

2019

Faculty Senate Update

Office of Legal Affairs

Contracts and the

Texas Public Information Act



Overview of Today's Presentation

1. The Office of Legal Affairs Team
2. Contracts
3. Texas Public Information Act
4. Questions



Our Team



Michael Donley

Chief Legal Officer



Teri Taylor

Contract Manager



Adrienne Hampton

Public Information Coordinator



Contracts

Tips for smooth processing



Contract Management

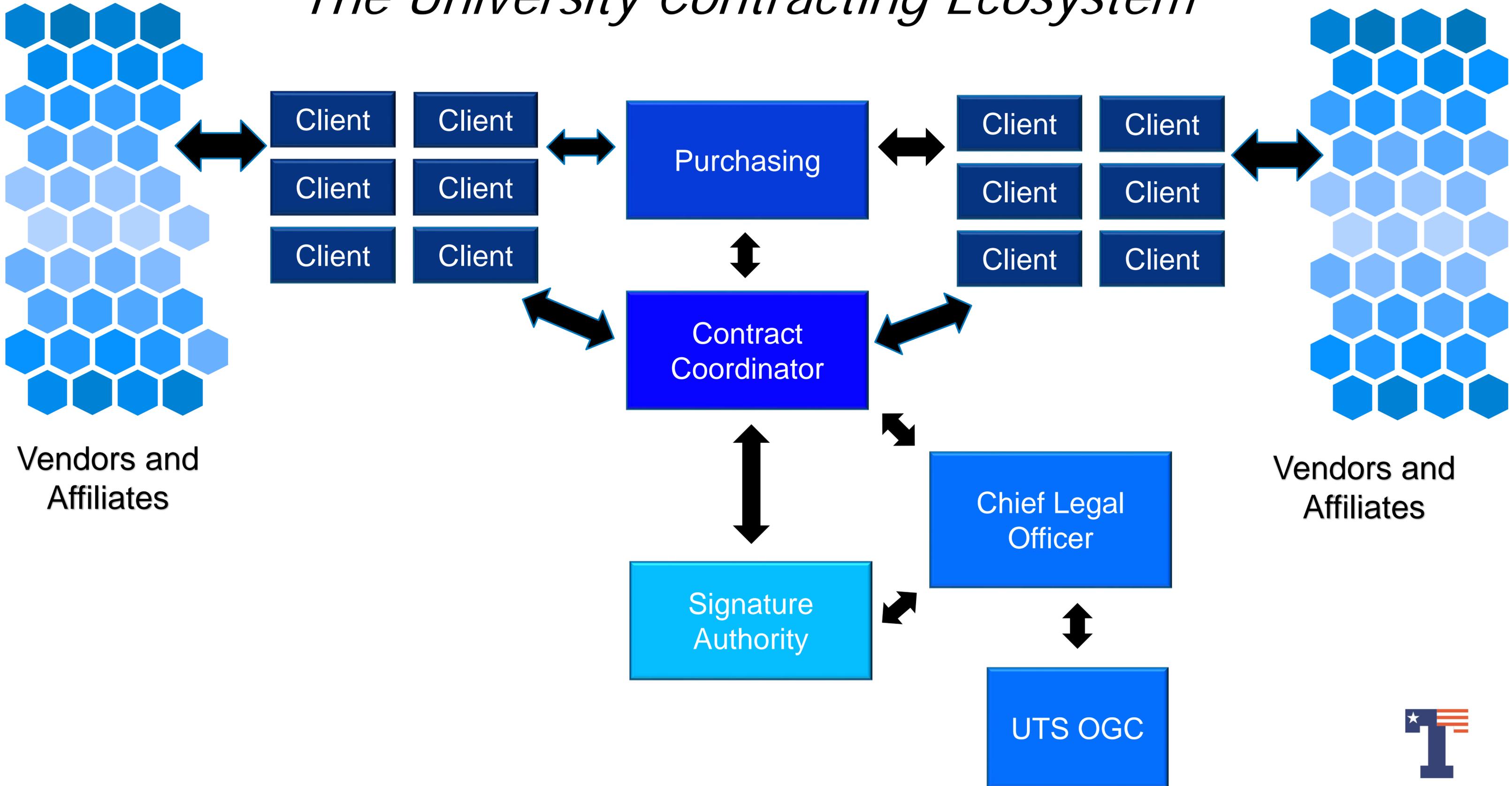
The University has a high-volume, partly decentralized contract management system.

In 2018, the Office of Legal Affairs processed 1360 contracts (about 4,000 drafts).

Every contract goes through a process of review, revisions, and approval before execution (7 – 10 business days).



The University Contracting Ecosystem



Bases by which Legal Affairs conducts legal content review:

- 1. Texas Government Code**
- 2. Contract Management Handbook -**
<https://www.uttyler.edu/finserv/purchasing.php>
- 3. UT System Regents' Rules**
- 4. UTS 145, UT Tyler HOP, System Attorneys**

IN ORDER TO BE PROCESSED, A CONTRACT MUST BE:

- 1. COMPLETE** – blanks filled in, all pertinent documents and information included
- 2. CORRECT** – dates, dollar amounts, terms, etc. are correct and consistent throughout the contract
- 3. COHESIVE (well integrated)** – no information has been cut off of a page, no pages are missing, pages are in order, etc.

Four Tips for Efficient Contract Approval

1. Review University Processing Procedures

Step-by-step resource available on the website.

2. Read For Obvious Errors and Omissions

Blanks filled in, all documents & attachments included, dollar amounts are correct, etc.

3. Contact Teri Taylor Early in the Process

Let OLA know as early as possible if you have a last-minute contract. OLA can expedite but all steps in the process still have to be completed.

4. Evaluate Hyperlinked Information

Spot shifting exogenous terms (may be called terms and conditions, privacy policies, EULAs).



Contract Processing Procedures

1. Determinations and Negotiations Prior to Processing. Before executing a document, the University department must determine whether the document is a contract that needs to be appropriately routed and approved by the Office of Legal Affairs and the Purchasing Department.

Generally, any document that contains “Terms and Conditions” in the language is considered a contract (aka agreement). Although it may be entitled “Proposal”, “Invoice”, “MOU”, etc. it is likely a contract that must be processed as described below through Legal and Purchasing (if required).

The originating University Department is responsible for the negotiation of the business terms of the contract. The originating department is responsible for negotiating for the best available business terms for agreements it originates. For agreements that involve significant monetary value or exposure to other risk, the originating department may schedule a meeting with Business Affairs, the Office of Legal Affairs or the Office of Risk management to discuss additional resources available to the originating department.

2. Purchasing Approval. **If the contract involves an expenditure, the department should submit the contract to the Purchasing Department for approval.**

Please be sure that all pertinent information is included in the contract before submission (fill in blanks, etc.). Obtain and complete the Contract Approval Routing Form through DocuSign. When setting up the Routing Form in DocuSign, be sure to include all names that will need to sign off on the form. Legal Affairs (Teri Taylor) will sign last. Contact Purchasing with any questions regarding the completion of the Routing Form.

Once the Contract Approval Routing Form is completed, Legal Affairs will print the document from DocuSign and begin processing. **Once received by Legal, allow 7 to 10 business days for the processing of a contract that contains no legal issues. If legal issues are found, that timeline will extend.**

If the contract does not involve an expenditure, begin with Step 3.

3. Submission for Legal Review. **Please be sure that all pertinent information is included in the contract before submission (fill in blanks, etc.).** Unless the vendor requires original signatures, scan the contract and completed routing form (if an expenditure) and email to Office of Legal Affairs for processing at taylor@uttyler.edu. In most circumstances the Office of Legal Affairs will only accept contracts for processing that have been sent as attachments through email. Emailing the document creates a record that the contract has been submitted to the Office of Legal Affairs. Please submit a .pdf or Word version of the contract... **we do not e-sign.** **Once received by Legal, allow 7 to 10 business days for the processing of a contract that contains no legal issues. If legal issues are found, that timeline will extend.**

4. Legal Revisions. Legal will review for legal content, make revisions and often add the UT Tyler version of the UT System Office of General Counsel Recommended Contract Addendum containing language recommended by OGC, including provisions that may be mandatory under the Constitution and the laws of the State of Texas.

5. Approval of Legal Revisions. If revisions have been made by the Office of Legal Affairs, the document will be emailed back to your department. On rare occasions, counterparties object to language recommended by the Office of Legal Affairs and several stages of negotiation of contract language may occur. In this situation, the University Department can contact the paralegal in the Office of Legal Affairs to help guide it through the process of legal revision.

6. Execution by Counterparty. When the vendor has approved all necessary revisions, the vendor will sign the contract and any necessary addenda. The vendor will then send the executed contract back to the originating department.

7. Execution by the University. The department will email the approved and signed contract to the Office of Legal Affairs at taylor@uttyler.edu for signature and execution by the appropriate University contracting authority. When the appropriate authority has signed, the Office of Legal Affairs will email an executed copy of the contract to the originating department and to Purchasing if needed.

8. Contract Management. The originating department has responsibility to ensure that the counter party has fulfilled its obligations under the contract. The originating department must monitor the performance of the counter party as often as necessary to ensure it is complying with its obligations under the contract.

In the vast majority of instances, contract management does not place an additional burden on the originating department because the products or services procured are delivered at the beginning of the contractual relationship or incorporated into the normal functioning of the originating department. In rare instances, the originating department must develop a proactive plan to monitor compliance with contracts it is managing.

Warning Regarding the Unauthorized Execution of Contracts. Unless a University employee has a delegation of authority to sign contracts from the President of the University, the employee is not authorized to execute contracts that bind the University. Individuals without a delegation should not sign contracts that involve the University in any way. If a University employee executes a contract involving the University without the authority to do so, that individual may be personally bound by the contract when the University is not. If an employee has questions regarding their authority to execute contracts on behalf of the University, the employee should contact the Office of Legal Affairs.

WHAT'S TAKING SO LONG?!

Unavoidable delays

1. Revisions, revisions, revisions
2. Contract requires Insurance, Marketing, IT or OGC review
3. Contractor/Vendor is slow to return the Contract when sent for revision review or signature
4. Illegal Terms



Avoidable delays

1. Contract is incomplete
2. Contract is incorrect,
3. Contract is incohesive
4. Contract is not submitted in a timely fashion
5. Business related revisions are not made before Legal review
6. Contract has been signed by an unauthorized UT Tyler employee

Texas Public Information Act

"..why, why, why?"

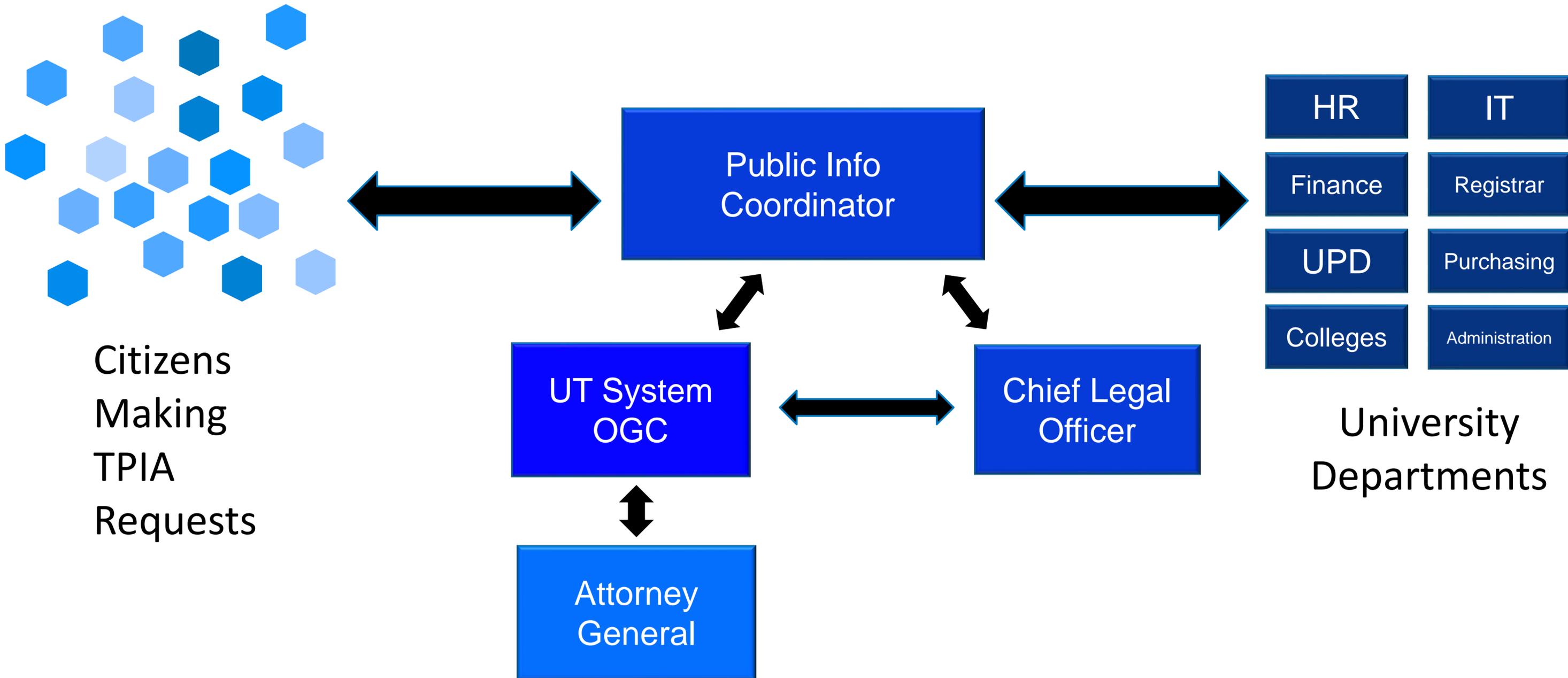


TPIA = Government Transparency

- ✓ **We are a public university**
- ✓ **We are funded by taxpayers**
- ✓ **They can ask for information**



The University TPIA Process



The University has 10 Days to Respond with...

Responsive Information

Provide all existing documents

Reasonable Delivery Date

For large, complicated requests

Notification That We Are Seeking an AG's Opinion

Attorney General will determine if the information is exempted



What to do if you get a request from your friendly TPIA Coordinator...

“Greetings...I am seeking your help to fulfill a TPIA request...”

Review

Copy of the request and response templates are provided

Communicate

Questions, clarification

Redirect

Does someone else hold this information?

Respond

Information, extension, reason to seek AG opinion



What Information is Public?

Any document produced while performing a public function.

The content matters...not the medium.

Can be on
state
owned or
personal
property

- Emails
- Text Messages
- Video
- Paper
- Electronic
- Data Bases



Best practices for compliance

Before hitting send ask.....

“Am I comfortable with the public reading this?”



Thank you for your attention.

Questions?

