

REDACTION

FAMILY LAW

What is required and discretionary

GENERAL INFORMATION

- No specific statute about how to redact
- Test to make sure the redaction not viewable
- Original document should remain unaltered

GENERAL INFORMATION

- Court Case Records are generally open to the public records limited only by statute, rules of Texas Supreme Court/Court of Criminal Appeal
- Clerks' authority is over both records in the clerks' office and resources/personnel in the clerks' office
- Public Information Act does not apply to records of the judiciary
 - ▣ Clerk can redact SSN without AG opinion

SUGGESTED BEST PRACTICES

- Identify the confidential/Sealed Cases
- Identify confidential/sealed information in public documents
- Create process to redact confidential information

JURY

- CONFIDENTIAL INFORMATION:
 - home address,
 - home telephone number,
 - social security number,
 - driver's license number, and
 - other personal information??

Tex. Code of Criminal Procedure 35.29

JURY

- COURT CAN ORDER DISCLOSURE:
 - Upon Application by a party/news media
 - Must show good cause

Tex. Code of Criminal Procedure 35.29(b)

BIOMETRIC IDENTIFIERS

- CONFIDENTIAL INFORMATION
 - retina or iris scan
 - Fingerprint
 - voiceprint,
 - hand or face geometry

Tex. Gov. Code 560.001; .002.

BIOMETRIC IDENTIFIERS

- Can disclose:

- If the individual consents to the disclosure;
 - the disclosure is required or permitted by a federal statute or a Texas statute;
 - the disclosure is made to a law enforcement agency for a law enforcement purpose

Tex. Gov. Code 560.001; .002; .003

CPS

- **CONFIDENTIAL INFORMATION:**
 - (1) a report of alleged or suspected abuse or neglect and the identity of the person making the report; and
 - (2) files, reports, records, communications, audiotapes, videotapes and working papers used or developed in an investigation

- Tex. Family Code 261.201[a]

CPS

- Confidential Information can be revealed:
 - Motion filed; and
 - Notice of hearing and all parties/interested persons notified
 - Court can order information disclosed based on specific factors.

Tex. Family Code 261.201[a]

Protective Orders

- Public Document

Confidentiality must be requested to Court

by Person protected

Family Member

Person in Household

Tex. Family Code 85.007

Protective Orders

- Information made confidential by Court Order:
 - Protected Person's residence Address;
 - County of Residence
 - Telephone number
 - Protected Person's place of employment/business address
 - Child Care Facility/School attended by child protected

Tex. Family Code 85.007

Protective Orders

- Confidential Information can be shown to:
 - ▣ The Court;
 - ▣ Law Enforcement Agency for entering information - DPS

Tex. Family Code 85.007

Writ of Withholding

- Public Information - Obligee/Obligor
 - Social Security Number
 - Name
 - Address

Writ of Withholding

- Information made confidential by Court Order:
 - Residence Address;
 - Social Security

Only if Obligee/Obligee's family member:

- Victim of Family Violence **and**
- Subject of Protective Order

- Unaltered Document only for Court

Tex. Family Code 8.152

Email Addresses

- GENERAL CONFIDENTIAL
 - Applies to public records but not Court Records
 - Email address of a public member used for communicating electronically with Government Body
 - Can be disclosed if person consents
 - Can disclose email address to another governmental body including Federal Agency

Texas Gov. Code 552.137

Email Addresses

- ADDITIONAL REASONS WHEN EMAIL ADDRESS NOT CONFIDENTIAL
 - ▣ People who have contractual relationship with governmental body;
 - ▣ Vendor seeking contract;
 - ▣ Provided to government body on letterhead/invoice that is public;
 - ▣ **Provided to governmental body for receiving Orders/Decisions from government body...**

Texas Gov. Code 552.137

SOCIAL SECURITY NUMBERS

- **SSN are not confidential in case files except**
- If individual or individual's representative makes written request, SSN must be redacted in a reasonable time except for last 4 numbers.
- Individual must identify, using form provided by Clerk, the specific document maintained/controlled by Clerk
- Original can be altered;
- If Person is an employee of school district in the custody of the district.



SOCIAL SECURITY NUMBERS

- **If SSN disclosed in ordinary course of business:**
 - ▣ Not official misconduct;
 - ▣ Does not subject clerk to civil/criminal liability including any damages in a lawsuit or criminal penalty.

Tex. Gov. Code 552.147

Crime Victim Identifier

- CONFIDENTIAL - Crime Victim Identifiers
 - Name
 - social security number
 - address
 - telephone number

Tex. Gov. Code 552.1325; AG Opinion GA-220 [2004]

Texas Rule of Civil Procedure 21c

- Key parts:
 - (a) definition of sensitive data
 - (b) EXCEPTIONS to sensitive data rules
 - (c) Retention of unredacted originals
 - (d) NOTIFICATION to clerk
 - (e) Lawyer's responsibility, NOT clerk's
 - (f) NO INTERNET POSTING of sensitive data

21 c(a): What can be Redacted?

(a) Sensitive Data Defined:

- (1) a driver's license number, passport number, social security number, tax identification number, or similar government-issued personal identification number;
- (2) a bank account number, credit card number, or other financial account number; and

Special Considerations Re: Minors

21c(a)(3):

a birth date,

a home address, and

name of any person who was a minor when the underlying suit was filed.

- ▣ Not a combination requirement: each of these items is sensitive data

21c(d): Handling Unredacted S.D.

(d) Notice to Clerk. **If a document contains sensitive data, the filing party must notify the clerk** by:

(1) **designating the document as containing sensitive data when the document is electronically filed;** or

(2) if the document is not electronically filed, by including, on the upper left-hand side of the first page, the phrase: **"NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA."**

21 c(e): Clerk Duties

(e) Non-Conforming Documents. The clerk may not refuse to file a document that contains sensitive data in violation of this rule. But the clerk **may identify the error** to be corrected and state a deadline for the party to resubmit a redacted, substitute document.

21 c(f): No Internet Posting of S.D.

(f) Restriction on Remote Access. Documents that contain sensitive data in violation of this rule must not be posted on the Internet.

ReSEarch:TX

If sensitive data not redacted and is transferred to ReSearch:TX, clerk not responsible:

“A court clerk is not responsible for the management or removal of a document from a state court document database and is not liable for damages resulting from the release of a document in the database if the clerk in good faith performs the duties as clerk as provided by law and the Texas Rules of Civil Procedure.”

Tex. Gov. Code 51.609

MISCELLANEOUS/DISCUSSIONS

- Graphic Photos
- Minor Pictures
- Foul Language

Thank you. Questions?

VELVA PRICE

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Redaction