

April 1, 2021

*Delivered via Market Notice*

To Whom It May Concern:

We have received formal requests to inspect or copy some of our files. A copy of these requests for information are enclosed. The requested files include records we received from you or from your company. The Office of the Attorney General is reviewing this matter, and they will issue a decision on whether Texas law requires us to release your records. Generally, the Public Information Act (the "Act") requires the release of requested information, but there are exceptions. As described below, you have the right to object to the release of your records by submitting written arguments to the attorney general that one or more exceptions apply to your records. You are not required to submit arguments to the attorney general, but if you decide not to submit arguments, the Office of the Attorney General will presume that you have no interest in withholding your records from disclosure. In other words, if you fail to take timely action, the attorney general will more than likely rule that your records must be released to the public. If you decide to submit arguments, **you must do so not later than the tenth business day after the date you receive this notice.**

If you submit arguments to the attorney general, you must:

- a) identify the legal exceptions that apply,
- b) identify the specific parts of each document that are covered by each exception, and
- c) explain why each exception applies.

Gov't Code § 552.305(d). A claim that an exception applies without further explanation will not suffice. Attorney General Opinion H-436 (1974). You may contact this office to review the information at issue in order to make your arguments. We will provide the attorney general with a copy of the request for information and a copy of the requested information, along with other material required by the Act. The attorney general is generally required to issue a decision within 45 business days.

Please send your written comments to the Office of the Attorney General at the following address:

Office of the Attorney General  
Open Records Division  
P.O. Box 12548  
Austin, Texas 78711-2548

If you wish to submit your written comments electronically, you may only do so via the Office of the Attorney General's eFiling System. An administrative convenience charge will be assessed for use of the eFiling System. No other method of electronic submission is available. Please visit the attorney general's website at <http://www.texasattorneygeneral.gov> for more information.

**In addition, you are required to provide the requestor with a copy of your communication to the Office of the Attorney General.** Gov't Code § 552.305(e). You may redact the requestor's copy of your communication to the extent it contains the substance of the requested information. Gov't Code § 552.305(e). You may provide a copy of your communication to the governmental body who received the request and sent the notice.

### **Commonly Raised Exceptions**

In order for a governmental body to withhold requested information, specific tests or factors for the applicability of a claimed exception must be met. Failure to meet these tests may result in the release of requested information. We have listed the most commonly claimed exceptions in the Government Code concerning proprietary information and the leading cases or decisions discussing them. This listing is not intended to limit any exceptions or statutes you may raise.

#### **Section 552.101: Information Made Confidential by Law**

Open Records Decision No. 652 (1997).

#### **Section 552.110: Confidentiality of Trade Secrets and Commercial or Financial Information**

Trade Secrets

Commercial or Financial Information:

*Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. filed) (construing previous version of section 552.110), *abrogated by In re Bass*, 113 S.W.3d 735 (Tex. 2003).

Open Records Decision No. 639 (1996).

Open Records Decision No. 661 (1999).

**Section 552.1101: Confidentiality of Proprietary Information**

**Section 552.113: Confidentiality of Geological or Geophysical Information**

Open Records Decision No. 627 (1994).

**Section 552.131: Confidentiality of Certain Economic Development Negotiation Information**

If you have questions about this notice or release of information under the Act, please refer to the *Public Information Handbook* published by the Office of the Attorney General, or contact the attorney general's Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN TEX). To access the *Public Information Handbook* or Attorney General Opinions, including those listed above, please visit the attorney general's website at <http://www.texasattorneygeneral.gov>.

Sincerely,

**Electric Reliability Council of Texas, Inc.**

Enclosure: Copy of requests for information  
Copy of request for OAG ruling

cc:  
Requestors  
(w/o enclosures)

Open Records Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548  
(w/o enclosures)



**HANCE SCARBOROUGH, LLP**  
ATTORNEYS AND COUNSELORS AT LAW

Jay B. Stewart  
Managing Partner  
jstewart@hslawmail.com

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April 1, 2021

**VIA ELECTRONIC FILING**

**Justin Gordon**

Office of the Attorney General  
Chief - Open Government Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548

RE: Request for a Determination of Applicability of the Texas Public Information Act,  
OAG Tracking ID: OR87850321

Dear Mr. Gordon,

On March 1, 2021, our office filed a request for a determination as to the applicability of the Texas Public Information Act to the Electric Reliability Council of Texas, Inc (OAG Tracking ID: OR87850321). Our office also filed our 15-Day brief on March 8, 2021. We have identified additional representative requests seeking information that could implicate the PIA. As such we have attached those additional requests. We hereby incorporate the March 1<sup>st</sup> and March 8<sup>th</sup> filings by reference in regards to these additional requests. We have provided a copy of the March 1<sup>st</sup> and 8<sup>th</sup> filings to the requestor, and the March 1<sup>st</sup> filings to third parties with the third party notice.

Sincerely,

/s/ Jay B. Stewart

Jay B. Stewart

Enclosure: Additional Requests



**HANCE SCARBOROUGH, LLP**  
ATTORNEYS AND COUNSELORS AT LAW

Jay B. Stewart  
Managing Partner  
jstewart@hslawmail.com

March 1, 2021

**VIA ELECTRONIC FILING**

**Justin Gordon**

Office of the Attorney General  
Chief - Open Government Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548

RE: Determination of Applicability of Texas Public Information Act

Dear Mr. Gordon,

Following Winter Storm Uri, ERCOT has received numerous information requests through its online portal and other means. See <http://ercot.com/about/contact/inforequest>. Some of the requests cite the Texas Public Information Act, Tex. Gov't Code ch. 552, as a basis for the records request. Exhibit "A". The requests were received beginning on February 14, 2021.

The Public Utility Commission has implemented ERCOT-specific regulations that govern ERCOT's disclosure of public information. 16 Tex. Admin. Code § 25.362(e). The procedures ERCOT has adopted for handling record requests have similar deadlines and exceptions to disclosure that would be relevant to ERCOT under the PIA. ERCOT is concerned that if it is also subject to the PIA, its disclosure obligations under that statute would conflict with its PUC-implemented disclosure obligations. ERCOT is working expeditiously to respond to the information requests, and it intends to timely disclose as much information as its governing regulations permit. But because there is ambiguity about which disclosure scheme governs, ERCOT seeks a ruling from this office on whether it is subject to the PIA, while preserving its objections to the release of any information that is confidential by law. ERCOT submits this request within ten business days of the first request received. ERCOT has provided the requestors with a copy of this request and has notified each of those parties whose information is the subject of one or more of the information requests.

The PUC, which directly oversees ERCOT, has established specific information-disclosure regulations that take into account the unique nature of ERCOT's role and ERCOT's and the PUC's expertise. ERCOT, though organized as a nonprofit corporation, performs a critical governmental function while also being directly answerable to the PUC. As the "independent organization" certified by the PUC, ERCOT is responsible for "ensur[ing] the reliability and adequacy of the regional electrical network" and "ensur[ing] access to the transmission and distribution systems

for all buyers and sellers of electricity on nondiscriminatory terms.” Tex. Util. Code § 39.151(a). In short, ERCOT manages the State’s electric grid and wholesale electricity market. All of ERCOT’s operations are subject to the PUC’s plenary control. ERCOT is “directly responsible and accountable to the commission,” which in turn “has complete authority” over ERCOT. *Id.* § 39.151(d).

In its comprehensive statute creating and defining ERCOT’s role, the Legislature did not explicitly subject ERCOT to the PIA. However, recognizing that ERCOT performs a public function, the PUC has established a public-information regime that accounts for the unique nature of the information ERCOT holds. *See* 16 Tex. Admin. Code § 25.362(e). Under PUC Rule 25.362(e)(1), ERCOT must “adopt and comply with procedures that allow persons to request and obtain access to records” possessed by ERCOT. Responsive information must “normally be provided within ten business days.” *Id.* Importantly, “ERCOT’s procedures regarding access to records shall be consistent with this [rule] and commission orders.”

ERCOT must generally disclose information in its possession on request, but it must not disclose information “designated as Protected Information pursuant to ERCOT rules.” *Id.* § 25.362(e)(1)(A). ERCOT’s rules—known as protocols—are themselves binding legal rules enacted using rulemaking authority delegated from the PUC, which also has plenary authority to approve, reject, or modify them. *See* Tex. Util. Code § 39.151(d); *PUC v. Constellation Energy Commodities Grp.*, 351 S.W.3d 588, 595 (Tex. App.—Austin 2011, pet. denied) (ERCOT’s rules “have the force and effect of statutes”). Section 1.3.1.1 of ERCOT’s protocols thus defines, in granular detail, what records in its possession are protected and which are not. Records deemed protected by these PUC-approved rules include Critical Energy Infrastructure Information, the protection of which is vital to the system’s security, and enormous volumes of confidential business information that market participants must provide so that ERCOT can manage the State’s electricity market and grid.

If ERCOT declines, under these rules and protocols, to disclose protected information, the requestor may seek review from the PUC, which “may determine the validity of the asserted claim of confidentiality through a contested-case proceeding.” 16 Tex. Admin. Code § 25.362(e)(1)(C). The process is designed to answer “whether the information is subject to protection from disclosure under law.” *Id.* Rulings by the PUC in contested-case proceedings are subject to judicial review.

Subjecting ERCOT to the PIA would interfere with the PUC’s “direct[]” and “complete” authority over ERCOT and would subject ERCOT to inconsistent regulatory regimes. ERCOT performs a public function. The system administration fee that funds ERCOT’s operations is collected pursuant to the State’s police power. *See* Tex. Util. Code § 39.151(e). Some requestors may therefore argue that ERCOT is a “governmental body” under the PIA because it “is supported in whole or in part by public funds.” Tex. Gov’t Code § 552.003(1)(A). However, this office need not contend with the PIA’s definition of “public funds,” *see id.* § 552.003(5), in order to determine that ERCOT is not subject to the PIA.

The problem is structural: subjecting ERCOT to the PIA would conflict with ERCOT’s enabling statute. *See City of Waco v. Lopez*, 259 S.W.3d 147, 153 (Tex. 2008) (holding “that a

specific statute will ordinarily prevail over a general statute when the two cannot be reconciled”). That statute gives the PUC “complete authority” over ERCOT, and pursuant to that “complete authority” the PUC has created a specialized public-information regime that accounts for ERCOT’s unique function and the PUC’s oversight role. Were the PIA to apply to ERCOT, the Office of the Texas Attorney General, rather than the PUC, would have authority to determine whether ERCOT holds are subject to disclosure. In that case, the PUC’s authority would no longer be complete—because the PUC’s authority over ERCOT’s records would be subordinate to the Attorney General’s. This would conflict not only with the language of ERCOT’s enabling act, but its purpose. The Legislature granted the PUC authority over ERCOT because it has expertise in the complicated subject matter for which ERCOT is responsible. This expertise is necessary to resolve disputes about whether records in ERCOT’s possession are confidential or should be disclosed. The Attorney General lacks the technical expertise the PUC enjoys.

For example, one category of “protected information” that ERCOT protocols prohibit ERCOT and its market participants from disclosing is “[r]esource-specific costs, design, and engineering data.” Protocols § 1.3.1.1.(1)(m). Determining what information falls within this category requires significant technical expertise and regulatory judgment in balancing the commercial sensitivity of information about individual generators with the needs of the broader market to have access to at least some basic generator parameter information for system modeling and generation development purposes. Similarly, recently approved protocols prohibit disclosure of ERCOT Critical Energy Infrastructure Information, which is defined as certain grid infrastructure information that “could foreseeably be useful to a person planning an attack on ERCOT System Infrastructure.” ERCOT Protocols §§ 1.3.2(1), 2.1 (eff. Apr. 1, 2021). Whether particular information satisfies this test requires expertise in the many possible ways in which this information could be used to compromise the many thousands of components of generators, control centers, transmission lines, and substations that make up the power grid. These interpretations are best overseen by the PUC.

ERCOT’s direct accountability to the PUC, Tex. Util. Code § 39.151(d), is likewise a barrier to the PIA’s application. The PUC has ordered ERCOT to disclose records “consistent with” the PUC’s rules. 16 Tex. Admin. Code § 25.362(e)(1). ERCOT could not comply with the PIA without violating an order from its direct overseer. *See Christus Health Gulf Coast v. Carswell*, 505 S.W.3d 528, 535–36 (Tex. 2016) (holding that “directly” “means ‘without the intervention of a medium or agent’ or ‘immediately’”).

Finally, a 2019 amendment to ERCOT’s enabling act confirms that ERCOT is not subject to the PIA. Because of its critical role, ERCOT must annually “conduct [an] internal cybersecurity risk assessment, vulnerability testing, and employee training” and report to the PUC regarding its compliance with “cybersecurity and information security laws.” Tex. Util. Code § 39.151(o). The Legislature specified that information reported *to the PUC* under this provision “is confidential and not subject to disclosure” under the PIA. *Id.* § 39.151(p). While the Legislature deemed this information confidential, it did not provide that the same information was not subject to disclosure when held by ERCOT, rather than “submitted in a report” to the PUC. This implies that the PIA does not apply to ERCOT.

ERCOT asks this office to issue a ruling that ERCOT is not subject to the PIA. *See Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353, 362 (Tex. App.—Waco 1998, pet. denied) (observing that it is routine for this office to answer such questions). ERCOT emphasizes that it seeks this ruling only to avoid the impossibility of complying with dueling, inconstant disclosure obligations. The ruling will ensure the public's access to information that the PUC has deemed disclosable, but will guard information that could harm the system or the legally protectable interests of private parties. ERCOT intends to disclose as many records as the law permits. Any non-disclosure may be challenged before the PUC and, ultimately, reviewed in court.

In the event this office determines ERCOT is subject to the PIA, ERCOT objects to the disclosure of any records made confidential by its protocols or other law pursuant to Texas Government Code § 552.101, and further objects to the disclosure of any information otherwise exempted from disclosure under Texas Government Code §§ 552.101, 552.102, 552.103, 552.104, 552.107, 552.110, 552.1101, 552.133, and 552.139.

ERCOT has notified the Requestors that it is seeking a ruling from the Attorney General as to the applicability of the PIA to ERCOT, and if found to be subject to the PIA, a ruling of the Attorney General as to those items it claims should be excepted from disclosure. ERCOT has also notified third parties whose information is the subject of one or more of these requests.

Sincerely,



Jay B. Stewart

Exhibit "A" – Copies of Requests for Information

Exhibit "B" – Third Party Notice



**From:** [info](#)  
**To:** [info](#)  
**Subject:** Information Request from Ercot.com  
**Date:** Wednesday, March 31, 2021 9:28:51 AM

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A visitor to the Ercot.com web site has requested information. The details of the request are below:

**Name** Ryan Autullo

**Company** American-Statesman

**Address** 305 South Congress Avenue  
Austin, TX 78704

**Email** rautullo@statesman.com

**Phone** (512) 230-0239

**Delivery  
Method** Electronic

**Request** Hello. I am requesting a complete list of all power plants ERCOT visited from Jan. 1, 2021 - Feb. 14, 2021 to inspect for winter weatherization. Please list the date ERCOT visited each plant and the names of ERCOT employees who conducted the inspections. Please include any notes ERCOT took during the inspections and any recommendations ERCOT provided to the power plants. If you have any questions about my request, please do not hesitate to reach out to me. The best way to reach me is by phone: 512.230.0239. Thank you. Ryan Autullo American-Statesman

# HOUSTON CHRONICLE

March 29, 2021

Custodian of Public Records  
ERCOT  
7620 Metro Center Dr.  
Austin, TX 78744

Dear Public Records Custodian,

As your lawyers argued in your legal battle with Panda Power, ERCOT “exercises uniquely governmental powers, including the power to make law.” Furthermore, your lawyers stated that ERCOT is “subject not only to conflict-of-interest **and public-information laws**, but – more significantly – sunset review,” and “even receives public funding.” \*

Pursuant to this sworn statement made by your counsel, and recognizing that the Texas Public Information Act clearly establishes (in 552.002, 552.221 and elsewhere) that the public is entitled to receive public records in the possession of public entities like ERCOT once a request is made in writing, I respectfully ask you to provide me the following:

**+ Any and all communications, including but not limited to emails, text messages, voicemails, audio files and third party application messages (such as Messenger, WhatsApp, etc.) exchanged between/among ERCOT employees, including but not limited to Bill Magness, and any market participant that in any way relates to or mentions the price of electricity, between and including the dates of February 13 through February 19.**

Please send all responsive records to my email address, [jay.root@chron.com](mailto:jay.root@chron.com); should you need a physical address you may send me mail at: 3005 South Lamar, Suite D109-297, Austin, TX 78704.

Thanks,

Jay Root  
Reporter/Houston Chronicle  
512-750-5477

\* See <https://www.powermarketstoday.com/members/Texas-Supreme-Court-to-review-ERCOT-Panda-dispute.cfm>

P.S. I am sending this via email and regular mail

**From:** [Root, Jay](#)  
**To:** [Media](#); [Sopko, Leslie](#)  
**Subject:** ORR from Jay Root 3-29-21  
**Date:** Monday, March 29, 2021 4:43:37 PM  
**Attachments:** [image001.png](#)  
[ERCOT ORR.docx](#)

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**\*\*\*\*\* EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. \*\*\*\*\***

PLEASE SEE OPEN RECORDS REQUEST IN BODY AND ATTACHMENT; ALSO SENDING VIA MAIL



March 29, 2021

Custodian of Public Records  
ERCOT  
7620 Metro Center Dr.  
Austin, TX 78744

Dear Public Records Custodian,

As your lawyers argued in your legal battle with Panda Power, ERCOT “exercises uniquely governmental powers, including the power to make law.” Furthermore, your lawyers stated that ERCOT is “subject not only to conflict-of-interest **and public-information laws**, but – more significantly – sunset review,” and “even receives public funding.” \*

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Please send all responsive records to my email address, [jay.root@chron.com](mailto:jay.root@chron.com); should you need a physical address you may send me mail at: 3005 South Lamar, Suite D109-297, Austin, TX 78704.

Thanks,

Jay Root  
Reporter/Houston Chronicle  
512-750-5477

\* See <https://www.powermarketstoday.com/members/Texas-Supreme-Court-to-review-ERCOT-Panda-dispute.cfm>

P.S. I am sending this via email and regular mail

**From:** [Mike Soraghan](#)  
**To:** [Media](#)  
**Subject:** PIA request from Lee, Klump, Soraghan  
**Date:** Monday, March 22, 2021 6:59:16 PM

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**\*\*\*\*\* EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. \*\*\*\*\***

March 22, 2021

Public Information Coordinator  
Electric Reliability Council of Texas  
Austin, Texas

To the Public Information Coordinator:

Pursuant to the Public Information Act in Texas Government Code, Chapter 552, we request access to and copies of the following communications, electronic or otherwise (including "text messages"), between ("to," "from" or "cc") Bill Magness, Jeyant Tamby, Woody Rickerson, Dan Woodfin, Kenan Ögelman, or Theresa Gage and:

Carrie Bivens

Any employee or representative of the Public Utility Commission of Texas. In the case of official electronic communications, that would include any account ending in @puc.texas.gov

Any employee or representative of the Railroad Commission of Texas Public (RRC). In the case of official electronic communications, that would include any account ending in @rrc.texas.gov.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision.

As we are making this request as journalists and this information is of timely value, we would appreciate your communicating with Mike Soraghan by telephone or email, rather than by mail, if you have questions regarding this request.

We agree to pay reasonable duplication fees for the processing of this request in an amount not to exceed \$50. However, please notify me prior to your incurring any expenses in excess of that amount.

Sincerely,

Edward Klump, Houston

Mike Lee, Fort Worth

Mike Soraghan, Winston-Salem, N.C.

Mailing address:

122 C St. NW

Washington, DC, 20001

Mike Soraghan

E&E News reporter

[msoraghan@eenews.net](mailto:msoraghan@eenews.net)

202-709-3699 (office and mobile)

[@MikeSoraghan](#)

**E&E NEWS**

[www.eenews.net](http://www.eenews.net) | [@EENewsUpdates](#)

Energywire, Climatewire, Greenwire, E&E Daily, E&E News PM

**From:** [Parks, Eva \(NBCUniversal\)](#)  
**To:** [info](#)  
**Cc:** [Friedman, Scott \(NBCUniversal\)](#)  
**Subject:** RE: NBC request  
**Date:** Thursday, March 25, 2021 1:30:59 PM  
**Attachments:** [image002.png](#)

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**\*\*\*\*\* EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. \*\*\*\*\***

Thank you for this, but it doesn't fulfill this request. We know the information exists, but we haven't seen it.

On page 3, that letter states that the information we requested are in confidential exhibits B,C D, E and F.

Can we obtain those to review?

Until then, this request hasn't been completed.

The results of each of ERCOT's site visits conducted in 2019-20 and 2020-21 are attached as Confidential Exhibits B and C, respectively. ERCOT also maintains a spreadsheet reflecting the schedule for site visits each year. The spreadsheet for 2019-20 is attached as Confidential Exhibit D, and the spreadsheet for 2020-21 is attached as Confidential Exhibit E. Finally, ERCOT also maintains a spreadsheet that provides a high-level color-coded summary of its findings at each generating facility reviewed over the years. This spreadsheet is attached as Confidential Exhibit F.

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**From:** info <i@ercot.com>  
**Sent:** Tuesday, March 23, 2021 3:56 PM  
**To:** Parks, Eva (NBCUniversal) <Eva.Parks@nbcuni.com>  
**Subject:** [EXTERNAL] RE: NBC request

Dear Ms. Parks,

Information responsive to your request has been posted to [ERCOT's website](#) in [ERCOT Response to State Representative Eddie Lucio III](#), specifically pages 2 – 4 of that Response.

Let us know if we can be of further assistance.

Sincerely,



Information Request Services  
ERCOT Client Services  
2705 West Lake Drive | Taylor, TX  
[www.ercot.com](http://www.ercot.com)

**From:** Parks, Eva (NBCUniversal) [<mailto:Eva.Parks@nbcuni.com>]  
**Sent:** Monday, March 1, 2021 8:23 AM  
**To:** Sopko, Leslie <[Leslie.Sopko@ercot.com](mailto:Leslie.Sopko@ercot.com)>  
**Cc:** Friedman, Scott (NBCUniversal) <[Scott.Friedman@nbcuni.com](mailto:Scott.Friedman@nbcuni.com)>  
**Subject:** NBC request  
**Importance:** High

**\*\*\*\*\* EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. \*\*\*\*\***

Hey Leslie:

Hope you had a nice weekend.

Looking at ERCOT filings to PUC, I focused on control number 27706. From there I found reports ERCOT sent to PUC notifying the agency of resource entity's non-compliance with the requirement to submit winter weatherization. For quick reference, I attached the most recent one filed in January, but I have them dating back to 2014.

From what I could see searching that control number, it looks like ERCOT submitted them to PUC each winter and summer since 2014.

Date	Count of entity with deficiency
Summer 2015	14
Summer 2016	63
Summer 2017	10
Summer 2018	21
Summer 2019	25
Summer 2020	94
Winter 2014	24
Winter 2015	18
Winter 2016	45
Winter 2017	25
Winter 2018	5
Winter 2019	30
Winter 2020	42
Winter 2021	42
<b>Grand Total</b>	<b>458</b>

From the list of deficiencies, it looks like most are listed as being deficient because they submitted them late or there was an issue with the signature. Can you better explain those deficiencies?

Once ERCOT submits those reports to PUC, what happens? Who reviews them and how does ERCOT follow up with a resource entity to verify they have a plan?

Going back to the winter weatherization workshops held each September, how does ERCOT choose who to run a spot check on? At one of the meetings you held, Bill indicated they focus on entities that have had previous issues. Can you clarify how ERCOT determines who gets a spot check?

We are pursuing this as a story and will also be connecting with PUC to understand the process. As I imagine, you guys are swamped, but we would like to interview someone at ERCOT about this and could do a zoom this afternoon or tomorrow.

Please let us know what you can.

Appreciate your help.

Eva

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**Eva Parks**  
**Investigative/Consumer Producer**  
NBC 5 | Dallas-Fort Worth  
Mobile: (817) 304-2389  
[NBCDFW.COM](http://NBCDFW.COM) | [NBCDFW](http://NBCDFW) | [@nbcdfw](https://twitter.com/nbcdfw)





Russell Gold  
The Wall Street Journal  
(214) 616-9715  
[Russell.Gold@WSJ.com](mailto:Russell.Gold@WSJ.com)

March 30, 2021

Electric Reliability Council of Texas  
7620 Metro Center Drive  
Austin, Texas 78744

Dear Officer for Public Records:

This request is made under the Texas Public Information Act, Chapter 552, Texas Government Code, which guarantees the public's access to information in the custody of governmental agencies. I respectfully request the following information:

- All electronic communications sent by or received by Bill Magness between Feb. 1<sup>st</sup> 2021 and March 1<sup>st</sup> 2021. This includes email and any electronic communication system used by Mr. Magness for the purpose of written communications.
- All electronic communications sent by or received by Dan Woodfin between Feb. 1<sup>st</sup> 2021 and March 1<sup>st</sup> 2021. This includes email and any electronic communication system used by Mr. Woodfin for the purpose of written communications.

The Texas Public Information Act ensures the citizens of Texas have access to records generated by and held by Texas governmental entities. That ERCOT is subject to the TPIA is spelled out by none other than ERCOT's attorney in filings before the Texas Supreme Court (and by no less an authority on Texas law than Wallace B. Jefferson, who served as a Texas Supreme Court Justice for nine years and was mentioned as a potential selection for the U.S. Supreme Court.)

He wrote in a filing in February 2019 in the Ercot vs Panda Power case (No. 18-0781) that "ERCOT has more indicia of governmental-unit status than did the police force in UIW. It exercises uniquely governmental powers, including the power to make law, and it does so while under the State's complete authority and supervision. It is subject not only to conflict-of-interest and public-information laws, but—more significantly—Sunset review." In July 2019, in the same case, Mr. Jefferson wrote on behalf of his client, Ercot, the following sentence: "[B]ecause ERCOT is performing a vital public service, its records [are] available to the public' absent a 'legally-sufficient basis for classifying a record as confidential.' 36 TEX. REG. 1817, 1818 (emphasis added)."

In the interest of expediency, and to minimize the research and/or duplication burden on your staff, I would be pleased to personally examine the relevant records if you would grant me immediate access to the requested material.

Additionally, and since time is a factor, please communicate with me by telephone or email rather than by mail. My telephone number is (214) 616-9715 and my email address is [Russell.Gold@WSJ.com](mailto:Russell.Gold@WSJ.com).

Disclosure of this information is in the public interest because understanding what happened to cause the blackouts of February 2021 would benefit the general public. In my 25 years as a reporter in Texas, I am hard pressed to think of another topic that is more in the public interest.

I therefore request a waiver of all fees and charges pursuant to Section 552.267 of the act. I shall look forward to hearing from you promptly, as specified in the law. Thank you for your cooperation.

Sincerely,

Russell Gold

**From:** [Gold, Russell](#)  
**To:** [Sopko, Leslie](#)  
**Subject:** TPIA request  
**Date:** Tuesday, March 30, 2021 9:38:24 AM  
**Attachments:** [ERCOT3.docx](#)

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**\*\*\*\*\* EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. \*\*\*\*\***

Leslie:

See below & attached a Texas Public Information Act request. Please forward it to the appropriate person(s) at ERCOT if it is not you.

Russell

Russell Gold  
The Wall Street Journal  
(214) 616-9715  
[Russell.Gold@WSJ.com](mailto:Russell.Gold@WSJ.com)

March 30, 2021

Electric Reliability Council of Texas  
7620 Metro Center Drive  
Austin, Texas 78744

Dear Officer for Public Records:

This request is made under the Texas Public Information Act, Chapter 552, Texas Government Code, which guarantees the public's access to information in the custody of governmental agencies. I respectfully request the following information:

- All electronic communications sent by or received by Bill Magness between Feb. 1<sup>st</sup> 2021 and March 1<sup>st</sup> 2021. This includes email and any electronic communication system used by Mr. Magness for the purpose of written communications.
  
- All electronic communications sent by or received by Dan Woodfin between Feb. 1<sup>st</sup> 2021 and March 1<sup>st</sup> 2021. This includes email and any electronic communication system used by Mr. Woodfin for the purpose of written communications.

The Texas Public Information Act ensures the citizens of Texas have access to records generated by and held by Texas governmental entities. That ERCOT is subject to the TPIA is spelled out by none other than ERCOT's attorney in filings before the Texas Supreme Court (and by no less an authority on Texas law than Wallace B. Jefferson, who served as a Texas

Supreme Court Justice for nine years and was mentioned as a potential selection for the U.S. Supreme Court.)

He wrote in a filing in February 2019 in the Ercot vs Panda Power case (No. 18-0781) that “ERCOT has more indicia of governmental-unit status than did the police force in UIW. It exercises uniquely governmental powers, including the power to make law, and it does so while under the State’s complete authority and supervision. It is subject not only to conflict-of-interest and public-information laws, but—more significantly—Sunset review.” In July 2019, in the same case, Mr. Jefferson wrote on behalf of his client, Ercot, the following sentence: “ ‘[B]ecause ERCOT is performing a vital public service, its records [are] available to the public’ absent a ‘legally-sufficient basis for classifying a record as confidential.’ 36 TEX. REG. 1817, 1818 (emphasis added).”

In the interest of expediency, and to minimize the research and/or duplication burden on your staff, I would be pleased to personally examine the relevant records if you would grant me immediate access to the requested material.

Additionally, and since time is a factor, please communicate with me by telephone or email rather than by mail. My telephone number is (214) 616-9715 and my email address is [Russell.Gold@WSJ.com](mailto:Russell.Gold@WSJ.com).

Disclosure of this information is in the public interest because understanding what happened to cause the blackouts of February 2021 would benefit the general public. In my 25 years as a reporter in Texas, I am hard pressed to think of another topic that is more in the public interest.

I therefore request a waiver of all fees and charges pursuant to Section 552.267 of the act. I shall look forward to hearing from you promptly, as specified in the law. Thank you for your cooperation.

Sincerely,

Russell Gold

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**Russell Gold**

SENIOR REPORTER, THE WALL STREET JOURNAL  
AUTHOR, [SUPERPOWER & THE BOOM](#)

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NOTE: IN CENTRAL TIME ZONE (-500 UTC)