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Strengthening the Public Information Act Through Required Response Legislation

Key Points

- The Texas Public Information Act (TPIA) sets forth an aspirational framework to guarantee the public's right to access government documents and information. Unfortunately, the law is different in theory and in practice.
- Some government officials ignore requests or do not respond in a timely manner. This creates distrust in government and undermines the public's right to know.
- The public has a right to know what their government officials are doing and why.
- Reforms are needed to strengthen the TPIA and foster public trust in government.

The Texas Public Information Act

The Texas Public Information Act (TPIA) sets forth an aspirational framework to guarantee the public's right to access government documents and information. Its opening preamble affirms as much, saying:

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 people insist on remaining informed so that they may retain control over the instruments they have created. ([Texas Public Information Act, 1993, Section 552.001](#))

Under the processes established by the TPIA, citizens can “access information maintained by governmental bodies and obtain a more complete understanding of how their government works” ([Office of the Attorney General, n.d.-b, para. 2](#)). To do so, “a person submits a written request to a governmental body. The request must ask for records or information already in existence. The Act does not require a government body to create new information, to do legal research, or to answer questions” ([Office the Attorney General, n.d.-a, p. i](#)). In order to ensure compliance from governmental entities, [Section 552.221\(a\)](#), Texas Government Code, requires that: “An officer for public information of a governmental body shall promptly produce public information for inspection, duplication, or both on application by any person to the officer.” Thus, by law, state and local governmental entities must *promptly* respond to a requester in writing within 10 business days to (1) provide the requested information or give notice of the date and time it will be released shortly thereafter; (2) assert that there are no records responsive to the request; or (3) inform the requestor that the entity is seeking a ruling from the Attorney General's Office to determine whether the records should be withheld under one of the numerous exceptions allowed by law.

In theory, the TPIA is an ambitious tool that empowers interested parties with the ability to probe their government's activities and archives. However, in practice, the TPIA falls short of its goal, in part, due to the absence of any meaningful accountability mechanism.

TPIA Problems: Delay and Disregard

While some public information officers (PIOs) uphold their TPIA obligations by promptly responding to requestors, other PIOs have been known to violate either the spirit or the letter of the law by failing to answer a request in a timely manner. One notable experiment, conducted by MuckRock, “a non-profit,

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collaborative news site that brings together journalists, researchers, activists, and regular citizens to request, analyze, and share government documents,” found that Texas agencies were, on average, not timely with their responses to TPIA requestors ([MuckRock, n.d.-a](#)). In fact, MuckRock records that, despite Texas’ 10-day timeframe for responding to requests, the average agency response time actually took 70 days ([MuckRock, n.d.-b](#)). In another illustration, the *Dallas Morning News*, in 2015, embarked upon a yearlong study of open government response time among more than 100 governmental entities in North Texas. In the study, *The News* uncovered a significant amount of delayed response time and institutional resistance. “On average, 21 percent of all requests sent received an initial response outside the 10-business day window required by law. Many requests required sending one or more reminder emails to the government agency before a response was received” ([Wisk, 2015, para. 20](#)). In some cases, those delays were extended or even indefinite. *The News* records: “A handful of requests were fulfilled a month or more after they were sent. And 80 requests went unfulfilled, due to silence on the part of the agency, a refusal to release information, a statement that the information wasn’t available, or a cost estimate that was prohibitively high” ([para. 24](#)).

Of course, these delayed response times were made worse by governments’ collective response to COVID-19. Last year, one editorial board lamented that,

Under normal circumstances, governing bodies must provide a requested record promptly or ask for a ruling from the attorney general’s office within 10 business days if they think it’s not supposed to be made public. But throughout the coronavirus pandemic, some local governments whose physical offices were closed have ignored that timeline. They cited guidance from the state attorney general’s office stating that if offices were closed to the public, that day didn’t count as a business day for public information purposes—even if employees were continuing to work remotely. That resulted in records requests being put on hold indefinitely. ([GDR Editorial Board, 2021, para 5](#))

This type of environment can breed “distrust of government and can leave the requestor unsure as to whether requested documents exist or if their request was ever received” ([HB 3015 Bill Analysis, 2021, p. 1](#)). This is especially true as there is little legal remedy available to requestors who have been abused or ignored by the system. Under current law, an aggrieved party has only a few options available

to seek relief, and each could possibly entail costly litigation.¹ Complicating matters further, district attorneys and the Texas attorney general are supposed to provide some measure enforcement in theory; however, the former may be reluctant to weigh in out of concern for offending the local political scene and the latter does not have the tools necessary to compel political subdivisions to strictly adhere to the law. Hence, there is no practical way to hold abusive PIOs or governments in general responsible for failing to promptly respond to record requests. There is an obvious need for the Texas Legislature to reform the system so as to strengthen the law and empower the individual.

Recommendations

The original intent of the TPIA was to give the public a powerful tool to keep track of its governments’ dealings; but over time, the law’s purpose and effectiveness has been eroded such that today it is a mere shell of its former self. Reforms are needed to reinvigorate it and restore its potential.

One possible improvement is to statutorily require PIOs to respond in writing by the 10th business day to requestors if there are no record responsive to a particular request. Similarly, officials should be made to notify a requestor if the entity intends to withhold documents or information based on a past attorney general ruling and specify which previous determination the entity is citing. Neither is currently required by law.

Additionally, the Legislature should empower requestors to be able to file a complaint with the Texas Attorney General’s Office more easily. With proper evidence, the Attorney General’s Office could make a determination as to whether the governmental entity had observed the letter of the law or failed to faithfully comply. If the latter, then the governmental entity could be subject to certain punitive measures, like TPIA training for select staff within a particular timeframe; producing any documents in question without redaction; and eliminating any fees asked of the requestor to fulfill the request. During the 87th regular session, two proposals were introduced to achieve much of these reforms ([SB 927, 2021](#) & [HB 3015, 2021](#)). However, the proposals failed in the legislative process.

Reforms of this nature will go far to ensure compliance with the TPIA and restore much of the law’s flagging strength. What’s more, by firming up this important open government tool, policymakers can spur greater public trust in government. For transparency is vital to accountability, and accountability central to trust. ★

¹ See [Section 552.321 and 552.3215 of the Texas Government Code](#).

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Quintero and his wife, Tricia, are blessed with five beautiful children, a Great Dane, a Boston Terrier, and an exceptionally large grocery bill.



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