OPEN RECORDS BASICS FOR TEXAS SOUTHERN UNIVERSITY EMPLOYEES

Presented by:
The Office of General Counsel
Texas Southern University
December 2011
The Texas Southern University Office of General Counsel has published this training module for general information and use by University employees regarding the Texas Public Information Act (“PIA”) and the University’s process for handling requests for information. This is not an exhaustive training session and the pages are not intended to provide legal advice for any particular situation. Legal advice can be provided only in the course of an attorney-client relationship with reference to all the facts of a specific situation. As situations arise, please forward your questions and/or comments to the Office of General Counsel at extension 7950.

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Office of General Counsel
The Texas Public Information Act (formerly known as and often referred to as the Open Records Act) governs access and disclosure to information held by Texas Governmental Bodies
OBJECTIVES

• To prepare all employees to handle requests for public information and the provisions of the Public Information Act (PIA).

• To ensure that all employees can recognize a request for information and know what actions to take.
Why Do I Need To Know About The Public Information Act (PIA)?

- Because TSU is a governmental body, pursuant to the PIA, all information and records (paper, electronic, microfilm, etc) collected, assembled, or maintained by or for TSU in connection with official business is public, unless it falls within a specific exception to the Act.

- TSU is committed to compliance with the letter and spirit of the PIA.
What Is A Governmental Body?

Texas Government Code Section 552.003 defines a governmental body as all public entities supported in whole or part by public funds, including: state agencies, cities, counties, public school districts, utility districts, police departments, sheriff’s offices, public universities, county commissioners courts, public school boards (does not include the judiciary)
Policy; Construction

(a) “...government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of the government and the official acts of public officials and employees...The provisions of this chapter shall be liberally construed to implement this policy”
Policy; Construction

This chapter shall be liberally construed in favor of granting a request for information.
Definition of Public Information

A. In this chapter, “public information” means information that is collected, assembled, or maintained under law or ordinance or in connection with the transaction of official business:

1) By a governmental body; or  
2) For a governmental body and the governmental body owns the information or has a right of access to it.
Types of Public Information
Texas Government Code 552.002(b)

Media Containing Public Information

- Paper
- Film
- Tape
- A device that can store electronic signals

- Mylar
- Linen
- Silk
- Vellum

NOTE: Information recorded in any format is public information
Exception: Confidential Information

Information is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.
Exceptions to Disclosure

• There are various exceptions to disclosure of public information which are found in Chapter 552 of the Texas Government Code. They are found in sections 552.101 to 552.137.

• Examples: Certain audits, Certain e-mail addresses, Credit Card/Debit Card information, Student Records, etc.
Who Determines What Information is Excepted?

The Office of the General Counsel determines whether the requested information is subject to an exception under the Act.
The Office of General Counsel’s duties are:

1. To be the designated custodian of records in accordance with the Texas Public Information Act (PIA).
2. To respond to requests for information under the Act.
Subpoenas

• A subpoena for the release of information is **NOT** considered an open records request.

• If served with a subpoena, accept the papers and forward the subpoena and responsive documents to the Office of General Counsel.
What is a Public Information Request?

- The request must be in **writing** to trigger the Public Information Act

- The request must ask for documents, records and/or information

There is no requirement to create new information, answer questions or perform legal research.
What is a Public Information Request? (cont’d)

• No specific phrase, statement or wording are required to trigger a request for information

• There is no requirement that it be labeled “open records request” or “public information request” for it to trigger a request for information
Requests may be presented as:

- Typed or handwritten
- E-mail requests sent to legalgeneralcounsel@tsu.edu
- To the attention of any particular person, with the exception of e-mail requests

TSU cannot require the use of a specific form to submit a request for information.
Are you ready for a test?

Can you correctly identify the public information requests...
October 19, 2011

Mr. Tiger, TSU
3100 Cleburne
Houston, Texas 77004

RE: Request for Records

Dear Mr. Tiger,

I want all records involved in Incident Report #1223456-07. I am happy to pay any costs involved in getting these records. Thank you very much.

R. Schecht
5030 Scott
Houton, Texas 77004
October 12, 2006

TO: TSU Athletic Department

Dear Sir,

Please send me all records you have on your athletic officer, Hilliard Green. I saw him at a football game. He is cute. I would like to get in touch with him to be a part of my Athletic Hunks calendar.

Sincerely,
Marie Stalker
P.O. Box 123
Hooterville, Texas 72345
July 4, 2003

To Whom It May Concern:

Who is your Director of Student Activities and where did he go to school?

Thank you

P. Requestor
P.O. Box 1299
Austin, Texas 78711
Email Message
From: Fred Superfly
To: John Employee, Texas Southern University
Date: October 19, 2011, 2:48 p.m.
Subject: Public Information Request

I was visiting your campus last week with my cousin who is a student there. The University Museum is beautiful. My girlfriend is an artist and I am thinking about making her my wife. I would like to get married there. Where do I make reservations?

Also, while I was visiting the campus I heard that you have had problems with rodents. I am very afraid of rodents. I would like to see all of the University’s contracts with companies that do pest control. Thank you very much.

Fred Superfly, 7946 Cadillac Road, Houston, Texas 77011
Can I Ask The Requestor Why He/She Is Requesting The Information?

No!
This is expressly prohibited by law.
Where Does A Person Submit A Request for Information?

Texas Southern University
Office of General Counsel
3100 Cleburne Hannah Hall, Room 310
Houston, Texas 77004
Phone 713-313-4216
Fax 713-313-1906
All public information requests should be **immediately** referred to the Office of General Counsel. An official there will determine whether the information is to be released, or whether it falls within an exception to the Act.
Timeframes

- A request for public information is considered received when it is first received at TSU and not when it is opened, read or forwarded to General Counsel.

- Therefore, it is imperative to review all correspondence and e-mails timely.
TSU must produce responsive information “promptly” – as soon as possible under the circumstances; within a reasonable time; without delay.
If the information cannot be produced within 10 business days, TSU shall certify that fact in writing to the requestor and set a date and time within a reasonable time when the information will be available for inspection or duplication.

(This does not mean to wait until the 10th business day!)
Timeframes (cont’d)

- If the requested information is excepted from public disclosure, TSU must seek a decision from the OAG within 10 business days after the date the request is received.

- The Office of General Counsel only has the 10 business days to act if the requested information should be excepted from disclosure.
Timeframes (cont’d)

Counting 10 business days:

- Start counting on the first business day after receipt of the request

- Do not count weekends, holidays, or days the University is officially closed.
Employee Responsibilities

- Contact the OGC immediately if you receive a request for information.

- Respond immediately if the OGC requests information from you or your department to answer a request for information.
Are There Penalties For Failing To Comply With The PIA?

YES! There are civil and criminal penalties (including fines and jail) for failing to comply with provisions of the PIA.
What if TSU does not have responsive information?

• The University is not required to create new information or conduct research in order to respond to a request.

• The OGC will send a response to the requestor that we do not have or have not been able to locate documents responsive to the request.

• The University may suggest where the requestor might locate the information he/she is seeking.
What does the University do about unclear or broad requests?

• The University can ask the requestor to clarify the request.

• The requestor can be contacted by the University to explain the types of records the governmental body maintains and possible ways to narrow the request to specific documents or to a specific timeframe.
How does the PIA impact TSU employees?

• Information that is created (Word documents, notes, audio & video tape recordings, photos, memos, information in databases, etc.) is considered information that is “…collected, assembled, maintained, or created…” by your division and is considered public information.

• As such, the information is presumed to be open to disclosure unless the PIA provides a specific exception to disclosure.
Examples of other information that can be considered public and subject to disclosure:

- Time sheets/Leave forms (keep them brief and to the point)
- Calendars/Blackberry data/Palm Pilot data/date books
- Emails
- Data employees create while working from home or any remote locate. Data, documents, voicemails and emails created are subject to public disclosure.
Information received by employee

Employee sends paperwork to OGC IMMEDIATELY

OGC reviews to determine if information is public or whether to request AG Ruling

If a ruling is requested, OGC prepares letters and briefs and submits to Attorney General

If no ruling requested, information is sent to requestor, generally within 10 days

OGC also requests information from relevant department
QUESTIONS?
Contact Information

Texas Southern University
Office of General Counsel
3100 Cleburne Hannah Hall Rm 310
Houston, Texas 77004

Phone 713-313-7950
Fax 713-313-1906