

## CHAPTER XI

### RECORDS MANAGEMENT

#### A. INTRODUCTION

This chapter provides a synopsis of the duties and responsibilities of county clerks under the Local Government Records Act (Chapters 201-205, Local Government Code). The Act applies to all local governments and elected county officials, not just county clerks.

The Act requires that all county clerks establish programs for the efficient and cost-effective management of the records of their offices. It also requires that the records of the office of county clerk be retained for minimum periods of time set by the Texas State Library and Archives Commission before they are eligible for disposal. When records become eligible for disposal, the disposal/destruction of records that have ceased to have administrative, fiscal, legal or historical value to the county is essential to the success of records management.

#### B. STATE AGENCY CONTACT

If a clerk has questions regarding the Local Government Records Act or would like to request assistance in establishing a records management program, the clerk should contact the Texas State Library, State and Local Records Management Division, by mail at P.O. Box 12927, Austin, TX 78711-2927, or by telephone at (512) 421-7200. Information is also available on the Texas State Library's web site, [www.tsl.state.tx.us](http://www.tsl.state.tx.us), including a link to contact the library by email.

#### C. RECORDS MANAGEMENT, GENERAL PROVISIONS

##### 1. Definitions

##### a. Custodian

County clerks are the "custodians" of the records of their respective offices.

*Local Gov't. Code  
Sec. 201.003(2)*

##### b. Essential Record

Records that are necessary for the resumption or continuation of operations in an emergency or disaster in order to recreate the office's legal and financial status or to fulfill the office's legal obligations to the public.

*Sec. 201.003(5)*

##### c. Local Government Record

Any information created or received by a county clerk pursuant to

*Sec. 201.003(8)*

law or in the transaction of public business is a local government record, regardless of whether it is a document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or any other type of information recording medium and regardless of whether it is an open or closed record.

For purposes of the Local Government Records Act, the following are **not** local government records:

- extra identical copies of documents created for the convenience of an employee or official (*e.g.*, clerk's copy of a commissioners court agenda);
- notes, journals, diaries, and similar documents created for the convenience of an employee or official (*e.g.*, telephone message pads and desk calendars);
- blank forms;
- stocks of publications;
- library and museum materials acquired solely for the purpose of display or reference (*e.g.*, law books);
- copies of documents in any media furnished to members of the public to which they are entitled under Chapter 552 of the Government Code, commonly known as the Public Information Act; and
- any records, correspondence, notes, memoranda or documents, other than a final written agreement described by Section 2009.054(c) of the Government Code, associated with a matter conducted under an alternative dispute resolution to which a government entity was a party, facilitated as an impartial third party, or facilitated as the administrator of a dispute resolution system or organization.

## **2. Declaration of Records as Public Property**

Local government records are public property and no official has any personal property right in them.

*Sec. 201.005*

## **3. Records to Be Delivered to Successor in Office**

A custodian of local government records shall deliver to his or her successor all records of the office.

*Sec. 201.006*

## **4. Alienation of Records**

A county clerk may transfer custody of a local government record to any public institution of higher education, public museum, public library, or other public entity with the approval of the local government's records management officer after the expiration of the records retention period under the local government's records control schedule.

*Sec. 202.004(a)*

A county clerk may not transfer custody of any of his or her local government records to a private organization or individual without the consent of the director and librarian of the Texas State Library. This prohibition does not apply to records that are temporarily transferred for the purpose of microfilming, conversion to electronic media, restoration, or other records management activities or when records are to be destroyed by sale or donation to a recycler.

*Sec. 202.004(b)  
and (c)*

## **5. Personal Liability**

A county clerk who destroys records in compliance with the Local Government Records Act and rules adopted under it is not personally liable for the destruction of those records.

*Sec. 202.007*

## **6. Penalty for Destruction or Alienation of Records**

A county clerk who knowingly or intentionally destroys or alienates local government records or fails to deliver the records of his or her office to a successor, contrary to the provisions of the Local Government Records Act or rules adopted under it, commits a Class A misdemeanor.

*Sec. 202.008*

# **D. RECORDS MANAGEMENT IN THE OFFICE OF COUNTY CLERK**

## **1. Administration, Duties and Support**

### **a. County Clerk as Records Management Officer**

A county clerk is automatically designated as the records management officer for his or her office.

*Sec. 203.001*

A county clerk may, at his or her discretion, designate the person appointed by the commissioners court to serve as records management officer for the non-elective offices of the county to serve as records management officer for the office of county clerk. It is important to note that in doing so, a county clerk does not relinquish legal custody of records to the county records management officer, but rather chooses to participate in one or more specific components of a countywide records management program and to have the county records management officer assist the clerk in meeting the requirements of the Local Government Records Act.

*Sec. 203.005(g)*

A county clerk may not be designated as records management officer for the non-elective offices of the county without the clerk's consent.

*Sec. 203.025(g)*

### **b. Duties of County Clerk as Records Management Officer**

A county clerk, as the records management officer for his or her office, is responsible for:

*Sec. 203.002*

- developing a records management program;
- administering the records management program efficiently and effectively;
- preparing and filing with the director and librarian of the Texas State Library a records control schedule;
- preparing requests for authorization to destroy records not on an approved control schedule and the originals of microfilmed permanent records;
- preparing requests to store records electronically;
- identifying and ensuring the preservation of records of permanent value;
- identifying and ensuring the preservation of essential records;
- ensuring that records management activities (*e.g.*, destruction, preservation and microfilming) are conducted in accordance with the requirements of the Local Government Records Act and rules adopted under it; and
- cooperating with the Texas State Library in records management surveys.

### **c. Funding for Records Management**

Several sources of funding exist for the management and preservation of records held by the county clerk.

(1) The county clerk is required to assess a filing fee of \$5 upon the filing of a civil case or an ancillary proceeding thereto. Money collected from this filing fee is to be placed in a special fund called the records management and preservation fund. Any expenditure from the fund must be approved by the county commissioners court and can only be used for records management and preservation purposes in the county. The funds are not limited to records management and preservation purposes of the county clerk, but can be used for any records management and preservation purpose in the county.

*Sec. 118.052*  
*Sec. 118.0546*  
*Sec. 118.0645*

(2) The county clerk has the option of setting a fee of not more than \$5 to be assessed upon the filing of any document other than a court document. In other words, a county clerk may choose to assess this fee on the filing of a record in the official public records. The exact amount of the fee (within the statutory limitations) is to be set by the county clerk – not by the commissioners court. The fee may be used only to provide for specific records management and preservation purposes. There are special rules for the use of this money in counties that are adjacent to an international boundary. Although the relevant statute does not specify the person or entity that approves expenditures of this money, the common understanding is that the commissioners court has final spending authority.

*Sec. 118.011*  
*Sec. 118.0216*

(3) A person convicted of a crime in a county-level court is required to pay a \$25 fee. Ninety percent of the fee (\$22.50) is directed to the records management and preservation fund discussed in paragraph (1) above. The remaining ten percent of the fee (\$2.50) is directed to a special county clerk's records management and preservation fund that can only be used to fund records management and preservation by the county clerk. The common understanding is that the commissioners court must approve expenditures from this fund.

*CCP Art.  
102.005(d)*

(4) The commissioners court is authorized (but not required) to adopt a records archive fee as part of the county's annual budget. The amount of the fee is to be set by the commissioners court, but cannot exceed \$5. The fee is to be assessed at the time a person (other than a state agency) presents a public document to the county clerk for recording or filing. Funds are to be directed to a separate records archive account in the general fund of the county and can only be expended for the preservation and restoration of the county clerk's records archive.

*Local Gov't Code  
Sec. 118.001(f),  
Sec. 118.025*

(5) The county clerk can also assess certain fees in connection with the issuance of a vital statistics record. These fees are to be used for the preservation of vital statistics records maintained by the county clerk. Approval by the commissioners court to spend the funds is assumed to be necessary.

*Health & Safety  
Code  
Sec. 191.0045*

## **2. Planning the Records Management Program**

### **a. The Records Management Plan**

Each county clerk must prepare a written records management plan for his or her office that sets out policies and procedures which will enable the clerk to fulfill his or her responsibilities as a records management officer. The plan must be filed with the director and librarian of the Texas State Library within 30 days after its adoption.

*Sec. 203.005*

### **b. Model Plan Available**

The Texas State Library has prepared a model plan that can be used by county clerks to meet the requirement of the Local Government Records Act that a written records management plan be prepared and filed. To request the model, a county clerk should contact the Texas State Library. A model plan is available on the library's web site: [www.tsl.state.tx.us/slr/recordspubs/forms/local.html](http://www.tsl.state.tx.us/slr/recordspubs/forms/local.html).

### **c. Deadlines and Determining Status**

The deadline for filing a written plan was January 1, 1991. A county clerk who has recently assumed office and is uncertain whether his or her predecessor fulfilled this requirement of the Act should contact the Texas State Library.

### **3. Scheduling Records**

#### **a. The Records Control Schedule**

Each county clerk must prepare and file with the director and librarian of the Texas State Library a records control schedule that lists the records of his or her office and how long the clerk proposes to retain the records listed before disposing of them. The schedules were to have been filed on or before January 4, 1999.

*Sec. 203.041*

The schedule must list all records, by records series, created and maintained in the office and all records no longer created or received that the Texas State Library has determined must be retained permanently or for periods that have not yet expired at the time the clerk prepares the schedule.

Schedules may be filed on an office-by-office or department-by-department basis. A county clerk may, for instance, submit one schedule for administrative records, a second for court records, and a third for all other records.

The clerk should prepare amendments to the records control schedule as needed to reflect new records created or received by the clerk's office or revisions to retention periods established in a records retention schedule issued by the State Library and Archives Commission.

In lieu of filing a records control schedule (or an amended records control schedule), the clerk may file a written certification of compliance (or an amended written certification of compliance) that the clerk's office has adopted record control schedules that comply with the minimum requirements established on record retention schedules issued by the Texas State Library and Archives Commission.

#### **b. Retention Periods**

The retention periods chosen by the county clerk for the records of his or her office may not be less than the minimum retention periods established by the Texas State Library for the various records of the office of county clerk.

*Sec. 203.042*

#### **c. Retention Schedule for Records of County Clerks**

The Texas State Library's retention periods for documents maintained by a county clerk can be found in the "Retention Schedule for Records of County Clerks" (also known as "Local Schedule CC"). The most recent edition was effective October 20, 1997. It can be accessed via the Internet at the Texas State Library's web site, located at [www.tsl.state.tx.us/slr/recordspubs/cc.html](http://www.tsl.state.tx.us/slr/recordspubs/cc.html). For those without Internet access, a copy of the document can also be requested directly from the State and Local Records Management Division of the State Library.

#### **4. Not Scheduling Records**

##### **a. Declaring Intention to Keep All Records Permanently**

A county clerk who wishes to keep all records of his or her office permanently or wishes to destroy only those for which the Texas State Library has not set minimum retention periods is not required to prepare and file records control schedules.

*Sec. 203.041(g)*

##### **b. How to Make the Declaration**

The model plan prepared by the Texas State Library has a section in which the decision to prepare a records control schedule or to declare permanent retention can be made.

##### **c. What the Declaration Means**

The *Texas County Records Manual* is quite thorough and minimum retention periods for almost all records of the office of county clerk have been established. Remember also that a declaration of intention to keep all records permanently means even such records as cash receipts would have to be retained indefinitely.

#### **5. Microfilming Records**

##### **a. Records That May Be Filmed**

Any record of a county clerk may be filmed and retained on microfilm either as the sole recording media or in addition to paper or other media.

*Sec. 204.002*

##### **b. Microfilming Standards**

Any filming of records must be in accordance with microfilming standards and procedures established by the Texas State Library and Archives Commission. These standards are contained in the Texas Administrative Code, or are available on request from the Texas State Library.

*Sec. 204.004*

*13 TAC Sections  
7.21-7.35*

All microfilm produced before June 1, 1990 under prior law is validated to the extent the microfilm was produced in the manner and according to the standards prescribed by prior law. The Texas State Library and Archives Commission may establish procedures for the retrospective certification of uncertified or improperly certified microfilm produced before April 1, 1990, that otherwise meets the standards prescribed by law.

*Local Gov't Code  
Sec. 204.003*

*While Section 118.024(a) of the Local Government Code provides a right to copy from a microfilm record, it provides no duty on the part of county clerk to provide a record for purchase in the form of microfilm.*

*A.G. Op.  
DM-30 (1991)*

*A.G. Op.  
DM-41 (1991)*

*A contract for microfilming of records of a county clerk's office is subject to competitive bidding. It does not fall within the "personal*

*Local Gov't Code  
Sec. 262.023*

*or professional service" exception of Local Government Code 262.024.*

*A.G. Op.  
JM-890 (1988)*

**c. Classification of Records**

If a county clerk chooses to maintain records on microfilm as provided by Chapter 204, Local Government Code, and rules adopted under that chapter, the clerk is required to divide the instruments received for filing, registering, or recording into the following seven classes for recording on microfilm.

*Local Gov't Code  
Sec. 193.008*

1. Records relating to real property, known as "Official Public Records of Real Property";
2. Records relating to receivables, chattels, and personal property, known as "Official Public Records of Personal Property and Chattels";
3. Records relating to probate matters, known as "Official Public Records of Probate Courts";
4. Records relating to county civil court matters, known as "Official public Records of County Civil Courts";
5. Records relating to county criminal court matters, known as "Official Public Records of County Criminal Courts";
6. Records relating to matters in the commissioners court, known as Official Public Records of Commissioners Court";
7. Records relating to an individual, a business entity, or a governmental agency other than a property record or a court record, known as "Official Public Records of Governmental, Business, and Personal Matters."

The clerk may consolidate the records described by numbers 1 and 7 above into a single class known as "Official Pubic Records."

**d. Indexing**

An index to a microfilmed record must show the same information that state law requires for the record if it is not microfilmed.

*Sec. 204.006  
Sec. 193.009*

An instrument that is recorded and classified on microfilm as provided above must be alphabetically indexed and cross-indexed in the indexes to that record under the names of the parties identified in the instrument.

*Sec. 193.009*

The index entry for an instrument recorded in the official public records of real property, personal property and chattels, or governmental, business, and personal matters must include:

- the names of the parties of the instrument;
- a brief description of the instrument;
- the date of filing;
- a brief description of the property, if any; and
- the location of the microfilm image of the instrument by roll or group number and by image number, or by another suitable method permissible under the rules adopted under Chapter 204, Local Government Code.

The index entry for an instrument recorded in the official public records of probate courts, county civil courts, county criminal courts, or the commissioners court must give information that would assist in further identifying the cause or action, including:

*Sec. 193.009(b)*

- the names of the parties to the action, except an action in the commissioners court;
- the nature of the cause or action;
- the date the cause or action was opened or taken;
- the court in which the cause of action lies;
- the docket number; and
- the location of the microfilm image of the instrument by roll or group number and by image number, or by another suitable method permissible under rules adopted under Chapter 204, Local Government Code.

The clerk must periodically revise the indexes throughout the year to obtain a complete alphabetical index to each of the classes of official public records for each calendar year. The clerk may not make a marginal entry to a previously completed index.

*Sec. 193.010*

A current register of court docket numbers must be maintained in numerical order for each type of court record included in an official public record. The entries in the register of court documents must include essentially the same information included in an equivalent index entry under Section 193.009 (listed above).

*Sec. 193.011*

After an original instrument that is not related to a court matter or proceeding has been microfilmed, the clerk shall return the original instrument to the person who filed it for record.

*Sec. 193.012*

The index may be maintained by computer, provided a backup copy is made daily and stored in a climate-controlled facility with fire alarms and sprinklers. The storage facility must be separate from the building in which the computer is located.

*Sec. 193.013*

#### **e. Destruction of Records**

If the minimum retention period set by the Texas State Library for the original record is less than permanent, the record may be destroyed after the

*Sec. 204.007*

county clerk is satisfied that the microfilm has been produced in accordance with the standards of the Texas State Library and Archives Commission. Permission from the Texas State Library is not required for destruction. A list of the originals destroyed must be filed with the clerk. The microfilmed record must be retained until the expiration of its retention period for the record.

If the minimum retention period set by the Texas State Library for the original record is permanent and the county clerk is satisfied that the microfilm has been produced in accordance with the standards of the commission, it may be destroyed after authorization is obtained from the director and librarian of the Texas State Library. Forms for this purpose are available from the Texas State Library. As part of the authorization, the director and librarian may require that the records be transferred to the custody of the Texas State Library rather than being destroyed. The microfilm of permanent records must be retained permanently.

*Sec. 204.008*

**f. Effect as an Original Record**

Microfilm records produced in accordance with the standards of the Texas State Library and Archives Commission or in accordance with prior law if filmed before June 1, 1990, are to be accepted by state agencies and courts as certified copies of original records.

*Sec. 204.011*

**6. Storing Records Electronically**

**a. Records that May be Stored Electronically**

Any record of a county clerk may be stored electronically (e.g., on computer hard disk, magnetic tape, optical disk, or similar machine-readable medium) in addition to or in lieu of any other medium.

*Sec. 205.002*

**b. Electronic Storage Standards**

The electronic storage of any record whose minimum retention period is set by the Texas State Library as 10 years or more must be stored in accordance with standards and procedures established by the Texas State Library and Archives Commission. These standards are contained in the Texas Administrative Code or are available on request from the Texas State Library.

*Sec. 205.003*

*13 TAC Sections  
7.71-7.79*

**c. Electronic Storage Authorization Requests**

Before electronically storing any record whose retention period is set by the Texas State Library at 10 years or more, the county clerk must obtain authorization to do so. Forms are available for this purpose from the Texas State Library.

*Local Gov't Code  
Sec. 205.007*

**d. Destruction of Source Documents**

If an electronic storage authorization request is approved, the source document may be destroyed. If the minimum retention period set for a source document is less than 10 years (for which an electronic authorization request is not

*Sec. 205.008*

required), the source document may be destroyed after the information in it is stored electronically.

In either case, the electronic recording medium and the software and hardware necessary to read it must be kept until the retention period for all source documents has expired.

A county clerk may also destroy electronically stored records if the source documents have been retained or if a paper or microfilm copy of the data has been generated from the electronic media.

**e. Indexing**

An index to records stored electronically must show the same information that state law requires for the source document.

*Sec. 205.006*

**f. Denial of Access Prohibited**

Persons under contract with a county clerk to provide electronic services or equipment may not refuse to provide the clerk timely access to the records of the office in a usable format.

*Sec. 205.009*

**7. Destruction of Records**

**a. When Lawful Destruction Can Occur**

A county clerk may lawfully destroy records if:

*Sec. 202.001*

- they appear on the office's records control schedule submitted to and approved by the director and librarian of the Texas State Library and Archives Commission and their retention periods on the schedule have expired or the original records have been microfilmed or stored electronically in accordance with Chapters 204 and 205, Local Government Code, respectively, including administrative rules of the Texas State Library and Archives Commission adopted under those chapters;
- the record appears on a list of obsolete records approved by the director and librarian of the Texas State Library and Archives Commission;
- they do not appear on the office's approved records control schedule or a schedule has not yet been submitted and a Request for Authorization to Destroy Records has been submitted to and approved by the director and librarian of the Texas State Library and Archives Commission;
- they are destroyed pursuant to an expunction order; or
- the Texas State Library and Archives Commission has defined the records as exempt from scheduling or filing requirements.

**NOTE:** *If a county clerk wishes to dispose of a backlog of obsolete*

*records prior to submitting a records control schedule as provided by section 203.044, Local Government Code, the clerk should use Form SLR 501 for this purpose. These request forms are available from the Texas State Library.*

**b. Litigation and Open Records Requests**

A county clerk may not destroy any records the clerk knows to be a subject of litigation or for which there is an open records request until the matter is resolved.

*Sec. 202.002*

**c. Method of Destruction**

Normally a clerk may destroy records by burning, shredding, pulping, burial in a landfill, or sale or donation for recycling. A clerk who sells or donates records for recycling is required to establish procedures to ensure that the records are rendered unrecognizable as local government records by the recycler.

Records designated as exempt from public disclosure by the Open Records Act or any other state law may be destroyed only by burning, shredding, or pulping. Extra, identical copies of these closed records must be destroyed in the same manner.

*Sec. 202.003  
Sec. 202.006*