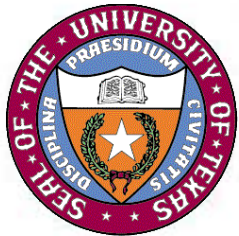




The Texas Public Information Act: To the Basics And Beyond

Ana Vieira Ayala
Cynthia Tynan
Audra Gonzalez Welter

March 25, 2015



UT System Office of General Counsel's Educational Seminars

Public Information Coordinators (PIC) – System & Academic Institutions (As of 3/25/15)

UT System Admin. – Ana Vieira Ayala (avieira@utsystem.edu)
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UT Arlington - Tiffany Gonzalez (tiffany@uta.edu)

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UT Brownsville – Mary Hernandez (mary.hernandez@utb.edu)

UT Dallas – Vanessa Balderrama (Vanessa.Balderrama@utdallas.edu)

UT El Paso – Vanessa Ramos (viramos@utep.edu)



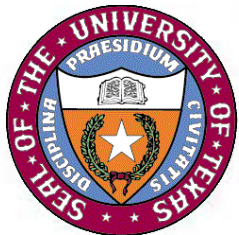
Public Information Coordinators (PIC) – System & Academic Institutions (As of 3/25/15), cont.

UT Pan American – Mark Saenz (masaenz@utpa.edu)

UT Permian Basin – Mark McGurk (mcgurk_m@utpb.edu)

UT San Antonio – Aaron Fuller (Aaron.Fuller@utsa.edu)

UT Tyler – Lee Murray (LMurray@uttyler.edu)



Public Information Coordinators (PIC) – UT Health Institutions (As of 3/25/15)

UT Southwestern – Christina Alvarado (Christina.Alvarado@UTSouthwestern.edu)

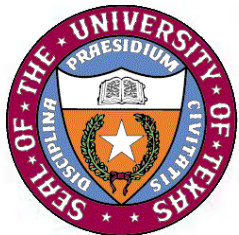
UT Medical Branch – Becky Wilson (bemwilso@UTMB.EDU)

UT Health Science Center Houston – Amy Dixon (Amy.P.Dixon@uth.tmc.edu)

UT Health Science Center San Antonio – Andrea Marks (Marksa@uthscsa.edu)

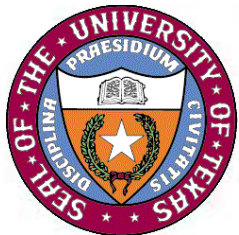
M.D. Anderson Cancer Center – Holly Rumbaugh (HRumbaugh@mdanderson.org)

UT Health Science Center at Tyler – Donna Patillo (Donna.Patillo@uthct.edu)



What every public employee needs to know about the Texas Public Information Act (“PIA”)

- A written request for records of a governmental agency is a PIA request.
- Request does not need any magic words or say it is a request under the PIA.
- Deadlines imposed by the PIA are triggered the moment we receive a *valid* written request for records.



What every public employee needs to know about the Texas Public Information Act (“PIA”), cont.

Valid Requests:

- Request that is hand-delivered to ANYONE;
- Request that is mailed to ANYONE;
- *Emailed* request *only* if it is emailed to the designated email inbox.

WARNING: If you receive a request via email, it will not be valid unless your email address has been designated to receive PIA requests.

What do you do when you receive a request via email, mail, or hand-delivery?

- Contact your PIC right away!
- At System Administration, if you receive email request, we ask you to inform the requestor how to make a valid request via email.



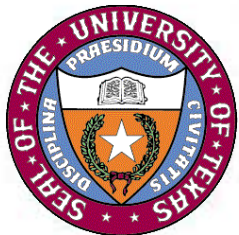
What every public employee needs to know about the Texas Public Information Act (“PIA”), cont.

The following is a sample email notice for you to send when you are emailed a request:


Pursuant to section 552.301(c) of the Texas Government Code, e-mailed public information requests must be sent to the designated public information e-mail address.

In order to submit a valid public information request to The University of Texas System, please e-mail your request to publicinformation@utsystem.edu.

For more information, please visit <http://www.utsystem.edu/open-records>.



What everyone needs to know if you get a request for documents from a member of the public

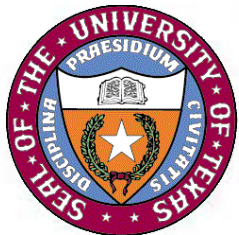


If you receive emailed request directly to your inbox

Tell requestor to submit request to appropriate inbox!

If you receive mailed or hand-delivered request

Send request to your PIC immediately!



The traditional PIA process

PIC gets a request, reads it, logs it and determines which offices likely maintain the requested information.



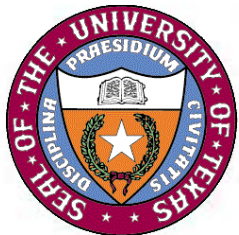
PIC sends your office an email requesting the documents and tells you when they need the records.



You search for records and send them to your PIC for handling.

HELPFUL TIPS:

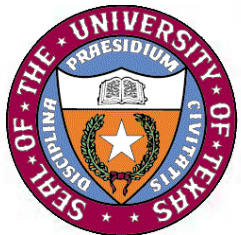
- Let your PIC know what the records contain and any background information.
- Tell your PIC about any concerns regarding the release of documents.
 - This does not always mean there is an available exception for non-disclosure BUT always let your PIC know so they can evaluate all facts.



The traditional PIA process, cont.

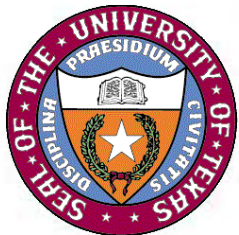


- PIC will either release the documents or discuss with OGC the available avenues to withhold the information. If we want to or are required to withhold the documents, we have to ask the AG (in most instances) to withhold the documents. This process is much more involved and the AG takes about two months to issue a ruling.
- PIC will always strive to keep the offices that hold the information updated on what is going on but feel free to ask if you have not heard from them.



What everyone needs to know about PIA deadlines

- By **10** business days after receipt of request, the following must be completed:
 - We are required, by law, to respond to a request.
 - This does not mean we have all 10 business days – it means we have up to 10 business days. If information is readily available and can be released without any concerns, it should be released *as soon as possible!*
 - If information is voluminous and cannot be released within 10 business days we are **REQUIRED** by law to certify a date and time when the information will be released. If by the future date we still can't produce all information, we should strive to release what we can and re-certify another date and time for the remaining production.

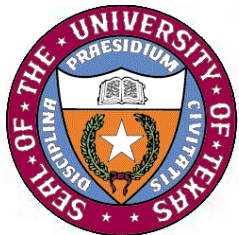


What everyone needs to know about PIA deadlines, cont.

The following is a sample certification notice for additional time to be sent by 10th business day:

I write to advise you we will need additional time to make this information available to you and/or provide you with a written estimate. System will make this information available to you and/or send you a written estimate of charges on March 30, 2015 at 5:00 PM. See TEX. GOV'T CODE §§ 552.221, 552.2615.

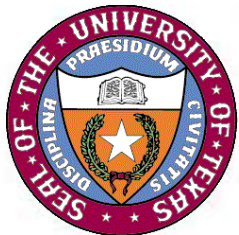
If you have any questions or concerns regarding this correspondence, please feel free to contact me at (512) 499-4563.



What everyone needs to know about PIA deadlines, cont.

What the 10th business day deadline means for you:

- Documents need to be delivered to your PIC as soon as possible, but at least *some* of those records must be sent prior to the 10th business day.
- PIC needs to know what they have in order to respond to requestor.
- Might be disruptive but complying with the PIA is everyone's duty.

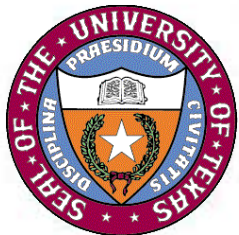


What everyone needs to know about PIA deadlines, cont.

When documents *cannot be released* because they are *confidential by law*, your PIC will coordinate with OGC and seek an AG ruling to withhold the documents.

- OGC will have 10 business days to file a brief and then another 5 business days to deliver documents to the AG for review.
- The AG may consider certain documents even when late, but it is never a good practice to miss a deadline.

NOTE: It is imperative that OGC receive documents from your PIC prior to the 15th business day deadline.



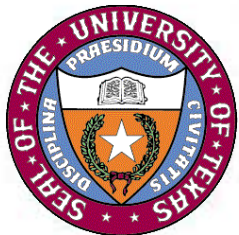
What everyone needs to know about PIA deadlines, cont.

When documents *can be released* but do not have to, that is, they are excepted from release by a *discretionary exception*, your PIC will coordinate with OGC and seek an AG ruling to withhold the documents.

- OGC will have 10 business days to file a brief and then another 5 business days to deliver documents to the AG for review.

WARNING: If the 10th day deadline is missed, the AG will NOT consider the documents and they will be released.

- **It is *even more* imperative that OGC receive the documents from your PIC prior to the 15th business day deadline.**



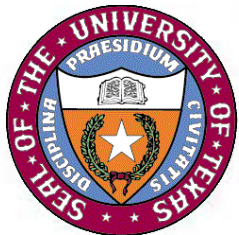
List of Mandatory vs. Discretionary PIA Exceptions

Mandatory

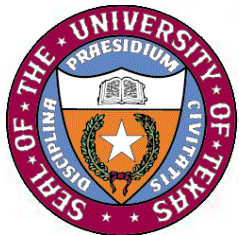
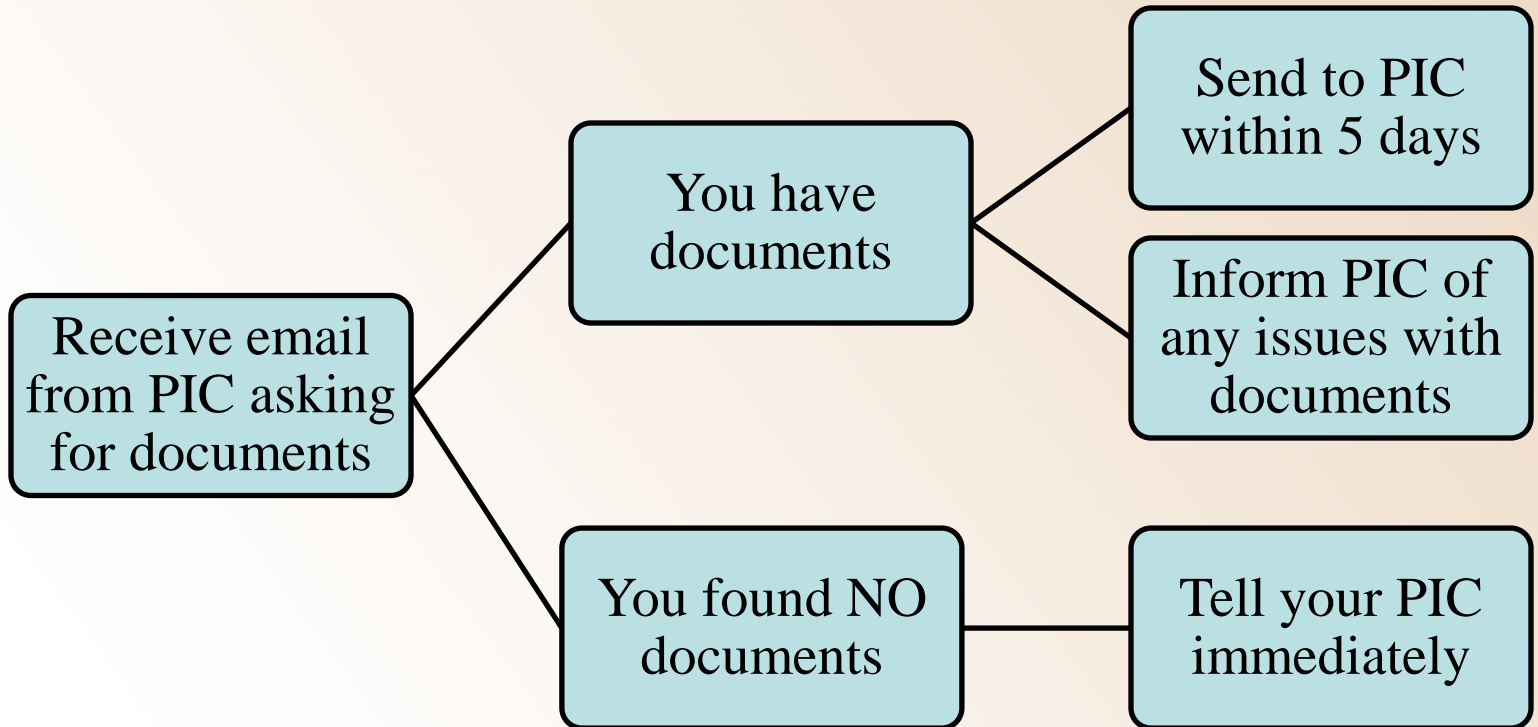
- Constitutional/Common Law Privacy
- Compliance Investigations
- Certain Police Reports
- Medical Records
- Computer Network Security
- Certain Research Information

Discretionary

- Internal Discussions regarding institutional or System-wide policy
- Drafts of press releases
- Attorney-client privilege
- Bid tabs
- Marketplace Competitor
- Ongoing/Closed Law Enforcement Investigations
- Litigation Exception
- Academic Test Items
- Certain Real Estate Information



What everyone needs to know if you get a request from your PIC for documents



Common Misconceptions

WRONG – you sent a brief to AG, so nothing gets released until the ruling.

RIGHT – non-excepted info must be released by the 10th business day or by the date and time you certified on the 10th business day.

WRONG – if you receive a request, you need to release documents.

RIGHT – only your PIC office should release documents!

WRONG – an employee can always receive their own personnel file.

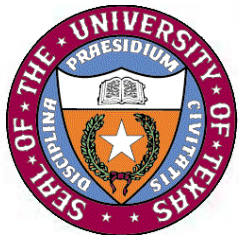
RIGHT – personnel files could be at issue in compliance investigations or litigation and may not always be released.

WRONG – bid tabs are always public.

RIGHT – sometimes bid tabs can include pricing for non-winning bidders and may be confidential.

WRONG – basic information from police reports always gets released.

RIGHT – basic information can be confidential in certain instances.



Common Misconceptions

WRONG – document is marked as confidential so we can't release it.

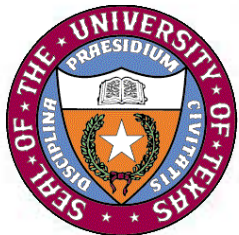
RIGHT – just because it is marked confidential does not mean it is under law.

WRONG – we ask another UT institution for the documents because we know they have them.

RIGHT – the PIA only requires us to answer with documents we maintain. We never ask for documents from other UT institutions.

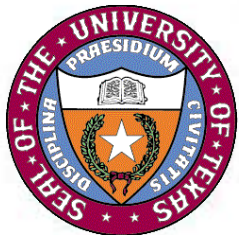
WRONG – we can withhold information if it's confidential.

RIGHT – with the exception of very limited information (such as social security numbers) we can NEVER withhold information without an AG ruling.



List of Items Withheld Without AG Ruling

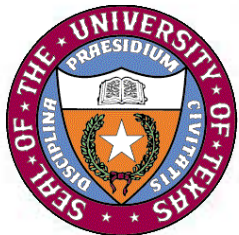
- Social Security Numbers
- Driver's License Numbers and Issuing State
- License Plate Numbers and Issuing State
- Private email addresses
- Employee family member, home address, and certain other personal information (in some cases)
- Bank account and routing numbers
- Credit card numbers
- I-9
- W-2 and W-4
- Direct deposit authorization forms
- Form DD-214
- L-2 and L-3 forms



Any Questions?

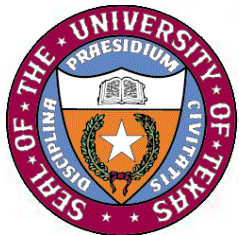
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You can also e-mail us questions at any time.



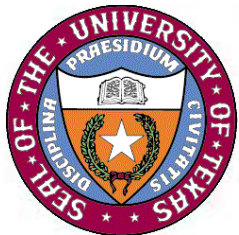
Contracts

- *Generally*, contracts with a governmental body are considered “super public” and must be released
- *Exceptions* to general rule:
 - Contract may not be released if RFP is currently pending or about to be pending for same services (552.104)
 - Third Party Proprietary Rights (552.305)
 - Review contract for non-disclosure clauses
 - Does contract require written notice to third party before release?
 - » If so, submit to AG for ruling
 - **BEWARE**: contracts may attach Third Party RFP Proposal as Exhibit (552.305)
 - » If so, submit to AG for ruling



Contracts, cont.

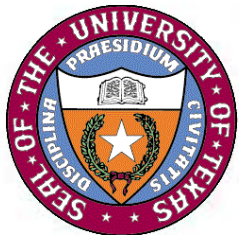
- Review contract for info relating to computer network security (552.139)
 - Depending on type of contract, this info may be confidential even if written in contract
 - Examples:
 - Physical location of data server
 - Type of security for data center
 - Time data is backed up



Any Questions?

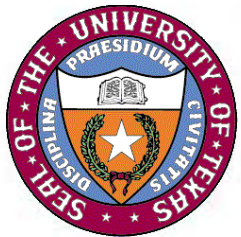
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You can also e-mail us questions at any time.



Law Enforcement

- Police investigations and reports will almost never be completely public.
 - ongoing/closed investigations (552.108)
 - sexual assault (privacy)
 - child abuse (Family Code)
 - juvenile offenses (Family Code)
 - mental health issues (privacy)
 - attempted suicide (privacy)



Law Enforcement, cont.

- Police reports contain dense information and a full review is always required to ensure privacy laws are observed
- Although section 552.108 of the PIA does not allow us to withhold basic information, basic information will not always be released
 - Child abuse
 - Sexual assault
 - Attempted suicide
 - Juvenile offenses
- Closed investigations can also be withheld
- Policies can partially be withheld
- Homeland Security Act exceptions may also apply to your information

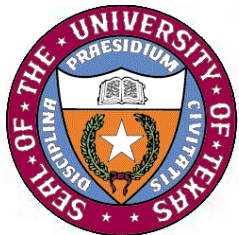


Law Enforcement, cont.

- Sharing information with other departments, institutions or agencies can be problematic

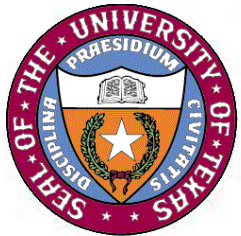
BEWARE: If you do so, you may lose available exceptions.

- So contact OGC with any questions prior to any transfer of documents.



Basic Information from Police Report

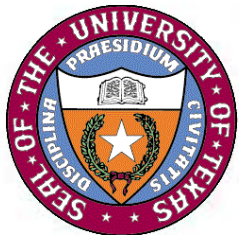
- (a) the name, age, address, race, sex, occupation, alias, social security number, police department identification number, and physical condition of the arrested person;
- (b) the date and time of the arrest;
- (c) the place of the arrest;
- (d) the offense charged and the court in which it is filed;
- (e) the details of the arrest;
- (f) booking information;
- (g) the notation of any release or transfer;
- (h) bonding information;
- (i) the location of the crime;
- (j) the identification and description of the complainant; (any pseudonym if used and description, for example, white female)
- (k) the premises involved;
- (l) the time of occurrence of the crime;
- (m) the property involved, if any;
- (n) the vehicles involved, if any;
- (o) a description of the weather;
- (p) a detailed description of the offense; and
- (q) the names of the arresting and investigating officers.



Any Questions?

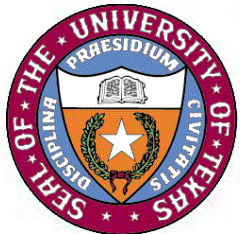
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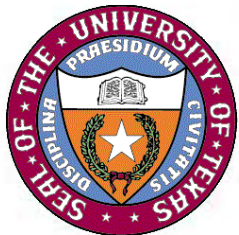
Compliance

- **NOT** limited to Compliance Offices
- §51.971 of the Education Code, makes confidential by law certain information relating to compliance programs of institutions of higher education
- System and the institutions are subject to the Education Code, which defines a “compliance program” as:
 - *a process to assess and ensure compliance by the officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies, including matters of:*
 - (A) *ethics and standards of conduct;*
 - (B) *financial reporting;*
 - (C) *internal accounting controls; or*
 - (D) *auditing.*



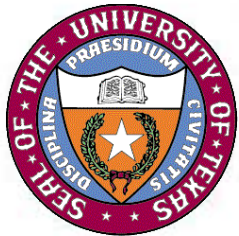
Compliance, cont.

- Many investigations fall under “ethics and standards of conduct”
- Examples:
 - ODOP/police department internal affairs
 - personnel investigations;
 - employment issue investigations performed by human resources personnel, department heads, or other individuals responsible for investigating employment issues.



Compliance, cont.

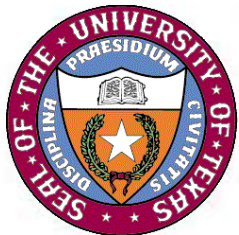
- What information is Confidential?
 - If investigation is *ongoing*:
 - we must withhold all responsive information.
 - If investigation is *completed*:
 - we must withhold *only* the identifying information of person who made the report or sought guidance from or participated in investigation.
 - Generally, this includes complainant(s) and witnesses.



Compliance, cont.

- If a *completed* investigation resulted in a finding that allegations are unsubstantiated, or without merit:
 - Then the identifying information of the accused must also be withheld.
- In certain limited circumstances, such as a very small department, where withholding only identifying information would not actually provide protection, we may withhold a *completed* compliance investigation in its entirety.

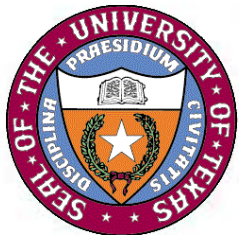
- Note: Individuals may waive confidentiality, so it is possible to obtain consent from witnesses or complainants, but there is no obligation that they do so.



Any Questions?

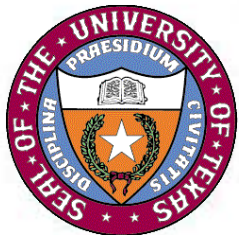
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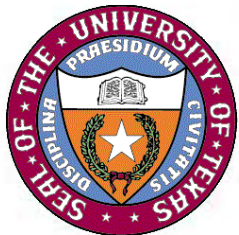
WRAP UP

- More QUESTIONS? (if time!)
- This is one presentation in a series of seminars that OGC will be offering this year.
- For more on the Texas Public Information Act please contact Ana Vieira Ayala, Cynthia Tynan or Audra Welter at avieira@utsystem.edu, ctynan@utsystem.edu, and awelter@utsystem.edu, respectively.
- We will be emailing you a written set of all of the questions (and answers) we didn't get through today.



RESOURCES

- <http://www.utsystem.edu/board-of-regents/policy-library/policies/uts139-texas-public-information-act>
- <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm>



Thank you for your support

- We hope you will tune in again next month!
- If you would like to set up a training on another legal topic through the UT System Office of General Counsel, please contact Tamra English (tenglish@utsystem.edu) or Jason King (jking@utsystem.edu).

