

# Everything You Ever Wanted to Know About Recordkeeping (But Were Afraid to Ask)

Rebecca Glisan  
TJCTC Director of Curriculum and Staff Attorney

1

**TJCTC Programs are an educational endeavor of the Justices of the Peace and Constable's Association of Texas, Inc. and funded by the Texas Court of Criminal Appeals.**

**Copyright © 2023 Texas Justice Court Training Center**

**All rights reserved. No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without the prior written permission of the Texas Justice Court Training Center unless copying is expressly permitted by federal copyright law.**

**Address inquiries to: Permissions  
Texas Justice Court Training Center  
1701 Directors Blvd. Suite 530  
Austin, TX, 78744**

2

# Agenda

## • Record Retention

- Resources
- Rules for Maintaining Records
- Maintaining Electronic Records
- Destruction of Records
- Getting More Info/Training About Record Retention

## ▪ Releasing Records

- Resources
- Descriptions of the Two Types of Records & the Laws You Must Follow for Each
- Procedures for Judicial Records
- Procedures for Case Records
- Rules that Apply to Both Judicial & Case Records
- Costs for Copies

3

# Record Retention

4

## Resources

- Recordkeeping & Reporting Deskbook Chapter 1
- Texas State Library & Archives Commission
  - <https://www.tsl.state.tx.us/landing/records-mgt.html>
- Local Government Code Chapters 201 – 205
  - (Local Government Records Act)
- Bulletin D: Local Government Records Act
  - <https://www.tsl.texas.gov/slrmpubs/bulletind>

5

## Rules for Maintaining Records

6

## What Counts as a Record that Must be Kept?

- Basically any records kept by your court (whether created or received by the court)
  - See “retention schedules” for specific categories – more info on these coming up
- You may still have to keep a record even if it is not one you have to release in a records request
- May exist in any medium (paper, electronic, video, etc.)

7

## What Don't You Have to Keep?

- ✘ Records ordered expunged by a court order (Local Government Code §202.001)
- ✘ Convenience copies: “Extra identical copies of documents created only for convenience of reference or research” (Local Government Code §201.003(8)(A))
- ✘ Extra copies of documents furnished to the public as part of a records request
- ✘ Blank forms/stocks of publications
- ✘ Library or museum materials
- ✘ Alternative Dispute Resolution working files

8

## Making Sure the Records Are Kept

- ✓ One or more court employees should be responsible for making sure records are properly kept
- ✓ Decide what format the “record copy” will be maintained in
- ✓ Additional copies should be disposed of as soon as they’re no longer needed – for reference, disaster preparedness, historical preservation, etc.

9

## Retention Schedules

- A **Retention Schedule** is a document that lists different types of records and the minimum amount of time (the “retention period”) that you are legally required to keep each type of record
- A county can impose stricter requirements than what is in the schedules, but not less strict requirements

10

## Schedules Relevant to Justice Court

- **Local Schedule GR** – for records common to all local governments
  - [https://www.tsl.texas.gov/slr/localretention/schedule\\_gr](https://www.tsl.texas.gov/slr/localretention/schedule_gr)
- **Local Schedule LC** – for records specific to justice and municipal courts
  - <https://www.tsl.texas.gov/slr/recordspubs/lc.html>
  - Also in your handouts

11

## Local Schedule GR – All Local Governments

- Part 1: Administrative Records
- Part 2: Financial Records
- Part 3: Personnel and Payroll Records
- Part 4: Support Services Records
- Part 5: Information Technology Records

12

## Local Schedule LC – JP & Municipal Courts

### **Let's take a look at this together!**

- Part 1: Civil and Criminal Records
- Part 2: Inquest Records
- Part 3: Vital Statistics Records
- Part 4: Miscellaneous Records
- Part 5: Juvenile Records

13

## Some Retention Codes

- AV – As long as Administratively Valuable
  - The record's immediate purpose has been served
  - You may destroy it whenever it ceases to have value to your court
- FE – Fiscal Year End
  - The last day of the fiscal year
- US – Until Superseded
  - The record is replaced by an updated version

14

## Look It Up in the Local Schedule LC!

How long must your court keep each of the following records:

1. A civil case (small claims) with a judgment for \$2,000?
2. A criminal docket? A civil docket? What if they are combined?
3. A no insurance ticket that your court dismissed?

15

## Maintaining Electronic Records

16

## Electronic Records

- See Bulletin B: Electronic Records Standards and Procedures:  
<https://www.tsl.state.tx.us/slr/recordspubs/lgbullb.html>
- You must be able to access the electronic version **for the full retention period**

17

## E-mail

- Emails **are** records
- Their retention is based on content – what type of record are they?
- Keep personal and business emails in separate accounts

18

## Source Document Destruction

- See Bulletin B, §205.008. Destruction of Source Documents
- Before destroying original, test:
  - That electronic version is complete and of good quality
  - That you are able to find and pull up the electronic version when needed
- If using a new software system, keep source documents for at least six months until you're sure the system is working properly

19

## Destruction of Records

20

## Why Dispose of Records?

- Creates room, speeds up retrieval
- Reduces operating, equipment, storage, supply, and personnel costs
- Shows that your record management system is an active and continuing program as required by law

21

## Record Destruction

- Generally, you do NOT need permission to destroy records once retention period is over
- Regardless of retention periods, historic court records must be kept permanently:
  - Dated before 1951; or
  - Case papers in a case from any period that, because of its notoriety or significance, might possess enduring value
    - Ex: Justice Scalia inquest

22



## What If Records Are Accidentally Destroyed Before They Should Be?

- This would not be good! Try to avoid this!
  - Consider electronic backups and emergency protocols in case of unavoidable issues (like flooding, fire, etc.)
  - Have a system for double checking before anything is intentionally destroyed

25

## What If Records Are Accidentally Destroyed Before They Should Be? *(continued)*

- But if a record is destroyed when it shouldn't be, make a note of the accidental destruction in your records disposition log
- If only a part of a file is accidentally destroyed before it should be, keep the rest of the file and make a note in the file of what was destroyed

26

## Liability – Destruction of Records

- A custodian of local government records, records management officer, or other officer or employee of a local government may not be held personally liable for the destruction of a record if the destruction is in compliance with the rules.

Local Government Code § 202.007.

27

## Getting More Info

28

## Additional Information

- Additional information is in our Recordkeeping & Reporting Deskbook, including:
  - Specific requirements for information that must be maintained in various types of records
  - What happens when a justice vacates office
  - Records management program requirements and forms the judge must file
    - This is the responsibility of the judge and/or the county-wide Records Management Officer (RMO)

29

## Look it Up in the Deskbook!

What information is required to be kept in the court's Criminal Docket?

30

## Training and Resources from TSLAC

- See Chapter 1, Section E of the Recordkeeping and Reporting Deskbook for links:
  - Webinars
  - Guidance Library
  - Classes/Workshops
  - Blog
  - Assistance from TSLAC staff and county-assigned analysts

31

## Releasing Records

32

## Resources

- Recordkeeping & Reporting Deskbook Chapter 2
- Rule 12 of the Texas Rules of Judicial Administration:  
<https://www.txcourts.gov/rules-forms/rules-standards/>
- OCA's Records Request Flowcharts for Justice and Municipal Courts (in your materials)

33

## Descriptions of the Two Types of Records & the Laws You Must Follow for Each

34

## Case Records

- Created or filed in connection with any matter that is or 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

For Case Records, you follow the relevant **Case Law** (*decisions from court cases*)

- **unless** a specific statute or rule applies to a certain type of record

35

## 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, personnel records

For Judicial Records, you follow **Rule 12 of the Rules of Judicial Administration**

36

## PIA Doesn't Apply

- Note that we did **not** mention The Public Information Act (PIA) as a law that you have to follow when requests are made for either Case Records or Judicial Records
- This is because the PIA covers record requests for government documents kept by certain governmental entities, but it **does not apply** to court records

*GC 552.003, 552.0035*

37

## Let's Practice – Judicial or Case Record?

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

38

# Procedures for Judicial Records

39

## Judicial Records Requests

- These requests will not be as common as case record requests.
- For detailed procedures that the court must follow when these do come up, see:
  - Chapter 2, Section B of the Recordkeeping & Reporting Deskbook
  - Rule 12 of the Texas Rules of Judicial Administration:  
<https://www.txcourts.gov/rules-forms/rules-standards/>
  - Records Request Flowchart for Justice and Municipal Courts - Judicial Records (Rule 12) (*in your handouts*)

40

## Rule 12 Deskbook Scenario #1

What is the deadline to respond to a request for judicial records?

41

## Rule 12 Deskbook Scenario #2

Can you ask a person who has requested a judicial record why they are making the request?

What questions can you ask?

42

## Judicial Records (Rule 12) Flowchart

Let's look at this together!

43

## Rule 12 Flowchart Scenario #1

You receive a records request for personnel records.

What do you do?

What if the request was from an inmate?

44

## Rule 12 Flowchart Scenario #2

You receive a records request for the judge's calendar for the next three months.

What do you do?

45

## Rule 12 Flowchart Scenario #3

You receive a request for copies of the entire Texas Property Code.

What do you do?

46

# Procedures for Case Records

47

## What is a Case Record Again?

Remember – a case record is any record:

- Created or filed in connection with any matter that is/has been before a court; OR
- Pertaining to a court's "**adjudicative function**" even if not related to a specific case

48

## 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 – either with the records requested, notification that the request has been forwarded elsewhere, or a denial of the request and the reason for the denial (if applicable)
- Keep requestor informed throughout the process

49

## Exceptions to Disclosure

- There are certain situations when you are not allowed to release a record or when the release of a record is limited in some way
- These are explained in the *“Records Request Flowchart for Justice and Municipal Courts-Court Case Records”* in your materials – **Let’s look at this together!**
  - (This information is also in the Recordkeeping & Reporting Deskbook)

50

## Additional Notes for the Flowchart

- **Box 8 – Record that is “sexual in nature”** – Example that you might have in your courts is a sexting offense committed by a 17-year-old
- **Box 21 – Mental health case records** – In JP court, mental health records will mainly be filed/created when magistrating defendants with mental health issues and in emergency detention warrant proceedings
- **Box 33 – “Judge can deny public access if release of record would be a vehicle for improper purpose”** – Very rare; Ex: If judge believes the requestor would use the record to stalk someone

51

## Not in Flowchart: Vacated EPO

- A vacated emergency protective order may not be accessed by the public.

*Government Code § 72.157(b).*

52

## Not in Flowchart: Protected Person's Address

- When issuing an Emergency Protective Order, if the protected person requests it, the court may issue an order to protect the person's address. The order must:
  - require the protected person to give their address to the court and designate another person/address to receive any notices or documents related to the order;
  - require the court clerk to strike the address from any public court records and maintain a confidential record of the protected person's address for use only by 28 the court or a law enforcement agency entering info required by Section 411.042(b)(6) of the Government Code into the statewide law enforcement information system; and
  - prohibit release of the protected person's address to the defendant.

*Code of Criminal Procedure Art. 17.294.*

53

## Not in Flowchart: Expunged Records

Why would this not be included in the flowchart?

54

## Appeal from Denial of Access

- No appeal process
- But if a court 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

55

## Case Records Scenario

What is the procedure that you should follow if someone requests a record that is confidential?

What if the person has been rude or unreasonable? Does that change what you are required to do?

56

## Case Records Flowchart Scenario #1

Your court processes a minor in possession of alcohol case.

Who can have access to the case records?

57

## Case Records Flowchart Scenario #2

Your judge performs an inquest which involves an autopsy. There is an ongoing criminal investigation regarding the death.

Who can have access to the inquest records?

58

## Case Records Flowchart Scenario #3

- A request is made for all of the records in a particular small claims case. Discovery documents that were filed in the case include one of the party's bank information.
- Can all of the records be released? Is there anything that the court needs to do?

59

## Rules that Apply to Both Judicial & Case Records

60

## If Only Part of Record is Subject to Disclosure

If part of a record should be disclosed but part should not, you **redact** (*black out so it can't be seen*) the part that should not be disclosed and release the rest of the record

There is software you can use to redact electronic versions of records.

61

## Confidentiality of Certain Information

In addition to the specific rules for each type of record, the following information is confidential and must be redacted anytime it is in a record:

- A credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for the court. *Government Code § 552.136(b)*
- An e-mail address of a member of the public that is provided for the purpose of communicating electronically with the court (unless the person affirmatively consents to its release). *Government Code §552.137(a),(b)*

62

## Liability – Release of Records

- A clerk, the county, and/or the commissioners court are not responsible or liable for the release of a confidential document from a state court document database if the clerk in good faith performs duties as provided by law and the Texas Rules of Civil Procedure.
- A court clerk is not liable for the release of a sealed or confidential document in the clerk's custody unless the clerk acted intentionally, or with malice, reckless disregard, or gross negligence in the release of the document.

*Government Code § 51.609.*

63

## **COSTS FOR COPIES**

64

## Costs for 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

65

## Costs for Non-Paper Copies

(Electronic, dvd, etc.)

- Judicial records  $\implies$  Must follow TX Office of Attorney General (OAG) schedule unless there is a specific statute that says something different
  - Rule 12. 7; Schedule can be found in the Texas Administrative Code (1 Tex. Admin. Code § 70.10)
- Case records  $\implies$  Amount must be “reasonable” (just follow OAG schedule)

66

## Waiver or Reduction of Costs for *Judicial Records Requests*

The court may reduce or waive the cost for a judicial record request 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

*Rule 12.7*

67

# Questions/Comments?

68