

TEXAS STATE TECHNICAL COLLEGE  
**STATEWIDE OPERATING STANDARD**

<b>No. GA.2.1</b>	<b>Page 1 of 5</b>	<b>Effective Date: 08/31/15</b>
<b>DIVISION:</b>	<b>General Administration</b>	
<b>SUBJECT:</b>	<b>Subpoenas</b>	
<b>AUTHORITY:</b>	<b>Executive Order</b>	
<b>PROPOSED BY:</b>	<b>Jerry Sorrells</b>	
<b>TITLE:</b>	<b>Coordinator of Records Management</b>	<b>Date: 08/31/15</b>
<b>RECOMMENDED BY:</b>	<i>Original Signed by Ray Rushing</i>	
<b>TITLE:</b>	<b>Vice Chancellor &amp; Chief Legal Officer/General Counsel</b>	<b>Date: 08/31/15</b>
<b>APPROVED BY:</b>	<i>Original Singed by Michael L. Reeser</i>	
<b>TITLE:</b>	<b>Chancellor</b>	<b>Date: 08/31/15</b>

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**EXECUTIVE ORDER**

**PERTINENT INFORMATION**

Texas State Technical College (TSTC) maintains detailed and confidential information regarding many individuals and entities (e.g. students, faculty, and staff). As such, TSTC often receives subpoenas pertaining to specific individuals or entities involved in potential or ongoing litigation. This Executive Order formalizes TSTC procedures for responding to subpoenas.

**DELEGATION OF AUTHORITY**

The Chancellor delegates to the Records Management Officer (RMO) the responsibility for coordinating the response to subpoenas for the system and the colleges.

**OPERATING REQUIREMENTS**

**Receiving a Subpoena**

1. Subpoena for Persons – This type of subpoena requests a person to give a deposition

or to appear in court to testify. Should an employee be served with a subpoena related to their employment, the employee shall immediately forward the subpoena to the RMO. The RMO will communicate with the Office of General Counsel.

2. Subpoena for Records (subpoena duces tecum) – This type of subpoena directs the person subpoenaed to produce certain records that are in the persons control, custody, or possession at a specified time and place. A subpoena for records can be served on the custodian of the records or upon the person named in the subpoena. Should an employee receive a subpoena for records, the employee shall immediately forward the subpoena to the RMO. The RMO will communicate with the Office of General Counsel.

### **Communication by an Employee**

An employee that receives a subpoena should not communicate with the contact person identified on the subpoena without express authorization from the RMO and/or the Office of the General Counsel. Employees should never provide records in response to a subpoena without first giving the records to the RMO to review.

### **Testifying pursuant to a Subpoena**

If an employee receives a subpoena to give a deposition or to appear in court to testify for purposes related to their employment, an attorney in the Office of General Counsel will meet with the employee to discuss the testimony. An attorney from the Office of General Counsel or an attorney from the Office of the Attorney General may accompany the employee to the proceeding.

### **Providing Records pursuant to a Subpoena**

1. The RMO, with the Office of General Counsel, will review the subpoena to determine whether it is valid, and, if not, take the necessary steps to inform the person who issued the subpoena or the court.
2. Once it is determined that a subpoena is valid, the RMO will make sure the subpoena includes a correct social security number or employee number to ensure that the records retrieved are for the correct individual, if applicable.
3. The RMO will request the employee that received the subpoena and/or the department to provide the RMO with the records. If a subpoena seeks records that are maintained by more than one department, the RMO will coordinate the collection of records from the various departments.
4. The RMO, with the Office of General Counsel, will determine whether the documents provided are responsive to the subpoena and whether any of the information is confidential. If information is confidential then the information should be excluded or redacted, as applicable.

5. The RMO will ensure that records requested by a subpoena are delivered to the requesting party on or before the date designated in the subpoena. Courts may sanction persons for not responding to a subpoena within the time designated in the subpoena.
6. The RMO will keep a record of both the subpoena and any records produced in accordance with the Records Retention Schedule (RRS).

### **Special Records: Law Enforcement**

A subpoena requesting law enforcement records of a student or employee should be directed to the TSTC Police Department. In all cases a copy of the subpoena should be forwarded to the RMO.

### **Special Records: Family Educational Rights and Privacy Act (FERPA)**

FERPA is a federal law that allows present or former students access to educational records of the student and provides basic privacy protections for these records. It is important that the employee responding to such subpoena be able to distinguish between educational and non-educational records. Subpoenas that ask for educational records would fall within the requirements of FERPA and TSTC must follow additional procedures to comply with the law.

Before disclosing student records, TSTC must notify the student of the subpoena. TSTC should send notice (by certified first class mail, return receipt requested) to a student's last known address. The notice should explain that the student has the right to take appropriate legal action to prevent TSTC from complying with the subpoena and that in the absence of such action from the student within ten working days, TSTC will disclose the requested records.

If a student has signed a release/consent form that is applicable to the subpoena, the notification requirement is waived. A student's consent must be in writing, signed, dated, and include the following information:

1. Description of the specific records to be disclosed;
2. Purpose or purposes of the disclosure; and
3. Party or class of parties to whom the disclosure may be made.

In situations where a subpoena is accompanied by a court order instructing TSTC NOT to disclose the subpoena to the student, TSTC shall comply with the order.

In all cases a copy of the subpoena and records should be forwarded to the RMO prior to being sent.

### **Special Records: Health Insurance Portability and Accountability Act (HIPAA)**

HIPAA imposes numerous requirements on TSTC concerning the use and disclosure of individual health information. This information, known as protected health information (PHI), includes virtually all current, past, or future information created or received by TSTC through its health care providers, health plans, and contractors. The term PHI does not generally include publicly available information, or information available or reported in a summarized or grouped manner.

A subpoena from an attorney representing a student or employee requesting PHI concerning the student or employee must be accompanied by a valid document authorizing the requested disclosure.

A subpoena from an attorney representing a third party who is requesting PHI concerning a student or employee must be accompanied by at least one of the following documents before records may be released:

1. A valid authorization to disclose the PHI signed by the target of the subpoena;
2. A certificate of compliance from the attorney that contains all of the requirements under HIPAA; or
3. A court order for the release of the requested information.

TSTC may disclose PHI in the course of any judicial or administrative proceeding in response to:

1. An order of a court or administrative tribunal, in which TSTC will only disclose the PHI expressly authorized by such order; or
2. A lawfully issued subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:
  - a. TSTC receives satisfactory assurance from the party seeking the information that reasonable efforts have been made to notify the person who is the subject of the PHI; or
  - b. TSTC receives satisfactory assurance from the party seeking the information that a qualified protective order has been secured.

TSTC may disclose PHI in response to any lawful process described above without receiving satisfactory assurance, if TSTC makes reasonable efforts to provide notice to the person that is the subject of the PHI or to seek a qualified protective order.

Satisfactory Assurance, for the purposes of responding to record requests, means receipt of a written statement and accompanying documentation demonstrating that:

1. The party requesting the information has made a good faith attempt to provide written notice to the student or employee (if the student or employee's location is unknown, has mailed a notice to their last known address);
2. The notice included sufficient information about the litigation or proceeding in which the PHI is requested to allow the student or employee the opportunity to raise an objection; and
3. The time for the student or employee to raise objections has elapsed, and no objections were filed or all objections filed have been resolved through the court process and the disclosures being sought are consistent with such resolution.

In all cases a copy of the subpoena and records should be forwarded to the RMO prior to being sent.

## PERFORMANCE STANDARDS

All Operating Requirements are complied with.