

	PIA	Rule 12	CLR
Found at	Gov't Code §§ 552.001 <i>et seq.</i>	Rule 12 of the <i>Rules of Judicial Administration</i>	<i>Nixon v. Warner Communications, Inc.</i> 435 U.S. 589 (1978) and other case law
Applies to	<i>Public information</i> (§ 552.002) held by a <i>governmental body</i> (§ 552.003)	<i>Judicial records</i> (R 12.2(d)) held by the judiciary, but not to information in R 12.3	Case records
Request	Must be in writing (§ 552.301(a)) No magic language necessary Need not be addressed to a specific person (unless a faxed or emailed request - §552.301(c))	Must be in writing (R 12.6(a)) Must clearly identify the information being requested Must be addressed to the custodian of records = judge (R 12.2(e))	Can be oral, but a good practice to reduce the request to writing
Exemptions	Found in §§552.101 – 552.148	Found in R 12.5 -or- Release would substantially and unreasonably impede the routine operation of the court (R 12.8(a))	-a qualified right- Courts have denied access where “files might have become a vehicle for improper purposes”
Decision	GB makes initial decision to release or withhold; If withholding, AG decides whether info may or must be withheld or must be released	Judge make decision	“Left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case”
Time Deadlines	If releasing, GB must do so “promptly” (§ 552.221(a)) If withholding, GB has 10 business days to request AG decision (5 more to send AG arguments/info) (§ 552.301(b), (e)) AG has 45 business days from receiving GB’s request to issue a decision (§552.306)	If producing info, must do so “as soon as practicable” (R 12.6(b)) If denying request, must do so within a “reasonable time” (R 12.8(b)) --Either way, not to exceed 14 days	No provision
Costs	Prescribed by municipal ordinance* or by AG [1 T.A.C. § 70.3] (§ 552.262) *not to exceed 25% more than costs AG prescribed	Prescribed by statute or by AG [1 T.A.C. § 70.3] (R 12.7(a))	Prescribed by municipal ordinance or by AG [1 T.A.C. § 70.3]
Appeals	GB may challenge ruling & file suit against AG in district court (R’or can intervene) (§ 552.321) R’or &/or AG may file suit in district court for writ of mandamus to compel GB to release info (§ 552.3215)	File petition for review with OCA’s Admin Director (R 12.9) Special Committee reviews petition and considers: <ul style="list-style-type: none"> • text & policy of the rule • submitted facts, arguments, and authorities; and • prior applications of the rule by other special committees or courts Special Committee has 60 days to issue determination Does not preclude relief by mandamus	Filed like any other appeal Reviewed for abuse of discretion

FOR MORE INFORMATION ON THE **PUBLIC INFORMATION ACT**:

Contact the Texas Attorney General

Website: www.oag.state.tx.us/open/index.shtml

Contains links to

- Open Records Decisions and Open Records Letter Rulings
- OAG Publications including:
 - Public Information Act Made Easy Article (contains FAQs pertaining to the PIA)
 - 2008 Public Information Handbook (contains full text of the PIA and detailed discussions of procedural requirements, exceptions, and cost rules)

Phone: Open Government Hotline – 877.OPENTEX

Hadassah Schloss (Cost Rules Administrator) – 512.475.2497

Open Records Decisions of Interest:

- Open Records Decision No. 25 (1974) – the records of a justice of the peace are not subject to the PIA but may be inspected under statutory and common-law rights of access
- Open Records Decision No. 657 (1997) – the judiciary exception applies only to those records that relate to the exercise of judicial powers; thus telephone billing records of the Texas Supreme Court are not records of the judiciary for purposes of the PIA, and the PIA does apply [OVERRULED BY THE SUPREME COURT]

FOR MORE INFORMATION ON **RULE 12**:

- *See* Order and Opinion Denying Request Under Open Records Act, 1997 WL 583726 (Tex. 1997) (overruling ORD 657)

Contact the Office of Court Administration

Website: www.courts.state.tx.us/rules/openrecstate.asp

Contains an overview of Rule 12 and links to:

- Complete text of Rule 12
- Rule 12 decision summaries
 - Pertaining to personnel file exemption: Appeal No. 08-004
 - Pertaining to costs: Appeal No. 00-007
 - Rule 12 vs. CLR: Appeal No. 00-001

FOR MORE INFORMATION ON THE COMMON-LAW RIGHT OF INSPECTION:

TMCEC website: www.tmcec.com

- Recorder (May 2006): *Bulk Requests: The "Ticket Stop" Example*
- Recorder (Apr/May 2005): *Dispelling Confusion: Requests for Records Pertaining to Juveniles*
- Recorder (May 2004): *Handling Requests for Court Records*

Cases of interest:

Federal Cases (from Texas)

- *Nixon v. Warner Commun., Inc.*, 435 U.S. 589 (1978)
- *In re Pratt*, 511 F.3d 483 (5th Cir. 2007), *cert. denied*, *Cadle Co. v. Dennis*, 128 S. Ct. 2445 (2008)
- *S.E.C. v. Van Waeyenberghe*, 990 F.2d 845 (5th Cir. 1993)
- *Belo Broad. Corp. v. Clark*, 654 F.2d 423 (5th Cir. 1981)
- *Carnaby v. City of Houston*, 2008 WL 4546606 (S.D. Tex. 2008, no pet.)
- *U.S. v. Raybould*, 130 F. Supp. 2d 829 (N.D. Tex. 2000, no pet.)

Texas Cases

- *Dallas Morn. News v. Fifth Ct. of App.*, 842 S.W.2d 655 (Tex. 1992)
- *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992)
- *Taylor v. Tex.*, 938 S.W.2d 754 (Tex. App.—Waco 1997)
- *Express-News Corp. v. MacRae*, 787 S.W.2d 451 (Tex. App.—San Antonio 1990)
- *Ashpole v. Millard*, 778 S.W.2d 169 (Tex. App.—Houston [1st Dist] 1989)
- *Times Herald Printing Co. v. Jones*, 717 S.W.2d 933 (Tex. App.—Dallas 1986), *vacated*, 730 S.W.2d 648 (Tex. 1987)
- *Houston Chron. Publg. Co. v. Hardy*, 678 S.W.2d 495 (Tex. App.—Corpus Christi 1984), *cert. denied*, 105 S. Ct. 1754 (1985)

Attorney General Opinion of Interest:

- Tex. Atty. Gen. Op. GA-0203 – discusses role of the clerk in a request for records to be handled under the CLR

Rule 12

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.

12.2 Definitions. In this rule:

(a) *Judge* means a regularly appointed or elected judge or justice.

(b) *Judicial agency* means an office, board, commission, or other similar entity that is in the Judicial Department and that serves an administrative function for a court. A task force or committee created by a court or judge is a "judicial agency".

(c) *Judicial officer* means a judge, former or retired visiting judge, referee, commissioner, special master, court-appointed arbitrator, or other person exercising adjudicatory powers in the judiciary. A mediator or other provider of non-binding dispute resolution services is not a "judicial officer".

(d) *Judicial record* means a record made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function, regardless of whether that function relates to a specific case. A record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record. A record is a document, paper, letter, map, book, tape, photograph, film, recording, or other material, regardless of electronic or physical form, characteristics, or means of transmission.

(e) *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.

(2) The judicial records of a court with more than one judge, such as any appellate court, are in the custody of the chief justice or presiding judge, who must act under this rule in accordance with the vote of a majority of the judges of the court. But the judicial records relating specifically to the service of one such judge or that judge's own staff are in the custody of that judge.

(3) The judicial records of a judicial officer not covered by subparagraphs (1) and (2) are in the custody of that officer.

(4) The judicial records of a judicial agency are in the custody of its presiding officer, who must act under this rule in accordance with agency policy or the vote of a majority of the members of the agency.

12.3 Applicability. This rule does not apply to:

(a) records or information to which access is controlled by:

(1) a state or federal rule, including:

(A) a rule of civil or criminal procedure, including Rule 76a, Texas Rules of Civil Procedure;

(B) a rule of appellate procedure;

(C) a rule of evidence;

(D) a rule of administration;

(2) a state or federal court order not issued merely to thwart the purpose of this rule;

(3) the Code of Judicial Conduct;

(4) Chapter 552, Government Code, or another statute or provision of law;

(b) records or information to which Chapter 552, Government Code, is made inapplicable by statute, rule, or other provision of law, other than Section 552.003(1)(B);

(c) records or information relating to an arrest or search warrant or a supporting affidavit, access to which is controlled by:

(1) a state or federal court rule, including a rule of criminal procedure, appellate procedure, or evidence; or

(2) common law, court order, judicial decision, or another provision of law;

(d) elected officials other than judges.

12.4 Access to Judicial Records.

(a) Generally. Judicial records other than those covered by Rules 12.3 and 12.5 are open to the general public for inspection and copying during regular business hours. But this rule does not require a court, judicial agency, or records custodian to:

(1) create a record, other than to print information stored in a computer;

(2) retain a judicial record for a specific period of time;

(3) allow the inspection of or provide a copy of information in a book or publication commercially available to the public; or

(4) respond to or comply with a request for a judicial record from or on behalf of an individual who is imprisoned or confined in a correctional facility as defined in Section 1.07(a), Penal Code, or in any other such facility in any state, federal, or foreign jurisdiction.

(b) Voluntary disclosure. A records custodian may voluntarily make part or all of the information in a judicial record available to the public, subject to Rule 12.2(e)(2) and 12.2(e)(4), unless the disclosure is expressly prohibited by law or exempt under this rule, or the information is confidential under law. Information voluntarily disclosed must be made available to any person who requests it.

12.5 Exemptions from Disclosure. The following records are exempt from disclosure under this rule:

(a) Judicial work product and drafts. Any record that relates to a judicial officer's adjudicative decisionmaking process prepared by that judicial officer, by another judicial officer, or by court staff, an intern, or any other person acting on behalf of or at the direction of the judicial officer.

(b) Security plans. Any record, including a security plan or code, the release of which would jeopardize the security of an individual against physical injury or jeopardize information or property against theft, tampering, improper use, illegal disclosure, trespass, unauthorized access, or physical injury.

(c) Personnel information. Any personnel record that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy.

(d) Home address and family information. Any record reflecting any person's home address, home or personal telephone number, social security number, or family members.

(e) Applicants for employment or volunteer services. Any records relating to an applicant for employment or volunteer services.

(f) Internal deliberations on court or judicial administration matters. Any record relating to internal deliberations of a court or judicial agency, or among judicial officers or members of a judicial agency, on matters of court or judicial administration.

(g) Court law library information. Any record in a law library that links a patron's name with the materials requested or borrowed by that patron.

(h) Judicial calendar information. Any record that reflects a judicial officer's appointments or engagements that are in the future or that constitute an invasion of personal privacy.

(i) Information confidential under other law. Any record that is confidential or exempt from disclosure under a state or federal constitutional provision, statute or common law, including information that relates to:

(1) a complaint alleging misconduct against a judicial officer, if the complaint is exempt from disclosure under Chapter 33, Government Code, or other law;

(2) a complaint alleging misconduct against a person who is licensed or regulated by the courts, if the information is confidential under applicable law; or

(3) a trade secret or commercial or financial information made privileged or confidential by statute or judicial decision.

(j) Litigation or settlement negotiations. Any judicial record relating to civil or criminal litigation or settlement negotiations:

(1) in which a court or judicial agency is or may be a party; or

(2) in which a judicial officer or members of a judicial agency is or may be a party as a consequence of the person's office or employment.

(k) Investigations of character or conduct. Any record relating to an investigation of any person's character or conduct, unless:

(1) the record is requested by the person being investigated; and

(2) release of the record, in the judgment of the records custodian, would not impair the investigation.

(l) Examinations. Any record relating to an examination administered to any person, unless requested by the person after the examination is concluded.

12.6 Procedures for Obtaining Access to Judicial Records.

(a) Request. A request to inspect or copy a judicial record must be in writing and must include sufficient information to reasonably identify the record requested. The request must be sent to the records custodian and not to a court clerk or other agent for the records custodian. A requestor need not have detailed knowledge of the records custodian's filing system or procedures in order to obtain the information.

(b) Time for inspection and delivery of copies. As soon as practicable - and not more than 14 days - after actual receipt of a request to inspect or copy a judicial record, if the record is available, the records custodian must either:

(1) allow the requestor to inspect the record and provide a copy if one is requested; or

(2) send written notice to the requestor stating that the record cannot within the prescribed period be produced or a copy provided, as applicable, and setting a reasonable date and time when the document will be produced or a copy provided, as applicable.

(c) Place for inspection. A records custodian must produce a requested judicial record at a convenient, public area.

(d) Part of record subject to disclosure. If part of a requested record is subject to disclosure under this rule and part is not, the records custodian must redact the portion of the record that is not subject to disclosure, permit the remainder of the record to be inspected, and provide a copy if requested.

(e) Copying; mailing. The records custodian may deliver the record to a court clerk for copying. The records custodian may mail the copy to a requestor who has prepaid the postage.

(f) Recipient of request not custodian of record. A judicial officer or a presiding officer of a judicial agency who receives a request for a judicial record not in his or her custody as defined by this rule must promptly attempt to ascertain who the custodian of the record is. If the recipient of the request can ascertain who the custodian of the requested record is, the recipient must promptly refer the request to that person and notify the requestor in writing of the referral. The time for response prescribed in Rule 12.6(b) does not begin to run until the referral is actually received by the records custodian. If the recipient cannot ascertain who the custodian of the requested record is, the recipient must promptly notify the requestor in writing that the recipient is not the custodian of the record and cannot ascertain who the custodian of the record is.

(g) Inquiry to requestor. A person requesting a judicial record may not be asked to disclose the purpose of the request as a condition of obtaining the judicial record. But a records custodian may make inquiry to establish the proper identification of the requestor or to clarify the nature or scope of a request.

(h) Uniform treatment of requests. A records custodian must treat all requests for information uniformly without regard to the position or occupation of the requestor or the person on whose behalf a request is made, including whether the requestor or such person is a member of the media.

12.7 Costs for Copies of Judicial Records; Appeal of Assessment.

(a) Cost. The cost for a copy of a judicial record is either:

(1) the cost prescribed by statute, or

(2) if no statute prescribes the cost, the cost the Office of the Attorney General prescribes by rule in the Texas Administrative Code.

(b) Waiver or reduction of cost assessment by records custodian. A records custodian may reduce or waive the charge for a copy of a judicial record if:

(1) doing so is in the public interest because providing the copy of the record primarily benefits the general public, or

(2) the cost of processing collection of a charge will exceed the amount of the charge.

(c) Appeal of cost assessment. A person who believes that a charge for a copy of a judicial record is excessive may appeal the overcharge in the manner prescribed by Rule 12.9 for the appeal of the denial of access to a judicial record.

(d) Records custodian not personally responsible for cost. A records custodian is not required to incur personal expense in furnishing a copy of a judicial record.

12.8 Denial of Access to a Judicial Record.

(a) When request may be denied. A records custodian may deny a request for a judicial record under this rule only if the records custodian:

(1) reasonably determines that the requested judicial record is exempt from required disclosure under this rule; or

(2) makes specific, nonconclusory findings that compliance with the request would substantially and unreasonably impede the routine operation of the court or judicial agency.

(b) Time to deny. A records custodian who denies access to a judicial record must notify the person requesting the record of the denial within a reasonable time - not to exceed 14 days - after receipt of the request, or before the deadline for responding to the request extended under Rule 12.6(b)(2).

(c) Contents of notice of denial. A notice of denial must be in writing and must:

- (1) state the reason for the denial;
- (2) inform the person of the right of appeal provided by Rule 12.9; and
- (3) include the name and address of the Administrative Director of the Office of Court Administration.

12.9 Relief from Denial of Access to Judicial Records.

(a) Appeal. A person who is denied access to a judicial record may appeal the denial by filing a petition for review with the Administrative Director of the Office of Court Administration.

(b) Contents of petition for review. The petition for review:

- (1) must include a copy of the request to the record custodian and the records custodian's notice of denial;
- (2) may include any supporting facts, arguments, and authorities that the petitioner believes to be relevant; and
- (3) may contain a request for expedited review, the grounds for which must be stated.

(c) Time for filing. The petition must be filed not later than the 30th day after the date that the petitioner receives notice of a denial of access to the judicial record.

(d) Notification of records custodian and presiding judges. Upon receipt of the petition for review, the Administrative Director must promptly notify the records custodian who denied access to the judicial record and the presiding judge of each administrative judicial region of the filing of the petition.

(e) Response. A records custodian who denies access to a judicial record and against whom relief is sought under this section may - within 14 days of receipt of notice from the Administrative Director - submit a written response to the petition for review and include supporting facts and authorities in the response. The records custodian must mail a copy of the response to the petitioner. The records custodian may also submit for in camera inspection any record, or a sample of records, to which access has been denied.

(f) Formation of special committee. Upon receiving notice under Rule 12.9(d), the presiding judges must refer the petition to a special committee of not less than five of the presiding judges for review. The presiding judges must notify the Administrative Director, the petitioner, and the records custodian of the names of the judges selected to serve on the committee.

(g) Procedure for review. The special committee must review the petition and the records custodian's response and determine whether the requested judicial record should be made available under this rule to the petitioner. The special committee may request the records custodian to submit for in camera inspection a record, or a sample of records, to which access has been denied. The records custodian may respond to the request in whole or in part but it not required to do so.

(h) Considerations. When determining whether the requested judicial record should be made available under this rule to petitioner, the special committee must consider:

- (1) the text and policy of this Rule;
- (2) any supporting and controverting facts, arguments, and authorities in the petition and the response; and

(3) prior applications of this Rule by other special committees or by courts.

(i) Expedited review. On request of the petitioner, and for good cause shown, the special committee may schedule an expedited review of the petition.

(j) Decision. The special committee's determination must be supported by a written decision that must:

- (1) issue within 60 days of the date that the Administrative Director received the petition for review;
- (2) either grant the petition in whole or in part or sustain the denial of access to the requested judicial record;
- (3) state the reasons for the decision, including appropriate citations to this rule; and
- (4) identify the record or portions of the record to which access is ordered or denied, but only if the description does not disclose confidential information.

(k) Notice of decision. The special committee must send the decision to the Administrative Director. On receipt of the decision from the special committee, the Administrative Director must:

- (1) immediately notify the petitioner and the records custodian of the decision and include a copy of the decision with the notice; and
- (2) maintain a copy of the special committee's decision in the Administrative Director's office for public inspection.

(l) Publication of decisions. The Administrative Director must publish periodically to the judiciary and the general public the special committees' decisions.

(m) Final decision. A decision of a special committee under this rule is not appealable but is subject to review by mandamus.

(n) Appeal to special committee not exclusive remedy. The right of review provided under this subdivision is not exclusive and does not preclude relief by mandamus.

12.10 Sanctions. A records custodian who fails to comply with this rule, knowing that the failure to comply is in violation of the rule, is subject to sanctions under the Code of Judicial Conduct.

COMMENTS

1. Although the definition of "judicial agency" in Rule 12.2(b) is comprehensive, applicability of the rule is restricted by Rule 12.3. The rule does not apply to judicial agencies whose records are expressly made subject to disclosure by statute, rule, or law. An example is the State Bar ("an administrative agency of the judicial department", Tex. Gov't Code Section 81.011(a)), which is subject to the Public Information Act. Tex. Gov't Code Section 81.033. Thus, no judicial agency must comply with both the Act and this rule; at most, one can apply. Nor does the rule apply to judicial agencies expressly excepted from the Act by statute (other than by the general judiciary exception in Section 552.003(b) of the Act), rule, or law. Examples are the Board of Legal Specialization, Tex. Gov't Code section 81.033, and the Board of Disciplinary Appeals, Tex. R. Disciplinary App. 7.12. Because these boards are expressly excepted from the Act, their records are not subject to disclosure under this rule, even though no law affirmatively makes their records confidential. The Board of Law Examiners is partly subject to the Act and partly exempt, Tex. Gov't Code Section 82.003, and therefore this rule is inapplicable to it. An example of a judicial agency subject to the rule is the Supreme Court Advisory Committee, which is neither subject to nor expressly excepted from the Act, and whose records are not made confidential by any law.

2. As stated in Rule 12.4, this rule does not require the creation or retention of records, but neither does it permit the destruction of records that are required to be maintained by statute or other law, such as Tex. Gov't Code Sections 441.158 - .167, .180 - .203; Tex. Local Gov't Code Ch. 203; and 13 Tex. Admin. Code Section 7.122.

3. Rule 12.8 allows a records custodian to deny a record request that would substantially and unreasonably impede the routine operation of the court or judicial agency. As an illustration, and not by way of limitation, a request for "all judicial records" that is submitted every day or even every few days by the same person or persons acting in concert could substantially and unreasonably impede the operations of a court or judicial agency that lacked the staff to respond to such repeated requests.