

GETTING PERSONAL WITH THE PIA: REQUESTS FOR PERSONNEL RECORDS

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DON'T QUIT YOUR DAY JOB-AI'S JOKES

Why did the government hide the personnel records? Because they didn't want anyone to see what they get up to on their lunch breaks!

What's the best way to get your personnel records in Texas? Use the TPIA to get them but be prepared for a trip to the Attorney General's office for rulings!

Why did the TPIA and the personnel records run into each other? They were both trying to get to the truth, but the TPIA had a lot more exceptions!

Why did the government make the TPIA so complicated? They wanted to make sure they could keep personnel records under wraps!

Why don't personnel records tell jokes? They're too busy being secret!

What happens if you make a TPIA request and then the personnel records get lost? The government will say they were never created in the first place!

TYPES OF PERSONNEL RECORDS

- ❖ Application
- ❖ Transcript
- ❖ Paystubs
- ❖ Salary
- ❖ benefits paperwork/elections
- ❖ use of leave/timeclock records
- ❖ training/certificates/evaluations
- ❖ W-2, I-9,
- ❖ discipline
- ❖ offer letters
- ❖ employment contracts (when applicable)
- ❖ 552.024 forms
- ❖ criminal background check, reference checks, reference letters

PEACE OFFICER PERSONNEL FILES (NOT CIVIL SERVICE FILES)

Commendations

TCOLE paperwork (Background Confirmation Form (“BCF”), L-1, L-2, L-3, F-5 forms)

Background investigations

Internal Affairs Investigation documents

Personal History Statements

Oral Board questions and responses

Firearms Qualification Sheet (contains serial number of guns-552.108)

Criminal History Record Information “CHRI”-from DPS (552.101/411.083)

DOCUMENTS SEPARATE FROM 'PERSONNEL FILE'

Records may differ in response to a request for an employee's personnel file vs. a request for "any and all records related to Mr. Templeton's employment including any complaints or grievances filed against Mr. Templeton."

- ❖ ADA/FMLA (confidential-must be kept separate from personnel file)
- ❖ Grievance/investigation documents
- ❖ Settlement agreements
- ❖ Interview questions/committee comments/scores

MR. TEMPLETON FOR REFERENCE



OTHER EXAMPLES OF REQUESTS

“Mr. Nibbles current employment record status & standing with the Roxbury Police Department; all disciplinary records resulting from documented complaints including, but not limited to subsequent “fit for duty” results; and complete personnel records starting from initial employment date including all complaints against Mr. Nibbles.”

“All employment background and training records including disciplinary files for former police dispatcher Mr. Nibbles. Also requesting job performance evaluations and job performance documentation.”

MR. NIBBLES FOR REFERENCE



ANOTHER 'ANY AND ALL' REQUEST:

“I would like to request any and all records, emails, texts, scoring, test scores, eligibility lists, interview notes/scores/reviews, as well as any internal notes or commentary regarding the recent hiring process for police cadet that was posted in June 2023 and finalized September 2023. I would like any emails or documents that include or mention any part of the cadet process, as well as any documents or emails or text messages mentioning the applicants for the position, including solicited feedback.”

“I am requesting an excel spreadsheet of the following categories for all current employees: names, salaries, position/titles, sex, and ethnicity.”

This information is not excepted from disclosure and must be released.

Tex. Gov't Code section
552.022(a)(2)

REQUESTING CLARIFICATION

- Request:

“All applications submitted by all the candidates for the positions of City Manager and Chief of Police.”

Clarify time frame if needed.

What do they mean by ‘candidate’?

Assuming it's the most recent job posting-the positions combined had 500 applications and 30 candidates that were interviewed.

CLARIFICATION REQUEST

Pursuant to Texas Government Code § 552.222(b) of the Act, the City is seeking clarification in order to narrow the scope of the request. Could you clarify if you are seeking all applications for the positions of City Manager and Chief of Police, or just applications of candidates who were qualified and/or interviewed for the positions?

Please note, in accordance with Texas Government Code § 552.222(d), if a response from a requestor is not received by the 61st day after this request for clarification is sent, the request for information is considered to have been withdrawn by the requestor.

EXCEPTIONS APPLICABLE TO PERSONNEL RECORDS:

- ❖ Section 552.101: Confidential Information
- ❖ Section 552.102: Confidentiality of Certain Personnel Information
- ❖ Section 552.107: Certain Legal Matters
 - ❖ Information Within the Attorney-Client Privilege
- ❖ Section 552.117: Confidentiality of Certain Addresses, Telephone Numbers, Social Security Numbers and Personal Family Information
- ❖ Section 552.1175: Confidentiality of Certain Personal Information of Peace Officers
- ❖ Section 552.122: Test Items
- ❖ Section 552.130: Confidentiality of Certain Motor Vehicle Records
- ❖ Section 552.136: Confidentiality of Credit Card, Debit Card, Charge Card and Access Device Numbers
- ❖ Section 552.137: Confidentiality of Certain E-mail Addresses
- ❖ Section 552.147: Social Security Numbers
- ❖ Section 552.152: Confidentiality of Information Concerning Public Employee or Officer Personal Safety

OPEN RECORDS DECISION 684- PREVIOUS DETERMINATION

The following information can be redacted or withheld without requesting a ruling because of ORD 684:

- 1) a direct deposit authorization form under section 552.101 in conjunction with the common-law right to privacy;
- 2) a Form I-9 and attachments under section 552.101 in conjunction with section 1324a of title 8 of the United States Code;
- 3) W-2 and W-4 forms under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code;
- 4) a certified agenda and tape of a closed meeting under section 552.101 in conjunction with section 551.104 of the Government Code;
- 5) a fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code;

ORD 684 CONTINUED.....

- 6) L-2 and L-3 declarations under section 552.101 in conjunction with section 1701.306 of the Occupations Code;
- 7) a Texas driver's license number, a copy of a Texas driver's license, a Texas license plate number, the portion of a photograph that reveals a Texas license plate number, and the portion of any video depicting a discernible Texas license plate number under section 552.130;
- 8) a credit card number, debit card number, charge card number, insurance policy number, bank account number, and bank routing number under section 552.136;
- 9) an e-mail address of a member of the public under section 552.137; and
- 10) a Form DD-214 or other military discharge record that is first recorded or first comes into the possession of a governmental body on or after September 1, 2003.

REDACTIONS WITHOUT A RULING

TEX. GOV'T CODE SECTIONS 552.117, 552.1175

Tex. Gov't Code section 552.117

- Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number as well as information that reveals whether the following individual has family members:
 - A current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;
 - Current or honorably retired peace officer complies with sections 552.024 and 552.1175 of the Government Code. (Section 552.117 applies only to information that a governmental body holds in an employment context.)

Tex. Gov't Code section 552.1175

- Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.² id. § 552.1175. For purposes of section 552.1175, “family member” means a spouse, minor child, or adult child who resides in the person's home. *Cf Gov't Code § 552.117(c)* (“family member” has meaning assigned by Fin. Code § 31.006(d))

TEX. GOV'T CODE SECTION 552.024

- Information of a current or former employee that is listed in section 552.117(a) may only be withheld if a request for confidentiality was made under section 552.024 prior to the date of the City's receipt of the request for the information.
- Cell phone numbers can only be withheld if employee if the City does not pay for the cellular service.

Template forms with required language to redact:

Redacting Public Information | Office of the Attorney General

- Form Letter Section 552.024 (DOCX)
- Form Letter Section 552.1175 (DOCX)

EXCEPTIONS TO DISCLOSURE THAT REQUIRE A RULING

- 552.101 “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”
 - CHRI from DPS Tex. Gov’t Code 411.083
 - Local Gov’t Code section 143.089-Civil Service File
 - Tex. Occupations Code sections: Sections 159.002 (medical records) Chapter 1701-Subchapter J sections for TCOLE records, except L-2, L-3 forms under section 1701.306
 - Health and Safety Code section 611.002 (mental health records)
 - Common law privacy-protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. Indus. Found. v. Tex. Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976).
 - Constitutional zone of privacy
- 552.102- Information is excepted from the requirements of Section 552.021 if it is information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Dates of birth)
- 552.108- Serial number on guns listed in training documents for peace officers (discretionary exception)

SECTION 552.101-PERSONAL FINANCIAL INFORMATION

- Personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision Nos. 600 (1992) (employee's withholding allowance certificate, designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care)
- Deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history, Open Records Decision Nos. 545 (1990)
- Common-law privacy protects credit Open Records Decision Nos. reports, financial statements, and other personal financial information, Open Records Decision Nos. 523 (1989)
- Sources of income not related to financial transaction between individual and governmental body protected under common-law privacy. Open Records Decision Nos. 373 (1983)

CONFIDENTIALITY UNDER FEDERAL LAW-FMLA

Tex. Gov't Code section 552.101 in
conjunction with Subsection (g) of section
825.500:

Records and documents relating to
certifications, recertifications or medical
histories of employees or employees' family
members, created for purposes of **FMLA**,
shall be maintained as confidential medical
records in separate files/records from the
usual personnel files, and if the ADA, as
amended, is also applicable, such records
shall be maintained in conformance with
ADA confidentiality requirements.

CONFIDENTIALITY UNDER FEDERAL LAW-ADA

Title I of the **ADA** provides that information about the medical conditions and medical histories of applicants or employees must be (1) collected and maintained on separate forms, (2) kept in separate medical files, and (3) treated as a confidential medical record. Information obtained in the course of a “fitness for duty examination” conducted to determine whether an employee is still able to perform the essential functions of his or her job is to be treated as a confidential medical record as well. See 29 C.F.R. § 1630.14(c); see also Open Records Decision No. 641 (1996).

The federal Equal Employment Opportunity Commission (the “EEOC”) has determined that medical information for the purposes of the **ADA** includes “specific information about an individual's disability and related functional limitations, as well as general statements that an individual has a disability or that an **ADA** reasonable accommodation has been provided for a particular individual.” See Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National Labor Relations Board, 3 (Oct. 1, 1997).

- Tex. Atty. Gen. Op. OR2024-42708 (Tex. A.G.)



CIVIL SERVICE LAWS

- DEPARTMENT AND PERSONNEL FILES ARE SEPARATE FILES, THE CONTENTS OF WHICH ARE DEFINED BY STATUTE. (LOCAL GOV'T CODE SECTION 143.089)
- ONLY APPLY TO CITIES THAT ADOPT CIVIL SERVICE LAWS.

PERSONNEL (A-FILE)

Civil Service/Personnel File-Subject to Public Disclosure:

The personnel file must contain commendations, periodic evaluations by the fire fighter or police officer's supervisor, and documents relating to misconduct that results in disciplinary action.

- Disciplinary action under Chapter 143 is removal, suspension, demotion, and uncompensated duty. Written reprimand are not disciplinary actions for purposes of chapter 143. Attorney General Opinion JC-0257 (2000)
- All investigatory records relating to the investigation misconduct and subsequent disciplinary action, including background documents such as complaints, witness statements, and documents of like nature, must be in the personnel file. See Abbott v. Corpus Christi, 109 S.W.3d 113, 122 (Tex.App.—Austin 2003, writ denied).

Documents related to alleged misconduct that is not sustained may not be placed in the personnel file. Information in the personnel file cannot be released without first obtaining written permission from the peace officer or fire fighter, **unless the release of the information is required by law.** (A law such as the Texas Public Information Act.)

DEPARTMENT FILE (G-FILE)

Department file - cannot be released:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use. The department file may not be released unless it is a law enforcement agency hiring the police officer.

TEX. OCCUPATIONS CODE-CHAPTER 1701, SUBCHAPTER J

Section 1701.454 governs the public availability of information submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code and provides as follows:

(a) All information submitted to [TCOLE] under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a [TCOLE] member or other person may not release information submitted under this subchapter.

Examples:

- F-5 Separation of Licensee, if it does not indicate the named officer resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. (F-5 forms no longer used but previous ones are maintained in personnel file.)
- 5SR History and Employment Verification

TCOLE REQUIRED FORMS-SECTION 1701.306

- (a) [TCOLE] may not issue a license to a person unless the person is examined by:
 - (1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and
 - (2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a blood test or other medical test.
- (b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCOLE]. A declaration is not public information.



L-2 Declaration of Medical Condition



L-3 Declaration of Psychological and Emotional Health forms

SECTION 1701.4535- PERSONNEL FILES

WHAT THE LAW SAYS:

(c) Except as provided by Subsections (d) and (e), a law enforcement **agency may not release any information contained in a license holder's personnel file to any other agency or person requesting information relating to the license holder unless required by law.**

SECTION
1701.4535-
PERSONNEL
FILES

CONTACT INFORMATION

(c) Except as provided by Subsections (d) and (e), a law enforcement **agency may not release any information contained in a license holder's personnel file to any other agency or person requesting information relating to the license holder unless required by law.**

WHAT THE ATTORNEY GENERAL SAYS

- **“Upon review, we find section 1701.4535 does not make information confidential for purposes of the Act.** See Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). We note in Open Records Decision No. 562 (1990), this office addressed the phrase “unless the release of the information is required by law” found in section 143.089(f) of the Local Government Code and concluded the Act is a law that requires release of information. ORD 562 at 5, 6. Thus, the decision further concluded subsection (f) does not prohibit disclosure of a personnel file in a situation governed by the Act. *Id.* at 6.”

MISCELLANEOUS NOTES

- ❖ Settlement agreements cannot make information confidential-must be made expressly confidential by statute.
- ❖ TCOLE ID-not subject to the Act
- ❖ 'Super public' info –Tex. Gov't Code section 552.022
 - (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:
 - (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;
 - (2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body
- ❖ Link to : Public Information Act Handbook 2024

OPEN RECORDS LETTER RULING DATABASE

- [Open Records Letter Ruling | Office of the Attorney General](#)
- [Public Information Act Decision Database](#)

Public Information Act (PIA) Decision Database

A maximum 50,000 Decision Requests can be displayed and searched through at a single time. As such, a date range of no more than 1 year (365 days) must be applied. Narrow your search as much as possible before further searching through the retrieved Decision Requests on the next page.

Note: in the event your search still returns over 50,000 Decision Requests, you will be shown an error screen, and given the opportunity to return to this page to further narrow your search/filter criteria.

Filter Options:

Further filter this database by utilizing the inputs below and then clicking the 'Next' button to see filter results.

* Start Date (Date OAG Received On or After)

Mar 4, 2025



* End Date (Date OAG Received On or Before)

Jun 2, 2025



Show/Hide Additional Filters

Governmental Body

Asserted Exceptions

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QUESTIONS??



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