

Memo

To: Scott Dixon, City Administrator
City Council Members

From: Bruce A. Alexander, Mayor Elect

BAA
5/8/25

Date: May 8, 2025

Re: City Issued Cell Phones for Elected Officials and Senior Staff

Please see the attached information that references cell phone use and the Texas Public Information Act;

In my opinion, the best way to separate personal use from business use, subject to open records requests and/or the records retention requirements, is to use separate devices for city business that are owned and/or managed by the city.

As the Superintendent of a local government and before as the Castroville Director of Public Works, I have carried separate cell phones for years to separate calls, texts, and email communications between personal and business use that may be subject to an open records request.

I strongly encourage all elected officials with the city of Castroville to do the same.

I disagree with the publication of personal phone numbers and use of personal devices to communicate official business of the city.

If you work (or have worked) for a governmental body in Texas, did you know the texts on your personal cell phone and the emails from your personal email address might be public information? In 2019, the Texas Legislature closed a loophole in the Texas Public Information Act (TPIA) to ensure that governmental bodies may obtain information stored on the private devices of their current and former officers and employees. Information stored on the privately-owned device of a current or former government official or employee may be subject to public disclosure unless the information falls within an exception under the TPIA.

Only “public information” is subject to disclosure under the Texas Public Information Act (TPIA).

“Public information” is defined to include information that is “written, produced, collected, assembled, or maintained under a law or ordinance or *in connection with the transaction of official business* by an individual officer or employee of a governmental body in the officer's or employee's official capacity[.]”^[1]

Information is “in connection with the transaction of official business” if it is “created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer’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 pertains to official business of the governmental body.”^[2]

In other words, virtually all the information in a governmental body’s physical possession constitutes public information—and information stored on the privately-owned device of a current or former government officer or employee may also constitute public information.

Whether information is “public information” under the TPIA doesn’t depend on whether it’s in the possession of the governmental body or an individual. If the requested information is related to the governmental body’s business, the mere fact that it isn’t in the governmental body’s physical possession doesn’t remove it from the scope of the TPIA.^[3]

And whether information is “public information” under the TPIA doesn’t depend on whether the governmental body purchased the electronic device or pays for the fees associated with the device. Information is within the scope of the TPIA if it relates to the official business of a government body and is maintained by a public official or employee of the governmental body.^[4]

To the extent that requested information constitutes “information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by or for the governmental body, it is subject to disclosure under the TPIA and must be released unless an exception to disclosure applies.

2019 law affirms governmental body's access to information stored on private devices

In 2019, the Texas Legislature amended the TPIA to ensure that governmental bodies may obtain public information that is stored on private devices belonging to government officials and employees.

SB 944 added a new section to the TPIA—section 552.233—which provides that a “current or former officer or employee of a governmental body does not have . . . a personal or property right to public information the officer or employee created or received while acting in an official capacity.”^[5]

A current or former government official or employee with possession, custody, or control of public information must surrender the information not later than the 10th day after the date the officer for public information of the governmental body requests it.^[6] Failure to surrender the information “is grounds for disciplinary action by the governmental body . . . or any other applicable penalties provided by [the TPIA] or other law.”^[7]

The governmental body itself is required by the TPIA to make to an attempt to obtain such records. Section 552.203(4) of the TPIA requires the governmental body's public information officer to make “reasonable efforts” to obtain public information from a current or former officer or employee of the governmental body if the public information officer “is aware of facts sufficient to warrant a reasonable belief that [such officer or employee] has possession, custody, or control of the information.”^[8]

Preservation and destruction of records on privately-owned devices

Current and former government officials and employees are also required to retain information on their privately-owned devices in accordance with applicable records retention laws. Section 552.004 of the TPIA states that a “current or former officer or employee of a governmental body who maintains public information on a privately owned device shall:

1. forward or transfer the public information to the governmental body [or server] to be preserved as provided by [records retention law]; or
2. preserve the public information in its original form in a backup or archive and on the privately owned device for the time described under [records retention law].”^[9]

In other words, the TPIA places the burden on the government official or employee to either store or transfer to the governmental body the public information maintained on their private device(s), in accordance with applicable retention laws and policies.

Destroying, removing, or altering public records may constitute a criminal offense. Under section 552.351 of the TPIA, the willful destruction, mutilation, removal without permission, or alteration of public records is a misdemeanor punishable by (i) confinement in a county jail for a minimum of three days and a maximum of three months, (ii) a fine of a minimum of \$25 and a maximum of \$4,000, or (iii) both confinement and the

fine.^[10] Government officials and employees should avoid using their personal devices for government business whenever possible, to avoid having to produce those communications in response to an open records request. Be careful what you say—you never know who might end up reading it.

[1] Tex. Gov't Code § 552.002.

[2] *Id.*

[3] Op. Tex. Att'y Gen. No. OR2021-08701 (2021); Op. Tex. Att'y Gen. No. OR2011-13256 (2011).

[4] *Id.*