

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
An Internal Audit of the Public Information Request (PIR) Program

Audit Report # 19-003

Executive Summary

The Office of Internal Audit (OIA) reviewed records, policies, processes and procedures for performing the duties of the Public Information Request (PIR) Program. We tested a sample of Public Information Requests (PIRs) and responses for completeness, accuracy and timeliness from receipt of the request, through responsive documents gathered and sent to the requestor, and closure of the specific public information request.

Based on the fieldwork performed, OIA concludes the PIR Program processes effectively deliver timely responses to all PIR requests. We noted the exceptions presented in the report. Three appendices accompany the report to provide the background, PIR rules and standards and the steps of public information requests in Texas.

Findings and Recommendations

Six Exceptions were noted.

Objective, Scope and Methodology

Based upon our risk assessment and other factors, we selected the PIR Program for review and testing. This audit was identified in the Fiscal Year 2019 Annual Audit Plan and included the objectives to evaluate and test the PIR Program's records, policies, processes and procedures in place for public information request received, responses provided and closure of the request, through documentation, database sample testing, and review of policies and procedures relevant to this program.

The current audit covered PIR requests that have been logged and tracked as of October 2018.



Mark Scott, CPA, CIA, CISA, CFE, MBA

Signed

1/9/19
Date



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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Greg Abbott
GOVERNOR

JANUARY 9, 2019

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Board Members of the Texas Department of Housing and Community Affairs ("TDHCA")

RE: REVIEW OF THE PUBLIC INFORMATION REQUESTS (PIR)) PROGRAM

Dear Board Members:

This report presents the results of the Office of Internal Audit ("OIA") "*Review of Public Information Requests (PIR) Program*." This audit was identified in the Fiscal Year 2019 Annual Audit Plan and was conducted in accordance with applicable audit standards. It included the objectives of evaluating and explaining the PIR Program; and evaluating the policies and procedures, administrative, and internal control procedures related to the program.

Our scope included a review of the Texas Government Code (TGC), and the Texas Administrative Code (TAC). We also reviewed internal and external policies, processes, and procedures in the Office of Attorney General (OAG) guidance found at Texas OAG and Comptroller of Public Accounts (CPA), various reports, and other related documents. Based upon our preliminary understanding of the PIR Program, we identified critical points and risks; in order to develop audit objectives and an audit plan including methodology.

BACKGROUND

The Texas Department of Housing and Community Affairs (TDHCA) administers the PIR Program in response to all public information requests submitted from all applicants, per the TDHCA PIR Rules and Standards found in Appendix 1, Audit # 19-003, TDHCA PIR Rules and Standards.

The Legal Division (LD) manages the intake, responses, deadlines, recordkeeping and monthly reporting to the OAG for the TDHCA PIRs. The TDHCA PIR database also holds the PIRs for the Manufactured

Housing (MH) Division, but MH maintains their own PIR records separately. In 2017 PIR recordkeeping changed from a calendar year to fiscal year basis for the PIR request and response records that had been in place. Also in 2017, this function was centralized and transferred from the Housing Resource Center (HRC) to the TDHCA Legal Division (at most state agencies, the function resides in the Legal Division).

The Texas Public Information Act (The Act) was originally implemented as the Texas Open Records Act in 1973. The Act states that “government is the servant and not the master of the people.”

The Act was passed as part of the reform resulting from the 1973 Sharpstown stock fraud scandal involving state officials.

TDHCA has a designated public information officer. Some key provisions of the Act are listed in Appendix 2, Key Provisions of the Texas Public Information Act, of this internal audit report.

Submitting a Public Information Request (PIR) is completed by the steps presented in Appendix 3, Steps to filing a Public Information Request, Audit # 19-002, Steps to Filing a Public Information Request (PIR) in Texas.

Audit Results:

We found the PIR Program processes effectively deliver timely responses to all PIR requests, including media requests. We noted the findings listed below in the report.

Documentation:

OIA performed research and review of internal and external documentation and interviewed PIR staff to gain an understanding of the effectiveness of the PIR program. OIA completed the Texas Office of Attorney General (OAG) public information request (PIR) training to gain an understanding of the standards to be met and observed.

This review identified the following findings in documentation:

a.1 Internal Documentation

a.1. Standard Operating Procedures (SOPs) – There are no current SOPs, staff is creating.

There are no SOPs, the current responses are considerably more complete than prior year records. Requests have been kept on different time bases. Older PIRs were kept on a calendar year basis and since transferred to the Legal Division on a fiscal year basis. In addition, program requests in different areas are received each year. The OAG training video states the number of PIRs is on the rise, illustrating the need to be efficient and correct in handling them.

a.2 External Documentation

a.2.1 Record Retention documentation –

The record retention schedule for PIRs is AC (after closed) plus 2 years. Any PIRs prior to November 2016 do not meet this requirement.

The PIR database includes records that need to be deleted to meet compliance with this requirement. Any PIRs prior to November 2016, which exceed the allowable Record Retention period, should be deleted from the TDHCA PIR database.

Testing:

We documented the PIR program process from requests received, through assigning identifying the response documents (by the PIR officer to division PIR liaisons), sending the responsive documents to the requestor and closing the PIR, and tested eighteen sample requests, one per each PIR liaison for the following elements:

- PIR number
- Date PIR received
- Date PIR response due
- Date PIR response
- Name of PIR requestor
- PIR requestor organization
- PIR status
- PIR liaison name
- Legislative PIR
- Manufactured Housing (MH) PIR
- Nature of PIR
- PIR liaison is current employee
- Area of PIR request
- PIR charges
- PIR request treated uniformly
- Days in PIR closed
- PIR response within required 10 day response window
- PIR request in writing
- Complaints about PIR
- Length of PIR response

OIA identified the following findings in the testing:

b. 1 The dropdown menu in the PIR database input tab does not contain completely accurate or relevant PIR nature/type choices.

The drop down menu in the Add PIR tab of the PIR database is not applicable to the majority of PIRs received and approximately 80% are placed in the generic "Other" category. PIR continues to work with IT to prioritize the task of correcting categories for PIR nature/type. PIRs are

complicated, and the OAG training film states the more accurate the details are, the better TDHCA can track PIR types and responsive documents provided.

Management response: In 2016 PIR requested IT to update this list and will be asking for the current status of getting this change implemented.

b.2 PIR database user list has many names on it with no rights.

PIR should review the current PIR database user list and update to hold current users only, removing those who no longer are.

Management response: The database was designed to automatically designate users who do not engage with the database for six weeks or longer as “inactive”. A double-check of users will be performed regularly to ensure all separated personnel have been removed from the user list.

Administration:

OIA identified the following findings in the PIR administration review:

c.1 The responsive documents vary substantially in length and content.

A library sheet of standard documents would provide a summary and guidance to double-check that all information is included. The PIR liaison is responsible for the content provided to the requestor. It is difficult to gain an understanding of the completeness and accuracy of the response from reviewing the whole of documents provided without guidance, as each response varies.

Management response: The PIR staff is considering this summary list for large or complicated PIR responses.

c.2 PIR files are in several directory file locations.

Review these various PIR files and directories and gather all current and relevant PIR requests and responses in a PIR Current/Active directory; consider a second directory for PIR Archive files.

Management response: The PIR file locations are being reviewed for duplication and relevance, and possible needed corrections.

OIA extends our sincere appreciation to management and staff of the PIR Program for their cooperation and assistance during the course of this audit.

Sincerely,

A handwritten signature in black ink that reads "Mark Scott". The signature is written in a cursive style with a large, sweeping flourish at the end.

Mark Scott, CPA, CIA, CISA, CFE, MBA
Internal Audit Director

MS/CK

Appendix 1, Audit # 19-002, TDHCA PIR Rules and Standards

TDHCA PIR Rules and Standards

[332 Records Retention Schedule Recertification.xlsx](#)

Texas Government Code (TGC) Section 552

<https://statutes.capitol.texas.gov/SOTWDocs/GV/htm/GV.552.htm>

Texas Office of Attorney General (OAG)

https://www.google.com/search?q=Texas+office+of+attorney+general&rls=com.microsoft:en-US&ie=UTF-8&oe=UTF-8&startIndex=&startPage=1&gws_rd=ssl

OAG Public Information Requests (PIR) Training (State of Texas)

<https://www.texasattorneygeneral.gov/open-government/governmental-bodies/pia-and-oma-training-resources/public-information-act-training>

Public Information Act Handbook 2018 (State of Texas)

https://www.texasattorneygeneral.gov/sites/default/files/2018-06/PIA_handbook_2018_0.pdf

OAG site

<https://www.texasattorneygeneral.gov/open-government>

Texas' Comptroller of Public Accounts (CPA) document:

[The Public's Right to Know.pdf](#)

Texas Public Information Act - Freedom of Information Foundation of Texas

source: <https://foift.org/resources/texas-public-information-act/>

Text cite:

Texas Public Information Act

The **Texas Public Information Act** was originally known as the Texas Open Records Act, approved by the Legislature in 1973 in a reform atmosphere following the Sharpstown stock fraud scandal involving state officials. Spelled out in Chapter 552 of the Texas Government Code, the act states that "government is the servant and not the master of the people."

"The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know," the law states.

Some key provisions of the Texas Public Information Act are as follows:

Covered Entities

The Texas Public Information Act applies to all governmental bodies, including all boards, commissions and committees created by the executive or legislative branch. It also may apply to a body that is supported by public funds or that spends public funds. Private organizations that hold records for governmental bodies also are covered. However, private individuals and businesses are not covered even though they supply goods or services through a government contract.

Types of Information

Public information refers to information collected, assembled, produced or maintained in the course of transacting public business. It may be on paper or film or in electronic communications such as emails, Internet postings, text messages or instant messages.

Exceptions

Some information is not open to the public. These types of information are listed as exceptions in the Texas Public Information Act. They include some information in personnel records, pending litigation, Home Blog Donate Legal Cases About Activities + Programs

Legislature FAQs **Resources** Contact

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competitive bids, trade secrets, real estate deals and certain legal matters involving attorney-client privilege. Attorneys' fees paid by a governmental body are generally public.

Law Enforcement

Generally, the front page of a police report is public. Records that would hinder the investigation or prosecution of a crime if they are released are exempt from disclosure.

The Judiciary

Information collected and maintained by the judiciary is not covered by the Texas Public Information Act. That information is governed by public access rules set by the Texas Supreme Court and other applicable rules and laws.

Making a Request

Filing a request under the Texas Public Information Act is as simple as asking the government agency in writing for the desired information. The request can be made through a letter or via email or fax. It does not need to contain any particular language, but it's important to be clear. Try to be specific. This will help produce the information that is sought and can eliminate the need later for narrowing down a request that is too broad. The governmental body is not allowed to ask why the information is being requested.

Charges

A governmental body or agency can charge for copies of the information, but the fee must be reasonable and cannot be used to discourage someone from asking for information. The requester is

entitled to an itemized bill if the charge is more than \$40. A governmental entity can also waive copying charges. For more information, see the Texas Cost Rules tab in the Resources section of our website. To avoid charges, the requester can ask to view the records in person on the premises of the governmental body.

Withholding Information

Public information is supposed to be released "promptly." There is a misconception that a governmental body or agency has 10 days to release information. The 10-day mark is the deadline for a governmental body, if it contends the information is not public, to ask for an attorney general's decision allowing it to withhold the records. (Texas' open records law is stronger than those in many other states in that if a governmental entity wants to withhold information, it has to ask the attorney general for permission to do so.) After a ruling is sought, the attorney general then decides within 45 days. The person making the original request can also offer written comments to the attorney general. If a governmental body fails to seek an attorney general decision in time, the information is presumed to be public.

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Appealing an Open Records Decision

When the attorney general's office agrees with a governmental body that information can be withheld from the public, the person making the original request has the option of filing a lawsuit in state district court to attempt to have the information released.

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Appendix 3, Audit # 19-002, Steps to Filing a Public Information Request

TDHCA is committed to providing full access to public information. To request public records under the Texas Public Information Act:

1. Submit your PIR in writing by email.
2. Include your full first and last names, email address, daytime telephone number or other contact information and a clear description of the records you want.
3. PIRs will be accepted only at the following email address: open.records@tdhca.state.tx.us

We will promptly notify you by return email to confirm receipt of your emailed PIR. For additional information regarding filing a PIR, please review the information provided below or contact the TDHCA Public Information Coordinator, Kathleen Vale Castillo, at (512) 475-4144.

Tips for PIRs

- Only PIRs emailed to open.records@tdhca.state.tx.us will be accepted.
- Your PIR should be for documents or other information already in existence. Governmental bodies are not required to answer questions, perform legal research, or comply with a request to supply information on a periodic basis for information that will be prepared in the future.
- Be as specific as possible. Include a timeframe when appropriate. For example: *"I am seeking a chronological list of 'xyz' allocations for 'abs' program to all recipients in Travis County from 9/1/2014 through 8/31/2015."*
- If you believe we have not responded as required by the Public Information Act, you may contact your local County or District Attorney, or the Office of the Attorney General, Open Records Hotline, at (512) 478-6736 or toll-free (877) 673-6839. For complaints regarding overcharges, please contact the General Services Commission at 512-475-2497.

If you need special accommodation pursuant to the Americans With Disabilities Act (ADA), please contact our TDHCA Public Information Coordinator, Kathleen Vale Castillo at (512) 475-4144.

If this PIR relates to Disaster Recovery, effective July 1, 2011, the CDBG Disaster Recovery Programs have transferred to the Texas General Land Office (GLO) from the Texas Department of Housing and Community Affairs (TDHCA) and the Texas Department of Agriculture (TDA). For Disaster Recovery related PIR processing, please visit the [GLO's PIR web page](http://www.glo.texas.gov/the-glo/public-information/requests/index.html) (<http://www.glo.texas.gov/the-glo/public-information/requests/index.html>)

The Public Information Act

Texas Government Code, Chapter 552, gives you the right to access government records; and an officer for public information and the officer's agent may not ask why you want them. All government information is presumed to be available to the public. Certain exceptions may apply to the disclosure of the information. Governmental bodies shall promptly release requested information that is not confidential by law, either constitutional, statutory, or by judicial decision, or information for which an exception to disclosure has not been sought.

Rights of Requestors

You have the right to:

- Prompt access to information that is not confidential or otherwise protected;
- Receive treatment equal to all other requestors, including accommodation in accordance with the Americans with Disabilities Act (ADA) requirements;
- Receive certain kinds of information without exceptions, like the voting record of public officials, and other information;
- Receive a written statement of estimated charges, when charges will exceed \$40, in advance of work being started and opportunity to modify the request in response to the itemized statement;
- Choose whether to inspect the requested information (most often at no charge), receive copies of the information or both;
- A waiver or reduction of charges if the governmental body determines that access to the information primarily benefits the general public;
- Receive a copy of the communication from the governmental body asking the Office of the Attorney General for a ruling on whether the information can be withheld under one of the accepted exceptions, or if the communication discloses the requested information, a redacted copy;
- Lodge a written complaint about overcharges for public information with the General Services Commission. Complaints of other possible violations may be filed with the county or district attorney of the county where the governmental body, other than a state agency, is located. If the complaint is against the county or district attorney, the complaint must be filed with the Office of the Attorney General.

Responsibilities of Governmental Bodies

All governmental bodies responding to information requests have the responsibility to:

- Establish reasonable procedures for inspecting or copying public information and inform requestors of these procedures;
- Treat all requestors uniformly and shall give to the requestor all reasonable comfort and facility, including accommodation in accordance with ADA requirements;

- Be informed about open records laws and educate employees on the requirements of those laws;
- Inform requestors of the estimated charges greater than \$40 and any changes in the estimates above 20 percent of the original estimate, and confirm that the requestor accepts the charges, or has amended the request, in writing before finalizing the request;
- Inform the requestor if the information cannot be provided promptly and set a date and time to provide it within a reasonable time;
- Request a ruling from the Office of the Attorney General regarding any information the Governmental body wishes to withhold, and send a copy of the request for ruling, or a redacted copy, to the requestor;
- Segregate public information from information that may be withheld and provide that public information promptly;
- Make a good faith attempt to inform third parties when their proprietary information is being requested from the governmental body;
- Respond in writing to all written communications from the General Services Commission regarding charges for the information. Respond to the Office of the Attorney General regarding complaints about violations of the Act.

Procedures to Obtain Information

- Submit a written request by mail, email, or in person, according to a governmental body's reasonable procedures (see instructions above).
- Include sufficient description and detail about the information requested to enable the governmental body to accurately identify and locate the information requested.
- Cooperate with the governmental body's reasonable efforts to clarify the type or amount of information requested.

A. Information to be released

- You may review it promptly, and if it cannot be produced within 10 working days the public information officer will notify you in writing of the reasonable date and time when it will be available.
- Keep all appointments to inspect records and to pick up copies. Failure to keep appointments may result in losing the opportunity to inspect the information at the time requested.

Cost of Records

- You must respond to any written estimate of charges within 10 days of the date the governmental body sent it or the request is considered automatically withdrawn.

- If estimated costs exceed \$100.00 (or \$50.00 if a governmental body has fewer than 16 full time employees) the governmental body may require a bond, prepayment or deposit.
- You may ask the governmental body to determine whether providing the information primarily benefits the general public, resulting in a waiver or reduction of charges.
- Make a timely payment for all mutually agreed charges. A governmental body can demand payment of overdue balances exceeding \$100.00, or obtain a security deposit, before processing additional requests from you.

B. Information that may be withheld due to an exception

- By the 10th business day after a governmental body receives your written request, a governmental body must:
 1. request an Attorney General opinion and state which exceptions apply;
 2. notify the requestor of the referral to the Attorney General; and
 3. notify third parties if the request involves their proprietary information.
- Failure to request an Attorney General opinion and notify the requestor within 10 business days will result in a presumption that the information is open unless there is a compelling reason to withhold it.
- Requestors may send a letter to the Attorney General arguing for release, and may review arguments made by the governmental body. If the arguments disclose the requested information, the requestor may obtain a redacted copy.
- The Attorney General must issue a decision no later than the 45th working day from the day after the attorney general received the request for a decision. The attorney general may request an additional 10 working day extension.
- Governmental bodies may not ask the Attorney General to "reconsider" an opinion.