

Public Information Act

3/19/2020

May a city temporarily suspend the requirements of the Texas Public Information Act during a disaster?

A governmental body that is currently impacted by a catastrophe that interferes with the ability of the governmental body to comply with the requirements of the Texas Public Information Act (Act) may suspend the applicability of the requirements of the Act. For purposes of the suspension of the Act, a catastrophe is defined as a condition or occurrence that interferes with the ability of a governmental body to comply with the requirements of the Act, including an epidemic. TEX. GOV'T CODE § 552.233(a). A governmental body that elects to suspend the requirements of the Texas Public Information Act must provide notice to the office of the attorney general that the governmental body is currently impacted by a catastrophe and has elected to suspend the applicability of the Act during the suspension period and the extension period. *Id.* § 552.233(c). [Notice](#) must be provided in a [form](#) promulgated by the attorney general. *Id.*

For how long can the requirements of the Act be suspended?

The governmental body may suspend the applicability of the requirements of the Act for an initial suspension period that does not exceed seven consecutive days. *Id.* § 552.233(d). The initial suspension period must occur during the period that: (1) begins not earlier than the second day before the date the governmental body submits the notice to the office of the attorney general; and (2) ends not later than the seventh day after the governmental body submits the notice.

Id. A governmental body may extend an initial suspension period, one time, if the governing body determines that the governing body is still impacted by the catastrophe on which the initial suspension period was based. *Id.* § 552.233(e). The initial suspension period may be extended for not more than seven consecutive days that begin on the day following the day the initial suspension period ends. *Id.*

How does a city calculate business days when determining the amount of time the Act can be suspended?

[The Attorney General has provided clarification](#) regarding the calculation of business days during the state response to the coronavirus. Cities should consider the following guidelines when calculating business days:

- Holidays observed by the city are not business days.
- Weekends are not business days.
- Skeleton crew days are not business days.
- A day on which a city's administrative offices are closed is not a business day.

- If a city has closed its physical offices for purposes of a public health or epidemic response or if a city is unable to access its records on a calendar day, then such day is not a business day, even if staff continues to work remotely or staff is present but involved directly in the public health or epidemic response.

Where and for how long must a suspension notice be posted?

A city that suspends the applicability of the Act must provide notice to the public of the suspension in a place that is readily accessible to the public and in each other location the governmental body is required to post notice of a meeting under the Open Meetings Act. *Id.* § 552.233(f). This means that the notice must be posted on a physical or electronic bulletin board at a place convenient to the public in city hall (*Id.* § 551.050(b)); on a city's website if the city maintains an internet website (*Id.* §§ 551.043(b), 551.056(b)); and, if the city has a population of 48,000 or more, the agenda of the emergency meeting must be concurrently posted on the city's internet website (*Id.* § 551.056(c)). The notice of suspension must be maintained during the suspension period. *Id.* § 552.233(f).

What happens to requests for public information that are received before or during a suspension period(s)?

The requirements of the Act related to a request for public information that was received before the initial suspension period begins are tolled until the first business day after the date the suspension period ends. TEX. GOV'T CODE § 552.233(h). A request that is received during a suspension period is considered to have been received by the city on the first business day after the date the suspension period ends. *Id.* § 552.233(g).

3/24/2020

What is a city required to do if the city elects to suspend the Public Information Act (PIA) because it has been impacted by COVID-19?

A [previous update](#) included detailed information relating to local suspension of certain PIA deadlines during an emergency. **PLEASE NOTE THAT the days that a city is closed, working with a skeleton crew, or working remotely do not count as business days for purposes of the PIA.** The attorney general's office has released a [clarification notice](#) concerning the PIA, calculating business days and COVID-19.

The attorney general's office has asked that the League help clarify some of the procedures involved with that process.

The city is required to:

1. submit a [catastrophe notice](#) to the attorney general's office. The notice has to be on the form created by the attorney general's office. The [form](#) (first page) requires the following information: (a) name of the governmental body; (b) identify and describe the catastrophe; (c) the dates for the beginning and end of the suspension period (only a seven calendar day period is allowed, with one extension); and (d) name, title, phone number, and signature of the governmental body's contact person; and

2. post notice of the PIA suspension in the same places the city would post notice of an open meeting.

Tex. Gov't Code §§ 552.233(c),(f),(j); see id. §§ 551.050, 551.056. Here is an example of a properly [filled out form](#).

How long can a city temporarily suspend the PIA?

The initial temporary suspension of the PIA is seven consecutive calendar days. Id. § 552.233(d). The city can extend the temporary suspension for another seven consecutive calendar days. Id. § 552.233(e). The city can only suspend the PIA for a total of up to 14 calendar days.

Is the attorney general's office required to post these catastrophe forms on its website?

Yes. The attorney general's office is required to post submitted catastrophe notice forms to its website. Id. § 552.233(i). These notices will be continuously posted until the first anniversary of the date the attorney general's office received the form. Submitted notice can be seen [here](#).

Is there a different notice form that the city has to fill out if the city decides to extend the temporary suspension of the PIA?

Yes. The attorney general's office has promulgated an [extension catastrophe notice form](#) (second page) for the extension of the temporary suspension of the PIA. The following information is required for the extension form: (a) name of the governmental body; (b) identify and describe the catastrophe; (c) the dates for the beginning and end of the original suspension period and the extension period (only a seven calendar day period is allowed, with one extension); and (d) name, title, phone number, and signature of the governmental body's contact person. Id. § 552.233(j). As with the initial catastrophe notice, the extension has to be submitted to the attorney general's office and posted where open meetings notice are required to be posted. Here is an example of a [filled out catastrophe extension notice form](#).

How does the city submit the catastrophe notice forms to the attorney general's office?

A city can submit its catastrophe notice form to the attorney general's office either [electronically](#) or via US mail to:

Attn: Public Information Act Catastrophe Notice
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

3/24/2020

What happens if a city official is unable to complete a state-mandated training by the deadline due to the coronavirus?

Social distancing requirements have led to the cancellation of many in-person training sessions across the state, many of which fulfill a state-mandated training requirement. Beyond that, many city officials are simply overwhelmed with performing essential functions in their communities to attend a training session at this time.

Two types of required training – training under the Public Funds Investment Act (PFIA) and the newly-imposed cybersecurity training – are available to be completed online using TML resources. In addition to in-person trainings, TML offers online PFIA training that can be taken anytime. More on PFIA training options through TML can be found [here](#). Mandatory cybersecurity training is being offered by the TML Intergovernmental Risk Pool, and can be taken through a free online video. More on this training option can be found [here](#).

The attorney general offers online [training videos](#) for city officials needing to complete training for the Open Meetings Act or Public Information Act.

Some city officials will understandably not have the time to complete even the online trainings in the coming weeks. Though the trainings mentioned above are mandatory, there are no specific penalty provisions for failing to take the training by the respective deadline. Still, city officials are encouraged to take any mandatory training as soon as possible under the circumstances.

4/14/2020

Has the Texas State Library and Archives Commission (TSLAC) published any guidance for records management officers about how long to keep COVID-19 records?

Yes. The State and Local Records Management Division of TSLAC publishes a very informative blog called [The Texas Record](#). An [April 13 blog post](#) explains there are two basic points to keep in mind when it comes to handling COVID-19-related records.

Just like any other city record, the first question to ask yourself when dealing with COVID-19 records is what function (or purpose) the record serves. Most functions that your city performs are already covered in one of TSLAC's [local retention schedules](#). Once you determine the function of the record, you can classify it into the correct series. The blog post contains helpful examples of common series under which COVID-19 records might fall.

Second, you need to evaluate: (1) the historical value of the records; and (2) whether the records must be kept because they are subject to a legal hold, litigation, public information request, audit, or other claim – even if the retention period has been met. See Local Government Code Section [202.002](#). Because of special legal and fiscal issues in regard to COVID-19 records, you may decide to place an indefinite destruction hold on the records.

The blog post concludes that “[i]t is difficult, if not impossible, to appraise the historical significance of COVID-19 records while we are all currently in the midst of the crisis. The simplest approach [records management officers] can take right now is to classify COVID-19 records according to their function as usual, and consider placing destruction holds on all COVID-19 records until the official course of action becomes clear.”

Still have questions? You can find your TSLAC local government analyst [here](#). And you can read more about city records management [here](#).

9/24/2020

How should cities treat COVID-19 health screening records?

Luckily, the Texas State Library and Archives Commission (TSLAC) is here to help with the answer. Earlier this week, TSLAC [posted on their blog](#), *The Texas Record*, some helpful guidance on how cities handle COVID-19 screening records.