



Confidential Agency Records in Court Proceedings

A Process-Based Approach




Moderator: Kellie Billings-Ray, Office of the Attorney General

Panelists:

- Hon. Leslie Ginn, State Office of Administrative Hearings
- Velva L. Price, Travis County District Clerk
- Karen L. Watkins, Office of the Attorney General
- Hon. Stephen Yelenosky, Former Judge, 345th Judicial District Court

Any opinions expressed herein are those of the speakers and do not constitute official statements on behalf of any agency or other entity.





“The Record” in a Contested Case

- Each pleading, motion, intermediate ruling;
- Evidence received or considered;
- Statement of matters officially noticed;
- Questions and offers of proof, objections, and rulings on them;
- Proposed findings and exceptions
- Each decision, opinion, or report by presiding officer;
- All staff memoranda or data submitted to or considered by the hearing officer or members of the agency who are involved in making the decision.

Tex. Gov't Code § 2001.060

Handling Confidential Records @ State Office of Administrative Hearings (SOAH)





(1) Be proactive and prepared

- Review all files, documents to be filed, anticipated exhibits, etc. to identify all categories of potentially confidential information
- Consider various categories: privileged; confidential by law; exempted from PIA disclosure; personal identifiers, etc.
- Determine obligations under applicable law and SOAH Rules
- Consider whether information is relevant or necessary to resolution
- Communicate effectively with other counsel/litigants
- Organize information for future ease of handling



(2) Follow SOAH Rules regarding handling of confidential information

SOAH Rule § 155.103, Public and Confidential Information

- Parties must protect confidential information filed/offered at SOAH
- Confidential documents are not e-filed
- Contemplates redaction when unnecessary for resolution of case
- Parties may challenge redaction or confidentiality designation
- Notes that SOAH designation as “confidential” does not determine whether it is subject to PIA disclosure

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