

Procedure 4-10: Public Information

Requests

Overview:

San Jacinto College, its employees and elected Trustees, are subject to numerous state and federal mandates pertaining to the management of information. The Texas Public Information Act (PIA) gives the public the right to full and complete information regarding the official acts of public employees, elected Board members, and governmental agencies. This act requires the college to make available for examination and copying all information collected, assembled, or maintained by the College, unless the information falls within a statutory exception.

The PIA was originally known as the Texas Open Records Act, and thus "open records request" is still the most commonly used term when a citizen requests information. The PIA is also the Texas equivalent of the federal Freedom of Information Act, so sometimes a citizen may request information under the "Freedom of Information Act." Any request for information under the Public Information Act, Open Records Act, or Freedom of Information Act should be processed in a similar manner.

The Vice Chancellor of Marketing, Public Relations, and Government Affairs has been designated as the responsible party for receipt of public information requests and questions about the Public Information Act. The Director of Accounting and Financial Services has been designated as the records management officer.

Records Management:

The proper management of the College's records strengthens business processes and administrative efficiencies and enhances the reputation of the College as a transparent and accountable institution. The College's Records Management Policy and Procedures can be found in the following locations: Policy on Records Management VI-U and Procedures 4-13.

The following are the College personnel for records management with their associated responsibilities summarized:

Officer of Public Information – This individual oversees the College's compliance with the Texas Public Information Act. The Vice Chancellor of Marketing, Public Relations, and Governmental Affairs is the College's Public Information Officer.

Departmental Records Administrators – The head of each department or organizational unit is responsible for official records in the custody of his or her department/unit and for ensuring that the day-to-day management of records complies with College policy.

Records Management Officer – This individual oversees compliance with state and federal records retention requirements. The Director of Accounting and Financial Services is the College's records management officer.

Requests for Information under the Public Information Act:

I. Receiving Requests for Public Information

San Jacinto College receives numerous requests for information each year. Requests are often hand delivered or sent by regular mail, e-mail, or facsimile transmission. Many requests will not be labeled as public information requests. Some requests may be buried within the body of a longer letter or

communication. **Because receipt of a request triggers certain deadlines, it is imperative that each request be promptly handled.**

Requests must be in writing. The Texas Public Information Act (PIA) applies only to written requests for information. Oral requests are not valid. Additionally, the PIA does not require the College to answer questionnaires or to create new information. The Act applies only to information that already exists as of the date of the request.

Although the College is not required to answer questions, the College is obligated to determine whether information exists that may answer the requester's question. For example, if the requester asks how many students were enrolled in the nursing program during a given semester, the College may respond by providing a copy of a report that contains the requested data.

Requests sent via e-mail and facsimile: E-mail and facsimile requests are not valid unless the requestor sends the request directly to the Public Information Officer. Nonetheless, some requestors will inadvertently send their requests to an employee who is not authorized to receive the request. Any employee who receives an e-mail or facsimile request for information must forward it *immediately* to the Public Information Officer who will determine whether the request is valid and will coordinate the College's response. Employees must forward all requests for information to the Public Information Officer even if they do not appear to be "official" requests under the PIA.

Requests that are hand delivered or mailed: When an employee receives a written request for information, he or she must **without delay** (i) record the date and time of receipt and (ii) forward a copy of the request to the employee's departmental leader and the Public Information Officer. If the request was received in an envelope, the envelope should be included.

Time is of the essence: Under the law, the College must make certain decisions and take certain actions within 10 business days of receiving a request for information. Failure to act within 10 business days may result in serious repercussions.

The Public Information Officer shall work with the affected department(s) and their leaders to identify all potential custodians of information and to ensure that responsive information is properly gathered.

During the initial 10 business-day period, the College must quickly determine whether any of the requested information is confidential. If the information is not confidential and is readily available, the College ordinarily will be required to produce the information within the 10 business-days without exception. However, requests for a substantial number of documents or records that have been archived may take several weeks to produce. If it will take the College longer than 10 business days to produce the records, the College must certify that fact in writing to the requestor. In the notice, the College must indicate a set date and hour within a reasonable time that the information will be made available for inspection or duplication.

Do not challenge requesters or ask why they need the information: Under the PIA, the College must respond to all requests professionally, reasonably, and in good faith. The College is prohibited from asking requesters why they want the information they have requested.

Unclear requests and burdensome requests: Occasionally, the College will receive a request for information that is difficult to understand, or the scope of the request may be larger than the requester realized. The departmental leader shall consult with the Public Information Officer on whether or not the College should contact the requester to obtain clarification. The Public Information Officer may contact the requester to seek clarification, or the Public Information Officer may authorize the departmental leader to contact the requester. When seeking clarification from a requester, the College shall comply with the strict requirements of the PIA. The Public Information Officer shall prepare a template letter that contains the notifications required by the Act. The template letter is located on the College servers on the Groups Drive in the Public Information folder.

Requests for confidential information: Occasionally, a requester will seek information that the College believes is confidential (for example, student educational information; employee medical information; information pertaining to a pending criminal investigation; attorney-client communications). To withhold information, the College must seek an opinion from the Texas Attorney General regarding the material. The deadline for seeking an opinion from the Attorney General is 10 business days from the date of receipt of the request for information.

These deadlines make it imperative that the Public Information Officer and the College's Legal Counsel be given as much time as possible to analyze requests for information. Accordingly, the affected department must immediately begin gathering the information as soon as the request is received. Additionally, if the College determines that the information is confidential, it will be required to submit the actual information (or representative samples) to the Attorney General for review.

In rare instances, the College may withhold information even without seeking an Attorney General opinion. This exception applies only to information that the Texas Attorney General has previously determined to be confidential.

Routine requests: Some departments regularly receive certain types of requests that may be characterized as routine or that involve information that clearly is not confidential. The Public Information Officer will coordinate with each department leader to identify categories of routine requests common to that department and to develop a process for promptly responding to such requests at the departmental level.

The departmental procedure also must address the circumstances under which the requester may have a special right of access to otherwise confidential information. For example, although an employee's medical file is confidential with respect to members of the public, an individual employee would have a special right of access to view his or her own medical file. Likewise, although a student's discipline file is confidential, a student may request to review his or her file.

Requests for information accompanied by a signed release. Occasionally, a department will receive a request for confidential information about a student or employee that is accompanied by a release signed by the affected employee or student. For example, an employee or student might authorize another employer or agency to review the individual's records for employment or other purposes. Such requests should be treated as other Public Information Act requests. Additionally, the departmental leader should verify and record the identity of the individual seeking access and should ensure that the release is valid. The release should be signed and dated and should contain specific information that identifies the employee or student (e.g., address, social security number).

Duplicate requests sent to multiple individuals or departments: Occasionally, a requester will send the same request to each of the college campuses or to multiple recipients within the College. To avoid duplicative or inconsistent responses and to minimize cost to the requester and to the College, it is imperative that all requests be forwarded to the Public Information Officer so that the College is aware of duplicative or redundant requests. The Public Information Officer will provide a single response on behalf of the College.

All other requests for information: the Public Information Officer shall process all other requests for information. The Public Information Officer shall maintain a log on the college Group's drive in the "Public Information" folder. The log contains an identifier for each request (e.g., 2014-DEPT NAME-01) and identifies the date received, who is processing the request, the due date for the College's response, and the date the response is sent and how it is sent. The Public Information Officer shall notify the departmental leader of the affected department and provide an internal deadline for providing responsive information to the Public Information Officer. The departmental leader shall immediately review all pertinent files and contact all employees who may possess information regarding the matter.

II. Deadlines for Responding to Requests for Information

The College must respond to PIA requests in accordance with the statutory deadlines. As indicated above, the most critical period is the 10 business days after receiving a request. All employees must cooperate with efforts by the Public Information Officer and departmental records coordinator to respond to a PIA request.

1. *Notice to requestor that the College needs additional time to produce records:* If the College is unable to produce a requested record within 10 business days for inspection or for duplication, the College must certify that fact in writing to the requestor and set a date and hour within a reasonable time that the information will be available for inspection or for duplication.
2. *Notice to requestor that the College needs additional time to produce records that are in active use or in storage:* If the College needs additional time to produce a record because it is in active use or because it is in storage, the College must notify the requestor of this fact. This notice must be given within 10 business days of the College's receipt of the request for the documents. The notice must set a date and hour within a reasonable time that the information will be available for inspection or duplication.
3. *Request by the College for a ruling from the Texas Attorney General regarding the confidentiality of the material:* If the College believes that the information is confidential and should be withheld from disclosure, it usually will be required to request an Attorney General ruling regarding the material. The written request for an Attorney General ruling must be made within 10 business days of the College's receipt of the request for the documents. The Public Information Officer and the College's Legal Counsel shall coordinate letters to the Attorney General. Individual employees are not authorized to seek opinion requests on behalf of the College.
4. *Notice to requestor that the College has sought an Attorney General Opinion:* The College must give written notice to the requestor if the College seeks an Attorney General ruling on the request. This notice must be given within 10 business days of the College's receipt of the request for the documents. The Public Information Officer is responsible for this communication.
5. *Notice to person or entity with proprietary interest in information:* If a request for information could result in the release of proprietary information, the College must make a good faith attempt to notify the person or entity that has an interest in the request. The College must send the written notice within 10 business days of the date the original request was received. This notice must include a copy of the request for information and a statement that the person is entitled to submit a letter, brief, or memorandum to the Attorney General in support of withholding the information. The Public Information Officer is responsible for sending this communication.
6. *Requester may be required to pay costs:* In many circumstances, the requester will be asked to pay reasonable costs in connection with production of information. The College assesses costs in accordance with state guidelines [www.oag.state.tx.us]. The Public Information Officer has a standard form to be used when assessing costs. The form is available on the Groups drive in the "Public Information" folder.

7. *Notice to the requestor of estimated costs:* If a request for a copy of public information will result in a charge that exceeds \$40, or a request to inspect a paper record will result in a charge that exceeds \$40, the College shall provide the requestor with a written itemized statement that details all estimated charges that will be imposed, including any allowable charges for labor or personnel costs. If an alternative less costly method of viewing the records is available, the statement must include a notice that the requestor may contact the College Public Information Officer regarding the alternative method. **The cost estimate must be sent promptly (before the 10th business day after the request is received).**

The College must inform the requestor of the responsibilities imposed on the requestor and of the rights granted and give the requestor the information needed to respond, including:

- (a) that the requestor must provide the College with a mailing, facsimile transmission, or electronic mail address to receive the itemized statement and that it is the requestor's choice which type of address to provide;
- (b) that the request is considered automatically withdrawn if the requestor does not respond in writing to the itemized statement and any updated itemized statement in the appropriate time and manner; and
- (c) that the requestor may respond to the statement by delivering the written response to the institution by mail, in person, by facsimile transmission, or by electronic mail.

Departmental and division leaders must assist the Public Information Officer in calculating estimated costs. All cost estimates must comply with state guidelines [www.oag.state.tx.us].

If the College later determines, but before it makes the copy or the paper record available, that the estimated charges will exceed the charges detailed in the written itemized statement by 20 percent or more, the Public Information Officer shall send to the requestor a written updated itemized statement that details all estimated charges that will be imposed, including any allowable charges for labor or personnel costs. If the requestor does not respond in writing to the updated estimate in the time and manner described above, the request is considered to have been withdrawn by the requestor.

A request is considered to have been withdrawn by the requestor if the requestor does not respond in writing to the itemized statement by informing the College within 10 business days after the date the statement is sent to the requestor that:

- (a) the requestor will accept the estimated charges;
- (b) the requestor is modifying the request in response to the itemized statement; or
- (c) the requestor has sent to the Attorney General a complaint alleging that the requestor has been overcharged for being provided a copy of the public information.

8. *Notice to requestor that there will be programming or manipulation costs:* Special rules apply to requests that may require computer programming. When the College determines that responding to a request for public information will require programming or manipulation of data and (i) compliance with the request is not feasible or will result in substantial interference with the College's ongoing operations or (ii) the information could be made available in the requested form only at a cost that covers the programming and manipulation of data, the College must provide a written statement containing the following information:

- (1) a statement that the information is not available in the requested form;
- (2) a description of the form in which the information is available;
- (3) a description of any contract or services that would be required to provide the information in the requested form;
- (4) a statement of the estimated cost of providing the information in the requested form, as determined in accordance with the rules established by the Attorney General under Section 552.262 of the Act; and
- (5) a statement of the anticipated time required to provide the information in the requested form.

The College must provide the written statement to the requestor within 20 days after the date the College receives the request. The College has an additional 10 days to provide the statement if it gives written notice to the requestor, within 20 days after the date of receipt of the request, that the additional time is needed. Additional requirements are set forth in Section 552.231 of the Public Information Act.

III. Responding to Subpoenas that Seek Records

A subpoena is a legal document that may be issued in a criminal, civil, or administrative proceeding. It commands the recipient to provide information at a certain date and time. The subpoena must meet several specific requirements before it is legally enforceable. Failure to respond to a subpoena may result in court-imposed sanctions.

A. Subpoenas in General

When an employee or student is involved in a criminal matter, the College may receive a subpoena from the state prosecutor or defense attorney seeking records regarding the employee or student. The College also occasionally receives subpoenas in civil matters, such as a divorce action involving an employee or a personal injury suit by a student against a third party. The College also occasionally receives requests at the Child Care Centers for information regarding other parents, attendance of the child, drop-off or pick-up times by the other parents, etc. An employee served with a subpoena should work with the Public Information Officer to determine the best way to respond to these requests.

The most common request received by College employees is a **deposition upon written questions** or **deposition subpoena for records (*subpoena duces tecum*)**. This document compels the production of documents. The subpoena may request documents alone, or it may request that the employee appear in person to testify about the documents. In most instances, the College is able to respond by producing the documents and a sworn affidavit that authenticates the documents.

Subpoena range. Federal subpoenas may command production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person. Texas court subpoenas may command a person's appearance in any county within 150 miles in any direction from the person's residence.

Subpoena fees. A state court civil subpoena compelling the attendance of a witness on a particular date in a civil case must include a witness fee of \$10 at the time of service. The witness fee in federal court in a civil case is \$40 (unless the issuer is the federal government).

If the state court subpoena does not require attendance by the witness but merely requires production of a certified record, the witness is entitled to \$1.00, which must be served at the time of service of the subpoena. The witness is not entitled to the \$10 witness fee. See Tex. Civ. Prac. & Rem. Code §22.004. The fee for a certified record is in addition to any other fee permitted by law for the production or certification of a record. Fees related to the certification or production of documents shall be transmitted to the College's business office, and the receipt must be provided to the Public Information Officer as a part of the file.

Cost of production. When the College receives a state subpoena to produce documents in a civil case in which it is not a party, the College is entitled to reimbursement of the reasonable costs of production. See Tex. R. Civ. P. 205.3(f). In federal court, when compliance with a subpoena will impose an undue expense, the court may shift the cost of compliance to the issuing party.

Service of subpoenas in civil cases. Civil subpoenas must be personally delivered by an adult who is not a party to the lawsuit. Subpoenas cannot be faxed or sent via e-mail. If a College employee receives a fax or email of a civil subpoena seeking College records, the employee shall notify the Public Information Officer. The Public Information Officer may notify the sender that the subpoena is not valid, or the Public Information Officer may direct the employee to contact the sender.

In criminal cases in state court, subpoenas may be served by hand delivery, by “electronically transmitting a copy of the subpoena, acknowledgment of receipt requested, to the last known electronic address of the witness,” or by “mailing a copy of the subpoena by certified mail, return receipt requested, to the last known address of the witness,” unless the proceeding for which the witness is being subpoenaed is set to begin within seven business days after the date the subpoena would be mailed.

An employee who is properly served with a subpoena that requires the production of College documents shall notify his or her leader of receipt of the subpoena and shall provide a copy of the subpoena to the Public Information Officer unless the subpoena is a grand jury subpoena. Grand jury subpoenas are confidential and may not be disclosed even to one’s supervisor without permission of the issuing prosecutor.

Grand jury subpoenas: Grand jury subpoenas are confidential. The subpoena will inform the witness that the subpoena is secret and that it cannot be shared with anyone. When an employee receives a grand jury subpoena for college records, the employee shall refrain from disclosing this fact to any person except as provided in this guideline or as directed by a court or the issuing prosecutor.

The employee shall inform the College’s legal counsel about the grand jury subpoena to ensure that it is valid and to determine the best method of compliance given the duty to maintain the secrecy of the subpoena. The College’s legal counsel is Thompson & Horton LLP and may be reached at 713-554-6767.

Determining validity of a subpoena. The federal courts and the state courts maintain specific rules that attorneys must follow when preparing subpoenas. The Public Information Officer will evaluate the content of a subpoena to ensure that it is valid.

Subpoenas for student records: Subpoenas for student records typically are served on the Enrollment Services Office. The Dean of Enrollment Services will coordinate with the Public Information Officer to ensure that the subpoena is valid, to gather responsive documents, and to serve the response. The Dean of Enrollment Services must ensure that the log on the Groups Drive in the Public Information folder is maintained with any responses made. The Enrollment Services Office shall notify the student of receipt of the subpoena in accordance with FERPA **unless the subpoena is a grand jury subpoena**. Staff shall use the form letter located on the Groups Drive in the “Public Information” folder to ensure all notices to students follow the same format. The notice to the student should be sent, via certified mail, return receipt requested, *within two business days* of service/receipt of the subpoena. In the event of receipt of a grand jury subpoena that prohibits disclosure to the student, the student shall not receive any notice regarding the subpoena.

Records retention: Each department that produces records in response to a subpoena shall retain a copy of its answers and the records produced. The action shall be logged on the master log on the Groups drive in the “Public Information” folder. These files must be maintained according to College retention policies. Under FERPA, student record subpoena responses must remain with the student record for as long as the student records are normally maintained (see FERPA, 34 C.F.R. § 99.32).

Requests for records in cases in which the College is a party: Requests for information in litigation involving the College or college employees are handled by the College’s legal counsel. Legal counsel

may coordinate with the Public Information Officer, the Human Resources Department, and others to ensure compliance with such requests.

B. Steps in responding to a subpoena

A subpoena is effective even if the witness refuses to accept it. When a witness attempts to refuse delivery, the process server is permitted to leave the subpoena documents on a counter, desk, or even the floor after he or she has confirmed the identity of the witness being served. For this reason, the College discourages employees from avoiding subpoenas. Avoidance tactics may disrupt College operations and may unnecessarily affect the College's legal position or response time. Accepting service of a subpoena does not waive the right to challenge it.

When a process server arrives on a campus to serve an employee or student who is absent or not available, the process server shall be referred to the Public Information Officer who will attempt to locate the employee or student and suggest a meeting place for action fulfillment. The campus or affected department shall not accept service on behalf of the absent student or employee. The campus or affected department shall refrain from volunteering information to the process server about the absent employee or student.

In some instances, the party issuing the subpoena will contact the Public Information Officer ahead of time to identify the proper person to receive the subpoena. When the Public Information Officer receives advance notice of an incoming subpoena, he or she will coordinate with the affected department or campus to arrange for delivery of the subpoena, preferably in a location away from the employee's work area.

In other instances, the process server will attempt service on an employee without first contacting the Public Information Officer. Upon receipt of a subpoena for production of College records, the affected employee or department must notify the Public Information Officer **without delay** by email or phone. The original copy of the subpoena and all attached documents (including envelopes) must be delivered to the Public Information Officer within one business day. The College does not have the option of ignoring a subpoena. The Public Information Officer, in consultation with legal counsel as may be necessary, will review the subpoena to determine whether it is enforceable and whether the College has a basis to object to the subpoena or to file a motion to quash.

An employee can be sanctioned by the court in which the case is pending for failing to respond to a subpoena within the time frame set out in the document. The Public Information Officer or College legal counsel may attempt to seek an extension of time for compliance by contacting the attorney who issued the subpoena; requests for extension must be in writing.

The Public Information Officer shall work with the affected department to identify all potential custodians of information and to ensure that responsive information is properly gathered and preserved.

If the Public Information Officer determines that the College does not possess responsive information, the College must still respond to the party that issued the subpoena.

The Public Information Officer shall ensure that a proper affidavit is prepared to authenticate the records being produced. The Public Information Officer shall serve the response. A copy of the subpoena and the College's response shall be maintained by the Public Information Officer and posted to the log on the Groups drive in the "Public Information" folder.

Employee Responsibilities:

All employees must be aware of college-wide and departmental policies and procedures regarding records management. All employees must file records in a manner that allows them to be safely stored and efficiently retrieved when needed. All employees must dispose of records in accordance with Texas laws, College policy, and the Records Retention Schedule.

Managing individual records: Employees are responsible for managing their individual records in the normal course of business, including paper records, electronic files, and e-mail.

Managing e-mail: The College frequently receives requests or subpoenas seeking copies of employee e-mails. E-mail is a “record” just like a traditional paper record and is subject to public disclosure. E-mail is classified based on its *content*. E-mail with a specific retention period can be printed and filed in a paper filing system, or it can be retained electronically. If messages are retained electronically, employees must ensure that they remain accessible and readable for the full retention period.

Most e-mails have no legal, fiscal, administrative, or archival value and can be deleted as soon as they have fulfilled their purpose. Examples include routine replies/requests for information; e-mails sent as reference or for informational distribution; e-mails used to set-up or accept meetings; announcements; and acknowledgements.

E-mails with substantive content must be retained in accordance with the Records Retention Schedule. Substantive e-mails may not be destroyed except in accordance with the Records Retention Schedule.

Correspondence that is delivered as an e-mail for the purpose of conducting official business must be managed as an official or master College record. E-mail must be categorized by its content and function in accordance with the certified Records Retention Schedule. For example, if a contract is updated via e-mail exchange, the e-mail thread becomes part of the contract files and must be retained.

The following rules apply to e-mails that must be retained as official records:

- If no response is sent via e-mail, retain the incoming message. For example, if a phone call is made in response to an e-mail received, retain the e-mail.
- If a response or a series of responses (a thread) is sent by e-mail, keep the last outgoing e-mail showing the final response, or the last incoming e-mail that shows the final resolution of the correspondence.
- If an e-mail is forwarded to someone else for resolution, retain the forwarding e-mail.

- Retain the e-mail in an electronic format. State law requires the retention of transmission data, also known as metadata (the data describing context, content, and structure of records), to establish the authenticity and integrity of the record. Data that must be retained includes:
 - Name of sender
 - Name of recipient/addressee(s)
 - Date/time the message was sent
 - Attachments
- As with paper records, when an employee departs, it is best practice to transfer e-mail master records to a common folder where they can be managed by the department until the retention requirements are met.
- E-mails that are official records may not be deleted except in accordance with the College’s e-mail destruction procedure.

State law regarding electronic records requires that electronic records be individually identifiable and retrievable for the entire retention period. Backup tapes cannot be considered a method of retaining e-mail records unless the backup tape is indexed for individual retrieval.

All employees who send or receive e-mail to conduct College business must follow the College’s [computer user guidelines](#) and retention schedule.

Security of E-mail: Many employees, as part of their job duties, send or receive e-mails containing confidential content or attachments, such as student information, medical information, or Social Security numbers. Employees must exercise due care in the management of e-mails. In particular, employees are prohibited from forwarding such e-mails to their personal e-mail accounts or to third parties who have not been specifically authorized to receive the information.

Additional information regarding Information Technology procedures and guidelines is available on the website of the College's Information Technology (IT) department.

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