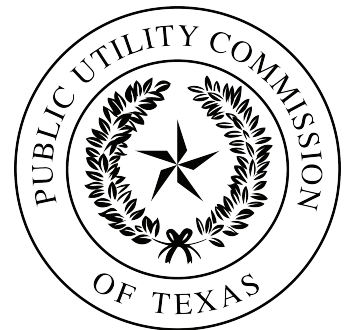


An Internal Audit Report on

Public Information Act Processes at the Public Utility Commission



Internal Audit Division
Public Utility Commission of Texas

Executive Summary

The General Law Division (Division) is responsible for processing all Public Information Act (PIA) requests received by the Public Utility Commission. The Division has seen a steady increase in the number and complexity of the requests received and should immediately update and ensure policies and procedures are in place, are complete, and include strong controls to ensure PIA requests are handled in accordance with applicable requirements.

Overall, General Law handles the majority of PIA requests effectively and without issue. However, the Division's process for PIA requests involving a ruling from the Office of the Attorney General (OAG) were not sufficient to ensure all rulings were handled appropriately. While there are some informal processes in place for requests involving an OAG ruling, they were not followed and did not always work. As a result, there were inconsistencies related to requesting an OAG ruling and compliance with OAG rulings was not always done timely.

In total, 16 requests were sent to the OAG for a ruling. Four, or 25% of the 16 cases had deficiencies that were identified during testing.

- Three rulings were not completed timely. The Division averaged 257 days to complete the three requests after an OAG ruling was received.
- One request was completed prior to receiving an OAG ruling, creating discrepancies between what was released to the requestor and the ruling from the Office of the Attorney General.
- There was an inconsistent approach when deciding to request a ruling from the OAG or relying on the Division to complete an information request.

Background Information

Public Information Requests are completed within the General Law Division. The Division is responsible for receiving, processing, and complying with all PIA requirements for the Public Utility Commission. The Division works closely with all areas in the agency to gather the information responsive to PIA requests and is ultimately responsible for the disposition of PIA requests.

The Division is staffed with two employees who share duties for all Public Information Requests. During fiscal years 2018 through January 2020 the Division processed 317 requests.

While the Division has established some policies and controls, they are outdated and not being used. Overall, the Division should update and use policies and procedures to improve its user access controls, record retention policies, and controls for Public Information Requests overall, with emphasis on requests involving a ruling from the OAG.

Summary of Audit Objectives, Scope, and Methodology

The audit objective was to determine whether the General Law Division has processes and related controls to ensure Public Information Requests are conducted in accordance with applicable requirements.

The scope of this audit included PIA requests from September 1, 2017 through January 2020. In total this included 317 requests.

The audit methodology included a review of applicable laws, statutes, and division policy and procedures. It also included a review of the PIA database used for tracking all requests.

Detailed Results

Chapter 1

The General Law Division Should Improve Their Process with Requests Involving a Ruling from the Office of the Attorney General

Public information requests requiring an Attorney General ruling can be complex and should be handled consistently in accordance with Texas Government Code Chapter 552.301- Requests for Attorney General Decisions. Without policies, procedures, and controls in place it is very difficult to successfully navigate these requests consistently and accurately. The auditor reviewed all 16 instances when an OAG ruling was considered and determined not all OAG rulings were handled timely or in accordance with Texas Government Code 552.301.

Once a ruling is received from the OAG, the governmental body has the responsibility to comply with the ruling on whether an exception applies or file suit against the OAG within 30 days. Testing identified 3 out of 16, or 19% of the OAG involved cases were not completed timely by the Division after receiving an OAG ruling and no suit was filed to challenge the rulings. The three cases identified were completed 196, 267, and 309 days after receiving a ruling from the OAG. This is not considered timely.

In one case, the Division requested a ruling from the OAG, which initially was in line with best practices prescribed by the OAG and statutes regarding the PIA process. However, on the same day the Division requested a ruling from the OAG, the exact document in question was released to the requestor with redactions done by the Division, 45 days before receiving the ruling from the OAG. This defeats the control in place to comply with an OAG ruling. The OAG ruled ten additional redactions should be made. The additional redactions could not be completed considering the document had already been released to the requestor.

Testing identified another case where the requestor was given the choice to allow the Division to make redactions or request a ruling from the OAG. According to government code 552.301 (a), a governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The exceptions are: (1) the governmental body has previously requested and received a determination from the attorney general concerning the precise information at issue in a pending request; and (2) the attorney general or a court determined that the information is public information under this chapter that is not excepted by Subchapter C.

It is unclear how the General Law Division met the exception requirements when choosing to complete the identified PIA requests with redactions and without requesting an Attorney General ruling. There was no documentation within the work product capturing how the exception requirements were met.

Recommendation

The decision to request a ruling should be made in accordance with Government Code 552.301-Requests for Attorney General Decisions. The Division should create a formal process that includes documenting how the exception requirements have been met when choosing to withhold information without an OAG ruling.

In addition, the division should comply with all rulings timely or follow the statute for challenging a ruling if the Division is in disagreement with the ruling. According to Government Code 552.324 (b), “The governmental body must bring the suit not later than the 30th calendar day after the date the governmental body receives the decision of the attorney general determining that the requested information must be disclosed to the requestor. If the governmental body does not bring suit within that period, the governmental body shall comply with the decision of the attorney general.”

The division should immediately create and use policies and procedures that include strong controls that will ensure all laws and requirements of the Texas Public Information Act are being met.

Response from General Law

Regarding the post-OAG decision response, the division’s outdated PIA tracking tool was replaced at the beginning of 2020 and has made tracking the division’s PIA workload and actions easier with a more user-friendly interface and a more reliable system. The division will comply with the recommendation for more detailed and updated policies and procedures and division personnel have already begun drafting policies and procedures. Additionally, new policies and procedures should be completed within six months and will include the following:

- *Checks and balances to ensure that all deadlines are met and documented;*
- *Guidance to determine when redacted information will be provided, taking into account the risk of accidental release of information that may be excepted from disclosure;*
- *Procedures to document the rationale used to determine which information is confidential when the requestor excludes confidential information from the request;*
- *Procedures for purging out-of-date records (See Chapter 2 response); and*
- *Procedures relating to PIA database access (See Chapter 3 response).*

Regarding concerns about the release of information prior to a decision from the Office of the Attorney General, the division respectfully disagrees with the auditor’s assessment that this was an error in following appropriate processes. Governmental bodies are not required to seek permission in order to release information. Rather, governmental bodies must seek a decision from the OAG if they wish to withhold information. (See Tex. Gov’t. Code Sec. 552.301(a).) The division identified information that should be withheld and redacted it, thereby withholding it, pending an OAG decision, and following the appropriate process to request a decision when confidential information is identified.

The division acknowledges, however, that the OAG identified additional information that it approved withholding. The division recognizes the error in failing to identify all information that may be withheld. The division will include additional controls in its procedures for reviewing documents for confidential information prior to redaction. Additionally, the division will draft procedures that clearly describe the circumstances under which redacted records should be released prior to an OAG decision.

Regarding the division giving the requestor the opportunity to rely on our redactions without seeking an OAG decision, this was not an option to not follow the law relating to requesting a decision, this was an opportunity to exclude confidential information from the request, so that it was not responsive. The OAG has recognized the legitimacy of this strategy by including options for the requestor to agree to mandatory and discretionary redactions on the Texas Public Information Act Request Form that it developed for governmental bodies’ use.

The Division Should Follow the Agency's Record Retention Schedule

The Division is not adhering to the Record Retention Schedule provided by the Texas Library Archives and adopted by the Public Utility Commission. According to the Retention Schedule (Item A.GN-20) “not exempt” requests, correspondence, and documentation should be maintained for one year after the request is fulfilled. Exempted record requests (Item A.GN-21) and correspondence should be maintained for two years after the date of notification. During testing, over 300 records from 2007 were identified as being maintained within the Division. Further testing identified a similar pattern for all subsequent years through 2018.

Recommendation

The Division should maintain a record of PIA requests in accordance with the Commission's record retention schedule.

Response from General Law

Beginning in January 2020, the division has been addressing the backlog of records exceeding their retention period. Over the next year, the division will evaluate old records, create destruction logs for the information to be destroyed, and determine if any of the information needs to be retained for training or other purposes. The division will also create and follow a procedure for evaluating and purging old records on an ongoing basis. Finally, the division will work with the agency's records coordinator and consider whether there is a need for an additional records retention category to cover the information contained in the PIA tracking database. The database contains basic information about the disposition of requests and may be useful to retain past the two-year retention period for exempted records requests. Additionally, the database contains information related to both exempted and non-exempted records requests and it is impractical to purge information from the database on a request-by-request basis, parsing between the exempted and non-exempted requests in order to purge according to the one- or two-year retention period.

The Division Should Improve Its Information Technology Controls

The Division does not have documented policies and procedures for the use of its Public Information Database. At the time of testing, access to the database with full edit capabilities was available to anyone within the agency. While the database is backed up and may be recovered, changes could be made by anyone within the agency and would go undetected.

The Division does not have adequate controls over the deletion of PIA requests being maintained within the database. Specifically, all users have the ability to delete a record without any required review or approval. Creating controls along with policies and procedures would help mitigate the risk of inappropriate deletion of records.

Recommendation

The Division should:

- Ensure that only necessary Division personnel have access to the PIA Database.
- Conduct periodic access reviews and ensure the reviews are effective and documented.
- Develop and implement controls over the deletion of records to mitigate the risk of inappropriate deletions.

Response from General Law

The division understands that the access issue was corrected shortly after the auditor discovered it and brought it to the attention of IT staff. Prior to that, division staff was unaware that when the database was created, access was not limited to PIA staff. During the next six months, the division will update policies and procedures relating to the PIA database and work with IT personnel to include requirements for access to the PIA database, and periodic access reviews.

Appendix

Objectives, Scope, and Methodology

Objective

To determine whether the General Law Division has processes and related controls to help ensure Public Information Requests are conducted in accordance with applicable requirements.

Scope

The scope of this audit included Public Information Requests from September 1, 2017 through January 2020.

Methodology

The audit methodology included a review of applicable laws, statutes, and division policy and procedures. It also included an analysis of the Public Information Request Database, interviews, and a review of support documentation maintained within the Division.

Sampling Methodology

Sampling was done using nonstatistical samples from databases, spreadsheets, and all means of data collection used for Public Information Requests included in the scope of this audit. The samples were used to determine if controls were operating effectively.

Information collected and reviewed includes:

- Public Information Requests maintained in the database and the excel spreadsheet previously used for request tracking.
- Supporting documentation maintained within staff emails and PIA electronic folder systems.

Testing

Testing included the following:

- Interviewed staff responsible for managing Public Information Requests.
- Tested source documentation to determine if data was accurate and reliable.

The criteria used during the audit was:

- Texas Government Code Chapter 552-Public Information.
- Public Information Act Handbook, 2018 Edition, published by The Office of the Attorney General of Texas.

- The Public Utility Commission's record retention schedule maintained on the agency's internal website.

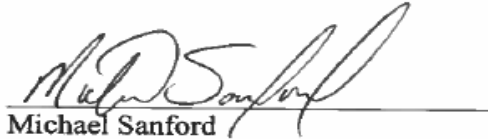
Project Information

Audit fieldwork was conducted from February 2020 through March 2020. This was a performance audit conducted in accordance with Generally Accepted Government Auditing Standards. Internal Audit believes that the evidence obtained provides a reasonable basis for the conclusions based on the audit objectives.

PUBLIC UTILITY COMMISSION OF TEXAS

Internal Audit Project #2020-200

April 2020



Michael Sanford
Internal Auditor, Public Utility Commission

This report has been provided to the following:

Mr. John Paul Urban, Executive Director, Public Utility Commission
Ms. DeAnn Walker, Chairman, Public Utility Commission
Mr. Arthur D'Andrea, Commissioner, Public Utility Commission
Ms. Shelly Botkin, Commissioner, Public Utility Commission

Other appropriate PUC management and posted on the agency intranet.

Copies of this report have been distributed to the following in accordance with Government Code §2102.0091:

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