

MUNICIPAL COURT RECORD REQUESTS WHO IS RESPONSIBLE?



30 MINUTE CLASS OBJECTIVE

To help Municipal Court Clerks Identify if a records requests is for the Court and who is responsible to approve the request and who will process them.

Does the request fall under: PIA, RULE 12,CLR or C.C.P. 45.0218?

1. Public Information Act (PIA)
- ▶ 2. Rule 12- Judicial Record
- ▶ 3. Common Law Right of Inspection and Access (CLR)
- ▶ 4. H.B. 681 and S.B. 47 of the 2017-85th legislation

WHAT STEPS DOES A CLERK FOLLOW TO DESCERN WHAT RULE APPLIES?



1. LOOK AT THE REQUEST...WHO IS IT ADDRESSED TO?
2. WHAT INFORMATION IS WANTED?
3. DOES PIA APPLY?... OR POSSIBLY RULE 12... HOW ABOUT COMMON LAW RIGHT TO INSPECT OR C.C.P. 45.0218?
4. WHAT ABOUT APPROVAL & THE COST OF THE REQUEST?

WHAT'S THE DIFFERENCE?

PUBLIC INFORMATION ACT

RULE 12-JUDICIAL

COMMON LAW RIGHT OF INSPECTION AND ACCESS

****HB 681/SB 47****

(85TH LEGISLATION)

1. **PUBLIC INFORMATION ACT**: any request to the Municipal Governing Body including the Police Department, the City; Prosecutors office and the Law Department. (**P.I.A. does not include the Judiciary; Govt. Code 552.0035**)
2. **JUDICIAL RECORDS**: records made or maintained by the court that do not have adjudicative function. Rule 12.2(d). (**processed by the City Secretary (Rule 12.6)**)
3. **COMMON LAW RIGHT OF INSPECTION**: a common law right of access to inspect court documents, at the Judges discretion. (**Nixon vs. Warner Communication 435 US 589**)

▶ **GOVERNMENT CODE 552.002**

▶ “Public Information” means information that is written, produced, collected, assembled, or maintained under a law, ordinance or in connection with the transaction of official business:

- ▶ 1. By a governmental body; or
- ▶ 2. For a governmental body and the governmental body owns the information or has a right of access to it.

▶ **(does not include the judiciary BUT Police Dept. and City Attorney/ Law Departments are!...)**

▶ ****Note: Information recorded in any form is subject to PIA.**

THIS IS P.I.A.

Information defined as:

- Traditional paper copies of documents
- Photos
- Letters
- Audio /video recordings
- Electronic communications such as emails, internet posts and text messages

JUDICIAL RECORDS- RULE 12

- NOT ADJUDICATIVE
- ADMINISTRATIVE RECORDS THAT ARE NOT CONFIDENTIAL

RECORDS MADE OR MAINTAINED BY THE COURTS IN ITS REGULAR COURSE OF BUSINESS BUT NOT PERTAINING TO AN ADJUDICATIVE FUNCTION. (Rule 12.2(d)) (cell phone records , email for a vacation request, personnel file)

A RECORD OF ANY NATURE CREATED, PRODUCED, OR FILED IN CONNECTION WITH ANY MATTER THAT HAS BEEN BEFORE A COURT IS NOT A JUDICIAL RECORD! (Rule 12.2(d))

EXEMPTIONS FOR JUDICIAL RECORDS

1. Security plans
2. Personal private records... home address family information, judicial calendar, employment applications, character investigations... etc.

RULE 12



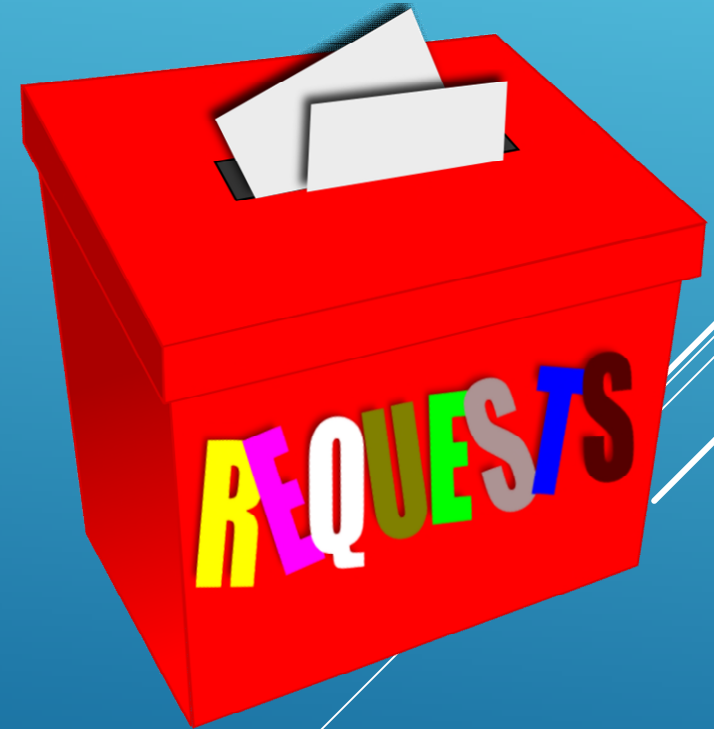
REQUESTING RECORDS UNDER RULE 12

1. A written request is required.
2. The Request must reasonably identify records requested.
3. All requests **MUST** go to the Records Custodian.
4. You cannot ask why the requestor wants the information.

RELEASING THE INFORMATION

1. Request should be answered as soon as possible but no later than 14 days.
2. Pay costs of information based on your written city ordinance or the Attorney General's guidelines

RULE 12.6



NIXON VS. WARNER COMMUNICATION

435 US 589

There is a common law right of access to court documents.

Right of Access is a qualified right.

Every Court has supervisory power over its own records and files.

Courts use their discretion to deny access when justice so requires.

Discretion exercised in light of relevant facts and circumstances in the particular case.

COMMON LAW RIGHT OF INSPECTION AND ACCESS



**RESTRICTING INFORMATION RELATED TO PERSONS
CONVICTED OR GRANTED A DISMISSAL AFTER
DEFERRED DISPOSITION FOR A FINE ONLY
MISDEMEANOR OFFENSE.**

**DUE TO LEGAL OR SOCIETAL CONSEQUENCES THESE
BILLS CHANGED THE C.C.P. 45.0218 TO RESTRICT
COURTS FROM PROVIDING ANY INFORMATION ON
MUNICIPAL CLASS "C" MISDEMEANOR'S AFTER FIVE
YEARS FROM THE DATE OF FINAL DISPOSITION.**

**THESE TWO BILLS MIRROR EACH OTHER WITH THE
EXCEPTION OF HOUSE BILL 681 GOES ONE STEP
FURTHER AND REQUIRES THE RECORDS TO BE SEALED.**

**(SEALING THE RECORDS WILL PROVIDE THAT ALL
INFORMATION IN ELECTRONIC FORMAT CAN BE
SEALED EASILY SO THAT NO CLERK WHO HAS
COMPUTER ACCESS WILL BE GIVING INFORMATION ON
CASES THAT MEET THE FIVE YEAR CRITERIA. AND HAVE
YET BEEN PHYSICALLY DESTROYED)**

H.B. 681 AND S.B. 47

EFFECTIVE SEPTEMBER 1, 2017



Once it's been determined what type of request you have and the Presiding Judge has reviewed, approved and authorized the release, the Clerk of the Court will respond to the request. But always realize in every type of records request:

YOU CANNOT ASK WHY THE "REQUESTOR" WANTS THE INFORMATION....

IF THE REQUEST IS UNCLEAR OR HARD TO DESCERN YOU MAY ASK THE REQUESTOR TO:

CLARIFY THEIR REQUEST IF IT IS UNCLEAR OR NARROW OR TO SPECIFY THEIR REQUEST IF IT RESULTS IN A LARGE AMOUNT OF INFORMATION.

****IMPORTANT****
DON'T BE A
"NOSEY NELLIE"



1. **ALL REQUEST MUST BE IN WRITING.**
2. **PERSON RESPONSIBLE FOR AUTHORIZING AND OR PROCESSING TO REQUESTS:**
 - P.I.A. – CITY SECRETARY**
 - RULE 12- CITY SECRETARY**
 - CLR- AUTHORIZING; THE PRESIDING JUDGE OF THE COURT**
 - PROCESSING- CLERK OF THE COURT**
3. **REQUEST SHOULD BE ANSWERED AS SOON AS, PRACTICABLE , BUT NOT LATER THAN 14 DAYS.**
4. **COSTS- DETERMINED BY ORDINANCE OR A.G. RULES.**
5. **ALWAYS APPLY COMMON LAW RIGHT TO PRIVACY ON ALL RECORDS REQUESTS!. (NO SS#; NO DL; D.O.B.; CONFIDENTIAL INFORMATION)**

GENERAL PROCESSING OF COURT REQUESTS



IF IT'S BEEN DETERMINED TO RELEASE THE INFORMATION, YOU MUST DO SO "PROMPTLY", AS SOON AS PRACTICABLE, BUT NO LATER THAN THE 14TH CALENDAR DAY YOU MUST:

- 1. PROVIDE THE INFORMATION, AND THE COSTS OR**
- 2. INFORM THE REQUESTOR ABOUT THE STATUS OF THEIR REQUEST.**

IF YOU ARE GOING TO WITHHOLD INFORMATION FROM THE REQUESTOR, YOU MUST GET A RULING FROM THE PRESIDING JUDGE OF THE COURT WITHIN THE 14 CALENDAR DAYS.

**RELEASING THE
INFORMATION**



THE CLARIFICATION OR NARROWING REQUEST FOR CLR MUST BE:

1. IN WRITING; AND
2. INCLUDE THE STATEMENT AS IT RELATES TO CONSEQUENCES OF FAILURE BY THE REQUESTOR TO TIMELY RESPOND.
3. TEXAS GOVERNMENT CODE 552.222(d)
4. “Should you choose not to clarify your request within sixty-one days from the date of this correspondence, the City will consider your request withdrawn.”

When you send a request for a requestor to clarify or narrow it:

1. Stops deadline to release information awaiting the OCA'S ruling.
2. Withdraws the request if the requestor does not respond in WRITING within the 61 day response time.

**THE JUDGE MAY
DETERMINE THAT
CLARIFYING OR
NARROWING DOWN
THE REQUEST IS
NEEDED**



**IF THE PRESIDING JUDGE OF THE
MUNICIPAL COURT DENY'S THE REQUEST
TO PROVIDE INFORMATION, OR THE
REQUESTOR DOESN'T LIKE THE RESPONSE
PROVIDED, THEY MUST APPEAL TO THE
OFFICE OF COURT ADMINISTRATION:**

David Slayton

**Director of the Office of Court
Administration**

P.O. Box 12066

Austin, Texas 78711-2066

Phone: 512-463-1625

Fax: 512-463-1648

**THE JUDGE DECLINES
THE REQUEST**



- ▶ TEXAS ADMINISTRATIVE CODE SECTIONS

- ▶ 701-70.11

- ▶ BASIC COST PROVISIONS

- ▶ PAGES (STANDARD-8.5X11: 10 CENTS PER PAGE (70.3(b)(1))

PERSONAL COST: \$15.00 PER HOUR (IF OVER 50 PAGES) (70.3(d))

OVERHEAD COST: 20% OF PERSONNEL COST (IF OVER 50 PAGES) (70.3(e))

POSTAGE/SHIPPING: ANY RELATED POSTAL OR SHIPPING EXPENSES WHICH ARE NECESSARY(70.3(j))

*** note costs may vary if outlined in your city's code of ordinances.

\$ COSTS \$



P.I.A.

OPEN GOVERNMENT HOTLINE - 877-673-6839

ATTORNEY GENERAL P.I. COORDINATOR -
512-475-4213

COST QUESTIONS – 512-475-2497

MUNICIPAL AFFAIRS – 512-475-4683

ATTORNEY GENERAL WEBSITE: www.oag.state.tx.us

RULE 12 REQUESTS

RULE 12 TEXT:

<http://www.courts.state.tx.us/Rules/rjac.htm>

RULE 12 DECISIONS:

www.courts.state.tx.us/oca/policy/openrecstate.asp

**** note on CLR – see previous slide for O.C.A. information!**

ADDITIONAL HELP INFORMATION



▶ IF YOU'D LIKE A COPY OF THIS
PRESENTATION, FEEL FREE TO EMAIL
ME AT:

- ▶ dfaulkenberry@decaturtx.org
- ▶ Or contact me by phone:
 - ▶ 940-393-0208
- ▶ There's always snail mail at:
 - ▶ City of Decatur
 - ▶ P.O. Box 1299
 - ▶ Decatur, Texas 76234

THANKS FOR SHARING
YOUR TIME!

