

AN ILLUSION OF PRIVACY?

EXPLORING RECENT EMPLOYEE CONFIDENTIALITY ISSUES AND RELATED RECENT LEGISLATIVE AND LEGAL DEVELOPMENTS

INTRODUCTION

In an era of rapidly evolving technology and an ever-shifting political, social, and economic landscape, it is imperative that an employer, especially those in the public sector, know how to protect themselves and their employees when it comes to employee privacy issues. The issue of privacy is central to the employer-employee relationship and mishandling of privacy issues can and likely will lead not only to distrust but, potentially, to costly litigation. In that context, this paper provides a detailed review and analysis of recent case law and legislative developments relating to certain areas of the often competing interests of employee privacy and an employer's need to know. The presentation will address recent areas of conflict, including topics relating to disclosure under the Texas Public Information Act, recent legislative changes regarding genetic information and discrimination, and employee monitoring, as well as how the law has addressed same. Most importantly, this paper will hopefully afford some insight into what savvy Human Resources Departments need to know and understand in order to protect themselves and their employees. While this paper is not intended to be fully exhaustive of all current privacy issues in employment law, the authors hope this survey of recent privacy issues of interest proves useful.

I. RELEASING INFORMATION UNDER THE PUBLIC INFORMATION ACT

A repeated concern for human resource managers across Texas involves balancing the privacy rights of their employees with the potential release of employee information under the Texas Public Information Act, Texas Government Code §§ 552.001, *et seq.* Liability exposure for the employer comes from both sides in these cases, though the Texas Attorney General's

Open Records Division and Texas courts provide some measure of guidance and protection. The Texas Public Information Act as you likely recall, is grounded in public policy dictating that every individual is entitled to complete information regarding governmental affairs and the official acts of public officials and employees, unless otherwise provided by law.¹ Under the Act, “Public Information” is defined as “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it.”² Whether an exception applies under the Act to support the withholding of public information is a question of law.³ A governmental agency which withholds documents under an exception bears the burden of proving the exception applies.⁴

However, keep in mind that the law allows employees to elect to withhold certain personal information, for example, under §§ 552.102 and 552.117 of the Act. Employers must make sure to afford and document such opportunities. Under § 552.102(a), “[I]nformation is excepted...if it is information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.” Similarly, § 552.117 allows employees to withhold “information that relates to the [employee’s] home address, home telephone number, or social security number” as well as information

¹ City of Dallas v. Dallas Morning News, 281 S.W.3d 708, 713 (Tex. App. 2009); *see also* TEX GOV’T CODE ANN. § 552.001(a) (Vernon 2004).

² TEX GOV’T CODE ANN. § 552.002(a) (Vernon 2004).

³ Simmons v. Kuzmich, 166 S.W.3d 342, 345-46 (Tex. App.--Fort Worth 2005, no pet.); City of Fort Worth v. Cornyn, 86 S.W.3d 320, 323 (Tex. App.--Austin 2002, no pet.).

⁴ Abbott v. Texas Dep’t of Mental Health and Mental Retardation, 212 S.W.3d 648, 655 (Tex. App.--Austin 2006, no pet.); Thomas v. Cornyn, 71 S.W.3d 473, 489-90 (Tex. App.--Austin 2002, no pet.).

regarding the status of government-employed relatives. Section 552.1175 applies such protection to certain employees involved in law enforcement. *See* Appendix “A” for a comprehensive list of exceptions to disclosure under the Texas Public Information Act.

The question of employee confidentiality also comes to bear on matters of employee discipline in determining whether a public employee is entitled to due process before the government entity may take adverse action against its employee. If the government releases information that stigmatizes a public employee in connection with an adverse personnel action, the disclosure may implicate a liberty interest and triggers a right to due process (usually a “name-clearing” hearing). Information kept confidential, however, cannot stigmatize the individual and no process is due.⁵

In the context of disciplinary action, generally caution is called for if released information affects the employee’s good name, honor, or integrity. Mere assertions of inadequate performance, incompetence, neglect of duty or malfeasance are insufficient.⁶ “Liberty is not infringed by a label of incompetence or a failure to meet a specified level of management skills, which would only affect one’s professional life and force one down a few notches in the professional hierarchy.”⁷

“Under the common law right of privacy, an individual has the right to be free from the publicizing of the individual’s private affairs when the public has no legitimate concern.”⁸ In

⁵ Bishop v. Wood, 426 U.S. 341 (1976).

⁶ Patterson v. City of Utica, 370 F.3d 322 (2nd Cir. 2004); Hutchinson v. CIA, 393 F.3d 226 (D.C. Cir. 2005); Ludwig v. Board of Trustees, 123 F.3d 404 (6th Cir. 1997); Randall v. United States, 30 F.3d 518 (4th Cir. 1994), *cert. denied*, 514 U.S. 1107 (1995).

⁷ Mitchell v. Glover, 996 F.2d 164, 167 (7th Cir. 1993) (citation omitted); Stodgill v. Wellston School Dist., 512 F.3d 472 (8th Cir. 2008).

⁸ Austin Chronicle Cor. v. City of Austin, 2009 Tex. App. LEXIS 1381 (Tex. App. Austin Feb. 24 2009); *see also* Industrial Found. of the South v. Texas Ind. Acc. Bd., 540 S.W.2d 668, 682 (Tex. 1976) (citing Billings v. Atkinson, 489 S.W.2d 858, 859 (Tex. 1973)).

Industrial Foundation, the Texas Supreme Court stated that the relationship between the common law right of privacy and disclosure under the Act:

[I]f a governmental unit's action in making its records available to the general public would be an invasion of an individual's freedom from the publicizing of his private affairs, then the information in those records should be deemed confidential by judicial decision under [] the Act. . . . Webster's Third International Dictionary defines "confidential" as "known only to a limited few: not publicly disseminated: PRIVATE, SECRET." These are precisely the characteristics which information protected by this branch of the tort invasion of privacy must have.

To summarize: [public information] is excepted from mandatory disclosure under the [Act] as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. If the information meets the first test, it will be presumed that the information is not of legitimate public concern unless the requestor can show that, under the particular circumstances of the case, the public has a legitimate interest in the information notwithstanding its private nature.⁹

In this regard, we advise governmental employers that often discretion is the better part of valor so that allowing a Court to decide scope of disclosure protects the employee as well as the employer.

A recent case is illustrative as to the sorting of public and private information as affected by new technology. In *City of Dallas v. Dallas Morning News*, several reporters with the *Dallas Morning News* (the "News") submitted open record requests for e-mails sent and received by former City Mayor Laura Miller and other City employees.¹⁰ One request, made by reporter Dave Levinthal, asked only for e-mails sent to or received from official City Hall e-mail addresses, including e-mails from Miller's Blackberry. The other inquiry, deemed the Devlin request, sought to obtain e-mails sent to and received from Miller and other employee's official City addresses, as well as e-mails from "accounts **other than their city address** to conduct

⁹ *Industrial Found. of the South*, 540 S.W.2d at 683, 685; *see also* Texas Comptroller of Pub. Accounts v. Attorney Gen. of Tex., 244 S.W.3d 629, 638 (Tex. App.--Austin 2008, pet. filed).

¹⁰ *Dallas Morning News*, 281 S.W.3d at 711.

business.”¹¹ In response, the City objected to the Levinthal request, asserting that e-mails to and from personal e-mail addresses were not public information under the Texas Public Information Act because the City did not own or possess the right to control “most of this information.”¹² The City claimed multiple exceptions to the Devlin request and cited an Attorney General’s opinion, which decided that the asserted exceptions were permissible and records relating to the Devlin request were rightfully withheld. Shortly thereafter, the *News* filed suit.

After filing suit, the *News* served the City with a subpoena for the phone records; however, the trial court quashed the subpoena. Nevertheless, the *News* tried again, this time filing a traditional motion for partial summary judgment, in which a writ of mandamus was requested for the release of e-mails accessible through City of Dallas employee e-mail accounts, including that of the former Mayor. The trial court granted the Motion, “requiring the City to produce all non-excepted e-mails and declaring that the information responsive to the Levinthal and Devlin requests is public information under the Act, ‘including but not limited to e-mail of Mayor Miller and other city officials and employees to or from Blackberry or similar devices, or to or from e-mail accounts **other than those with City Hall addresses**, made in connection with the transaction of official business, regardless of whether such e-mails passed through or were processed by City e-mail servers.’”¹³ Following a non-jury trial, the *News* was awarded attorney’s fees.

On appeal, the City contended that the trial court improperly granted the *News*’ motion. The Austin Court of Appeals noted that the central issue was whether then-Mayor Miller’s Blackberry e-mails, which never travel through the City’s server, are public information under

¹¹ *Id.* (emphasis added).

¹² *Id.*

¹³ *Id.* at 712. (emphasis added).

the Act.¹⁴ The Appellate Court held that the *News* could not meet its summary judgment burden of showing public information existed that the City had refused to produce, thereby reversing the decision of the lower court, and remanding the case for further proceedings. The court noted that even if Mayor Miller had used her Blackberry for official business on occasion, the *News* failed to demonstrate conclusively that public information responsive to its requests existed. More specifically, the Court could not determine “what the terms of the personal account [were]; who [had] a right of access to the device or account; what type of access, if any, exists; whether the City [had] any policies or contracts relating to personal e-mails or accounts; whether any e-mails exist falling within the *News*’ requests; or other information relevant to inquiries explored in addressing the public’s open records rights.”¹⁵ While no final decision has yet been handed down after remand, the Court’s opinion is important because it provides relatively clear guidelines for which to review such public information requests and points to a need for city policy on potential commingling of public and private information.

Thus, the above case should serve as a benchmark to reassess any pertinent City policies (or to draft them if none exist), and the various unintended consequences which can arise with the advent of new technology under the Texas Public Information Act. More importantly, the case serves as a guideline for handling your inquiries relating to e-mails and other electronic data. It is vital that you know and understand what information the request intends for you to provide and whether such information can be provided. With respect to the presence of new technology and related social networks, we anticipate many other similar circumstances to come

¹⁴ *Id.* at 713.

¹⁵ *Id.* at 717; *see also* Flagg v. City of Detroit, 252 F.R.D. 346, 348 (E.D. Mich. 2008) (City of Detroit entered into contract for text messaging services with non-party service provider for text messaging devices and corresponding services to various city officials and employees); TEX ATT’Y GEN. ORD-3778 (1999) (factors relevant in deciding whether document is governmental or personal include: who prepared document; nature of document contents; purpose or use for document; who possessed document; who had access; whether governmental body required its preparation; whether its existence was necessary to or in furtherance of official business).

to pass such as the circumstances faced in the above-noted case. With this in mind and as we have noted above, we have provided a comprehensive list of the available exceptions to disclosure under the Act, and have attached that list hereto as Appendix “A”. It is our hope that you find this list useful during your daily practice.

II. GENETIC INFORMATION NON-DISCRIMINATION ACT AND RELATED TEXAS JURISPRUDENCE

Among the recent legislative changes of import to public employers and further affecting employee privacy is the Genetic Information Non-Discrimination Act (“GINA”).¹⁶ GINA was introduced on May 21, 2008, the purpose of which was to calm fears that modern advances in genetic technology could soon lead to discrimination, specifically, discrimination in employment. More specifically, however, the Act intends to:

“prohibit the improper use of genetic information in health insurance and employment...[and also to] prohibit group health plans and health insurers from denying coverage to a healthy individual or charging that person higher premiums based solely on a genetic predisposition to developing a disease in the future. The legislation also would bar employers from using individuals’ genetic information when making hiring, firing, job placement, or promotion decisions.”¹⁷

Even more plainly, in light of recent genetic testing breakthroughs, GINA exists to prohibit three particular possibilities:

1. Prohibit medical insurance companies from discriminating against an applicant on the basis of an applicant’s genetic information;
2. Prohibit medical insurance companies from requesting that applicants for health coverage plans be genetically tested; and,
3. Prohibit employers from using genetic information to refuse employment, and prohibit them from collecting such data.

¹⁶ PUB.L. 110-233, 122 STAT. 881, ENACTED May 21, 2008. *See also*, Appendix “B”.

¹⁷ Statement of Administration policy, Executive Office of the President, Office of Management and Budget, April 27, 2007.

GINA is applicable only to employers with 15 or more employees. The Act “defines ‘genetic test’ as an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes.”¹⁸ It bears mention that the Act does not protect “the results of routine tests that do not measure DNA, RNA, or chromosomal changes, such as complete blood counts, cholesterol tests, and liver-function tests.”¹⁹ Note that tests for drugs and alcohol will likely not constitute genetic tests.²⁰ Moreover, genetic information does not include the sex or age of an individual. The Act is not retroactive, and, thus, cannot be applied to acts or omissions prior to its **effective date of November 21, 2009**. Under the Act, employers are prohibited from:

- (a) Discriminating against any employee or prospective employee because of the employee’s genetic information;
- (b) Engaging in retaliation against an employee for opposing any action made unlawful by this Act; and,
- (c) Requesting, requiring, or purchasing genetic information with respect to an employee or a family member of an employee.²¹

In addition to the above-noted prohibitions on discrimination, and using the information for any other general employment decisions (i.e., hiring, firing, promotions, etc.), the Act further prohibits the segregation or classification of employees in any way based on genetic testing results.²²

¹⁸ National Human Genome Research Institute and Department of Health and Human Services, *The Genetic Information Non-Discrimination Act of 2008 - Information for Researchers and Health Care Professionals*, 6 April 2009, available at: <http://www.genome.gov/Pages/PolicyEthics/GeneticDiscrimination/GINAInfoDoc.pdf>.

¹⁹ *Id.*

²⁰ 29 CFR 1635.3(f): Genetic Test. (EEOC proposed regulation).

²¹ P.L. 110-233 (2008).

²² HR Hero, *Genetic Information Non-Discrimination Act of 2008 – GINA; HR Hero Hot Topics*, available at: <http://www.hrhero.com/topics/gina.html>.

While GINA is often hailed for being the initial step in promoting the “implementation of genetic diagnostics” and also for “stimulating the personalized medicine industry,”²³ it is not without a number of potential problems.²⁴ Tera Eerkes, the founder of Qtrait, a personal genetic testing company, notes several potential privacy shortcomings with GINA, including:

First, this measure does not prevent genetic discrimination against people when they are applying for life insurance, or long term care and disability insurance. So, there are still some important gaps in protection and thus there may still be reasons people want to keep their genetic information out of their medical record.

Second, it is not clear to me if or how this legislation will supersede the individual state regulations regarding discrimination, which can vary widely. It will probably take some years to resolve this, and I worry that in the worst-case scenario, some people may be the victims of discrimination while this is worked out in the courts.

Lastly, this legislation is likely to lead to a surge in demand for personal genetic testing. What has not been addressed, by this or any other measure that I know of, is the possible institutional misuse of genetic information. For example, some personal genetic testing companies include contractual clauses that lets them use and sell their clients genetic information to outside parties.²⁵

While it remains to be seen whether Eerkes’ fears regarding GINA will materialize, she is reasonable in several of her concerns. At this stage, it is clear that GINA will **not** apply to life insurance or long-term care or disability insurance, which could lead to future conflicts as genetic testing proliferates, new generations appear, and people seek and require such coverage.²⁶ Eerkes also makes a strong point about the misuse of genetic information. This issue could be especially problematic for less educated employees, as they could be taken

²³ Resnik, David, *GINA — A big step toward personalized medicine*, Mass Tech High: The Journal of New England Technology, August 22, 2008, available at: <http://www.masshightech.com/stories/2008/08/18/newscolumn5-GINA--A-big-step-toward-personalized-medicine.html>

²⁴ Keim, Brandon, *Genetic Protections Skimp on Privacy, Says Gene Tester*, WIRED SCIENCE, May 23, 2008, available at: <http://www.wired.com/wiredscience/2008/05/genetic-protect/>.

²⁵ *Id.*

²⁶ National Human Genome Research Institute and Department of Health and Human Services, *The Genetic Information Non-Discrimination Act of 2008 - Information for Researchers and Health Care Professionals*, 6 April 2009, available at: <http://www.genome.gov/Pages/PolicyEthics/GeneticDiscrimination/GINAInfoDoc.pdf>.

advantage of, by both genetic testing companies and the employers who contract with them, with little idea of the impact of the contractual language they have agreed to.

Another important byproduct of this legislation for employers to be aware of is the manner in which it changes how an employer manages their pre-employment practices under the Americans with Disabilities Act (“ADA”). Previously, under the ADA, an employer was permitted to “obtain family medical history or conduct genetic tests of job applicants once an offer of employment has been made, provided [it was] done for all entering employees in the same job category.”²⁷ **Under GINA, this pre-employment measure will no longer be permitted.** Also, while an employer may not request, require or purchase genetic information from a potential employee or employee, certain inadvertent disclosures or acquisitions of genetic information by the employer (the “water cooler” exceptions) are excluded. For instance, this type of disclosure may occur “where a supervisor overhears a conversation between co-workers in which genetic information is discussed or receives genetic information in response to a question about the general health of an employee or employees family member, or where an employer receives genetic information as part of documentation an employee submits in support of a request for reasonable accommodation under the ADA or other similar law.”²⁸

Economic damages for those employees who are discriminated against under the Act could be significant. Under the Act, employees will be entitled to the same remedies that they would be with a Title VII claim. Moreover, a party may also seek reinstatement, hiring, promotion, back pay, injunctive relief, pecuniary and non-pecuniary damages (including

²⁷ The U.S. Equal Employment Opportunity Commission, *Background Information for EEOC Notice of Proposed Rulemaking On Title II of the Genetic Information Non-Discrimination Act of 2008*, available at: http://www.eeoc.gov/policy/docs/qanda_geneticinfo.html#fn1.

²⁸ *Id.*

compensatory and punitive damages) and attorneys' fees and costs.²⁹ "Title VII's cap on combined compensatory and punitive damages also applies to actions under Title II of GINA," which is based on the number of employees an employer maintains.³⁰ Punitive damages are not available against federal, state, or local government employers.³¹

Interestingly, Texas has had its own genetic discrimination act on the books since 1997.³² Like many federal statutes, all states must comply with GINA, but may employ even more stringent methods by their own measure. It remains to be seen as to whether courts will interpret the standards in Texas to be stricter than those required under GINA, although at the forefront, there would appear to me several parallels of permitted use of genetic information. In Texas, discriminatory use of genetic information is prohibited on the basis of genetic information concerning the individual or because of the refusal of the individual to submit to a genetic test in the following circumstances:

(a) An employer commits an unlawful employment practice if the employer fails or refuses to hire, discharges, or otherwise discriminates against an individual with respect to compensation or the terms, conditions, or privileges of employment:

(b) A labor organization commits an unlawful employment practice if the labor organization excludes or expels from membership or otherwise discriminates against an individual

(c) An employment agency commits an unlawful employment practice if the employment agency classifies or refers for employment, fails or refuses to refer for employment, or otherwise discriminates against an individual:

(d) An employer, labor organization, or employment agency commits an unlawful employment practice if the employer, labor organization, or employment agency limits, segregates, or classifies an employee, member, or applicant for employment or membership in a way that would deprive

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² TEX. LAB. CODE § 21.402 (2009).

or tend to deprive the employee, member, or applicant of employment opportunities or otherwise adversely affect the status of the employee, member, or applicant.³³

Additionally, under Section 21 of the Texas Labor Code, genetic information is confidential and privileged regardless of the source of the information. Importantly, “a person who holds genetic information about an individual may not disclose or be compelled to disclose, by subpoena or otherwise, that information unless the disclosure is specifically authorized” by statute.³⁴ This would implicate the Public Information Act’s §552.101 which protects information from disclosure if disclosure is prohibited by other statutes. Note that disclosure of such genetic information in violation of this statute is punishable up to \$10,000 in fines, not to mention reasonable attorney’s fees and court costs.³⁵ There are, however, multiple exceptions to these confidentiality rules.

Under § 21.4031 of the Texas Labor Code, genetic information may be disclosed without authorization if the disclosure is: authorized under a state or federal criminal law relating to: the identification of individuals; or a criminal or juvenile proceeding, an inquest, or a child fatality review by a multidisciplinary child-abuse team; required under a specific order of a state or federal court; for the purpose of establishing paternity as authorized under a state or federal law; made to provide genetic information relating to a decedent and the disclosure is made to the blood relatives of the decedent for medical diagnosis; or made to identify a decedent.

Genetic information may also be disclosed without an authorization under Section 21.4032 if “the disclosure is for information from a research study in which the procedure for obtaining informed written consent and the use of the information is governed by national

³³ *Id.*

³⁴ *Id.* at § 21.403(b). An individual (or an individual’s representative) may disclose information in writing, if they detail a description of the information to be disclosed, who it is being disclosed to, and the purpose of disclosure.

³⁵ *Id.* at § 21.403(d).

standards for protecting participants involved in research projects”;³⁶ “the information does not identify a specific individual”;³⁷ or “the information is provided to the Texas Department of Health to comply with the Texas Health and Safety Code.”³⁸

Technological innovation has allowed us the ability to possibly crack our own genetic codes and provide medical care specific to our own genetic needs, but, unfortunately, this technology did not come with a guide as to how to handle employee privacy rights in acquiring and using the information. GINA, and similarly, Texas’ current labor standards, exist to attempt to protect employees from their employers and from themselves. At this stage, it is difficult to tell whether the law will be effective as intended. However, as employers, you must be aware of what the laws provide and what they prohibit. Undoubtedly, these rules and regulations will be subject to heavy revisions as cases involving this and related topics traverse our court systems in the next several decades.

III. EMPLOYEE MONITORING

Another important set of privacy issues are those dealing with employee monitoring.³⁹ Employee monitoring occurs in many shapes and forms. Employers can (and do) monitor phone usage, e-mails, general internet use, and work sites via video cameras. The right to do so should be spelled out in city policies and employee handbooks and acknowledged by the employee. Whether an employee has a constitutionally protected reasonable expectation of privacy is determined by an analysis under the Fourth Amendment.⁴⁰ An employee has a reasonable

³⁶ *Id.* at § 21.4031(b).

³⁷ *Id.*

³⁸ *Id.*

³⁹ Texas courts generally recognize three types of invasion of privacy claims, including: “(1) intrusion upon one’s seclusion or solitude or into one’s private affairs, (2) public disclosure of embarrassing private facts, and (3) wrongful appropriation of one’s name or likeness.” *Austin Chronicle Cor.*, 2009 Tex. App. LEXIS 1381, *15; *See also*, *Cain v. Hearst Corp.*, 878 S.W.2d 577, 578 (Tex. 1994); *Industrial Found. of the South v. Texas Indus. Acc. Bd.*, 540 S.W.2d 668, 682-83 (Tex. 1976) (quoting William L. Prosser, *Privacy*, 48 Cal. L. Rev. 383, 389 (1960)).

⁴⁰ *United States v. Ward*, 561 F.3d 414, 417 (5th Cir. 2009).

expectation of privacy if he or she is able to demonstrate reasonable subjective and objective bases for such privacy with respect to his or her work.⁴¹ A public employee’s “expectation of privacy may be reduced by office practices, procedures, or legitimate regulation”⁴² (which should be spelled out). Therefore, a public employee’s privacy interest in his or her place of employment is far more limited than those privacy rights afforded to the employee at home or with respect to other aspects of his or her personal life.⁴³ Consequently, public employers, including governmental entities, and, in particular, human resource managers for such entities, must understand the limits and restrictions on employee monitoring.

A. Monitoring Phone Usage

Under the Federal Wiretap Act, employees have a limited right to privacy in their telephone and voice messaging usage.⁴⁴ The Act, which has been amended numerous times over recent years to broaden the scope of violations of personal privacy,⁴⁵ provides protection to employees with respect to both intercepted communications⁴⁶ and stored communications.⁴⁷ In particular § 2520, provides that “any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity, other than the United States, which engaged in that violation such relief as may be appropriate.”⁴⁸ In return, the Act also allows a defendant the benefit of a good faith defense, if the defendant can demonstrate reliance on one of the following: “a court warrant or order (thus our recommendation to err on the side of obtaining court validation), a

⁴¹ *Id.*

⁴² *Pack v. Wood County*, 2009 U.S. Dist. 57103, *21 (E.D. Tex. 2009) (citing *O’Connor v. Ortega*, 480 U.S. 709, 717, 107 S. Ct. 1492, 94 L. Ed. 2d 714 (1987)).

⁴³ *Ortega*, 480 U.S. at 725.

⁴⁴ 18 U.S.C. § 2520.

⁴⁵ Andrew Ayers, *The Police Can Do What? Making Local Government Entities Pay for Unauthorized Wiretapping*, 19 N.Y.SCH. HUM.RTS. 651, 679 (2003).

⁴⁶ 18 U.S.C. § 2520.

⁴⁷ *Id.* at § 2707.

⁴⁸ 18 U.S.C. § 2520.

grand jury subpoena, legislative authorization, statutory authorization, a request of an investigative or law enforcement official under section 2518(7), or a good faith determination that section 2511(3) permitted the conduct complained of.”⁴⁹ Texas has similar provisions, codified in Chapter 123 of the Texas Civil Practice and Remedies Code.

The recent decision of *Garza v. Bexar Metro. Water Dist.*⁵⁰ is especially instructive given its involvement with governmental employees under the Act. In *Garza*, Gilbert Garza claimed that while working as a purchasing manager at the Bexar Metropolitan Water District he witnessed several improprieties.⁵¹ After being instructed to ignore the improprieties, Garza resigned, claiming that he was unable to stomach the working conditions. Months after his resignation, the Plaintiff learned that he had been monitored by his apparent supervisors Adolfo Ruiz, Victor Villereal, and Gilbert Olivares. More specifically, Garza’s colleagues listened to his personal calls and the calls of other employees. Upset that his privacy had been violated, Garza brought suit for violations of both the Federal and Texas Wiretap Acts. Garza alleged that the Bexar Met Board of Directors (“Bexar Met”) knew of or should have known of the illegal interceptions, that Garza did not give consent for such monitoring, and Bexar Met had no employee or manager policy which informed managers that their telephone calls would be subject to interception or monitoring. In response, Defendant Bexar Met filed a motion to dismiss arguing primarily that the Federal Wiretap Act did not apply to governmental entities; however, the court, while noting a significant split in authority on the issue, disagreed.

The court found that the majority of federal courts which have entertained the issue “have determined that governmental entities may be held liable for civil damages” under recent

⁴⁹ *Garza v. Bexar Metro. Water Dist.*, 2009 U.S. Dist. LEXIS 21613, *8 (W.D. Tex. Feb. 16 2009); *see also* 18 U.S.C. § 2520(d).

⁵⁰ 2009 U.S. Dist. LEXIS 21613, * (W.D. Tex. Feb. 16, 2009).

⁵¹ *Id.* at *2.

amendments to the Act.⁵² As interpreted by the Sixth Circuit in *Adams v. City of Battle Creek*,⁵³ the definition of “person” under the Act was amended to include entities in 1986. The court found that the amendment would have been “superfluous if it was not intended to include governmental entities.”⁵⁴ Eventually, Congress revised the statute to include governmental entities.⁵⁵ Therefore, because the Act was applicable to governmental entities and because the defendants did not have a good faith defense, the court denied the defendants’ Motion to Dismiss. Similarly, the defendants were denied any relief under the Texas Wiretap Act, which tracks its federal brethren, and defines a “person” under the Act to include the government or any governmental subdivision or agency.⁵⁶

Interestingly, the court also refused to apply the traditional governmental defense of qualified immunity at that stage of litigation because the plaintiff had demonstrated that despite Garza’s expectation of privacy, defendants “had intercepted, listened to and recorded his telephone calls without his knowledge or consent”, and therefore, his privacy had been violated.⁵⁷ Note that the court reiterated that **even though** Bexar Met had an employee handbook which reserved the right to monitor and access any phone or e-mail messages stored on voice or e-mail systems, **the authorization requirements to intercept were quite different from those which allowed access to stored electronic communication**⁵⁸, namely court

⁵² *Id.* at *6. *See also*, *Adams v. City of Battle Creek*, 250 F.3d 980, 985 (6th Cir. 2001); *Williams v. City of Tulsa*, 393 F.Supp.2d 1124, 132-33 (N.D. Okla. 2005); *Conner v. Tate*, 130 F.Supp.2d 1370, 1374-75 (N.D. Ga. 2001); *Dorris v. Absher*, 959 F.Supp. 813, 820 (M.D. Tenn. 1997), *aff’d in part, rev’d in part on other grounds*, 179 F.3d 420 (6th Cir. 1999).

⁵³ 250 F.3d 980, 985 (6th Cir. 2001).

⁵⁴ *Garza*, 2009 U.S. Dist. LEXIS at *7 (citing *Adams*, 250 F.3d at 985).

⁵⁵ *See Adams*, 250 F.3d at 985 (citing S.Rep. No. 541, 99th Cong., 2d Sess. 43 (1986), reprinted in 1986 U.S.C.C.A.N. 3555, 3597).

⁵⁶ TEX. CIV. PRAC. & REM. CODE ANN. § 123.002 (Vernon 2005).

⁵⁷ *Garza*, 2009 U.S. Dist. LEXIS at *10.

⁵⁸ *Id.* (emphasis added); *see*, *Forsyth v. Barr*, 19 F.3d 1527, 1535 (5th Cir. 1994); *see also*, *Steve Jackson Games, Inc. v. U.S. Secret Service*, 36 F.3d 457 (5th Cir. 1994).

approval and oversight. As the Fifth Circuit noted, “there are more stringent, complicated requirements for the interception of electronic communications; a court order is required.”⁵⁹

In light of *Garza*, governmental entities can be sued under both the Federal and Texas Wiretap Acts. Thus, governmental entities must abide by the substantive and procedural requirements for authorization before implementing a wiretap. Foremost, a governmental entity should ensure that it has a global provision in its employee handbook clearly delineating the entity’s right to intercept telephone calls and review stored electronic messages. The government entity should explain these provisions in detail to the employee, and obtain their signature as confirmation and consent. Remember that to legally intercept a call under the Texas Wiretap Act, a governmental entity must first have consent of a party to the communication⁶⁰, or a warrant or court order.

B. Monitoring E-Mails

Unlike telephone calls, employees typically have much less privacy when it comes to the use of electronic data such as e-mails, specifically, those on the employer’s network. It is generally understood, that employers can and will monitor employee internet use and e-mail messages. Employees should be made aware that use of their work e-mail and internet are not actions protected by privacy rights.

The recent case of *Pack v. Wood* provides an instructive example.⁶¹ Larry Pack was a Justice of the Peace for Wood County, Texas. On March 9, 2000, he received notice from an individual in a local school district that a primary candidate for constable, Joe Gidney, had sexually abused a child. Thereafter, Pack reported the abuse to Child Protective Services

⁵⁹ *Steve Jackson Games, Inc.*, 36 F.3d at 463. See 18 U.S.C. § 2518.

⁶⁰ TEX. CIV. PRAC. & REM. CODE ANN. § 123.001 (Vernon 2005); *Kotrla v. Kotrla*, 718 S.W.2d 853, 855 (Tex. App. – Corpus Christi 1986, writ ref’d n.r.e.).

⁶¹ 2009 U.S. Dist. 57103 (E.D. Tex. 2009).

("CPS"). Following an investigation, CPS found the allegations to be unsubstantiated. In response, the Wood County District Attorney subpoenaed Pack to testify as to whether he had committed official misconduct in reporting the allegations to CPS. Though Pack was not indicted for either, he was eventually charged and convicted of aggravated perjury. The conviction was later reversed on appeal. Pack brought an action for malicious prosecution and violation of his Fourth Amendment right to be free from an unreasonable search. Pack's latter claim was based on allegations that several Wood County employees remotely accessed his computer's hard drive from his work office without his authorization and (allegedly) found pornographic files. Pack further alleged that he only had personal e-mails on his work computer and never gave permission to access them.

The court found that the Plaintiff had neither a subjective, nor objective, expectation of privacy in his computer hard drive.⁶² With respect to the subjective expectation of privacy, the court reasoned that the computer used by Pack was in and through his Justice of the Peace Office, it was owned and paid for by Wood County, and was provided to the plaintiff in conjunction with his employment. The court also noted that Pack had not taken any precautions with his work computer, in that he did not have a password to access the computer and he did not lock his office door. With regard to Pack's objective expectation, the court held that because Wood County owned and paid for the computer, Pack had no privacy right therein.⁶³

⁶² *Id.* at *22-23.

⁶³ *Id.* at *24; *see* *United States v. Angevine*, 281 F.3d 1130, 1134 (10th Cir. 2002) ([a]lthough ownership of the item[s] seized is not determinative, it is an important consideration in determining the existence and extent of a defendant's Fourth Amendment interests") (internal quotations omitted), additionally ("[b]ecause the computer was issued to Professor Angevine only for work related purposes, his relationship to the [public] University computer was incident to his employment" and "[r]easonable people in Professor Angevine's employment context would expect University computer policies to constrain their expectations of privacy in the use of University-owned computers"); *see also*, *United States v. Zimmerman*, 303 Fed. Appx. 207, 209 (5th Cir. 2008) ("we conclude Zimmerman did not have an objectively reasonable expectation of privacy in his City-owned workplace computer").

The court in *Pack* makes clear that employers, especially public employers, have a significant amount of leeway when it comes to reviewing their employee's e-mail correspondence and internet usage. Nevertheless, the governmental entity must prepare a detailed policy regarding inspection of employee computer use. The policy should warn employees that they have no expectation of privacy while using their office computer system. Additionally, the policy should detail exactly what type of usages are prohibited. It would also be wise to draft disciplinary actions to be used when violations of the policy occur. Employees should be well-versed in - and agree in writing to - this policy and acknowledge the consequences violating the policy at the time they are hired.

C. Oversight of Employee Use of Social Networks

As noted above, use of the internet while at work is rarely a protected activity, but what about use of other social networks outside of the office, such as MySpace, Facebook and Twitter? Because such information is intentionally posted on a public forum, employees are unlikely to have a reasonable expectation of privacy in these kinds of communications. Nonetheless, a governmental employer should have written a policy regarding the access to and use of these social sites. The use of these sites takes away valuable work time and can possibly disrupt internal network security systems. Additionally, as a general policy, it might also be helpful to review these sites when hiring an employee or if an employee is a candidate for termination. While an employer need not be overzealous in its oversight of its employees, it should not turn a blind eye to these networks, which will continue to play an ever-expanding role in our daily lives.

CONCLUSION

The recent legislative developments and judicial decisions in Texas regarding privacy rights of employees have shaped the legal landscape in a manner which has affected the way in which employers educate, treat, and discipline their employees. As is apparent from the above authorities, it is crucial for employers to have an extremely thorough and well-designed employee handbook and/or new employee training format, which clearly discusses these issues, delineates guidelines relating to employee privacy rights and any limitations to same, and provides a governmental employer with some defense mechanisms. Like any other field of legal study, the area of privacy in an employment context is both controversial and subject to change, especially as technology continues to advance. While privacy will always be a preeminent legal issue in employment law due to privacy rights entrenchment under common law and global application, it is especially vital for employers to keep a close eye on future developments in this field with an eye on rapidly evolving technologies which will greatly affect an employer's plans and policies for their employees. It is with that in mind that the authors sincerely hope the legal practitioner or human resources professional finds this paper to be a useful tool in reviewing, revising and adopting comprehensive privacy guidelines and properly educating their employees on pertinent privacy issues.

APPENDIX "A"

TEXAS PUBLIC INFORMATION ACT EXCEPTIONS TO DISCLOSURE

Texas Government Code Statute Section:	Reason for Exception:
§ 552.101	<p>Confidential Information:</p> <ul style="list-style-type: none"> ○ Information is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.
§552.102	<p>Personnel Information:</p> <ul style="list-style-type: none"> A. 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, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter. The exception to public disclosure created by this subsection is in addition to any exception created by Section 552.024. Public access to personnel information covered by Section 552.024 is denied to the extent provided by that section. B. Information is excepted from the requirements of Section 552.021 if it is a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.
§552.103	<p>Litigation or Settlement Negotiations Involving the State or a Political Subdivision:</p> <ul style="list-style-type: none"> A. Information is excepted from the requirements of Section 552.021 if it is information relating to litigation of a civil or criminal nature 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 a political subdivision, as a consequence of the person's office or employment, is or may be a party. B. For purposes of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and post conviction remedies in state and federal court. C. Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the

	information.
§552.104	<p>Information Related to Competition or Bidding:</p> <p>A. Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.</p> <p>B. The requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under this section.</p>
§552.105	<p>Information Related to Location or Price of Property:</p> <p>o Information is excepted from the requirements of Section 552.021 if it is information relating to:</p> <ol style="list-style-type: none"> 1. the location of real or personal property for a public purpose prior to public announcement of the project; or 2. appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.
§552.106	<p>Certain Legislative Documents:</p> <p>A. A draft or working paper involved in the preparation of proposed legislation is excepted from the requirements of Section 552.021.</p> <p>B. An internal bill analysis or working paper prepared by the governor's office for the purpose of evaluating proposed legislation is excepted from the requirements of Section 552.021.</p>
§552.107	<p>Certain Legal Matters</p> <p>Information is excepted from the requirements of Section 552.021 if:</p> <ol style="list-style-type: none"> 1. it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct; or 2. a court by order has prohibited disclosure of the information.
§552.108	<p>Certain Law Enforcement, Corrections, and Prosecutorial Information:</p> <p>a. Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:</p>

	<ol style="list-style-type: none"> 1. release of the information would interfere with the detection, investigation, or prosecution of crime; 2. it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; 3. it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or 4. it is information that: <ol style="list-style-type: none"> A. is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or B. reflects the mental impressions or legal reasoning of an attorney representing the state. <p>b. 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 the requirements of Section 552.021 if:</p> <ol style="list-style-type: none"> 1. release of the internal record or notation would interfere with law enforcement or prosecution; 2. the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or 3. the internal record or notation: <ol style="list-style-type: none"> A. is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or B. reflects the mental impressions or legal reasoning of an attorney representing the state. <p>c. This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.</p>
§552.109	<p>Certain Private Communications of an Elected Office Holder:</p> <ul style="list-style-type: none"> o Private correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy are excepted from the requirements of Section

	552.021.
§552.110	<p>Trade Secrets; Certain Commercial or Financial Information:</p> <p>A. A trade secret obtained from a person and privileged or confidential by statute or judicial decision is excepted from the requirements of Section 552.021.</p> <p>B. Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is excepted from the requirements of Section 552.021.</p>
§552.111	<p>Agency Memoranda:</p> <ul style="list-style-type: none"> o An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency is excepted from the requirements of Section 552.021.
§552.112	<p>Certain Information Relating to Regulation of Financial Institutions or Securities:</p> <p>A. Information is excepted from the requirements of Section 552.021 if it is information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both.</p> <p>B. In this section, "securities" has the meaning assigned by The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).</p> <p>C. Information is excepted from the requirements of Section 552.021 if it is information submitted by an individual or other entity to the Texas Legislative Council, or to any state agency or department overseen by the Finance Commission of Texas and the information has been or will be sent to the Texas Legislative Council, for the purpose of performing a statistical or demographic analysis of information subject to Section 323.020. However, this subsection does not except from the requirements of Section 552.021 information that does not identify or tend to identify an individual or other entity and that is subject to required public disclosure under Section 323.020(e).</p>
§552.113	<p>Geological or Geophysical Information:</p> <ul style="list-style-type: none"> a. Information is excepted from the requirements of Section 552.021 if it is: <ul style="list-style-type: none"> 1. an electric log confidential under Subchapter M, Chapter 91, Natural Resources Code; [1]

	<ol style="list-style-type: none"> 2. geological or geophysical information or data, including maps concerning wells, except information filed in connection with an application or proceeding before an agency; or 3. confidential under Subsections (c) through (f). <p>b. Information that is shown to or examined by an employee of the General Land Office, but not retained in the land office, is not considered to be filed with the land office.</p> <p>c. In this section:</p> <ol style="list-style-type: none"> 1. "Confidential material" includes all well logs, geological, geophysical, geochemical, and other similar data, including maps and other interpretations of the material filed in the General Land Office: <ol style="list-style-type: none"> A. in connection with any administrative application or proceeding before the land commissioner, the school land board, any board for lease, or the commissioner's or board's staff; or B. in compliance with the requirements of any law, rule, lease, or agreement. 2. "Basic electric logs" has the same meaning as it has in Chapter 91, Natural Resources Code. 3. "Administrative applications" and "administrative proceedings" include applications for pooling or unitization, review of shut-in royalty payments, review of leases or other agreements to determine their validity, review of any plan of operations, review of the obligation to drill offset wells, or an application to pay compensatory royalty. <p>d. Confidential material, except basic electric logs, filed in the General Land Office on or after September 1, 1985, is public information and is available to the public under Section 552.021 on and after the later of:</p> <ol style="list-style-type: none"> 1. five years from the filing date of the confidential material; or 2. one year from the expiration, termination, or forfeiture of the lease in connection with which the confidential material was filed. <p>e. Basic electric logs filed in the General Land Office on or after September 1, 1985, are either public information or confidential material to the same extent and for the same periods provided for the same logs by Chapter 91, Natural Resources Code. A person may request that a basic electric log that has been filed in the General Land</p>
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	<p>Office be made confidential by filing with the land office a copy of the written request for confidentiality made to the Railroad Commission of Texas for the same log.</p> <p>f. The following are public information:</p> <ol style="list-style-type: none"> 1. basic electric logs filed in the General Land Office before September 1, 1985; and 2. confidential material, except basic electric logs, filed in the General Land Office before September 1, 1985, provided, that Subsection (d) governs the disclosure of that confidential material filed in connection with a lease that is a valid and subsisting lease on September 1, 1995. <p>g. Confidential material may be disclosed at any time if the person filing the material, or the person's successor in interest in the lease in connection with which the confidential material was filed, consents in writing to its release. A party consenting to the disclosure of confidential material may restrict the manner of disclosure and the person or persons to whom the disclosure may be made.</p> <p>h. Notwithstanding the confidential nature of the material described in this section, the material may be used by the General Land Office in the enforcement, by administrative proceeding or litigation, of the laws governing the sale and lease of public lands and minerals, the regulations of the land office, the school land board, or of any board for lease, or the terms of any lease, pooling or unitization agreement, or any other agreement or grant.</p> <p>i. An administrative hearings officer may order that confidential material introduced in an administrative proceeding remain confidential until the proceeding is finally concluded, or for the period provided in Subsection (d), whichever is later.</p> <p>j. Confidential material examined by an administrative hearings officer during the course of an administrative proceeding for the purpose of determining its admissibility as evidence shall not be considered to have been filed in the General Land Office to the extent that the confidential material is not introduced into evidence at the proceeding.</p> <p>k. This section does not prevent a person from asserting that any confidential material is exempt from disclosure as a trade secret or commercial information under Section 552.110 or under any other basis permitted by law.</p> <p>[1] Tex. Natural Resources Code § 91.551 et seq.</p>
§552.114	Student Records:

	<p>a. Information is excepted from the requirements of Section 552.021 if it is information in a student record at an educational institution funded wholly or partly by state revenue.</p> <p>b. A record under the Subsection (a) shall be made available on the request of:</p> <ol style="list-style-type: none"> 1. educational institution personnel; 2. the student involved or the student's parent, legal guardian, or spouse; or 3. a person conducting a child abuse investigation required by Subchapter D, Chapter 261, Family Code. [1] <p>[1] Tex. Family Code § 261.301 et seq.</p>
§552.115	<p>Birth and Death Records:</p> <p>a. A birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from the requirements of Section 552.021, except that:</p> <ol style="list-style-type: none"> 1. a birth record is public information and available to the public on and after the 75th anniversary of the date of birth as shown on the record filed with the bureau of vital statistics or local registration official; 2. a death record is public information and available to the public on and after the 25th anniversary of the date of death as shown on the record filed with the bureau of vital statistics or local registration official; 3. a general birth index or a general death index established or maintained by the bureau of vital statistics or a local registration official is public information and available to the public to the extent the index relates to a birth record or death record that is public information and available to the public under Subdivision (1) or (2); 4. a summary birth index or a summary death index prepared or maintained by the bureau of vital statistics or a local registration official is public information and available to the public; and 5. a birth or death record is available to the chief executive officer of a home-rule municipality or the officer's designee if: <ol style="list-style-type: none"> A. the record is used only to identify a property owner or other person to whom the municipality is required to give notice when enforcing a state statute or an ordinance;

	<ul style="list-style-type: none"> B. the municipality has exercised due diligence in the manner described by Section 54.035(e), Local Government Code, to identify the person; and C. the officer or designee signs a confidentiality agreement that requires that: <ul style="list-style-type: none"> i. the information not be disclosed outside the office of the officer or designee, or within the office for a purpose other than the purpose described by Paragraph (A); ii. the information be labeled as confidential; iii. the information be kept securely; and iv. the number of copies made of the information or the notes taken from the information that implicate the confidential nature of the information be controlled, with all copies or notes that are not destroyed or returned remaining confidential and subject to the confidentiality agreement. b. Notwithstanding Subsection (a), a general birth index or a summary birth index is not public information and is not available to the public if: <ul style="list-style-type: none"> 1. the fact of an adoption or paternity determination can be revealed by the index; or 2. the index contains specific identifying information relating to the parents of a child who is the subject of an adoption placement. c. Subsection (a)(1) does not apply to the microfilming agreement entered into by the Genealogical Society of Utah, a nonprofit corporation organized under the laws of the State of Utah, and the Archives and Information Services Division of the Texas State Library and Archives Commission. d. For the purposes of fulfilling the terms of the agreement in Subsection (c), the Genealogical Society of Utah shall have access to birth records on and after the 50th anniversary of the date of birth as shown on the record filed with the bureau of vital statistics or local registration official, but such birth records shall not be made available to the public until the 75th anniversary of the date of birth as shown on the record.
§552.116	<p>Audit Working Papers</p> <ul style="list-style-type: none"> a. An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school

	<p>district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.</p> <p>b. In this section:</p> <ol style="list-style-type: none"> 1. "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation. 2. "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including: <ol style="list-style-type: none"> A. intra-agency and interagency communications; and B. drafts of the audit report or portions of those drafts.
§552.117	<p>Certain Addresses, Telephone Numbers, Social Security Numbers, and Personal Family Information</p> <p>a. Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, or social security number of the following person or that reveals whether the person has family members:</p> <ol style="list-style-type: none"> 1. a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024; 2. a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable; 3. a current or former employee of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with Section 552.1175; 4. a peace officer as defined by Article 2.12, Code of Criminal Procedure, or other law, a reserve law enforcement officer, a

	<p>commissioned deputy game warden, or a corrections officer in a municipal, county, or state penal institution in this state who was killed in the line of duty, regardless of whether the deceased complied with Section 552.024 or 552.1175;</p> <ol style="list-style-type: none"> 5. a commissioned security officer as defined by Section 1702.002, Occupations Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable; or 6. an officer or employee of a community supervision and corrections department established under Chapter 76 who performs a duty described by Section 76.004(b), regardless of whether the officer or employee complies with Section 552.024 or 552.1175. <p>b. All documents filed with a county clerk and all documents filed with a district clerk are exempt from this section.</p>
§552.1175	<p>Confidentiality of Addresses, Telephone Numbers, Social Security Numbers, and Personal Family Information of Peace Officers, County Jailers, Security Officers, and Employees of the Texas Department of Criminal Justice or a Prosecutor's Office</p> <ol style="list-style-type: none"> a. This section applies only to: <ol style="list-style-type: none"> 1. peace officers as defined by Article 2.12, Code of Criminal Procedure; 2. county jailers as defined by Section 1701.001, Occupations Code; 3. current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department; 4. commissioned security officers as defined by Section 1702.002, Occupations Code; 5. employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters; and 6. officers and employees of a community supervision and corrections department established under Chapter 76 who perform a duty described by Section 76.004(b). b. Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter

	<p>if the individual to whom the information relates:</p> <ol style="list-style-type: none"> 1. chooses to restrict public access to the information; and 2. 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. <p>c. A choice made under Subsection (b) remains valid until rescinded in writing by the individual.</p> <p>d. This section does not apply to information in the tax appraisal records of an appraisal district to which Section 25.025, Tax Code, applies.</p> <p>e. All documents filed with a county clerk and all documents filed with a district clerk are exempt from this section.</p>
§552.1176	<p>Confidentiality of Certain Information Maintained by State Bar</p> <p>a. Information that relates to the home address, home telephone number, electronic mail address, social security number, or date of birth of a person licensed to practice law in this state that is maintained under Chapter 81 is confidential and may not be disclosed to the public under this chapter if the person to whom the information relates:</p> <ol style="list-style-type: none"> 1. chooses to restrict public access to the information; and 2. notifies the State Bar of Texas of the person's choice, in writing or electronically, on a form provided by the state bar. <p>b. A choice made under Subsection (a) remains valid until rescinded in writing or electronically by the person.</p> <p>c. All documents filed with a county clerk and all documents filed with a district clerk are exempt from this section.</p>
§552.118	<p>Official Prescription Form</p> <p>Information is excepted from the requirements of Section 552.021 if it is:</p> <ol style="list-style-type: none"> 1. information on or derived from an official prescription form filed with the director of the Department of Public Safety under Section 481.075, Health and Safety Code; or 2. other information collected under Section 481.075 of that code.
§552.119	<p>Photograph of Peace Officer</p> <p>a. A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the</p>

life or physical safety of the officer, is excepted from the requirements of Section 552.021 unless:

1. the officer is under indictment or charged with an offense by information;
2. the officer is a party in a civil service hearing or a case in arbitration; or
3. the photograph is introduced as evidence in a judicial proceeding.

b. A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

§552.120

Certain Rare Books and Original Manuscripts

- o A rare book or original manuscript that was not created or maintained in the conduct of official business of a governmental body and that is held by a private or public archival and manuscript repository for the purpose of historical research is excepted from the requirements of Section 552.021.

§552.121

Certain Documents Held for Historical Research

- o An oral history interview, personal paper, unpublished letter, or organizational record of a nongovernmental entity that was not created or maintained in the conduct of official business of a governmental body and that is held by a private or public archival and manuscript repository for the purpose of historical research is excepted from the requirements of Section 552.021 to the extent that the archival and manuscript repository and the donor of the interview, paper, letter, or record agree to limit disclosure of the item.

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§552.122

Test Items

- a. A test item developed by an educational institution that is funded wholly or in part by state revenue is excepted from the requirements of Section 552.021.
- b. A test item developed by a licensing agency or governmental body is

	excepted from the requirements of Section 552.021.
§552.123	<p>Name of Applicant for Chief Executive Officer of Institution of Higher Education</p> <ul style="list-style-type: none"> ○ The name of an applicant for the position of chief executive officer of an institution of higher education is excepted from the requirements of Section 552.021, except that the governing body of the institution must give public notice of the name or names of the finalists being considered for the position at least 21 days before the date of the meeting at which final action or vote is to be taken on the employment of the person.
§552.1235	<p>Identity of Private Donor to Institution of Higher Education</p> <ul style="list-style-type: none"> a. The name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education or to another person with the intent that the money or property be transferred to an institution of higher education is excepted from the requirements of Section 552.021. b. Subsection (a) does not except from required disclosure other information relating to gifts, grants, and donations described by Subsection (a), including the amount or value of an individual gift, grant, or donation. c. In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.
§552.124	<p>Records of Library or Library System</p> <ul style="list-style-type: none"> a. A record of a library or library system, supported in whole or in part by public funds, that identifies or serves to identify a person who requested, obtained, or used a library material or service is excepted from the requirements of Section 552.021 unless the record is disclosed: <ul style="list-style-type: none"> 1. because the library or library system determines that disclosure is reasonably necessary for the operation of the library or library system and the record is not confidential under other state or federal law; 2. under Section 552.023; or 3. to a law enforcement agency or a prosecutor under a court order or subpoena obtained after a showing to a district court that: <ul style="list-style-type: none"> A. disclosure of the record is necessary to protect the public safety; or

	<p>B. the record is evidence of an offense or constitutes evidence that a particular person committed an offense.</p> <p>b. A record of a library or library system that is excepted from required disclosure under this section is confidential.</p>
§552.125	<p>Certain Audits</p> <ul style="list-style-type: none"> o Any documents or information privileged under the Texas Environmental, Health, and Safety Audit Privilege Act [1] are excepted from the requirements of Section 552.021. <p>[1] Tex. Rev. Civ. Stat. art. 4447cc.</p>
§552.126	<p>Name of Applicant for Superintendent of Public School District</p> <ul style="list-style-type: none"> o The name of an applicant for the position of superintendent of a public school district is excepted from the requirements of Section 552.021, except that the board of trustees must give public notice of the name or names of the finalists being considered for the position at least 21 days before the date of the meeting at which a final action or vote is to be taken on the employment of the person.
§552.127	<p>Personal Information Relating to Participants in Neighborhood Crime Watch Organization</p> <ul style="list-style-type: none"> a. Information is excepted from the requirements of Section 552.021 if the information identifies a person as a participant in a neighborhood crime watch organization and relates to the name, home address, business address, home telephone number, or business telephone number of the person. b. In this section, "neighborhood crime watch organization" means a group of residents of a neighborhood or part of a neighborhood that is formed in affiliation or association with a law enforcement agency in this state to observe activities within the neighborhood or part of a neighborhood and to take other actions intended to reduce crime in that area.
§552.128	<p>Certain Information Submitted by Potential Vendor or Contractor</p> <ul style="list-style-type: none"> a. 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 under a local, state, or federal certification program is excepted from the requirements of Section 552.021, except as provided by this section. b. Notwithstanding Section 552.007 and except as provided by Subsection (c) the information may be disclosed only: <ul style="list-style-type: none"> 1. to a state or local governmental entity in this state, and the state or

	<p>local governmental entity may use the information only:</p> <p>A. for purposes related to verifying an applicant's status as a historically underutilized or disadvantaged business; or</p> <p>B. for the purpose of conducting a study of a public purchasing program established under state law for historically underutilized or disadvantaged businesses; or</p> <p>2. with the express written permission of the applicant or the applicant's agent.</p> <p>c. Information submitted by a vendor or contractor or a potential vendor or contractor to a governmental body in connection with a specific proposed contractual relationship, a specific contract, or an application to be placed on a bidders list, including information that may also have been submitted in connection with an application for certification as a historically underutilized or disadvantaged business, is subject to required disclosure, excepted from required disclosure, or confidential in accordance with other law.</p>
§552.129	<p>Motor Vehicle Inspection Information</p> <ul style="list-style-type: none"> o A record created during a motor vehicle emissions inspection under Subchapter F, Chapter 548, Transportation Code, [1] that relates to an individual vehicle or owner of an individual vehicle is excepted from the requirements of Section 552.021. <p>[1] Tex. Transportation Code § 548.301 et seq.</p>
§552.130	<p>Motor Vehicle Records</p> <p>a. Information is excepted from the requirements of Section 552.021 if the information relates to:</p> <ol style="list-style-type: none"> 1. a motor vehicle operator's or driver's license or permit issued by an agency of this state; 2. a motor vehicle title or registration issued by an agency of this state; or 3. a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document. <p>b. Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.</p>
§552.131	<p>Economic Development Information</p>

	<p>a. Information is excepted from the requirements of Section 552.021 if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:</p> <ol style="list-style-type: none"> 1. a trade secret of the business prospect; or 2. commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. <p>b. Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from the requirements of Section 552.021.</p> <p>c. After an agreement is made with the business prospect, this section does not except from the requirements of Section 552.021 information about a financial or other incentive being offered to the business prospect:</p> <ol style="list-style-type: none"> 1. by the governmental body; or 2. by another person, if the financial or other incentive may directly or indirectly result in the expenditure of public funds by a governmental body or a reduction in revenue received by a governmental body from any source.
§552.132	<p>Confidentiality Of Crime Victim or Claimant Information</p> <p>a. Except as provided by Subsection (d), in this section, "crime victim or claimant" means a victim or claimant under Subchapter B, Chapter 56, Code of Criminal Procedure, [1] who has filed an application for compensation under that subchapter.</p> <p>b. The following information held by the crime victim's compensation division of the attorney general's office is confidential:</p> <ol style="list-style-type: none"> 1. the name, social security number, address, or telephone number of a crime victim or claimant; or 2. any other information the disclosure of which would identify or tend to identify the crime victim or claimant. <p>c. If the crime victim or claimant is awarded compensation under Section 56.34, Code of Criminal Procedure, as of the date of the award of compensation, the name of the crime victim or claimant and the amount of compensation awarded to that crime victim or claimant are public information and are not excepted from the requirements of</p>

	<p>Section 552.021.</p> <p>d. An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the victim, including a photograph or other visual representation of the victim. An election under this subsection must be made in writing on a form developed by the governmental body, be signed by the employee, and be filed with the governmental body before the third anniversary of the latest to occur of one of the following:</p> <ol style="list-style-type: none"> 1. the date the crime was committed; 2. the date employment begins; or 3. the date the governmental body develops the form and provides it to employees. <p>e. If the employee fails to make an election under Subsection (d), the identifying information is excepted from disclosure until the third anniversary of the date the crime was committed. In case of disability, impairment, or other incapacity of the employee, the election may be made by the guardian of the employee or former employee.</p> <p>[1] Vernon's Ann.C.C.P. art 56.31 et seq.</p>
§552.1325	<p>Crime Victim Impact Statement: Certain Information Confidential</p> <p>a. In this section:</p> <ol style="list-style-type: none"> 1. "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure. 2. "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure. <p>b. The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:</p> <ol style="list-style-type: none"> 1. the name, social security number, address, and telephone number of a crime victim; and 2. any other information the disclosure of which would identify or tend to identify the crime victim.
§552.133	Public Power Utility Competitive Matters

a. In this section:

1. "Public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter
2. "Public power utility governing body" means the board of trustees or other applicable governing body, including a city council, of a public power utility.
3. "Competitive matter" means a utility-related matter that the public power utility governing body in good faith determines by a vote under this section is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors but may not be deemed to include the following categories of information:
 - A. information relating to the provision of distribution access service, including the terms and conditions of the service and the rates charged for the service but not including information concerning utility-related services or products that are competitive;
 - B. information relating to the provision of transmission service that is required to be filed with the Public Utility Commission of Texas, subject to any confidentiality provided for under the rules of the commission;
 - C. information for the distribution system pertaining to reliability and continuity of service, to the extent not security-sensitive, that relates to emergency management, identification of critical loads such as hospitals and police, records of interruption, and distribution feeder standards;
 - D. any substantive rule of general applicability regarding service offerings, service regulation, customer protections, or customer service adopted by the public power utility as authorized by law;
 - E. aggregate information reflecting receipts or expenditures of funds of the public power utility, of the type that would be included in audited financial statements;
 - F. information relating to equal employment opportunities for minority groups, as filed with local, state, or federal agencies;
 - G. information relating to the public power utility's performance in contracting with minority business

	<p>entities;</p> <ul style="list-style-type: none"> H. information relating to nuclear decommissioning trust agreements, of the type required to be included in audited financial statements; I. information relating to the amount and timing of any transfer to an owning city's general fund; J. information relating to environmental compliance as required to be filed with any local, state, or national environmental authority, subject to any confidentiality provided under the rules of those authorities; K. names of public officers of the public power utility and the voting records of those officers for all matters other than those within the scope of a competitive resolution provided for by this section; L. a description of the public power utility's central and field organization, including the established places at which the public may obtain information, submit information and requests, or obtain decisions and the identification of employees from whom the public may obtain information, submit information or requests, or obtain decisions; or M. information identifying the general course and method by which the public power utility's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures. <p>b. Information or records are excepted from the requirements of Section 552.021 if the information or records are reasonably related to a competitive matter, as defined in this section. Excepted information or records include the text of any resolution of the public power utility governing body determining which issues, activities, or matters constitute competitive matters. Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiply certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter.</p> <p>c. In connection with any request for an opinion of the attorney general under Section 552.301 with respect to information alleged to fall under this exception, in rendering a written opinion under Section 552.306 the attorney general shall find the requested information to</p>
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	<p>be outside the scope of this exception only if the attorney general determines, based on the information provided in connection with the request:</p> <ol style="list-style-type: none"> 1. that the public power utility governing body has failed to act in good faith in making the determination that the issue, matter, or activity in question is a competitive matter; or 2. that the information or records sought to be withheld are not reasonably related to a competitive matter. <p>d. The requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under this section.</p>
§552.134	<p>Certain Information Relating to Inmate of Department of Criminal Justice</p> <ol style="list-style-type: none"> a. Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department. b. Subsection (a) does not apply to: <ol style="list-style-type: none"> 1. statistical or other aggregated information relating to inmates confined in one or more facilities operated by or under a contract with the department; or 2. information about an inmate sentenced to death. c. This section does not affect whether information is considered confidential or privileged under Section 508.313. d. A release of information described by Subsection (a) to an eligible entity, as defined by Section 508.313(d), for a purpose related to law enforcement, prosecution, corrections, clemency, or treatment is not considered a release of information to the public for purposes of Section 552.007 and does not waive the right to assert in the future that the information is excepted from required disclosure under this section or other law.
§552.135	<p>Certain Information Held by School District</p> <ol style="list-style-type: none"> a. "Informer" means a student or a former student or an employee or former employee of a school district who has furnished a report of another person's possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement

	<p>authority.</p> <p>b. An informer's name or information that would substantially reveal the identity of an informer is excepted from the requirements of Section 552.021.</p> <p>c. Subsection (b) does not apply:</p> <ol style="list-style-type: none"> 1. if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or 2. if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or 3. if the informer planned, initiated, or participated in the possible violation. <p>d. Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.</p> <p>e. This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.</p>
§552.136	<p>Confidentiality of Credit Card, Debit Card, Charge Card, and Access Device Numbers</p> <p>a. In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:</p> <ol style="list-style-type: none"> 1. obtain money, goods, services, or another thing of value; or 2. initiate a transfer of funds other than a transfer originated solely by paper instrument. <p>b. Notwithstanding any other provision of this chapter, 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.</p>
§552.137	<p>Confidentiality of Certain E-mail Addresses</p> <p>a. Except as otherwise provided by this section, an e-mail address of a</p>

	<p>member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.</p> <p>b. Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.</p> <p>c. Subsection (a) does not apply to an e-mail address:</p> <ol style="list-style-type: none"> 1. provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent; 2. provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent; 3. contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or 4. provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public. <p>d. Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.</p>
§552.138	<p>Family Violence Shelter Center and Sexual Assault Program Information</p> <p>a. In this section:</p> <ol style="list-style-type: none"> 1. "Family violence shelter center" has the meaning assigned by Section 51.002, Human Resources Code. 2. "Sexual assault program" has the meaning assigned by Section 420.003. <p>b. Information maintained by a family violence shelter center or sexual assault program is excepted from the requirements of Section 552.021 if it is information that relates to:</p> <ol style="list-style-type: none"> 1. the home address, home telephone number, or social security number of an employee or a volunteer worker of a family violence shelter center or a sexual assault program, regardless of whether the employee or worker complies with Section 552.024; 2. the location or physical layout of a family violence shelter center;

	<ol style="list-style-type: none"> 3. the name, home address, home telephone number, or numeric identifier of a current or former client of a family violence shelter center or sexual assault program; 4. the provision of services, including counseling and sheltering, to a current or former client of a family violence shelter center or sexual assault program; 5. the name, home address, or home telephone number of a private donor to a family violence shelter center or sexual assault program; or 6. the home address or home telephone number of a member of the board of directors or the board of trustees of a family violence shelter center or sexual assault program, regardless of whether the board member complies with Section 552.024.
§552.139	<p>Government Information Related to Security Issues for Computers</p> <ol style="list-style-type: none"> a. Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security or to the design, operation, or defense of a computer network. b. The following information is confidential: <ol style="list-style-type: none"> 1. a computer network vulnerability report; and 2. any other assessment of the extent to which data processing operations, a computer, or a computer program, network, system, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information is vulnerable to alteration, damage, or erasure.
§552.140	<p>Military Discharge Records</p> <ol style="list-style-type: none"> a. This section applies only to a military veteran's Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003. b. The record is confidential for the 75 years following the date it is recorded with or otherwise first comes into the possession of a governmental body. During that period the governmental body may permit inspection or copying of the record or disclose information contained in the record only in accordance with this section or in accordance with a court order. c. On request and the presentation of proper identification, the following

	<p>persons may inspect the military discharge record or obtain from the governmental body free of charge a copy or certified copy of the record:</p> <ol style="list-style-type: none"> 1. the veteran who is the subject of the record; 2. the legal guardian of the veteran; 3. the spouse or a child or parent of the veteran or, if there is no living spouse, child, or parent, the nearest living relative of the veteran; 4. the personal representative of the estate of the veteran; 5. the person named by the veteran, or by a person described by Subdivision (2), (3), or (4), in an appropriate power of attorney executed in accordance with Section 490, Chapter XII, Texas Probate Code; 6. another governmental body; or 7. an authorized representative of the funeral home that assists with the burial of the veteran. <p>d. A court that orders the release of information under this section shall limit the further disclosure of the information and the purposes for which the information may be used.</p> <p>e. A governmental body that obtains information from the record shall limit the governmental body's use and disclosure of the information to the purpose for which the information was obtained.</p>
§552.141	<p>Confidentiality of Information in Application for Marriage License</p> <ol style="list-style-type: none"> a. Information that relates to the social security number of an individual that is maintained by a county clerk and that is on an application for a marriage license, including information in an application on behalf of an absent applicant and the affidavit of an absent applicant, or is on a document submitted with an application for a marriage license is confidential and may not be disclosed by the county clerk to the public under this chapter. b. If the county clerk receives a request to make information in a marriage license application available under this chapter, the county clerk shall redact the portion of the application that contains an individual's social security number and release the remainder of the information in the application.
§552.142	<p>Records of Certain Deferred Adjudications</p> <ol style="list-style-type: none"> a. Information is excepted from the requirements of Section 552.021 if

	<p>an order of nondisclosure with respect to the information has been issued under Section 411.081(d).</p> <p>b. A person who is the subject of information that is excepted from the requirements of Section 552.021 under this section may deny the occurrence of the arrest and prosecution to which the information relates and the exception of the information under this section, unless the information is being used against the person in a subsequent criminal proceeding.</p>
§552.1425	<p>Civil Penalty: Dissemination of Certain Criminal History Information</p> <p>a. A private entity that compiles and disseminates for compensation criminal history record information may not compile or disseminate information with respect to which the entity has received notice that:</p> <ol style="list-style-type: none"> 1. an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or 2. an order of nondisclosure has been issued under Section 411.081(d). <p>b. A district court may issue a warning to a private entity for a first violation of Subsection (a). After receiving a warning for the first violation, the private entity is liable to the state for a civil penalty not to exceed \$1,000 for each subsequent violation.</p> <p>c. The attorney general or an appropriate prosecuting attorney may sue to collect a civil penalty under this section.</p> <p>d. A civil penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.</p>
§552.143	<p>Confidentiality of Certain Investment Information</p> <p>a. All information prepared or provided by a private investment fund and held by a governmental body that is not listed in Section 552.0225(b) is confidential and excepted from the requirements of Section 552.021.</p> <p>b. Unless the information has been publicly released, pre-investment and post-investment diligence information, including reviews and analyses, prepared or maintained by a governmental body or a private investment fund is confidential and excepted from the requirements of Section 552.021, except to the extent it is subject to disclosure under Subsection (c).</p> <p>c. All information regarding a governmental body's direct purchase, holding, or disposal of restricted securities that is not listed in Section 552.0225(b)(2)-(9), (11), or (13)-(16) is confidential and excepted from the requirements of Section 552.021. This subsection does not</p>

	<p>apply to a governmental body's purchase, holding, or disposal of restricted securities for the purpose of reinvestment nor does it apply to a private investment fund's investment in restricted securities. This subsection applies to information regarding a direct purchase, holding, or disposal of restricted securities by the Texas growth fund, created under Section 70, Article XVI, Texas Constitution, that is not listed in Section 552.0225(b).</p> <p>d. For the purposes of this chapter:</p> <ol style="list-style-type: none"> 1. "Private investment fund" means an entity, other than a governmental body, that issues restricted securities to a governmental body to evidence the investment of public funds for the purpose of reinvestment. 2. "Reinvestment" means investment in a person that makes or will make other investments. 3. "Restricted securities" has the meaning assigned by 17 C.F.R. Section 230.144(a)(3). <p>e. This section shall not be construed as affecting the authority of the comptroller under Section 403.030.</p> <p>f. This section does not apply to the Texas Mutual Insurance Company or a successor to the company.</p>
§552.144	<p>Working Papers and Electronic Communications of Administrative Law Judges at State Office of Administrative Hearings</p> <p>The following working papers and electronic communications of an administrative law judge at the State Office of Administrative Hearings are excepted from the requirements of Section 552.021:</p> <ol style="list-style-type: none"> 1. notes and electronic communications recording the observations, thoughts, questions, deliberations, or impressions of an administrative law judge; 2. drafts of a proposal for decision; 3. drafts of orders made in connection with conducting contested case hearings; and 4. drafts of orders made in connection with conducting alternative dispute resolution procedures.
§552.145	<p>Texas No-Call List <i>[Effective April 1, 2009]</i></p> <ul style="list-style-type: none"> ○ The Texas no-call list created under Subchapter B, Chapter 304, Business & Commerce Code, and any information provided to or received from the administrator of the national do-not-call registry

	<p>maintained by the United States government, as provided by Sections 304.051 and 304.056, Business & Commerce Code, are excepted from the requirements of Section 552.021.</p>
<p>§552.146</p>	<p>Certain Communications With Assistant or Employee of Legislative Budget Board</p> <ul style="list-style-type: none"> a. All written or otherwise recorded communications, including conversations, correspondence, and electronic communications, between a member of the legislature or the lieutenant governor and an assistant or employee of the Legislative Budget Board are excepted from the requirements of Section 552.021. b. Memoranda of a communication between a member of the legislature or the lieutenant governor and an assistant or employee of the Legislative Budget Board are excepted from the requirements of Section 552.021 without regard to the method used to store or maintain the memoranda. c. This section does not except from required disclosure a record or memoranda of a communication that occurs in public during an open meeting or public hearing conducted by the Legislative Budget Board.
<p>§552.147</p>	<p>Social Security Numbers</p> <ul style="list-style-type: none"> a. The social security number of a living person is excepted from the requirements of Section 552.021, but is not confidential under this section and this section does not make the social security number of a living person confidential under another provision of this chapter or other law. b. A governmental body may redact the social security number of a living person from any information the governmental body discloses under Section 552.021 without the necessity of requesting a decision from the attorney general under Subchapter G. c. Notwithstanding any other law, a county or district clerk may disclose in the ordinary course of business a social security number that is contained in information held by the clerk's office, and that disclosure is not official misconduct and does not subject the clerk to civil or criminal liability of any kind under the law of this state, including any claim for damages in a lawsuit or the criminal penalty imposed by Section 552.352. d. Unless another law requires a social security number to be maintained in a government document, on written request from an individual or the individual's representative the clerk shall redact within a reasonable amount of time all but the last four digits of the individual's social security number from information maintained in the clerk's official public records, including electronically stored

	<p>information maintained by or under the control of the clerk. The individual or the individual's representative must identify, using a form provided by the clerk, the specific document or documents from which the partial social security number shall be redacted.</p>
§552.148	<p>Certain Personal Information Maintained by Municipality Pertaining to a Minor</p> <ul style="list-style-type: none"> a. In this section, "minor" means a person younger than 18 years of age. b. The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from the requirements of Section 552.021: <ul style="list-style-type: none"> 1. the name, age, home address, home telephone number, or social security number of the minor; 2. a photograph of the minor; and 3. the name of the minor's parent or legal guardian.
§552.148	<p>Records of Comptroller or Appraisal District Received From Private Entity</p> <ul style="list-style-type: none"> a. Information relating to real property sales prices, descriptions, characteristics, and other related information received from a private entity by the comptroller or the chief appraiser of an appraisal district under Chapter 6, Tax Code, is excepted from the requirements of Section 552.021. b. Notwithstanding Subsection (a), the property owner or the owner's agent may, on request, obtain from the chief appraiser of the applicable appraisal district a copy of each item of information described by Section 41.461(a)(2), Tax Code, and a copy of each item of information that the chief appraiser took into consideration but does not plan to introduce at the hearing on the protest. In addition, the property owner or agent may, on request, obtain from the chief appraiser comparable sales data from a reasonable number of sales that is relevant to any matter to be determined by the appraisal review board at the hearing on the property owner's protest. Information obtained under this subsection: <ul style="list-style-type: none"> 1. remains confidential in the possession of the property owner or agent; and 2. may not be disclosed or used for any purpose except as evidence or argument at the hearing on the protest. c. Notwithstanding Subsection (a) or Section 403.304, Government Code, so as to assist a property owner, a school district, or an appraisal district in a protest filed under Section 403.303, Government Code, the

	<p>property owner, the district, or an agent of the property owner or district may, on request, obtain from the comptroller any information, including confidential information, obtained by the comptroller in connection with the comptroller's finding that is being protested. Confidential information obtained by a property owner, a school district, an appraisal district, or an agent of the owner or district under this subsection:</p> <ol style="list-style-type: none">1. remains confidential in the possession of the owner, district, or agent; and2. may not be disclosed to a person who is not authorized to receive or inspect the information.
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