

**PUBLIC INFORMATION ACT POLICY
CITY OF TOYAH (EXHIBIT A)**

I. POLICY

This policy is intended to comply in all particulars with the Public Information Act as set forth in Chapter 552, Texas Government Code (the "Act" or "PIA"), as it exists, as it may be amended, and as it may be interpreted by Attorney General Rulings, Decisions, Opinions, and applicable case law. The Attorney General has published a *Public Information Handbook* that provides guidance to both staff and citizens on the process and applicable rules. In accordance with the Act, all persons or entities requesting public information from the City shall be treated uniformly.

It is important to recognize that while virtually all records held by the City fall within the PIA's definition of "public information," that term is often misinterpreted. It does not mean that the City's records may always be released to the public. As used in the Act, the term "public information" is best viewed as meaning "the information is owned by the general public through a governmental entity", however, the Texas Legislature has determined it is in the public interest to establish numerous exceptions to mandatory public disclosure under the Act which restrict City employees and officials from releasing certain types of information. This policy sets forth the procedures used by the City to permit reasonable access to its records while simultaneously protecting the interests of the City's residents and the rights of persons whose information may appear in City records.

Questions regarding the scope and application of this policy should be directed to the Public Information Officer. City employees and officials should generally presume that any record relating to their functions within the City will be within the scope of the Act, but there may be exceptions to mandatory public disclosure which call for or allow withholding of the information from the public.

II. DEFINITIONS

Archival Box means a box that measures approximately 12.5"W x 15.5"L x 10" H, and on average contains 4000 pages. 1 TAC 70.2(10)

Business day means any day that the general administrative offices of the City are open and conducting business.

Normal Business Hours means between 8:00 a.m. and 5:00 p.m., Monday through Friday, except for City-observed holidays.

OAG means the Office of the Attorney General of the State of Texas.

PIA means the Texas Public Information Act (Texas Government Code Chapter 552, as amended).

Public Information Officer means the City Secretary or his/her designee.

Request for Public Information means a properly submitted written request for information held by the City.

Requestor means the person or entity who submitted a Request.

Responsive Information means all of the City's information falling within the scope of a

Request, including all forms of media (paper documents, electronic data files and emails, photos, audio/video recordings, etc.).

III. ACCESS TO INFORMATION

A. **Recognized Methods of Making Requests for City Records**

It is important to remember that not every inquiry to the City seeking information triggers the duties described by this policy implementing the PIA. As amended on September 1, 2019, the PIA only applies to written requests for information received by certain methods specified by state law, which can also include methods approved by the City Council.

The only methods which are permissible for submission of public information requests to the City of Toyah are:

1. United States mail

Must be addressed to either the City Secretary or the City Secretary's designee for receipt of public information requests. As of the date this policy was adopted, the City Secretary's sole designee to receive such correspondence is the City Secretary.

2. Electronic mail

Must be sent to the email address of the City Secretary or the City Secretary's designee for receipt of public information requests. As of the date this policy was adopted, the City Secretary is the sole designee to receive emailed public information requests.

3. Hand delivery

Must be hand-delivered to either the City Secretary or the City Secretary's designee for receipt of public information requests. As of the date this policy was adopted, the sole designee to receive hand-delivered requests is the City Secretary.

These approved methods for submission of PIRs shall be published on the City's website, and they may also be listed on signs posted by the City in accordance with Texas Government Code § 552.205.

No other methods of submission have been approved by the City Council. As such, the following examples do not constitute Requests for purposes of the PIA and this policy, and should matters should be handled according to the direction of the employee's Department Contact:

- Inquiry via telephone
- Verbal / walk-in inquiry
- Correspondence to City employees other than the City Secretary (email or paper)

B. Information Subject to the PIA

The PIA defines "public information" as:

Information that is written, produced, collected, assembled, or maintained under a law or ordinance or in the connection with the transaction of official business. Tex. Gov't Code§ 552.002(a).

Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to the official business of a governmental body. Tex. Gov't Code§ 552.002(a-1).

[Public information] applies to and includes any electronic communication transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business. Tex. Gov't Code§ 552.002(a-2).

This definition is extremely broad and applies to all forms of media. NOTE: the physical location of the information is not dispositive of whether the information is considered to be the City's "public information." As such, City officials and employees should presume that all information relating to City business, even that held/maintained/created by outside entities (such as contractors) is Responsive Information if within the scope of a Request. **In addition, City officials and employees should be mindful that any information on a personal device (smartphone or computer), or which is stored remotely-including off-site shared drives and/or cloud storage - can fall within the definition of "public information" for purposes of the PIA.**

All City officials and employees are responsible for ensuring that all public information is timely transferred from any private device or private account to the City for proper archiving. City employees and officials should preferentially use City-supplied, City-owned devices and email accounts for handling records and communications relating to the official business of the City. Any information relating to City activities which might be contained on a privately-owned device (including that relating to a privately-owned online account, i.e., social media) constitutes personal notes for the personal convenience of the owner (e.g., a memory aid) and is not created, transmitted, received, or maintained by any officer or employee of the City in their official capacity. City records do not include individual employee meeting/appointment schedules, notes memorializing contents of phone conversations or reminders to return calls, draft versions of unsent correspondence, outlines or preliminary versions of incomplete reports not yet shared with any other employees/officials or parties doing business with the City, or similar transitory information unless written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business of the City, as such materials have no administrative value to the City.

Failure to comply with this policy could result in an employee/official being deemed a "temporary custodian" of City records under state law, imposing additional special duties regarding preservation of the information. Any and all public information which is inadvertently

stored on a privately-owned device shall be promptly forwarded or transferred to the City and/or a City server for preservation. Until such forwarding/transfer is accomplished, all record retention rules must be observed and all public information must be preserved in its original form on the privately-owned device. City officials and employees must surrender or return public information to the City no later than the 5th day after the date the Public Information Officer requests the information or be subject to disciplinary action and other penalties under state law.

When a City employee or official no longer has an official capacity with the City (e.g., ends City employment/leaves office), they shall promptly forward or transfer any public information on a privately-owned device to the City. Failure to comply with this requirement could lead to criminal liability on the part of the former employee/official under state law.

c. Information Which is Not Public Information Under the PIA

The PIA only applies to information which exists on or before the date a Request is received. Creation of new documents is not required in order to supply information in response to a Request, and City personnel are expressly instructed to refrain from creating new materials in relation to a Request without authorization from the City Secretary. Further, City personnel should be mindful that the PIA also does not require that the City answer questions or conduct legal research.

In addition, requests for certain kinds of records are not covered by the PIA, including but not limited to the following:

- Records of the judiciary (including records relating to proceedings)
- Certain records of economic development entities receiving less than \$1 million in funding from the City, state agency, or affiliated entities (e.g., Toyah's CDC/EDC) in the preceding fiscal year

IV STAFF PROCEDURES

1. The City's policy is to provide a suitable copy of public information which is not subject to withholding under the PIA without undue delay following receipt of a public information request.
2. If the requestor asks that copies be provided in a specific format (such as "paper" or designated electronic file type (e.g., "PDF")), the City shall accommodate such requests when practicable, but may seek reimbursement of associated expenses under appropriate circumstances.
3. Any staff member receiving a document which is expressly designated in writing as constituting a public information request (whether within the document body or cover letter/email) shall immediately forward a copy of the document and its related correspondence to the Public Information Officer. The request should be date-stamped to reflect the first day that the City was open for business after following receipt (which may be the same day the request was received).

If the receiving staff member is aware of any special City concerns relating to the potentially responsive materials (e.g., anticipated or pending litigation or litigation hold, especially sensitive information, potential for damage to the City's business interests, etc.), they shall also ensure that the Public Information Officer is notified of those potential concerns. The receiving staff member shall also notify the Public Information Officer of the identity of any third-parties likely to hold responsive information on behalf of the City, should any exist.

4. Upon receipt of a request for City records, the personnel responsible for PIR handling shall ensure that the request is properly memorialized in the records-tracking software used by the City, and shall also:
 - a. For non-basic requests (see below), supply a copy to the City Attorney;
 - b. Calculate all applicable deadlines for City action/response, and ensure that necessary personnel are apprised of those deadlines;
 - c. Make reasonable efforts to obtain public information from any and all temporary custodians of those materials;
 - d. With the assistance of the City Attorney, evaluate whether the City is required to contact any outside agencies to request provision of responsive information;
 - e. In consultation with the Public Information Officer, identify and contact the City personnel who are likely to hold or help identify Responsive Information, including but not limited to temporary custodians as defined by Texas Government Code 552.003(7).

5. All written requests delivered by means other than the exclusive delivery methods listed in Section III(A)(1)-(4) of this policy should receive the following response, delivered via the same method the City received the correspondence if practicable: "Please be advised that I have not been designated as an authorized recipient of public information requests to the City of Toyah, and therefore I cannot respond to the request for records included in your correspondence of [month/date/year] to the extent that it was intended to be a request under the Texas Public Information Act. All requests for public information must be submitted in accordance with the City's Public Information Act Policy, Article III. This policy can be accessed at www.toyahtx.com or by sending a written request to the Public Information Officer. If you have any questions about this, please direct them to the Public Information Officer. Thank you for your cooperation."

6. If a request is received by one of the methods set forth in Section III(A)(1)-(4), City employees may engage in discussion with the sender as to the desired objects of the request. The requester's motivation or reasons for requesting public information will never be considered by the City in determining how it processes proper requests, but City staff should generally encourage requesters to draft their requests as narrowly as possible and avoid use of open-ended terms ("**all documents** re: __, **including** _"; "files, pictures, videos, **etc.**"; "records relating to __, **such as**").

7. Once it is determined that a submission constitutes a valid written request for public information subject to the PIA, the City is required to make a good faith effort to relate the language of a Request to the public information it holds. However, if a request is overly broad or vague, the requester may be asked to clarify the request. All requests for clarification must be in writing. All responses for clarification must be in writing or memorialized by the Public Information Officer in writing and kept as part of the PIA request.
8. If a large amount of information has been requested, the Public Information Officer may discuss with the requester how the scope of the request might be narrowed. All narrowing of scope of the request shall be made in writing or memorialized by the Public Information Officer in writing.
9. City staff members receiving direct correspondence which fails to qualify as a proper public information request under this applicable law or policy are authorized to direct such correspondence to alternative communication channels, or provide the sender with notice that no further responses shall issue if correspondence fails to conform with this policy, in a manner authorized by the City of Toyah.
10. **Basic Requests:** The Public Information Officer is authorized to treat requests for the following types of information as "basic requests", and so long as no other information is within the scope of a request, may release the responsive information held by the City without redaction or request for Attorney General decision:
 - a. Official and final versions of City documents which were previously made public, such as:
 - i. City ordinances and resolutions passed by the City Council;
 - ii. Notices of public meetings;
 - iii. Approved minutes of public meetings;
 - iv. Official maps of the City limits;
 - v. Approved/adopted financial audits and budget; and
 - vi. Any documents properly published on the City's website.

- b. Copies of documents obtained by the City from outside private parties (but not other government agencies) through any means generally accessible to the public (e.g., downloads from websites), unless related to ongoing or anticipated litigation matters.
 - c. The preferred method of response shall be to notify the requester that copies of the requested information may be picked up at City Hall upon payment of the applicable charges.
11. The Public Information Officer will consult with the City Attorney to determine whether the Responsive Information sought by a non-basic request is open to the public. If some or all of the information is determined to be public, the Public Information Officer should arrange for the information to be made available to the requester without undue delay.
12. When practicable, the City will attempt to provide public information in the format requested so long as (a) the City is technically capable of providing the data in the requested format and (b) the requester is willing to pay any applicable charges. In some instances, programming and manipulation of data may be necessary to comply with the request. In such cases, additional charges will be assessed to the requester in accordance with the cost provisions of the Act.
13. The Act calls for the information be provided promptly. If the information is in active use, or if the information cannot be provided within ten (10) business days after the date the information is requested, the City must notify the requester in writing of that fact and set a date and hour within a reasonable time when the information will be available for inspection or copying. This written notice will typically be sent to the requester within 10 business days after receiving the request.
- a. The department contact should notify the Public Information Officer within three (3) days of receipt of the request if additional time will be needed and include an estimate of when the information can be made available to the requester.
 - b. When necessary, the Public Information Officer will send the written notice to the requester if additional time is needed to provide the information.
14. All official notifications and responses shall come from the Public Information Officer or the City Attorney's office (or their authorized designees).
15. After the information is provided to the requester, the Public Information Officer

shall attach a copy of the information to the request for inclusion in the City's official record. Requests for Public Information are considered public information.

16. If it appears that the information falls within one of the mandatory or permissive exceptions to public disclosure, the request should immediately be forwarded to the City Attorney. A copy of the information sought shall also be sent to the City Attorney. If the request is for a large volume of information, the City Attorney may ask to review the information, or to receive representative samples of the documentation. All communication with the City Attorney must be coordinated with the Public Information Officer.
17. The City will typically only have ten (10) business days after the date the request is received to prepare and submit a request to the Attorney General for a ruling. Any delay in providing the Public Information Officer and/or City Attorney with the request and/or responsive information may affect the ability of the City Attorney to submit a complete and accurate request for Attorney General decision. The City Attorney will coordinate with the Public Information Officer to prepare and send the proper notifications to the requester.
18. If the City determines that it is appropriate to ask a requester to clarify or narrow a request, the deadlines for requesting an Attorney General decision or providing access to responsive materials may be extended in accordance with applicable law.
19. Requests implicating the privacy or property interests of persons other than the City: The Public Information Officer shall determine whether the Responsive Information includes materials subject to exceptions to mandatory public release under Texas Gov't Code §§ 552.101, 552.110, 552.1101, 552.113, 552.131, and/or 552.143. In such cases, the Public Information Officer shall supply a copy of the request and a statement (in the form prescribed by the Texas Attorney General), notifying the person of the receipt of the request and the opportunity to submit arguments against disclosure, not later than the 10th business day after the City received the request. NOTE: The requirement described in this paragraph is cumulative with all other responsibilities of the Public Information Officer imposed by this policy and applicable law.
20. Requests for "contracting information": If the Public Information Officer determines that a PIR calls for production of "contracting information" as defined by Texas Government Code § 552.0222 which is not maintained by the City, a written request to provide such information to the City must be sent to the person/entity having custody or possession of the contracting information no later than the third business day after the date the City received the PIR.

See Tex. Gov't Code§ 552.371 and related statutes.

V. GENERAL GUIDELINES REGARDING AVAILABILITY OF INFORMATION

1. Upon a determination by the Public Information Officer that the information is available for release, the information should be made available during regular business hours at City Hall. Once notified that the information is available for inspection, requesters shall have ten (10) business days to contact the Public Information Officer and schedule a time for inspection.
2. Generally, a requester may choose to inspect or to copy public information, or to both inspect and copy public information. When copies are requested, the City department that has custody of the information shall make the copies and provide the same to the Public Information Officer.
3. Whenever practical, copies of original records should be made available to the requester for review. Original records may not be removed from the offices of the City. Requesters may be allowed to review original records under the supervision of a City employee.
4. The examination of information by a requester may be interrupted if the information is needed for use by the City.
5. The City employee dealing with requests for public information shall treat all requests for information uniformly without regard to the position or occupation of the requester, the person on whose behalf the request is made, or the status of the individual as a member of the media.
6. The City is not required to provide a copy of information in a commercial book or publication purchased or acquired by the City for research purposes if the book or publication is commercially available to the public.
7. The City shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of the City.
8. The Act does not require the City to comply with standing requests for documents that may be created in the future. Due to the limited availability of City resources, the City shall decline any such requests to provide records on an ongoing basis or to provide periodic updates.
9. Once the information is provided, the Public Information Officer or department contact, shall document that the requester has received the

information by one of the following methods:

- a. The requester should be asked to sign and date the City's copy of the request or suitable acknowledgment form if the information is picked up in person.
 - b. If the information is faxed to the requester, the fax transmittal sheet along with the confirmation showing date and time should be kept and attached to the request.
 - c. If the information is e-mailed to the requester, a copy of the email shall be printed out or converted to PDF for separate archiving, showing the date and time the email was sent.
 - d. If the information is mailed, the sender shall use certified mail, return receipt requested, and ensure that the tracking number and postmarked date are recorded for future reference.
 - e. No matter which delivery method is used, a complete copy of the contents of each item of correspondence sent to a requester shall be retained (electronic format is acceptable) and kept with the City's other records relating to the request.
10. The City may require that any person seeking to inspect or to pick up copies of information assembled pursuant to a public information request establish proper identification. The preferred method of establishing proper identification is by provision of a driver's license, but other materials might be acceptable as determined by the City Attorney. The City will make copies of all proofs of proper identity offered for this purpose. Failure to establish proper identification may result in a delay or denial of access to the requested information.

VI. COSTS

The Public Information Officer shall ensure that costs assessed are consistent and in accordance with state law. The following guidelines are to be utilized in determining and collecting costs of providing information.

1. Each department contact should carefully document expenses related to producing the information for each request, including time spent collecting and locating information, supplies used, number of copies, etc.
2. The City will charge for public information in accordance with the cost rules established by the Texas Attorney General, as such rules exist and as they may be amended, or as otherwise provided by state law.
3. Certain information developed by the City for the purposes of informing the public such as budgets, ordinances, brochures and pamphlets, may be provided at no cost if approved by Council as in the public interest. To the extent practicable, the City will endeavor to maintain its website up-to-date,

including such documents of general interest such as ordinances, agendas, minutes or meetings, maps, budgets, etc.

4. Bond. The City shall require a bond, prepayment/deposit, or other adequate assurance of payment if the estimated costs exceed \$50.00 or if a requestor has failed to pay for past requests for information and has received such information, sufficient to ensure the City will recover 100% of chargeable costs. The Public Information Officer shall notify requesters in writing of any bond, prepayment, or deposit requirements and the procedures for submission.
5. 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 the requester.
6. If a required bond, prepayment, or deposit is not received within ten (10) business days, the request is considered to have been withdrawn. When a bond, prepayment, or deposit is required to be provided by a requester, the date that it is received is considered to be the date the request is received by the City.
7. Requests that Require a Large Amount of Personnel Time:
 - a. Consistent with Section 552.275, costs attributable to personnel charges related to a request shall be assessed if:
 - i. The amount of time that personnel are required to spend producing public information for inspection or duplication by a requester, or providing copies of public information to a requester, exceeds 36 hours in the 12-month period corresponding to the City's fiscal year. The time spent producing public information for each and every request from a single requester during the corresponding fiscal year is aggregated for purposes of the 36 hour threshold.
 - ii. Once the requests exceed 36 hours in a 12-month period corresponding to the City's fiscal year, the requestor shall be required to compensate the City for costs attributable to personnel time exceeding the 36 hour threshold.
 - 1) This provision does not preclude the City from assessing labor charges for a request for copies or a request for inspection as authorized under other provisions of the Act. Labor costs are calculated using the hourly rates set by the State of Texas, and were set as \$15.00 per hour in 2014. Labor charges and personnel

charges will not both be assessed for any individual request.

- 2) When the requestor meets or exceeds 36 hours, the Public Information Officer shall also assess charges for overhead expenses and materials for all subsequent requests.
- 3) When necessary, the Public Information Officer will typically provide a written estimate of charges within ten (10) business days of receipt of the request, even if the estimated total will not exceed \$40.00.

- b. The time limit established herein shall be applied to all requestors equally, except for those exempted under the Act, and the Public Information Officer shall record the number of hours required to respond to each requestor in the City's 12-month fiscal year.
- c. In order to enforce the cost recovery provisions for personnel time as described above, the Public Information Officer must provide each requestor with a statement detailing the time spent in complying with the current request and the cumulative amount of time the requestor has accrued toward the established limit as each request is concluded. Time spent preparing the statement shall not be included in any charges. The statement described in this subsection may be combined with or accompany other City correspondence to the requestor, such as an estimate of copying costs.

8. Charges for Inspection:

- a. The Public Information Officer shall charge for copies of any page that must be copied so that confidential information may be redacted to enable the requestor to inspect the information subject to release. Tex. Gov't Code, 552.271.
- b. If the information requested exists only in an electronic medium and a copy is not requested, requestors may be subject to charges if compliance with the request will require programming or manipulation of data.
- c. A deposit, bond, or prepayment of anticipated personnel costs will be required if only inspection is requested if the Public Information Officer estimates that it will require more than 5 hours to prepare the records for inspection (including the time required to locate and compile the records, redact confidential information and to make copies of pages requiring redaction), and:

- 1) The records sought to be inspected are older than 5 years; or
- 2) The records completely fill, when assembled, 6 or more archival boxes

d. Personnel time spent responding to requests for inspection is included in the calculation of the requestor's 36 hour per fiscal year threshold.

9. Overdue Balances:

If the requestor has an overdue balance exceeding \$100, the Public Information Officer shall require full payment or obtain a security deposit before processing additional requests from the same requestor.

VII. MISCELLANEOUS

1. The City Secretary should address any questions regarding the policy and procedures for processing PIA requests to the Public Information Officer.
2. Any matters or issues not addressed by this Policy relative to public information shall be governed by the provisions of the PIA and any other applicable laws or policies.
3. The Mayor, in consultation with the City Secretary and the City Attorney, may amend this policy on an as-needed basis to conform with changes in applicable law and/or the administrative needs of the City. If such amendments are made without advance individualized approval by the City Council and reflect a material change in prior policy, the amended policy shall be presented to the City Council for formal adoption and/or further modification when practicable.
4. Helpful information on the Public Information Act is available at:

- a. Attorney General's Website: www.oag.state.tx.us
- b. Texas State Law Library: (512) 463-1722
- c. Cost Rules Administrator (questions concerning charges):
 - i. 888/672-6787 (888)ORCOSTS or
 - ii. (512) 475-2497
- d. Open Government Hotline:
 - i. 512/478-OPEN (6736) or

Toll Free at: 877-OPEN TEX or (877) 673-6839