

OPEN RECORDS AND RECORDS MANAGEMENT

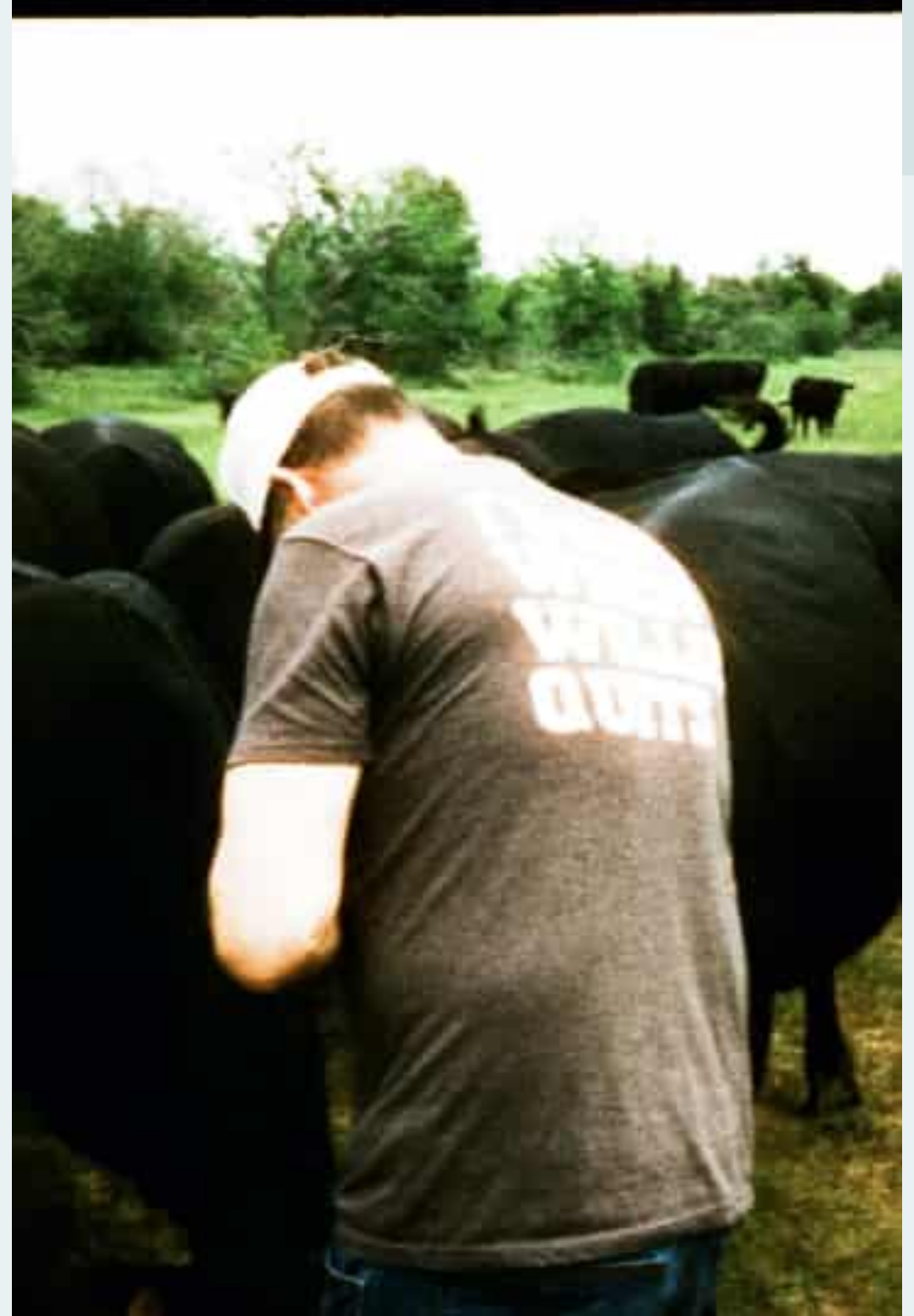
Agenda

- Introduction
- Texas Public Information Act
- Records Management Laws
- Final tips & takeaways

Questions? Give us a ring!



Texas Public
Information Act,
Chapter 552, Texas
Government Code



What is the background of the Public Information Act?

1970s Sharpstown
Scandal

Legislative open
government package,
including Open Meetings
Act, Lobbying Laws

Emphasis that
governmental records are
public property

Law applies to all public
officials

Training requirements

- All elected officials are required to take Public Information Act training approved by the Attorney General's office within 90 days of taking office.

Rights of the Public

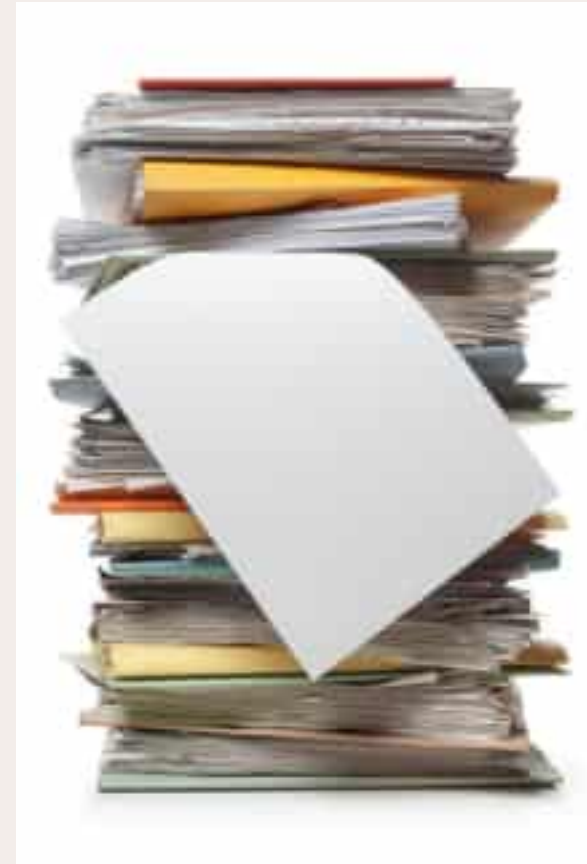
- The public has the right to make written requests for access or copies of public records

What is a record?

Determined by content, not form

Includes information created for county by a third party if the county owns or has access to the material

Judicial records are not subject to the Public Information Act, but available to public under Rule 12 of Texas Rules of Judicial Information



What is a Temporary Custodian?



Employees, former employees, officials, and former officials who retain public information on their personal devices are “temporary custodians” of the public information.

Required to forward or transfer the public information to the county to be preserved or preserve the public information in its original form in a backup or archive and on the privately owned device for the appropriate preservation period

Required to transfer the public information not later than the 10th day after the officer of public information requests it. Failure to timely transfer grounds for disciplinary action or other penalties provided by law.

Examples of information that might be subject to disclosure

Emails in a personal account

Text messages on a personal cell phone

Posts to social media accounts, even if restricted to friends or followers

Direct messages or private messages using a personal Facebook (or other social media account)



How does the PIA impact social media?



Posts are subject to disclosure if in connection with transaction of official business.

What are some best practices to comply with the PIA?

As soon as you or an employee receive a request for documents that might be public records:

- Date stamp the request
- Immediately locate the records
- Notify the county attorney if you think you may need to withhold some of the records.

Review the request to make sure you understand what is being requested

- Discuss records with people with knowledge of subject

What are some more best practices?

Produce records as quickly as possible without fuss

Request clarification if you don't understand request or it's very broad

Don't ask requestor why the record is being requested

Don't create a record to comply with the request

Don't comply with standing requests

May the county designate a single address for requests?

Yes. County may designate one mailing address and one email address for public information requests.

If the county does so and includes address on its PIA posters and the county website, not required to respond to a request unless received at one of the addresses

The Attorney General has created a request form and the PIA requires counties who use the form to post it on their website.

What is the “10 Day Rule?”

- Within 10 business days (defined under Section 552.0031, Gov’t Code) after receiving a request, you must:
- Produce the records or notify the requestor when the records will be available; or
- Request an AG ruling authorizing you to withhold the records.
- Records are presumed public and must be produced if within 10 business days you fail to either produce the record, notify the requestor when they will be available, or request an AG ruling authorizing you to withhold the records.



How are the ten days counted?

- Business days
- Weekends not counted
- State and national holidays not counted
- “optional holiday” if observed. Optional holidays are Rosh Hashanah, Yom Kippur, and Good Friday
- NEW: governmental body may designate up to 10 days a calendar year on which administrative offices are closed or minimally staffed as a nonbusiness day.



What is “super-public” information?



- Final audit and investigation reports
- Name and salary of public employees
- Billing information
- Investment information
- Settlement information
- Contracting information

What are some examples of exceptions to disclosure?

Once you have reviewed the material, you may find information you believe should be redacted or not disclosed. Most exceptions do require an AG ruling.

| Exceptions that do not require an AG ruling (ORD-684) | | | |
|---|--|--|--|
| Personal Tax Return | Military record information | | |
| Drivers License Number | Certified agenda and tape of executive session | | |
| Social Security Number | | | |
| Credit card number | | | |
| Personal email address | | | |

Is all information concerning public employees subject to the Act?

Within 14 days of employment, taking office, or appointment, a public employee or officer must elect not to allow public access to their personal information

| Exceptions for personal information | | | |
|---|--|--|--|
| Home address | | | |
| Home phone | | | |
| Social Security Number | | | |
| Emergency contact information | | | |
| Information that reveals information about family members | | | |

Requesting an AG ruling



Consult the county attorney and have them write to the AG

- Bring them in early on and identify the information you believe may be confidential

Meet the deadlines!

By the 15th business day, you must submit

- written comments stating which exceptions apply
- a copy of the request
- A copy of the specific information requested or a representative sample that is labeled to indicate portions where exceptions apply
- Send a copy of the comments to the requestor

What is the result of the ORD determination?

- No later than the 30th day after the AG makes a determination, the county must produce the information, or notify the requestor of withholding the information and filing suit against AG challenging determination.



What are the penalties for failure to comply with the PIA?

- Refusing to produce a public record or Unlawful disclosure of a public record
 - Misdemeanor-Fine up to \$1000
 - Jail up to 6 months
 - Both fine and Jail
 - Official Misconduct (automatic removal from office)

What if the requested record no longer exists?

If you don't have the requested record because it was disposed of under your schedule, you don't have to produce it.

If you still have a public record that you could have disposed of but failed to do so before receipt of the request, you must produce the document.



Records Management

What laws govern county maintenance of public records?

The Local Government Records Act (LGRA), Chapters 201-205 of the Local Government Code.

Requires management of local government records as necessary to effective and economic operation of local and state government

Requires preservation of records of permanent historical value

To establish uniform standards and procedures for maintenance, preservation, microfilming, or other disposition of local governmental records

Who is the records management officer?

- Each elected county official is the records management officer for records of the officer's office.
- The RMO shall develop policies and procedures for administration of an active and continuing management program
- Identify and take steps to preserve records of permanent value and essential records of the office

What are the commissioners court's duties under the Local Governmental Records Act?

- Section 203.003 requires the court to promote and support the efficient and economical management of records of all elected officers in the county to enable those offices to comply with the act.
- Facilitate identification and preservation of records that are of permanent value or essential records of elective offices
- Establish a county clerk records management fund for fees subject to Section 118.0216, LGC (fee paid at time of filing and recording documents in clerk's office) and approve expenditures in advance from the fund
- Establish a records management and preservation fund for fees from civil and criminal filings and approve expenditures only for records management preservation or automation purposes in the county.

What about non-elective county offices?

- The commissioners court is required to create and enforce policies for the non-elected county offices in the same manner elected officials do for their officers

Record Retention Schedule



TEXAS STATE LIBRARY
AND
ARCHIVES COMMISSION

Records Management



Forms



Laws and Rules



Training



Local Retention
Schedules



State Retention
Schedules



The Texas Record Blog



Records Center Storage



Imaging Services



Contact Us

How long must records be retained?

- The records management officer is charged with creating and enforcing retention schedule for records in the office's care. 203.041.
- The schedule or period must be not be less than the period prescribed by outside law or a period for the record established by TSLAC (Texas State Library and Archives Commission).

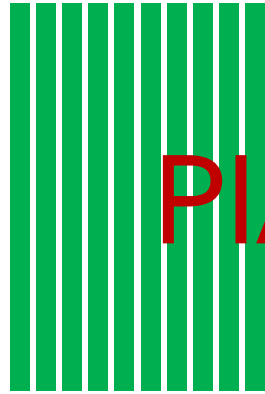
Examples of records not subject to schedule

- Material can be destroyed at the discretion of the custodian or creator if it is not a local government record and it is described by Local Government Code 201.003(8)(A), (B), or (C):
- Extra identical copies created for convenience, reference or research
- Notes, journals, diaries, and similar documents created for personal convenience
- Blank forms

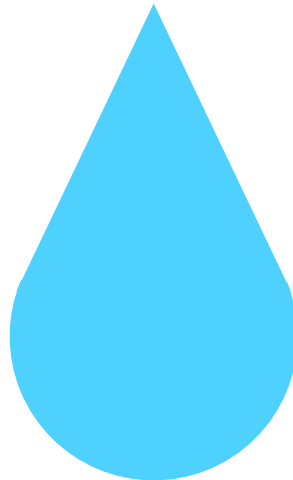
Destruction Process



PIA



PIA



PIA



Questions? Give us a ring!



Thank
you

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