



Record Requirements for Charter Boards



- Gives **public right** to request access to information
- Applies to open enrollment **charter schools**
- Applies to '**Public Information**'
- Allows **charges** to the requestor
- **Exceptions** to disclosure apply

- Under Chapter 552, the governing body of the charter holder (or the charter school) is considered to be **“governmental bodies”**; and
- **Any requirement** in Chapter 552 that applies to a school district, the board of trustees of a school district, or public school students applies to an open-enrollment charter school, its board, and its students.

Texas Educ. Code §12.1051

What is “Public Information”?

- **Public information** includes, but is not limited to:
 - A completed report, audit, evaluation, or investigation made of, for, or by a GB
 - The name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a GB
 - Information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a GB

What is “Public Information”?

- **Public information** includes, but is not limited to:
 - All working papers, research material, and information used to estimate the need for or expenditure of public funds
 - A statement of the general course and method by which a GB’s functions are channeled and determined, including the nature and requirements for all formal and informal policies and procedures

What is “Public Information”?

- **Public information** includes, but is not limited to:
 - Administrative staff manuals and instructions to staff that affect a member of the public
 - Information that is in a bill for attorney’s fees and that is not privileged under the attorney-client privilege
 - A settlement agreement to which a GB is a party

What is “Public Information”?

- **NEW!** Senate Bill 1368 expanded the definition of “Public Information” to include any **electronic communication** created, transmitted, received or maintained on **any device** if the communication *is in connection with the transaction of official business.*

What is “Public Information”?

- SB 1368 amends the type of media containing public information to include ***e-mail, Internet Posting, text message, instant message, and other electronic communication.***

What is “Public Information”?

- Information is “in connection with the transaction of official business” if it is:
 - Created by, transmitted to, received by, or maintained by
 - An officer, employee, or person performing official business on behalf of a governmental body; and
 - Pertains to official business of the governmental body.

What is “Public Information”?

- Public information has been construed by the OAG to include any recorded information in practically any medium, including:
 - Paper, Book, Letter, Print Out
 - Microfiche, Microfilm, Photostat
 - Sound Recording
 - Drawing
 - Voice, Data, or Video Representation held in Computer Memory
 - NEW! SB 1368 adds emails, internet postings, text messages, instant messages, and other electronic communication
 - Film
 - Photograph
 - Map
- But, public information does not include tangible items such as tools or keys.

- Submit **written requests**
- Include a **sufficiently detailed** description of the requested information
- Cooperate with the governmental body's reasonable requests for clarification

Requestor's Responsibilities

- Respond promptly in writing to all written communications from the governmental body (including any written estimate of charges)
- Make a timely payment for all valid charges
- Keep all appointments for inspection of records and for picking up copies of the requested information.

Requesting Public Information

In Writing

- Fax
- Letter
- E-mail

Addressed to:

- Public Information Officer
- Any employee of the school

Content

- No magic language
- Sufficient description and detail

- Treat all requestors equally
- Go through open records training
- Inform requestors of cost estimates and any changes to the estimates
- Inform third parties of their proprietary information is being requested

- **Promptly provide requested information**
- Cooperate to schedule reasonable times for inspection and copying
- Follow Office of the Attorney General (OAG) regulations on charges

- Inform the requestor if/when a ruling is being requested from the OAG (exception)
- Copy the requestor on any written comments to the OAG
- Follow any OAG ruling or file suit within 30 days
- Respond in writing to any complaints
- Designate a **public information officer**

- **Display a sign** created by the OAG:
 - Sign must be displayed at the administrative office
 - In a place plainly visible to members of the public requesting information and employees whose duties relate to the PIA
 - <http://www.oag.state.tx.us/open/pia/pia.shtml>

- Receive the request
- Ask for clarification
 - If request was via email, clarification may be requested through email. (HB 2134)
 - If no response to clarification email in 61 days, request considered to be withdrawn. (HB 2134)
- Discuss how the scope of the request might be narrowed
- Calculate deadlines
- Ask for proper ID

- **Ask the Requestor for his or her motive**
- Delay responding
- Avoid replying
- Prepare new information or a new report
- Discriminate between requestors

Responding to a Request for Public Information

- The officer for public information must **“promptly” produce** the requested information.

Methods to Produce Information

- For inspection in the GB's office
- For duplication in the GB's office
- Sending copies by first class US mail if the person requested copies and has paid postage and other applicable charges (before)

Methods to Produce Information (2 of 2)

- Via email if the requestor consents
- New—HB 685. Refer the requestor to an exact internet location/unique URL if the requested information is identifiable and readily available on that website
 - Must also inform requestor they may still access this information through inspection/duplication/US mail.

Once Disclosed, Always Disclosed *(In Most Instances)*

- The following exceptions to the general rule apply:
 - Information provided for **legislative** use
 - Information in **personnel files**
 - Information in a **student or education record**
 - **Intra-or Inter-governmental** transfers or records
 - Other limited disclosures
 - Information about the person requesting the information

Commonly Asserted Exceptions to Public Disclosure

- Information Confidential by Law
- Information Confidential by Judicial Decision
- Certain Personnel Information
- Information Relating To Litigation
- Information Relating to Competition or Bidding
- Information Relating to Location or Price of Property

Commonly Asserted Exceptions to Public Disclosure

- Information within the Attorney-Client Privilege
- Law Enforcement Records
- Agency Memoranda (Deliberative Process Privilege)
- Test Items
- Student Records
 - **Excludes 'Directory Info' on Students**
 - You enact FERPA protection and do not have to seek OAG exception.

Information Elected Not to Be Disclosed

- The following information must be withheld from public disclosure if a **current or former official or employee** of the GB elects for the information to be withheld:
 - Home Address
 - Home Telephone Number
 - Social Security Number
 - Any information revealing whether the person has family members
 - *Emergency contact information* – NEW!

Information Elected Not to Be Disclosed

- Each affected person must state the person's election **in writing not later than the 14th day after the date** that
 - (a) the employee begins employment,
 - (b) the official is appointed, or
 - (c) the former employee or official ends his or her service.
- The employee also may amend.

Asserting an Exception to Public Disclosure

- Step 1. Ask for a decision from the OAG concerning whether the information is within an exception.
 - This is a written letter mailed to OAG or
 - (NEW! Senate Bill 246) the request may be sent electronically to an email address designated by the AG for such purpose.

Asserting an Exception to Public Disclosure

- Step 1. Timeframe.
 - Within 10 business days, the GB must state the exceptions that apply
 - Within 15 business days, the GB must send rationale for applying the stated exceptions, copy of the request, evidence of the date the GB received the request, and a copy of the specific information requested (send a sample if the request is voluminous) Exception: Student Records and Previous Determination

Asserting an Exception to Public Disclosure

- Step 2. Send copies of OAG correspondence to the requestor. Send copy of the 10-day letter and of the 15-day letter. The GB can withhold or redact the requested information.
 - Step 2A. If the request implicates a third person's interest (i.e., privacy, property, or proprietary), then timely notify that person so that the person may correspond with the OAG as well.

Asserting an Exception to Public Disclosure

- Step 3. Wait for the OAG's decision – deadline is 45 business days
- Step 4. Comply with or appeal the AG's decision within 30 days in court

Charging for Public Information

All charges for public information must be calculated in accordance with the OAG's cost rules. A GB can exceed the OAG's cost rules by up to 25% if necessary to cover its costs. **Can charge for employee time or overtime.**

Sample Charges

- \$.10 per hard copy page
- Labor and overhead charges for more than 50 pages
- Programming, data manipulation, and processing charges
- Charges for inspection in certain situations

Waivers or Reductions

- At the GB's discretion
- Based on "public interest" standard

Statement of Estimated Charges

- Must be provided if the charges will exceed \$40.00
- Must advise of the requestor of a less expensive way, if any
- Contain notice that the request will be considered withdrawn if the request does not respond in writing within 10 business days

The GB must provide an updated statement of estimated charges if the GB determines that the actual cost will be more than 20% of the original estimate.

Consequence of Noncompliance:
**The information is presumed public
and must be released
unless there is a compelling reason
to withhold the information.**

- **Informal Resolution**
 - Open Government Hotline (512-478-OPEN)
 - Informal Written Complaints
- **Criminal Penalties**
 - “... fails or refuses to give access to or to permit or provide copying...”
 - Official Misconduct
 - Misdemeanor: confinement to county jail for not more than 6 months and a fine not to exceed \$1,000.

2014 PIA Handbook:

Office of the Attorney General
Support Services Division
Opinion Library
Post Office Box 12548
Austin, Texas 78711-2548
(512) 936-1730

https://www.texasattorneygeneral.gov/open/og_resources.shtml

- Open Government Hotline:
877-OPEN TEX
(or 512- 478-6736)
- Costs Rules Administrator:
888ORCOSTS
(or 512-475-2497)
- Annual OAG's Open Government Conference, Austin, TX

Record Retention Act

- Each open-enrollment charter school **must have 3 things in place** to be compliant with the Local Government Records Act:
 - Records Management Policy
 - Records Management Officer
 - Records Control Schedule

- Policy must be approved by the governing body and on file with the Texas State Library & Archives Commission (TSLAC).
- We recommend charter schools use Policy Model #4:
 - <http://www.tsl.state.tx.us/slrm/recordspubs/forms/pm4.doc>

Records Management Officer

- A Records Management Officer (RMO) appointment form or letter needs to be on file with TSLAC.

- The Records Management policy specifies the position responsible for records management, e.g. the superintendent or business manager.
 - The appointment form or letter specifies the person currently holding the position.
 - This person has the legal authority to sign all records management paperwork. You can use either letterhead or form SLR 504
 - <http://www.tsl.state.tx.us/slr/recordspubs/forms/slr504.doc>

Records Control Schedule

- A Records Control Schedule must be approved by TSLAC. The school can either
 - develop their own schedule OR
 - adopt TSLAC schedules

- To develop own schedule
 - use forms SLR500 and SLR 540
 - all records series are listed along with the retention period for each
 - The retention period must be at least as long as those found in the TSLAC schedules on our website

- To adopt TSLAC schedules,
 - use form SLR508: Declaration of Compliance.
 - Charter Schools would select Local schedules GR and SD.
 - link to the form:
 - <http://www.tsl.state.tx.us/slr/recordspubs/forms/slr508.doc>

Example Schedule Timeframes

Record Description	Retention Period
Academic Records, grades 9-12	Permanent
Academic Records, grades 5-8	Date of withdrawal + 5 years
Enrollment/Registration Forms	Date of withdrawal + 5 years
Records of Access to Information	2 years to permanent
Attendance Control Documentation	2 years
Attendance Reports submitted to TEA	5 years
PEIMS data	5 years
Financial Records	Fiscal Year + 3 years

Questions?

Lindsey Gordon

General Counsel

lgordon@txcharterschools.org

Christine Nishimura

Director of Policy Services

cnishimura@txcharterschools.org

