be withheld because of an exception to disclosure (*see FAQ #3*), in most cases the campus must submit a ruling request to the Open Records Division of the Attorney General's Office by the 10<sup>th</sup> business day. PIRs are processed by each component’s Public Information Coordinator (“PIC”), and ruling requests are facilitated by the PICs and submitted to the Attorney General's Office through the System’s General Counsel.

The Public Information Act permits a governmental body impacted by a catastrophe or disaster to suspend the applicability of the Act for up 14 calendar days. Use of the suspension process is

appropriate where a governmental is open for business but determines that a catastrophe has interfered with its ability to comply with the Act. More information, as well as the Catastrophe Notice form, may be found at <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/catastrophe-notice>.

During the coronavirus pandemic, the Attorney General's Office has clarified that if a governmental body has closed its physical offices for purposes of a public health or epidemic response or if a governmental body is unable to access its records on a calendar day, then such day is not a business day, even if staff continues to work remotely or staff is present but involved directly in the public health or epidemic response.

#### ***5. Can we charge for providing records in response to a PIR?***

**RESPONSE:** You are not required to produce copies of records for free, but there are fairly strict rules that determine the amounts you can charge. Additional information about the costs can be found on the Attorney General's Office's website at <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/charges-public-information>. Keep in mind that if estimated charges will exceed \$40.00, you must send the requestor a cost estimate and receive their acceptance of the charges before preparing the records; if the estimated charges will exceed \$100.00, you can require payment of a deposit up to 100% of the estimated costs before the records must be prepared. If the requestor does not respond to the cost estimate or does not pay the deposit within 10 days, then the request is considered withdrawn. A requestor can complain to the Attorney General's Office about the charges and if you do not have the proper justification, you may have to pay up to three times the amount overcharged.

#### ***6. What training is available on the PIR process?***

**RESPONSE:** OGC has personnel available with extensive experience in the PIR process that can provide a general overview or answer specific questions about the Public Information Act. In addition, the Attorney General's Office has training resources on its website at <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/pia-and-oma-training-resources>. They also conduct an Open Government Conference each year, usually in December. For 2020, the Conference is being held virtually and at no cost.