Community College Records Management and the Public Information Act

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.

1. **What is the Texas Local Government Records Act?**

   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.

2. **What is a local government record?**

   *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).

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3. **What is the Public Information Act?**

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.

4. **Who is responsible for a community college's compliance with the PIA?**

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;
4) Make reasonable efforts to obtain public information from a temporary custodian if:
   a. The information has been requested from the college;
   b. The officer for public information is aware of facts sufficient to warrant a reasonable belief that the temporary custodian has possession, custody, or control of the information;
   c. The officer for public information in unable to comply with the duties imposed by this chapter without obtaining the information from the temporary custodian;
   d. The temporary custodian has not provided the information to the officer for public information or the officer's agent; and
5) Display a sign published by the attorney general.

Tex. Gov't Code §§ 552.201(a), .202, .203, .205.
5. **In what manner must a PIA request be received?**

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. A college may designate one mailing address and one email address to receive written PIA requests. Both addresses must be provided to any person upon request. If a college posts both addresses on its website or on required PIA signs, it is not required to respond to PIA requests unless they are received through one of the designated addresses, hand delivery, or another method approved by the college. 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, .234.

6. **What if the requested information does not exist?**

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 requested information comes into existence; or
4) Answer questions or do legal research.


7. **What if a PIA request is vague or ambiguous?**

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).
8. **How much time does a community college have to respond to a PIA request?**

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).

9. **How are business days calculated for purposes of responding to PIA requests?**

*a Business day* means a day other than Saturday, Sunday, or a national or state holiday. Under Texas law, the following are holidays:

1) National holidays, which include New Year's Day, Martin Luther King, Jr. Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day; and

2) State holidays, which include Confederate Heroes Day, Texas Independence Day, San Jacinto Day, Emancipation Day, Lyndon Baines Johnson Day, the Friday after Thanksgiving Day, the 24th day of December, and the 26th day of December.

Tex. Gov’t Code § 552.0031(a); 662.003(a)-(b).

The term also excludes Rosh Hashanah, Yom Kippur, and Good Friday if the public information officer observes that holiday. The term also excludes the Friday before or Monday after a national or state holiday if the holiday occurs on a Saturday or Sunday and the college observes the holiday on that Friday or Monday. Tex. Gov’t Code § 552.0031(c), (e).

A college may also designate a day on which the college's administrative offices are closed or operating with a skeleton crew as a nonbusiness day. The designation of a nonbusiness day must be made by the college's chief administrative officer. A college may designate not more than 10 nonbusiness days each calendar year. Tex. Gov’t Code § 552.0031(f).
10. How may a community college produce the requested documents?

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.

11. When may a community college withhold records from disclosure?

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.

12. What are the procedures for requesting an attorney general decision?

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-665 (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).
A community college that requests an attorney general opinion on information it wishes to withhold is required to submit the request through the attorney general's electronic filing system. This requirement does not apply if the community college has fewer than 16 full-time employees or is located in a county with a population less than 150,000, if the amount or format of responsive information makes use of the electronic filing system impractical or impossible, or if the request is hand delivered to the attorney general's office. Tex. Gov't Code § 552.3031.

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 requestor 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(a).

13. What steps should a community college take after receiving an attorney general decision?

After the attorney general issues an opinion, the community college should, as soon as practicable but within a reasonable amount of time, provide the requestor an itemized estimate of charges for producing the information. If the requested information is voluminous but can be disclosed in a single batch, the college should notify the requestor that the information is impractical or impossible to disclose within a reasonable amount of time and should provide written certified notice of the date and hour the information will be disclosed, which may not be later than the 15th business day after the notice is provided. The information must be disclosed by the time provided.

If the requested information is voluminous and cannot be disclosed in a single batch, the college must follow a similar procedure as voluminous single-batch disclosures by providing notice of the situation, including that the information requested cannot be disclosed in a single batch, and by providing written certified notice when each subsequence batch of information will be disclosed. The college must also provide notice in writing to the requestor if the college is withholding information as authorized by an attorney general opinion or that the college has filed suit against the attorney general regarding the information. Tex. Gov't Code § 552.306(c).
So long as the college has taken action under Government Code 552.306(c) not later than the 30th day after the attorney general opinion has been released, it is presumed the college has complied with the requirements of Government Code 552.306(c). Tex. Gov’t Code § 552.306(d).

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

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.

15. **What exceptions may a community college rely on to withhold requested information?**

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.


7) Certain employees’ and former employees’ addresses, telephone numbers, emergency contact information, social security numbers, and family information. Tex. Govt. Code § 552.117.


9) Names of applicants for college president or chancellor, except finalists. Tex. Govt. Code § 552.123.
10) Social security number of a living person. Tex. Govt. Code § 552.147(a)-(b); and

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

16. **What information is considered confidential and excepted from disclosure?**

   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.
   5) Identifying information of victims of certain crimes. Tex. Gov't Code § 552.132(d)-(e).
   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.

17. **May a requestor access student records?**

   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).

18. **When are a community college’s internal communications subject to disclosure?**

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 trial or 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).

19. **Can a community college charge requestors for providing copies of public information?**

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](http://www.texasattorneygeneral.gov) website, or contact the attorney general’s cost rules administrator at 888.672.6787. Also see TASB Policy GCB (EXHIBIT).
20. **What are a community college's options when it receives large or frequent requests?**

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 requestor 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).

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).

A community college may also ask a person requesting information under the PIA to provide photo identification to establish that the requestor has not concealed their identity or exceeded the limit established by the college for requestors that make large and frequent information requests. Tex. Gov't Code § 552.275(g).

21. **May a community college suspend PIA requirements?**

Yes, PIA requirements can be suspended if the college is significantly impacted by a catastrophe that directly causes the inability of the college to comply with the requirements of the PIA. **Catastrophe** means a condition or occurrence that directly interferes with the ability of a college to comply with requirements of the PIA, including natural disasters; power and transportation failure; interruption of communication facilities; epidemic; riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence. Catastrophe does not mean a period when staff is required to work remotely and can access information responsive to an application for information electronically. Tex. Gov't Code § 552.2325(a)(1)-(2), (b).

If suspending responding to information requests, the college must submit notice to the office of the attorney general and the public that the college is impacted by a catastrophe. The initial suspension period may not exceed seven consecutive days and cannot occur earlier than the second day before the college gives notice to the attorney general’s office and ends not later than the seventh day after the
date the college provides that notice. A college may extend an initial response period once by giving notice to the attorney general if it is still impacted by the catastrophe for up to seven more consecutive days, not exceeding fourteen consecutive days total for a single catastrophe. Tex. Gov't Code § 552.2325(c)-(h).

22. **When is a PIA request considered withdrawn?**

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 10 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 10 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(b).

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

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.

24. **What TASB Policies apply to the PIA?**

See TASB Policies CF(LEGAL), FJ(LEGAL) and (LOCAL), DBA (LEGAL) and (LOCAL), DIAA(LEGAL), 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.
25. Where can I get more information regarding the PIA?

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.

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