

# Employment Law

# Employment Law Basics

*The bottom line is, when people are crystal clear about the most important priorities of the organization and team they work with and prioritized their work around those top priorities, not only are they many times more productive, they discover they have the time they need to have a whole life.*

Stephen Covey

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Seminar for Newly Elected Officials  
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# Employment Law Basics

As an elected official, in addition to your statutory or constitutional duties, you are also responsible for knowing and complying with all of the laws that affect the employer-employee relationship. And that's quite a bit of law!

Fear not!<sup>1</sup> The Office of Harris County Attorney Vince Ryan is available to help. This paper is just a summary of the major laws that you or your staff will need to be familiar with while you are in office. Even if you have been in management in the private sector for years, you will quickly learn that life in the public sector is not the same.

Lina Garcia and I are available to listen to your concerns and ideas and to provide you with accurate and timely legal advice on all of the subjects addressed below and many more. Barbara Callistien is in the Litigation Practice Group. She handles the vast majority of employment law litigation. Please do not hesitate to contact us, preferably before you make any major moves. It is far easier to defend an employment action when we have helped set up the facts.

We look forward to working with you and wish you the best of luck!

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<sup>1</sup> Actually, a little bit of fear in this area is probably a good thing.

# **Three Fastest Ways to Get Sued By Your Employees**

## **# 3**

### **Sexual Harassment (and other Hostile Work Environment Claims)**

Title VII of the Civil Rights Act of 1964 (as amended in 1991) prohibits discrimination on the basis of a person's race, color, sex, national origin, and religion. 42 U.S.C. § 2000e. Chapter 21 of the Texas Labor Code prohibits the same thing. In the early 1980s the United States Supreme Court first recognized a claim for sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

In addition to sexual harassment, actions, words, jokes, or comments (spoken, written, or sent electronically) based on an individual's race, color, religion, national origin, age, disability, or any other legally protected characteristic are also forbidden.

The cause of action under either federal or state law includes recovery of compensatory damages limited to \$300,000. Tex. Labor Code § 21.2585 and 42 U.S.C. § 1981a. Both also allow recovery of attorneys fees and costs. Tex. Labor Code § 21.259 and 42 U.S.C. § 2000e-5(k).

## # 2

### **At-Will Employment is Rarely, if Ever, a Defense**

Employment at will is, indeed, a doctrine recognized by Texas courts. What that means is that unless there is a specific agreement to the contrary, either party can terminate an employer-employee relationship at any time for any reason or for no reason at all. *Fed. Express Corp. v. Dutschmann*, 846 S.W.2d 282, 283 (Tex. 1993); *Schroeder v. Tex. Iron Works*, 813 S.W.2d 483, 489 (Tex. 1991). But employers may not terminate an employee for an illegal reason.

The at-will employment doctrine is simply not an effective defense to any type of claim for discrimination or retaliation. Several major employment laws (i.e., *illegal* reasons for firing someone) are summarized in the subsections that follow. These are not the only employment laws.

The bottom line is that any time an employee is terminated, demoted, or otherwise adversely affected at work, juries demand that employers articulate legitimate, non-discriminatory, and non-retaliatory reasons for the decision. Further, juries expect the employer to produce contemporaneous documentation to prove the articulated reason(s) for the termination. Without that documentation, it is extremely difficult, if not impossible, to win a lawsuit on the merits.

#### **A. Title VII of the Civil Rights Act of 1964**

As noted above, Title VII prohibits discrimination on the basis of race, color, sex, national origin, and religion. 42 U.S.C. § 2000e. Thus, employers may not refuse to hire, fire, or in any way change the terms, conditions, or privileges of employment based on those protected categories. 42 U.S.C. § 2000e-2(a)(1). It also prohibits retaliation against an employee or applicant because she has opposed any practice made unlawful or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing about discrimination. 42 U.S.C. § 2000e-3.

## **B. Age Discrimination in Employment Act of 1967**

The ADEA makes it unlawful to take any adverse action against an applicant or employee because he is at least 40 years old. 29 U.S.C. § 623(a). Originally, this law only protected employees until they were 70 years old. During the Reagan administration, Congress amended the law to have no upper age limit. 29 U.S.C. § 631.

Damages under the ADEA include the actual lost wages plus attorney's fees. Successful plaintiffs may also get liquidated damages if the violation was "willful." Liquidated damages can be any amount up to 100% of the original lost wages. 29 U.S.C. § 626(b). *Purcell v. Seguin State Bank and Trust Co.*, 999 F.2d 950 (5th Cir. 1993). ("Willful" means the employer knew or showed reckless disregard for whether its conduct violates ADEA; but "willful violation does not necessarily occur just because employer knew that ADEA was 'in the picture.'" *Id.* at 955.)

## **C. Americans With Disabilities Act of 1990**

The Americans With Disabilities Act (as amended in 2008) states:

No covered entity shall discriminate against a *qualified individual with a disability* because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

42 U.S.C. § 12112(a). The law imposes three different sets of obligations on employers. The first set deals with the hiring process. Employers may not ask applicants whether they have a disability. However, if an applicant has an obvious disability or discloses that she has a disability, then the employer may ask the applicant whether she can perform the essential functions of the job with or without an accommodation. If the applicant states that she will require an accommodation, the employer may ask what type of accommodation would be needed.

Employers may require post-offer medical examinations only if the employer requires all employees in the same job category to undergo such evaluation. 42 U.S.C. § 12112(b)(6). The examination itself does not have

to be job-related; however, if the employer establishes any exclusionary criteria, then the criteria must be job-related and consistent with business necessity. 42 U.S.C. § 12112(d). Employers may require employees to undergo a medical examination at any time if it is job-related and consistent with business necessity.

Once the employer hires an individual with a disability, the employer must ensure that she enjoys the same benefits and privileges of employment as similarly-situated employees without disabilities, including: training programs; services (like an EAP, credit unions, cafeterias, lounges, gymnasiums, auditoriums, transportation); and social functions. If the employer provides information about any of these benefits and privileges of employment, then the employer must provide the same information to employees with disabilities through some effective means, regardless of whether the employee needs the information to perform the job.

The prohibition against discriminating against individuals with disabilities with respect to the “terms, conditions, and privileges of employment” includes a requirement to provide a work environment free from harassment based on disabilities. *Flowers v. Southern Regional Physician Services, Inc.*, 247 F.3d 229 (5th Cir. 2001) (employee subjected to 4 drug tests in one week after disclosing she had HIV and fired within 8 months of disclosure).

Finally, employers must provide reasonable accommodations to enable qualified individuals with disabilities to perform the job. 42 U.S.C. § 12112(b)(5)(A). Employers are excused from providing reasonable accommodations if it would be an *undue hardship* or if the applicant or employee would pose a *direct threat* to his own health and safety or the health and safety of others in the workplace. 42 U.S.C. § 12112(b)(5)(A).

Disabilities include both physical and mental impairments. Further, the ADAAA (the 2008 amendments) greatly expands the definition of who qualifies as disabled under the law to capture just about anyone. 42 U.S.C. § 12112 (3)(2)(B).

The damages available under the ADA are the same as under Title VII. 42 U.S.C. § 12117(a). *See above.*

#### **D. Family & Medical Leave Act of 1993**

The Family & Medical Leave Act gives eligible employees several entitlements, including time off work, benefits protection, and job restoration rights when the employee or his spouse, parent, or child is hospitalized or has a serious health condition. 29 U.S.C. § 2601, *et. seq.*

Since 2008, FMLA also gives eligible employees leave for “qualifying exigencies” related to a military activation and to care for “next of kin” recovering from an illness or injury sustained in the line of active military duty.

Employees are eligible if they have worked for Harris County (in any department) for a total of 12 months (need not be consecutive months) and have actually worked 1,250 hours in the 12 month period immediately preceding the leave. Therefore, most full time employees are eligible.

Like all employment laws, in addition to the employee’s rights under FMLA, the employer is also prohibited from retaliating against an employee who exercises those rights. 29 U.S.C. § 2615.

#### **E. The Texas Whistleblower Act**

State law protects public employees from adverse employment actions based on their whistle-blowing activities. The Texas Whistleblower Act provides:

- (a) A state or local governmental entity may not suspend or terminate the employment of, or take other adverse personnel action against, a public employee who in good faith reports a violation of law by the employing governmental entity or another public employee to an appropriate law enforcement authority.
- (b) In this section, a report is made to an appropriate law enforcement authority if the authority is a part of a state or local governmental entity or of the federal government that the employee in good faith believes is authorized to:

- (1) regulate under or enforce the law alleged to be violated in the report; or
- (2) investigate or prosecute a violation of criminal law.

Tex. Gov't Code Ann. § 554.002.

As we would expect in employment law, the Act is remedial in nature and thus courts construe it liberally. *E.g.*, *Davis v. Ector County, Tex.*, 40 F.3d 777, 785 (5th Cir. 1994); *Stinnett v. Williamson County Sheriff's Dep't*, 858 S.W.2d 573, 575 (Tex. App.—Austin 1993, *writ denied*); *Castaneda v. Texas Dep't of Agriculture*, 831 S.W.2d 501, 503 (Tex. App.—Corpus Christi 1992, *writ denied*).

The Act “evidences two legislative purposes: to protect public employees from retaliation by their employer when, in good faith, employees report violations of law, and in consequence, to secure lawful conduct on part of those who direct and conduct the affairs of public bodies.” *Tarrant County v. Bivins*, 936 S.W.2d 419, 421 (Tex. App.—Fort Worth 1996, *no writ*); *Texas Dep't of Human Services v. Green*, 855 S.W.2d 136, 143 (Tex. App.—Austin 1993, *writ denied*). Stated another way, the Act “is designed to enhance openness in government and compel the government’s compliance with law by protecting those who inform authorities of wrongdoing.” *Davis*, 40 F.3d at 785 (quoting *Castaneda*, 831 S.W.2d at 503); *Wagner v. Texas A & M University*, 939 F. Supp. 1297, 1321 (S.D. Tex. 1996).

## **F. First Amendment of the United States Constitution**

Public employees who blow whistles or engage in other speech may also be protected by the First Amendment. Public employees do not enjoy an unfettered right to free speech. However, they do have a right to speak out as citizens on matters of public concern. Courts traditionally engage in a balancing test to see whether the employee’s interest in commenting on the matter of public concern outweighs the government’s interest in promoting efficiency of the services it performs. *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968). To determine whether an employee’s speech involves a matter of public concern, courts look at the “content, form, and context of a given statement, as revealed by the whole record.” *Connick v. Myers*, 461 U.S. 138, 147-48 (1983).

In 2006 the United States Supreme Court held that “when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.” *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006). The Court concluded that when the speech “owes its existence to a public employee's professional responsibilities,” it is not the speech he might enjoy as a private citizen. *Id.* at 422. This interpretation does not mean a public employer can fire an employee for any utterance so long as it was made in the work place or is made about the work itself. It’s just another defense we can try to establish.

## # 1

### **Fair Labor Standard Act of 1938**

The Fair Labor Standards Act (“FLSA” or “Act”) was the very first of all the employment laws. Congress enacted the FLSA in 1938 to help alleviate the extremely high unemployment rates of the Great Depression and the oppressive working conditions for those men, women, and children who did have jobs. The law has three main components: a minimum wage requirement, a maximum hours requirement, and child labor restrictions.

The minimum wage and maximum hour requirements only apply to “nonexempt” employees.<sup>2</sup> The Act identifies three major exemptions: the Executive, Professional, and Administrative exemptions. 29 U.S.C. § 213(a)(1). Another exemption that most of us have to grapple with is the Computer exemption. 29 U.S.C. § 213(a)(17).

Collective action lawsuits against employers who erroneously classify non-exempt employees as exempt or who require non-exempt employees to work “off the clock” are the lawsuit “du jour.” While the ultimate burden is on an employee to prove that he performed work for which he was not paid, these cases really put the burden on the employer to show that an employee did not work. They are very difficult to defend. And the fact that the

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<sup>2</sup> Volunteers, elected officials, and the personal staff, policymakers, and legal advisors appointed by elected officials are not included in the definition of “employee” under the Act. 29 U.S.C. §§ 203(e)(4)(A) and 203(e)(2)(C).

employee only has estimates of the number of hours he worked without getting paid is not fatal to his claim.

[W]here the employer's records are inaccurate or inadequate and the employee cannot offer convincing substitutes . . . the solution . . . is not to penalize the employee by denying him any recovery . . . In such a situation . . . an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produced sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference.

*Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687-88 (1946). Once the employee comes forward with enough evidence to show a "just and reasonable inference" that he worked the extra hours, the employer has the burden to show the inference is not reasonable. Otherwise, the court can award damages based on the employee's approximation, i.e., his completely self-serving testimony. *Hodgson v. American Concrete Const. Co.*, 471 F.2d 1183, 1186 (6th Cir.) *cert. denied sub nom. American Concrete Const. Co. v. Brennan*, 412 U.S. 949 (1973).

The FLSA includes the usual array of penalties for an employment case: unpaid wages, attorney's fees, and costs. 29 U.S.C. § 216(b). The Act also includes criminal penalties for "willful violations." Employers can be liable for a fine of not more than \$10,000 or imprisonment for not more than 6 months, or both. 29 U.S.C. § 216(a). In a suit by the DOL, employers can be subject to civil penalties for willful or repeated violations. Civil penalties may not exceed \$1,000 per violation. 29 U.S.C. § 216(b).

If those penalties aren't enough to ensure compliance, the Act also includes two unique provisions. The first is liquidated damages. 29 U.S.C. § 216(b). While liquidated damages are not automatic, the burden on the employer to escape them is onerous. The employer must show both good faith and reasonable grounds for believing its actions met the requirements of the FLSA. If an employer proves both prongs of the exception, then the trial court has discretion to award no liquidated damages, partial liquidated damages, or full liquidated damages. *Lee v. Coahoma County, Miss.*, 937 F.2d 220, 226-27 (5th Cir. 1991).

The other provision unique to the FLSA is the statute of limitations. Like most employment law claims, the statute of limitations under the FLSA is two years. However, if the employer's violation was "willful," then the Act adds a third year. 29 U.S.C. § 255(a). That's three years to file the lawsuit and three years worth of unpaid wages to recover, plus liquidated damages.

Luckily, the burden for stretching the statute of limitations an extra year is on the plaintiff and proving a "willful" violation is difficult. A violation is "willful" only if the employer knew or showed reckless disregard about whether its conduct violated the FLSA. *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133 (1988). Thus, an employer can act unreasonably, but not recklessly, and still avoid the extra year of exposure. *McLaughlin*, 486 U.S. at 135.

### **Conclusion**

Employees are every employer's most valuable asset. We have to be familiar with our responsibilities so that we protect their legal rights while ensuring efficient government operations. It's not always easy. But it is always the right thing to do.

# Harris County Ethics Policy & Grievance Procedures



Erika Owens  
The Office of Human Resources & Risk Management

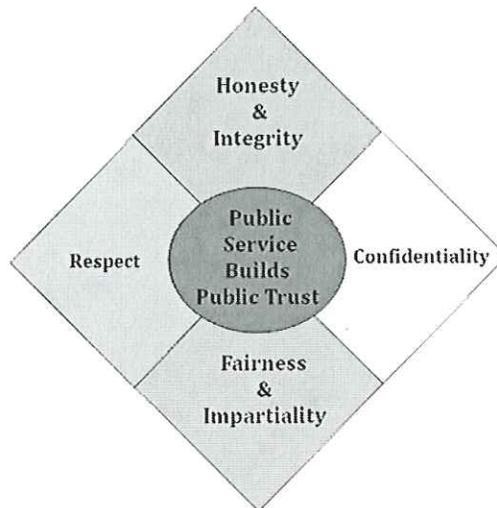
## Ethics and Confidentiality

§ 2.01 - § 2.04

- Ethics Policy
- Ethical Standards as Public Servants
- Ethics Committee
- Ethics Video
- Financial Disclosure –  
\*\*April 30<sup>th</sup> due date

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## 4 Commitments of Ethics



## Completely Prohibited

Do not ask for or accept any benefit as consideration for your discretion as a public servant.



Texas Penal Code § 36.02(a)(1)

Public Service Builds Public Trust

## Completely Prohibited

Do not ask for or accept:

- Money
- Loans
- Negotiable Instruments

from a current or potential vendor



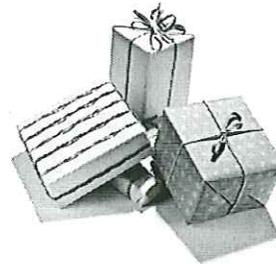
Public Service Builds Public Trust

## General Rule

Do not ask for or accept:

- Gifts
- Favors
- Anything of value

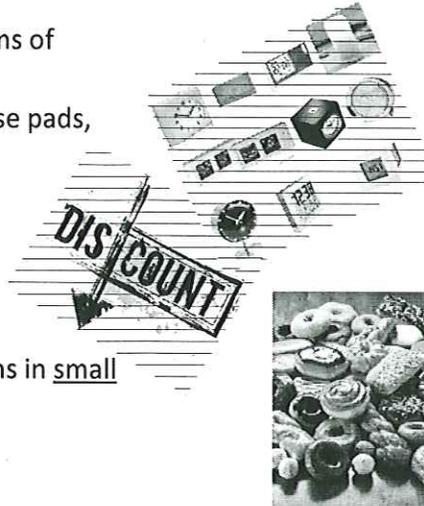
from a current or potential vendor or customer even if it is not in exchange for an exercise of discretion.



Public Service Builds Public Trust

## Exceptions to the General Rule

- Promotional or commemorative items of minimal value
  - ✓ Baseball caps, coffee mugs, mouse pads, key chains, and plaques
- Discounts offered to all employees
  - ✓ Verizon, AT&T, Dell,
- Unsolicited and perishable food items in small amounts, delivered infrequently
  - ✓ donuts, cookies, or sandwiches
- Gifts with a value less than \$50



Public Service Builds Public Trust

## Exceptions to the General Rule



- Meals, travel, and lodging as a guest of the vendor as long as the vendor is actually present.

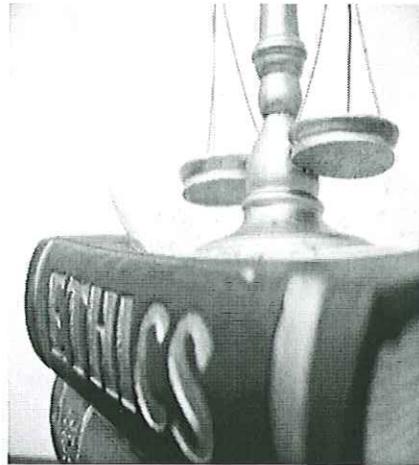
Texas Penal Code § 36.10(b).

Public Service Builds Public Trust

## Think Before You Act

➤ Abusing the exceptions.

- ❖ Accepting gifts frequently from the same or different people.
- ❖ Accepting anything that is *extravagant*.
- ❖ Consider the timing.



Public Service Builds Public Trust

## HARRIS COUNTY GRIEVANCE PROCEDURES



## History

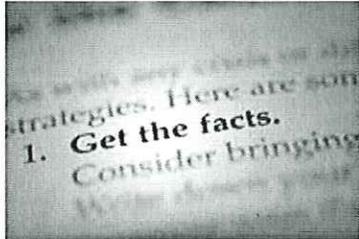
- The Texas Legislature enacted the statute in 1987 *bracketed* to Harris County.
- The procedure applies to all employees ... including yours.



## Grievance Procedures

- Purpose
  - Settle grievances quickly
    - Assure efficient work operations
    - Maintain positive employee morale
  - Pursue informal resolutions first
  - Informal Resolution does not extend time limits

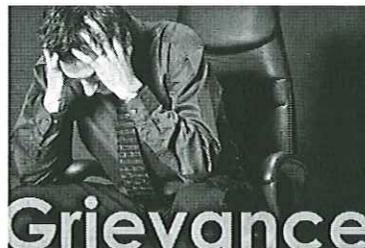
## Important Facts



- Does not apply to allegations of discrimination based on race, color, religion, sex, national origin, age or disability .... Those are handled separately.
- Employees may not file grievances based upon their termination from employment.
- Each department has a Grievance Coordinator.

## Grievable Matters

- A violation, misinterpretation, misapplication, or disparity in the application of a specific law, ordinance, resolution, written or unwritten policy, or rule regarding wages, hours of work, or conditions of work.



§ 160.003 Tex. Local Gov't Code

## Grievable Matters – Examples

### ➤ Grievable

- Misapplication of salary ladder;
- Misinterpretation of a departmental mandatory overtime policy;
- Disparity in the application of a departmental shift bidding policy;
- Violation of the County compensatory time policy.

### ➤ Non-Grievable

- Employee performance evaluation that are not directly related to wages;
- Written reprimands;
- Terminations;
- Promotion decisions; unless covered by a salary ladder.

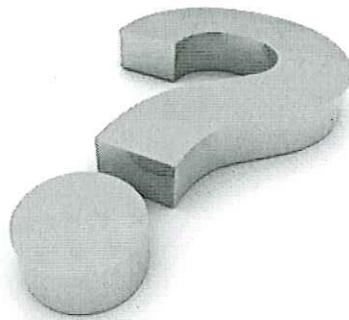
## Grievable Matters Cont'd

### ➤ Non Grievable Determinations

- Department notifies employee before deadline.
- Employee appeals to County Grievance Coordinator within 5 days.
- Grievance Resolutions Committee evaluates issue.
- If found grievable, grievance resumes
- If the grievance is found not grievable, the process ends.

## Formal Grievance Steps

- Step 1 – Supervisor
- Step 2 – Department Grievance Coordinator
- Step 3 – Department Head
- Step 4 – Grievance Committee
- Step 5 – Appropriate Authority
- Step 6 -- Commissioners Court



**GRIEVANCE PROCEDURE PACKET**

**FOR**

**EMPLOYEES OF**

**HARRIS COUNTY**

**&**

**HARRIS COUNTY FLOOD CONTROL DISTRICT**

**INSTRUCTIONS AND REQUIRED FORMS**

**Amended February 2009**

## *PURPOSE*

- The purpose of the grievance system is to settle any grievance between the County and an employee as quickly as possible to assure efficient work operations and maintain employee morale.
- **Employees should pursue, if possible, an informal resolution of their complaints, utilizing all available avenues within their department before filing a formal, written grievance.**
- Department Heads and supervisors are encouraged to work with employees to resolve grievances informally. **Efforts at informal resolution are unrelated to the formal grievance procedure and do not extend the time limit(s) included in the procedure.**

## *ELIGIBILITY*

These procedures apply to all employees (not volunteers) of the County, including but not limited to employees of the Flood Control District the Juvenile Probation Department. However, these procedures **do not apply** to the employees of the Sheriff's Department or Community Supervision and Corrections. **These procedures do not apply to former employees.**

## *GRIEVABLE MATTERS*

"Grievance" means a claim by an employee that he was adversely affected by a violation, misinterpretation, misapplication, or disparity in the application of a specific law, ordinance, resolution, written or unwritten policy, or rule regarding wages, hours of work, or conditions of work.

- Examples of grievable matters include, but are not limited to:
  - Misapplication of a salary ladder;
  - Misinterpretation of a department mandatory overtime policy;
  - Disparity in the application of a department shift bidding policy;
  - Violation of the County compensatory time policy.
- Examples of matters that are not grievable include, but are not limited to:
  - Employee performance evaluations that are not directly related to wages;
  - Written reprimands;
  - Terminations;
  - Promotion decisions, unless covered by a salary ladder.

- If at any point in the grievance process the Department determines that the subject of a grievance is not grievable as defined above, the Department notifies the employee in writing before the next applicable deadline.
- Employees may appeal that determination to the Grievance Resolutions Committee by submitting a copy of the Department's written notice to the County Grievance Coordinator within 5 working days of receiving it. The County Grievance Coordinator or her designee has 5 days from receipt of the appeal to set a meeting date of a panel of the Grievance Resolutions Committee. The Committee evaluates the issue and issues a written response. If the Committee determines that the issue is grievable, then the grievance resumes at the point it left off. If the Committee determines that the issue is not grievable, the grievance process ends. The Grievance Resolutions Committee's decision is final.

**ALL GRIEVANCES COMPLAINING OF A TERMINATION ARE AUTOMATICALLY DENIED AT THE TIME OF FILING.**

**GENERAL PROVISIONS**

- *Employees must use the Grievance Forms provided by the County.* The forms are available from the Department's Grievance Coordinator, the Department's human resources staff, from Human Resources & Risk Management, and via the HRRM website.
- Employees receive their usual rate of pay for time spent during normal working hours in the grievance proceedings.
- Employees may represent themselves or be represented by someone else when presenting a grievance.
- Commissioners Court appoints the County Grievance Resolutions Committee.
- Each Department Head designates a Department Grievance Coordinator for the purpose of handling appeals in compliance with Step 2 of the procedure for filing employee grievances. This designation should be communicated to all employees within the department.
- All grievances complaining of a termination are automatically denied at the time of filing.

## ***PROCEDURE FOR FILING EMPLOYEE GRIEVANCES***

Employees must follow these steps in the order given. Do not omit a step. **If a supervisor, Grievance Coordinator, Department Head, or Appropriate Authority fails to respond within the time limits set forth herein, the employee may take the next step in the procedure.**

- **Time limits begin on the first working day after the applicable occurrence, filing, appeal, response, or recommendation. Working days do not include weekends or County Holidays.**
- The employee retains a copy of the grievance and the supervisor places a copy in the employee's personnel file. All copies should note the date that the grievance was filed and the date and time that the supervisor received the grievance.
- Employees may get the forms from their Department's Grievance Coordinator, from the Office of Human Resources & Risk Management, or via the HRRM website.

### ***Step 1- Supervisor***

In order to be considered, a grievance (other than an allegation of discrimination based on race, color, religion, sex, national origin, age, or disability) **must be filed in writing using County Form 100 with the employee's supervisor within 5 working days** from its occurrence. The forms should not be used by former employees. Grievances complaining of a termination are automatically denied at the time of filing.

The supervisor has 5 working days from receipt of Form 100 to investigate, meet with the grievant, and respond in writing on County Form 200.

**If the grievance involves allegations of discrimination based on race, color, religion, sex, national origin, age, or disability, then the supervisor MUST:**

- **refer the grievance to the Director of the Office of Human Resources & Risk Management for handling as required under the law, and**
- **notify the employee in writing of the referral.**

### ***Step 2- Department Grievance Coordinator***

- Employees may appeal the supervisor's determination by filing a written appeal on Form 300 with the Department Grievance Coordinator within 5 working days of receiving the Form 200.
- The Department Grievance Coordinator has 5 working days to investigate, meet with the grievant, and respond in writing using County Form 300.

### ***Step 3– Department Head***

- Employees may appeal the Department Grievance Coordinator’s determination by filing a written appeal on Form 400 with the Department Head within 5 working days of receiving the Form 300.
- The Department Head has 5 working days to investigate, meet with the grievant, and respond in writing using County Form 400.

### ***Step 4– Grievance Committee***

- Employees may appeal the Department Head’s determination by filing a written appeal on Form 500 with the County Grievance Resolutions Committee Chairperson/Coordinator within 5 working days of receiving Form 400.
- The appeal *must*:
  - (1) be made in writing, and
  - (2) state the reason for the appeal, and
  - (3) pertain to the original grievance filed, and
  - (4) include all written responses pertaining to the specific complaint, and
  - (5) include the signature of the aggrieved employee and the name of the employee's representative, if any.
- The County Grievance Coordinator schedules a hearing within 5 working days from receipt of the appeal. The Resolutions Committee reviews and carefully studies the employee's complaint. Each party may present evidence. Upon hearing the grievance, the Resolutions Committee votes to adopt a response and recommendation.

### ***Step 5– Appropriate Authority***

- Either the employee or the Department Head may appeal the Grievance Resolutions Committee’s determination to a governing body other than Commissioners Court that has appropriate supervisory authority over the Department Head, if one exists, and has established a grievance procedure. For Juvenile Probation employees, the appropriate authority is the Juvenile Board. The appealing party must submit a written appeal with the County Grievance Coordinator within 10 working days of receiving the Grievance Resolutions Committee’s determination. The appeal must state the reason for the appeal and specify whether appealing party wants it to be heard at a public hearing or in Executive Session. The County Grievance Coordinator places the appeal on the appropriate agenda.
- In accordance with all applicable laws, the appropriate authority considers the grievance and takes whatever steps it deems necessary under the circumstances.

### ***Step 6 – Commissioners Court***

- Either the employee or the Department Head may appeal the determination made in the highest applicable step described above to Commissioners Court by filing a written appeal with the County Grievance Coordinator within 10 working days. The appeal must state the reason for the appeal and specify whether the appealing party wants it to be heard at a public hearing or in Executive Session. The County Grievance Coordinator places the appeal on the Commissioners Court Agenda.
  
- In accordance with all applicable laws, the Commissioners Court considers the grievance and takes whatever steps it deems necessary under the circumstances, including referring the matter back to the governing body referenced in Step 5.

**HARRIS COUNTY GRIEVANCE  
FORM 100  
EMPLOYEE GRIEVANCE**

**DO NOT USE THIS FORM IF YOU HAVE BEEN TERMINATED.** Please type or print using a ball point pen.

<b>Employee Name:</b>	<b>Job Title:</b>
<b>Department:</b>	<b>Work Phone:</b>

I have discussed this complaint with my immediate supervisor and I have received his/her verbal answer on (date) \_\_\_/\_\_\_/\_\_\_ . Because this answer is unacceptable to me, I wish to file a formal complaint.

**Adverse Impact Statement:** Specify the law, ordinance, resolution, policy or rule that was violated and how it adversely affected you.

**Nature of grievance:** Explain how you were unfairly treated including names and dates. (Use additional pages if needed)

**A Just and Fair Solution to my grievance is:**

I understand that if I wish to further appeal my complaint I have five (5) working days from my supervisor's response to submit the grievance to next step in the procedure. Grievances not appealed in a timely manner are considered settled at the previous level. **I UNDERSTAND THAT I MAY NOT GRIEVE A TERMINATION AND THAT ALL GRIEVANCES COMPLAINING OF TERMINATION ARE AUTOMATICALLY DENIED AT THE TIME OF FILING.**

**Date:** \_\_\_/\_\_\_/\_\_\_

**Signature:** \_\_\_\_\_

- Original to be retained by employee
- Copy submitted to proper appeals person for department personnel file

**HARRIS COUNTY GRIEVANCE  
FORM 200  
SUPERVISOR RESPONSE**

**DO NOT USE THIS FORM IF YOU HAVE BEEN TERMINATED.** Please type or print using a ball point pen.

<b>Employee Name:</b>	<b>Job Title:</b>
<b>Supervisor's Name:</b>	<b>Position:</b>

**Supervisor's Response To Employee Complaint: DO NOT USE THIS FORM IF THE GRIEVANCE INVOLVES A TERMINATION. GRIEVANCES CONCERNING TERMINATIONS ARE AUTOMATICALLY DENIED AT TIME OF FILING.**

**Date:** \_\_\_/\_\_\_/\_\_\_      **Signature:** \_\_\_\_\_

**Once you have completed this form, please return to the employee and have the employee sign the acknowledgement below:**

I have read my supervisor's response to my complaint and I understand that if I wish to further appeal my complaint I have five (5) working days from this response to submit the grievance to the next step in the procedure. Grievances not appealed in a timely manner are considered settled at the previous level. I UNDERSTAND THAT ALL GRIEVANCES COMPLAINING OF A TERMINATION ARE AUTOMATICALLY DENIED AT THE TIME OF FILING.

**Date:** \_\_\_/\_\_\_/\_\_\_      **Employee Signature:** \_\_\_\_\_

- Supervisor returns original to employee
- Supervisor retains copy for file

**HARRIS COUNTY GRIEVANCE  
FORM 300  
APPEAL TO GRIEVANCE COORDINATOR**

I received my supervisor's response on (date) \_\_\_/\_\_\_/\_\_\_\_. I am dissatisfied with my supervisor's solution to my grievance. I hereby appeal to the grievance coordinator.

**DO NOT USE THIS FORM IF YOU HAVE BEEN TERMINATED.** Please type or print using a ball point pen.

**Reason for further appeal:**

Date: \_\_\_/\_\_\_/\_\_\_\_

Signature: \_\_\_\_\_

**Grievance Coordinator's Response:**

Date: \_\_\_/\_\_\_/\_\_\_\_

Signature: \_\_\_\_\_

**Once you have completed this form, please return to the employee and have the employee sign the acknowledgement below:**

I have read the grievance coordinator's response to my complaint and I understand that if I wish to further appeal my complaint I have five (5) working days from this response to submit the grievance to the next step in the procedure. Grievances not appealed in a timely manner are considered settled at the previous level. **I UNDERSTAND THAT I MAY NOT GRIEVE A TERMINATION AND THAT ALL GRIEVANCES COMPLAINING OF TERMINATION ARE AUTOMATICALLY DENIED AT THE TIME OF FILING.**

Date: \_\_\_/\_\_\_/\_\_\_\_

Employee Signature: \_\_\_\_\_

- Grievance Coordinator returns original to employee
- Grievance Coordinator retains copy for file

**HARRIS COUNTY GRIEVANCE  
FORM 400  
APPEAL TO DEPARTMENT HEAD**

I received the grievance coordinator's response on (date) \_\_\_\_/\_\_\_\_/\_\_\_\_. I am dissatisfied with the grievance coordinator's solution to my grievance. I hereby appeal to the department head.

**DO NOT USE THIS FORM IF YOU HAVE BEEN TERMINATED.** Please type or print using a ball point pen.

**Reason for further appeal:**

**Date:** \_\_\_\_/\_\_\_\_/\_\_\_\_

**Signature:** \_\_\_\_\_

**Department Head's Evaluation and recommendation:**

**Date:** \_\_\_\_/\_\_\_\_/\_\_\_\_

**Signature:** \_\_\_\_\_

**Once you have completed this form, please return to the employee and have the employee sign the acknowledgement below:**

I have read my Department Head's response to my complaint and I understand that if I wish to further appeal my complaint I have five (5) working days from this response to request a hearing before the County Grievance Resolution Committee. I acknowledge that the completion and filing of my written grievance to the County Resolutions Committee is my responsibility. **I UNDERSTAND THAT I MAY NOT GRIEVE A TERMINATION AND THAT ALL GRIEVANCES COMPLAINING OF TERMINATION ARE AUTOMATICALLY DENIED AT THE TIME OF FILING.**

**Date:** \_\_\_\_/\_\_\_\_/\_\_\_\_

**Employee Signature:** \_\_\_\_\_

- Original to employee
- Department Head retains copy for file

**HARRIS COUNTY GRIEVANCE  
FORM 500  
APPEAL TO GRIEVANCE RESOLUTION COMMITTEE**

**DO NOT USE THIS FORM IF YOU HAVE BEEN TERMINATED. Please type or print using a ball point pen.**

**Nature of Grievance:**

**Date:** \_\_\_/\_\_\_/\_\_\_

**Signature:** \_\_\_\_\_

**Name of Representative:** \_\_\_\_\_

**All written response(s) pertaining to this specific complaint must accompany this request.**

- **Employee retains a copy**
- **Send Originals to:**

**Harris County Human Resources & Risk Management  
1310 Prairie, Suite 240  
Houston, TX 77002**

# Auditor's Office

## Harris County Auditor's Office

The position of County Auditor is filled by appointment by the State District Judges for a term of two years. The current County Auditor is Barbara Schott.

The Auditor's Office has two main divisions: the Accounting Division and the Audit Division.

### Accounting Division

The Accounting Division is headed by Mike Post (713-755-4150).

Departments in the Accounting Division include:

- **Financial Accounting** is responsible for financial reporting. This department is headed by Carol Market, Director (713-755-6516).
- **Accounts Payable** is responsible for auditing claims submitted for payment. Contacts are Linda Harvey, Director (713-755-4832) and Ronny James, Manager (713-755-8374).
- **Grants and Accounts Receivable.** Contacts are Linda Harvey, Director (713-755-4832); Paul Wilden, Manager for Grants (713-755-3584); and Ron Foster, Manager for Accounts Receivable (713-755-3539).
- **Revenue Accounting** prepares the annual statement of estimated available resources used by the Budget Office for the annual budget and monitors revenue collections. This department is headed by Jeff Jackson, Director (713-755-4134).

### Audit Division

The Audit Division is headed by Steve Garner (713-755-6571).

Departments in the Audit Division include:

- **Audit Services** performs various financial audit engagements. Contacts are Mark Ledman, Director (713-755-3441) and Harland Maisel, Director (713-755-1125).
- **Compliance Audit** performs reoccurring prescribed audit procedures as set forth in statutes, including auditing Tax Assessor-Collector reports and collections and auditing collections of various other elected and appointed officials. This department is headed by Wayne Comeaux, Manager (713-755-6538).
- **Payroll Audit** verifies and processes payrolls. This department is headed by Curt Weller, Director (713-755-4112).
- **Systems and Procedures** develops written accounting policies and procedures. This Department is headed by Janet Norstrom, Director (713-755-4149).

## PAYROLL AUDIT HELP LIST

The following individuals in the Payroll Audit Department will be glad to take your questions regarding the listed topics. If you cannot get your question resolved, please feel free to contact Curt Weller, Director of Payroll or Linda Dougherty, Assistant Director of Payroll at any time.

TOPIC	CONTACT PERSON Backup Person	PHONE NUMBER
Bankruptcies Child Support IRS Levy Social Security Garnishments Student Loans	Zanobia Rhodes Sheli Ruis	713-755-4127 713-755-4118
Deferred Compensation	Sirina Macias Zanobia Rhodes	713-755-4128 713-755-4127
Direct Deposit	Sirina Macias Zanobia Rhodes	713-755-4128 713-755-4127
Employment Verifications	Sirina Macias Sharhonda Cato Jason Vance	713-755-4128 713-755-4122 713-755-4119
W-2 Information	Sheli Ruis	713-755-4118
W-2 Reprints	Employee Website	<a href="http://www.harriscountytexas.gov">www.harriscountytexas.gov</a>
Held Paychecks	Brenda Tucker Sheli Ruis	713-755-4114 713-755-4118
Payroll/Personnel	Janice Mitchell Sheli Ruis	713-755-4115 713-755-4118
Retirement	Sirina Macias Sheli Ruis	713-755-4128 713-755-4118
Worker's Compensation	Sheli Ruis Zanobia Rhodes	713-755-4118 713-755-4127
File Room	Velia Frias Rosa Trevino	713-755-4124 713-755-4789
Main Phone Number Fax Number eFax Number	Payroll Payroll Payroll	713-755-6544 713-755-4130 713-437-4380
At any time, you may contact	Curt Weller Linda Dougherty	713-755-4112 713-755-4828

## HELP LIST

<b>OTHER HELPFUL NUMBERS &amp; INFORMATION</b>		
<b>ORGANIZATION</b>	<b>TOPIC</b>	<b>PHONE NUMBER</b>
<b>Human Resources &amp; Risk Management</b>	<b>Benefits Retirement Employee Relations Workers' Compensation</b>	<b>713-755-7057 713-755-6552 713-755-8740 713-755-8751</b>
<b>Retirement System</b>	<b>Texas County &amp; District Retirement System</b>	<b>1-800-823-7782</b>
<b>Harris County Federal Credit Union</b>	<b>Credit Union</b>	<b>713-755-5160</b>
<b>Deferred Compensation</b>	<b>ING Nationwide AIG Valic</b>	<b>1-800-584-6001 1-877-677-3678 1-800-448-2542</b>

# Public Information Act

# **Public Information Act 2012**

*Newly Elected Officials Seminar*

Susan Fillion  
Assistant County Attorney  
**Office of Harris County Attorney Vince Ryan**  
Harris County, Texas

## **What is “Public Information?”**

- Public Information means information that is collected, assembled, or maintained by or for a governmental body under a law or ordinance or in connection with the transaction of official business. 552.002 (a)
- Forms include: Book, paper, letter, document, email, computer data (i.e. voice, data, or video representation held in computer memory), printout, photograph, film, tape, microfiche or microfilm, map, audio or video recordings, maps, and drawings.

## Information Not Covered by the PIA

- Commercially Available Information - commercial publications, books or resource materials.
- Records of the Judiciary. (552.003 & 552.0035)
- Requests to Conduct Research, Answer Questions, and/or Construct New Records.
- Tangible Items – Tools, Keys, etc.
- Other Types: Litigation Discovery Requests and Subpoenas (552.0055), Inmate Requests (552.028).

## Personal vs. Public Information

- Information Is Within The Scope Of The Act If It Relates To The Official Business Of A Governmental Body And Is Maintained By A Public Official/Employee (552.002[a]).
  - Personal Cellular Telephone Records May Be Subject To The Act Where The Public Official/Employee Uses The Personal Cellular Telephone To Conduct Public Business.
  - Appointment Calendar Owned By Public Official/Employee Is Subject To The Act When It Is Maintained By Another Public Employee And Used For Public Business.
- Personal Emails/Records (ORD 635 [1995]).
  - Personal information unrelated to official business.
  - Created/Maintained by public employee involving de minimis use of governmental resources.

## Public Information Request

- Must be in writing –mail, email or fax.
  - Note: Fax/Email must be *directed* to the designated officer for public information.
- Must request documents in existence at the time of the request.
- Does not need to reference or cite to the Public Information Act.
- Cannot require the use of a specific form to submit the request – e.g. can be typed or written.

## INQUIRY BY GOVERNMENTAL BODY TO REQUESTOR (552.222)

- *May Not:*
  - Inquire Into The Purpose For Which The Information Will Be Used.
- *May:*
  - Request Proper Identification.
  - Ask Requestor To Clarify An Unclear Request.
  - Discuss With The Requestor How The Request May Be Narrowed.

## Super Public Information

- Certain information is public and not excepted from disclosure unless expressly confidential under other law. 552.002(a)
  - Completed report, audit, evaluation or investigation, except as provided by 552.108;
  - Name, sex, ethnicity, salary, title and dates of employment for each employee and officer;
  - Information in an account, voucher, or contract relating to the receipt or expenditure of public funds by a governmental body on completion of the estimate;
  - Description of organization, rules, policies and procedures;
  - Staff manuals and instructions that affect the public;
  - Public court records; and,
  - Settlement Agreements.

## Common Exceptions to Disclosure

- Confidential by Law – 552.101
- Personnel Records – 552.102
- Litigation Records – 552.103
- Attorney Client Communication - 552.107
- Law Enforcement Records - 552.108
- Trade Secrets, Commercial or Financial Information – 552.110
- Employee Records (Home Address, Family Information, Medical, etc.) - 552.117
- Credit/Debit Or Other Access Device information – 552.136

## Deadlines

- **10 Day – Business Deadline (552.301):**
  - Request decision from the Attorney General to withhold information within 10 business days of receipt of the written request.
  - Extension: Notify the Attorney General in writing of intent to request an Attorney General decision within 15 days.
  - Cost estimate if charges exceed \$100.
- **15 Day – Business Deadline (552.301):**
  - Request decision from the Attorney General to withhold information, if extension of time was previously requested.

## Penalties

- Records are presumed public unless compelling reason exists to overcome presumption.
- **Civil Enforcement:**
  - Attorney General May File Writ Of Mandamus Against The Governmental Body. (552.321)
  - Attorney General, District Or County Attorney May Seek Injunctive Relief And/Or A Declaratory Judgment Against The Governmental Body. (552.3215[c])
- **Criminal Penalties:**
  - Misdemeanor Offense If With Criminal Negligence The Officer Fails/Refuses To Provide Public Information. (552.321)
  - \$1000 And/Or Confinement (Not More Than 6 Months).

## Open Records Training

- Applies to Elected or Appointed Official(s) or the Officer(s) for Public Information.
- Official/Officer shall complete a training course (one to two hours) not later than the 90<sup>th</sup> day after the official takes the oath of office or assumes the duties as the public official.
  - Official/Officer may designate a public information coordinator to satisfy the training requirements if the coordinator is responsible for responding to Public Information Act requests.
- Attorney General provides **free training - online and video courses**.
- Attorney General issues certificate of completion.

## Texas Attorney General Contact Information

- Open Government Hotline:  
(877) OPEN TEX – (512) 478-6736
- Cost Questions:  
(888) OR Costs - (512) 475-2497
- Texas Attorney General Website:  
– <https://www.oag.state.tx.us/open/index.shtml>

The End

# OPEN RECORDS

## THE PUBLIC INFORMATION ACT: THE GOOD, THE BAD, AND THE UGLY

November 30, 2012

Presented at:

Newly Elected Officials Seminar

Presented by:

Susan Fillion  
Assistant County Attorney  
Office of Harris County Attorney Vince Ryan

## **THE GOOD – provide transparency to the public.**

We are required to provide transparency to the public of public matters; however, we are not required to create a document or perform legal research to satisfy a request for information. Nor are we required to provide copies of information contained in commercial publications, books, or resource materials. The Act expressly excludes records of the judiciary. Furthermore, standing or running requests for information do not have to be complied with by governmental agencies. Tangible items such as physical evidence, tools, keys, etc... are not “information” under the Act.

## **THE BAD – refusing to do what we are required to do.**

An officer for public information or the officer’s agent commits a misdemeanor offense if with criminal negligence the officer or agent fails or refuses to give access to or provide copies of public information as required by the Act. The punishment is a fine not over \$1,000 and/or confinement in the county jail for not more than six months.

## **THE UGLY – missing a deadline.**

If we plan to assert an exception to disclosure and withhold information, we must request a ruling from the Attorney General within 10 business days of receipt of the request. If we do not request a ruling within the 10 business-day deadline, then the information is presumed public and must be released, unless there is a compelling reason to withhold the information.

# THE TEXAS PUBLIC INFORMATION ACT

## I. PURPOSE

The Public Information Act (Act), originally called the Open Records Act, was passed in 1973 and is now codified in Chapter 552 of the Texas Government Code. The stated purpose of the Act is as follows:

Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each 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 people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy.

TEX. GOV'T CODE ANN. § 552.001(a) (Vernon 2004). The Act was passed to ensure that the people maintain control over their government by remaining informed about government affairs. The Attorney General is required to liberally construe the Act in favor of granting a request for information. *Id.* at § 552.001(b).

## II. WHAT IS PUBLIC INFORMATION?

### A. Definition

According to the Act, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental body and the governmental body owns the information or has a right of access to it. *Id.* at § 552.002(a). **Tangible items such as physical evidence, tools, keys, etc... are not "information" under the Act.**

**B. Information that is Expressly Public and Only Excepted from Disclosure if Expressly Confidential Under Other Law.**

The following categories of information are public information and not excepted from required disclosure under the Act unless they are expressly confidential under 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 (the law enforcement exception);
2. The name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of the governmental body;
3. Information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;
4. The name of each official and the final record of voting on all proceedings in a governmental body;
5. All working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate;
6. The name, place of business, and the name of the municipality to which local sales and use taxes are credited, if any, for the named person, of a person reporting or paying sales and use taxes under Chapter 151, Tax Code;
7. A description of an agency's central and field organizations, including: the established places at which the public may obtain information, submit information requests, or obtain decisions and the employees from whom and the methods by which the public may obtain information, submit information requests or obtain decisions;
8. A statement of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures;
9. A rule of procedure, a description of forms available or the places at which forms may be obtained and instructions relating to the scope and content of all papers, reports, and examinations;

10. A substantive rule of general applicability adopted or issued by an agency as authorized by law, and a statement of general policy or interpretation of general applicability formulated and adopted by an agency;
11. Each amendment, revision, or repeal of information described by items 7-10;
12. Final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases;
13. A policy statement or interpretation that has been adopted or issued by an agency;
14. Administrative staff manuals and instructions to staff that affect a member of the public;
15. Information regarded as open to the public under an agency's policies;
16. Information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege;
17. Information that is also contained in a public court record; and
18. A settlement agreement to which a governmental body is a party.

*Id.* at § 552.022(a).

### **C. Information That is Not Public Information**

Governmental agencies are generally not required to provide copies of information contained in commercial publications, books, or resource materials. The Act expressly excludes records of the judiciary because the Texas Supreme Court provides rules for courts to follow when providing access to court records. *Id.* at § 552.003(1) (B). A governmental body is not required to create a document or perform legal research to satisfy a request for information. *See* Open Records Decision Nos. 347 (1982); 563 (1990). Furthermore, standing or running requests for information do not have to be complied with by governmental agencies.

### III. ENTITIES SUBJECT TO THE ACT

#### A. Governmental Bodies

The Act defines governmental body to include the following entities:

- a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;
- a county commissioners court in the state;
- a municipal governing body in the state;
- a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;
- a school district board of trustees;
- a county board of school trustees;
- a county board of education;
- the governing board of a special district;
- the governing body of a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code;
- the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds; and
- a nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic areas of the state.
- a local workforce development board created under section 2308.253.

TEX. GOV'T CODE ANN. § 552.003(1) (A) (Vernon 2004).

#### B. Open Records Training

The Attorney General prevailed upon the Seventy-ninth Legislature to enact legislation to require public officials to obtain training in open government laws. *See* TEX. GOV'T CODE ANN. § 552.012 (Vernon Supp. 2010). Each public official shall complete a course of training of not less than one and not more than two hours not later than the 90<sup>th</sup> day after the date the public official takes the oath of office or otherwise assumes the person's duties as a public official. However, public officials may designate a public information coordinator to satisfy the training requirements for the public official if the designee is primarily responsible for processing open records request for the

official. Judicial officials and employees are excluded from the training requirement because public access to information maintained by the judiciary is governed by Rule 12 of the Judicial Administration Rules of the Texas Supreme Court. *The training is available on-line at [https://www.oag.state.tx.us/open/og\\_training.shtml](https://www.oag.state.tx.us/open/og_training.shtml).*

#### **IV. HOW DO YOU MAKE A REQUEST FOR PUBLIC INFORMATION?**

##### **A. Writing**

A request for information must be in writing to be enforceable under the Act. Open Records Decision No. 308 (1982). A request must reasonably identify information, but the request does not have to refer to the Act to be valid.

##### **B. Delivery**

The request may be hand delivered, mailed, e-mailed, or faxed. However, requests sent by e-mail or fax must be directed to the designated public information officer for the governmental body or the person designated by that officer. TEX. GOV'T CODE ANN. § 552.301(c) (Vernon Supp. 2008).

##### **C. Copies or Access**

A requestor may ask to examine documents rather than pay for copies. A requestor may obtain information in a particular format, such as on a disk rather than on paper, as long as the governmental body has the technological ability to comply. However, a governmental body is not required to copy information onto material provided by the requestor. *Id.* at § 552.228. A request for public information that requires a governmental body to program or manipulate existing data is not considered a request for the creation of new information. *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681-82 (Tex. App. – Eastland 2000, pet. denied), *see also* § 552.231. Governmental bodies are not required to make copies of copyright protected information, but may allow access to such information and the requestor is charged with complying with copyright law.

##### **D. Cost**

The Act allows governmental bodies to charge for copies of public information. *Id.* at § 552.261. A governmental body may charge for providing copies of information and, if necessary, for personnel time spent redacting confidential information. The usual charge is \$.10 a page and if the request is for more than 50 pages or for documents located in separate buildings, then charges for labor and overhead are allowed. If the cost is estimated to be over \$40, the governmental body is required to send a written,

itemized statement that details all estimated charges that will be imposed, including any allowable charges for labor or personnel costs; and notice of an alternative less expensive way to access the information if one exists. *Id.* at § 552.2615. The statement must also contain a notice advising the requestor that he has 10 business days to respond to the cost estimate by accepting the charges or modifying the request. If the requestor does not respond timely, the request is considered automatically withdrawn. Additionally, the officer for public information may require a deposit or bond for payment of anticipated costs if the estimated charge for the requested copies exceeds (1) \$100, if the governmental body has more than fifteen full-time employees, or (2) \$50, if the governmental body has fewer than sixteen full-time employees. *Id.* at 552.263.

## **V. HOW DOES THE GOVERNMENTAL BODY RESPOND TO A REQUEST?**

### **A. Promptly Produce**

The Act requires that governmental bodies “promptly produce” public information upon receipt of a written request. *Id.* at § 552.221(a). The amount of time allowed varies depending on the amount of information requested, the type of information requested, and whether the information contains confidential information or information subject to one of the Act’s exceptions to disclosure.

### **B. Clarification**

A governmental body may request clarification of a request to properly identify the information. TEX. GOV’T CODE ANN. § 552.222 (Vernon Supp. 2010). When a voluminous amount of information is requested, the governmental body may discuss with the requestor ways to narrow the request. A governmental body may not ask the purpose of the request.

### **C. Deadlines**

#### **1. Additional Time is Needed to Produce the Information**

If a governmental body is unable to produce information within 10 business days, then written notice must be provided within 10 business days to the requestor along with a date and hour within a reasonable time that the information will be available for inspection or duplication. *Id.* at § 552.221(d).

## 2. Cost Estimate to Produce Information

If production of the requested information in a requested format requires computer programming or manipulation of data, the governmental body must provide written notice within 20 business days to the requestor that the information is not available in the requested format and the estimated time and cost to produce the information. *Id.* at § 552.231.

## 3. Request for Attorney General Ruling

If a governmental body plans to assert an exception to disclosure and withhold information, it must request a ruling from the Attorney General within 10 business days. A written notice to the requestor of the request for the Attorney General ruling must be sent within 10 business days. The day(s) that the governmental body is actively clarifying the scope of information requested does not count toward the 10 business day deadline. *Id.* § 552.301. *See* Tex. Att'y Gen. ORD-663 (1999). **If the governmental body does not request a ruling within the 10 business day deadline, then the information is presumed public and must be released, unless there is a compelling reason to withhold the information.** *Id.* at § 552.302.

## 4. Third Party Proprietary Information

If requested information includes a person or entity's proprietary information, then the governmental body must make a good faith attempt to notify the person or entity of the request. TEX. GOV'T CODE ANN. § 552.305 (Vernon 2004). The notification must include a copy of the request and inform the person or entity that they may submit a letter to the Attorney General in support of withholding the proprietary information within 10 business days of the date received by the governmental body.

## 5. After the Attorney General's Ruling

The Attorney General has 45 business days to issue a ruling and must notify the governmental body and the requestor if an additional 10 business day extension is needed. *Id.* at § 552.306. If the Attorney General has ruled that the governmental body must release all or part of the information, the Attorney General expects the governmental body to release the public information within 10 calendar days of the ruling or notify the requestor of the intent to appeal the ruling.

## **6. Appealing the Attorney General's Ruling**

The governmental body may appeal an Attorney General ruling by filing suit in Travis County within 30 calendar days of receipt of the ruling, preferably within 10 calendar days. *See* TEX. GOV'T CODE ANN. § 552.324(b) and § 552.353(b) (3), (c) (Vernon Supp. 2010).

## **VI. CONFIDENTIAL INFORMATION**

The Act does not require the disclosure of information that other law requires to be kept confidential. Release of confidential information constitutes a misdemeanor of official misconduct. TEX. GOV'T CODE ANN. § 552.352(a). Thus, information is excepted from disclosure if it is considered to be confidential by law, either constitutional, statutory, or by judicial decision.

### **A. Examples of Information Confidential Under Other Statutes**

1. Originating telephone numbers and addresses furnished on a call-by-call basis by a service supplier to a 9-1-1 emergency communication district. TEX. HEALTH & SAFETY CODE ANN. § 772.318.
2. Law enforcement records concerning a juvenile offender. TEX. FAM. CODE ANN. § 58.007(c).
3. Any document that evaluates the performance of a teacher or administrator. TEX. EDUC. CODE ANN. § 21.355.
4. Autopsy photographs and x-rays. TEX. CRIM. PROC. CODE ANN. art. 49.25, § 11.
5. Social security number of applicant or holder of license issued by a licensing agency to practice in a specific occupation or profession. TEX. OCC. CODE ANN. § 51.251.
6. Medical records a physician creates or maintains concerning the identity, diagnosis, evaluation, or treatment of a patient by a physician. TEX. OCC. CODE ANN. § 159.002(b).
7. Reports, records, and working papers used or developed in an investigation of alleged child abuse or neglect. TEX. FAM. CODE ANN. § 261.201(a).
8. Certain information relating to the provision of emergency medical services. TEX. HEALTH & SAFETY CODE ANN. § 773.091.

9. Communications between a patient and a mental health professional and records of the identity, diagnosis, or treatment of a mental health patient created or maintained by a mental health professional. TEX. HEALTH & SAFETY CODE ANN. § 611.002.
10. Certain personal information in government operated utility customer's account records if the customer has requested that the utility keep the information confidential. TEX. UTILITY CODE ANN. § 182.052.

## **B. Examples of Information Confidential by Common Law Privacy**

### **1. Intimate and Embarrassing Information**

In *Industrial Foundation of the South v. Texas Industrial Accident Board*, the Texas Supreme Court concluded that information is confidential if it (1) contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and (2) the information is of no legitimate concern to the public. The Attorney General has ruled that the common-law privacy protection afforded by *Industrial Foundation* includes the names of victims of sexual assault and child victims of sexual abuse.

### **2. Financial Information**

Common law privacy protects a person's overall financial status and background financial history. Information regarding a financial transaction between an individual and a governmental body, such as a donation to a public institution, is a matter of legitimate public interest and is not protected under common law privacy. However, when a transaction is not between an employee and the governmental agency, such as employee participation in a deferred compensation plan, then common law privacy protects the information.

### **3. Informer's Privilege**

The informer's privilege allows a governmental body to withhold the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. The privilege furthers the public interest in law enforcement. This is the only confidentiality exception that a governmental body may waive, since

it exists to protect the governmental agency, and not the individual. *Roviaro v. United States*, 353 U.S. 53 (1957),

#### **4. Criminal History**

Criminal history record information compiled by a governmental entity takes on a character that implicates a person's right of privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989).

### **C. Information Protected by Constitutional Privacy**

The United States Constitution protects an individual's interest in independently making certain important personal decisions about matters within the "zones of privacy," and an individual's interest in avoiding disclosure of personal matters to the public or government. The zones of privacy include matters relating to marriage, procreation, contraception, family relationships, and child rearing and education. For matters outside the zones of privacy, courts use a balancing test and weigh the individual's privacy interest against the public's right to know the information.

### **D. Privacy Right Upon Death**

Common law privacy and constitutional privacy rights lapse upon the death of the subject. *See Open Records Decision No. 272 at 1* (1981). Whether statutory privacy provisions remain upon death depends on the particular statute in question.

## **VII. EXCEPTIONS TO DISCLOSURE**

The Act provides exceptions to disclosure so that governmental bodies have the discretion to release or withhold certain information. Many of these exceptions to disclosure are not mandatory, as opposed to confidential information that may not be released. Governmental agencies seeking to withhold information according to one of the Act's exceptions are usually required to obtain a ruling from the Attorney General on the applicability of the exception. Some of the more common exceptions to disclosure are described below.

### **A. Personnel Information**

Information in a personnel file is excepted from required disclosure if release would result in an unwarranted invasion of privacy. TEX. GOV'T CODE ANN. § 552.102. This exception applies to former as well as current employees, but does not apply to applicants. In reality, this exception does not apply to very much information because there is usually a greater public interest in knowing

information about public employees. For example, job reviews, letters of recommendation, reasons for termination, demotion, promotion, and resignation letters are all subject to disclosure. However, personal financial information is excepted, unless it is a transaction between the employee and the governmental agency.

#### **B. Information Relating to Litigation**

Information is excepted from disclosure if it relates to anticipated or pending civil or criminal litigation to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or political subdivision, as a consequence of the person's office or employment, is or may be a party. TEX. GOV'T CODE ANN. § 552.103. This exception prevents the use of the Act as a method of avoiding the rules of discovery used in litigation and allows a governmental body to protect its position in litigation. The litigation exception does not apply to information expressly deemed public under section 552.022 of the Government Code.

#### **C. Information Related to Competition or Bidding**

Information is excepted from disclosure if release would give advantage to a competitor or bidder. The information listed in section 552.022 is excepted under this provision like any other information. TEX. GOV'T CODE ANN. § 552.104.

#### **D. Information Relating to Location or Price of Property**

Information is excepted from disclosure if it relates to the location of real or personal property for a public purpose prior to public announcement of the project or appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property. TEX. GOV'T CODE ANN. § 552.105.

#### **E. Certain Legislative Documents**

A draft or working paper involved in the preparation of proposed legislation is excepted from disclosure. An internal bill analysis or working paper prepared by the governor's office for the purpose of evaluating proposed legislation is also excepted. TEX. GOV'T CODE ANN. § 552.106.

#### **F. Certain Legal Matters**

Information is excepted from disclosure if the Attorney General or an attorney of a political subdivision is prohibited from disclosing the information because of a duty to the client under the Texas Rules of Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional

Conduct, or a court has ordered that the information is prohibited from being disclosed. TEX. GOV'T CODE ANN. § 552.107.

### **G. Certain Law Enforcement Records**

Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if (1) release of the information would interfere with the detection, investigation, or prosecution of crime; (2) the information relates to an investigation that did not result in conviction or deferred adjudication; or (3) the information relates to a threat against a peace officer collected or disseminated under section 411.048; or (4) information prepared by an attorney representing the state in anticipation of or in preparation for criminal litigation or information that reflects the mental impressions or legal reasoning of an attorney representing the state. TEX. GOV'T CODE ANN. § 552.108(a).

An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from disclosure if (1) release would interfere with law enforcement or prosecution; (2) it relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it was prepared by an attorney representing the state in anticipation of or in preparation for criminal litigation or information reflects the mental impressions or legal reasoning of an attorney representing the state. TEX. GOV'T CODE ANN. § 552.108(b).

The law enforcement exception does not except basic information about an arrested person, an arrest, or a crime.

Information concerning complaints against police officers generally may not be withheld under the law enforcement exception. In cities that have adopted chapter 143 of the Local Government Code, information about complaints against city police officers are confidential if the department did not take disciplinary action against the officer or if no just cause was found in the complaint.

### **H. Certain Private Communications of an Elected Office-Holder**

Private correspondence or communication of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy is excepted from disclosure. The standards for determining whether release of the information would be an invasion of privacy are the same as under the common law privacy. TEX. GOV'T CODE ANN. § 552.109.

## **I. Agency Memoranda**

An interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency is excepted from disclosure. This exception includes the deliberative process privilege and the attorney work product privilege. The deliberative process privilege protects information consisting of advice, opinion, or recommendations on policymaking matters of the governmental body. This exception encourages frank and open discussion within agencies. The attorney work product privilege protects information created for trial or in anticipation of litigation and the information consists of or tends to reveal an attorney's mental processes, conclusions, and legal theories. TEX. GOV'T CODE ANN. § 552.111.

## **J. Audit Working Papers**

Generally, an audit working paper of an audit of the state auditor or a state agency or an institution of higher education, a county, a municipality or a school district is excepted from disclosure. TEX. GOV'T CODE ANN. § 552.116 (Vernon Supp. 2010).

## **K. Certain Addresses, Telephone Numbers, Social Security Numbers, and Personal Family Information**

Information that relates to the home address, home telephone number, or social security number, or reveals whether the person has family members is excepted from disclosure if it relates to a current or former official or employee of a governmental body; a peace officer; a security officer commissioned under section 51.212 of the Education Code; a current or former employee of the Texas Department of Criminal Justice; a reserve law enforcement officer, a commissioned deputy game warden, a corrections officer who was killed in the line of duty; a commissioned security officer as defined by section 1702.002 of the Occupations Code; an officer or employee of a community supervision and corrections department. TEX. GOV'T CODE ANN. § 552.117 (Vernon Supp. 2010).

Section 552.117 must be read with 552.024, which requires employees of governmental bodies to choose whether to allow access to the information in the custody of the governmental body that relates to their home address, home telephone, or that reveals whether they have family members. Thus, employees are required to inform the main personnel officer of their choice in a signed writing within 14 days of (1) the beginning of employment; (2) the official is elected or appointed; or (3) the former employee or official ends service with the governmental body.

**L. Confidentiality of Addresses, Telephone Numbers, Social Security Numbers, and Personal Family Information of Peace Officers, County Jailers, Security Officers, and Employees of Texas Department Criminal Justice**

Information that relates to the home address, home telephone number or social security number of a peace officer, county jailer, employee of the Texas Department of Criminal Justice, a commissioned security officer, employees of a district attorney, county attorney or municipal attorney whose jurisdiction includes any criminal law or child protective services matters is confidential and may not be disclosed if the individual chooses to restrict access and notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status. A choice made under this exception remains valid until rescinded in writing by the individual. TEX. GOV'T CODE ANN. § 552.1175 (Vernon Supp. 2010).

**M. Photographs of Peace Officers**

A photograph of a peace officer is excepted from disclosure unless the officer is under indictment or charged with an offense by information; the officer is a party in a civil service hearing or a case in arbitration or the photograph is introduced as evidence in a judicial proceeding. TEX. GOV'T CODE ANN. § 552.119 (Vernon Supp. 2010).

**N. Certain Information Submitted by Potential Vendor or Contractor**

Information submitted by a potential vendor or contractor to a governmental body in connection with an application for certification as a historically underutilized or disadvantaged business is excepted from disclosure. The information may be disclosed to a state or local entity only for use relating to verifying an applicant's status as a historically underutilized or disadvantaged business or to conduct a study of a public purchasing program established under state law or with written permission of the applicant. TEX. GOV'T CODE ANN. § 552.128.

**O. Motor Vehicle Inspection Information**

A record created during a motor vehicle emissions inspection that relates to an individual vehicle or the owner of the vehicle is excepted from disclosure. TEX. GOV'T CODE ANN. § 552.129.

#### **P. Motor Vehicle Records**

Information relating to a motor vehicle driver's license or permit issued by the state; a motor vehicle title or registration; or a personal identification document is excepted from disclosure. TEX. GOV'T CODE ANN. § 552.130.

#### **Q. Crime Victim or Claimant Information**

Information is excepted from disclosure if it relates to the name, social security number, address, or telephone number of a crime victim or claimant who has filed an application for compensation and elected in writing not to allow public access to the information. If the crime victim or claimant is awarded compensation under Section 56.34, Code of Criminal Procedure, the amount of the compensation and the name of the victim are not excepted from disclosure. TEX. GOV'T CODE ANN. § 552.132 (Vernon Supp. 2010).

#### **R. Government Information Related to Security Issues for Computers**

Information is excepted from disclosure if it relates to computer network security or to the design, operation, or defense of a computer network. TEX. GOV'T CODE ANN. § 552.139.

#### **S. Confidentiality of Credit Card, Debit Card, Charge Card, and Access Device Numbers.**

A credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential. TEX. GOV'T CODE ANN. § 552.136.

#### **T. Confidentiality of Certain E-Mail Addresses**

An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure, unless the member of the public affirmatively consents to its release. TEX. GOV'T CODE ANN. § 552.137. However, the following email addresses are all public information: a government employee's work email address; a business' general email address or website address; the email address of a person who has a contractual relationship with the governmental body; the email address provided to the governmental body by a vendor seeking to contract with the governmental body; an email address contained in a response for a request for bids or proposals ; and the email address provided to the governmental body on letterhead, coversheets, or printed documents made available to the public.

#### **U. Social Security Number of Living Person**

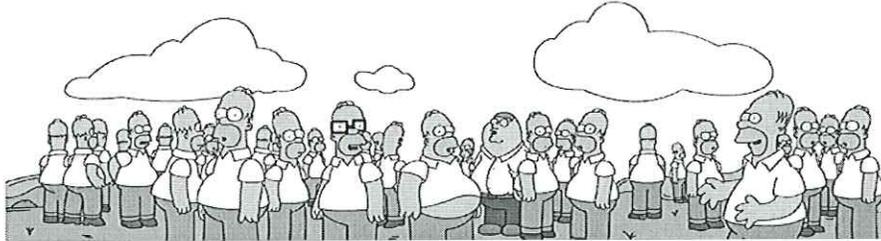
The social security number of a living person is confidential. A governmental body may redact the social security number of a living person from any information the governmental body discloses without the necessity of requesting a decision from the Attorney General. *Id.* at § 552.147.

### **VIII. PENALTIES**

An officer for public information or the officer's agent commits a misdemeanor offense if with criminal negligence the officer or agent fails or refuses to give access to or provide copies of public information as required by the Act. The punishment is a fine not over \$1,000 and/or confinement in the county jail for not more than six months.

# Nepotism/Prohibited Relationships

# NEPOTISM



Scott Durfee

Harris County District Attorney's Office

## Section 573.041, Government Code



Cannot:

- Appoint
- Confirm appointment
- Vote for appointment/confirmation

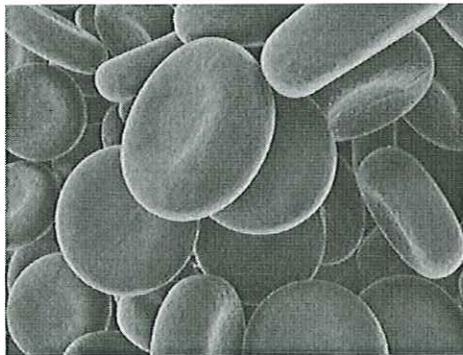
Section 573.041, Government Code



Person directly  
or indirectly  
compensated by  
public funds

**IF**

Section 573.041, Government Code



You are  
related to 3<sup>rd</sup>  
degree of  
consanguinity  
(blood)

or

Section 573.041, Government Code



You are  
related to 2<sup>nd</sup>  
degree of  
affinity  
(marriage)

Section 573.084, Government Code



**Penalty**

\$100 to \$1000  
fine

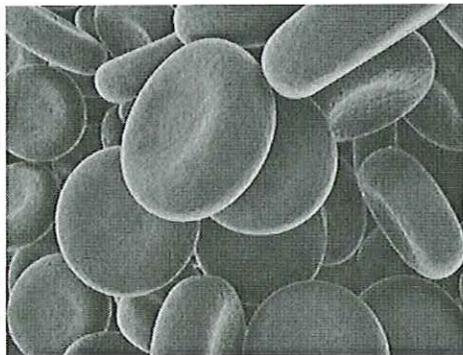
## Section 573.084, Government Code



### Penalty

Official  
misconduct  
and removal.

## Consanguinity

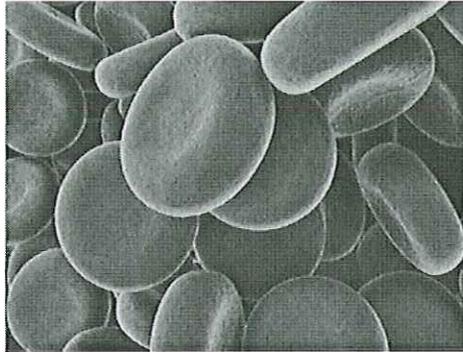


### 1<sup>st</sup> Degree

Parents and  
Children

\* Includes  
adoptive.

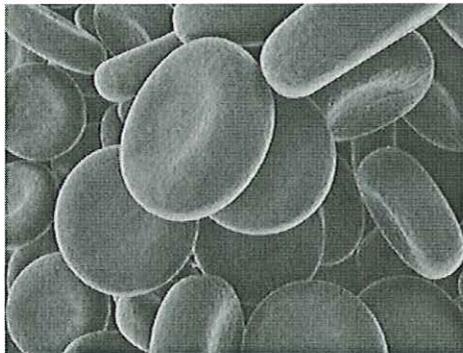
## Consanguinity



### 2<sup>nd</sup> Degree

Brothers,  
sisters,  
grandparents,  
grandchildren.

## Consanguinity



### 3<sup>rd</sup> Degree

Uncle or aunt,  
nephew or  
niece, great-  
grandparent,  
great-  
grandchild.

## Affinity



### 1<sup>st</sup> Degree

Spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, step-parent, or step-child

## Affinity



### 2<sup>nd</sup> Degree

Employee's brother-in-law, sister-in-law, spouse's grandparent, spouse's grandchild, employee's grandparent, or spouse of employee's grandchild.

## Tips

1. Don't hire your relatives.
2. Make sure your applications inquire whether the applicant is related to a public official.
3. If there's a relative already there when you take office, check Section 573.062 to see if you can keep him or her.

## Tips

4. When in doubt, call your County Attorney.

