



2019 County and District Clerks' Association
of Texas Winter Education Conference

January 28-31, 2019

Embassy Suites by Hilton Hotel Conference Center & Spa, San Marcos

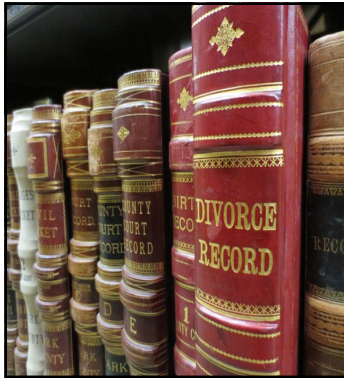
Piece of the Puzzle, Part of the Whole

Clerks 101: New Clerk Orientation

- Clerks Records
- Access to Clerks Records

Ms. Karen Gladney, Attorney At Law &
Legal Counsel for CDCAT

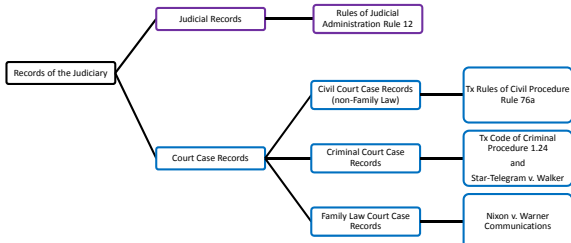
Hon. Sheri Woodfin
Tom Green County, District Clerk



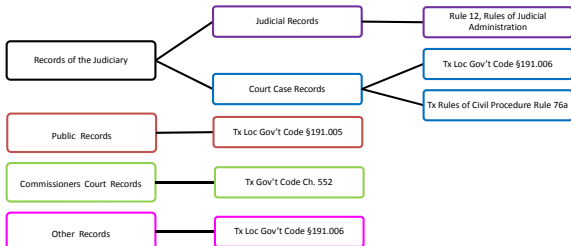
Clerks Records

Karen Gladney, Attorney At Law and
Legal Counsel for CDCAT and
Sheri Woodfin, Tom Green County
District Clerk

District Clerk Records



County Clerk Records



Records of the Judiciary

Not subject to Public Information Act

552.021, Government Code

- General rule public access but only applies to "governmental bodies"

552.003, Government Code

- "Governmental body" defined Term "does not include the judiciary"

552.0035, Government Code

- Access to Information of Judiciary governed by Supreme Court of Texas rules or governed by other rules

Judicial Records

v.

Court Case Records

What is a Judicial Record?

- Administrative

What is a Court Record?

- Everything Else

Judicial Records

- 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.
- 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.
- Judicial records are almost always maintained by judges themselves and not by Clerks. If a County or District Clerk receives a request for a judicial record, the Clerk should refer the requestor to the relevant judge.

Judicial Records

Access

Governed by Rule 12, Texas Rules of Judicial Administration

- 12.1 Policy. The purpose of this rule is to provide public access to information in the judiciary consistent with the mandates of the Texas Constitution that the public interests are best served by open courts and by an independent judiciary. The rule should be liberally construed to achieve its purpose.

Judicial Records

Custodian

Records custodian means the person with custody of a judicial record determined as follows:

- (1) The judicial records of a court with only one judge, such as any trial court, are in the custody of that judge. Judicial records pertaining to the joint administration of a number of those courts, such as the district courts in a particular county or region, are in the custody of the judge who presides over the joint administration, such as the local or regional administrative judge.

Court Case Records

- Rule 12 of the Texas Rules of Judicial Administration does not apply to court case records and deals only with public access to "judicial records."
- 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 would not be a judicial record.
- 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.



Court Case Records

Are -Generally, open to the public.

BUT...

- A number of statutory exceptions exist; and
- Under common law, not open to the public if a *specific, serious and substantial* interest clearly outweighs the presumption of openness.

Court Case Records

Common Law

- Nixon v. Warner Communications, 435 U.S. 589 (1978)
- Clear Channel Communications v. United Services Automobile Assn. 195 S.W. 3d 129 (Tex. App.—San Antonio 2006, no writ)
- Ashpole v. Milland, 778 S.W. 2d 169 (Tex. App.—Houston [1st Dist.] 1989, no writ)

Texas Code of Criminal Procedure, art. 1.24

- The proceedings and trials in all courts shall be public.

Texas Rules of Civil Procedure, rule 76a

- Court records “presumed to be open to the general public”

Court Case Records

Not Publicly Available:

- Mental Health Records, Health & Safety Code 571.015
- Juvenile Case Records, Family Code 58.007
- Adoption Suits after Order of Adoption, Family Code 162.022
- Parental Notification Records, Family Code 33.003(k)
- Sealed Records in Civil Cases, Tex. Rule of Civil Procedure 76a
- Arrest and Search Warrants, Code of Crim. Pro. 15.26 & 18
- Juror Information Sheets, Code of Crim. Pro. 35.29

Criminal Court Case Records

Arrest Warrants (CCP, art. 15.26)

- Public information immediately upon **execution**. Copy of warrant and affidavit available for public inspection in clerk's office during normal business hours.

Search Warrant (CCP, art. 18.01, 18.011)

- Unless sealed, the affidavit is public information if executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

Presentment of Indictment (CCP, art. 20.22)

- The indictment may not be made public and the entry in the record of the court relating to the indictment must be delayed until the *capias* is served and the defendant is placed in custody or under bond.

Criminal Law Court Case Records

Juror Information Sheets in Criminal Cases (CCP, art. 35.29)

- Juror's home address, telephone number, SSN, driver's license number, and other personal information, is confidential and may not be disclosed by the court, prosecuting attorney, defense counsel, or court personnel.

Jury Summons Questionnaire (Gov't Code sec. 62.0132)

- (f) Except as provided by Subsection (g), information contained in a completed questionnaire is confidential and is not subject to Chapter 552.
- (g) The information contained in a completed questionnaire may be disclosed to:
 - (1) a judge assigned to hear a cause of action in which the respondent to the questionnaire is a potential juror;
 - (2) court personnel;
 - (3) a litigant and a litigant's attorney in a cause of action in which the respondent to the questionnaire is a potential juror; and
 - (4) other than information provided that is related to Section 62.102(8) or (9), the voter registrar of a county in connection with any matter of voter registration or the administration of elections.

Criminal Law Court Case Records

Expunctions (CCP, art. 55.02)

- No inspection by anyone except the subject of the order. The clerk of the court issuing the order shall obliterate all public references to the proceeding and maintain the files or other records in an area not open to inspection.

Registry Funds (Local Gov't Code, sec. 117.003)

- Forms and information provided to clerk for tax purposes are not subject to public disclosure except as necessary to comply with federal tax law requirements

Family Law Court Case Records

Juvenile Case Records (Sec. 58.007)

- Access generally limited to
 - Judge, probation officers, juvenile court staff
 - Juvenile justice agency
 - Attorney representing a party in a proceeding under this title
 - Public or private agency providing supervision or having custody under court order
 - Any other person, agency or institution with leave of juvenile court
- If sealed, record inspection only on order of court and by persons named in order

Family Law Court Case Records

If a juvenile record is sealed -Fam Code Chapter 58, Subchapter C-1, "Sealing and Destruction of Juvenile Records"

- On entry of order, court clerk shall seal all court records relating to the proceedings, including any records created in the clerk's case management system, and send copies of the order to all entities listed in the order.
- Not later than the 61st day after receiving an order to seal the records the receiving entity shall seal (or destroy, as applicable) the records and send written verification of the sealing or destruction to the issuing court. 58.259
- Certain entities shall send written verification of the deletion of index references to the issuing court. 58.259

Family Law Court Case Records

Parental Notification Case Records (Fam Code sec. 33.003)

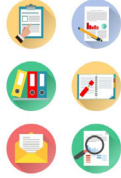
- Not subject to disclosure under PIA or discovery, subpoena or other legal process. Order may only be released to pregnant minor, minor's guardian ad litem, minor's attorney, physician, another person designated by minor, or agency/attorney in a criminal action seeking to assert or protect minor's interest.

Adoption (Fam Code sec. 162.022)

- Records maintained after order of adoption are confidential. Access to record only for good cause under order of the court that issued order of adoption

Public Records

- Chapter 552, Tex. Gov't Code contains Public Information Act
- Does not include Judicial Records; see Rule 12 of Rules of Judicial Administration and Special Committee Appeals Decisions, available at <http://www.txcourts.gov/open-records-policy/>



What is subject to the PIA in a clerk's office?





Inmate request and the PIA

Open Record Act- 552.223 Uniform Treatment of Request for Information

The officer for public information or the officer's agent shall treat all request for information uniformly without regard to the position or occupation of the requestor, the person or whose behalf the request is made, or the status of the individual as a member of the media. Although section 552.223 requires an officer for public information to treat all request for informational uniformly, section 552.028 provides as follows:

- (a) A governmental body is not required to accept or comply with a request for information from:
- (1) An individual who is imprisoned or confined in a correctional facility; or
 - (2) An agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

Inmate request and the PIA

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a) (1), or that individual's agent, information held by the governmental body pertaining to that individual.

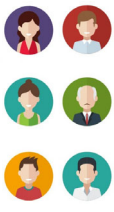
(c) In this section, "correctional facility" means: (1) a secure correctional facility, as defined by Section 1.07, Penal Code; (2) a secure correctional facility and a secure detention facility, as defined by Section 51.02, Family Code; and (3) a place designated by the law of this state, another state, or the federal government for the confinement of a person arrested for, charged with, or convicted of a criminal offense.

Commissioners Court Records

Chapter 552, Texas Gov't Code:
• Commissioners Court Records are Public

Types of Commissioners Court Records:

- Minutes
- Agendas
- Index of Minutes
- Orders
- Resolutions
- Official Court Correspondence
- Audio or Video Recordings of Commissioners Court Meetings



Other Records

- Official Bonds
- Occupational Bonds
- Plats
- Military Discharge Records
- Earmarks, Brands & Tattoos (and Chips)
- Estrays
- Assumed Name Certificates
- Condo Records
- Real Property Records
- Instruments conveying real property v. Instruments concerning real property
- Types of Real Property Records: Deed records; homestead designation; Power of Attorney; Liens and Abstracts; Leases (residential, commercial, mineral), Contracts for Sale; Trusts; Certified Probate Proceedings; Deeds of Trust;
- Grazing permits
- State water permits
- Stud horse fees
- Tax Receipts
- Tubercular commitments
- Affidavits to swear off drinking

Resources



Your County or District Attorney's Office



Texas Association of Counties
Legal Helpline: (888) ASK-TAC4
Nanette Forbes, Legislative Liaison: (800) 456-5974



Office of Court Administration
Legal: (512) 936-7553



Texas Secretary of State
Elections: (800) 252-VOTE Texas Register: (512) 463-5561



Texas Attorney General
Open Records: (877) 673-6839
