



Public Inspection of Case Files

(with a Little PIA thrown in)

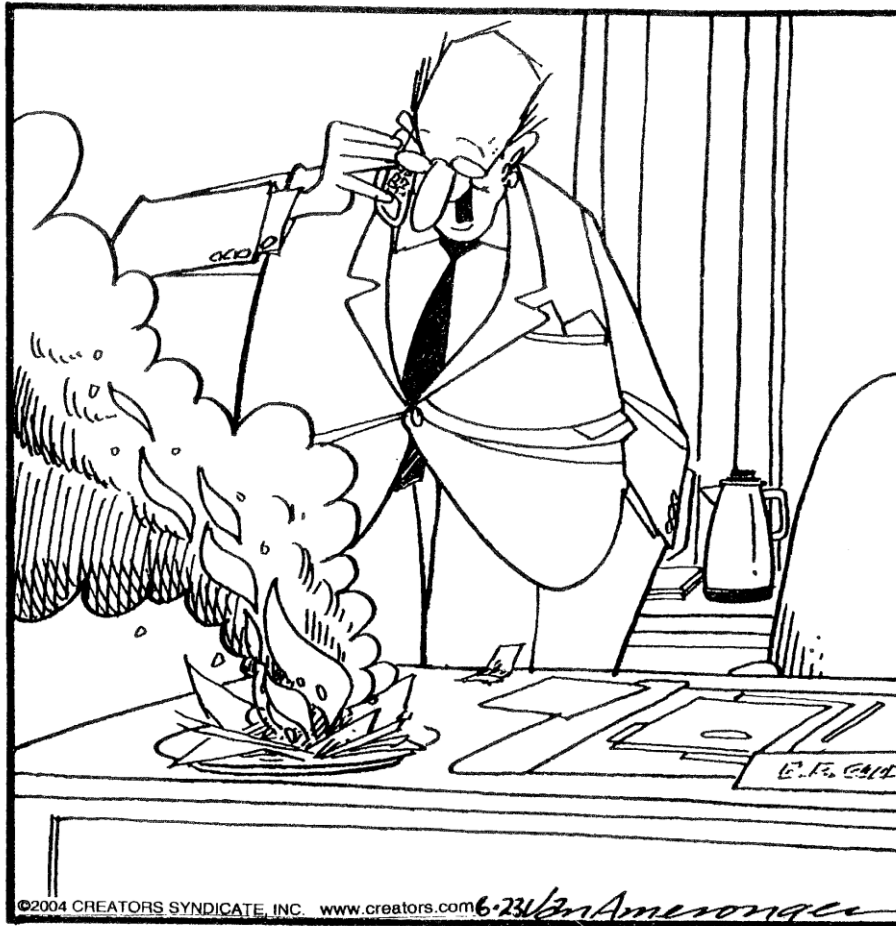
What applies to a request for
information

OBJECTIVE



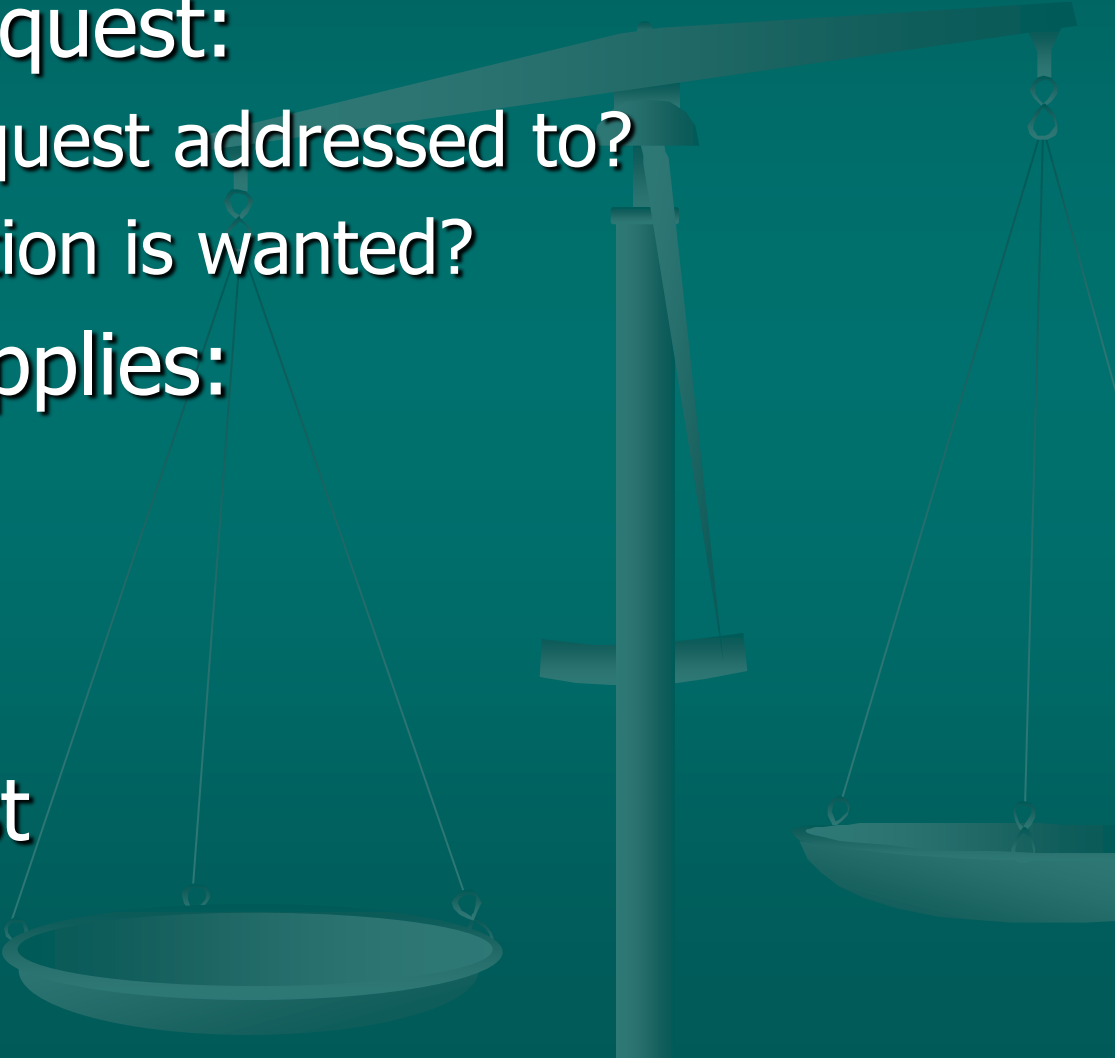
- 1) Identify if a request falls under:
 - 1) Public Information Act (PIA)
 - 2) Rule 12, or
 - 3) Common Law Right of Inspection and Access (CLR)
- 2) Discuss PIA
- 3) Discuss Rule 12: Define “judicial records”
- 4) Discuss CLR
- 5) Cost Associated w/ Request

BALLARD STREET By Jerry Van Amerongen



"I'm quite certain I'm not going to be able to produce that document."

Steps to Follow: Decide what Applies?

- 1) Look at the Request:
 - 1) Who is the request addressed to?
 - 2) What information is wanted?
 - 2) Decide what applies:
 - 1) PIA,
 - 2) Rule 12, or
 - 3) CLR
 - 3) Determine Cost
- 

Look at the Request



To: Sleepy Hollow Municipal Court

Under the Texas Public Information Act, I would like all the information in all of my speeding cases.

Sincerely,
Speed Racer

Look at Request

Who is the request
addressed to?

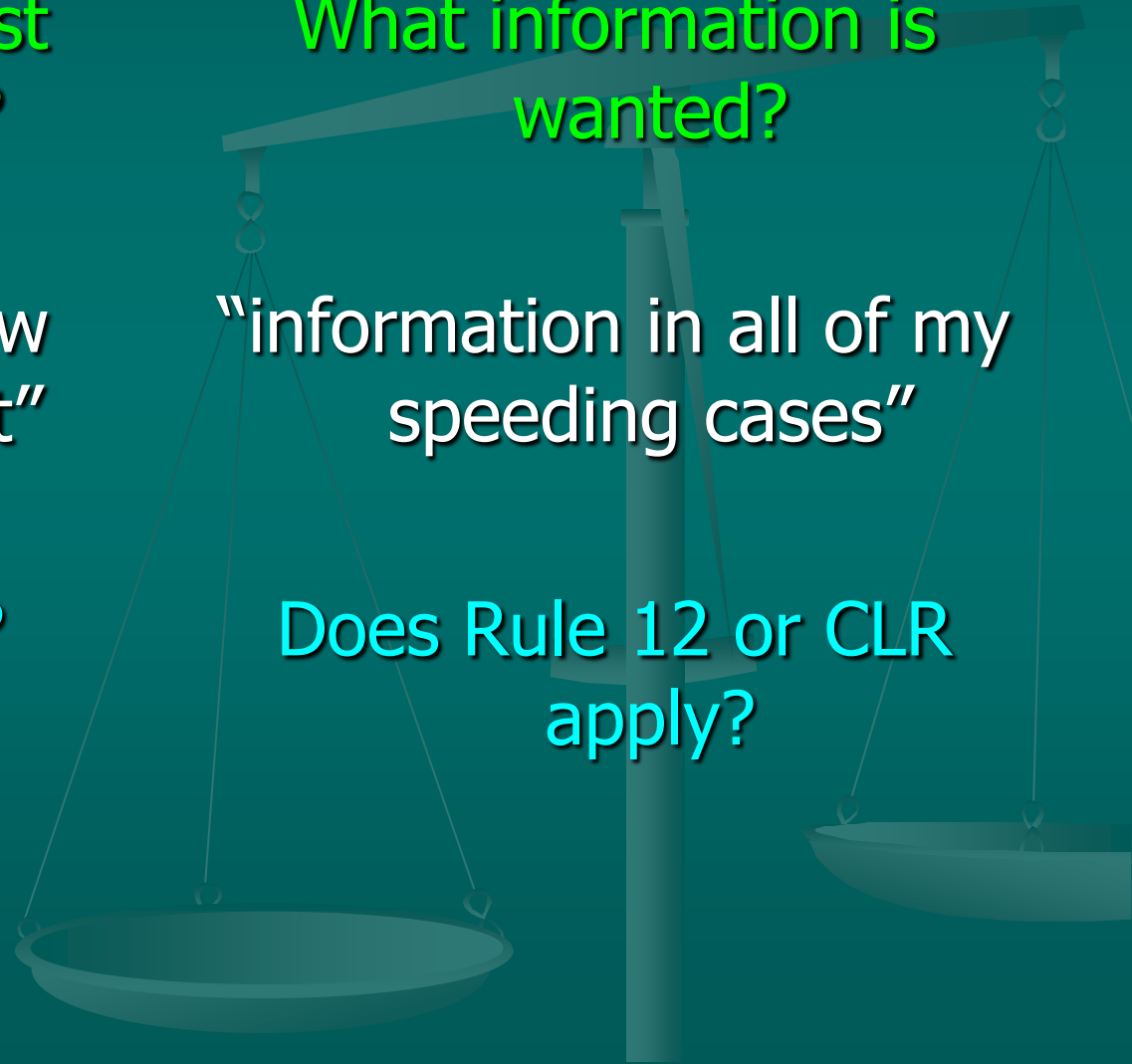
"To: Sleepy Hollow
Municipal Court"

Does PIA apply?

What information is
wanted?

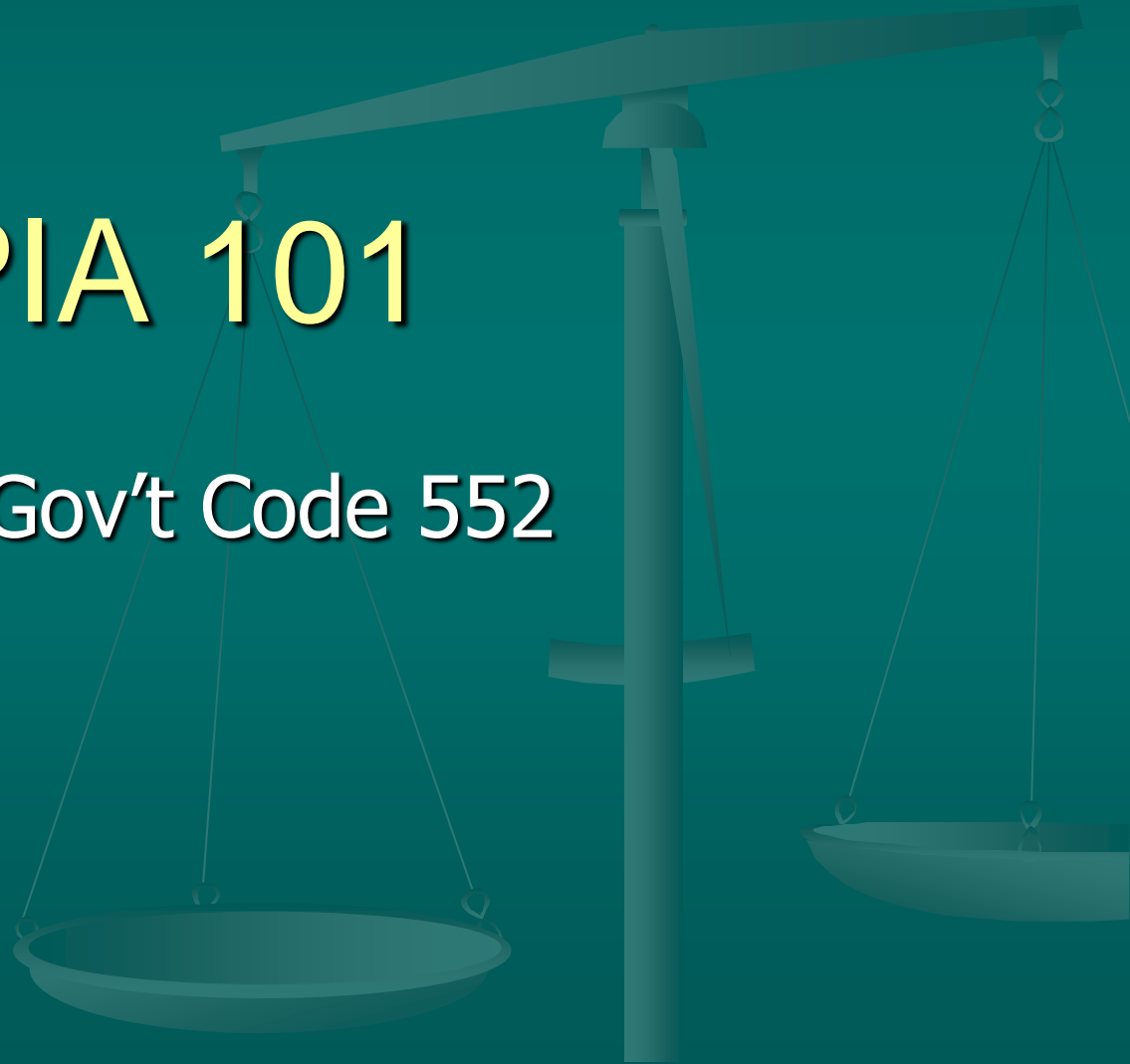
"information in all of my
speeding cases"

Does Rule 12 or CLR
apply?



PIA 101

Tex. Gov't Code 552



PIA 101

Government Code § 552.002

“Public Information” means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction or 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.

Information recorded in any form is subject to the PIA.

PIA 101

Governmental Body (GB)

Gov. Code § 552.003*

Includes:

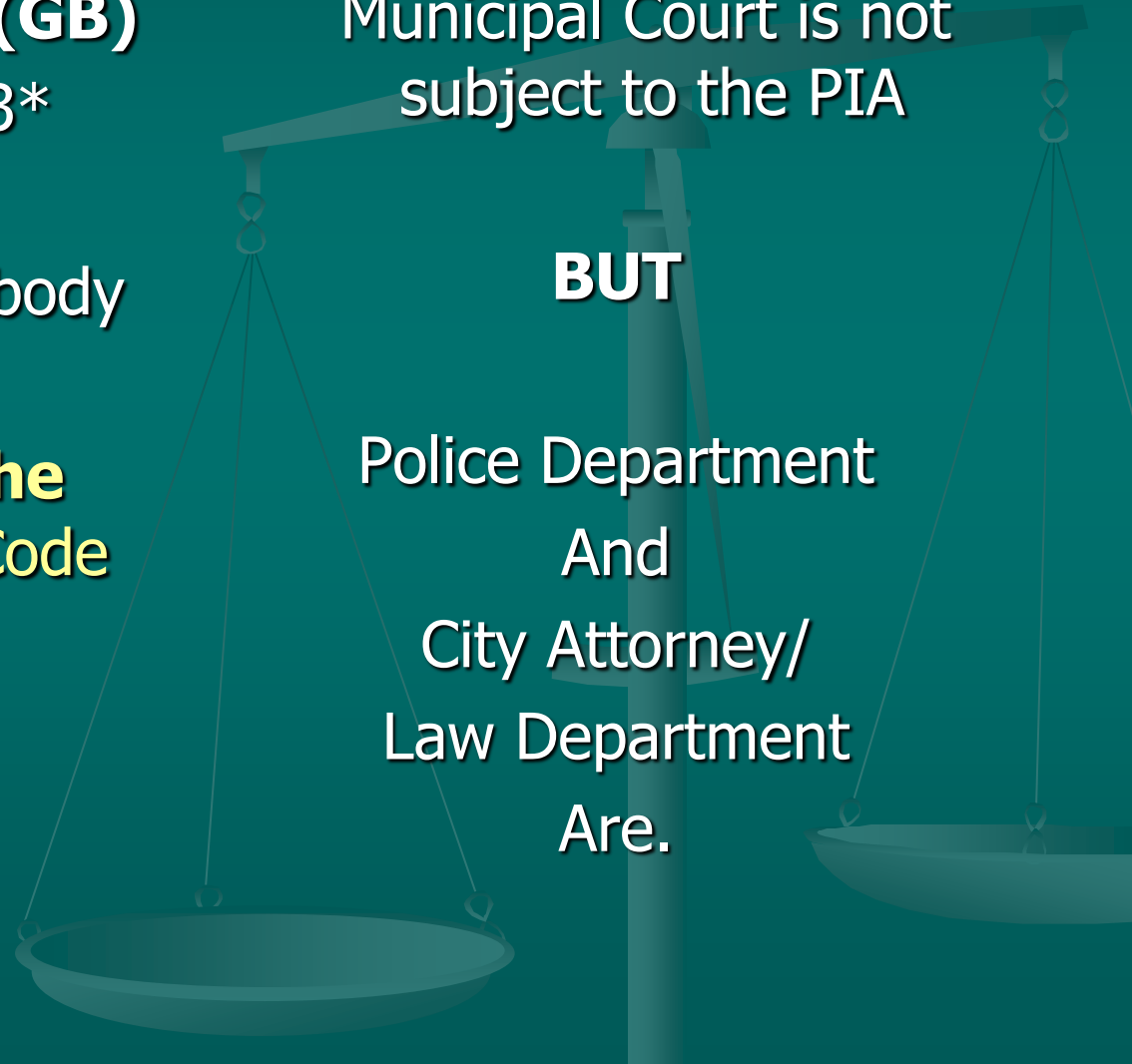
- Municipal governing body
- **Does not include the Judiciary!!!** (Gov't Code 552.0035)

* Not an exclusive list

Municipal Court is not subject to the PIA

BUT

Police Department
And
City Attorney/
Law Department
Are.

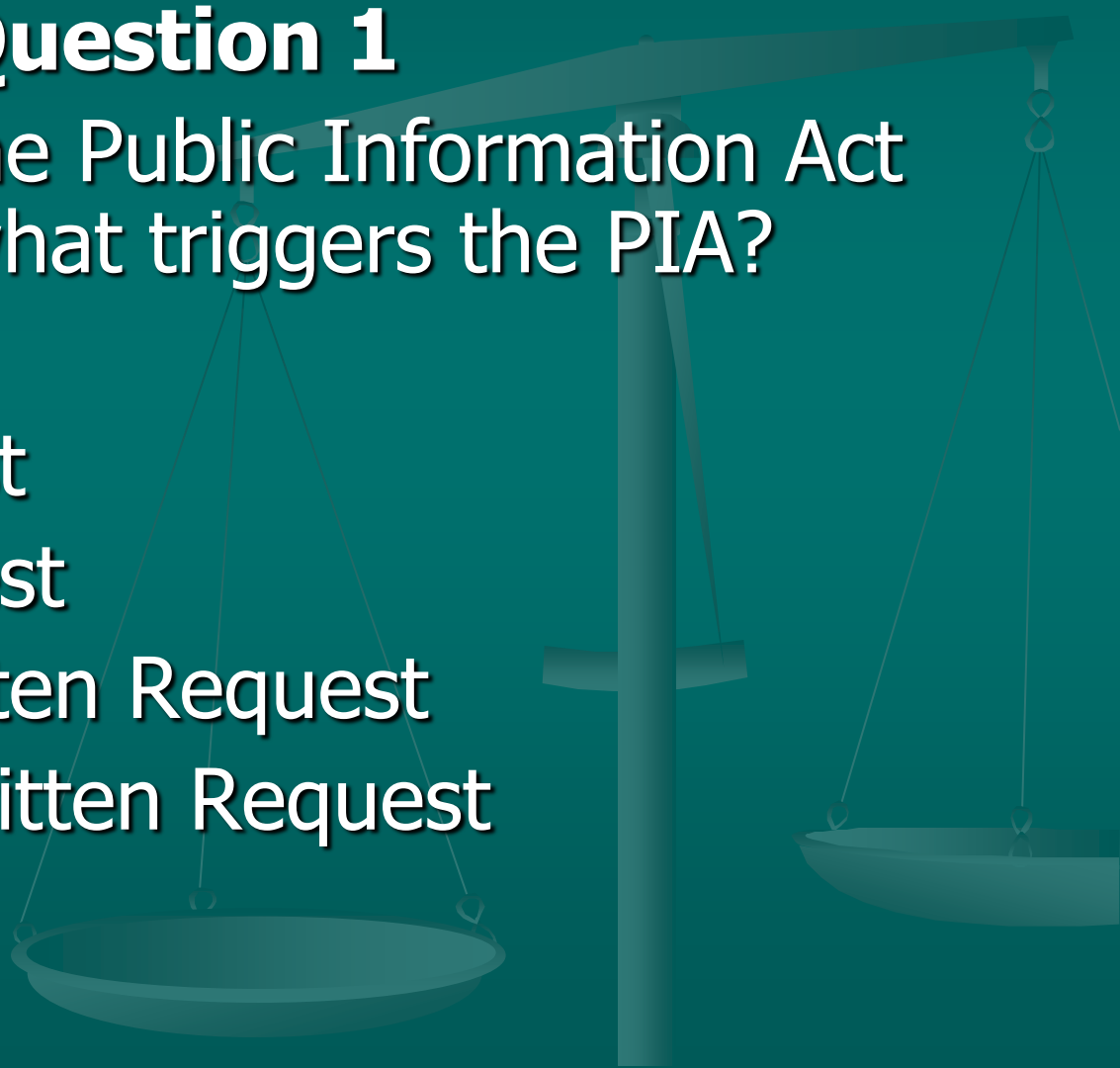


PIA 101

Question 1

According to the Public Information Act (PIA), what triggers the PIA?

- A. Verbal Request
- B. Written Request
- C. Verbal or Written Request
- D. Verbal and Written Request



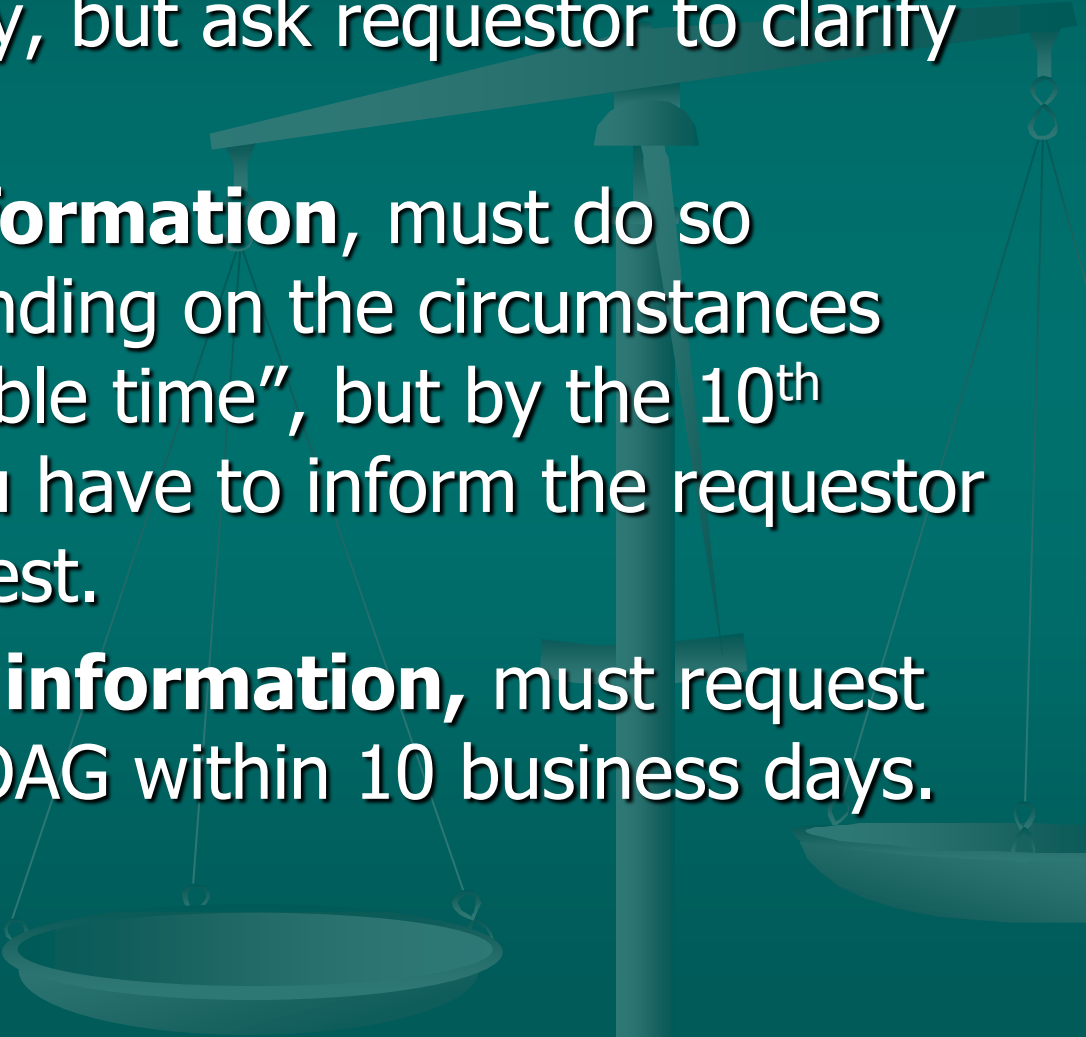
PIA 101

Answer 1

B. Written Request

- ✓ Only Written Request trigger the PIA.
- ✓ Any Written Request triggers the PIA.
- ✓ PIA does not requires that the public direct its written request to any specific employee or officer, *except for:*
 - ✓ *E-mail Request*
 - ✓ *Faxed Request*

PIA 101

- CANNOT ask why, but ask requestor to clarify or narrow.
 - **If releasing information**, must do so “promptly, depending on the circumstances within a reasonable time”, but by the 10th business day you have to inform the requestor about their request.
 - **If withholding information**, must request ruling from the OAG within 10 business days.
- 

How do you count 10 business days?

- General Rules for determining 10 business days
 - Start counting the next business day after receiving written request
 - “Received” = when the OAG physically received, not when it is opened or read
 - Saturdays, Sundays and Holidays do not count.
 - Optional holidays, skeleton crew days, or days the GB is closed do not count if that is the GB’s policy, but make sure that is explained if you are requesting a ruling from the AG
- Let’s see how that looks for December 2002/January 2003.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18 Written Request Received	19 1	20 2	21
22	23 Skeleton Crew Day	24 State Closed Christmas Eve	25 State Closed Christmas Day	26 State Closed Day After Christmas	27 Skeleton Crew Day	28
29	30 3	31 ½ Day Skeleton/ ½ Day Holiday	1 State Closed New Year's Day	2 4	3 5	4
5	6 6	7 7	8 8	9 9	10 10	11

Speed Racers Request

To: Sleepy Hollow Municipal
Court

Under the Texas Public
Information Act, I would
like all the information in
all of my speeding cases.

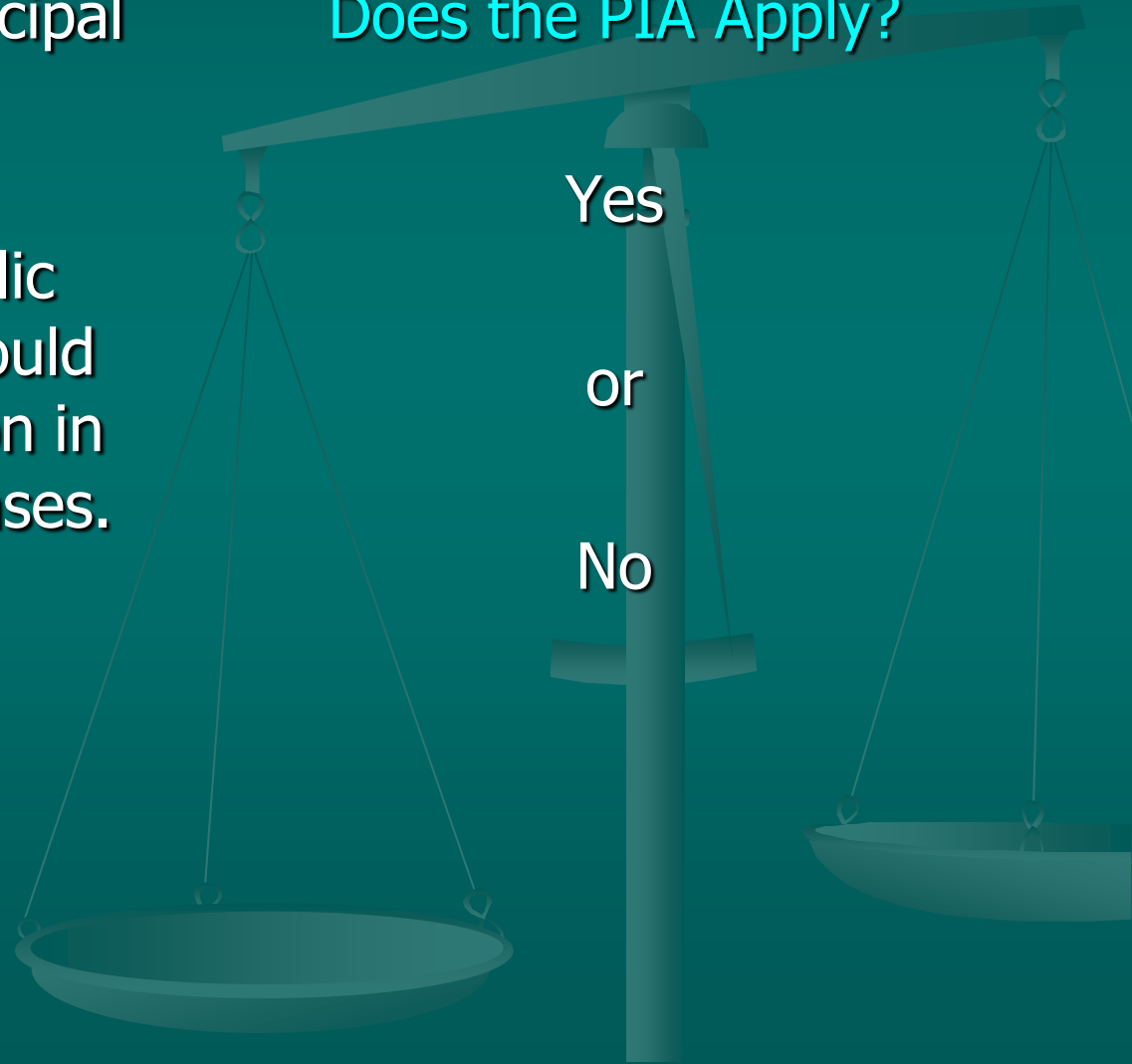
Sincerely,
Speed Racer

Does the PIA Apply?

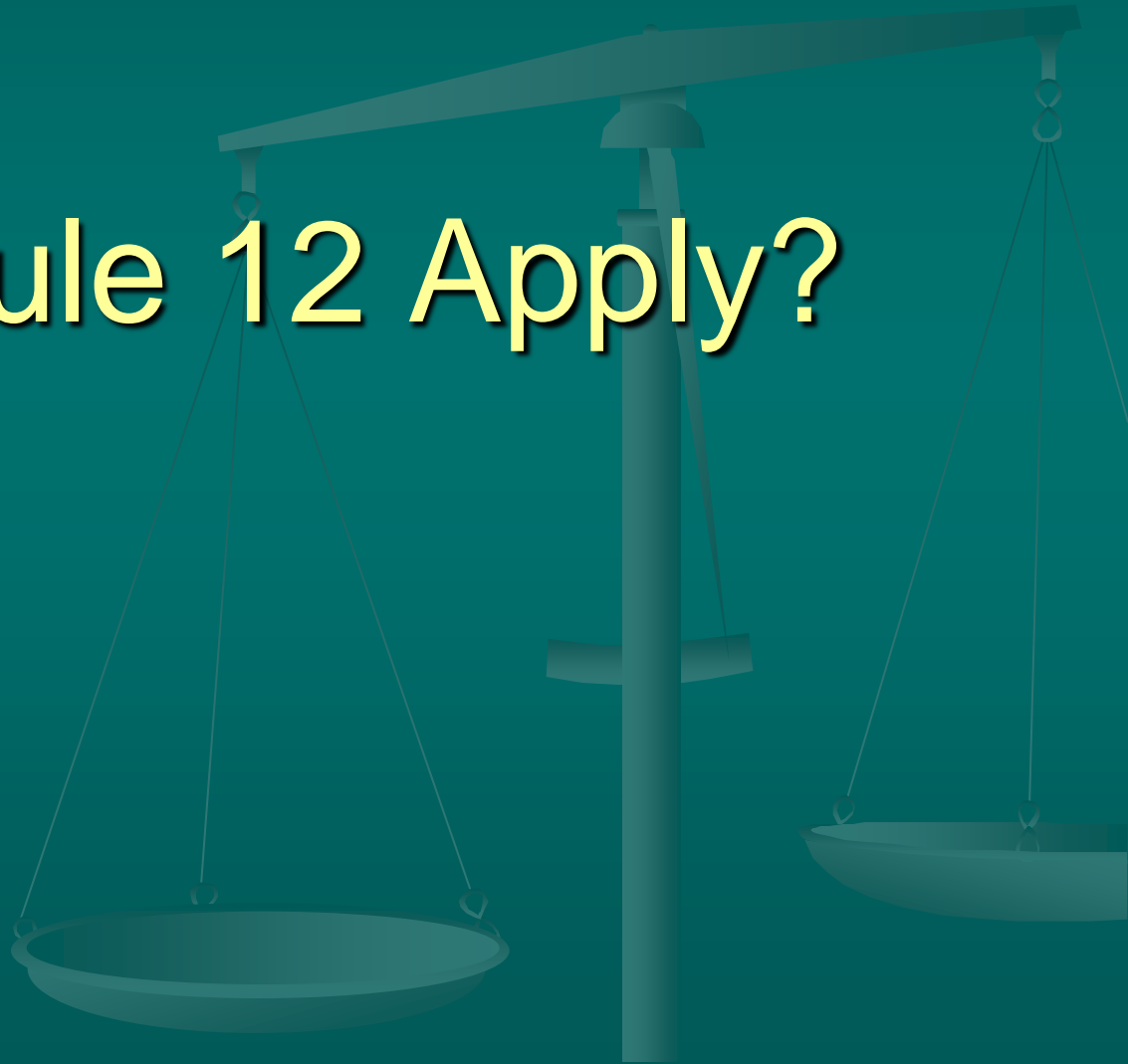
Yes

or

No

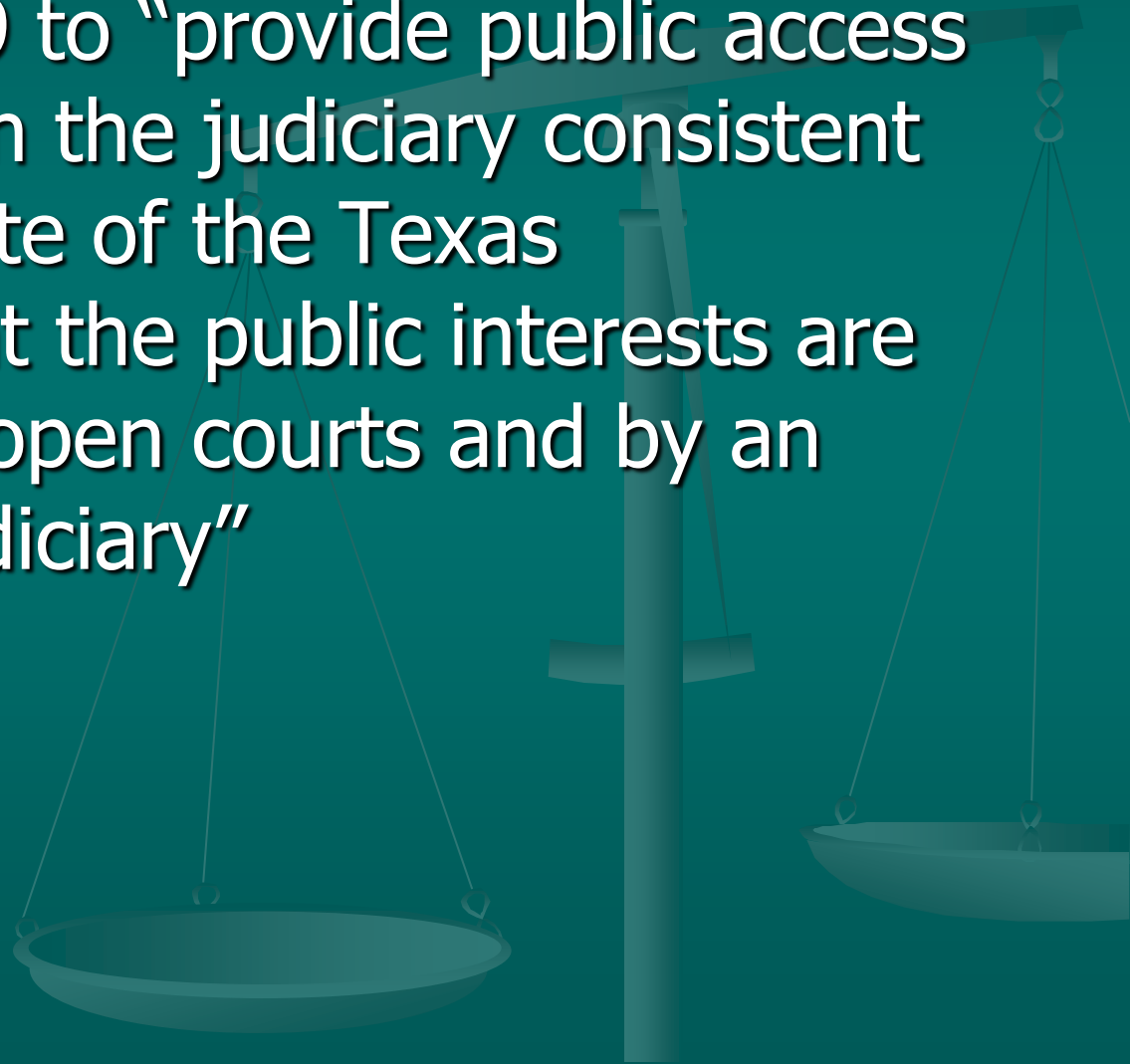


Does Rule 12 Apply?



Rule 12 of the Texas Rules of Judicial Administration

- ❖ Enacted in 1999 to “provide public access to information in the judiciary consistent with the mandate of the Texas Constitution that the public interests are best served by open courts and by an independent judiciary”



Judicial Records Defined

Rule 12.2 (d)

Records made or maintained by the court in its regular course of business

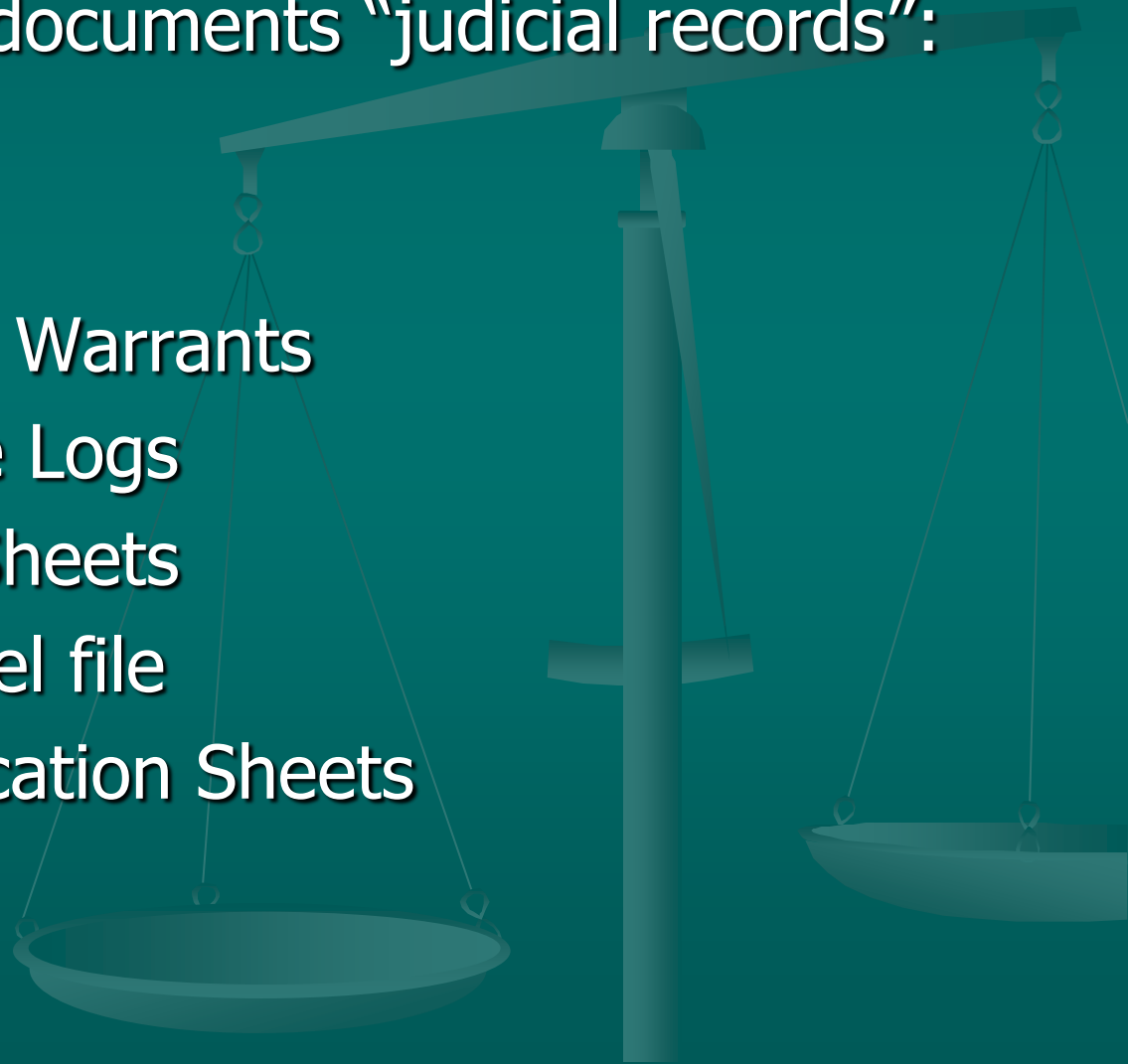
BUT NOT PERTAINING TO ITS ADJUDICATIVE FUNCTION

A record of any nature created, produced or filed in connection with any matter that is or has been before a court *is not* a judicial record.

“Judicial Records” Quiz

Are the following documents “judicial records”:

- A. Traffic Tickets
- B. Arrest or Search Warrants
- C. Court Telephone Logs
- D. Court’s Docket Sheets
- E. Judge’s personnel file
- F. Deferred Adjudication Sheets

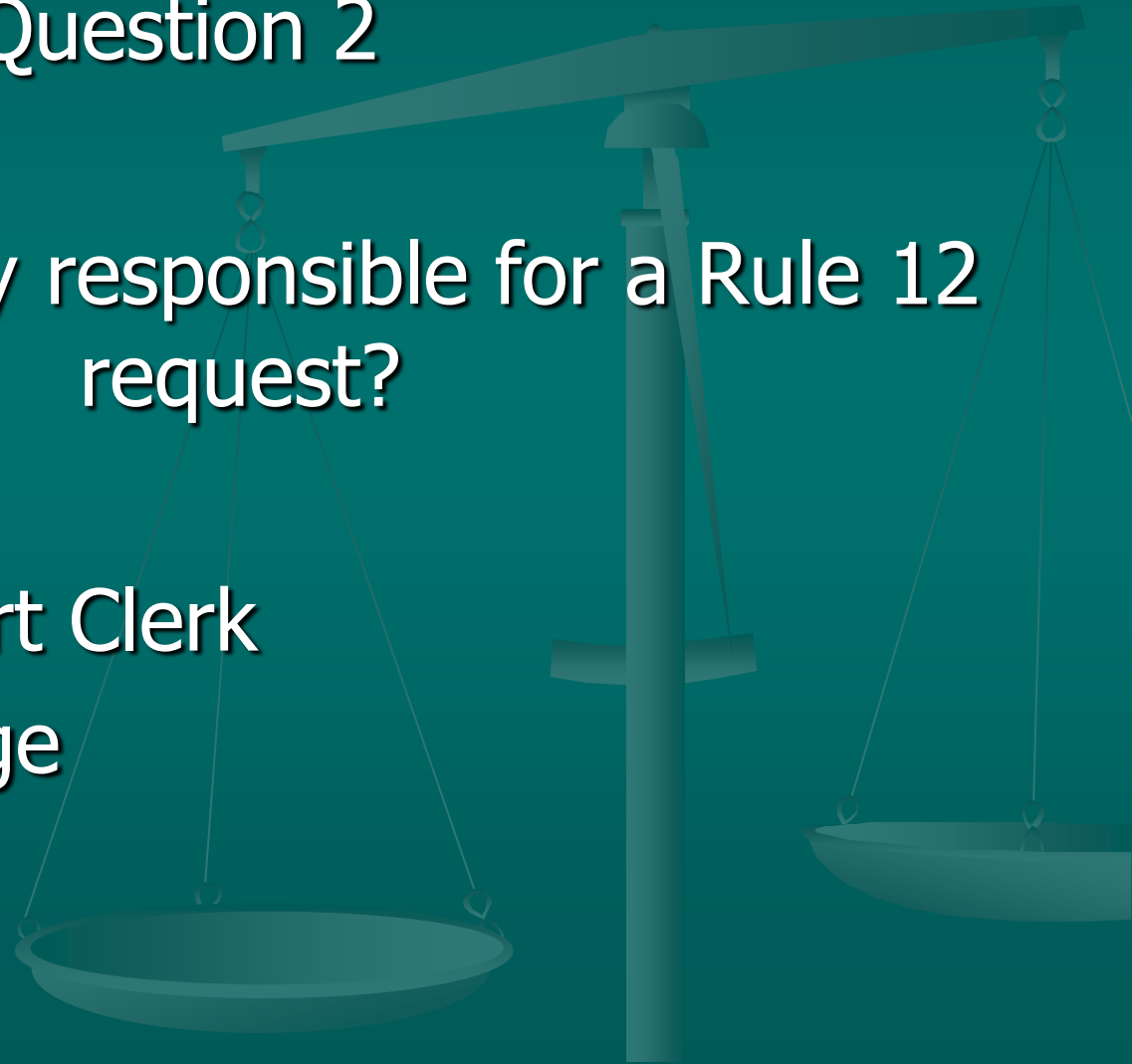


Rule 12

Question 2

Who is ultimately responsible for a Rule 12 request?

- A. Municipal Court Clerk
- B. Municipal Judge



Rule 12

Answer 2

B. Municipal Judge

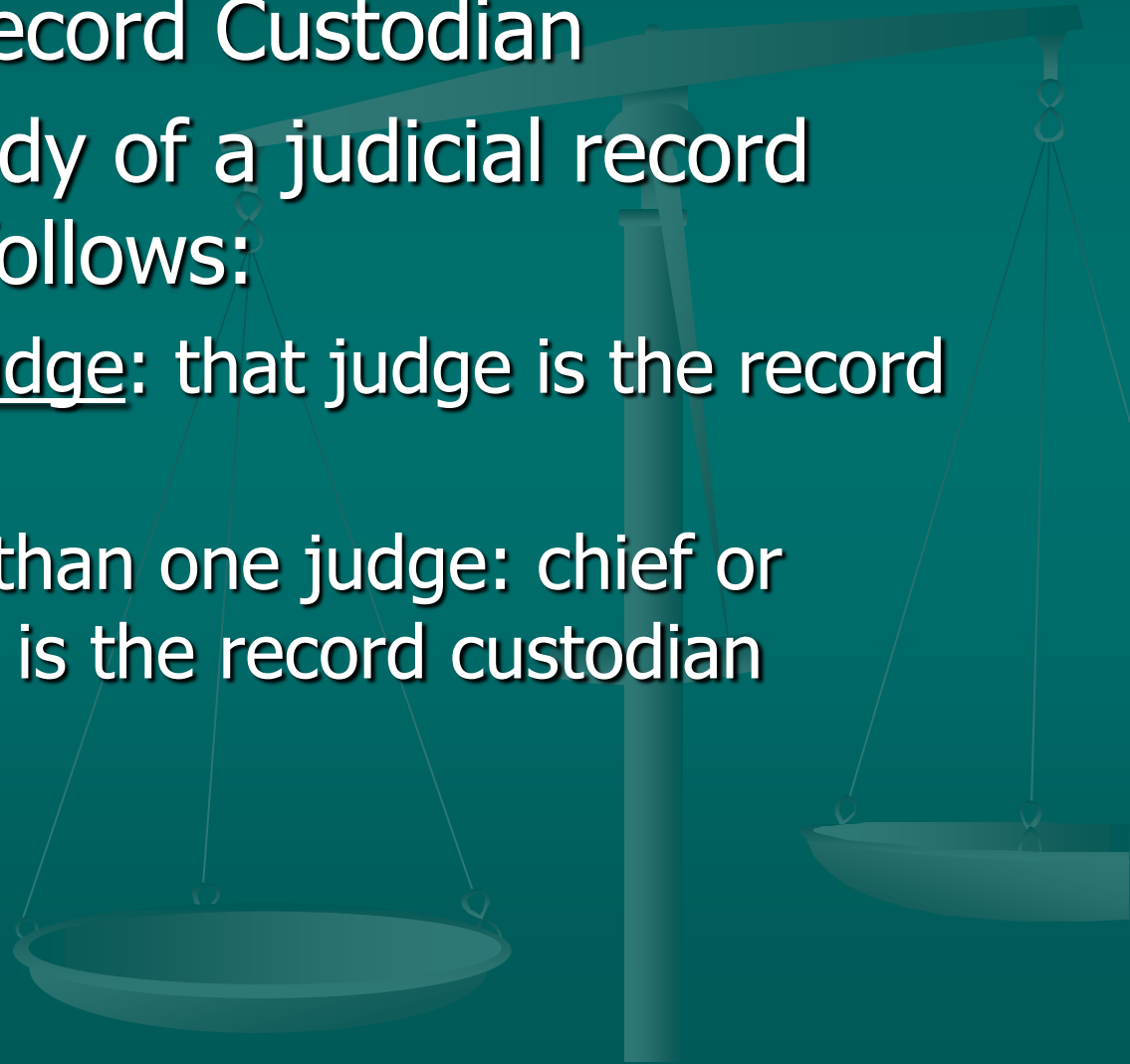


Rule 12

- Rule 12.2(e): Record Custodian

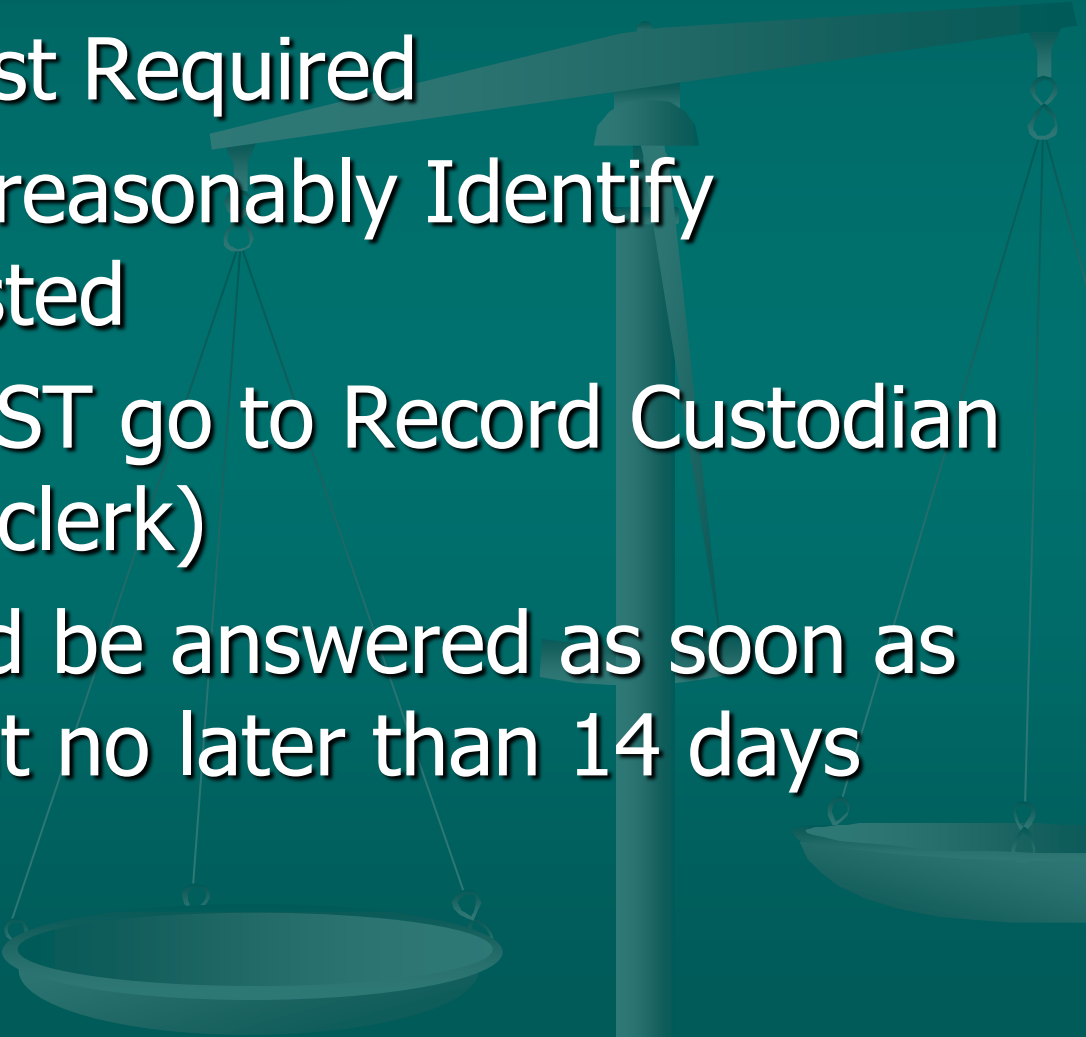
Person with custody of a judicial record determined as follows:

- Court w/ one judge: that judge is the record custodian
- Court w/ more than one judge: chief or presiding judge is the record custodian



Rule 12

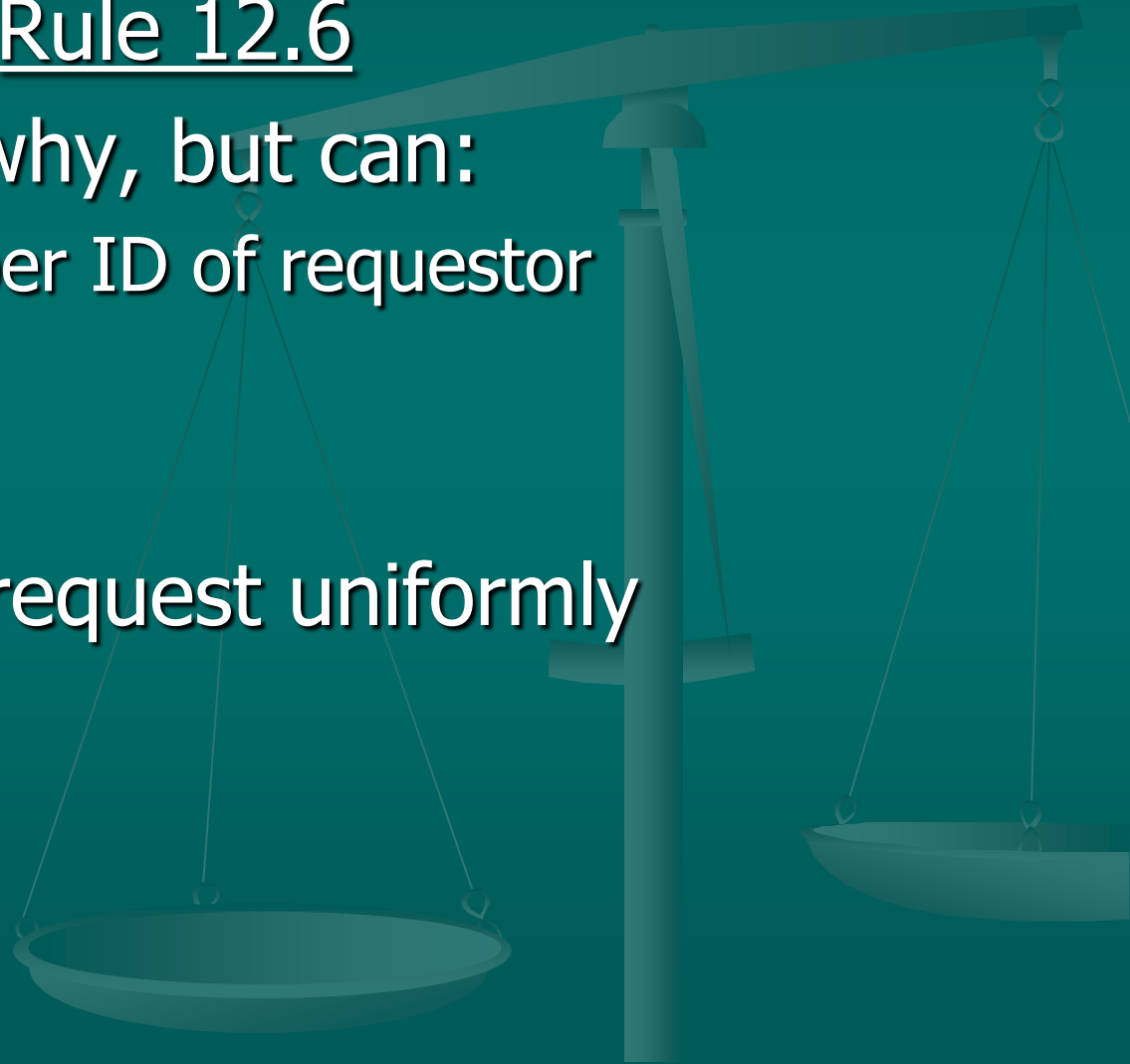
Rule 12.6

- A. Written Request Required
 - B. Request must reasonably Identify records requested
 - C. All request **MUST** go to Record Custodian (not the court clerk)
 - D. Request should be answered as soon as practicable, but no later than 14 days
- 

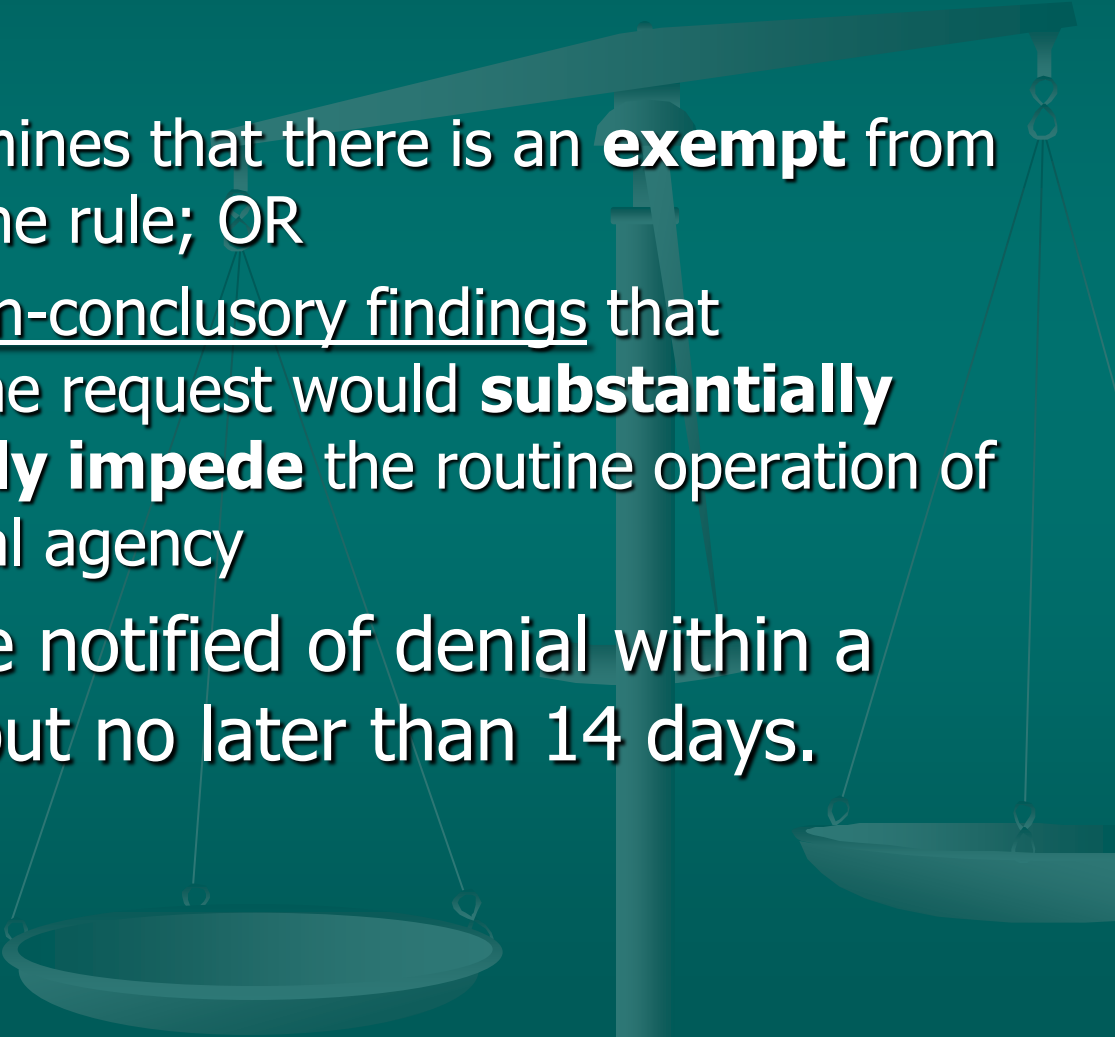
Rule 12

Rule 12.6

- A. CANNOT ask why, but can:
 1. Establish Proper ID of requestor
 2. Clarify
 3. Narrow
- B. Must treat all request uniformly



Denial of Judicial Records

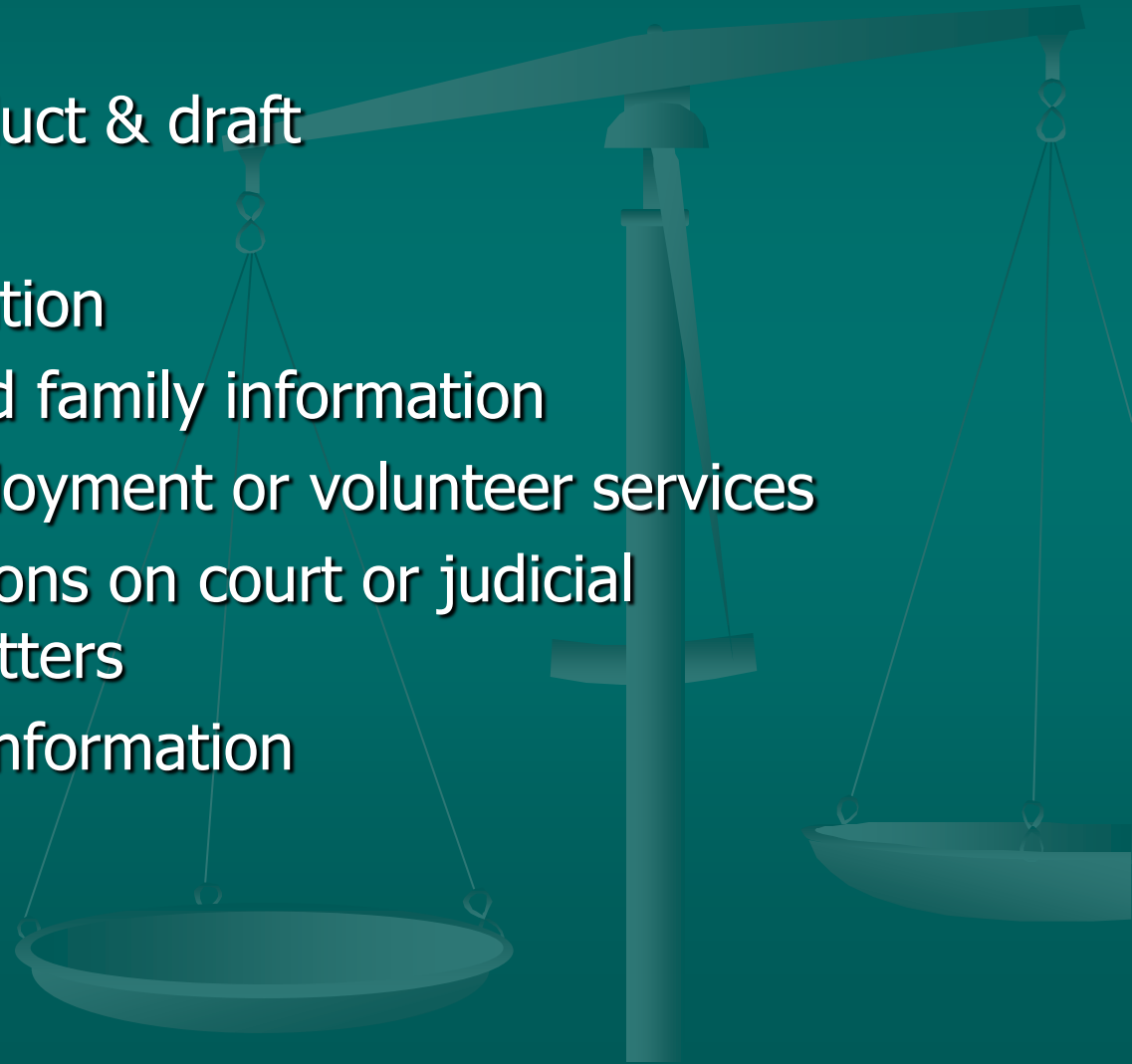
- ☹ Access can be denied when the record custodian:
 - ☹ Reasonably determines that there is an **exempt** from disclosure under the rule; OR
 - ☹ Makes specific, non-conclusory findings that compliance with the request would **substantially and unreasonably impede** the routine operation of the court or judicial agency
 - ☹ Requestor must be notified of denial within a reasonable time, but no later than 14 days.
- 

Exemptions*

■ Rule 12.5

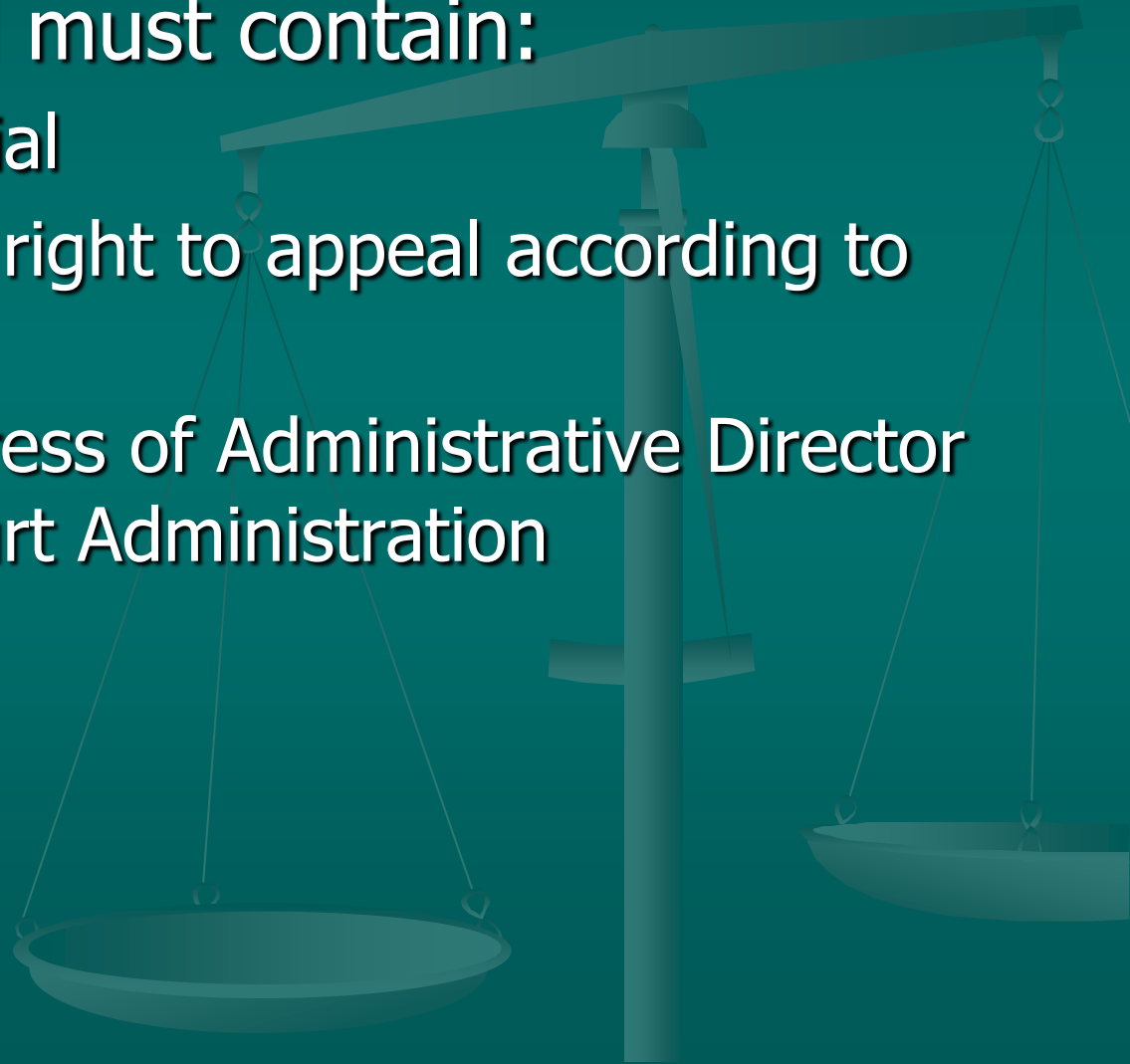
- Judicial work product & draft
- Security plans
- Personnel information
- Home address and family information
- Applicant for employment or volunteer services
- Internal deliberations on court or judicial administration matters
- Judicial calendar information

*not an exclusive list



Denial of Judicial Records

- Notice of Denial must contain:
 - ☑ Reason for denial
 - ☑ Information on right to appeal according to Rule 12.9
 - ☑ Name and Address of Administrative Director of Office of Court Administration



Speed Racers Request

To: Sleepy Hollow Municipal
Court

Under the Texas Public
Information Act, I would
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all of my speeding cases.

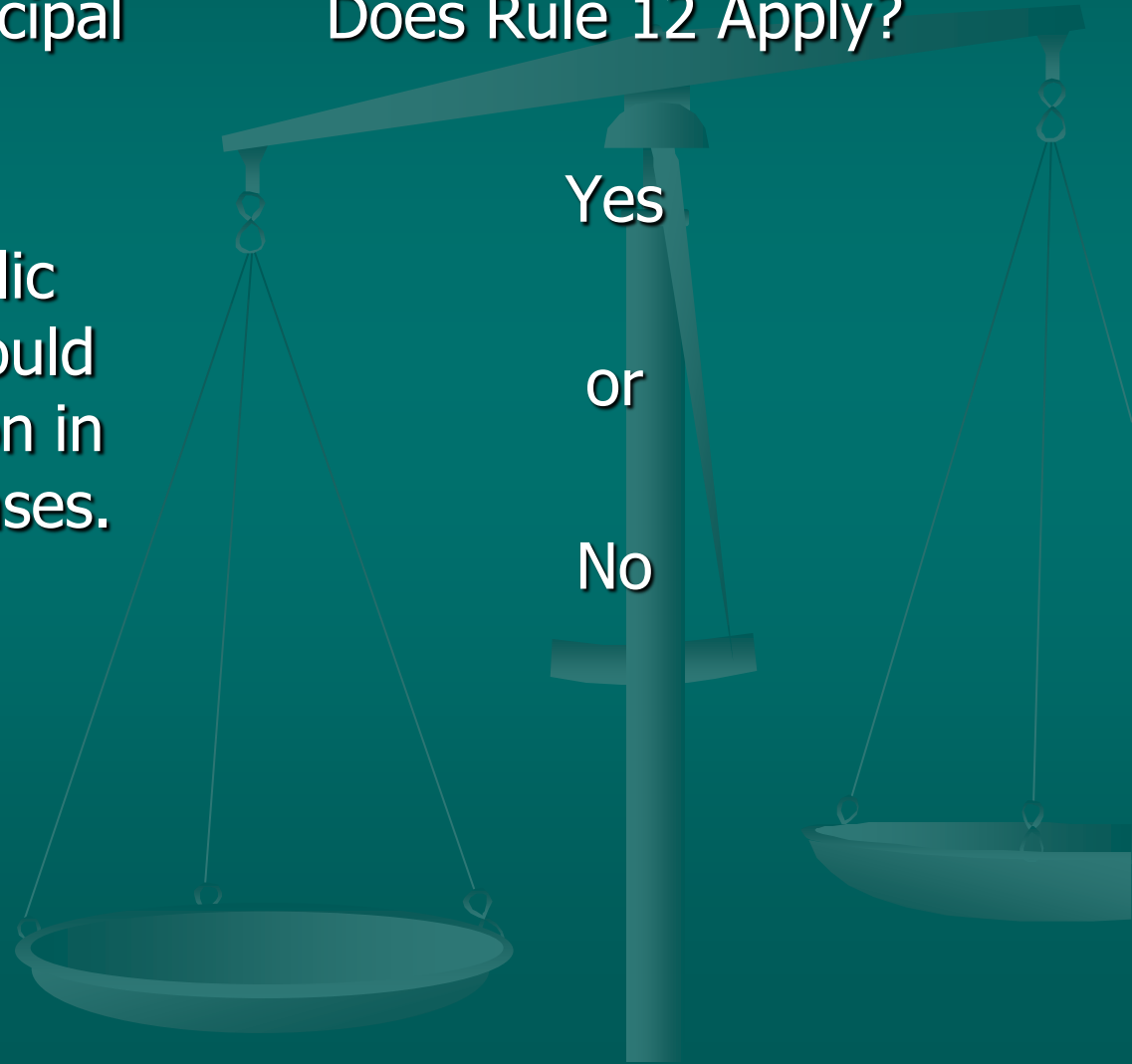
Sincerely,
Speed Racer

Does Rule 12 Apply?

Yes

or

No

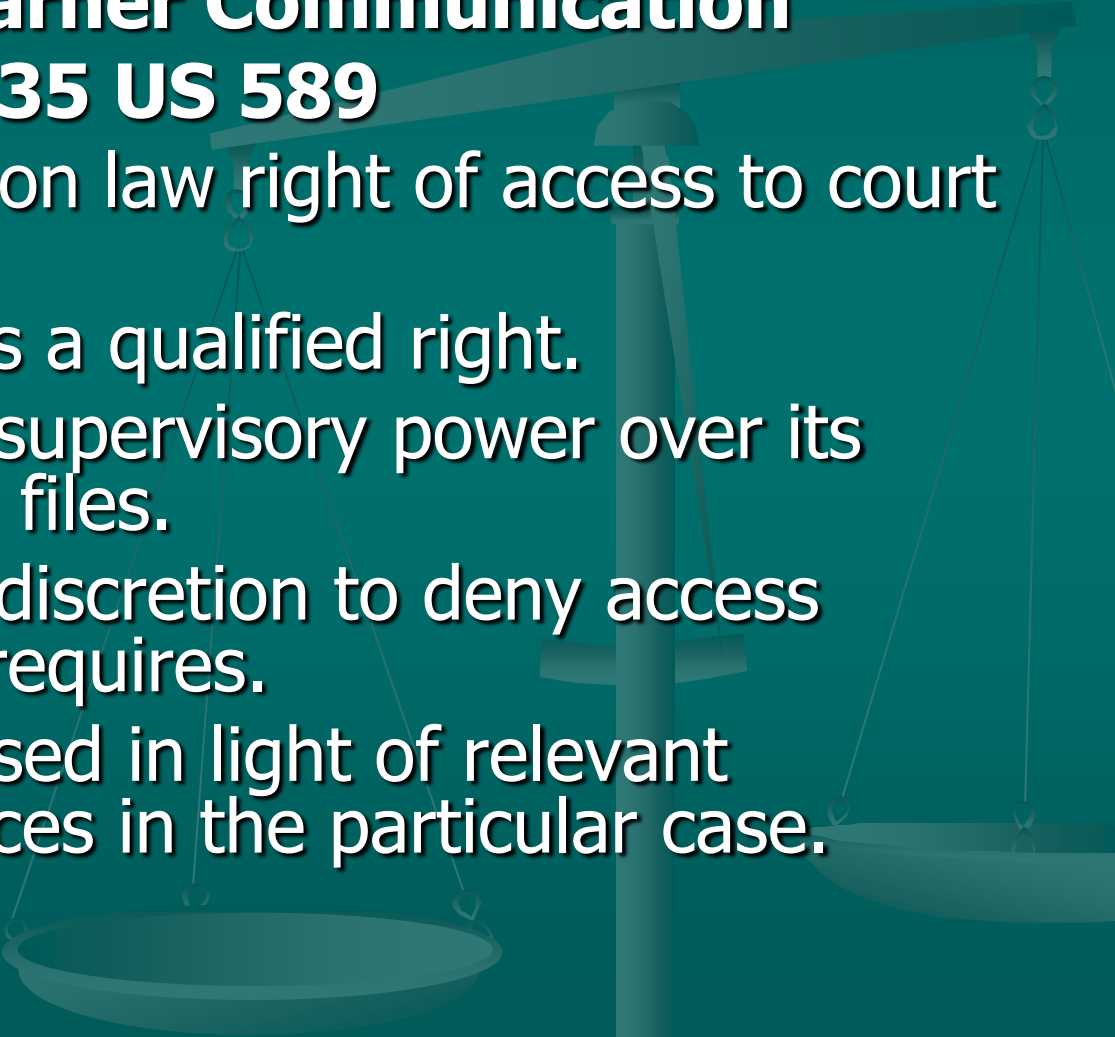


Does CLR Apply?



CLR of Inspection and Access

Nixon vs. Warner Communication 435 US 589

1. There is a common law right of access to court documents.
 2. Right of Access is a qualified right.
 3. Every Court has supervisory power over its own records and files.
 4. Courts use their discretion to deny access when justice so requires.
 5. Discretion exercised in light of relevant facts/circumstances in the particular case.
- 

Speed Racers Request

To: Sleepy Hollow Municipal
Court

Under the Texas Public
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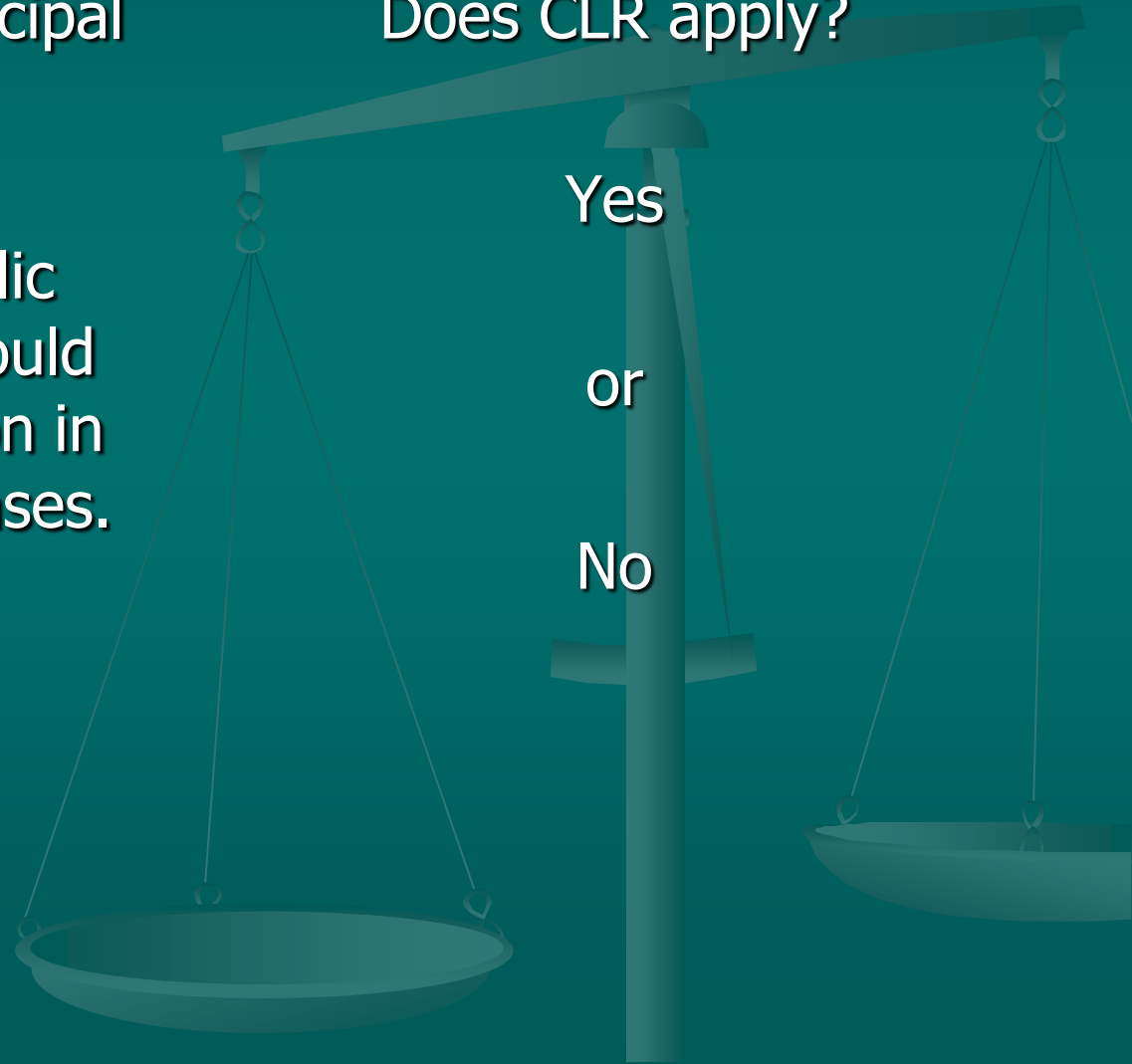
Sincerely,
Speed Racer

Does CLR apply?

Yes

or

No



Cost



How much do you charge?

Cost

How much can you charge?

PIA: Cost prescribed by municipal ordinance

(Gov. Code 552.266)

Rule 12: Cost Provided by statute or actual cost prescribed by the OAG

(Rule 12.7)

CLR: Cost prescribed by municipal ordinance or Cost prescribed by the OAG

1 Texas Administrative Code Sections 70.1 – 70.11

Basic Cost Provisions

Pages (Standard): 10¢ per page [§70.3(b)(1)]

Personnel Cost: \$15 per hour (only if more than 50 pages) [§70.3(d)]

Overhead Cost: 20% of Personnel cost (only if more than 50 pages) [§70.3(e)]

Postage/Shipping: any related postal or shipping expenses which are necessary [§70.3(j)]

Speed Racers Request

Cost?

Speed Racer had 15 speeding cases w/ 10 pages of documents in each case.

Total pages: 150

Pages:	$150 \times 10\text{¢} =$	\$ 15.00
Personnel:	$1.5 \text{ hrs} \times \$15.00 =$	\$ 22.50
Overhead:	$\$ 22.50 \times 20\% =$	\$ 4.50
Postage:	$150 \text{ pgs} \times .0479 =$	<u>\$ 7.19</u>
TOTAL:		\$ 48.69

Racer X Scenario

Racer X has given up the racing life and has become a defense lawyer. Racer X puts in a request for the following to the Sleepy Hollow Municipal Court:

- 1) Docket sheets for the next 2 weeks
- 2) All of Speed Racers speeding cases
- 3) Municipal Judge Trixie's personnel file
- 4) All the complaints filed on Nov. 13, 2006

Sparky Scenario

Sparky, Speed's best friend, is a reporter for the local newspaper. Sparky put in a request to the Sleepy Hollow City Police Department and to the Sleepy Hollow City Municipal Court. He put in the exact request to both. He requested the following:

- 1) Search Warrant of Slash's car, The Melange, executed on July 10, 2008
- 2) Arrest Warrant Affidavit of Slash Jr. executed on July 15, 2008
- 3) All traffic tickets issued on July 4, 2008
- 4) Municipal Court Judge Trixie's calendar

More Information

☺ PIA

- ☺ Open Government Hotline
(877) 673-6839 (toll-free)
(877) open tex
- ☺ OAG Public Information Coordinator - Zindia Thomas:
(512) 475-4213
- ☺ Cost Questions - Hadassah Schloss: (512) 475-2497
- ☺ Municipal Affairs – Julian Grant: (512) 475-4683
- ☺ OAG Publications at AG Website: www.oag.state.tx.us
2008 Public Information Act Handbook
2006 Public Information Act Made Easy Article

More Information

☺ Rule 12

☺ Rule 12 Text:

<http://www.courts.state.tx.us/Rules/rjac.htm>

☺ Rule 12 Decisions:

<http://www.courts.state.tx.us/oca/policy/openrecstate.asp>

