

CHAPTER XIV

REQUESTS FOR RECORDS

A. INTRODUCTION

County clerks will often receive requests to inspect or copy records. The law that applies to requests for records depends on the type of record that is requested. County clerks hold two types of records: Court case records and public records. Because each type is sometimes handled differently, they are discussed separately in this chapter.

Open Government Training. Elected and appointed officials are required to complete Open Government Training not later than 90 days after taking the oath of office or assuming the duties of the office.

*Gov't Code
Sec. 552.012*

More information, including frequently asked questions and training materials, can be obtained from the Open Government section of the Attorney General's website: http://www.oag.state.tx.us/open/og_training.shtml.

B. REQUESTS FOR COURT CASE RECORDS

County clerks frequently receive requests for records related to proceedings in the courts they serve. For example, a clerk may receive a request to see the file in a probate case. Another possible request might be for a copy of an information (the charging instrument) in a criminal misdemeanor case. Or, a clerk may receive a request to inspect the entire file in a particular mental health matter. The requests a clerk may receive for court case records are as wide and varied as the universe of documents that may be filed in any court proceeding handled by a county-level court.

A county clerk holds court case records on behalf of the judges of the courts served by the clerk. Therefore, court case records maintained by county clerks are records of the judiciary.

*A.G. Op.
DM-166 (1992)
H-826 (1976)*

The Public Information Act (PIA) does not apply to records of the judiciary. The Texas Legislature has expressly excluded the judiciary and its records from the PIA. Accordingly, when dealing with a request for court case records, county clerks need not concern themselves with the PIA. The PIA simply is not relevant to a request for court case records.

*Gov't Code
Sec. 552.003(1)(B)*

Similarly, Rule 12 of the Texas Rules of Judicial Administration does not apply to court case records. Rule 12 deals only with public access to “judicial records.” Like court case records, judicial records are records of the judiciary. But the two types of records are entirely separate. A record cannot be both a court case record and a judicial record. A judicial record is a record made or maintained by or for a court in its regular course of business but not pertaining to its adjudicative function. A record that is filed in connection with any matter that is or has been before a court would be a record pertaining to a court’s adjudicative function and

*TRJA
Rule 12.2(d)*

would not be a judicial record. Examples of judicial records might include a judge's calendar, a court's security plan and written materials obtained in connection with an educational seminar.

NOTE: *Judicial records are almost always maintained by judges themselves and not by clerks. If a county clerk receives a request for a judicial record, the clerk should refer the requestor to the relevant judge.*

Correspondingly, a judge may receive a request for court case records. Because court case records are maintained by clerks, the judge should refer the person making such a request to the clerk.

The fact that neither the PIA nor Rule 12 apply to requests for court case records does not mean there are no laws controlling requests for court case records.

Many *statutes* address the right of access to court case records.

Public access to certain court case records is also controlled by *judicial rules* such as the Texas Rules of Civil Procedure.

If there are no applicable statutes or rules regarding the release of a particular type of court case record, then access to such a record is controlled by *common law*.

1. General Rule – Court Case Records are Open to the Public

a. Statutes Controlling Access to Court Case Records

The general rule regarding access to court case records maintained by the county clerk is that the records are open and are to be accessible by the public. This general rule is set out in Section 191.006 of the Local Government Code as follows:

All records belonging to the office of the county clerk to which access is not otherwise restricted by law or by court order shall be open to the public at all reasonable times. A member of the public may make a copy of any of the records.

Records maintained by the county clerk on behalf of the judiciary are considered to be records belonging to the office of the county clerk for purposes of this statute.

Additionally, Section 118.065 provides that a “person is entitled to read, examine, and copy from” documents referred to in Subchapter C of Chapter 118 of the Local Government Code. That subchapter makes reference to all documents in civil court actions and probate court actions filed with the county clerk. The term “documents” is defined to include “any microfilm or other photographic image of the documents.”

Some statutes serve to make particular types of documents public

*Gov't Code
Sec. 552.0035*

*Local Gov't Code
Sec. 191.006*

*A.G. ORD
274 (1981)*

*Local Gov't Code
Sec. 118.065
Sec. 118.051, et
seq.*

*CCP
Art. 15.26*

information. The Texas Legislature has specifically stated that arrest warrants and affidavits in support thereof are "public information." The clerk or the magistrate who issued the arrest warrant is required to make a copy of both the warrant and the supporting affidavit available for public inspection.

Art. 18.01

The statute does not say that search warrants themselves are public information, but search warrants may be accessible under other law.

The Code of Criminal Procedure specifically states that the defendant in a criminal case is entitled to notice of a complaint (defined as "a sworn allegation charging the accused with the commission of a crime") not later than the day before the date of any proceeding in the prosecution of the defendant under the complaint.

Art. 45.018

The fact that a criminal defendant is granted deferred adjudication does not serve to make his or her criminal file confidential. Rather, the Code of Criminal Procedure affirmatively states that "[a] record in the custody of the court clerk regarding a case in which a person is granted deferred adjudication is not confidential."

*Art. 42.12,
Sec. 5(f)*

Papers and records in proceedings to adjudicate parentage (*i.e.*, paternity suits) are available for public inspection.

*Family Code
Sec. 160.633*

b. Court Rules Controlling Access to Court Case Records

Rule 76a of the Texas Rules of Civil Procedure states that court case records filed in connection with any matter (other than documents filed in actions originally arising under the Family Code, documents filed with a court in camera solely for the purpose of obtaining a ruling on their discoverability, and documents to which access is otherwise restricted by law) before any civil court are presumed to be open.

TRCP 76a

*ClearChannel
Communications v.
United States Auto
Ass'n, No. 04-04-
00724-CV, slip op,
2006 Tex App
LEXIS 7 (Tex. App.-
San Antonio, Jan. 4,
2006, no pet. h.)*

This presumption may be overcome, and the court case records may accordingly be sealed, only in certain limited situations in which the judge finds that (1) a specific, serious and substantial interest clearly outweighs the presumption of openness and any probable adverse effect that sealing will have upon the general public health or safety; and (2) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted. The sealing of court records without compliance with Rule 76a is improper.

Attorneys have a special right of access to the records of cases in which they are involved. Rule 76 of the Texas Rules of Civil Procedure states that "[e]ach attorney at law practicing in any court shall be allowed at all reasonable times to inspect the papers and records relating to any suit or other matter in which he may be interested."

TRCP 76

c. Common Law Principles Controlling Access to Court Records

In the absence of a statute or court rule, access to court case records is controlled by common law. The United States Supreme Court has observed that the courts of this country recognize a general right to inspect and copy court case records. The right is not absolute, however. The public's right to inspect and copy court case records is subject to the court's inherent power to control access to its records. But a court's power to limit access to its records ends when the court no longer has jurisdiction over the particular case.

*AG Op.
DM-166 (1992)*

*Nixon v. Warner
Communications,
435 U.S. 589
(1978)*

*Ashpole v. Millard,
778 S.W. 2d 169
(Tex. App. –
Houston [1st Dist.]
1989, no writ*

2. Exceptions to the General Rule that Court Case Records are Open

There are a number of statutes that serve to restrict public access to court case records. As noted in Local Government Code, Section 191.006, a law that restricts public access to a particular record will prevail over the general rule that all records belonging to the county clerk are open. A law restricting public access will also prevail over the general law set out in Section 118.065. Rule 76a specifically states that the court records presumed to be open do not include "documents in court files to which access is otherwise restricted by law." The laws which serve to create "exceptions" to the general rule of openness are delineated below.

*Local Gov't Code
Sec. 191.006*

TRCP 76a

a. Mental Health Proceedings

Records in mental health proceedings (including docket books, indexes and judgment books) that are maintained in the county clerk's office are termed "public record[s] of a private nature." The general rule is that these records may be inspected or copied only pursuant to court order. This means that even a person who is the subject of a mental health proceeding may not access his or her court file absent a court order.

*Health & Safety
Code
Sec. 571.015*

There is, however, an exception to the general rule requiring a court order to access mental health records. Mental health papers may be accessed by an attorney representing the proposed patient.

b. Juvenile Case Records

The records of a child who is a party to a proceeding under Title 3 of the Family Code (*i.e.*, juvenile case records) are open to inspection only by the following:

*Family Code
Sec. 58.007*

- the judge, probation officers, and professional staff or consultants of the juvenile court;
- a juvenile justice agency (*i.e.*, an agency that has custody or control over juvenile offenders);

- an attorney for a party to the proceeding;
- a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or
- with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

Similarly, information collected and maintained by the Texas Juvenile Probation Commission for statistical and research purposes is confidential. (While this does not directly relate to clerks' duties, the clerks should be aware of laws that govern release of similar information by other entities.) It may not be disclosed or disseminated by the Commission, except as detailed below.

Sec. 58.0072

Access may be granted to the following for research and statistical purposes:

Sec. 58.0072(c)

- criminal justice agencies;
- the Texas Education Agency;
- any agency under the authority of the Health & Human Services Commission; or
- a public or private university.

Access may be granted only for a purpose approved by the Commission to persons working on research or statistical project or to a governmental entity subject to an agreement with the Commission. The Commission shall grant access for legislative purposes.

Sec. 58.0072(d)
Sec. 58.0072(e)
Sec. 58.0072(g)

The Commission may not release juvenile justice information in any form that contains a juvenile offender's name or otherwise identifies or may be reasonably interpreted to identify a particular juvenile. The only exceptions are information provided to criminal justice agencies, the Texas Education Agency, Health & Human Services Commission agencies, or governmental entities under agreement with the Commission.

Sec. 58.0072(f)

If a court orders that the records in a particular juvenile case are to be sealed, the records are open to inspection only upon an order of the juvenile court and are to be inspected only by those persons named in the order.

Sec. 58.003(h)

NOTE: Any records collected by the Texas Juvenile Probation Commission are not subject to a sealing order under Family Code Section 58.003.

Sec. 58.003(g-1)

In certain circumstances, the Department of Public Safety will certify to the juvenile probation department that the records relating to a person's juvenile case are subject to "automatic restriction of access." Upon receiving such a certification, the juvenile probation department shall order that records maintained by

Sec. 58.203
Sec. 58.207

the clerk of the juvenile court may only be accessed:

- by a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code; and
- for research purposes, by the Texas Juvenile Probation Commission, the Texas Youth Commission, or the Criminal Justice Policy Council.

Sec. 58.204

Accordingly, clerks are to follow the court's order and allow access only as detailed immediately above. If a juvenile court serves more than one county, the certification is issued to each juvenile probation department that serves the court.

NOTE: The automatic restriction of access described above is in addition to the sealing of juvenile records. A person who is the subject of records to which access has automatically been restricted is entitled to access to the records for the purpose of preparing and presenting a motion to seal or destroy the records.

Sec. 58.210

NOTE: Restricted access may be rescinded under certain circumstances. The Department of Public Safety notifies the juvenile probation department, which in turn is responsible for notifying the entities that maintain juvenile records, of the rescission.

Sec. 58.211

c. Juror Information Sheets in Criminal Cases

Personal information about a person who serves as a juror in a criminal case such as the juror's address, telephone number, social security number, and driver's license number is confidential and may not be disclosed absent an order of the court in which the juror served.

*CCP
Art. 35.29*

d. Written Jury Summons Questionnaires

The information contained in a written jury summons questionnaire is confidential. The information contained in a completed questionnaire may be disclosed only to:

- a judge assigned to hear a cause of action in which the respondent to the questionnaire is a potential juror;
- court personnel; and
- a litigant and a litigant's attorney in a cause of action in which the respondent to the questionnaire is a potential juror.

*Gov't Code
Sec. 62.0132*

e. Criminal History Records of Guardians

In guardianship cases, the county clerk is required to obtain criminal history information from the Department of Public Safety (DPS) or the Federal Bureau of Investigation (FBI) regarding the proposed guardian, unless the guardian is a family member or an attorney. The clerk is also required to obtain criminal history information regarding employees of the private professional guardian or others who will represent the interests of a ward on behalf of the private professional guardian. A person may submit the required information to the clerk not later than 10 days before a guardianship hearing. These criminal history records are for the exclusive use of the court and are privileged and confidential. The criminal history information may be released only pursuant to court order or the consent of the person being investigated.

*Probate Code
Sec. 698*

*Gov't Code
Sec. 411.1386*

NOTE: The clerk may destroy the criminal history information records after they have been used for their intended purposes. A person who releases or discloses these records without the proper authorization commits a Class A misdemeanor offense.

g. Exceptions Applicable only in a County with a Population of 3.4 Million or More (Harris County)

If a county has a population of 3.4 million or more, the pleadings and documents filed in a court for the dissolution of marriage are confidential and may not be released to a person who is not a party to the suit until after the date of service of citation or the 31st day after the date of filing suit, whichever date is sooner.

*Family Code
Sec. 6.411*

If a county has a population of 3.4 million or more, an application for a protective order is confidential and may not be released to a person who is not a respondent to the application until after the date of service of notice of the application or the date of the hearing on the application, whichever date is sooner.

Sec. 82.010

If a county has a population of 3.4 million or more, the pleadings and documents filed in a suit affecting the parent-child relationship are confidential and may not be released to a person who is not a party to the suit until after the date of service of citation or the 31st day after the date of filing the suit, whichever date is sooner.

Sec. 102.0086

h. Suits for Adoption

The records concerning a child maintained by the clerk after entry of an order of adoption are confidential. No person may access the records except for good cause under an order of the court that issued the order of adoption.

Sec. 162.022

i. Sealed Records

Almost all civil court case records in cases that do not arise under the Family Code may be sealed in certain circumstances and pursuant to certain detailed

TRCP 76a

Fox v. Anonymous,

procedures. Court orders themselves cannot be sealed, but certain information such as the identity of a sexual assault victim may be ordered to be redacted from an otherwise open judgment. Court records may be sealed only upon a party's written motion. The motion must be open to public inspection. A motion to seal records must be decided by written order. The written order is open to the public.

*869 S.W. 2d 499
(Tex. App.-San Antonio 1993, writ denied)*

Courts may also seal records in certain cases originating under the Family Code. Specifically, courts may order the sealing of a file in a suit for termination of parental rights and in a suit requesting an adoption.

*Family Code
Sec. 162.021 and
Sec. 161.210*

Courts are required to seal records concerning orders issued under Chapter 144 of the Civil Practice and Remedies Code. (Chapter 144 deals with certain court orders dealing with particular former mental health patients.)

*Civ. Prac. & Rem.
Code
Sec. 144.005*

The law is silent as to the exact meaning of sealing a record. However, the general understanding appears to be that a judge's order that a clerk seal a record requires something more than merely not making the record publicly accessible. The recommended practice is that the clerk actually place a seal around the record or records in question and physically place the records in a special area. The physical seal is not to be broken until the records are ordered to be unsealed.

j. Parental Notification Case Records

As noted in Chapter 12, all court documents pertaining to a minor's application for judicial approval to undergo an abortion are confidential and privileged. Not only are the documents confidential but the clerk may not divulge to anyone (except essential court personnel) that the minor was ever in the clerk's office, was ever pregnant or ever sought to have an abortion. Even the disclosure of the particular trial court in which a proceeding was held is in violation of the rule of confidentiality.

*Family Code
Sec. 33.003(k)*

*SCR 1.3
SCR 1.4*

*In re Jane Doe, 19
S.W. 3d 249 (Texas
2000)*

k. Forms and Information Provided to Clerk so that Interest Earned on Registry Funds can be Reported to the IRS

If any funds deposited into the court registry are placed into an interest-bearing account, any person with a taxable interest in the funds must submit appropriate tax forms and provide correct information to the clerk so that the interest earned on such funds can be reported to the Internal Revenue Service. The information and forms provided to the clerk are not subject to public disclosure except to the extent necessary to comply with federal tax law requirements.

*Local Gov't Code
Sec. 117.003*

l. Certain Investment Information held by a Governmental Body

Most information regarding investments held by a governmental body are open to the public. This information includes:

*Gov't Code
Sec. 552.0225*

- Name of a fund or investment entity;

- Date the fund or entity was established;
- Each date the governmental body invested in the fund or entity;
- Amount of the investment;
- Amount received from a fund or entity in connection with any investment;
- Rate of return;
- Amount of fees paid;
- Names of the managers of the fund or entity in which a governmental body has invested;
- Any recusal filed in connection with an investment;
- minutes of a governmental body's meeting in which investments were discussed; and
- Any annual ethics disclosure report submitted to the governmental body by the investment fund or entity.

Pre- and post-investment due diligence and activity regarding restricted securities are confidential. Generally, information that is not enumerated in Government Code Section 552.0225(b) may be withheld by a governmental entity.

Sec. 552.143

NOTE: *Neither situation discussed above applies to the Texas Mutual Insurance Company.*

*Sec. 552.225(c)
Sec. 552.143(f)*

C. REQUESTS FOR PUBLIC RECORDS

1. General Rule – Public Records are Open to the Public

One of the county clerk's major responsibilities is to maintain public records and make those records available to the public. Manifestly, the public records maintained by the county clerk are to be open to the public. As noted in this chapter's earlier discussion of court case records, Section 191.006 of the Local Government Code declares that "[a]ll records belonging to the office of the county clerk to which access is not otherwise restricted by law or by court order are to be accessible by the public." This statute applies with equal force to public records.

*Local Gov't Code
Sec. 191.006*

Public records held by the county clerk are also generally available under the Public Information Act (PIA). As noted earlier in this chapter, the Public Information Act (PIA) does not apply to records of the judiciary. Accordingly, court case records maintained by county clerks are not subject to the PIA. However, public records maintained by county clerks are not records of the judiciary. Public access to these records is controlled by the PIA.

*Gov't Code
Sec. 552.002
Sec. 552.003
Sec. 552.021*

Because a county clerk's public records are subject to the PIA, exceptions contained within the PIA to its general rule of openness are also applicable to these records. Clerks must be familiar with these exceptions. The disclosure of confidential information to a person who is not authorized to receive that information is a misdemeanor offense constituting official misconduct.

Sec. 552.352

Deeds, mortgages and deeds of trust that are properly recorded in the proper

Prop. Code

county are "subject to inspection by the public."

Sec. 13.002

2. Exceptions to the General Rule that Public Records are Open to the Public

The idea that public records are open to the public is an intuitive truth. Conversely, the idea that certain public records are not open to the public runs counter to what intuition would lead one to expect. The fact is, however, that some public records are not open to the public. Exceptions to the general rule that public records are open to the public are detailed below.

a. Military Discharge Records

The county clerk is to record the official discharge of persons who after 1915 have served as members of the United States armed forces, the United States armed forces reserve, or an armed forces auxiliary. These military records are often contained on a form known as a Department of Defense Form DD-214. If the military discharge record is first recorded by the county clerk (or first comes into the possession of the county clerk or other governmental body) on or after September 1, 2003, then the discharge record is confidential for a period of 75 years after the date it is recorded. During the 75-year time period, the county clerk may permit inspection or copying of the record by members of the general public only pursuant to court order. However, the following individuals may inspect the record and may obtain a free copy or free certified copy of the discharge record upon the presentation of proper identification:

*Local Gov't Code
Sec. 192.002*

*Gov't Code
Sec. 552.140*

- the veteran who is the subject of the record;
- the veteran's legal guardian;
- the veteran's spouse, child or parent;
- the veteran's closest living relative if the veteran has no living spouse, child or parent;
- the personal representative of the veteran's estate;
- the person named by any of the above persons in an appropriate power of attorney;
- another governmental body; or
- an authorized representative of the funeral home that assists with the burial of the veteran.

If the military discharge record first came into the possession of the county clerk or other governmental body prior to September 1, 2003, then the clerk is to make the record available to the general public. However, the veteran who is the subject of the military discharge record or the veteran's legal guardian may direct the county clerk to destroy all copies of the record that the clerk makes generally available to the public. The county clerk must comply with such a directive within 15 business days after the directive is received.

b. Birth Records

A birth record is public information but is not to be made available to the public until the 75th anniversary of the date of birth shown on the record.

Sec. 552.115

However, the Genealogical Society of Utah shall have access to birth records on or after the 50th anniversary of the date of birth shown on the record.

A birth record is to be made available to the chief executive officer of a home-rule municipality in certain situations.

c. Death Records

A death record is public information but is not to be made available to the public until the 25th anniversary of the date of death as shown on the death record.

A death record is to be made available to the chief executive officer of a home-rule municipality in certain situations.

D. REDACTION OF INFORMATION FROM RECORDS

Some laws prohibit the release of certain information as opposed to prohibiting the release of documents altogether. Thus, the clerk is faced with two conflicting mandates – first, make the document available to the public but, second, don't release a particular item of information. The solution to this conflict is for the clerk to redact the particular item of information from the document before making the document generally available. Usually, clerks are not statutorily required to redact information from documents. However, redaction appears to be the only way in which clerks can meet both the requirement of making documents available to the public and the requirement of keeping certain information (such as social security numbers) confidential.

1. Redaction Process

To redact information from a document means to remove confidential references from a document. There is no specific statute detailing the proper method of redacting information from a document. The general and recommended practice, however, is to make a copy of the original document and remove the confidential references from the copy of the document. The original document is to remain unaltered.

The confidential references are usually removed from the copy of the document by blackening the areas of the copy in which the confidential references are situated. Sometimes the confidential references can still be ascertained even after the blackening of the relevant area of the document. If this is the case, a copy of the altered copy should be made so that the references definitely cannot be ascertained. The altered copy is the document that is presented to the requestor of the document in satisfaction of his or her request. The requestor does not view the original document.

2. Social Security Numbers

Federal law provides that social security numbers obtained or maintained by authorized persons are confidential and may not be disclosed. OCA has researched this issue and advises clerks that they do not meet the statutory definition of “authorized persons” under federal law. Thus, the federal law does not appear to require clerks to keep social security numbers confidential.

*42 U.S.C. Sec.
405(c)(2)(viii)(1)*

State law seems consistent with this. The PIA provides that the social security number of a living person is excepted from the requirement to disclose under the PIA. The PIA further states that a social security number is not confidential, however.

*Gov't Code
Sec. 552.147(a)*

The PIA also allows a county clerk to disclose a social security number “in the ordinary course of business” without becoming subject to allegations of misconduct or criminal or civil liability.

Sec. 552.147(c)

County clerks may redact social security numbers of a living person and must redact all but the last four digits of the social security number if an individual or his or her representative requests redaction in writing.

Sec. 552.147(d)

3. Social Security Numbers on Marriage License Applications

The social security number of an individual that is maintained by a county clerk and that is on an application for a marriage license is confidential. If the county clerk receives a request to access information in the marriage license application, the clerk must redact the social security number from the application and release the remainder of the information in the application.

*Gov't Code
Sec. 552.141*

4. Social Security Numbers, Signatures and Other Information on Birth Certificates

The social security numbers and signatures of the mother and father are not part of the legal birth certificate. Generally, the social security numbers and signatures must be redacted from the birth certificate. However, the social security numbers and signatures are to be made available to the agency administering the state’s plan under Part D of Title IV of the federal social security act and may be used and disseminated for the establishment and the enforcement of child support orders. The social security numbers must also be made available to the federal Social Security Administration.

*Health & Safety
Code
Sec. 192.002*

The section of the birth certificate entitled “For Medical and Health Use Only” is not part of the legal birth certificate. Information in that section of the birth certificate is confidential. The information contained in this area should be redacted from the document before a copy of the document is made. The information may not be released or made public on subpoena or otherwise, except that release may be made:

- for statistical purposes only so that no person, patient, or facility is

- identified;
- to medical personnel of a health care entity; or
- to appropriate state or federal agencies for statistical research.

5. Crime Victim Information Contained in Victim Impact Statements

In 2003, the Texas Legislature enacted Section 552.1325 of the Government Code which makes confidential certain information that is filed with a court and that is contained in a victim impact statement (or was submitted for purposes of preparing a victim impact statement). The name, social security number, address, and telephone number of a crime victim is confidential if it relates to a victim impact statement. Additionally, any other information that would identify or tend to identify a crime victim is not to be disclosed. Accordingly, any documents (not just victim impact statements) that contain this type of confidential information must have the confidential information redacted from the documents prior to any release of the documents.

*Gov't Code
Sec. 552.1325*

6. E-Mail Addresses

The law described here applies only to public records and does not apply to court case records. An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body (including the county clerk) is confidential. However, the e-mail address may be disclosed if the member of the public affirmatively assents to release of the e-mail address.

Sec. 552.137

An e-mail address is not confidential if the e-mail address is:

- provided by a person who has a contractual relationship with the governmental body or by the vendor's agent;
- provided by a vendor who seeks to contract with the governmental body or by the vendor's agent;
- contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided in the course of negotiating the terms of a contract or potential contract; or
- provided on a letterhead, coversheet, printed document, or other document made available to the public.

The county clerk may disclose an e-mail address to another governmental body or to a federal agency.

Any record that contains a confidential e-mail address must have the e-mail address redacted from the record before the record may be released to the public.

7. Biometric Identifiers

A biometric identifier is a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry. A county clerk who possesses an individual's biometric

Sec. 560.001

identifier, whether as part of a court case record or public record, may not disclose the identifier to another person unless:

- the individual consents to the disclosure;
- the disclosure is required or permitted by a federal statute or a Texas statute other than the Public Information Act; or
- the disclosure is made to a law enforcement agency for a law enforcement purpose.

Sec. 560.002

8. Protective Orders

Generally, the information contained in protective orders is open to the public. However, in response to a request from the person protected by an order (or from a member of the family or household of the person protected by an order), the court may exclude from a protective order the address and telephone number of the following:

*Fam.Code
Sec. 85.007*

- a person protected by the order (in which case the order shall state the county in which the person resides);
- the place of employment or business of a person protected by the order; or
- the child-care facility or school a child protected by the order attends or in which the child resides.

If the court grants the request for confidentiality, the court will order the clerk to strike the information from the public records of the court and maintain a confidential record of the information for use only by the court.

9. Order (Writ) of Withholding

An order (writ) of withholding is a document issued by the clerk of a court and delivered to an employer, directing that earnings be withheld for payment of spousal maintenance. An order of withholding must state, among other things, the name, address and social security number of both the obligor and the obligee. Upon the request of an obligee, the court may exclude from an order of withholding the obligee's address and social security number if the obligee or a member of the obligee's family or household is a victim of family violence and is the subject of a protective order to which the obligor is also subject. If the court grants the obligee's request, the court shall order the clerk to strike the address and social security number from the order of withholding and maintain a confidential record of the obligee's address and social security number to be used only by the court.

*Sec. 8.001
Sec. 8.152*

10. Real Property Records

Deeds and deeds of trust are subject to inspection by the public. These instruments are not required to contain an individual's social security number, but, if they do, the clerk has no duty to redact the social security number unless the individual has requested redaction under the PIA, Government Code sec. 552.147(d).

*Prop. Code
Sec. 11.008
(a)(b)(e)*

A clerk cannot be held criminally or civilly liable for disclosing an

Sec. 11.008 (g)

instrument or information like a social security number in an instrument if the disclosure was consistent with the PIA or another law.

Clerks must post a notice in their office stating that deeds and deeds of trust are not required to contain a social security number or driver's license number and are public records available for review by the public.

Sec. 11.008(f)

All deeds and deeds of trust transferring an interest in real property must include a notice at the top of the document as follows:

Sec. 11.008(c)

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORDING: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENCE NUMBER

Sec. 11.008(d)

The clerk may not reject an instrument presented for recording solely because it does not contain this notice.

E. RESPONDING TO RECORDS REQUESTS

The Public Information Act (PIA) details relevant procedures in responding to records requests. These procedures are directly relevant only to requests for records to which the PIA is applicable. However, the procedures also comprise a helpful (albeit not binding) guideline for responding to requests for records to which the PIA does not apply.

1. Time in which to Respond to Records Requests

a. Generally

In response to a request for records that are open to the public, the county clerk is required to promptly produce the records. "Promptly" means as soon as possible under the circumstances, that is, within a reasonable time, without delay.

*Gov't Code
Sec. 552.221*

If the requested records are unavailable at the time of the request because the record is in active use or in storage, the clerk shall certify this fact in writing to the requestor and set a date and hour within a reasonable time when the records will be made available for inspection or duplication.

If the clerk cannot produce public information for inspection or duplication within ten business days after the date the records are requested, the clerk shall certify this fact in writing and shall set a date and hour within a reasonable time when the information will be available for inspection or duplication.

b. Financing Statements

The county clerk's office is required to respond within two business days to the following requests for information:

*Bus. & Com. Code
Sec. 9.523*

- Whether there is on file any financing statement that:
 - Designates a particular debtor;
 - Has not lapsed under Section 9.515 of the Business and Commerce Code with respect to all secured parties of record;
 - If the request so states, has lapsed under Section 9.515 and a record of which is maintained by the clerk under Section 9.522(a) of the Business and Commerce Code;
 - The date and time of filing of each financing statement; and
 - The information provided in each financing statement.

2. Permissible Inquiries in Response to Records Requests

In regard to requests for records, the county clerk may not make any inquiry of a requestor except to establish proper identification or to clarify the request. If a large amount of information has been requested, the clerk may discuss with the requestor how the scope of the request might be narrowed. The clerk may not make inquiry as to the purpose for which the information will be used.

*Gov't Code
Sec. 552.222*

The clerk shall treat all requests for information uniformly without regard to the position or occupation of the requestor, the person on whose behalf the request is made, or the status of the individual as a member of the media.

Sec. 552.223

These rules are also good guidelines for records that are considered open under other law or policies.

3. Time for Requestor to Examine Records

A requestor must complete the examination of the requested information not later than the 10th business day after the date the clerk makes the information available to the requestor. However, the requestor can request additional time to examine the records. The clerk shall, within certain limits, grant these requests for additional time. If the requestor does not complete the examination within the 10 business days and does not request an extension of time, the request is considered withdrawn.

Sec. 552.226

4. Providing Copies of Requested Records

A county clerk is not to allow requestors to remove original records from the clerk's office. But clerks are required to provide suitable copies of requested records within a reasonable period of time following the request.

*Sec. 552.226
Sec. 552.228*

If the requested information exists in an electronic or magnetic medium, the requestor may request a copy either on paper or in an electronic medium, such as on diskette or on magnetic tape. The clerk shall provide a copy in the requested medium if:

- the clerk has the technological ability to produce a copy of the requested information in the requested medium;
- the clerk is not required to purchase any software or hardware to accommodate the request; and
- provision of a copy of the information will not violate the terms of any copyright agreement between the clerk (or county) and a third body.

If the clerk is unable to comply with a request to produce a copy of information in a requested medium, the clerk shall provide a paper copy of the requested record or a copy in another medium that is acceptable to the requestor.

F. DENYING REQUESTS FOR RECORDS

If the requested record is in writing and is a record to which the Public Information Act (PIA) applies and the county clerk believes the record should be withheld from public disclosure pursuant to one of the exceptions listed in the PIA, then the clerk must ask for a decision from the Texas Attorney General about whether the information is within one of the exceptions. The clerk must ask for the attorney general's decision and state the exceptions that are thought to apply within a reasonable time but not later than the 10th day after the date of receiving the written records request. If the clerk asks for an attorney general's opinion, the clerk must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the written records request:

Sec. 552.301

- a written statement that the clerk wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exemption to public disclosure; and
- a copy of the clerk's written communication to the attorney general asking for the decision or, if the clerk's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

A clerk who requests an attorney general decision must, within a reasonable time but not later than the 15th business day after the date of receiving the written request, submit to the attorney general:

- written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;
- a copy of the written request for information;
- a signed statement as to the date the request for information was received by the governmental body or evidence sufficient to establish that date; and
- a copy of the specific information requested, or representative samples

of the information if a voluminous amount of information was requested.

A copy of written comments, as discussed above, must be sent to the person who originally requested the information. If the comments disclose or contain the substance of the information requested, then the copy to the requestor must be redacted.

The clerk must label the copy of the specific information, or of the representative samples, to indicate which exceptions apply to which parts of the copy.

While the clerk makes the formal request for an attorney general decision, a clerk would be wise to consult with his or her county attorney or criminal district attorney on formulating the request. In many circumstances, the county attorney or the criminal district attorney will prepare the request on behalf of the clerk.

The clerk must release the requested information and, in most cases, may not request a determination from the attorney general if a determination was previously requested concerning the same information and the attorney general or a court determined the information is public and not excepted from disclosure.

G. FEES IN CONNECTION WITH RECORDS REQUESTS

The charge for providing a paper copy of records made by a county clerk's office shall be the charge provided by Chapter 118 of the Local Government Code or other applicable law.

Sec. 552.265

1. Fees for Copies of Records on Paper

a. Certified Copies Generally

Often, county clerks are asked to provide not only a copy of a particular record but a "certified copy" of the record. A certified copy is a duplicate of an original document that is certified by the county clerk as an exact reproduction of the original document. The county clerk certifies a document by placing the clerk's certificate "on each page or part of a page" of the document.

*Local Gov't Code
Sec. 118.014*

As noted in Chapter II, the fee for applying the clerk's certificate to the document is \$5.00. There is also a fee of \$1.00 for each page or part of a page of the document.

Sec. 118.011

*AG Op.
JC-0292 (2000)*

Thus, the charge for a certified copy of a one-page document would be \$6.00. The charge for a six-page document would be \$11.00. The charge for a ten-page document would be \$15.00. The charge for a 500-page document would be \$505.00.

The clerk is not to charge any additional amount for labor, materials or overhead no matter how many pages are in the document. Labor costs and clerical

preparation costs are included in the charges set out in the statutorily specified \$1.00 per page charges (plus the \$5.00 certification charge).

The fees for a certified copy are to be paid at the time the order for a certified copy is placed.

The fee does not apply to a certified copy of map records or condominium records. Nor does the fee apply to a certified document or license for which another statute prescribes a different fee.

b. Noncertified Copies Generally

The fee for issuing a noncertified copy of a record is \$1.00 per page or part of a page.

*AG Op.
JC-0292 (2000)*

As is the case with certified copies, the clerk is not to charge any additional amount for labor, materials or overhead. The fee must be paid at the time the order for the noncertified copy is placed. A county clerk may waive or reduce the fee if the document involves a family law matter or is the record of a judgment in a misdemeanor case.

*Local Gov't Code
Sec. 118.011
Sec. 118.0145*

c. Certified Copy of a Birth Certificate or Death Certificate or Marriage License

See Chapter VIII – Vital Statistics

2. Fees for Copies of Records on a Format Other Than Paper

A county clerk who provides a copy of a record on a format other than paper must charge a fee in accordance with Sections 552.231 and 552.262 of the Government Code. Section 552.262 states that the rules of the Attorney General shall prescribe the methods for computing the charges for providing copies of public information in electronic and other media. Those rules set out the following copy charges for non-standard media:

*Local Gov't Code
Sec. 118.011(e)
1 TAC §70.10*

- diskette \$ 1.00
- magnetic tape actual cost
- data cartridge actual cost
- tape cartridge actual cost
- CD
 - Rewritable (CD-RW) \$ 1.00
 - Non-rewritable (CD-R) \$ 1.00
- Digital video disk (DVD) \$ 3.00
- JAZ drive actual cost
- other electronic media actual cost
- VHS video cassette \$ 2.50
- audio cassette \$ 1.00

These charges are to cover the cost of materials only. A county clerk may

charge for the personnel costs involved in processing the request for non-paper copies of records at a rate of \$15 per hour per person. However, if the services of programming personnel were required to comply with the request, then those programming personnel charges should be billed at the rate of \$28.50 per hour.

Whenever any personnel charge is applicable to a request for non-paper copies of records, the clerk may also include direct and indirect overhead costs in the charges. These charges may cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities and administrative overhead. The overhead charge should be computer at 20 percent of the charge made to cover any personnel costs associated with a particular request.

If the clerk already has the requested information on microfiche or microfilm and has copies available for sale or distribution, the charge for a copy must not exceed the cost of its reproduction. If no copies are available and the information on the microfiche or microfilm can be released in its entirety, then the clerk should make a copy of the microfiche or microfilm and should not exact a charge that is greater than the cost of reproduction. If the clerk cannot reproduce microfiche or microfilm in-house, then the clerk may charge the actual costs of having the reproduction made commercially.

The clerk may also charge additional fees in connection with providing non-paper copies of requested documents such as remote document retrieval charges, computer resource charges, miscellaneous supplies charges, and postal or shipping expenses. The proper amounts of these charges are detailed in 1 TAC Sec.70.3.

A clerk must request an exemption from the Attorney General in order to recover costs that are more than 25 percent higher than the standard charges set out above. The detailed procedures for requesting an exemption are delineated in the Texas Administrative Code.

1 TAC Sec. 70.4

3. No Fees for Inspection of Records

A person is entitled to read, examine and copy from the documents to which the public has access (after redaction) that are maintained by the county clerk. This access is to be full and free. A person may execute this entitlement without paying any charge under the reasonable rules of the county clerk at all reasonable times during the hours in which the clerk's office is open to the public.

*Local Gov't Code
Sec. 118.024*

The right to copy from documents in the county clerk's office apparently includes the right of a person to use his or her own copy equipment. A clerk may not require a person copying from the records to provide an indemnity bond or provide proof of insurance.

*The Permian
Report v. Lacy, 817
S.W. 2d 175 (Tex.
App.-El Paso 1991,
writ denied)*

If a requested page contains confidential information that must be edited from the record before the information can be made available for inspection, the county clerk may charge for the cost of making a photocopy of the page from which confidential must be edited. No charge other than the cost of the photocopy may be

*Gov't Code
Sec. 552.271*

imposed.

In response to a request to inspect information that exists in an electronic medium and that is not available directly on-line to the requestor, a charge may not be imposed for access to the information, unless complying with the request will require programming or manipulation of data.

Sec. 552.272

NOTE: *The Texas Attorney General has determined that birth and death records that are accessible to the general public are not "open for persons to thumb through." Rather, the clerks should provide copies of birth and death records to requestors.*

*AG Op.
DM-146 (1992)*

4. Fee for Mental Health Background Check

The fee for a mental health background check for a license to carry a concealed weapon is not to exceed \$2.00. The clerk is to perform such a background check at the request of the Department of Public Safety.

*Local Gov't Code
Sec. 118.0217*

5. Notification to Requestor if Charges Will Exceed \$40.00

If a request for copies of records will result in a charge of more than \$40.00 then the clerk must provide the requestor with a written itemized statement detailing the estimated charges that will be imposed. If an alternative less costly way of viewing the records is available, the statement must include a notice that the requestor may contact the clerk regarding the alternative method. The clerk must inform the requestor (at a mail, fax or e-mail address provided by the requestor) that the requestor's request will be considered to be automatically withdrawn if the requestor does not respond in writing to the itemized statement and that the requestor may respond to the statement by delivering his or her written response to the clerk by mail, fax, e-mail or in-person delivery.

*Gov't Code
Sec. 552.2615*

A request is considered to have been withdrawn if the requestor does not respond in writing by informing the clerk within ten business days after the statement is sent to the requestor that:

- the requestor will accept the estimated charges;
- the requestor is modifying the request in response to the itemized statement; or
- the requestor has sent a complaint to the attorney general alleging that the requestor has been overcharged for being provided with a copy of the public information.

If the county clerk later determines, but before he or she makes the copy of the paper record available, that the estimated charges will exceed the charges detailed in the written itemized statement by 20 percent or more, the clerk must send to the requestor an updated itemized statement that details all estimated charges that will be imposed. If the requestor does not timely respond to the updated estimate, the request will be considered to have been withdrawn by the requestor.

If the actual charges that the clerk imposes exceed \$40.00, then the charges may not exceed the amount estimated in the updated itemized statement, or, if an updated itemized statement is not sent, an amount that exceeds by 20 percent or more the amount estimated in the itemized statement.

A county clerk may require a deposit or a bond for payment of anticipated costs for the preparation of a copy of public information if the clerk has provided the requestor with the required written itemized statement detailing the estimated charge for providing the copy and if the charge for providing the copy is estimated to exceed \$100 (if the clerk has more than 15 full-time employees) or \$50.00 if the clerk has 15 or fewer full-time employees).

Sec. 552.263

A request is considered withdrawn if a deposit or bond, as set forth above, is not made before the 10th business day after the date the clerk required it.