



Community College Records Management and the Public Information Act¹

Certain records produced by a community college are subject to the Texas Local Government Records Act. These records must be retained by the college and may be subject to disclosure under the Public Information Act. This article answers frequently asked questions about what records must be retained and how a college must respond to a PIA request for those records.

Q: *What is the Texas Local Government Records Act?*

A: The Texas Local Government Records Act states that local government records are considered public property if they were created or received in the transaction of official business or were paid for by public funds. The records are subject to Texas Government Code Chapter 441 regarding the preservation and management of local government records. Tex. Loc. Gov't Code § 201.005.

Communications that are local government records must be preserved in accordance with the college's records retention schedule. The Texas State Library and Archives Commission has promulgated a series of [records retention schedules](#).

Local government records are also subject to the disclosure requirements of the Texas Public Information Act (PIA) discussed below. Tex. Loc. Gov't Code § 201.009.

Q: *What is a local government record?*

A: *Local government record* means, "any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business." Tex. Loc. Gov't Code § 201.003(8).

The term does not include, extra identical copies of documents, notes journals, or diaries, blank forms, stocks of publications, library and museum materials solely for display, copies of documents given to the public under the PIA, or any records other than a final written agreement associated with an alternative dispute resolution procedure. Tex. Loc. Gov't Code § 201.003(8).

¹ An electronic version of this document is available on TASB College eLaw at tasb.org/Services/Community-College-Services/Resources/TASB-College-eLaw/documents/records-management-and-the-public-information-act.pdf.

Q: *What is the Public Information Act?*

A: In general, unless made confidential or a specific legal exception applies, all information written, produced, collected, assembled, or maintained by a governmental body, including a community college, in connection with official business, is open to the public. Public information includes information for a community college when the college owns the information, has a right of access to the information, or spends public money producing the information, and information produced or maintained by an officer or employee of the college in their official capacity, if the information pertains to official college business. This information must be made available by a college's PIA officer for public inspection and copying upon request. Tex. Gov't Code §§ 552.002(a), .203.

Q: *Who is responsible for a community college's compliance with the PIA?*

A: The college president or chancellor is a community college's officer for public information (PIA officer). Each department head in the college is an agent of the PIA officer. With respect to the public information, the PIA officer must:

- 1) Make it available for public inspection and copying
- 2) Protect it from deterioration, alteration, mutilation, loss, or unlawful removal
- 3) Repair, renovate, or rebind to maintain it properly; and
- 4) Display a sign published by the attorney general

Tex. Gov't Code §§ 552.201(a), .202, .203, .205.

Q: *In what manner must a PIA request be received?*

A: Through local policy, most community colleges require requests to be in writing. A college must respond to all written requests for information, including those received by email or fax. If a person orally requests copies of or access to records, a college may require that the requestor submit a written request. A college should be consistent in its treatment of all requestors. Note, a community college can voluntarily release public information without a formal written request. Tex. Gov't Code §§ 552.007, .223.

Q: *What if the requested information does not exist?*

A: The PIA only covers public information in existence on the date a community college receives the request. A college has no duty under the PIA to:

- 1) Prepare new information that does not already exist
- 2) Notify the requestor if the requested information later comes into existence

- 3) Comply with a continuing request for periodic disclosure as the rested information comes into existence; or
- 4) Answer questions or do legal research.

A&T Consultants, Inc. v. Sharp, 904 S.W.2d 668 (Tex. 1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678 (Tex. App.—Eastland 2000, pet. denied); 1); Tex. Att’y Gen. Op. No. JM-48 (1983); Tex. Att’y Gen. ORD-452 (1986), ORD-476 (1987), ORD-465 (1987), ORD-563 (1990), ORD-555 (1990).

Q: *What if a PIA request is vague or ambiguous?*

A: A community college must make a good faith effort to relate a request to information it holds. Tex. Att’y Gen. ORD-561 (1990). If a request is vague or ambiguous a college may request clarification, via certified mail to the requestor, and ask for: (1) proof of the requestor’s identity, if relevant to their right of access; and (2) ways to narrow the scope of the request, if it asks for voluminous information. Tex. Gov’t Code § 552.22(a)-(b). Note, a community college cannot ask how the requestor intends to use the information. Tex. Gov’t Code § 522.222(b).

Q: *How much time does a community college have to respond to a PIA request?*

A: The PIA requires a community college to “promptly produce” the requested public information. *Promptly* means “as soon as possible under the circumstances, that is, within a reasonable time, without delay.” Tex. Gov’t Code § 552.221(a). When possible, a college should release the requested information prior to the expiration of 10 business days, beginning the first business day after the request is received and not including days that the college closed. Tex. Att’y Gen. ORD-664 (2000).

If a community college cannot produce the public information within 10 business days or because the information is in storage or active use, the college must certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication. Tex. Gov’t Code § 552.221(c)-(d).

Q: *How may a community college produce the requested documents?*

A: A community college may provide the information for inspection or copying in the college offices. The PIA does not authorize the removal of original documents from the college offices. A college may, in the alternative, send copies of the public information by first class mail if the requestor asks for copies and pays for postage. Tex. Gov’t Code §§ 552.221(b)(1), (b)(2), .226.

A community college must provide a copy of the information in the requested medium if the college has the technological ability to do so, but the college is not required to purchase any software or hardware to accommodate the request. Tex. Gov't Code § 552.228(b).

If a community college has already made certain information available to a requestor in response to a subsequent request for the same information, a college may make the information available again or respond with details about when the information was previously provided. Tex. Gov't Code § 552.232.

Q: *When may a community college withhold records from disclosure?*

A: A community college must show that the information it seeks to withhold is made confidential or excepted from disclosure. The PIA officer must request a decision or ruling from the attorney general in certain circumstances. If a college does not request a decision from the attorney general the information is presumed to be public unless the attorney general has made a previous determination that the information is excepted from disclosure or is made confidential by law. Tex. Gov't Code § 552.301.

Q: *What are the procedures for requesting an attorney general decision?*

A: A community college may seek an attorney general decision only when it has a good faith belief that the requested information is not subject to disclosure. Tex. Att'y Gen. ORD-65 (2000).

Within a reasonable time, but not later than 10 business days after receiving a PIA request, a community college must submit to the attorney general a request for a decision as to whether information requested is within an applicable exception, state that exception, and provide a written statement to the requestor that the community college wishes to withhold information and has sought an attorney general decision. Tex. Gov't Code § 552.301(d).

Not later than 15 business days after receiving the request, a community college must also submit to the attorney general written comments stating why the exceptions apply, a copy of the request for public information, a signed statement of the date the request was received by the college, and a copy or representative sample of the information requested. The college must send a copy of the written comments to the requester no later than 15 business days after receiving the request. Tex. Gov't Code § 552.301(e)-(e-1).

The attorney general must render a decision no later than 45 business days after receiving the request. Tex. Gov't Code § 552.306.

Q: *How may a community college challenge a ruling that the attorney general issued in response to a request for a decision?*

A: Requests to reconsider open records rulings issued by the attorney general are prohibited by law. Tex. Gov't Code § 552.301(f). However, if a community college believes that a factual mistake has been made in a ruling it has received, then the college may contact the attorney general's Open Government Hotline at 877-OPEN TEX or 512-478-6736 to discuss the situation.

A community college may seek declaratory relief from compliance with an attorney general's ruling by filing suit against the attorney general in Travis County, as set out in Texas Government Code sections 552.324 and 552.325, no later than the 30th calendar day after the ruling was received.

Q: *What exceptions may a community college rely on to withhold requested information?*

A: A community college may rely on the following exceptions to withhold information:

- 1) Information confidential under the constitution, by statute, or by judicial decision. Tex. Govt. Code § 552.101.
- 2) Personnel information included in a personnel file if disclosure would constitute a clearly unwarranted invasion of personal privacy. Tex. Govt. Code § 552.102.
- 3) Information related to litigation or settlement negotiations. Tex. Govt. Code § 552.103.
- 4) Attorney-client communication with the college's attorney Tex. Govt. Code § 552.107.
- 5) Law enforcement records. Tex. Govt. Code § 552.108.
- 6) Agency memoranda. Tex. Govt. Code § 552.111.
- 7) Certain employees' and former employees' addresses, telephone numbers, emergency contact information, social security numbers, and family information. Tex. Govt. Code § 552.117.
- 8) Names of applicants for college president or chancellor, except finalists. Tex. Govt. Code § 552.123.
- 9) Social security number of a living person. Tex. Govt. Code § 552.147(a)-(b); and
- 10) Cybersecurity information. 6 U.S.C. § 1504(d)(3).

See TASB Policy GCA(LEGAL) for a complete list of exceptions.

Q: *What information is considered confidential and excepted from disclosure?*

A: As mentioned above, information considered confidential does not constitute public information for purposes of the PIA. Therefore, it is not required to be disclosed. However, disclosure may be required under certain circumstances such as by court order or law enforcement action. A community college is not required to disclose the following forms of confidential information:

- 1) Certain law enforcement body-worn camera footage. Tex. Occ. Code § 1701.661(c)-(d), (f), (h).
- 2) Certified agenda or recording of a closed board meeting. Tex. Gov't Code § 551.104(c).
- 3) Personal information of college employees. Tex. Gov't Code § 552.024.
- 4) Student Records. Tex. Gov't Code § 552.114.
- 5) Identifying information of victims of certain crimes. Tex. Gov't Code § 552.132(d)-(e).
- 6) Certain products, devices, and processes. Tex. Educ. Code § 51.914(a).
- 7) Identifying information contained in compliance investigations. Tex. Educ. Code § 51.971(c).
- 8) Computer network security information. Tex. Gov't Code § 552.139.
- 9) Security system specifications, operations, and locations. Tex. Gov't Code § 418.182(a); and
- 10) Election judge or clerk e-mail address or personal phone number. Tex. Elec. Code § 32.076(a).

See TASB Policy GCA(LEGAL) for a complete list of exceptions.

Q: *May a requestor access student records?*

A: It depends. Student record information is confidential and excepted from the requirements of the PIA unless disclosure is authorized by the Family Educational Rights and Privacy Act of 1974 (FERPA). Community colleges generally may not disclose student records without a student's consent. However, FERPA allows for a number of exceptions to the consent requirement some of which include exceptions for, college officials with legitimate educational interests, officials of other colleges to which a student seeks to enroll, and in connection with a student's financial aid. Tex. Gov't Code §§ 552.114(b), .026, 20 U.S.C. § 1232g(b).

Q: *When are a community college's internal communications subject to disclosure?*

A: The agency memorandum exception protects internal community college communications from disclosure if the documents would not be available by law to a party in litigation with the college. This exception includes both intra-agency and interagency communications in two limited circumstances. Tex. Gov't Code § 552.111.

First, the agency memoranda exception is limited to records that discuss the formulation of college policy. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000). This does not apply to factual information that serves as part of the deliberative process. *Arlington Indep. Sch. Dist. v. Tex. Att'y Gen.*, 37 S.W.3d 152 (Tex. App.-Austin 2001, no pet.). Secondly, a community college may also withhold information under this exception as attorney work product if the college can demonstrate that there was an actual or substantial risk of litigation, and the information was created for trial or in anticipation of litigation and consists of an attorney's mental processes, conclusions, or legal theories. Tex. Att'y Gen. ORD-677 (2002); Tex. R. Civ. P. § 192.5(a).

Q: *Can a community college charge requestors for providing copies of public information?*

A: Sometimes. The PIA allows community colleges to set charges for providing copies of public information. A college can either follow the schedule of charges set by the attorney general or set its own schedule of charges. If a college sets its own charges, it may not charge more than 25% above the attorney general's charges unless it has received an exception from the attorney general. Charges may not exceed the actual cost to the college. Tex. Gov't Code §§ 552.261-.262.

However, if a requestor does not request a copy of the public information, the community college may not impose a charge for making available for inspection any public information that exists in a paper record. Tex. Gov't Code § 552.271(a).

For more information regarding charges, visit [Texas Attorney General Charges for Public Information Website](#), or contact the attorney general's cost rules administrator at 888-OR-COSTS or 888-672-6787. Also see TASB Policy GCB (EXHIBIT).

Q: *What are a community college's options when it receives large or frequent requests?*

A: A community college may establish a reasonable time limit on the amount of time that employees are required to spend producing public information for inspection or duplication by a requestor or providing copies to a requestor, without recovering the costs attributable to that personnel time. Tex. Gov't Code § 552.275.

If the cumulative amount of personnel time spent complying with PIA requests from a frequent requester equals or exceeds the time limits set by a college, the college is required to provide the requestor with an estimate of the total costs necessary to comply with the request within 10 days of receiving the request. Tex. Gov't Code § 552.275(e).

Under Texas Government Code section 552.275 does not apply to requestors who for substantial financial gain, gather, compile, prepare, collect, photograph, record, write, edit, report, investigate, process or publish news or information and seek information to disseminate it by a news medium or communication service provider. Tex. Gov't Code § 552.275(j).

Q: *When is a PIA request considered withdrawn?*

A: A request may be considered withdrawn in several circumstances. For example, if the requestor fails to inspect or duplicate the public information within 60 days of the information being made available, or fails to pay the postage and other fees within 60 days of receiving notice of the charges, the request is considered withdrawn. Additionally, if a college does not receive a written response to a written request for clarification by the 61st day after delivery, the request is considered withdrawn. If a requestor does not complete inspection of the public information within ten business days and does not file a request for additional time, the request is considered withdrawn. A request is also considered to be withdrawn if the requestor does not respond in writing to an itemized statement of charges within ten business days indicating, an acceptance of charges, a modification of the request, or a complaint to the attorney general regarding the charges. Tex. Gov't Code §§ 552.221(e), .222(d)-(e), .225, .2615.

Q: *Can a community college be sued if it does not comply with the PIA?*

A: Yes. A requestor or the attorney general can file suit to compel a community college to produce requested information. Tex. Gov't Code § 552.321. Additionally, a local district or county attorney may file suit against a college seeking declaratory or injunctive relief. Tex. Gov't Code § 552.3215. Failure to comply with the PIA may also result in criminal liability. For example, a person commits an offense if they willfully destroy, mutilate, alter, or remove public information, if they distribute confidential information, or if they fail or refuse to give access to information to a requestor. Tex. Gov't Code §§ 552.351-.353.

Q: Where can I get more information regarding the PIA?

A: For more information regarding the PIA, refer to the [Texas Attorney General's Public Information Handbook](#), available on the attorney general's website, or contact the attorney general's Open Government Hotline at 877-OPEN TEX or 512-478-6736, or contact TASB Community College Services at 800-580-1488.

If you have questions about these or other legal issues, community college representatives may contact Community College Services at 800.580.1488 or colleges@tasb.org.

Q: What TASB Policies apply to the PIA?

A: See TASB Policies FJ(LEGAL) and (LOCAL), DBA (LEGAL) and (LOCAL), GCA (LEGAL), GCB(LEGAL) and (LOCAL) and (EXHIBIT), and GCC(LEGAL).

See TASB Policies BBI(LEGAL) and (LOCAL) and CIA(LEGAL) and (LOCAL) for information regarding the Local Government Records Act.

For more information on community college law topics,
visit TASB Community College eLaw online at colleges.tasb.org/elaw.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is neither an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. It is important for the recipient to consult with the college's own attorney in order to apply these legal principles to specific fact situations.