

Records Requests

Rebecca Glisan, Staff Attorney, TJCTC
rebecca.glisan@txstate.edu

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Abbreviations

- TRCP = Texas Rules of Civil Procedure
- GC = Government Code
- CCP = Code of Criminal Procedure
- LGC = Local Government Code

- You may get requests for records that are kept by your court
- The judge is the **records custodian** for these records
- This presentation covers:
 - The two categories of records you will have and which laws you have to follow for each category
 - When to release and when to withhold records
 - The procedures you need to follow

The Public Information Act (PIA) gives public access to government documents.

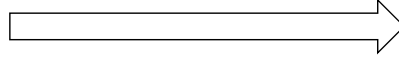
However, it DOES NOT APPLY to your court records!

Instead...

--GC 552.003, 552.0035

The Law You Follow Depends on the Type of Record

“Case records”

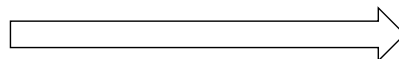


- Created or filed in connection with any matter that is/has been before a court; OR
- Pertaining to a court’s “**adjudicative function**” (*means the court’s role in hearing and deciding cases*) even if not related to a specific case.
 - Ex: Blank forms; info packets

Case law; UNLESS a specific statute or rule applies to a certain type of record

The Law You Follow Depends on the Type of Record

“Judicial records”



- Made or maintained by or for a court or judicial agency in its regular course of business; and NOT a “case record”
 - Ex: Disaster preparedness plan

Rule 12 of the Rules of Judicial Administration

Judicial or Case Record?

- Traffic case records
- Courthouse renovation records
- Inquest records
- Information packet on how to file a small claims case

JUDICIAL RECORDS

Request for Judicial Records

(Rule 12.6)

- Request must be in writing
- Records are open to the general public for inspection and copying during regular business hours and must be produced at a convenient, public area
- Respond as soon as practicable but not more than 14 days after receipt of request
 - Send written notice, if record can't be provided within 14 days, setting a reasonable date and time when documents will be provided, produced or made available

Request for Judicial Records

(Rule 12.6)

- Never ask a requestor to disclose the reason for the request – but you may ask for info to clarify the nature or scope of a request
- All requests should be treated the same

If You Don't Have the Records

(Rule 12.6(f))

If you do not have the requested records, you should attempt to determine who the custodian is

- If you can figure out who the custodian is, you should promptly refer the request to that person; and
- Notify the requestor in writing of the referral

What You Don't Have To Do

(Rule 12.4(a))

Rule 12 does not require a records custodian to:

- Create a record, other than to print information stored in a computer
- Retain a judicial record for a specific period of time
- Allow the inspection or provide a copy of information in a publication commercially available to the public, or
- Respond to or comply with a request for a judicial record from or on behalf of an individual who is imprisoned or confined in a correctional facility

Voluntary Disclosure

(Rule 12.4(b))

- Even if not required, a records custodian may voluntarily make part or all of the information in a judicial record available to the public, unless:
 - The disclosure is expressly prohibited by law or exempt from disclosure under Rule 12; or
 - The information is confidential under law
- Information voluntarily disclosed must be made available to any person who requests it

Rule 12 Exemptions From Disclosure (DON'T DISCLOSE THESE)

(Rule 12.5)

- **Security Plans**
 - If release would jeopardize security of a person against physical injury or security of information/property against damage/theft//unauthorized access/etc.
- **Personnel Information**
 - If disclosure would be a clearly unwarranted invasion of personal privacy
- **Home address and Family Information**
 - Any record showing someone's home address, home or personal telephone number, social security number, or family members

Rule 12 Exemptions From Disclosure (DON'T DISCLOSE THESE)

(Rule 12.5)

- Records relating to applicants for Employment or Volunteer Services
- Records relating to internal court deliberations or deliberations among judges concerning court or judicial administration matters

Rule 12 Exemptions From Disclosure (DON'T DISCLOSE THESE)

(Rule 12.5)

- Judicial calendar information
 - Judicial officer's appointments/engagements that are in the future or that constitute an invasion of personal privacy
- Information that is confidential under other law
 - Specific examples included under Rule 12.5(k)

Denial of Access to Judicial Records

(Rule 12.8)

- Request may be denied if:
 - You reasonably determine that it is exempt from disclosure; or
 - You make a specific, non-conclusory finding that compliance with the request would substantially and unreasonably impede the routine operation of the court
- Time to deny – within a reasonable time but not more than 14 days after request is received or, if response time was extended, before the deadline for responding to the request

Denial of Access to Judicial Records

(Rule 12.8)

Notice of denial must be in writing and must:

- State the reason for denial
- Inform the person of the right to appeal under Rule 12.9
- Include the name and address of the Administrative Director of the Office of Court Administration
David Slayton
P.O. Box 12066
Austin, TX 78711 - 2066

Appeal from Denial of Access

(Rule 12.9)

- Filed with the Office of Court Administration
- Must be filed within 30 days
- Respondent notified of appeal
 - May respond within 14 days but not required to
 - May be asked to provide documents by committee for its review

SCENARIO

You receive a records request for personnel records. What do you do?

What if the request was from an inmate?

CASE RECORDS

Request for Case Records

- Case records are assumed to be open to the public **unless** an exception applies
- No specific rules like for Rule 12
- Reply as soon as practicable
- Keep requestor informed
- If part of a record should be withheld and part should be released, redact the part that should be withheld and release the rest

Exceptions – DON'T RELEASE THESE

- If sealed or subject to non-disclosure order (except as allowed by the order or the relevant statute/rule)
 - TRCP 76a; GC Ch. 411, Subchapter E-1
- If expunged by a court order

Exceptions – DON'T RELEASE THESE

- If common law privacy exception applies
 - Protects information that contains “highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person” and that is “not of legitimate concern to the public.” (*Industrial Foundation of the South v. Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976))
 - Ex: social security number, driver’s license number, financial info

Exceptions – DON'T RELEASE THESE

- If judge determines that release of the record would be a vehicle for improper purposes (RARE)
 - Example: If judge believes the requestor would use the record to stalk someone
- If there is a specific statute or rule that limits access (see following slides)

Exceptions – Arrest warrants, search warrants or supporting affidavits

- If **executed** (*meaning the officer has already done what the warrant says to do*)- must release
- If **not executed**, must not release
- CCP 15.26, 18.01(b)

Exceptions – Records in a case charging a child with a fine-only misdemeanor other than a traffic offense (regardless of the outcome)

- Record is confidential, except it may be released to:
 - the child;
 - the child's parents;
 - an attorney for a party in the case;
 - DPS;
 - a criminal justice agency for a criminal justice purpose; or
 - judges and court staff.
- CCP 45.0217

Exceptions – Records relating to fine only offenses if it has been 5 years since date of final conviction/dismissal after deferral of disposition

- Record is confidential, except it may be released to:
 - judges or court staff; a prosecutor; DPS;
 - a criminal justice agency for a criminal justice purpose;
 - the defendant or the defendant's counsel;
 - if the offense is a traffic offense, an insurance company or surety company;
 - for the purpose of complying with a requirement under federal law or if federal law requires the disclosure as a condition of receiving federal highway funds.
- This does not apply to records related to an offense that is sexual in nature, as determined by the holder of the records (ex: under-age sexting offenses)
- CCP45.0218

Exceptions – Records in a mental health case

- In JP court, mental health records will mainly be filed/created when magistrating defendants with mental health issues and in emergency detention warrant proceedings .
- Mental health records are confidential unless:
 - a county or district judge makes a written order granting access;
 - the requestor is the attorney for the patient; or
 - law enforcement needs information in the record in execution of a writ or warrant.
- Health & Safety Code 571.015

Exceptions – Records in a truancy case

- Record is confidential, except it may be released to:
 - the judge of the truancy court, the truant conduct prosecutor, and their staff;
 - the child or the child's attorney;
 - a governmental agency if the disclosure is required or authorized by law;
 - a person or entity to whom the child is referred for treatment or services if there is a written confidentiality agreement regarding the protection of the disclosed information;
 - the Texas Department of Criminal Justice and the Texas Juvenile Justice Department for the purpose of maintaining statistical records of recidivism and for diagnosis and classification; or
 - with leave of the truancy court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

Exceptions – Juror information sheets

- Information is confidential except it may be released to the:
 - parties;
 - attorneys for the parties;
 - judge and court personnel; and
 - in criminal cases, the media if the court has found good cause to permit disclosure.
- CCP 35.29, GC 62.0132(f, g)

Appeal from Denial of Access

- Since Rule 12 does not apply, the Rule 12 appeal process does not apply to denial of case records.
- If a judge denies access to a record, the requestor could choose to challenge that decision by filing a mandamus action against the judge.
 - A mandamus action basically asks a higher court to determine if the judge has not followed the law, and if they haven't, to order them to do so.

Scenario

You process a minor in possession of alcohol case in your court.

Who can have access to the case records?

Scenario

You perform an inquest which involves an autopsy. There is an ongoing criminal investigation regarding the death.

Who can have access to the inquest records?



Cost of Copies

Costs for Copies

Paper copies:

- Set by Local Gov't Code (Sec. 118.121):
 - Certified - \$2 for first page and \$0.25 for each additional page
 - Non-certified - \$1 for first page and \$0.25 for each additional page

Non-paper copies (electronic, dvd, etc.):

- Judicial records  Must follow TX Office of Attorney General (OAG) schedule
 - Costs are set by the OAG in the Texas Administrative Code (1 Tex. Admin. Code § 70.10) unless there is a specific statute –Rule 12.7
- Case records  Must be “reasonable” (just follow the OAG schedule)

Waiver/Reduction and Appeal of Costs for *Judicial Records Requests*

- Court may reduce or waive cost if:
 - In public interest because providing record primarily benefits general public; or
 - Cost of processing collection of a charge will exceed the amount of the charge
- Appeal:
 - If a requestor believes a charge is excessive
 - May appeal the overcharge by filing a petition for review with the Administrative Director of the Office of Court Administration (OCA)

--Rule 12.7

THANK YOU!