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Open Government: Providing Public Information in Electronic Searchable and Sortable Formats

Key Points

- Access to public information in a searchable and sortable format is an essential tool for achieving increased government transparency and meaningful reform.
- The Public Information Act requires information be provided in a requested format if the information is maintained or feasibly created in that format.
- The Act should be amended to clarify that available formats include those allowing the information to be searched and sorted.

Introduction

A hallmark of any democracy is a government that is open and responsive to the people. It is imperative that all citizens know what their government is doing on their behalf and with what authority. All decisions and deliberations must be made in public with notice and an opportunity for the public to be heard. And all information and documents created or maintained in the course and scope of the government's business must be made available.

In short, the people should always know how their government works, what actions it is taking, and under what authority it is taking it. These are not just philosophical ideas; these principles are constitutionally and statutorily required.

The Texas Constitution [Article 1, Section 2](#), provides that “all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit.” One important aspect of power resting with the people is the people's right of access to public information created or maintained by their government.

In this vein, the Texas Public Information Act (the “Act”; [Texas Government Code, Ch. 552](#)) was enacted to require and ensure that the government would provide the people access to information created or held by the government and that the people have the right to request from the government any information that is not specifically excepted as confidential or otherwise statutorily excepted from disclosure.

The Act requires that government agencies provide requested information in an electronic format if available and in a requested format if the information is already maintained or feasibly available in that format. If not available in the requested format, the government agency must offer to provide the information in an alternative format and provide a cost estimate, including any necessary reprogramming, for providing the information in the requested format. Unfortunately, these estimates may not always include the least costly method of accommodating the requested format. The Act should clearly require government agencies to provide information in a searchable and sortable format if available or

identify the least costly method of providing the information in the requested format.

Texas Public Information Act

The Texas Public Information Act codifies the rights of the people to access public information from governmental bodies. The Act defines “public information” as “information ... written, produced, collected, assembled, or maintained...” by or for a governmental body, a government official, or government employee. It includes physical as well as electronic records whether on governmental issued or personal electronic devices ([Texas Government Code, Sec. 552.002 \(a\)](#)).

The purpose of the Public Information Act is expressly provided within its preamble:

Sec. 552.001. POLICY; CONSTRUCTION. (a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that 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 government and the official acts of public officials and employees. 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 Government Code, Sec. 552.001](#))

While the facts of each case determine the outcome of any dispute, subsection (b) of the preamble makes it clear that the law “shall be liberally construed in favor of granting a request for information.”

Yet, despite this clear announcement of open government, many situations continue to arise where the public is not provided the information they need to make informed choices.

Exceptions to Disclosure

There are some exceptions to disclosure of public information or meetings such as for personal, confidential, or proprietary information which is specifically listed in statute. If information is to be withheld from the public, it must meet one of the specific exceptions listed in the Act. For instance, unless specifically required to be disclosed

pursuant to other statutes, information that is confidential such as trade secrets or other proprietary information is excepted from disclosure under the Act ([Sec. 552.1101](#)). An example would be information related to settlement negotiations, or information submitted by a private individual or business during a bidding process for government contracts ([Sec. 552.104](#)).

The Act also requires that public information requests must be in writing and must be limited to information already in existence. In other words, the governmental agency is not required to answer questions, perform legal research, or create new information in response to a public information request.

Open Records in Requested Format

Another exception to disclosure relates to formatting. Generally, a request that open records be provided in a specified format that is not already stored and readily available in that format may be denied. However, the law does require that information must be provided in the requested format, such as an electronic format, if they are already stored and available or technologically able to produce the information in that format ([Sec. 552.228](#)).

[Section 552.002, subsection \(c\)](#) of the Act lists the forms this information may take:

The general forms in which the media containing public information exist include a book, paper, letter, document, e-mail, Internet posting, text message, instant message, other electronic communication, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory.

While these formats still exist and may be useful in some instances, newer formats and software programs such as Excel, should be added to the list in the statute.

Public records are often requested and used by private citizens and organizations for a variety of functions. A person could simply wish to know how their tax dollars are being spent, or a business could need public records to make necessary changes to its operations, anticipating a shift in regulatory patterns or changes in the tax code. In addition, researchers, journalists, and nonprofits frequently request and utilize public records in order to effectively craft solutions to issues or to determine whether a state agency has mishandled funds.

For instance, A *Dallas Morning News* investigative series, “Pain and Profit,” reported on numerous problems in the state’s Medicaid system in part by analyzing the spreadsheet data and record layouts of government agencies (McSwane, 2019). Other datasets include sales tax data, government expenditures on specific projects or by date or type of expenditure. When researching these data, being able to sort or search the information is helpful to effectively and efficiently analyze the information.

Yet, according to the bill analysis to HB 1810, which was introduced in the 87th Texas Legislature, some state agencies have denied requests to provide information in specified formats, such as spreadsheets in searchable CVS or other formats and instead have offered to supply the information in alternative formats such as non-sortable formats such as scanned PDFs that are not easily searched or sorted. The bill analysis states:

Despite attorney general rulings indicating that governmental entities should produce documents in response to public information requests in the form in which they are kept, some governmental entities distribute records as unsearchable images or PDFs, making it difficult to search and sort information. Additionally, some governmental entities have refused to provide the field codes or data dictionaries needed to understand or interpret data in the format in which it is provided. (HB 1810 Bill Analysis, 2021, p. 1)

House Bill 1810 (2021), and its companion legislation Senate Bill 928 (2021), was filed to address this issue. The bill sought:

to update state public information law to provide for the maintenance and production of electronic public information in a **searchable and sortable format** [emphasis added], such as an Excel spreadsheet, if the information is maintained in that manner and that is how the requestors wish to receive the information.

The bill passed the House but failed in the Senate.

While the Act currently requires the release of public information held by the government, the information is not required to be provided in a specific format unless it is already available in that format or can be feasibly provided in that format. Specifically, the government agency is not required to create a document or in all cases provide it in a requested format. Nonetheless, the Legislature has

indicated throughout the Act its intent to provide all reasonable accommodations to ensure adequate access to the information.

For instance, Section 552.221 of the Act allows compliance:

by referring a requestor to an exact Internet location or uniform resource locator (URL) address on a website maintained by the governmental body and accessible to the public if the requested information is **identifiable and readily available** [emphasis added] on that website.

(Texas Government Code, Sec. 552.221 (b-1))

Thus, the intent of the law is that the governmental agency must attempt to ensure access is provided, including on a website or via other electronic format. The agency shall provide the information in the requested medium if it is available or can be feasibly provided in that medium.

Sec. 552.228 of the Act specifies:

(b) If public information exists in an electronic or magnetic medium, **the requestor may request a copy in an electronic medium** [emphasis added], such as on diskette or on magnetic tape. A governmental body **shall provide a copy in the requested medium if:**

(1) **the governmental body has the technological ability to produce a copy of the requested information in the requested medium** [emphasis added];

(2) the governmental body is not required to purchase any software or hardware to accommodate the request; and

(3) provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the governmental body and a third party.

(c) **If a governmental body is unable to comply with a request to produce a copy of information in a requested medium for any of the reasons described by this section, the governmental body shall provide a copy in another medium that is acceptable to the requestor** [emphasis added].

Importantly, the Texas Attorney General’s Office has issued a formal open records decision that a government agency

cannot provide documents in a substitute format unless the requestor agrees to such substitution. ([Texas Attorney General, 1995](#)).

The opinion specifically states:

The act's policy is not served by a construction that permits a governmental body to provide another record in lieu of one that has specifically been requested. If a requestor seeks a particular public record and that record is not completely excepted from required public disclosure, the act requires the release of the record or the portions thereof that are not excepted. ([Texas Attorney General, 1995, p. 3](#))

This would seem to end the discussion about whether a government agency must provide information in a requested format if it is available in that format. However, attorney general opinions are not final and according to the bill analysis to House Bill 1810 in the 86th Legislature, governmental agencies have apparently continued to attempt to provide alternate formats to what was requested even when the requested format was available or feasibly obtained ([HB 1810 Bill Analysis, 2021, p. 1](#)).

Searchable and Sortable

Often the quantity of requested public information is immense and the format in which it is made available or provided to the requestor is difficult to sort through. For instance, the information may be submitted in a reproduced spreadsheet rather than in the format in which it is maintained by the government which would allow for the information to be more easily searched and sorted.

Without the ability to effectively use the information, it is of little use to the public and hardly open. There is also less ability for the public to act on the issues disclosed, and consequently, public information laws which lack clarity that could otherwise ensure access to usable data can significantly hinder the efficiency of government and any existing momentum toward reform.

Therefore, not only access to public records, but especially access to these records in a usable, effective format is particularly important when discussing the continuation of a system in which power is derived from and legitimized by the populous. A consistent circulation of knowledge, feedback, and improvements based on shared information between government and the people is one of the most effective ways to not only improve agency functions, but also more broadly steer the system in the direction of a

limited, effective government that can be trusted by citizens to remain in that capacity.

Therefore, Texas should strengthen the clarity of the public records process by mandating that agencies provide requested data in a searchable and sortable format if it is maintained or can be feasibly provided in that format.

Other states have imposed similar standards. In Georgia, the Legislature amended the Education Code in 2020 to create sortable databases available upon request for each local school district which displayed per-student spending, to be used for calculating a financial efficiency rate ([GA Code Sec. 20-14-49.13](#)). Similar programs were adopted in Missouri, encouraging public information to be maintained and released through electronic formats “to the greatest extent feasible” ([Missouri Revised Statutes, Section 610.029](#)), and Colorado, requiring the release of public documents in a searchable and/or sortable digital format if they are held in that format ([Colorado Revised Statutes, Title 24, Article 72, Section 203, Subsection 3.5 \(a\)](#)).

In Texas, the Act requires government agencies to release information in electronic formats maintained in that format if feasible to do so. If not feasible, the agency must provide a written statement to that effect and what formats are available and at what cost. The problem is that the feasibility is left to the discretion of the agency.

Sec. 552.231. RESPONDING TO REQUESTS FOR INFORMATION THAT REQUIRE PROGRAMMING OR MANIPULATION OF DATA.

(a) A governmental body shall provide to a requestor the written statement described by Subsection (b) if the governmental body determines:

- (1) that responding to a request for public information will require programming or manipulation of data; and
- (2) that:
 - (A) compliance with the request is not feasible or will result in substantial interference with its ongoing operations; or
 - (B) the information could be made available in the requested form only at a cost that covers the programming and manipulation of data.

- (b) The written statement must include:
- (1) a statement that the information is not available in the requested form;
 - (2) a description of the form in which the information is available;
 - (3) a description of any contract or services that would be required to provide the information in the requested form;
 - (4) a statement of the estimated cost of providing the information in the requested form, as determined in accordance with the rules established by the attorney general under Section 552.262.

Recommendations

- Require that electronic public information be produced in a searchable and sortable format, such as an Excel spreadsheet, if such information is maintained in that manner and if a requestor asks for information in that format.
- If not maintained in the requested format, require agencies to identify the least costly means of formatting the information.
- Clarify that data dictionaries and record layouts that define what certain data fields are constitute public information subject to disclosure.
- Encourage state agencies to maintain information in electronic and digital format that is searchable and sortable which is then required to be provided in that format upon request.

Conclusion

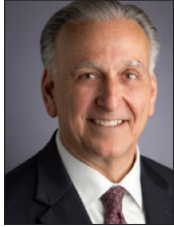
The Texas Public Information Act provides great benefits to the public by ensuring they have access to public records upon request. Agencies are further encouraged to provide more information on their websites and to provide more efficient methods of processing open records requests. Agencies are also required by the Act to provide information in requested mediums and formats where already maintained or feasibly converted to that format. Nonetheless, greater clarity is needed to ensure all agencies are providing the information in a searchable and sortable format if maintained in that format or if otherwise feasible to produce and to provide the lowest cost estimate of converting or manipulating the information to accommodate the needs of the requesting public.

Information maintained by government agencies and requested by the public belongs to the public not to the government. Accommodations should always be made, where feasible, for providing information in a requested format. Doing so would provide better access to information the public already has a right to and provide more trust in government overall. ★

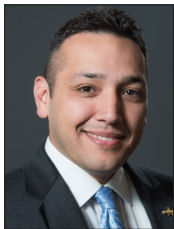
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Nathan Evenhar was a research associate at the Texas Public Policy Foundation. He is from Dallas, Texas, and is a freshman at Texas Tech University studying economics. A first-generation American born to Soviet refugees, he has always had a deep appreciation for democratic institutions and economic freedom. He is passionate about working towards advancing the ideas that make the American dream possible. His primary policy interests are in economic and foreign policy.

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