

PUBLIC INSPECTION OF CRIMINAL CASE FILES

- You've Got to Keep Them Separate



Katie Tefft
Program Attorney
TMCEC

A magnifying glass is positioned over a document. The document has the text 'Public Access' written on it. The magnifying glass is centered over the text 'Public Information Act (PIA)'.

Public Access

Public Information Act (PIA)

- **Rule 12**

- **Common-Law Right**

To Judge Judy,

Please send me copies of the following information so that I can get ready for my upcoming court date:

- 1. Copies of all citations written by Officer Peabody on March 1, 2009,**
- 2. All of the court's docket sheets from January 1, 2008 to today,**
- 3. A copy of Officer Peabody's personnel file,**
- 4. A copy of your personnel file,**
- 5. A copy of your daily calendar for July 6, 2009, and**
- 6. The entire file on my pending public intoxication charge.**

**Thank you,
Steve Slosed**

PUBLIC INFORMATION ACT

- Codified in Chapter 552 of the Government Code

“...[E]ach person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees... The [PIA] shall be **liberally construed** in favor of granting a request for information.”

- Gov't Code § 552.001(a)-(b)

PUBLIC INFORMATION ACT

- Codified in Chapter 552 of the Government Code

“...**[P]ublic information** means information that is collected, assembled, or maintained under a law or 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.”

- Gov't Code § 552.002(a)

Who is subject to the PIA?

- Gov't Code § 552.003

- State agency

- Municipal governing body

- Department, agency, or political subdivision of a municipality

- ~~JUDICIARY~~

The PIA in a nutshell...

- Request *must* be in writing
- Need *not* be addressed to any particular person (unless a faxed or e-mailed request)
- Governmental body *may* ask requestor to clarify or narrow request, but *may not* inquire as to requestor's purpose for the request

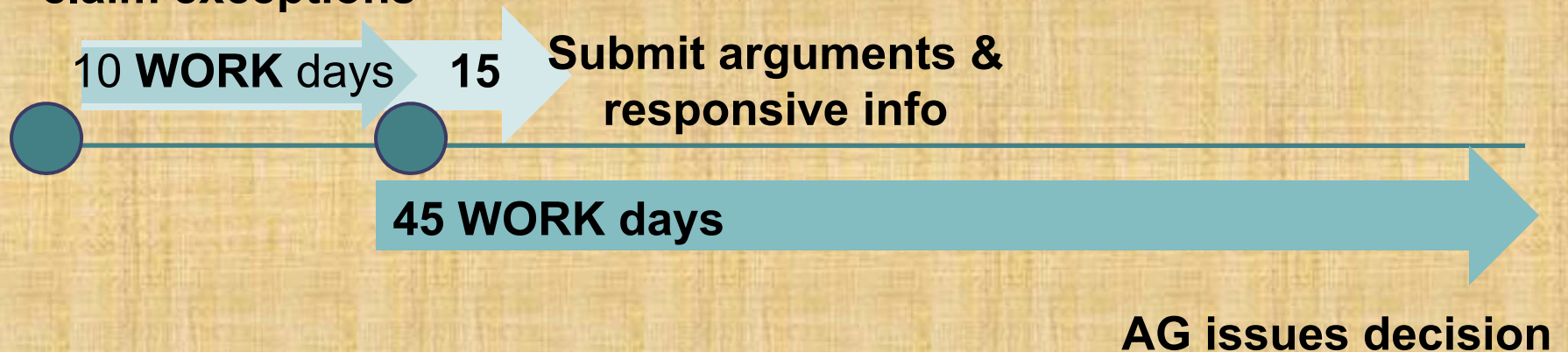
Governmental body must decide whether to:

- (1) release information **promptly** –or–
- (2) withhold information and seek a decision from the Attorney General

Governmental body must decide whether to:

- (1) release information **promptly** –or–
- (2) withhold information and seek a decision from the Attorney General

**Request decision;
claim exceptions**



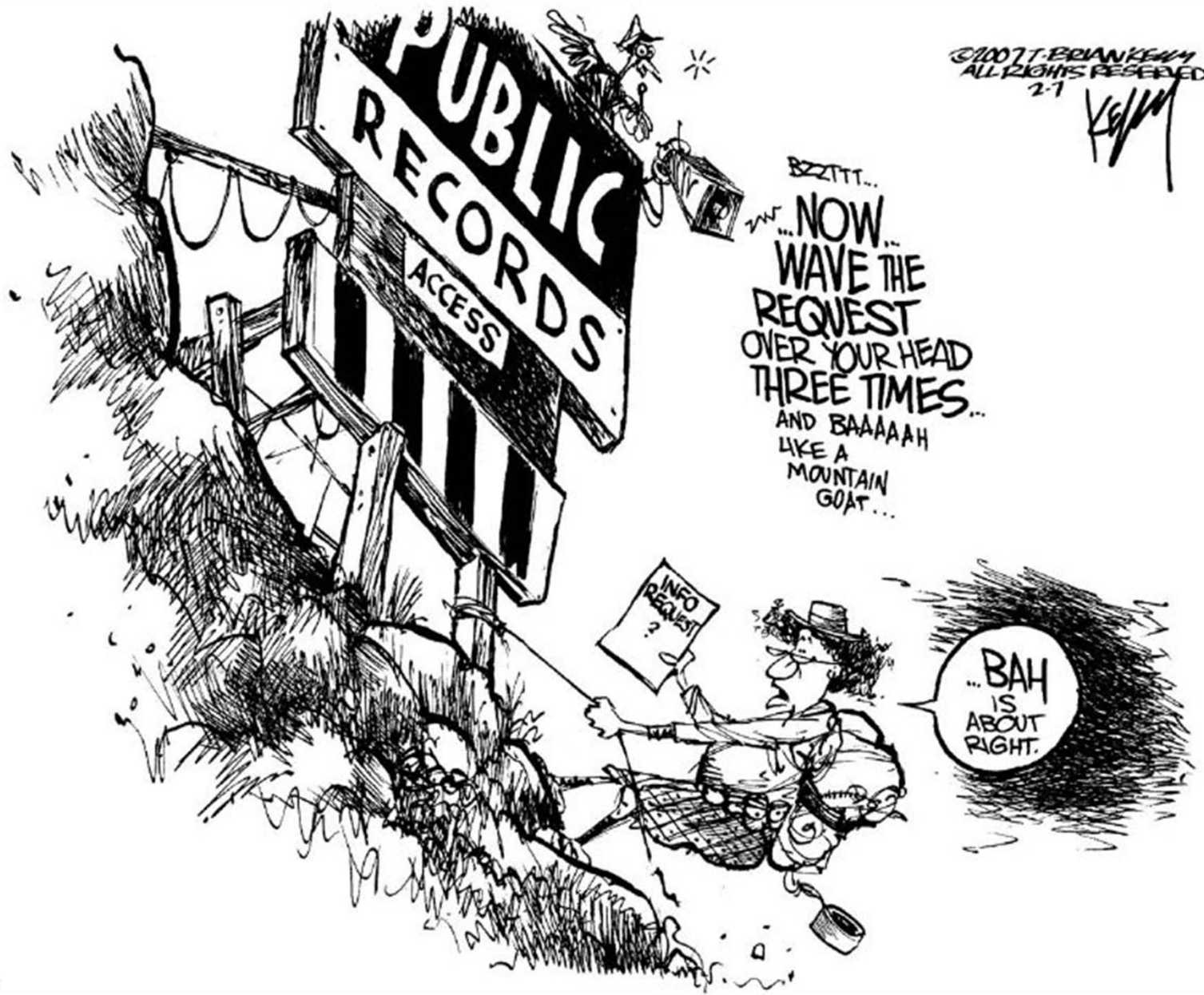
Common PIA exceptions:

- 552.101: **INFORMATION MADE CONFIDENTIAL BY LAW**
- 552.102: certain personnel information
- 552.103: information related to pending or anticipated litigation
- 552.107: attorney-client privileged information
- 552.108: **LAW ENFORCEMENT INFORMATION**
- 552.110: certain trade secret or financial information
- 552.111: work-product information
- 552.117 & 552.1175: employees' home addresses, phone numbers, social security numbers, and family member information
- 552.130: Texas motor vehicle record information (driver's licenses)
- 552.136: certain account numbers
- 552.137: certain e-mail addresses
- 552.147: social security numbers

Not everyone is happy....

- Governmental body may challenge ruling by filing suit against the Attorney General in district court
- Requestor and/or Attorney General may file suit in district court for writ of mandamus compelling governmental body to make information public

**Trial court is not bound by the
Attorney General's decision**



Who is subject to the PIA?

- Gov't Code § 552.003

- State agency
- Municipal governing body
- Department, agency, or political subdivision of a municipality
- ~~JUDICIARY~~

- Gov't Code § 552.0035(a)

“Access to information collected, assembled, or maintained **by or for the judiciary** is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.”

RULE 12: PUBLIC ACCESS TO JUDICIAL RECORDS

- Found in the Rules of Judicial Administration promulgated by the Texas Supreme Court

“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.”

- Rule 12.1

RULE 12: PUBLIC ACCESS TO JUDICIAL RECORDS

- **Found in the Rules of Judicial Administration promulgated by the Texas Supreme Court**

“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...”

- Rule 12.2(d)

Examples of judicial records:

- ~~Traffic citations~~
- ~~Arrest or search warrants~~
- ~~Docket sheets~~
- ~~Trial transcript~~
- ~~Names of individuals on deferred adjudication~~
- Court telephone logs
- Judge's personnel file
- Municipal court's administrative procedures manual
- E-mails - **DEPENDS ON THE CONTENT**

Who is the records custodian?

- Rule 12.2(e)

The person with custody of a judicial record

in municipal court is

**THE
JUDGE**

Rule 12 in a nutshell...

- Request *must* be in writing
- Request must be sent to the records custodian (i.e. the judge)
- *May* ask requestor to clarify scope or nature of request, but *may not* inquire as to requestor's purpose for the request

Records Custodian must, within a **reasonable time** either:

- (1) provide copy or allow inspection of the record, or set a reasonable time for such –or-
- (2) deny the request because of:
 - an exemption –or-
 - a finding that compliance would substantially and unreasonably impede the routine operation of the court.

Common Rule 12 exemptions:

- 12.5(a): judicial work product & drafts
- 12.5(b): security plans or codes
- 12.5(c): **CERTAIN PERSONNEL INFORMATION**
- 12.5(d): ANY person's home address, phone number, social security number, or family member information
- 12.5(f): information related to internal deliberations on administration matters
- 12.5(h): **JUDICIAL CALENDAR INFORMATION**
- 12.5(i): information confidential under other law
- 12.5(k): certain information related to an investigation of a person's character or conduct

If judge denies a request...

Rule 12.9: Relief from Denial

- Requestor sends a petition for review to the Administrative Director
- Appeals decided by a committee of presiding judges who issue written opinions explaining the committee's decision

Committee will consider:

- text and policy of Rule 12
- submitted facts, arguments, and authorities
- prior applications of Rule 12 by other committees or courts

Does not preclude relief by writ of mandamus

Examples of judicial records:

- ~~Traffic citations~~
- ~~Arrest or search warrants~~
- ~~Docket sheets~~
- ~~Trial transcript~~
- ~~Names of individuals on deferred adjudication~~
- Court telephone logs
- Judge's personnel file
- Municipal court's administrative procedures manual
- E-mails - **DEPENDS ON THE CONTENT**

COMMON-LAW RIGHT



Art. 1.24, CCP:

The proceedings and trials in all courts shall be public.

General presumption that requestor is entitled to the requested records

- Identified in *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978)

COMMON-LAW RIGHT

- Identified in *Nixon v. Warner Communications, Inc.*,
435 U.S. 589 (1978)

“It is clear that the courts of this country recognize a general **right** to inspect and copy public records and document, including judicial records and documents. . . It is uncontested, however, that the right to inspect and copy judicial records **is not absolute**. Every court has supervisory power over its own records and files, and access has been denied where court files might have become a **vehicle for improper purposes. . .**”

Who decides?

THE JUDGE

“. . . the decision as to access is one best 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.”

A couple of examples...

Belo Broadcasting Corp. v. Clark (5th Cir.)

- Court did not abuse its discretion in denying request for audiotapes.

Publication...prior to trial would “severely prejudice [the defendant’s] sixth amendment right to a fair trial, as well as potentially deny him rights guaranteed by the fourth and fifth amendments. Moreover... this court would be severely hampered in selecting a fair and impartial jury in the forthcoming trial.”

U.S. v. Raybould (N.D. Tex.)

- Court did abuse its discretion in sealing a motion for downward departure in a criminal sentencing.

“For the presumption in favor of public access...to be overcome, there must be a definitive showing that there is a higher interest to be served by secrecy. The government has failed to allege...any facts that would overcome that presumption.”

On appeal...

Appellate court reviews trial court's
decision for **abuse of discretion**

Please send me copies of the following information so that I can get ready for my upcoming court date:

Copies of all citations written by Officer Peabody on March 1, 2009:

All of the court's docket sheets from January 1, 2008 to today:

A copy of Officer Peabody's personnel file:

A copy of your personnel file:

A copy of your daily calendar for July 6, 2009:

Please send me copies of the following information so that I can get ready for my upcoming court date:

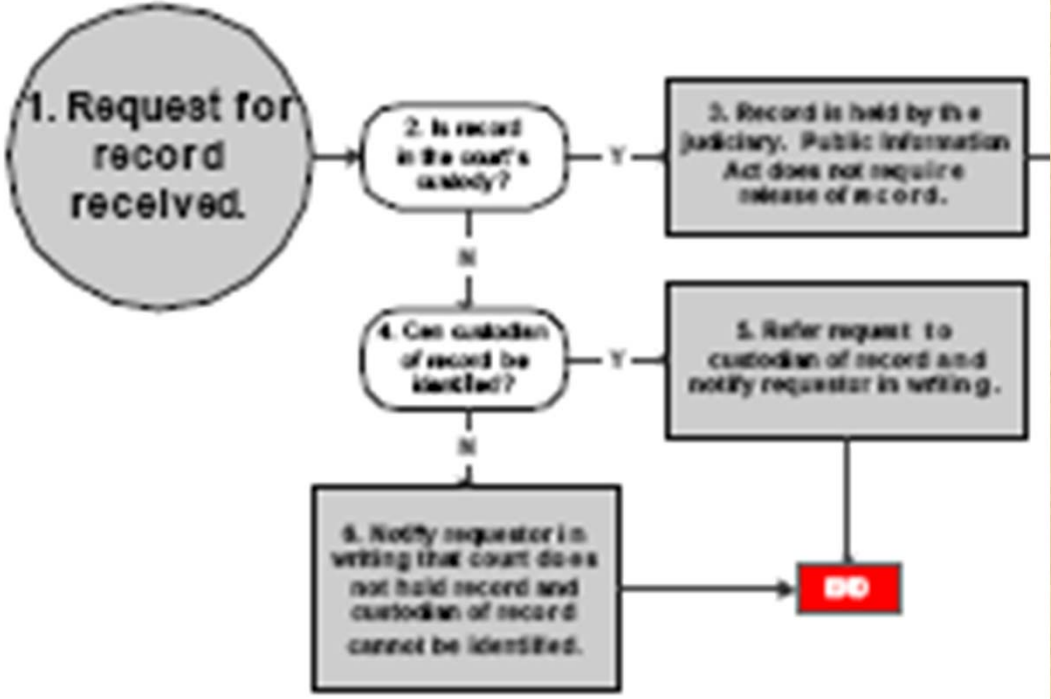
Copies of all citations written by Officer Peabody on March 1, 2009:

All of the court's docket sheets from January 1, 2008 to today:

A copy of Officer Peabody's personnel file:

A copy of your personnel file:

A copy of your daily calendar for July 6, 2009:



Please send me copies of the following information so that I can get ready for my upcoming court date:

Copies of all citations written by Officer Peabody on March 1, 2009:

All of the court's docket sheets from January 1, 2008 to today:

A copy of Officer Peabody's personnel file:

**Not in the
court's
possession**

A copy of your personnel file:

A copy of your daily calendar for July 6, 2009:

Please send me copies of the following information so that I can get ready for my upcoming court date:

Copies of all citations written by Officer Peabody on March 1, 2009:

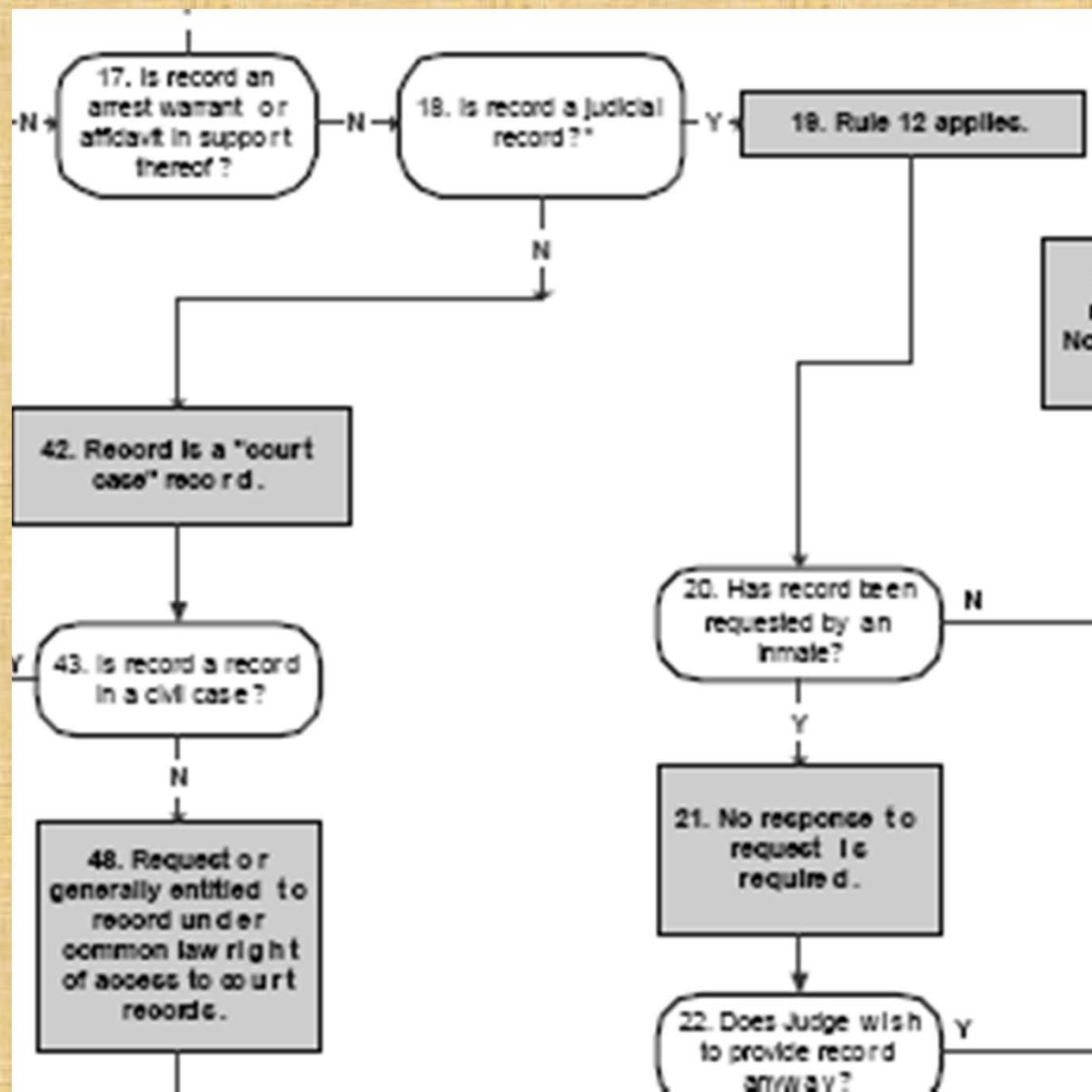
All of the court's docket sheets from January 1, 2008 to today:

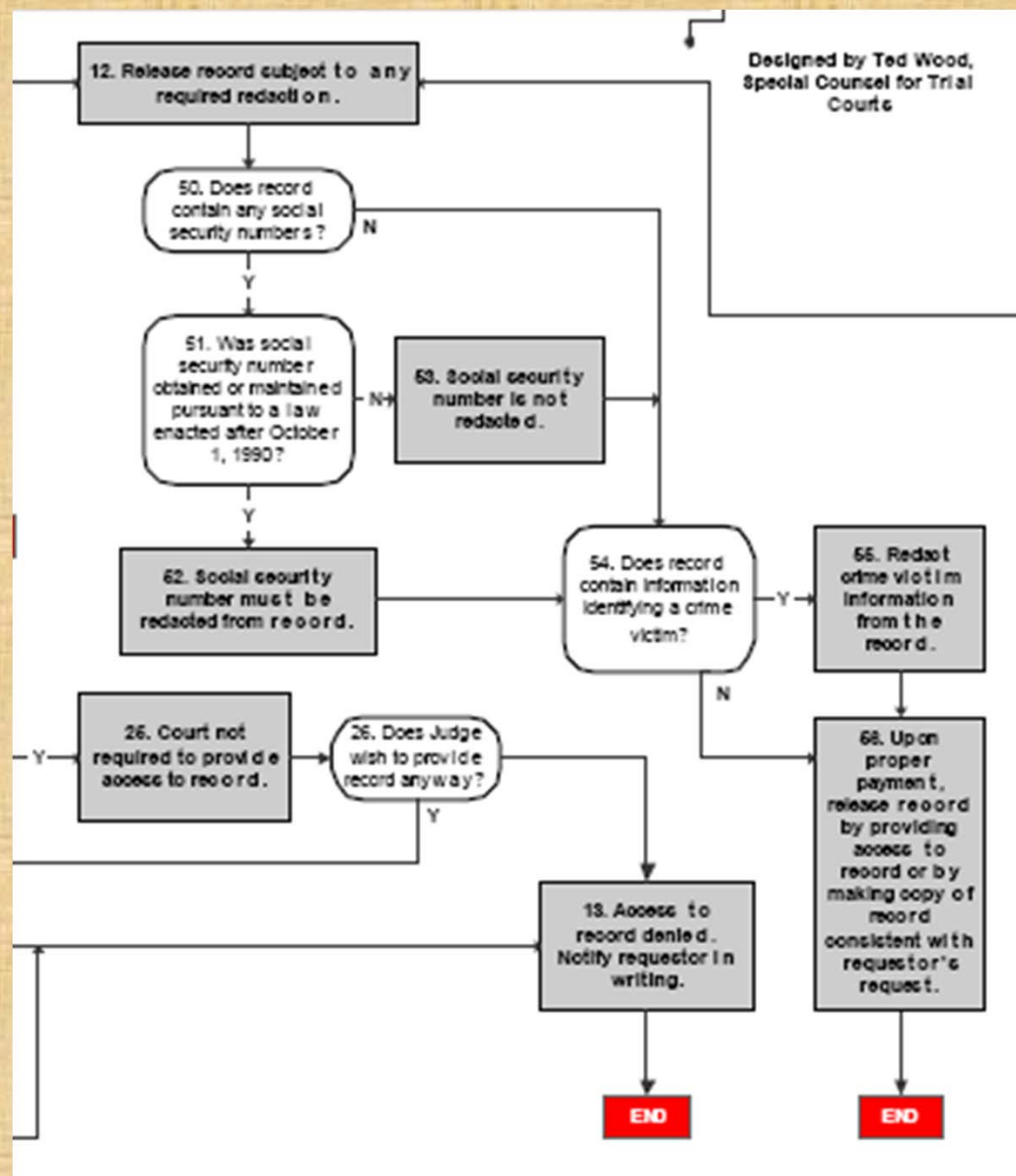
A copy of Officer Peabody's personnel file:

**Not in the
court's
possession**

A copy of your personnel file:

A copy of your daily calendar for July 6, 2009:





Please send me copies of the following information so that I can get ready for my upcoming court date:

Copies of all citations written by Officer Peabody on March 1, 2009: CLR : RELEASE upon redacting SSNs

All of the court's docket sheets from January 1, 2008 to today: CLR: RELEASE

A copy of Officer Peabody's personnel file:

**Not in the
court's
possession**

A copy of your personnel file:

A copy of your daily calendar for July 6, 2009:

Please send me copies of the following information so that I can get ready for my upcoming court date:

Copies of all citations written by Officer Peabody on March 1, 2009: **CLR: RELEASE** upon redacting SSNs

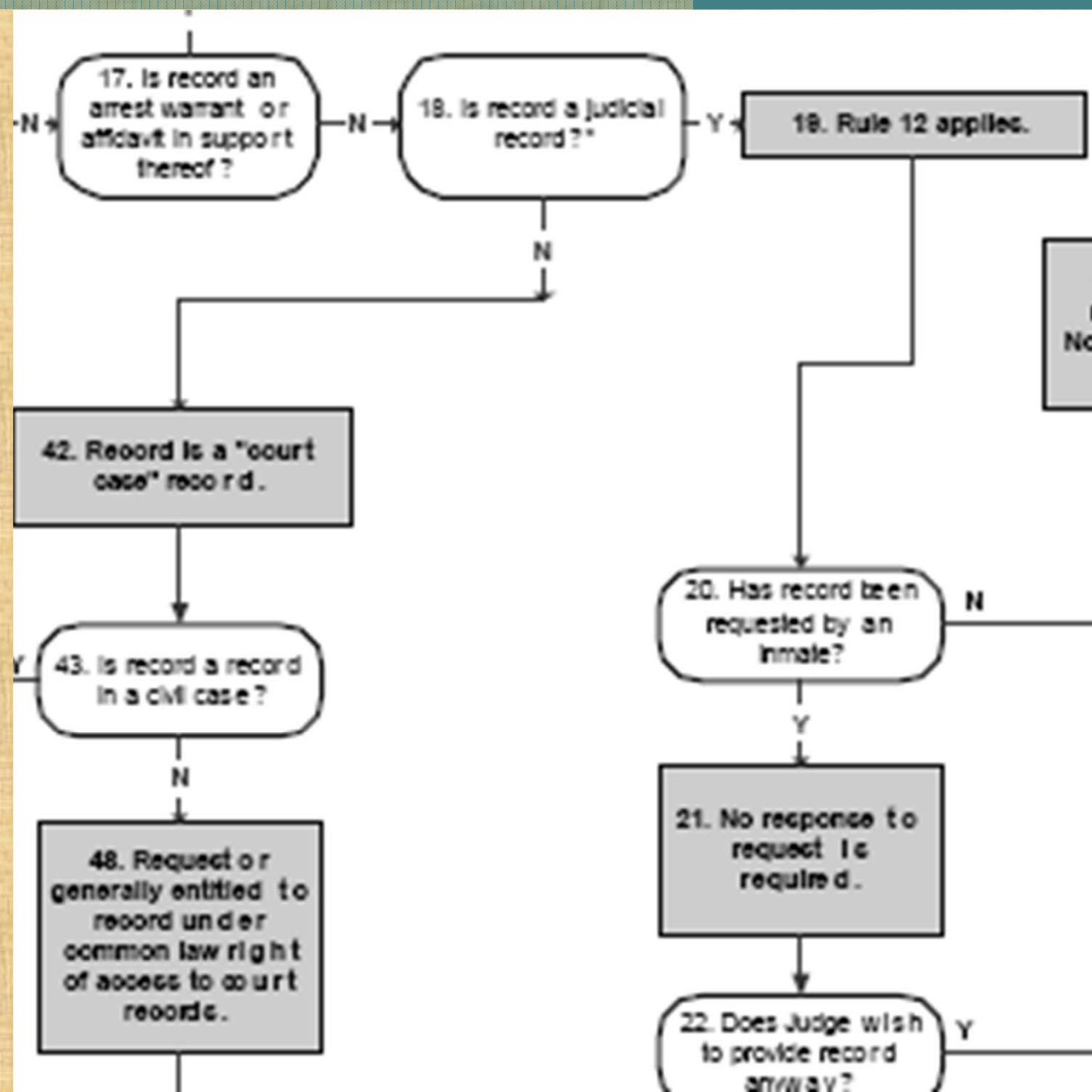
All of the court's docket sheets from January 1, 2008 to today: **CLR: RELEASE**

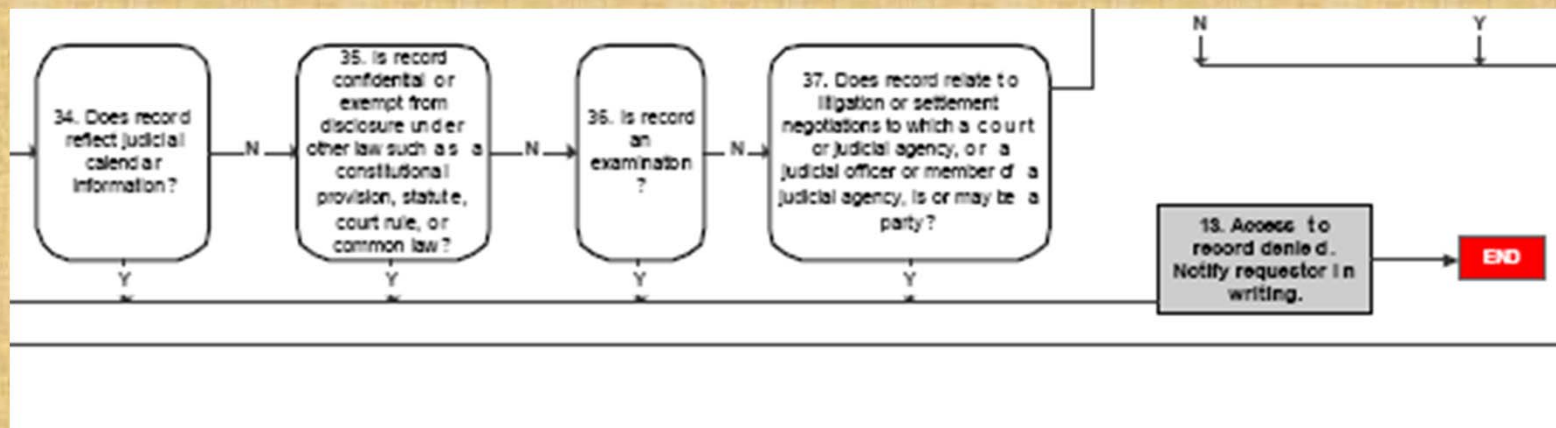
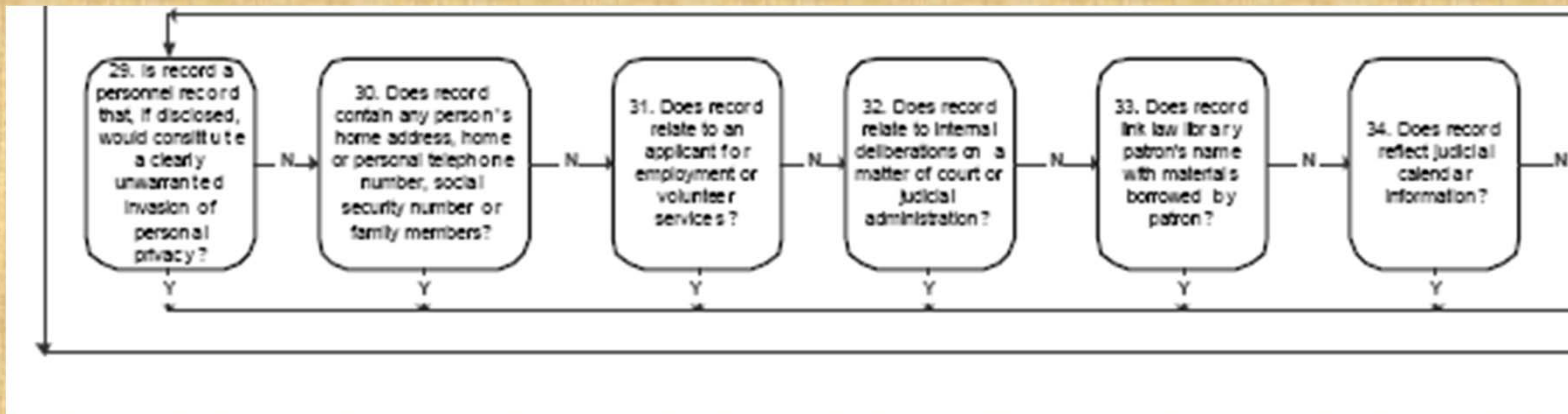
A copy of Officer Peabody's personnel file:

Not in the
court's
possession

A copy of your personnel file:

A copy of your daily calendar for July 6, 2009:





Please send me copies of the following information so that I can get ready for my upcoming court date:

Copies of all citations written by Officer Peabody on March 1, 2009: **CLR: RELEASE** upon redacting SSNs

All of the court's docket sheets from January 1, 2008 to today: **CLR: RELEASE**

A copy of Officer Peabody's personnel file: **Not in the court's possession**

A copy of your personnel file:

Rule 12: personnel record exemption – DENIED

A copy of your daily calendar for July 6, 2009:

Rule 12: judicial calendar exemption – DENIED

What does this have to do with prosecutors?

Openness in judicial proceedings gives assurance that established procedures are being followed and that deviations will become known, enhancing both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system
-Press-Enterprise Co. v. Superior Court of California (1986)

Public criminal proceedings ensure that judge and prosecutor carry out their duties responsibly
-Waller v. Georgia (1984)

What does this have to do with prosecutors?

It is the primary duty of a municipal prosecutor not to convict, but to see that justice is done.

- CCP, Art. 45.201(d)

Texas Disciplinary Rules of Professional Conduct

- Rule 3.04. Fairness in Adjudicatory Proceedings
 - Rule 8.04. Misconduct

What does this have to do with prosecutors?

The entire file on my pending public intoxication charge:

CLR: RELEASE

REMEMBER

**For Law Enforcement Use Only!!!
Not for public release!!!**

Austin Police Department

Page: 1

Intel #: 1998-31503

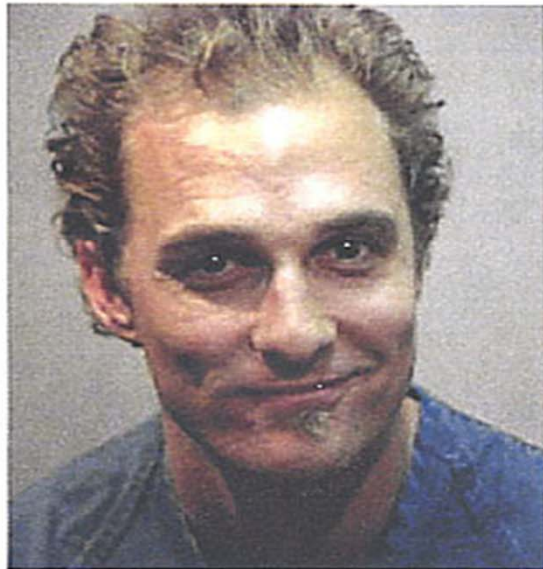
PD Number: 367396

Person: MCCONAUGHEY, MATTHEW DAVID DOB: / / Sex: Race:

Alias:

By: GONZALES TC330 10/25/1999 11:58

By: GONZALES TC330 10/25/1999 11:59





APD NEWS

Public Information Office: (512) 974-5017

715 E. 8th St. Austin, Texas 78701



May 31, 2001

CITATIONS ISSUED TODAY

The Austin Police Department issued citations today to Jenna Bush, 19, Barbara Bush, 19, and Jesse Day-Wickham, 20, for an alcohol related incident that occurred Tuesday night. Citations issued included:

Jenna Bush - Misrepresentation of age by a minor - Class C Misdemeanor Texas Alcoholic Beverage Code, Sec. 106.07 (This section makes it an offense for a person under 21 years of age to present any document that falsely indicates that the person is 21 years of age or older to a person engaged in selling or serving alcoholic beverages.)

Barbara Bush - Possession of alcohol by a minor - Class C Misdemeanor Texas Alcoholic Beverage Code, Sec. 106.05 (This section makes it an offense for a person under 21 years of age to possess an alcoholic beverage.)

Jesse Day-Wickham - Possession of alcohol by a minor - Class C Misdemeanor Texas Alcoholic Beverage Code, Sec. 106.05

Tuesday, May 29th, at approximately 10:19 p.m., the Austin Police Department received a 9-1-1 call reporting minors attempting to purchase alcohol at the Chuy's Restaurant located at 1728 Barton Springs Road.

APD patrol officers arrived and found that Jenna and Barbara Bush, 19, were alleged to have been involved in this incident. Jenna Bush allegedly ordered an alcohol beverage and was asked to produce identification proving she was 21 years of age. Jenna Bush allegedly displayed a valid driver's license that belonged to someone else. Jenna was refused the alcohol beverage.

According to witnesses, Barbara Bush and Jesse Day-Wickham ordered an alcohol beverage and were served.

APD and the Texas Alcoholic Beverage Commission investigated the incident.



www.ci.austin.tx.us/police

We know what to release,

but HOW MUCH CAN WE CHARGE?

PIA: cost prescribed by the **Attorney General**
or by municipal ordinance
See Gov't Code §§ 552.261 -552.275

Rule 12: cost prescribed by statute or if no
statute, cost **prescribed by the**
Attorney General

CLR: cost **prescribed by the Attorney General**
or by municipal ordinance

Cost prescribed by the Attorney General

1 T.A.C. § 70.3

Copies: 10¢ per page

Personnel Costs: \$15 per hour (only if more than 50 pages)

Overhead Costs: 20% of personnel costs

Postage/Shipping: necessary expenses

ANY QUESTIONS?