SENATE SELECT COMMITTEE ON OPEN GOVERNMENT
CITY OF HOUSTON
NOVEMBER 30, 2012

The City of Houston ("Houston") would like to thank the Senate Select Committee on Open Government for considering its comments on Interim Charge Number 4: Overly Burdensome/Frivolous Open Records Requests.

Houston is the fourth-largest city in the United States and the largest in Texas. Houston likely receives, therefore, as many or more requests under the Texas Public Information Act ("TPIA") than any other governmental entity in Texas. Houston is firmly committed to the concept of democracy, and in a democratic nation, citizens must be given access to information compiled in the course of conducting governmental functions. While this concept sounds simple enough, it is actually quite complex in implementation, given that many laws protect certain types of information (e.g., social security numbers, medical information, tax return information, proprietary information, insurance information, police records in cases that are pending investigation or prosecution, etc.) The current framework of the law therefore results in a delicate and often burdensome balancing act that costs governmental entities--and thus taxpayers--much more than most might realize.

Houston has established a city-wide infrastructure for handling day-to-day TPIA requests. Each department has a Public Information Officer ("PIO") who is charged with reviewing and responding to requests from the appropriate department. A number of the very large departments (Public Works & Engineering, Houston Police Department, Houston Fire Department, and the Houston Emergency Center) have several persons assigned as PIOs due to the volume of requests they receive. The PIO receives regular training on TPIA requirements, and consults the City Legal Department when there is a question about confidentiality or a need to write to the Attorney General when it is necessary to request authority to withhold certain types of information. Houston has no objection to responding to routine TPIA requests; Houston's concerns arise from frivolous and/or extraordinarily burdensome requests and offers the following examples:

1. Party politics.

- A political group became very interested in a former mayor with higher political aspirations. The group made a single request for essentially everything in the mayor's office from January 2004 through June 2009, including all emails sent or received by the mayor, all contracts/agreements signed by the mayor (n.b: the mayor signs virtually all city contracts), all purchase orders, travel records, expenditures/reimbursements, all schedules of the mayor and staff, and any item the mayor had worked on.
- The original cost estimate was $95,000. Upon receipt of the estimate, the requestor withdrew the request and sent 114 individual requests in an effort to avoid triggering the personnel costs. Each request was so large, in and of itself, that labor and overhead charges were allowed for the majority. The estimate grew to $180,000. The requestor consistently filed complaints regarding the cost estimates and never did remit payment.

- The requestor then hand-picked approximately 20 requests to be fulfilled, along with a single request for all emails for the past five years. The email portion alone took five people in the mayor's office several weeks to print, gather, and prepare for review by the Legal Department. The result was more than 30 boxes of information. The Legal Department then used three attorneys and four paralegals to review each page in the 30 plus boxes. The entire process took approximately six months to complete. In the end, the requestor withdrew the request without paying for the costs.

2. Election season.

A few months before city council elections were to take place, a requestor submitted a request for all emails sent or received by a council member and her staff (a total of nine individuals) for eight months of email. The requestor refused to narrow the request, meaning Houston was required to review approximately 200,000 emails. The review was necessary in order to ensure that any information may be confidential by law was redacted. Absent such action, Houston risked violating the law. In addition to their regular full-time duties, a group of 12 lawyers, four paralegals, and an administrative assistant participated in this project for five months. Even after the election, the requestor insisted he/she wanted the information, but eventually stopped picking up the responsive documents.

3. Former employees with axes to grind.

A disgruntled former employee consistently makes hundreds of requests regarding his former department. From January through June 2012, he has made 385 requests. Many of these requests had sub-requests, keeping the PIO busy on a full-time basis. (Keep in mind that PIOs have other full-time job duties that must be disregarded while working on such projects.) In this type of situation, Houston has no remedy to protect itself. While Government Code §552.275 makes a move in the right direction, this provision does not offer adequate protection for an entity the size of Houston. The Attorney General's office has advised that this section cannot be implemented for a single department—it has to be city-wide. The sheer magnitude of the record-keeping required to implement §552.275 in a city of Houston's size and complexity (25+ departments and separate divisions, 22,000+ employees, etc.) coupled with our estimate of an estimated 5,000 to 7,000 requests the city receives each year, make this section's "remedy" of little or no practical use or value.

4. The hobby horse with retaliatory strategies.

One requestor would make a request, and if the City didn't immediately release the information in order to request an opinion from the Attorney General the requestor would immediately file a request for the personnel file of the attorney

who prepared the opinion request. This was not an effort to gain information about the City, but simply an act of retaliation.

These are but a few of the examples Houston faces in a given year. Other governmental entities undoubtedly face similar burdens. The focus of the TPIA is on the public having access to most governmental records, as it should, but nothing in the TPIA protects governmental entities from requestors who file 40 requests in a 24-hour period. Nothing compels a requestor to have to narrow a request, and nothing recovers the true costs to the responding entity. The cost rules promulgated by the Attorney General's office do not remotely approximate real costs—they haven't been updated since 1996. Much of the information that we must spend time redacting include email addresses of private citizens, personal information of our own employees, medical and tax information, etc. This is time well-spent, but it should be compensated at current costs.

In closing, Houston welcomes the opportunity to provide information to responsible, reasonable requests, but the retaliatory, burdensome, or "fishing expedition" requests must be limited. Section 552.275 does not help. It requires a governmental entity to keep track of each individual requestor over a 12-month period, but does nothing to address the unscrupulous approach that requires a team of lawyers to review hundreds of thousands of emails, for example. These types of requests detract government employees from performing their regular job duties, meaning citizens and taxpayers experience less value for their taxpaying dollars.

Houston would welcome the opportunity to work with the legislature in crafting solutions to these problems.

Submitted by:
Carolyn Hanahan
First Assistant City Attorney
Office of the City Attorney