

N128W12795 Highland Road
Germantown, WI 53022
November 26, 2007

Chelsea Thornton, Assistant General Counsel
Office of the Governor of Texas
P.O.Box 12428
Austin, Texas 78711

Sent Via Email and Certified Post

Dear Ms. Thornton

I must first state my displeasure that the current policy of the Office of the Governor of Texas is to destroy public records after seven days. Please change this obnoxious archive policy (destruction of records after 7 days) to a more reasonable archive strategy. Public records such as e-mails should be archived for at least one year. The retention period should be longer given the simplicity of archiving electronic data.

I have received your three certified letters of last week. The letters are

- 1) Request from the Office of the Governor to the Office of the Attorney General for a Public Records Decision. This letter is dated November 19, 2007.
- 2) Withdrawal of the request for a Public Records Decision. This letter is dated November 20, 2007.
- 3) A letter purporting to be an itemization of the reproduction costs of the electronic records of my Texas Public Information Act (TPIA) request sent on November 6, 2007. This letter is dated November 20, 2007.

In summary:

- This correspondence is to acknowledge receipt of these three letters.
- I accept in part and dispute in part the charges for the first TPIA request.
- I again state I am not inclined to narrow, alter, or withdraw any of the TPIA requests I have submitted to this office. I repeat. **I am not inclined at this time to narrow, alter, or withdraw any of the Very narrow and carefully crafted TPIA requests I have submitted to this office.**

Before I get into the particulars of the one TPIA request to which the office of the Governor of Texas has belatedly responded (November 6, 2007), I must first attend to some housekeeping.

The first bit of housekeeping is the number of discrete requests I have made and the current status of those several requests. By the time you receive this correspondence on November 27, 2007, your office will be in possession of seven (7) TPIA requests for electronic email records. These are dated November 6, November 9, November 13, November 16, November 20, November 23, and November 27. Attached is the current status of these seven requests.

I will deal with the first TPIA request (dated November 6, 2007) in greater detail below. For each of the remaining six TPIA requests I have made (November 9, 2007 through November 27, 2007), the Office of the Governor of Texas has made absolutely no reply as of this date. I repeat there has been no response to any of the six remaining TPIA requests.

Because of this, I must call attention to the fact that you are late in responding to the requests of November 9, 2007. The ten business days in which to respond to this TPIA request elapsed. on

November 26, 2007. Since the Office of the Governor has not requested a public records decision from the Attorney General or stated the records are unavailable, I expect the all records requested on November 9, 2007 to be produced immediately. This is accordance with the information provided by the Attorney General of Texas (http://www.oag.state.tx.us/opinopen/og_fags.shtml#pia) which states:

If the information you request falls within one of the exceptions to disclosure found in the Public Information Act, the governmental body may refuse to release the information while it seeks an open records decision from the Attorney General. Unless the governmental body has a previous determination from a court or the Attorney General regarding the precise information requested, a governmental body cannot determine on its own to withhold information.

This request for an open records decision has not been made for the TPIA dated November 9, 2007. Thus all the records are to be immediately available because “a governmental body cannot determine on its own to withhold information”. I have enclosed a check for the copying of the records specified by the TPIA request dated November 9, 2007. I have also included a self addressed stamped CD-ROM mailer. Please mail the CD-ROM containing the requested records by Friday, November 30, 2007.

For the remaining five TPIA requests, the TPIA states there are six ways to lawfully respond to a TPIA request. These responses are:

- 1) Provide the requested records – TGC 552.2212(b)(1) and (2). Perhaps even free of charge – TGC §552.267.
- 2) State the information is unavailable and state when it will be available – TGC 552.2212(c)
- 3) State, in writing, that the requested records cannot be produced within 10 business days – TGC 552.2212(d)
- 4) Tell me you have already given me records covered by the current TPIA request – TGC 552.232.
- 5) State the production of the requested records will require programming and present the cost for said programming – TGC 552.231
- 6) State the Office of the Governor will be seeking a public records decision from the Attorney General in order to exercise one of the 54 statutory exemptions provided in the TPIA.

The second bit of housekeeping is that in the November 19, 2007 letter to the General Attorney you represent that I have not paid for the records requested under these seven TPIA requests. This is flatly untrue. I cannot pay a bill I have not received. I have received a very, late itemization of costs only for the November 6, 2007 TPIA request. I have received no itemization of costs for the any of the other six TPIA requests I have made to date.

On the matter of the November 9, 2007 TPIA, I accept the itemized costs in part and dispute the itemized costs in part and do hereby formally complain to the Attorney General of Texas under TGC 552.2615(b)(3). Specifically, I claim both the charge for labor and the surcharge to be excessive.

I accept the media cost of \$1. This cost for non-paper copies is laid out in Texas Administrative Code Title 1, Part 3, Chapter 70, Rule §70.3. (b) (2)(F) which reads:

Non-rewritable CD (CD-R)--\$1.00.

I reject the charge of 472.50 as excessive. It is excessive because it does not apply to my TPIA request. You did not state so but this charge derives from Texas Administrative Code Title 1, Part 3, Chapter 70, Rule §70.3. (d)(1) which reads:

The charge for labor costs incurred in processing a request for public information is \$15 an hour. The labor charge includes the actual time to locate, compile, manipulate data, and reproduce the requested information

This form of charge is expressly forbidden by Texas Administrative Code Title 1, Part 3, Chapter 70, Rule §70.3. (d) (2) which reads:

A labor charge shall not be billed in connection with complying with requests that are for 50 or fewer pages of paper records, unless the documents to be copied are located in:

- (A) Two or more separate buildings that are not physically connected with each other; or*
- (B) A remote storage facility.*

This charge does not apply because my TPIA request is for less than 50 pages of copies. In fact my TPIA requests are for zero (0) pages of copies and are covered by the definition of non-standard copy found in Texas Administrative Code Title 1, Part 3, Chapter 70, Rule §70.3. (b) (2).

I reject as the labor surcharge of 94.50 as excessive. It is excessive because it does not apply to my TPIA request. You did not state so but this charge derives from Texas Administrative Code Title 1, Part 3, Chapter 70, Rule §70.3. (e) which reads:

(e) Overhead charge.

(1) Whenever any labor charge is applicable to a request, a governmental body may include in the charges direct and indirect costs, in addition to the specific labor charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead. If a governmental body chooses to recover such costs, a charge shall be made in accordance with the methodology described in paragraph (3) of this subsection. Although an exact calculation of costs will vary, the use of a standard charge will avoid complication in calculating such costs and will provide uniformity for charges made statewide.

(2) An overhead charge shall not be made for requests for copies of 50 or fewer pages of standard paper records unless the request also qualifies for a labor charge pursuant to Texas Government Code, §552.261(a)(1) or (2).

Texas Government Code, §552.261(a) reads:

Again this charge does not apply to my TPIA because the request is for less than 50 pages of copies. In fact my TPIA requests are for zero (0) pages of copies and are covered by the definition of non-standard copy found in Texas Administrative Code Title 1, Part 3, Chapter 70, Rule §70.3. (b) (2).

Payment of undisputed charges:

Please find enclosed a check for \$2 dollars and two (2) self-address stamped CD-ROM mailers. The check covers the following itemized costs:

- One Dollar (\$1.00) for a single CD-ROM containing the records requested on November 6, 2007.
- One Dollar (\$1.00) for a single CD-ROM containing the records requested on November 9, 2007.

If you have any questions you may respond to the email, call me at 414-375-5777 or send correspondence to the above address.

Thank you for your time in this matter and I look forward to reviewing the email contained on the two CD-ROM disks.

In Liberty,

John Washburn

CC: Greg Abbott, Attorney General of Texas.

Appendix A: Status of current TPIA requests.

Date of TPIA Request	Covering emails (Dates ranges are inclusive)		Ten Business days	Status	Notes
	Starting With	Ending With			
6-Nov-07	2-Nov-07	5-Nov-07	20-Nov-07	Itemization of Cost Presented Via Certified Mail on November 20, 2007	Costs are accepted in part and disputed in part.
9-Nov-07	6-Nov-07	8-Nov-07	24-Nov-07	No Response. Time has elapsed. The records are due immediately.	\$1 media cost and cost of SASE is accepted.
13-Nov-07	9-Nov-07	12-Nov-07	28-Nov-07	No Response.	
16-Nov-07	13-Nov-07	15-Nov-07	1-Dec-07	No Response.	
20-Nov-07	16-Nov-07	19-Nov-07	5-Dec-07	No Response.	
23-Nov-07	20-Nov-07	22-Nov-07	7-Dec-07	No Response.	
27-Nov-07	23-Nov-07	26-Nov-07	11-Dec-07	No Response.	