

## TEXAS CIVIL COMMITMENT OFFICE



**NUMBER:** 1.4  
**EFFECTIVE DATE:** 1/5/2016  
**SUPERCEDES:** None

### POLICY AND PROCEDURE

#### **SUBJECT: PUBLIC INFORMATION ACT REQUESTS**

**POLICY:** The Texas Civil Commitment Office (TCCO) is committed to providing full access to public information in compliance with the Texas Public Information Act (the Act). *See* Tex. Gov't Code Ch. 552.

#### **DEFINITIONS:**

**“Governmental Body”** has the meaning assigned by Section 552.003(1) of the Act and includes TCCO.

**“Public Information,”** has the meaning assigned by Section 552.002 of the Act and includes information written, produced, collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business by or for TCCO or by a TCCO officer or employee in his or her official capacity pertaining to official TCCO business. This includes e-mails or text messages sent or received by a TCCO officer or employee in his or her official capacity from a personal e-mail account or phone.

**“Public Information Coordinator”** means a TCCO employee designated by the TCCO Executive Director to be primarily responsible for administering TCCO’s responsibilities under the Act.

**“Requestor”** means a person who submits a request for inspection or copies of public information.

**“Ten-Business Days,”** for the purpose of this policy and computation of the ten-business day time period, the period begins the first business day after the date of receipt of the written request. Weekends and days on which TCCO offices are closed are not included in the calculation of days. However, skeleton crew days are included in the calculation of days.

**“Written Request”** means a hard-copy request for public information submitted to TCCO by e-mail, fax, delivered in person, or submitted by mail to view records and/or to obtain copies of records. A written communication that reasonably can be judged to be a request for public information is a request for information under the Act.

## **PROCEDURE:**

### **I. Public Information Act Training**

The Act requires that members of the TCCO Board are required to complete Public Information Act training within 90 days of their appointment. Any TCCO employee designated by the Executive Director to act as TCCO's public information coordinator is also required to complete the training course. The Office of the Attorney General (OAG) has a free training program available on the OAG website at <http://www.texasattorneygeneral.gov/og/open-government>.

### **II. General Information**

- A.** If TCCO receives a verbal request for information, the requestor shall be asked to submit the request in writing. This is because TCCO's duties under Section 552.301 of the Act only arise after a written request is received.
- B.** TCCO is not required to do the following in response to a written request for public information under the Act:
  - 1.** Prepare new information;
  - 2.** Comply with a continuing request to supply information on a periodic basis as such information is prepared in the future;
  - 3.** Prepare answers to questions; or
  - 4.** Do legal research.
- C.** A subpoena or discovery request issued in compliance with a statute or rule of civil or criminal procedure is not considered a request for information under the Act.

### **III. Legislative Requests**

Written requests for information from an individual member, agency, or committee of the Legislature to use for legislative purposes shall be handled in accordance with Section 552.008 of the Act. Such requests shall also be immediately brought to the attention of the Executive Director.

### **IV. Request Review Process**

- A.** From the date the request is received, a clock is running for TCCO to review the request and determine whether an OAG opinion is necessary. If TCCO wishes to withhold any of the information within the request, it must submit the request to the OAG within ten-business days.
  - 1.** Accordingly, it is imperative that TCCO have record of the date the request was received.
  - 2.** Upon receipt of a request for information delivered in person or through the mail, the receiving staff member shall date stamp the request.

3. The date stamp shall clearly appear on the face of the request as well as on any envelope in which the request was delivered. If the initial stamp is illegible or incorrect, it shall be re-done with the initials of the stamping party legibly written next to the second stamp.
- B.** The General Counsel or Public Information Coordinator (if applicable) shall maintain a PIA Request Tracking Spreadsheet which assigns an internal tracking number to log all requests under the Act and states the following information:
1. The date the request was received;
  2. The name of the requestor;
  3. A brief description of the requested information;
  4. The ten-day deadline to request an OAG opinion;
  5. The date an opinion was requested;
  6. The date information was released to the requestor; and
  7. Other pertinent information.
- C.** The General Counsel or Public Information Coordinator (if applicable) shall log the request on the PIA Request Tracking Spreadsheet and conduct an initial review to determine the following information:
1. Whether the present request is an exact duplicate of a previous request from the same requestor.
    - a) If the request is a duplicate request from the same requestor, the General Counsel or Public Information Coordinator shall follow the guidelines set forth in the Act and the *Texas Public Information Act Handbook*, published by the OAG, for handling such requests.
    - b) If the request is a request for duplicate information from a different requestor, the General Counsel or Public Information Coordinator shall respond to the request in the same manner as the previous including the filing of any necessary briefs with the OAG.
  2. Whether the request is clear or whether clarification is required in order to complete the request.
    - a) TCCO may request clarification from a requestor in order to assist in relating the request to information held by TCCO. All clarification requests shall be made in writing and shall comply with the requirements of the Act.
    - b) TCCO shall not ask the requestor why he or she is requesting the information or what he or she plans to do with the information.
  3. Whether the request is for information written, produced, collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business by or for TCCO or by a TCCO officer or employee in his or her official capacity pertaining to official TCCO business.
  4. Whether a cost estimate or deposit is warranted as permitted or required by the provisions of the Act.
    - a) In cases in which a cost estimate or deposit is necessary, the estimate shall be provided to the requestor in writing and shall comply with the requirements of the Act.

- b) TCCO should not complete work on the request until receiving response from the requestor regarding the estimate.

#### **D. Locate Information**

1. TCCO staff shall make a diligent effort to locate the information requested and shall make a good faith effort to relate the request to information that it holds. In locating information, the search shall include a review of information in the possession of both the TCCO central office as well as any field office(s).
2. TCCO shall also determine whether the requested information is information held by a contractor in connection with the transaction of official business by or for TCCO and to which TCCO has a right of access.

#### **E. Legal Review**

1. Once the materials have been gathered, the General Counsel and Public Information Coordinator (if applicable) shall review the materials together to discuss whether there are exceptions to disclosure that apply to the requested information. The review shall additionally include consideration of whether the provided materials are responsive to the request.
2. Several categories of information are considered to be prohibited from disclosure or made confidential as a matter of law such as medical records or bank account numbers. Such exceptions to disclosure are mandatory exceptions.
  - a) The General Counsel shall make note of the mandatory exceptions to disclosure that apply to the responsive information.
  - b) TCCO shall request an OAG opinion to withhold information subject to a mandatory exception.
3. There are also categories of information of which the law does not prohibit disclosure but that could fall within an exception to disclosure such as attorney-client communications. These are considered discretionary exceptions to disclosure.
  - a) TCCO could choose to waive discretionary exceptions by releasing the information. However, such a waiver must not be made without a careful consideration of the potential consequences of such a waiver and whether such waiver is within the best interests of the agency.
  - b) TCCO shall not release information subject to a discretionary exception to disclosure without the written authorization of the Executive Director or General Counsel.
4. In instances in which information has been requested that may impact the proprietary interests of a third party, TCCO shall notify the OAG, the requestor, and the third party in accordance with the Act's requirements.

#### **V. Request for Attorney General Opinion**

- A. With the exception of Legislative Requests, if TCCO chooses to release information to a requestor without first seeking an OAG determination, that information must also be released in the same fashion to future requestors. Further, withholding information without an OAG determination can be a violation of the Act which has both civil and

criminal enforcement provisions. Therefore, TCCO shall submit a request for an OAG opinion if there is information which it seeks to withhold.

- B.** To request an OAG determination or opinion, TCCO shall submit a written brief which includes a listing of the specific exceptions to disclosure which TCCO believes apply to the responsive information in addition to an argument stating why each exception applies to the information. TCCO shall specify which exceptions apply to each part of the responsive information but shall not specifically identify the information in the body of the request; e.g. John Smith's cancer diagnosis is confidential medical information.
- C.** TCCO shall submit a copy of the specific information it seeks to withhold to the OAG. If the information is voluminous and the same kind of information appears throughout a lengthy document, TCCO can submit a representative sample. TCCO shall provide a copy of the brief, without the attached documents, to the requestor.
- D.** TCCO is required to submit notice to the OAG that it is requesting an opinion within the ten-business day period required by the Act. That notice must state the exceptions to disclosure which TCCO will cite in its full brief. TCCO must submit its full brief including attachments within the fifteen-business day period required by the Act.
- E.** The OAG will return to TCCO all of the submitted documents with its determination and will provide specific guidance as to the parts of the submitted documents that may be withheld due to a discretionary exception and the parts that must be withheld due to a mandatory exception.

## **VI. Release of Documents to Requestor**

- A.** Documents released by TCCO without having requested and received an OAG opinion may only be redacted to the extent that:
  - 1.** TCCO notifies the requestor in the body of a cover letter the type of redactions that have been made e.g. non-responsive information or a specific type of information which TCCO is permitted by law to redact without requesting an OAG opinion; and
  - 2.** Information that is not responsive to the request is contained within a page of responsive information; or
  - 3.** The redactions are subject to a provision in the Act or an Open Records Decision which explicitly permits a governmental body to redact the information without requesting an OAG opinion e.g. social security numbers of living people.
- B.** After receipt of an OAG opinion, TCCO may redact only that information which the opinion stated could be withheld, non-responsive information, and information which is subject to a provision in the Act or an Open Records Decision explicitly permitting a governmental body to redact the information. The remaining information must be released to the requestor.

- C. In the event that a bill for the costs of the documents or staff time in locating or redacting the information is necessary, TCCO shall follow the cost rules set forth by the OAG in the Act and the Texas Administrative Code.

**VII. Filing and Retention**

Upon completion of the release of documents to the requestor, all information related to the request including any notes, draft briefing, copies of documents submitted for OAG review, withheld documents and all communications with the OAG and requestor shall be filed with due care taken to safeguard confidential information. Each file shall be retained for the retention period required by law.

**SIGNATURE ON FILE**

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Marsha McLane  
Executive Director