



# *Texas Public Information Act: The Basics*

Presented by:

Kevin McCormack

Chief Legal Officer, HCAD



# 10,000 Foot View

- Located in Chapter 552 of the Texas Government Code.
- The Public Information Act (“PIA”) is a law that gives individuals access to inspect or copy government records.
- The law also details the specific instances when a governmental body can withhold government records from the public
- The Public Information Act applies to every “governmental body” as defined in the Government Code.



# Generally...

- The Act requires a governmental body to respond and release the information requested by an individual.
- Information kept by a governmental body is presumed to be public.
- Public may have access to it or copies upon written request.
- Information is not public if a law provides that it is confidential.
- The GB must ask the AG before withholding or releasing information it believes to be confidential or otherwise excepted from disclosure.



# What is Public Information?

- Section 552.002(a)
- Information that is:
  - Written, produced, collected, assembled, or maintained
    - By a governmental body (“GB”);
    - For a governmental body and the governmental body owns the information, has a right of access to it, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
    - by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.



# Is your “Governmental Body” included?

- Section 552.003 – Government Code
- GB’s include:
  - State agencies
  - Police departments & sheriff’s offices
  - Cities and counties
  - Public school districts and school boards
  - Public universities
  - County commissioners courts
  - ...and **many** more!



# Who are the Major Players?

- **Requestor** – the person requesting the information
- **Governmental body** – the party receiving the request
- **Attorney General (Open Records Division)**
  - Receives request for ruling on whether information is confidential and excepted from disclosure.
  - Prepares & sends ruling to parties.



# What is a Public Information Request?

- A typed or handwritten request that asks for information.
- Information must be in existence as of the date the request was received.
- No “magic words” required.
- No requirement to label it as an open records/public information request.



# Know Your Limits

- The requestor is asking me questions – do I have to answer them?
- I got a request, but I don't have the information as it's requested. Should I create a new document?
- The requestor wants to me research something for them – do I have to?
- Can I ask the requestor why they want this information?





# What Types of “Records” are Public Information?

- Section 552.002(a-2) – Government Code
- Can include:
  - Paper, film, tape
  - Photographs
  - Maps
  - Drawings
  - Emails, internet postings, text messages, instant messages, etc.



# How do you make a Public Information Request?

- Section 552.234
- Request must be submitted by:
  - U.S. Mail
  - E-mail
  - Hand Delivery
  - Other methods approved by the governmental body (i.e.: fax, through a website, etc.)



# I Got a Request...Now What?

- Section 552.221, 552.301
- Make sure request is in the proper format.
- Promptly produce information for inspection, duplication, or both; OR
- Ask for a decision from the Attorney General about whether the information is excepted from disclosure .



# Responding to Requests – Producing Non-Confidential Documents

- Promptly...as soon as possible under the circumstances; within a reasonable time; without delay.
- Cost: a governmental body may recover costs incurred for reproducing copies of public information, as well as labor, overhead and materials. Section 552.261; 552.271; 552.272; 552.2615
- If you cannot produce information within 10 business days from receipt of request, you must:
  - Notify requestor in writing
  - Set a date/hour within a reasonable time when information will be available.



# The Requestor Wants Confidential Information...

- Confidential Information
  - Can include: DOB, drivers license numbers, license plate numbers, etc.
- If you wish to withhold information from the requestor, you must:
  - Identify the information being requested.
  - Determine whether a confidentiality law or exception to disclosure applies.
  - Request an opinion from the AG.
  - Must be done within 10 business days after receipt of the request.
- Two Types of Confidential Information:
  - Mandatory
  - Discretionary



# How to Request a Decision from the AG

- 552.301; 552.305
  - Not later than the 10<sup>th</sup> business day
    - Ask AG for ruling
    - Notify requestor in writing of your request for a decision & include copy of your request for a ruling
    - Notify any third parties
  - Not later than the 15<sup>th</sup> business day
    - Submit a written, signed statement to the AG stating why exceptions apply
    - Submit a copy of the specific information requested, or a representative sample
    - Label the information or representative sample with what code section applies
    - Send a copy of the written comments to requestor!



# The AG's Ruling

- The AG will issue a ruling in response to the GB's request within 45 business days.
- The AG will issue the ruling to the GB and send a copy to the requestor.
- Ruling will determine whether records may be withheld, must be withheld, or must be released.



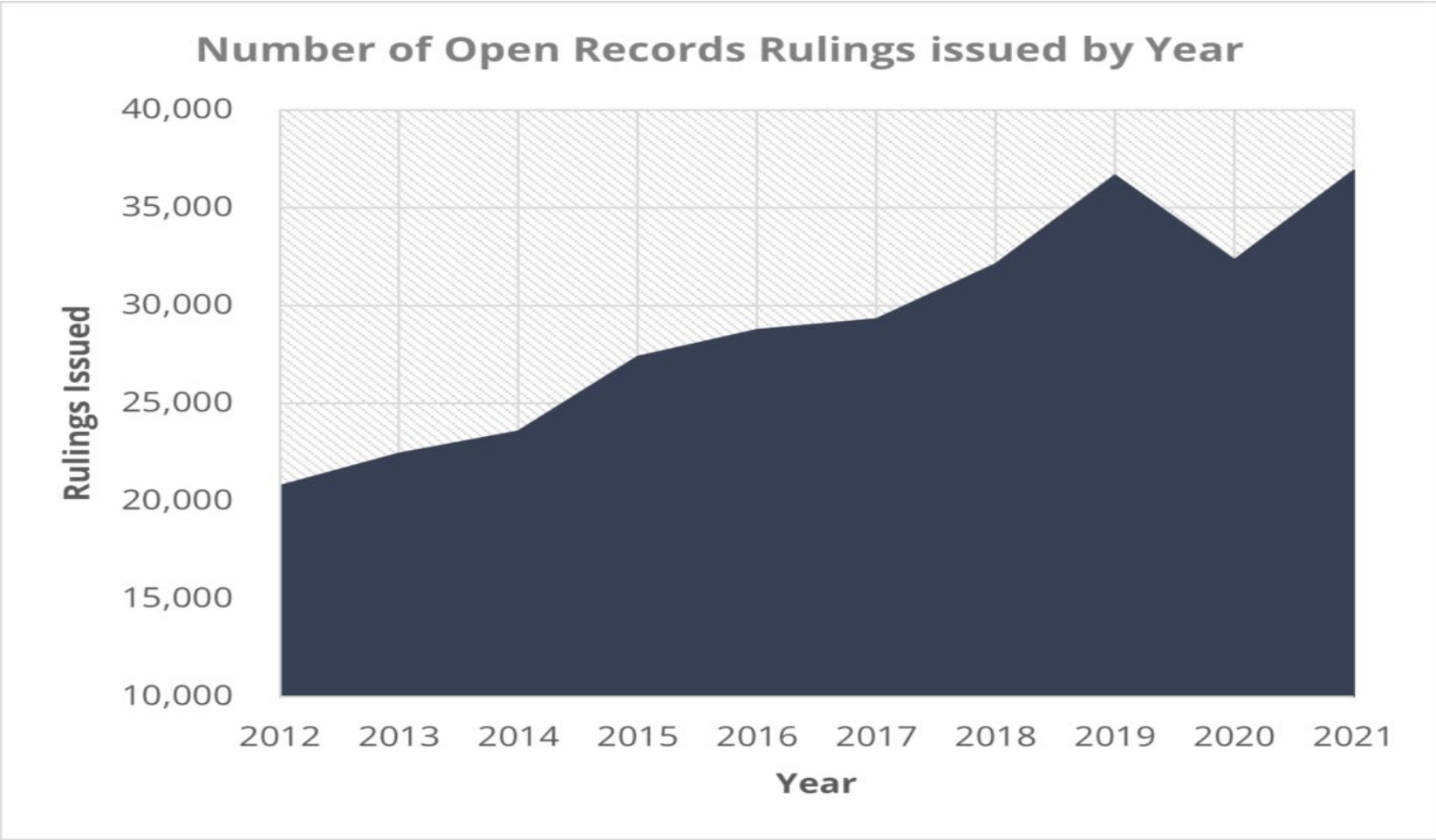
# Challenging the AG's Ruling

- Section 552.301(f)
- Either side (requestor or the GB) can challenge the AG's ruling.
- If a GB disagrees with the ruling, it may file a suit against the AG.
  - STRICT DEADLINE: not later than the 30<sup>th</sup> calendar day after the receipt of the AG decision.





# Rulings By the AG...It Keeps Going Up





# Consequences for Missing Deadlines

- Mandatory exceptions are not waived.
- Permissive exceptions are waived.
- Potential criminal penalties.
- Civil penalties possible by the local DA or county attorney, AG or the requestor.



# Penalties and Other Consequences for Failure to Comply with the Act

- Section 552.3215, 552.321, 552.351 - 552.353, etc.
- Writ of mandamus
- Misdemeanor with a fine
- Official misconduct
- County jail time



# Best Practices

- Respond promptly
- Read the request carefully!
- Do not withhold information
- Do not assume your department has nothing responsive
- Do not guess about what the requestor wants
- Educate your staff
- Be reasonable 😊



- The PIA handbook is available on the Attorney General's website: [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov)
- The PIA Hotline is available to answer questions:  
(512) 478-6736 or Toll Free: (877) 673-6839