

OPEN RECORDS STEERING COMMITTEE

**REPORT REGARDING THE POSTING OF INFORMATION ON
STATE AGENCIES' WEB SITES**

NOVEMBER 2000

ACKNOWLEDGEMENTS

The following people aided the Committee in the development of this study and report. We appreciate their cooperation and dedication.

Jack Cato, Harris County
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Darryl Brown, OAG
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The Committee would also like to commend the participating agencies for their assistance and candid remarks.

This report was written by the Open Records Steering Committee. For questions or additional copies, please call Hadassah Schloss, Presiding Officer, General Services Commission at 512-475-2497, or send e-mail to hadassah.schloss@gsc.state.tx.us.

OPEN RECORDS STEERING COMMITTEE

Austin, Texas

**REPORT REGARDING THE POSTING OF INFORMATION ON
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November 2000**

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EXECUTIVE SUMMARY

This report is presented by the Open Records Steering Committee to the Governor, Lt. Governor, Speaker of the House, and the presiding officers of the Senate Finance Committee, the House Budget Committee, and the Senate and House State Affairs Committees. The Open Records Steering Committee (“the Committee”) is comprised of representatives from six state agencies, three local governmental bodies, and five public members.

This report is mandated by Government Code, Chapter 552, §552.009, which states:

The members of the committee that represent state governmental bodies and the public members of the committee shall periodically study and determine the types of public information for which it would be useful to the public or cost-effective for the government if the type of information were made available by state governmental bodies by means of the Internet or another electronic format.

In accordance with the mandate, the committee presents the following recommendations:

Recommendations

- Ensure that all agencies, regardless of size, have the capital and human resources necessary to make Texas state agencies the model of valuable and cost-effective web sites.
- Provide additional funds to those agencies that currently rely on revenue from information sales and would suffer a shortfall if they made that information available on the Internet at no charge.
- Create a clearinghouse within an appropriate agency to share expertise, equipment, and procedures to protect the integrity of state agency information.
- Direct the Department of Information Resources to develop and establish a “best practices model” so that agencies can benefit from work and techniques already developed.
- Direct the Legislative Budget Board to develop a uniform, concise definition for “open records/public information” requests for purposes of LBB reporting.
- Encourage the pursuit of grants and partnerships between government and public educational institutions for the purpose of web site development and maintenance.
- Investigate the possibility of establishing partnerships between government and private industry for the purpose of web site development and maintenance and set standards for such partnerships.

REPORT AND RECOMMENDATIONS

INTRODUCTION

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In accordance with the statutory mandate, this report contains the Committee's findings and recommendations.

OPEN RECORDS STEERING COMMITTEE

The Open Records Steering Committee (the "Committee") is a statutory standing committee whose charge is to advise the General Services Commission (GSC) regarding the GSC's performance of its duties under Chapter 552. The Committee is comprised of representatives from six state agencies: the General Services Commission, the Office of the Comptroller of Public Accounts, the Office of the Attorney General, the Department of Information Resources, the Department of Public Safety, the State Library and Archives Commission; three local governmental bodies: the City of San Antonio, Harris County, Ysleta Independent School District; and five public members: the Texas Daily Newspapers Association, Common Cause of Texas, Consumers Union, Texas Association of Broadcasters, and the Freedom of Information Foundation of Texas. The representative from the GSC is the presiding officer of the Committee.

STUDY METHODOLOGY

The Committee selected twenty-seven agencies to survey. The agencies were selected to be a representative sample of small (15 or fewer FTEs), medium (16 – 500 FTEs), and large (over 500 FTEs) state agencies. Agencies under sunset

review during the 2001 legislative session were also included in the survey sample. The agencies selected were:

Department of Agriculture	Alcoholic Beverage Commission
Board of Barbers' Examiners	Bond Review Board
Department of Criminal Justice	Employees' Retirement System
Ethics Commission	Public Finance Authority
General Services Commission	Department of Human Services
Department of Insurance	Legislative Council
Department of Licensing & Regulation	Department of MHMR
Board of Psychologists' Examiners	Department of Public Safety
Railroad Commission	Real Estate Commission
Savings & Loan Department	Secretary of State
Department of Transportation	University of Texas System
Water Development Board	Workers' Compensation Commission
Workforce Commission	Department of Health
Department of Banking	

The Committee created two-person teams to perform the survey interviews. Each team was comprised of a state governmental body member and a public member. The teams selected agencies to interview from the above list, and invited agencies to bring the web content manager, public information officer, and the employee responsible for completing the Open Records Report to the Legislative Budget Board to the meeting. Team members set appointments with the agencies and met with designated employees over a period of three weeks.

The Committee members researched the web sites of the selected state agencies and formulated a series of baseline questions that were asked of all state agencies. During the course of the interviews, the agencies and the teams were free to expand on the questions and issues discussed. In general, the team members found the interviews satisfying and came away with a feeling that state agencies are eager to put as much information as possible on their web sites. The main obstacles to this goal appeared to be a lack of resources, both human and capital, as well as a myriad of state and federal regulations that limit the kind of information that may be posted for certain types of records and/or transactions.

KEY ISSUES IDENTIFIED IN THE INTERVIEWS

There is a general consensus among the Committee members that the following key issues were identified during the interviews.

1. Usefulness of Web Site Information to the Public

Most of the information found on the twenty-seven selected agencies' web sites is useful to the public. In addition, information posted on agency web sites produces a more informed requestor. This generally benefits both the requestor and the agency, for it either obviates the need for the formal request or it allows the requestor to hone the request to more specific information. Agencies benefit by diminished foot traffic at the agency and by a decrease in more costly and labor-intensive activities, such as providing paper copies. Agencies reported savings in printing, publishing, and mailing costs. However, some of the most useful information is still not being posted. Among the reasons agencies cited for not posting some information were lack of resources, loss of revenue from sale of the information, and privacy, security, and confidentiality issues that are regulated by other statutes.

2. Assessing Cost Effectiveness

The Committee's assessment of the type of information that would be cost effective to post and the willingness of agencies to move toward electronic exchange of common information, was hampered by problems with the new system of reporting open records requests to the Legislative Budget Board (LBB). The LBB required agencies to report the number of requests received divided into several categories, and the cost of fulfilling these requests. Based on interviews with agencies, the Committee determined that each agency has created its own definitions of what it reports to LBB. Some report only requests that are funneled through their General Counsel's office, while others count every phone call and e-mail request for a brochure or a license application packet. In order to determine cost savings that might be generated by more efficient electronic communication systems, the Committee suggests that the LBB provide agencies with a baseline definition of a request for information, and definitions for the categories of information to be reported.

3. Inadequate Resources

The usefulness to the public of web site information is directly related to sufficient funding and skilled staff. All agencies stated that more information would be made available if they had adequate resources, but some large agencies have managed to create very useful sites by reallocating existing resources. The lack of adequate resources affects agencies of all sizes and it is equally divided between capital and human resources. Some agencies have been able to form partnerships with the UT Graduate School of Library and Information Science, thereby acquiring temporary help from very knowledgeable individuals. However, this approach may not work for every agency because of

the temporary nature of the assistance and the need to maintain the systems when assistance is no longer available. Additionally, the current job market in Austin makes it difficult for state agencies to retain or recruit staff skilled in Information Technology.

Also, some agencies sell some of their information (i.e., customer lists, licensee lists, etc.) for more than it would cost as an "open record." The agencies rely on the income from these sales for general operating expenses. Such charges are a barrier to access. If the information that is now sold is put on the agencies' web sites, the revenue from the sales is lost. If the loss of income is not replaced by general revenue appropriations, the agencies may experience significant shortage of funds to fulfill their mandates.

4. Focus on Best Practices

Most agencies were open to suggestions that they expand some of the information they provide, or make it more "user friendly." However, it is apparent that there is no uniform method for state agencies to evaluate the external needs, if any, for specific information or kinds of information. State agencies, in general, post information that is easy to post, even if the external need has not warranted such exposure.

Several agencies have very useful sites. Their philosophy is to put as much information as possible on their web sites. Some even provide tools to build better web sites, and make these tools available on their web site. The Committee's consensus was that the sites belonging to the Department of Human Services, the Department of Licensing and Regulation, and the Real Estate Commission deserve special mention for the quality and quantity of the information posted.

The Committee believes that all state agencies should post the following information on their web sites:

- **Information Required by Statute or DIR Rules**

HB 2835 requires agencies with biennial budgets exceeding \$175 million to post the following types of information:

- Agency expenditures by county, region, or field office.
- Profile of governing officer or board members and contact information for officers or members.
- List and description of all current or prospective contract with vendors with a value exceeding \$100,000.

- Brief description of agency duties
- Link to all agency rules
- Link to written procedures relating to agency hearings not published in the Administrative Code.

SB 801 requires all agencies to post:

- The text of its rules.
- Letters, opinion, or compliance manuals that explain or interpret one or more of its rules and that the agency has issued for general distribution.
- Email system for asking questions about agency rules and receive an answer electronically.

DIR Rules require agencies to post:

- Agency contact information.
- Privacy policy.
- Description of Open Records policy/procedures.
- Link to statewide search (TRAIL).
- Link to Texas home page.
- Description of agency duties.
- Links to enabling legislation.
- Link to Texas Administrative Code.
- Compact with Texans.

- **Additional Useful Information for All Agencies**

- Agency budget.
- Meeting notices, minutes and agendas for governing boards. Immediately after public meetings post attending members and record votes.
- Bid announcements, agency procurement forms, procurement requirements or link to general procurement rules, final contracts once awarded with a value greater than \$100,000.
- Agency mission statement, and a list of programs with summary information describing each. Map to physical location and location of regional offices if any.
- Link to text of proposed rules.
- Sample system for filing public comments on rules via email, including posted instructions for such public comments and instructions for filing public comment by regular mail or in person.
- All agency publications, including program reports required to be submitted to the legislature, LBB, DIR, the Governor, etc. Index.
- FAQs relevant to the agency's customer types (i.e., licensees, general public, students, retirees, etc.)

- Email system for filing a complaint (where agency has complaint investigation functions) that is appropriately secure and protects confidential disclosures. Forms and instructions for paper complaint filing.
- Statistical information about complaints filed with the agency, including general types of complaint, code violations, resolution, remedies.
- Organization chart showing names of persons in key administrative posts and contact information. Contact information should include contacts at division, program or regional levels.
- Webmaster email and phone for reporting problems with web site.
- Application forms for licenses, registrations, and programs in accessible formats.
- List/database of professional licensees/registrants/permittees including basic information: name, business address, type of license, number of complaints filed against licensee and resolution of complaints, fines imposed.
- Enforcement actions completed including name, business address, type of enforcement action.
- Basic information about procedures for appeal of agency decisions.
- Current job postings, applications forms, and instructions for submitting applications.
- General effort to post database information that would be useful to the public and is within the purview of the agency.

5. Privacy, Security, and Confidentiality of Certain Information

Current state law includes some 580 individual statutes that make confidential some types of information held by certain governmental entities. Appendix C provides a sample table of the statutes. The complete table can be viewed at http://www.oag.state.tx.us/notice/privacy_statutes.htm. Whether particular types of information may be publicly released depends on which statute applies and, in many cases, which particular state agency holds that information. For instance, general information about licensees, such as the licensee's address, is considered confidential information that may not be publicly released by some agencies (i.e., the names of the persons licensed by the Texas Alcoholic Beverage Commission to sell alcoholic beverages), while the addresses of other types of licensees are clearly public information (i.e., persons granted tax permits by the Comptroller's Office to sell cigarettes). The inconsistent approach taken by the state's confidentiality laws makes it difficult to recommend to the state agencies a uniform model of information that should be posted on all web sites. However, within those statutory constraints, the Committee believes that agencies should post information recommended in Key Issue # 4.

Agencies also expressed concerns about the security of the information they post. Some of the information consists of items that could be used for identity theft if the agency's system was penetrated by hackers. Information security systems are being installed, but the process is costly.

Additionally, several agencies are reluctant to post employees' names in contact information (i.e., telephone numbers, e-mail addresses, etc.) because of personnel turnovers. The agencies would prefer to post a job title or function, so that it does not need to be updated every time an employee leaves a position.

RECOMMENDATIONS

- Ensure that all agencies, regardless of size, have the capital and human resources necessary to make Texas state agencies the model of valuable and cost-effective web sites.
- Provide additional funds to those agencies that currently rely on revenue from information sales and would suffer a shortfall if they made that information available on the Internet at no charge.
- Create a clearinghouse within an appropriate agency to share expertise, equipment, and procedures to protect the integrity of state agency information.

- Direct the Department of Information Resources to develop and establish a “best practices model” so that agencies can benefit from work and techniques already developed.
- Direct the Legislative Budget Board to develop a uniform, concise definition for “open records/public information” requests for purposes of LBB reporting.
- Encourage the pursuit of grants and partnerships between government and public educational institutions for the purpose of web site development and maintenance.
- Investigate the possibility of establishing partnerships between government and private industry for the purpose of web site development and maintenance and set standards for such partnerships.

CONCLUSION

Agencies have made significant progress toward improving the quality and quantity of information they post to their web sites. However, agencies of all sizes are hampered by a lack of resources, dependency on income from the sale of information, or statutory constraints.

The Committee is grateful to the state agencies and their personnel for opening their doors and their minds, and sharing their concerns as well as their hopes. The Committee will update this study and its recommendations biennially, unless otherwise directed by the legislature.

APPENDICES

APPENDIX A

SAMPLE LETTER

July 28, 2000
Mr. Jim Muse
Executive Director
General Services Commission
1711 San Jacinto
Austin, TX 78701

RE: INTERVIEW REGARDING WEB SITE CONTENT

Dear Mr. Muse:

On behalf of the Open Records Steering Committee (ORSC), I request your help pursuant to a study the ORSC is conducting.

As you may be aware, the ORSC is a statewide, multi-agency committee that was statutorily created by SB 1851 (1999). One of the committee's mandates is "to periodically study and determine the types of public information for which it would be useful for the public or cost effective for the government if the type of information were made available by state governmental bodies by means of the Internet or another electronic format."

Your agency has been selected to be interviewed for the study, which primarily deals with open records issues and Internet content. Your answers to the survey questions will help us write better recommendations.

We believe that the following staffers would be knowledgeable on the issues to be discussed: the web content manager, the public information officer, and the open records employee that is responsible for the LBB report mandated by SB 1851. With these employees present, we anticipate that the information can be gathered in about one hour. If any of these positions do not exist in your agency, please select an alternate employee that has experience and knowledge in these topics.

The committee membership understands that you and your employees are busy with other endeavors; therefore we have selected several dates to meet with you and your staff. Please select a first and second choice and e-mail it to my attention at hadassah.schloss@gsc.state.tx.us, no later than August 4.

If you have any questions, please feel free to contact me at 475-2497.

Sincerely,

Hadassah Schloss
Chair
Open Records Steering Committee

cc: Committee Members

Attachment

APPENDIX B

BASELINE QUESTIONS FOR SELECTED AGENCIES

1. What do you consider as an open records request?
2. If you do not count everything, is your count based on
 - a. whether or not you charged or what the charges were?
 - b. who is the requestor? (i.e., media requests are counted separately, other governmental bodies' requests are not counted, etc.)
 - c. volume of information requested?
 - d. type of contact? (i.e., fax, phone, e-mail, etc.)
 - e. type of material requested? (i.e., brochures, rules, etc.)
3. What kind of requests did you put in the "Other" category on the LBB monthly report?
4. How does your agency decide what you put on your web site?
 - a. Each division writes their own content and posted with IS coordination.
 - b. Each division writes their own content but it must have OGC approval before is posted.
 - c. Everything must go through PIO or similar office.
 - d. All decisions on what gets posted are made only at the executive level.
5. What do you see as the purpose of having a web site?
 - a. To comply with the law.
 - b. To save time and money in the long run.
 - c. To reduce the foot traffic at our agency.
 - d. To increase agency visibility.
 - e. To provide information to the public.
6. Who do you consider your "customers" for information?
 - a. The general public.
 - b. Vendors.
 - c. Regulated individuals and entities.
 - d. Other state, federal, and local agencies.
7. What are your concerns about:

- a. Putting information on the web site?
- b. Privacy?
- c. Lack of technical expertise?
- d. Increase in requests?
- e. Increase in traffic?

8. What concerns do you have about posting

- a. Licensee information?
- b. Vendor information?
- c. Proposed rules?
- d. Enforcement information?
- e. Agency decisions?

9. What other concerns, if any, do you have about posting information on the Internet?

10. Have you considered posting the information

- a. In a de-identified format?
- b. Aggregated? (i.e., Statistical Information)
- c. after consulting the Office of the Attorney General for guidance?

APPENDIX C

This appendix can be viewed by accessing the following web address:

http://www.oag.state.tx.us/notice/privacy_statutes.htm