

PROPOSED POLICY MANUAL REVISION

STATE BAR RECORDS

Purposes:

1. To summarize requirements regarding State Bar records retention and confidentiality.
 2. To outline a process for access to State Bar records by officers and directors. (This provision was modeled on the policy and procedure of the University of Texas.)
 3. To update the Public Information Act (PIA) policies of the State Bar.
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9.03 RECORDS OF THE STATE BAR.

A. Officers, directors, and employees must maintain all records created or received in connection with the transaction of State Bar official business in accordance with the State Bar of Texas Record Retention Schedule as filed with the Texas State Library State and Local Records Management Division.

B. No State Bar officer, director, or employee will wilfully destroy, mutilate, remove without permission, or alter records pertaining to the official business of the State Bar except in accordance with the State Bar Record Retention Schedule.

C. No State Bar officer, director, or employee will disclose or distribute confidential information.

9.04 Processing Information Requests

A. Requests by Members of the Public. The State Bar will act in strict compliance with the Texas Public Information Act, section 9.05 of this Policy Manual, and applicable State and federal law in providing public access to State Bar records.

B. Requests by Officers or Directors.

1. Requests by an Officer or Director for State Bar records, other than requests pursuant to the Texas Public Information Act, shall be submitted to the Executive Director in writing, with a copy to all Officers and the Chair.

2. The Executive Director, in consultation with the President, President-elect, Immediate Past President, and the Chair, shall adopt reasonable procedures with regard to the timing, copying, and process for review of records by an Officer or Director, including prohibiting the copying of any confidential or personal material. Additionally, the Executive Director will determine whether State or federal law restricts compliance with a request.

3. The Executive Director may, at any time, seek the guidance and will of the Board of Directors concerning the appropriate response to a request for records by an Officer or Director. For the purpose of a Board vote on this issue, the vote of a majority of the Board of Directors is required to direct the response to an Officer or Director request.

4. In the event a requesting Officer or Director disagrees with the decision of the Executive Director concerning a request, the requesting Officer or Director may appeal this decision to the Board of Directors. The vote of a majority of the Board of Director is required to direct the response to an Officer or Director request.

9.05 PUBLIC INFORMATION ACT

9.05.01. Generally. Pursuant to Tex. Govt. Code 81.033, all State Bar records pertaining to the official business of the State Bar of Texas are subject to the Texas Public Information Act, Tex. Govt. Code Ch. 552 (the "TPIA"). It is the policy of the State Bar that its officers, directors, sections, committees, and employees fully comply with the TPIA. The State Bar will comply with all notice, deadline, and procedural requirements set forth in the TPIA and the rules or regulations promulgated thereunder.

9.05.02 Public Information Officer. The Executive Director, or designee, is the public information officer ("PIO").

9.05.03 Public Information.

A. Public information consists of information written, produced, collected, assembled, or maintained under a law or ordinance, or in connection with the transaction of official business:

1. by the State Bar;

2. for the State Bar and the State Bar:

_____ **a. owns the information;**

b. has a right of access to the information; or

c. spends or contributes money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

3. by an individual Officer, Director, or employee of the State Bar in such person's official capacity and the information pertains to official business of the State Bar.

B. Information is in connection with the transaction of the official business of the State Bar if the information is created by, transmitted to, received by, or maintained by an officer, director, or employee of the State Bar in the officer's, director'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 the information pertains to the official business of the State Bar.

C. The general forms in which the media containing public information exist include a book, paper, letter, document, email, 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.

9.05.04 Requests for Public Information.

A. Requests for public information must be in writing and may be delivered to the State Bar by mail or by electronic means. Requests by email are not considered requests for public information unless and until they are delivered or forwarded directly to the PIO.

B. Upon receipt of a request for public information, the recipient will immediately forward such request to the PIO. The PIO will review the request to determine whether clarification or narrowing is required or advisable under the TPIA.

C. The PIO will timely gather all potentially responsive information in existence at the time of the request. All officers, directors, and employees will promptly deliver all information to the PIO upon request. Upon receipt, the PIO, with the assistance of State Bar legal counsel, will review all potentially responsive information to determine whether the information is responsive to the request, and whether the information is confidential or may be withheld pursuant to the TPIA.

D. If the PIO determines that any information may be confidential or withheld under the TPIA, the PIO, on consultation with State Bar legal counsel, will take such action as is required or permitted under the TPIA, including seeking a determination from the Office of the Attorney General as to whether such information is exempted from disclosure under the TPIA.

E. The State Bar, its Officers, Directors, and Employees, are not required to conduct research, answer questions, or create any record or information in response to a request for public information.

9.03 Internal Policy for Public Information Requests

~~9.03.01 General. To more fully comply with §552.230 of the Public Information Act, Texas Government Code, Title 5, Subtitle A, Chapter 552, the Board may adopt and maintain policies and procedures governing compliance with public information requests and appropriate charges.~~

~~9.03.02 Internal Policy for Public Information Requests.~~

~~(A) Introduction. In order to more fully comply with §552.230 of the Public Information Act (formerly the Open Records Act) (Texas Government Code, Title 5, Subtitle A, Chapter 552), hereafter termed the PIA, which states that "A governmental body may promulgate reasonable rules of procedure by which public information may be inspected efficiently, safely, and without delay," the State Bar of Texas has developed the following internal policy for fulfilling public information requests.~~

~~(B) Definitions of Terms in the Public Information Act.~~

~~(1) Officer for public information. The Executive Director shall be the officer for public information [§552.201(A), PIA].~~

~~(2) Agent for officer of public information. Each department head shall be an agent for the officer for public information [§552.202, PIA].~~

~~(3) Public information.~~

~~(a) Information is public information if, under a law or ordinance or in connection with the transaction of official business, it is collected, assembled, or maintained:~~

~~(i) by a governmental body; or~~

~~(ii) for a governmental body and the governmental body owns the information or has a right of access to it.~~

~~(4) Availability. Public information is available to the public during normal business hours of the governmental body. [§552.021, PIA]~~

~~(C) Procedures for Handling Public Information Requests.~~

~~(1) Records which are clearly public information and are routinely requested by the public and attorneys on a daily, weekly or monthly basis, or which are provided routinely on a yearly basis, such as annual reports, and which are currently handled over the telephone or through the mail without requiring a written request from the inquirer, may continue to be handled in this manner in order to provide the information to the inquirer with as little delay as possible.~~

~~Some examples of this type of information are: date of licensing and record of disciplinary actions taken against State Bar members, articles and biographical information from the *Texas Bar Journal*, some survey information, pamphlets and informational brochures on public services offered by the agency, information on courses and institutes offered by the State Bar's TexasBarCLE, press releases, information on legislative policies of the agency, information on the agency's legislative programs, and financial records.~~

~~All requests for records and information that are not provided on a routine basis should be submitted in writing and should be forwarded immediately to the Executive Director. An employee receiving a telephone request should instruct the caller to put the request in writing and send it to the State Bar, to the attention of the Executive Director. NEITHER THE EXECUTIVE DIRECTOR NOR ANY EMPLOYEE SHALL MAKE ANY INQUIRY OF ANY PERSON WHO APPLIES TO EXAMINE OR COPY PUBLIC INFORMATION BEYOND ESTABLISHING PROPER IDENTIFICATION AND WHICH RECORDS ARE BEING REQUESTED [§552.222, PIA].~~

~~(2) Upon receipt of a request to examine records or information that is not routinely provided, the Executive Director shall determine within five calendar days if the records being requested are included in the above definition of public information. If the records are deemed to be public information, the Executive Director shall forward the approved request to the appropriate department head.~~

~~(3) Upon receipt of the approved request the department head shall make the records available to the requestor for inspection or duplication within five calendar days from the time that the department head received the approved request. If the requested records are in active use at the time that the requestor asks to examine them, and will not be available within five calendar days from the time that the department head receives the approved request, then the Executive Director shall certify this fact in writing to the requestor and set a date and hour within a reasonable time when the records will be available for examination by the requestor [§552.221, PIA]. The Executive Director, or the department head shall give, grant and extend to the requestor all reasonable comfort and facility for the full exercise of the right granted by the PIA [§552.224, PIA].~~

~~(4) If the Executive Director receives a request which is considered to be within one of the exceptions under Subchapter C, but there has been no previous determination that it falls within one of the exceptions, the Executive Director must request within ten calendar days of receiving the request a decision from the attorney general to determine whether that information is within one of the exceptions. If a decision is not so requested, the information shall be presumed to be public information [§§552.301 and 552.302, PIA].~~

~~(5) The Executive Director or the department head shall provide the requestor with a copy of Subchapters A and B of the Public Information Act so that the requestor will be fully aware of his rights and of the rules~~

~~concerning access to public information.~~

~~(D) Other Statutory Responsibilities.~~

~~(1) Nothing in the Public Information Act shall authorize any person to remove original copies of public information from the offices of any governmental body [§552.226, PIA].~~

~~(2) The Executive Director or the department head shall treat each request for information uniformly without regard to the position or occupation of the person making the request or the person on whose behalf the request is made or because the individual is a member of the media [§552.223, PIA].~~

~~(3) Information deemed confidential under §552.101 (PIA) shall not be distributed [§552.352, PIA]. However the officer for public information may in any instance within the officer's discretion make public information protected under the exceptions contained within the PIA that is not deemed confidential by law [§552.007, PIA].~~

~~(4) It shall be the duty of the officer for public information, subject to penalties provided in the PIA, to see that public information is made available for public inspection and copying; that the information is carefully protected from deterioration, alteration, mutilation, loss, or unlawful removal; and that public information is repaired, renovated, or rebound when necessary to maintain them properly [§552.203, PIA].~~

~~(E) Charges for Copying Public Information. Guidelines for charges for copying public information consisting of standard size pages (up to and including legal size) are contained in 1 TAC §§111.61-111.63. The State Purchasing and General Services Commission acts as a consultant to governmental bodies to assist them in setting charges for nonstandard size pages or records in computer banks, on microfilm, or other similar record keeping systems. It is the responsibility of the Executive Director to initiate consultation with this commission and to supply adequate cost data relative to the records request. This consultation request must be submitted in writing to the attention of the Material Management Section of the Central Services Division of the Commission. [1 TAC §111.63]~~

~~(F) Charges for Labels and Mailing Lists: Under the Public Information Act, the State Bar must provide a list of its membership to anyone who requests it. A reasonable fee as determined by applicable statutes and rules will be charged for providing the list. Mailing labels containing the names of each member of the State Bar shall be made available for a reasonable fee.~~

~~(1) The Board has determined that the cost of purchasing labels/lists includes the cost of materials plus the cost of central processing unit (CPU) time plus postage and sales tax. Prices are subject to change depending on vendors charge in cost of materials to us.~~

~~(2) The amount of such fees may be different depending on category of user.~~

~~(3) Mailing labels will be furnished without charge to Board Members for use within their respective districts no more frequently than quarterly.~~