

**RECORDS REQUEST FLOWCHART FOR MUNICIPAL COURTS
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STEP-BY-STEP COMMENTARY (WITH FORMS)

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STEP 1. Request for record received

Requests for certain records must be written. For example, requests to inspect or copy “judicial records” must be in writing. TEX. R. JUD. ADM. [hereinafter TRJA] 12.6(a). (“Judicial records” is a term of art and is defined in Step 18.) However, not all requests for records need to be written. There is no requirement that a request for “court case records” (defined in Step 18) be in writing. Given that not all requests for records need to be written, a municipal court would be unwise to ignore a request simply because the request is not in writing.

Upon receiving an oral request for a record, the ideal practice would be for the municipal court to assist the requestor in formulating a written request. (This assistance can certainly include advice about limiting the request so as to reduce the possibility that requested records will not be released because compliance with the request would impede the court’s routine operation. *See* Step 40.) A written request is better than an oral request because a written request provides accurate documentation of (1) the time the request was made; (2) the specific record(s) requested; and (3) the requestor’s basic contact information.

Written requests need not be in any particular form. For example, requests for judicial records are simply required to “include sufficient information to reasonably identify the record requested.” TRJA 12.6(a). However, **Form 1-A** is suggested as a form that a municipal court may wish to use in helping someone make a written request for records.

Common sense suggests that a person who wishes to access a record should request the record from the person or entity holding that record. The Texas Supreme Court has incorporated this basic idea into a rule, declaring that a request for a judicial record “must be sent to the records custodian and not to a court clerk or other agent for the records custodian.” TRJA 12.6(a). While the foregoing language definitely allows a municipal court to ignore a misdirected request, the better practice would be to forward the request to the records custodian. An example will serve to illustrate this point.

Assume that a requestor directs a request for a judicial record to a municipal court clerk. In most cases, the custodian of the judicial record will be the municipal judge as opposed to the clerk. In such a situation, TRJA 12.6(a) permits the clerk to ignore the request. But the better course of action would be for the clerk to accept the request and then give the request to the judge.

Another important issue regarding requests for records concerns the inquiries judges and clerks may make regarding the requestor and his or her purposes in requesting a particular record. If the record in question is a judicial record, neither the judge nor any other court personnel may ask the requestor “to disclose the purpose of the request as a condition of obtaining the judicial record.” TRJA 12.6(a). This is a good practice to follow with requests for court case records as well – even though no statute or rule prohibits an inquiry as to the reason court case records are requested.

Generally, there is no need to obtain any information about the requestor beyond the requestor’s name, address and telephone number. However, additional information about the requestor must be gathered if a request is made for an accident report. This is because members of the public with certain knowledge concerning an accident can access a report concerning that accident while members of the public without that information cannot access the accident report. Similarly, certain requestors (such as federal agencies) have a right to access accident reports whereas members of the general public do not have such a right. **Form 1-B** can be used to gather the additional information.

There is no requirement that a requestor declare the particular law pursuant to which he or she is seeking access to a record in order to obtain that record. If there is any law under which a requestor is entitled to access a record, the municipal court must provide such access.

Often, a requestor will request a record pursuant to the wrong law. For example, a requestor may request access to a record pursuant to the Public Information Act. As noted in Step 3, the Public Information Act does not require the release of records held by municipal courts and thus an individual is not entitled to any municipal court record under the Public Information Act. But refusing access to the requested record because the record is not subject to the Public Information Act would be wrong. The appropriate course of action would be to determine whether the record should be released pursuant to some other law.

Upon receiving a request for a record, advance to Step 2.

STEP 2. Is record in the Court’s Custody?

Upon receiving a request for a record, the first task for the municipal court clerk or judge is to

determine whether the municipal court holds the record requested. If the municipal court holds the requested record, the record is a “record of the judiciary.” Advance to Step 3.

Sometimes a municipal court will receive a request for records that the court does not hold. In such an instance, advance to Step 4.

STEP 3. Record is held by the judiciary. Public Information Act does not require release of record.

The Public Information Act (PIA) is codified in Chapter 552 of the Texas Government Code. The PIA provides for public access to public information held by or for a governmental body. Many individuals naturally assume that the PIA controls access to records held by municipal courts. But this is not the case. Records held by the judiciary (*i.e.*, “records of the judiciary”) are not required to be released pursuant to the PIA.

The reason that records of the judiciary are not required to be released under the PIA is that the PIA only requires access to public information that is held by a “governmental body.” For purposes of the PIA, the definition of governmental body does not include the judiciary. TEX. GOV. CODE ANN. § 552.003(1)(B) (Vernon Supp. 2004). The PIA specifically states that “[a]ccess to information collected, assembled, or maintained by or for the judiciary [*i.e.*, “records of the judiciary”] is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” TEX. GOV. CODE ANN. § 552.0035(a) (Vernon Supp. 2004). Please note, however, that if a provision of the PIA makes certain information “confidential,” that provision does apply to information contained in records of the judiciary that may be accessible under other law. *See e.g.*, TEX. GOV'T CODE ANN. § 552.1325 (Vernon Supp. 2004) (certain crime victim information is confidential).

An analysis of whether a requested record should be released to the public pursuant to “rules adopted by the Supreme Court of Texas or by other applicable laws and rules” begins by advancing to Step 7.

STEP 4. Can custodian of record be identified?

If a request for a record has been directed to the municipal court but the court does not hold the record, the best course of action is to attempt to determine the individual or entity who does hold the record (*i.e.*, the custodian of the record). Technically, such an effort is legally required only in the case of a request for a “judicial record,” *see* TRJA 12.6(f), but the practice is a sound and courteous one no matter what type of record has been requested.

If the custodian of the record can be identified, advance to Step 5. If the custodian of the record cannot be identified, advance to Step 6.

STEP 5. Refer request to custodian of record and notify requestor in writing.

Having determined the identity of the custodian of the requested record, the municipal court should forward the request to the custodian and inform the requestor in writing that the request has been forwarded. For example, if the request is for a court case record held by a certain justice of the peace, the municipal court should forward the request to the office of that justice of the peace. Again, such an action is required only in the case of a judicial record, *see* TRJA 12.6(f), but the best policy is to forward a request for any type of record.

Form 5 can be used to provide the requestor with written notice that the municipal court does not hold the requested record and that the records request has been forwarded to an entity that is believed to hold the record.

This is the last step the municipal court will take in regard to the request.

STEP 6. Notify requestor in writing that court does not hold record and custodian of record cannot be identified.

A written message to the requestor stating that the municipal court does not hold the requested record is required only in the case of a request for a judicial record. TRJA 12.6(f). However, the most courteous, helpful and safe action is to notify the requestor in writing that the court does not hold the requested record and that the custodian of the record cannot be identified. **Form 6** is offered as an aid in making this written statement.

This is the last step the court will take in regard to the request.

STEP 7. Is record an accident report?

Public access to accident reports is controlled by the Texas Transportation Code. *See* TEX. TRANSP. CODE ANN. § 550.065 (Vernon Supp. 2004). If the requested record is an accident report, advance to Step 8. If the requested record is not an accident report, advance to Step 14.

STEP 8. Is requestor a federal government agency, an agency of the State of Texas, or a Texas local government?

If the answer to this question is “yes,” then the accident report should be released to the requestor. *Id.* Advance to Step 12. If the answer to this question is “no,” there may still be other categories of requestors who are entitled to the accident report. Advance to Step 9.

STEP 9. Is requestor the law enforcement agency that employs the officer who investigated the accident?

If the answer to this question is “yes,” then the accident report should be released to the requestor. *Id.* Advance to Step 12. If the answer to this question is “no,” there may still be other categories of requestors who are entitled to the accident report. Advance to Step 10.

STEP 10. Is requestor a court in which a case involving a person involved in the accident is pending and has report been subpoenaed?

If the answer to this question is “yes,” then the accident report should be released to the requestor. *Id.* Advance to Step 12. If the answer to this question is “no,” there may still be other categories of requestors who are entitled to the accident report. Advance to Step 11.

STEP 11. Has requestor provided two or more of the following: (1) date of accident; (2) specific address or street where accident occurred; or (3) name of any person involved in accident?

If the answer to this question is “yes,” then the accident report should be released to the requestor. *Id.* Advance to Step 12. If the answer to this question is “no,” then access to the accident report should be denied. Advance to Step 13.

STEP 12. Release record subject to any required redaction.

Determining that a record should be made available to, or copied for, a requestor does not automatically mean that the entire document should be released. Certain laws prohibit the release of sensitive personal information even though the document in which the information is contained may be released. Step 12 is the starting point for analyzing whether any personal information must be redacted (*i.e.*, removed) from the requested record before the record is released.

STEP 13. Access to record denied. Notify requestor in writing.

When a request for a judicial record is denied, the denial is required to be in writing. TRJA 12.8(c). There is no comparable requirement for the denial of other records held by municipal courts. However, the best practice is to communicate all denials to requestors in writing.

A written denial of a request for judicial records must contain certain information – some of which should not be included in written denials of requests for other records held by municipal courts. **Form 13-A** is a suggested form that can be used to deny requests for judicial records. The form provides requestors with basic information on the way to appeal a denial of a request for judicial records.

Form 13-B is a suggested form that can be used to deny requests for all other records held by municipal courts. A requestor has no method of appealing a denial of a request for these records. A requestor's only method of challenging such a denial is to seek a writ of mandamus ordering the municipal court to release the records in question.

Assuming there is no successful appeal of the denial or any writ of mandamus ordering the release of the records at issue, the completion of Form 13-A or 13-B is the last step the municipal court will take in regard to a request for records that is denied.

STEP 14. Is record a juror information sheet?

If the requested record is a juror information sheet, then advance to Step 15. Otherwise, advance to Step 16.

STEP 15. Advise requestor to file formal court motion to obtain juror information sheet.

If the answer to this question is “yes,” then the requestor should be advised to file a formal motion with the court in order to attempt to obtain the juror information sheet. The information contained in a juror information sheet is confidential and may only be disclosed if such disclosure is permitted by the court. TEX. CRIM. PROC. CODE ANN. art. 35.29 (Vernon Supp. 2004). Once the requestor has been informed of the need to file a formal court motion, the municipal court, in its role as records custodian, need not take any additional action in response to the records request . (Of course, if a motion is filed, the court should consider the motion in the same manner it considers all other motions.)

STEP 16. Is record an affidavit in support of a search warrant?

If the answer to this question is “yes,” then the affidavit should be released to the requestor. As noted in TEX. CRIM. PROC. CODE ANN. art. 18.01(b) (Vernon Supp. 2004), an affidavit in support of a search warrant is public information “if executed.” This language probably means that the affidavit becomes public information once the search warrant is executed. Advance to Step 12.

If the answer to this question is “no,” advance to Step 17.

STEP 17. Is record an arrest warrant or affidavit in support thereof?

If the answer to this question is “yes,” then the warrant or affidavit should be released to the public. “The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate’s clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk’s office during normal business hours.” TEX. CRIM. PROC. CODE ANN. art. 15.26 (Vernon Supp. 2004). Advance to Step 12.

If the answer to this question is “no,” advance to Step 18.

STEP 18. Is record a judicial record?

As noted in Steps 2 and 3, records held by municipal courts are “records of the judiciary.” This term, however, is not synonymous with the term “judicial records.”

Records of the judiciary can be divided into the following two types of records:

- 1) judicial records; and
- 2) court case records.

A “judicial record” is:

a record made or maintained by 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.

TRJA 12.2(d). In other words, judicial records are the administrative records of the court and are not the records contained in individual case files. The records in individual case files are “court case records.”

Pursuant to Section 74.024 of the Texas Government Code, the Texas Supreme Court has promulgated Rule 12 of the Texas Rules of Judicial Administration. (Rule 12 went into effect in 1999.) Rule 12 defines the term “judicial records” and sets out rules concerning access to those records. Significantly, Rule 12 does not deal in any way with court case records. Accordingly, when a request for a record is presented to a municipal court, the court usually must determine whether the requested record is a judicial record or a court case record. (No such determination must be made if access to the requested record is controlled by a statute specifically dealing with that record, *i.e.*, special statutes dealing with accident reports, juror information sheets, arrest warrants, and affidavits in support of arrest warrants and search warrants – *see* Steps 7, 14, 16 and 17.)

If the requested record is a judicial record, advance to Step 19. If the requested record is not a judicial record, advance to Step 42.

STEP 19. Rule 12 applies.

Rule 12 will control access to the requested record which is a judicial record.

STEP 20. Has record been requested by an inmate?

If the answer to this question is “yes,” advance to Step 21. Otherwise go to Step 24.

STEP 21. No response to request is required.

Rule 12 does not require a court to respond to a request for a judicial record from an inmate. TRJA 12.4(a)(4). Upon receiving a records request from an inmate, a court may simply ignore the request.

STEP 22. Does judge wish to provide record anyway?

While Rule 12 does not require a court to respond to a records request from an inmate, nothing prohibits the court from doing so. A judge may decide to respond to an inmate’s request for a judicial record. *See* TRJA 12.4(b) (“A records custodian may voluntarily make part or all of the information in a judicial record available to the public . . . unless the disclosure is expressly prohibited . . .”). If the judge wishes to accommodate an inmate’s records request, advance to Step 24. If the judge does not wish to comply with an inmate’s request, go to Step 23.

STEP 23. Court either informs requestor that access to record is denied because requestor is an inmate or makes no response at all.

A municipal court need not make any response at all to an inmate’s request for a judicial record. However, nothing prevents a court from informing an inmate that access to the requested judicial record is denied on account of the requestor’s status as an inmate.

Once a court decides not to accommodate an inmate’s request for a record, nothing further need be done in response to the request.

STEP 24. Is record a book or publication that is commercially

available to the public?

If the answer to this question is “yes,” then advance to Step 25. Otherwise, move on to Step 27.

STEP 25. Court not required to provide access to record.

A municipal court is not required to provide access to information in a book or publication that is commercially available to the public. TRJA 12.4(a)(3).

STEP 26. Does judge wish to provide record anyway?

While Rule 12 does not require a court to provide public access to a commercially-available publication, nothing prohibits the court from doing so. *See* TRJA 12.4(b). If the judge wishes to accommodate a request for a commercially-available publication held by the court, advance to Step 27. Otherwise, go to Step 13. (Note: If the court chooses not to provide access to a commercially-available publication, the request for the record should be formally denied in writing as detailed in Step 13. The request should not simply be ignored the way that a records request from an inmate can be ignored.) (Additional Note: If the court voluntarily provides access to a commercial publication for one requestor, the same access must be provided to all requestors. TRJA 12.4)

STEP 27. Is record a judicial work product or draft?

The general rule is that judicial records are to be open to the general public for inspection and copying during regular business hours. TRJA 12.4(a). However, there are several exemptions from disclosure. Steps 27 through 41 deal with these exemptions. Before releasing any requested judicial record, a court should make sure that no exemption applies. If a particular type of record is exempt from disclosure, the court may not release the record. TRJA 12.4(b).

A “judicial work product or draft” is defined as “[a]ny record that relates to a judicial officer’s adjudicative decision-making process prepared by that judicial officer, by another judicial officer, or by a court staff, an intern, or any other person acting on behalf of or at the direction of the judicial officer.” TRJA 12.5(a).

If the requested judicial record is a judicial work product or draft then access to the record must be denied. Go to Step 13. If the requested record is not a judicial work product or draft then go to Step 28 to see if the next possible exemption applies to the requested record.

STEP 28. Is record a security plan?

The following type of record is exempt from disclosure under Rule 12 and may not be released:

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.

TRJA 12.5(b). If the requested judicial record is a security plan, go to Step 13. Access to the record must be denied. If the requested record is not a security plan, move on to Step 29.

STEP 29. Is record a personnel record that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy?

The question of whether the release of a personnel record would constitute a clearly unwarranted invasion of personal privacy must generally be answered by the judge. Rule 12 provides no guidelines for determining the answer to this question. *See* TRJA 12.5(c).

If the judge answers this question affirmatively, then the record cannot be released. Move to Step 13. If the judge finds that the answer is “no,” then advance to Step 30.

Step 30. Does record contain any person’s home address, home or personal telephone number, social security number or family members?

If the requested record contains any of this personal information then the entire record is exempt from discovery. Rule 12 declares that “any record” reflecting this personal information is exempt from disclosure. TRJA 12.5(d). Rule 12 does not say that the information itself is confidential.

A question arises as to whether a record from which this type of personal information is redacted can be released. While the rule does not definitively answer this question one way or another, the best course of action would seem to be to err on the side of disclosure and release a record from which such information has been redacted.

Accordingly, a record from which this type of information has been redacted or that does not contain this type of personal information can be released provided there is not some other reason the record should be exempt from release. In such a situation, advance to Step 31. If, however, a record does contain this type of personal information then the record cannot be released. Go to Step 13.

STEP 31. Does record relate to an applicant for employment or volunteer services?

Any records relating to an applicant for employment or volunteer services are exempt from disclosure. TRJA 12.5(e). If the answer to this question is “yes,” go to Step 13. Otherwise, advance to Step 32.

STEP 32. Does record relate to internal deliberations on a matter of court or judicial administration?

Any record relating to the 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 is exempt from disclosure. TRJA 12.5(f) If the answer to this question is “yes,” go to Step 13. If the answer is “no,” advance to Step 33.

STEP 33. Does record link law library patron’s name with materials borrowed by patron?

If the answer to this question is “yes,” then the record is exempt from disclosure. TRJA 12.5(g). Go to Step 13. If the answer is “no,” move to Step 35.

STEP 34. Does record reflect 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 are exempt from disclosure. TRJA 12.5(h). If the answer to this question is “yes,” go to Step 13. If the answer is “no,” advance to Step 35.

STEP 35. Is record confidential or exempt from disclosure under

other law such as a constitutional provision, statute, court rule or common law?

This category of exempt information includes, but is not limited to, the following:

- 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 other law; and
- 3) a trade secret or commercial or financial information made privileged or confidential by statute or judicial decision.

TRJA 12.5 (I). If the requested record is confidential or exempt from disclosure under other law, the record is not to be released. Go to Step 13. Otherwise, advance to Step 36.

STEP 36. Is record an examination?

Generally, any record relating to an examination administered to any person is exempt from disclosure. The exception to the general rule is where the requestor is the person who took the examination and the examination is concluded. Thus, if the record is an examination and the requestor is a person other than the person who took the requested examination, the record is not to be released. TRJA 12.5(l). If the answer to this question is “yes,” go to Step 13. Otherwise, advance to Step 37.

STEP 37. Does record relate to litigation or settlement negotiations to which a court or judicial agency, or a judicial officer or member of a judicial agency, is or may be a party?

The judicial officer or member of a judicial agency must be a party to the litigation as a consequence of the person’s office or employment. TRJA 12.5(j). If the answer to this question is “yes,” then go to Step 13. The record is exempt. If the answer to this question is “no,” advance to Step 38.

STEP 38. Does record relate to an investigation of any person’s

character or conduct?

If the answer to this question is “yes,” advance to Step 39. If the answer is “no,” move to Step 40.

STEP 39. Was record requested by person being investigated and does judge believe release of record will not impair investigation?

If the answer to both of these questions is “yes,” then go to Step 40. If the answer to either question is “no,” then the record should not be released. TRJA 12.5(k). Go to Step 13.

STEP 40. Would compliance with request substantially and unreasonably impede court’s routine operation?

If one is at this point (Step 40) in the analysis of a records request, then the requested record is a judicial record that must be released unless compliance with the request would substantially or unreasonably impede the routine operation of the court or judicial agency. TRJA 12.8(a)(2). In a municipal court, this determination should be made by the municipal judge. If the judge determines that there is no impediment to the court’s routine operation, then the record should be released subject to an analysis of the record to see if any information must be redacted from the record before the record can be released. Go to Step 12.

If, however, the judge determines that compliance with the request would substantially or unreasonably impede the operation of the court, then go to Step 41.

STEP 41. Make specific findings to support conclusion reached in Step 40.

If the municipal judge has concluded that compliance with the records request would substantially or unreasonably impede the routine operation of the court, then the judge must make specific, non-conclusory findings that support his or her conclusion. TRJA 12.8(a)(2). The best course of action would be to put these findings in writing. The requested record is not to be released. Go to Step 13.

STEP 42. Record is a “court case record.”

Court case records are not required to be released under the Public Information Act (PIA). Nor are court case records required to be released pursuant to Rule 12. Advance to Step 43.

STEP 43. Is record a record in a civil case?

Municipal courts that are not municipal courts of record have only criminal jurisdiction. There are never any civil cases in these courts. Even cases involving the forfeiture and final judgment of bail bonds – which municipal courts have jurisdiction to hear, *see* TEX. GOV'T CODE ANN. § 29.003(e) (Vernon Supp. 2004) -- are considered to be incidental to criminal cases and are not civil cases. *City of Dallas v. Smith*, 716 S.W.2d 114, 116-17 (Tex.App.--Dallas 1986, no writ).

Municipal courts of record, however, are another story. While almost all cases that come before municipal courts of record are criminal cases, the law does give jurisdiction over certain civil cases to municipal courts of record in particular circumstances. Section 30.00005 of the Government Code states that

[t]he governing body of a municipality by ordinance may provide that the [municipal] court [of record] has: (1) civil jurisdiction for the purpose of enforcing municipal ordinances enacted under Subchapter A, Chapter 214, Local Government Code [regulation of housing and other structures], or Subchapter E, Chapter 683, Transportation Code [regulation of abandoned motor vehicles]; [and] (2) concurrent jurisdiction with a district court or county court at law under Subchapter B, Local Government Code, within the municipality's territorial limits and property owned by the municipality located in the municipality's extraterritorial jurisdiction for the purpose of enforcing health and safety and nuisance abatement ordinances[.]

TEX. GOV'T CODE ANN. § 30.00005(d) (Vernon Supp. 2004).

If the case from which the record is requested is a civil case, advance to Step 44. If the case is a criminal case, move on to Step 48.

STEP 44. Is requestor an attorney involved in the case?

In civil cases, attorneys have a special right of access to court case records. Texas Rule of

Civil Procedure 76 states that “[e]ach attorney at law practicing in any court shall be allowed at all reasonable times to inspect the papers and records relating to any suit or other matter in which he may be interested.” The phrase “matter in which he may be interested” has never been officially interpreted. One could argue that the phrase permits attorneys to access the records of any civil court case that the attorney wants to see. More likely, the phrase refers to cases in which the attorney is serving as an attorney for one or more of the parties in the case. Accordingly, the relevant question here is “whether the requestor is involved in the case.”

If the requestor is an attorney involved in the case, then advance to Step 45. If the requestor is not an attorney involved in the case, go to Step 46.

STEP 45. Record is not subject to redaction.

Generally, when a municipal court determines that a record must be released to a requestor, certain confidential information must first be redacted from the document. *See* Step 12. An exception to this rule exists for attorneys who wish to access civil court case documents in cases in which they are involved. Accordingly, skip the redaction analysis that begins with Step 12 and advance directly to Step 56.

STEP 46. Requestor presumed to be entitled to record under Texas Rule of Civil Procedure 76a.

Civil court records “are presumed to be open to the general public.” Go to Step 47.

STEP 47. Has record been sealed?

Civil court case records can be sealed by the judge upon a showing of certain conditions set out in Texas Rule of Civil Procedure 76a. If the requested record has been sealed, the presumption that civil court case records are open to the general public has been overcome. The sealed records may not be released to the public. Go to Step 13. If the requested record has not been sealed, the requestor is entitled to access the record. Go to Step 12.

STEP 48. Requestor generally entitled to record under common law right of access to court records.

No statute or rule provides for public access to court case records in criminal cases. This is not to say, however, that the public is not entitled to access to criminal court case records. Rather, the public has the right to access criminal court case records under the common law. This common law right applies to civil court case records as well. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597, 98 S.Ct. 1306, 1312, 55 L.Ed.2d 570, 579 (1978) (“It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.”) Please note that in using the term “judicial records and documents,” the United States Supreme Court was referring to court case records and not judicial records as defined by Rule 12.

The common law right to access court case records is not absolute, however. *Id.* As noted by the Supreme Court, “[e]very 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.” *Id.* at 598. The decision as to access “is one 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.” *Id.* at 599; *see also Dallas Morning News v. Fifth Court of Appeals*, 842 S.W.2d 655 (Tex. 1992)(court of appeals did not abuse its discretion in limiting access to trial exhibits).

Accordingly, the general rule is that court case records are public information pursuant to the common law. However, an exception to the general rule exists in that a court could find that the denial of public access to a record is appropriate where the court files might become a vehicle for improper purposes. Advance to Step 49.

STEP 49. Does court find that record, if released, would become a vehicle for improper purposes?

The municipal court must use its discretion in answering this question. A court’s determination on this issue will only be disturbed if the court abuses its discretion. *Dallas Morning News v. Fifth Court of Appeals*, 842 S.W.2d 655 (Tex. 1992).

In most cases, the record would probably not become a vehicle for improper purposes upon release. Thus, in most cases, the answer to this question would be “no.” If this question is answered “no,” then the requested record should be released. Advance to Step 12. Alternatively, if this question is answered “yes,” then access to the record should be denied. Go to Step 13.

STEP 50. Does record contain any social security numbers?

If the requested record contains any social security numbers, advance to Step 51. If the record does not contain any social security numbers, go to Step 54.

STEP 51. Was social security number obtained or maintained pursuant to a law enacted after October 1, 1990?

Federal law provides as follows:

Social security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such social security account number or related record.

42 U.S.C. § 405(c)(2)(C)(viii)(I)(2003). Accordingly, if a social security number appears on the requested document because a law enacted on or after October 1, 1990 requires the social security number to appear on the document, then the social security number is confidential and cannot be released. If, on the other hand, a social security number appears on a document because a law enacted prior to October 1, 1990 requires the social security number to appear on the document (or if there is no requirement that the social security number appear on the document), then the social security number is not confidential and can be released.

This begs the following question: What municipal court records are required to contain social security numbers pursuant to a law enacted on or after October 1, 1990? Research has revealed at least one such record which is described below.

A municipal court is required to keep a record of each case in which a person is charged with a violation of law regulating the operation of vehicles on highways. TEX. TRANSP. CODE ANN. § 543.201 (Vernon 1999). If the person charged with the violation was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver learner's permit, then the record must include the person's social security number. TEX. TRANSP. CODE ANN. § 543.202 (Vernon Supp. 2004). These legal requirements were enacted in 1995. Accordingly, the social security number contained within such a record is obtained or maintained pursuant to a law enacted on or after October 1, 1990.

If the requested record contains a social security number that is obtained or maintained pursuant to a law enacted on or after October 1, 1990, then advance to Step 52. Otherwise, go to Step 53.

STEP 52. Social security number must be redacted from record.

To redact information from a document means to remove confidential references (such as a social security number) from a document. There is no specific statute detailing the proper method of redacting information. The general and recommended practice, however, is to make a copy of the original document and remove the social security number from the copy of the document. The original document is to remain unaltered.

A social security number is usually removed from the copy of the document by blackening the areas of the copy in which the number is located. Sometimes the social security number can still be ascertained even after the blackening of the relevant area of the copy of the document. If this is the case, a copy of the altered copy should be made so that the social security number definitely cannot be ascertained. The altered copy is the document that is presented to the requestor. The requestor does not view the original document. Go to Step 54.

STEP 53. Social security number is not redacted.

The requested record may be released without redacting any social security numbers that appear in the record.

STEP 54. Does record contain information identifying a crime victim?

The name, social security number, address, and telephone number of a crime victim is confidential if the information is filed with the municipal court and is contained in a victim impact statement or was submitted for the purpose of preparing a victim impact statement. TEX. GOV. CODE ANN. § 552.1325 (Vernon Supp. 2004). While the statute is new and the meaning may not be entirely clear, municipal courts would be well-advised to proceed on the assumption that all crime victim information in any municipal court record (not just in a victim impact statement) is confidential and cannot be released to the public.

Please note that while Section 552.1325 is part of the Public Information Act (PIA), the statute does apply to court case records because the statute declares the crime victim information to be “confidential” and does not merely exempt the information from disclosure under the PIA’s general rule of disclosure. The PIA’s general rule of disclosure does not apply to court case records. *See* Step 3.

If the requested record contains crime victim information, then advance to Step 55. Otherwise, go to Step 56.

STEP 55. Redact crime victim information from the record.

Redact the crime victim information from the record using the same procedure as outlined in Step 52. Advance to Step 56.

STEP 56. Upon proper payment, release record by providing access to record or by making copy of record consistent with requestor's request.

A requestor may simply request to “see” or “look at” a record. Generally, there should be no charge associated with granting such a request (*i.e.*, there should be no charge for simply providing access to a requested record). There is no statute explicitly stating that municipal courts must allow free access to requested records, but the following statute applicable to county court records held by county clerks provides a helpful guideline:

- (a) This subchapter does not limit or deny any person full and free access to any document referred to in this subchapter. A person is entitled to read, examine, and copy from those documents or from any microfilm or other photographic image of the documents.
- (b) A person may, without paying any charge, exercise the right provided by this section under the reasonable rules of the county clerk at all reasonable times during the hours in which the clerk's office is open to the public.

TEX. LOC. GOV'T CODE ANN. § 118.065 (Vernon 1999) (emphasis added).

While mere access to requested records should be permitted without charge, charging a fee for copies of municipal court records is entirely appropriate.

There is a special charge for a copy of an accident report. The charge for providing the report is the lesser of \$6.00 or the actual cost of preparing the copy of the report. If the requestor wishes for the accident report to be certified, the charge should be increased by \$2.00.

Of course, most records requests will not be for accident reports. What should be charged for providing copies of court case records and judicial records?

There are no set charges for providing copies of court case records. However, Rule 12 does

set out the charges for providing copies of judicial records. A reasonable policy would be to charge the same amount for providing copies of court case records as for providing copies of judicial records.

The cost for a copy of a judicial record is detailed in TRJA 12.7. Assuming that there is no statute prescribing the cost for a particular judicial record (in which case the statute dictates the cost), the cost for a copy is the lesser of:

- (1) the “actual cost” of the copy; or
- (2) 125 percent of the amount prescribed by the Texas Building and Procurement Commission (TBPC) for providing public information.

The term “actual cost” is defined as “[t]he sum of all direct costs plus a proportional share of overhead or indirect costs.” Tex. Bldg. & Proc. Comm’n, 1 TEX. ADMIN. CODE § 111.62 (West Dec. 31, 2002). Actual cost should be determined in accordance with generally accepted methodologies. *Id.*

As a practical matter, municipal courts often charge the amount prescribed by the TBPC for providing public information. These prescribed charges are detailed in the Texas Administrative Code. *See* Tex. Bldg. & Proc. Comm’n, 1 TEX. ADMIN. CODE §§ 111.63, 111.69, 111.70 (West Dec. 31, 2002). The TBPC charges are spelled out below.

The charge for standard paper copies (reproduced by means of an office machine printer or a computer printer) is \$.10 per page. Each side that has a printed image is considered to be a page.

The charges for non-standard copies are as follows:

- (a) diskette – \$1.00
- (b) magnetic tape
 - (i) 4 mm. – \$13.50
 - (ii) 8 mm. – \$12.00
 - (iii) 9-track – \$11.00
- (c) data cartridge
 - (i) 2000 Series – \$17.50
 - (ii) 3000 Series – \$20.00
 - (iii) 6000 Series – \$25.00
 - (iv) 9000 Series – \$35.00
 - (v) 600A – \$20.00

- (d) tape cartridge
 - (i) 250 MB – \$38.00
 - (ii) 525 MB – \$45.00
- (e) VHS video cassette – \$2.50
- (f) Audio cassette – \$1.00
- (g) oversize paper copy (*e.g.*, 11" x 17", greenbar, bluebar) – \$.50
- (h) Mylar
 - (i) 3 mil. – \$.85/linear foot
 - (ii) 4 mil. – \$1.10/linear foot
 - (iii) 5 mil. – \$1.35/linear foot
- (i) blueprint/blueline paper (all widths) – \$.20/foot

If a particular records request requires the services of a programmer in order to execute an existing program or to create a new program so that requested information may be accessed and copied, a charge of \$26 per hour may be assessed for the programmer's time.

A charge may also be assessed for the other personnel costs at the rate of \$15 per hour. Personnel charges may be assessed for the actual time to locate, compile and reproduce the requested record as well as to redact information from the record. However, personnel charges are not to be assessed in connection with requests for 50 or fewer pages of paper records unless the documents to be copied are located in: (1) two or more separate buildings that are not physically connected to each other; or (2) a remote storage facility.

Whenever any personnel charge is assessed, an overhead charge of 20 percent of the personnel charge may be assessed.

The actual cost of miscellaneous supplies (*e.g.*, labels, boxes) used to produce the requested records as well as the actual cost of postal and shipping may also be assessed.

_____ Municipal Court

Request for Record(s)

Date of Request: _____

Information concerning person and/or organization making request for record(s):

Name: _____

Address: _____

Telephone Number(s): _____

Please describe the record(s) you are requesting:

I am making a request to:

G *Inspect the record(s)* **G** *Receive _____ copy(ies) of the record(s)*

Signature of person requesting record(s): _____

NOTE: If request is for an accident report then please complete Form 1-B also.

_____ **Municipal Court**

Request for Accident Report – Additional Information

Date of Request: _____

*Name of Requesting
Person and/or
Organization:* _____

The party requesting the accident report is:

- G** *an agency of the United States*
- G** *an agency of the State of Texas*
- G** *a Texas local government*
- G** *the law enforcement agency that employs the peace officer who investigated the accident that is the subject of the request*
- G** *a court in which a case involving a person involved in the accident is pending and the report been subpoenaed*
- G** *a person who can provide two or more of the following:*

Date of accident: _____

Name of any person involved in the accident: _____

*Specific address or the highway or
street where the accident occurred:* _____

_____ Municipal Court

Referral of Request for Record(s)

Date: _____

To: _____

The _____ Municipal Court does not have the record(s) you requested on _____. Accordingly, the _____ Municipal Court is unable to provide you with the record(s) you have requested. However, your request has been forwarded to the following entity which is believed to have custody of the record(s) you have requested:

Please contact the entity listed above if you have any questions concerning your request.

_____ Municipal Court

Requested Record(s) not held by Municipal Court

Date: _____

To: _____

The _____ Municipal Court does not have the record(s) you requested on _____. Accordingly, the _____ Municipal Court is unable to provide you with the record(s) you have requested. The custodian of the record(s) you have requested is unknown. Consequently, the _____ Municipal Court is unable to do anything more for you in regard to your request.

_____ Municipal Court

Denial of Request for Judicial Record(s)

Date: _____

To: _____

Re: Your Request for Record(s) of _____ *(date)* _____

The _____ *Municipal Court has determined that your request is a request for “judicial records.” Access to judicial records is controlled by Rule 12 of the Texas Rules of Judicial Administration.*

The _____ *Municipal Court is of the opinion that you are not entitled to access to the judicial record(s) you have requested because:* _____

Pursuant to Rule 12.9 of the Texas Rules of Judicial Administration, you have the right to appeal this decision. If you wish to appeal, you may do so by filing a petition for review with:

*Ms. Alicia G. Key
Administrative Director
Office of Court Administration
P. O. Box 12066
Austin, Texas 78711-2066*

_____ Municipal Court

Denial of Request of Record(s)

Date: _____

To: _____

Re: Your Request for Record(s) of _____ (date) _____

The _____ Municipal Court is of the opinion that you are not entitled to the record(s) you have requested because: _____

