

**HAYS COUNTY ESD NO. 4
PUBLIC INFORMATION ACT POLICY**

I. POLICY

This policy is intended to comply in all particulars with the Public Information Act as set forth in Chapter 552, Texas Government Code (the "Act" or "PIA"), as it exists, as it may be amended, and as it may be interpreted by Attorney General Rulings, Decisions, Opinions, and applicable case law. The Attorney General has published a *Public Information Handbook* that provides guidance to both staff and citizens on the process and applicable rules. In accordance with the Act, all persons or entities requesting public information from Hays County Emergency Services District No. 4 / Wimberley Fire Rescue ("ESD 4") shall be treated uniformly. **ESD 4 employees and officials are advised to carefully read this policy to ensure awareness of the applicable law.**

It is important to recognize that while virtually all records held by the ESD 4 fall within the PIA's definition of "public information," that term is often misinterpreted. It does not mean that the ESD 4's records may always be released to the public. As used in the Act, the term "public information" is best viewed as meaning "the information is owned by the general public through a governmental entity", however, the Texas Legislature has determined it is in the public interest to establish numerous exceptions to mandatory public disclosure under the Act. This policy sets forth the procedures used by the ESD 4 to permit reasonable access to its records while simultaneously protecting the interests and rights of persons whose information may appear in ESD 4 records.

Questions regarding the scope and application of this policy should be directed to the Public Information Officer. ESD 4 employees and officials should generally presume that any record relating to their functions within the ESD 4 will be within the scope of the Act, but there may be exceptions to mandatory public disclosure which call for or allow withholding of the information from the public.

II. DEFINITIONS

Business day means any day that the general administrative offices of the ESD 4 are open and conducting business, in accordance with Section 552.0031 of the Act.

Department Contact means Public Information Officer, or their designee to implement the policy in the department.

Normal Business Hours means between 8:00 a.m. and 5:00 p.m., Monday through Friday, on all Business days.

OAG means the Office of the Attorney General of the State of Texas.

PIA (or "Act") means the Texas Public Information Act (Texas Government Code Chapter 552, as amended).

Public Information Officer means the ESD 4 Secretary or his/her designee.

Request, Public Information Request or PIR means a properly submitted written request for information held by the ESD 4. (Attachment 1)

Requestor means the person or entity who submitted a Request.

Responsive Information means all of the ESD 4's public information falling within the scope of a Request, including all forms of media (paper documents, electronic data files and emails, photos, audio/video recordings, etc.).

III. ACCESS TO INFORMATION

A. Recognized Methods of Making Requests for ESD 4 Records

It is important to remember that not every inquiry to the ESD 4 seeking information triggers the duties implemented under the Act and described by this policy. As amended on September 1, 2019, the PIA only applies to written requests for information. The Act specifies that the ESD 4 can establish reasonable procedures for the submission of requests. All requests must include a completed Attachment 1 as a cover page.

The only methods which are permissible for submission of requests to ESD 4 are:

1. United States mail

Must be addressed to either the Secretary of the Board of Commissioners or Executive Assistant for receipt of public information requests at the address below. As of the date this policy was adopted the primary recipient to receive U.S. Mail is the ESD 4 Secretary, and/or the Executive Assistant as his/her designee.

P.O. Box 1312, Wimberley, Texas 78676

2. Electronic mail

Must be sent to the email address designated for receipt of public information requests. As of the date this policy was adopted, the ESD 4 Secretary, and/or the Executive Assistant as his/her designee primarily monitor the designated email address below.

angel@wimberleyfire.org

3. Hand delivery

Must be hand-delivered to the Executive Assistant as ESD 4 Secretary's designee for receipt of public information requests. As of the date this policy was adopted, the ESD 4 Secretary's sole designee to receive hand-delivered requests is the Executive Assistant.

These approved methods for submission of PIRs shall be published on ESD 4's website, and they may also be listed on signs posted by the ESD 4 in accordance with Texas Government Code § 552.205.

No other methods of submission have been approved by the ESD 4 Board. As such, the following

examples do not constitute Requests for purposes of the PIA and this policy, and matters should be handled according to the direction of the Fire Chief or Executive Assistant:

- Inquiry via telephone
- Verbal walk-in inquiry
- Correspondence to ESD 4 employees other than the ESD 4 Secretary or Executive Assistant (email or paper)
- Submissions to any ESD 4 website or social media account

B. Information Subject to the PIA The PIA defines "public information" as:

Information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business. Tex. Gov't Code§ 552.002(a).

Information is in connection with the transaction of official business if the information 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 the official business of a governmental body. Tex. Gov't Code § 552.002(a-1).

[Public information] applies to and includes any electronic communication transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business. Tex. Gov't Code§ 552.002(a-2).

This definition is extremely broad and applies to all forms of media. NOTE: the physical location of the information is not dispositive of whether the information is considered to be the ESD 4's "public information." As such, ESD 4 officials and employees should presume that all information relating to ESD 4 business, even that held/maintained/created by outside entities (such as contractors) is Responsive Information if within the scope of a Request. **In addition, ESD 4 officials and employees should be mindful that any information on a personal device {smartphone or computer}, or which is stored remotely-including off-site shared drives and/or cloud storage-could fall within the definition of "public information" for purposes of the PIA.**

Public information shall never be maintained on a privately-owned device. ESD 4 employees and officials shall use only ESD 4-supplied, ESD 4-owned devices and email accounts for handling records and communications relating to the official business of the ESD 4. Any information which might be contained on a privately-owned device is not created, transmitted, received, or maintained by any officer or employee of the ESD 4 in their official capacity, and constitutes only personal notes for the convenience of the owner (e.g., a memory aid). The official business of the ESD 4 shall never include use of private electronic mail accounts, private social media accounts/posts/messages, or similar tools, and they shall never be used to transact ESD 4 business.

Failure to comply with this policy could result in an employee/official being deemed a "temporary custodian" of ESD 4 records under state law, imposing additional special duties regarding preservation of the information. Any and all public information which is inadvertently stored on a privately-owned device shall be promptly forwarded or transferred to the ESD 4 and/or the ESD 4 cloud for preservation. Until such forwarding/transfer is accomplished, all record retention rules must be observed and all public information must be preserved in its original form on the privately-owned device. ESD 4 employees and officials must surrender or return public information to the ESD 4 no later than the 10th day after the date ESD 4's Secretary requests the information or be subject to disciplinary action and other penalties under state law.

When an ESD 4 employee or official no longer has an official capacity with the ESD 4 (e.g., ends ESD 4 employment or Commissioner seat), they shall promptly forward or transfer any public information on a privately-owned device to the ESD 4. Failure to comply with this requirement could lead to criminal liability on the part of the former employee/official under state law.

C. Information Which is Not Public Information Under the PIA

The PIA only applies to information which exists on or before the date a Request is received. Creation of new documents is not required in order to supply information in response to a Request, and ESD 4 personnel are expressly instructed to refrain from creating new materials in relation to a Request without authorization from the ESD 4 Secretary. Further, ESD 4 personnel should be mindful that the PIA also does not require that ESD 4 answer questions or conduct legal research.

IV. STAFF PROCEDURES

1. ESD 4's policy is to provide a suitable copy of public information which is not subject to withholding under the PIA without undue delay following receipt of a public information request.
2. If the requestor asks that copies be provided a specific format (such as "paper" or designated electronic file type (e.g., "PDF")), the ESD 4 shall accommodate such requests when practicable, but may seek reimbursement of associated expenses when permitted under the Act.
3. Any staff member receiving a document which is expressly designated in writing as constituting a public information request (whether within the document body or cover letter/email) shall immediately forward a copy of the document and its related correspondence to the Secretary of the Board of Commissioners and/or Executive Assistant. The request should be date-stamped to reflect the first Business day following receipt (which may be the same day the request was received).

If the receiving staff member is aware of any special ESD 4 concerns relating to the potentially responsive materials (e.g., anticipated or pending litigation or litigation hold, especially sensitive information, potential for damage to the ESD 4's business interests, etc.), they shall also ensure that the Secretary of the Board of Commissioners and/or Executive Assistant are/is notified of those potential concerns. The receiving staff member shall also notify the Secretary of the Board of Commissioners and/or Executive Assistant of the identity of any third-parties likely to hold

responsive information on behalf of the ESD 4, should any exist.

4. Upon receipt of a request for ESD 4 records, the personnel responsible for PIR handling shall ensure that the request is properly memorialized in the electronic records management process used by the ESD 4, and shall also:

- a) For non-basic requests (see below), supply a copy to the ESD 4 Attorney or ESD 4's Attorney's designee;
- b) Calculate all applicable deadlines for ESD 4 action/response, and ensure that necessary personnel are apprised of those deadlines;
- c) If requested by the ESD 4 Attorney, make reasonable efforts to obtain public information from any and all temporary custodians of those materials;
- d) With the assistance of the ESD 4 Attorney, evaluate whether the ESD 4 is required to contact any outside agencies to request provision of responsive information;
- e) In consultation with the ESD 4 Attorney, Secretary of the Board and/or Executive Assistant, identify and contact the ESD 4 personnel who are likely to hold or help identify Responsive Information, including but not limited to temporary custodians as defined by Texas Government Code 552.003(7).

5. All written requests delivered by means other than the exclusive delivery methods listed in Section III(A)(1)-(3) of this policy should receive the following response, delivered via the same method the ESD 4 received the correspondence if practicable:

"Please be advised that I have not been designated as an authorized recipient of public information requests to the Hays County Emergency Services District No. 4 / Wimberley Fire Rescue. All requests for public information must be submitted in accordance with ESD 4's Public Information Act Policy, Section III. This policy can be accessed at www.wimberleyfire.org or by sending a written request to the Secretary of the Board of Commissioners and/or Executive Assistant. If you have any questions about this, please direct them to the Secretary of the Board of Commissioners and/or Executive Assistant. Thank you for your cooperation."

6. If a request is received by one of the methods set forth in Section III(A)(1)-(3), ESD 4's Fire Chief or Executive Assistant may request ESD 4's Attorney to engage in written communication with the sender as to the desired objective of the request. The requestor's motivation or reasons for requesting public information will never be considered by ESD 4 in determining how it processes proper requests, but ESD 4 via ESD 4's Attorney should generally encourage requestors to draft their requests as narrowly as possible and avoid use of open-ended terms ("all documents re: __, including __"; "files, pictures, videos, etc."; "records relating to __, such as").

7. Once it is determined that a submission constitutes a valid written request for public information subject to the PIA, ESD 4 is required to make a good faith effort to relate the language of a Request to the public information it holds. However, if a request is overly broad or vague, the requestor may be asked by ESD 4 via ESD 4's Attorney to clarify the request. All requests for clarification must be in writing. All responses for clarification must be in writing and kept as part of the PIA request.

8. If a large amount of information has been requested, ESD 4 via ESD 4's Attorney may contact the requestor in writing on how the scope of the request might be narrowed. All requests for clarification must be in writing and kept as part of the PIA request.

9. Basic Requests: The Secretary of the Board of Commissioners is authorized to treat requests for the following types of information as "basic requests", and so long as no other information is within the scope of a request, may release the responsive information held by the ESD 4 without consulting the ESD 4 Attorney:

- a) Official and final versions of ESD 4 documents which were previously made public, such as:
 1. ESD 4 orders and resolutions passed by the ESD 4 Board;
 2. Notices of public meetings;
 3. Approved minutes of public meetings;
 4. Official maps of the ESD 4 areas;
 5. Approved/adopted financial audits and budget; and
 6. Any documents properly published on the ESD 4's website.
- b) Copies of documents obtained by the ESD 4 from outside private parties (but not other government agencies) through any means generally accessible to the public (e.g., downloads from websites), unless related to ongoing or anticipated litigation matters.
- c) Basic requests which involve a cost of response for the ESD 4 of less than \$40.00 may be fulfilled without seeking to recover said costs from the requestor. In other cases, the preferred method of response shall be to notify the requestor that copies of the requested information will be provided upon payment of the applicable charges.

10. The Secretary of the Board of Commissioners and/or Executive Assistant or Fire Chief will consult with the ESD 4 Attorney to determine whether the Responsive Information sought by a non-basic request is open to the public. If some or all of the information is determined to be public, the Secretary of the Board of Commissioners and/or Executive Assistant should arrange for the information to be made available to the requestor without undue delay.

11. Public information must be provided in the format requested so long as (a) the ESD 4 is technically capable of providing the data in the requested format and (b) the requestor is willing to pay any applicable charges authorized under the Act. In some instances, programming and manipulation of data may be necessary to comply with the request. In such cases, additional charges will be assessed to the requestor in accordance with the cost provisions of the Act.

12. The Act calls for the information to be provided promptly. If the information is in active use, or if the information cannot be provided within ten (10) business days after the date the information is requested, the ESD 4 via ESD 4's Attorney must notify the requestor in writing of that fact and set a reasonable time when the information will be available for inspection or copying. This written notice will typically be sent to the requestor within 10 business days after receiving the request.

13. All official notifications and responses shall come from the ESD 4 Attorney's office (or their authorized designees) on behalf of ESD 4.

14. After the information is provided to the requestor, the Secretary of the Board of Commissioners and/or Executive Assistant shall attach a copy of the information to the request for inclusion in the ESD 4's official record. Requests for Public Information are considered public information.

15. If it appears that the information falls within one of the mandatory or permissive exceptions to public disclosure, the request should immediately be forwarded to the ESD 4 Attorney. A copy of the information sought shall also be sent to the ESD 4 Attorney. If the request is for a large volume of information, the ESD 4's Attorney may ask to review the information, or to receive representative samples of the documentation. All communication with the ESD 4 Attorney must be coordinated with the Secretary of the Board of Commissioners and/or Executive Assistant or Fire Chief.

16. The ESD 4 via the ESD 4's Attorney will typically only have ten (10) business days after the date the request is received to prepare and submit a request to the Attorney General for a ruling. Any delay in providing the Secretary of the Board of Commissioners and/or Executive Assistant and/or ESD 4 Attorney with the request and/or responsive information may affect the ability of ESD 4's Attorney to submit a complete and accurate request for Attorney General decision. ESD 4's Attorney will coordinate with the Secretary of the Board of Commissioners and/or Executive Assistant to prepare and send the proper notifications to the requestor.

17. If the ESD 4 via the ESD 4's Attorney determines that it is appropriate to ask a requestor to clarify or narrow a request, the deadlines for requesting an Attorney General decision or providing access to responsive materials may be extended in accordance with applicable law.

18. Requests implicating the privacy or property interests of persons other than the ESD 4: The ESD 4's Attorney shall determine whether the Responsive Information includes materials subject to exceptions to disclosure under the Act. In such cases, ESD 4's Attorney on behalf of the ESD 4, shall supply a copy of the request to the Attorney General and comply with all other requirements under the Act, not later than the 10th business day after the ESD 4 received the request. NOTE: The requirement described in this paragraph is cumulative with all other responsibilities of the Secretary of the Board of Commissioners and/or Executive Assistant imposed by this policy and applicable law.

19. Requests for "contracting information": If the Secretary of the Board of Commissioners and/or Executive Assistant determines that a PIR calls for production of "contracting information" as defined by Texas Government Code § 552.0222 which is not maintained by the ESD 4, the ESD 4 Attorney shall be contacted and a written request to provide such information to the ESD 4 must be sent to the person/entity having custody or possession of the contracting information

no later than the third business day after the date the ESD 4 received the PIR. See Tex. Gov't Code § 552.371 and related statutes.

V. GENERAL GUIDELINES REGARDING AVAILABILITY OF INFORMATION

1. Upon a determination by the Secretary of the Board of Commissioners and/or Executive Assistant that the information is available for release, the information should be made available to the Requestor. Or, once notified that the information is available for inspection, requestors shall have ten (10) business days to contact the Secretary of the Board of Commissioners and/or Executive Assistant and schedule a time for inspection.

2. Generally, a requestor may choose to inspect or to copy public information, or to both inspect and copy public information. When copies are requested, the Secretary of the Board of Commissioners and/or Executive Assistant shall make the copies and provide the same to the ESD 4's Attorney for transmittal to the Requestor.

3. Whenever practical, copies of original records should be made available to the Requestor for review. Original records may not be removed from the offices of the ESD 4. Requestors may be allowed to review original records under the supervision of an ESD 4 employee.

4. The examination of information by a requestor may be interrupted if the information is needed for use by the ESD 4.

5. The Secretary of the Board of Commissioners and/or Executive Assistant dealing with requests for public information shall treat all requests for information uniformly.

6. The ESD 4 is not required to provide a copy of information in a commercial book or publication purchased or acquired by the ESD 4 for research purposes if the book or publication is commercially available to the public.

7. The ESD 4 shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of ESD 4.

8. The Act does not require ESD 4 to comply with standing requests for documents that may be created in the future. Due to the limited availability of ESD 4 resources, ESD 4 shall decline any such requests to provide records on an ongoing basis or to provide periodic updates.

9. Once the information is provided, the Secretary of the Board of Commissioners and/or Executive Assistant, shall document that the requestor has received the information by one of the following methods:

- a) The requestor should be asked to sign and date ESD 4's copy of the request or suitable acknowledgment form if the information is picked up in person.
- b) If the information is faxed to the requestor, the fax transmittal sheet along with the

confirmation showing date and time should be kept and attached to the request.

- c) If the information is e-mailed to the requestor, a copy of the e-mail shall be printed out or converted to PDF for separate archiving, showing the date and time the email was sent.
- d) If the information is mailed, the sender shall use certified mail, return receipt requested, and ensure that the tracking number and postmarked date are recorded for future reference.
- e) No matter which delivery method is used, a complete copy of the contents of each item of correspondence sent to a requestor shall be retained (electronic format is acceptable) and kept with the ESD 4's other records relating to the request.

10. The ESD 4 may require that any person seeking to inspect or to pick up copies of information assembled pursuant to a public information request establish proper identification. The preferred method of establishing proper identification is by provision of a driver's license, but other materials might be acceptable as determined by the ESD 4 Attorney. The ESD 4 will make copies of all proofs of proper identity offered for this purpose. Failure to establish proper identification may result in a delay or denial of access to the requested information.

VI. COSTS

The Secretary of the Board of Commissioners and/or Executive Assistant shall ensure that costs assessed are consistent and in accordance with the Act. The following guidelines are to be utilized in determining and collecting costs of providing information.

- 1. The Secretary of the Board of Commissioners and/or Executive Assistant should carefully document expenses related to producing the information for each request, including time spent collecting and locating information, supplies used, number of copies, etc.
- 2. The ESD 4 will charge for public information in accordance with the cost rules established by the Texas Attorney General, as such rules exist and as they may be amended, or as otherwise provided by state law.
- 3. Certain information developed by the ESD 4 for the purposes of informing the public such as budgets, orders, resolutions, brochures, and pamphlets, may be provided at no cost if approved by the Board as in the public interest. To the extent practicable, the ESD 4 will endeavor to maintain its website up-to-date, including such documents of general interest such as orders, resolutions, agendas, minutes of meetings, maps, budgets, etc.
- 4. Bond. The ESD 4 shall require a bond, prepayment, or a deposit if the estimated costs exceed \$100. The Secretary of the Board of Commissioners and/or Executive Assistant, via the ESD 4's Attorney, shall notify requestors in writing of any bond, prepayment, or deposit requirements and the procedures for submission. If a required bond, prepayment, or deposit is not received within ten (10) business days, the request is considered to have been withdrawn. When a bond, prepayment, or deposit is provided by a requestor, the date that it is received is considered to be the date the request is received by the ESD 4.

5. Requests that Require a Large Amount of Personnel Time:

- a. Consistent with Section 552.275, costs attributable to personnel charges related to a request shall be assessed if:
 - i. The amount of time that personnel are required to spend producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, exceeds 36 hours in the 12-month period corresponding to the ESD 4's fiscal year. The time spent producing public information for each and every request from a single requestor during the corresponding fiscal year is aggregated for purposes of the 36-hour threshold.
 - ii. Once the requests exceed 36 hours in a 12-month period corresponding to the ESD 4's fiscal year, the requestor shall be required to compensate the ESD 4 for costs attributable to personnel time exceeding the 36-hour threshold.
 - 1) This provision does not preclude ESD 4 from assessing labor charges for a request for copies or a request for inspection as authorized under other provisions of the Act. Labor costs are calculated using the hourly rates set by the State of Texas and were set as \$15.00 per hour in 2014.
 - 2) When necessary, the Secretary of the Board of Commissioners and/or Executive Assistant will typically provide a written estimate of charges within ten (10) business days of receipt of the request.
- b. The time limit established herein shall be applied to all requestors equally, except for those exempted under the Act, and the Secretary of the Board of Commissioners and/or Executive Assistant shall record the number of hours required to respond to each requestor in the ESD 4's 12-month fiscal year.

6. The Secretary of the Board of Commissioners and/or Executive Assistant shall provide each requestor, via ESD 4's Attorney, with a statement detailing the time spent in complying with the current request and the cumulative amount of time the requestor has accrued toward the established limit as each request is concluded. Time spent preparing the statement shall not be included in any charges. The statement described in this subsection may be combined with or accompany other ESD 4 Attorney's correspondence to the requestor, such as an estimate of copying costs.

7. Charges for Inspection:

- a. The Secretary of the Board of Commissioners and/or Executive Assistant may charge for copies of any page that must be copied so that confidential information may be redacted

to enable the requestor to inspect the information subject to release. Tex. Gov't Code, 552.271.

b. If the information requested exists only in an electronic medium and a copy is not requested, requestors may be subject to charges if compliance with the request will require programming or manipulation of data.

c. A deposit, bond, or prepayment of anticipated personnel costs will be required if only inspection is requested if the Secretary of the Board of Commissioners and/or Executive Assistant estimate that it will require more than 5 hours to prepare the records for inspection (including the time required to locate and compile the records, redact confidential information and to make copies of pages requiring redaction), and:

- The records sought to be inspected are older than 5 years; or
- The records completely fill, when assembled, 6 or more archival boxes

d. Personnel time spent responding to requests for inspection is included in the calculation of the requestor's 36-hour per fiscal year threshold.

8. Overdue Balances:

If the requestor has an overdue balance exceeding \$100, the Secretary of the Board of Commissioners and/or Executive Assistant shall require full payment or obtain a security deposit before processing additional requests from the same requestor.

VII. MISCELLANEOUS

1. Department Contacts should address any questions regarding the policy and procedures for processing PIA requests to the Secretary of the Board of Commissioners and/or Executive Assistant.
2. Any matters or issues not addressed by this Policy relative to public information shall be governed by the provisions of the PIA and any other applicable laws or policies.
3. The Secretary of the Board of Commissioners, in consultation with the ESD 4 Attorney, is authorized to amend this policy as may be necessary or appropriate to conform to changes in law or availability of ESD 4 resources. From time to time, as is administratively convenient in the discretion of the Secretary of the Board of Commissioners, the as-amended policy shall be subject to re- affirmation by the ESD 4 Board.
4. Helpful information on the Public Information Act is available at:
 - a. Attorney General's Website: ww.oag.state.tx.us
 - b. Texas State Law Library: (512) 463-1722