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Texas Supreme Court Resets Public Information Act's Ten-Day Deadline

When a governmental entity believes that information requested from it under the Texas Public Information Act ("PIA") is exempt from disclosure, the PIA requires the entity to request an attorney general's opinion within 10 business days after receiving the request. However, the PIA also allows the governmental entity to ask the requestor to clarify a request it finds to be unclear.

The Attorney General's Office historically interpreted these two provisions to mean that the 10-day deadline is tolled while the governmental entity is awaiting the requested clarification, but the Texas Supreme Court has now ruled that the 10-day period for seeking an attorney general opinion is reset starting from the date that the public entity receives the clarification.

On Feb. 19, in *City of Dallas v. Greg Abbott, Attorney General of Texas*, No. 07-0931, 2010 WL 571972 (Tex. Feb. 19, 2010), the Court held that "when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the 10-day period to request an attorney general opinion is measured from the date the request is clarified or narrowed." *Abbott* arose out of a PIA request to the City of Dallas. Four business days after receiving the request, the City asked the requestor to clarify it. The requestor responded three business days later, and the City requested an attorney general opinion nine business days after receiving the clarification. The Attorney General concluded that the opinion request was not timely because it was made 13 business days after receipt (the four business days between receipt and the requested clarification plus the nine business days after clarification, but not counting the three business days when the clarification request was pending).

The Supreme Court disagreed with this approach, however, and instead held that the ten-day time frame would restart on the date the governmental entity received the clarification. The City's opinion request was timely, the Court therefore concluded, because the City submitted it nine business days after receiving the requestor's clarification.

The Court reasoned that with the PIA, the Legislature intended to provide the public with prompt responses and access to public information. While the PIA requires a governmental body to request an attorney general opinion no later than the tenth business day after receiving a written request for documents, the Court concluded that the Legislature also intended for entities to have a reasonably clear idea of the information being requested before the deadline actually begins to run. An unclear or overbroad request hampers the government's ability to identify statutory exceptions to disclosure.

The Court looked to other statutory language allowing for a resetting of the ten-day deadline to support its decision. It pointed specifically to Sections 552.261, .275, and .263(e) of the PIA, all of which provide mechanisms for dealing with costs associated with requests and provide that a request is not considered "received" until a bond is posted to cover costs, thus resetting the ten-day limit. TEX. GOV'T. CODE § 552.263(e).

From this, the Court reasoned that the ten-day deadline could also be reset for good faith efforts to clarify a request. A good faith attempt by the government to clarify or narrow requests should not, therefore, limit the entities' time to challenge disclosure. What constitutes "good faith" under this opinion, however, is less clear. The Court stated that the government cannot use "requests for clarification in bad faith merely to delay production of public information," but gave little else in way of guidance.

Governmental entities may now seek to clarify and narrow requests such that they can better respond to citizens' requests with the knowledge that once the issues are clarified they will have the full ten business days to seek exception from disclosure. By the same token, requestors should be alert to requests for clarification, and respond to them as quickly as possible.

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