

POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE

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| SECTION: | GENERAL POLICIES/PROCEDURES/DIRECTIVES | REFERENCE NUMBER: 504.01 |
| SUBJECT: | TEXAS PUBLIC INFORMATION ACT | INITIAL EFFECTIVE DATE: 09/01/84 |
| TITLE: | RESPONDING TO CITIZEN REQUESTS FOR CITY DOCUMENTS, RECORDS, AND OTHER PUBLIC INFORMATION | LAST REVISION DATE: 11/20/2001 |

ADMINISTRATIVE DIRECTIVE:

Employees of the City of Denton shall observe the requirements of the Texas Public Information Act, and related statutory and case law, in responding to citizen requests for information. This Act requires that public records be made available for public inspection and copying; that the records be carefully protected and preserved from deterioration, loss, removal, or destruction; and that public records be repaired, renovated, or rebound whenever necessary to preserve them properly.

I. PUBLIC INFORMATION DEFINED

- A. “Public Records” include any information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business by or for a governmental entity and the governmental body owns the information or has a right of access to it.
- B. “The Public Information Act” applies to records regardless of their format; it includes information that is maintained in paper, film, audiotape, microfilm, videotape, electronic data held in a computer memory, Mylar, linen, silk or vellum. A document labeled “draft” is not a protected document if it is used in the course of conducting public business.
- C. Exceptions: the following is a list of exceptions to public information recognized under the Public Information Act that are relative to government:
 1. “Litigation Exception” – information about civil or criminal litigation or settlement negotiations that are pending or reasonably anticipated on the date the requestor requests the information will not be released.
 2. “Private/Confidential Information” – information that is legally recognized as highly intimate or embarrassing [that if disclosed would constitute a clearly unwarranted invasion of personal privacy] and which is of no legitimate concern to the public is exempted. Also exempted from disclosure is information considered to be confidential by law, either constitutional, statutory or by judicial decision.
 3. “Trade Secrets/Commercial Information” – exempted from public disclosure are trade secrets and certain commercial or financial

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information. Cities do not typically have trade secret protection in their own information-this exception is typically used to protect the trade secrets of a third party, such as software and source code.

4. “Economic Development” – protected from disclosure is information relating to economic development negotiations involving the City and a business prospect that the City wants to locate, stay or expand in or near the City.
 5. “Attorney/Client Privilege” – The City will not disclose information that reveals client confidences or contains legal advice or legal opinions.
 6. Other – Employee personnel files, City utility customer records, records within the Police Department and Civil Service employee records all have various but limited exceptions to disclosure. When in doubt as to whether or not an exception applies, contact the City Attorney.
 7. Opinions, recommendations and advice that relate to the policy-making processes of the City Council that are included in intra-agency and interagency memorandums or letters.
 8. Public Power Utility Competitive Matters - Denton Municipal Electric information that is a competitive matter that includes commercial information that if disclosed to the public would give an advantage to competitors or prospective competitors.
- D. An “Open Records Request” or “Public Information Request” must be for inspection or copies of an existing document or record. An open records request does not require the City of Denton to produce information that is not in existence. It does not require the City of Denton to calculate statistics, perform legal research, to prepare answers to questions, conduct research, collect raw data, or construct new records. On the other hand, the City may be required to query a computer database to generate a report with the requested information. If the City of Denton has the technological ability to do so, and if the requestor is willing to pay the expenses of doing so under scheduled charges, the City may be required to produce the information in a particular requested format. The City of Denton is not required by the Public Information Act to buy additional hardware or software to accommodate an open records request.

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II. ADMINISTRATIVE PROCEDURES

A. Employees Authorized to Provide Information to the Public

Department directors and division heads shall be responsible for ensuring that this directive is observed in their respective departments and divisions. Each department director/division head shall authorize one or more employees to respond to citizen requests for written documentation. Only those employees with such authorization may release information to the public. Employees lacking such authorization will refer citizen requests to an authorized employee. Each department/division director will forward the names of employees authorized to respond to public information requests to the City Secretary. Authorized employees will be required to participate in training to ensure compliance with the Public Information Act and will need to keep current with the regulations as needed.

B. Determination of Whether Information is Public

Authorized employees shall provide information to the public in the manner described in Section II, Part C unless the information clearly falls into one of the exceptions described in Section I, Part B. If the request is for questionable materials (i.e., it is not clear whether the information is public or confidential), the authorized employee will refuse disclosure at that time and explain to the citizen that he/she is not sure if such information is public. The employee will then forward the completed "Request for Information" form to the department director and the City Attorney's Office as quickly as possible.

C. Procedures for Releasing Information that is Deemed Public

1. Public Information Act Activation

- a. The mandatory provisions of the Public Information Act are activated only by a *written* request, and authorized employees should insist that all oral requests be reduced to writing and time stamped when received.
- b. A "Request for Information" form or any written format of a request will be accepted, including e-mail.
- c. Essential information needed in the written request includes name, address, phone number, and a detailed description of documents requested

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2. Restrictions on Asking Why a Person is Requesting Information

It is a violation of the Public Information Act to inquire of any applicant the reason why he or she wishes to inspect or copy public records. The City of Denton may only inquire to the extent of establishing proper identification and to identify the public records being requested. City of Denton employees shall not inquire into the motives or use that a requestor may have for the requested information.

3. Processing a Public Information Act Request

- a. Authorized employees shall stamp the date the written request is received and forward a copy to the City Secretary and City Attorney Offices promptly. The City Secretary will maintain a log of all Public Information Act requests and their disposition.
- b. Any documents produced will be made available for inspection during normal business hours.
- c. Authorized employees shall not allow requestors to use city computer terminals for searches nor may requestors use portable copiers under the following conditions:
 - a. When it is unreasonably disruptive of working conditions;
 - b. When the records contain confidential information;
 - c. When it would cause safety hazards; or
 - d. When it would interfere with other persons' rights to inspect and copy records.
- d. Authorized employees shall use city supplies (diskettes, paper and other materials) rather than supplies provided by a requestor.

4. Time Frames for Public Information Act Responses

- a. Any requested public information that is produced shall be produced as quickly as possible within a reasonable time frame but not to exceed 10 business days.
- b. Authorized employees shall notify a requestor in writing if the requested records cannot be produced within 10 business days, setting a date and hour within a reasonable time when the records will be available.
- c. If the information is in active use or in storage and cannot be produced within 10 business days, authorized employees shall certify that fact to the requestor and set a date and hour within a

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reasonable time when the information will be available for inspection or duplication.

- d. The requestor shall complete the inspection of public records within 10 days of the date the information is made available but authorized employees may extend this time period upon written request for additional time from the requestor.
- e. Authorized employees shall provide a written notice to a requestor within 20 days of receipt of the request if the production of records in a particular format requires additional computer programming or manipulation of data that will substantially interfere with the department's ongoing operations, or can be supplied in requested form only at a cost that covers programming and manipulation. This notice will inform the requestor that the information is not available in the requested format, an estimated cost, time that it will take to provide the information, a description of the forms in which the information is available and a description of any contract or services that would be required to provide the information in the requested form and will also state if additional time is needed to calculate the costs and timing of the request.
- f. Any requests that are forwarded to the City Attorney for review will be forwarded as quickly as possible to allow adequate time for legal analysis and review. Likewise, potentially responsive data or records shall be forwarded to the City Attorney as soon thereafter as they become available.
- g. The City Attorney's Office shall provide written notice to the requestor within 10 business days of receipt of a request if the City seeks an Attorney General Open Records ruling on the request. The 10 days will not run during any time the City and requestor are actively discussing the scope of information requested.

D. Authorized Employees Always Present

An authorized employee shall be present at all times when a person is inspecting documents. In no instances shall the person be left alone with the records. In addition, no employee shall allow official records to be removed from City buildings without the permission of a department head or division director.

E. Costs, Charges for Copies

- 1. Permissible charges for Public Information records are set by the General Services Commission.

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2. Authorized employees shall use a "Public Record Charges" form to calculate copy charges.
3. Authorized employees may consider reducing or waiving fees if it is determined that waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public.
4. Authorized employees shall not charge for copies of requests that cost \$2.00 or less, whether claimed to be in the public interest or not.
5. Authorized employees shall charge the cost for the labor to provide access to electronic records if providing such access requires programming or manipulation of data. A written notice will be provided the requestor in this case.
6. Authorized employees shall charge for photocopying paper records for public access that must have confidential information removed. Charges will be only for the cost of copying the materials, not for any associated labor to remove confidential information.
7. Postal related charges will be added by authorized employees to transmit the reproduced documents to the requesting party.

F. Notification of Copy Charges

1. If a request for copies or to inspect information will result in charges exceeding \$40, an authorized employee will provide a written itemized estimate, notify the requestor of less costly alternatives and request an address of the requestor's choice. If actual charges are greater than originally estimated, an updated itemized statement will be sent or a charge of no more than 20% more than the original estimate will be used. If the requestor does not respond within ten business days, the request will be considered withdrawn.
2. A bond or deposit will be required if the anticipated costs of preparing a copy of information will exceed \$100.00. A bond or cash deposit will be required for anticipated personnel costs for making information available for inspection if it will take more than five hours to prepare the information for inspection and (a) the information is more than five years old or (b) the information completely fills six or more archival boxes.

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G. Limitations on Copies

1. Authorized employees will not provide more than one copy of requested materials.
2. A requestor will be notified by an authorized employee if requested documents are not in existence at the time of the request and will be asked for a re-submittal of the request at a later date. The authorized employee is not required to notify a requestor in the future that the information has come into existence.
3. Authorized employees will not honor a repeated request from the same requestor for the same information once copies have been provided. A written certificate will be provided to the requestor detailing a description of the information that was previously furnished or made available, the date the City received the previous request, the date the City previously furnished or made available the information to the requestor and that no subsequent additions or corrections have been made.

H. Procedures for E-Mail Requests

The City Secretary is designated as the authorized individual to receive e-mail requests for information for the City of Denton. City employees receiving an e-mail request for information shall inform the requestor that his request must be directed to the City Secretary at citysecretary@cityofdenton.com. City employees shall forward an e-mail request for information to the City Secretary's Office. Time frames associated with Public Information Act requests will begin at the time the e-mail is received by a City of Denton employee in his mailbox.

I. Procedures for Faxed Requests

The City Secretary is designated as the authorized individual to receive faxed requests for information for the City of Denton. City employees receiving faxed requests for information shall inform the requestor that his/her request must be directed to the City Secretary at 940-349-8596. City employees shall forward a faxed request for information to the City Secretary's Office. Time frames associated with Public Information Act requests will begin at the time the fax is received by a City of Denton employee.

In all cases, if employees are unsure of how to proceed with a request for public information, the City Secretary or Legal Department should be contacted.

While this directive, in some cases, may summarize portions of the Public Information Act, it is not intended to substitute for the Act and that in any situation where the directive may state

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something contrary to the Act; the language of the Act would supercede the language of the directive. The standards set out in this directive are not intended to limit or waive the legal standards existing under state law.