



# THE TEXAS MUNICIPAL LAWYER<sup>TM</sup>

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## EMPLOYEE PERSONNEL FILES

An employee's personnel file typically includes the application for employment, and records that have been used to determine an employee's qualifications for hire, promotion, compensation, or disciplinary action. The best time to start compiling the file is when the city commences its search for candidates.

In Texas, there are no specific legal requirements for what an employer must include in a personnel file. Nonetheless, certain legal and practical considerations suggest that records pertinent to an employee's work history, as well as signed acknowledgements of employer policies and handbooks, should be maintained in the individual personnel file. A non-exhaustive list of common contents of personnel files include:

- Application
- Resume
- Transcripts
- Licenses/certifications
- References
- Performance evaluations
- Commendations
- Disciplinary letters or reprimands
- Training records
- Compensation & benefits

The federal Civil Rights Act and Americans with Disability Act both reference that personnel records must be preserved for a minimum of one year from the later of either: (a) the date the record is made; or (b) the date the personnel action (hiring, disciplinary action, etc.) is taken. 29 C.F.R. §1602.14. A municipality must implement a records retention schedule for use of active and inactive records, disposal of inactive and antiquated records, maintaining of records related to a pending or anticipated legal action, and protecting and preserving permanent records. Tex. Loc. Gov't Code § 201.002.

The federal Uniformed Services Employment and Reemployment Rights Act (USERRA) requires governmental employers to retain records of employees who are injured during military service or who leave employment to enter military service. 5 C.F.R. §353.105. The notice of rights and benefits that governmental employers are required to provide to persons so entitled under USERRA should be kept in the personnel file.

The Texas Unemployment Compensation Act requires governmental employers to retain records related to employment and payroll for four years. 40 TAC §815.106.

Personnel files are routinely requested in government agency in-

vestigations, listed in subpoenas and in discovery requests in employment litigation. Therefore, employers should be careful not to inadvertently include anything in a personnel file that would constitute a waiver of a privilege. Remember that decisions about what goes in those files may affect production obligations (not to mention that non-managing agents might have access to those files). To protect confidentiality and avoid accidental disclosure of sensitive materials, access should be limited to personnel records involving medical issues, investments, and family identities.

Much of what constitutes an employee's personnel file is open and subject to mandatory public disclosure under the Texas Public Information Act.

### EDUCATIONAL OPPORTUNITIES

**Feb. 18, 2011, 8:00 a.m.–**

#### **12th Annual Texas CPM & ASPA District 4 Conference—**

Alan will moderate a panel titled How State Budget Cuts Affect Local Budgets at 9:30 a.m. (LBJ School of Public Affairs).

#### **June 11, 2011, 2:30-3:45pm TCMA Annual Conference**

Alan is on the Open Govt. & Social Networking panel at the Embassy Suites in Frisco, Texas.

CLIENT NEWS



**Dripping Springs**— Ginger Faught recently celebrated her 10th anniversary with the City. She began her tenure as City Secretary and currently serves as Deputy City Administrator.

[Pictured with Mayor Todd Purcell (L)]



Pictured are Mayor Hector Gonzales (L) and Village Commissioner Sean McMahon (R)

**Webberville** – On December 11th, the Village of Webberville hosted its 8th Annual Santa Visit.

**Dripping Springs** – Congratulations to the City for receiving a 2010 Hardworking Rural Community Award!

Dripping Springs is recognized for the dedication, leadership and ingenuity shown by community volunteers, business owners, and city and county officials who have successfully worked together to preserve the past, celebrate the present and anticipate the future!

**INTEGRITY AT CITY HALL**

**Q:** Do Code Compliance Officers have the authority to inspect the backyard of a residence?

**A:** The duty of a Code Compliance Officer is to investigate violations of certain municipal ordinances. The only way a Code Compliance Officer may enter a resident's property is with the resident's permission or a search warrant. Otherwise, the officer can only view the property from the street or sidewalk. The officer may not photograph the violation by holding the camera above the property's fence, or by photographing through any holes in the fence. However, if a neighbor allows, an inspector may view the violation from the neighbor's property via a second story or deck, for example. Typically, the officer will issue the resident a notice of violation, from which the resident may appeal, or correct the problem in order to prevent a citation. In some cases, the officer has the authority to correct the problem themselves and hold the resident financially accountable to the corrections made.

**ABOUT THE FIRM**

The firm's Annual Christmas Party held on December 3, 2010 was well attended! Fun was had by all. *We wish all our clients, friends and colleagues the very best in the new year!*



Check out the Forms section on our website. Get *free downloads* for sample codes, ordinances and many more at [TexasMunicipalLawyers.com](http://TexasMunicipalLawyers.com)



- For more info., check out our website ([click here](#)).
- The firm welcomes **Susan Crippin** as Associate Attorney, a May 2010 graduate of St. Mary's University School of Law.
- Deborah Jennings** joins the firm as Legal Assistant with an MPA from Texas Tech.

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