

Possible Votes on Changes to TRCP 76a
September 30, 2022

1. What court orders should be subject to sealing?

- (1) None (Y) ___ (N) _____
- (2) Orders required by statute to be sealed (Y) ___ (N) _____
- (3) Orders changing the name of a person who has been granted a protective order for family violence (Y) ___ (N) _____
- (4) Orders changing the name of a person to protect that person from a well-founded fear of violence (Y) ___ (N) _____
- (5) _____ (Y) ___ (N) _____
- (6) _____ (Y) ___ (N) _____
- (7) _____ (Y) ___ (N) _____
- (8) _____ (Y) ___ (N) _____
- (9) _____ (Y) ___ (N) _____

2. Should there be any exceptions to the idea that all court records are presumed to be open to the general public? (Y) ___ (N) _____

3. If so, should there be a presumption in favor of sealing—

- (1) trade secrets (Y) ___ (N) _____
- (2) other proprietary information (Y) ___ (N) _____
- (3) sensitive data under TRCP 21c (Y) ___ (N) _____
- (4) names of minors (Y) ___ (N) _____
- (5) real names behind pseudonyms under Code Crim. P. art. 58 (Y) ___ (N) _____
- (6) information that is within the constitutional zone of privacy (Y) ___ (N) _____
- (7) information that is confidential under a statute (Y) ___ (N) _____
- (8) information that is confidential under a state or Federal regulation (Y) ___ (N) _____
- (9) information that is privileged under a court rule or regulation (Y) ___ (N) _____
- (10) information that is subject to a confidentiality agreement (Y) ___ (N) _____
- (11) information that is subject to a protective order under TRCP 192.6

- (Y) ___ (N) ___
- (12) information that is subject to a pre-suit nondisclosure agreement with a non-party (Y) ___ (N) ___
- (13) _____ (Y) ___ (N) ___
- (14) _____ (Y) ___ (N) ___
- (15) _____ (Y) ___ (N) ___
- (16) _____ (Y) ___ (N) ___
- (17) _____ (Y) ___ (N) ___
- (18) _____ (Y) ___ (N) ___
- (19) _____ (Y) ___ (N) ___
- (20) _____ (Y) ___ (N) ___

4. Without regard to the presumption to be applied, should the requirement for sealing be different for any categories of information? (Currently the party sealing must show a specific, serious and substantial interest which clearly outweighs the presumption of openness and any probable adverse effect sealing would have on the general public health)

(Y) _____ (N) _____

5. If a different standard applies to some types of information, what should it be:

- (1) information is within the constitutional zone of privacy (Y) ___ (N) ___
- (2) information is confidential by statute or regulation (Y) ___ (N) ___
- (3) information is subject to a privilege not previously waived (Y) ___ (N) ___
- (4) information filed in violation of TRCP 59 (Y) ___ (N) ___
- (4) information that is embarrassing (Y) ___ (N) ___
- (5) information that would be defamatory if published (Y) ___ (N) ___
- (6) information that would tortious invasion of privacy (Y) ___ (N) ___
- (7) information that not relevant (Y) ___ (N) ___
- (8) whether a party is attempting to harass another party (Y) ___ (N) ___
- (9) _____ (Y) ___ (N) ___
- (10) _____ (Y) ___ (N) ___
- (11) _____ (Y) ___ (N) ___
- (12) _____ (Y) ___ (N) ___
- (13) _____ (Y) ___ (N) ___

6. A. Should a party be required to give notice to another party or non-party before

filing “protected” information of that other party or non-party, to allow them to seek a ruling from the court before the information is filed unsealed? (Y) ___ (N) ___

B. Should a party be required to give notice of intent to file information that does not have a presumption of openness before such information can be filed unsealed? (Y) ___ (N) ___

7. A. Should a party be able to have the court review information in camera in advance of filing to determine whether it would or would not be sealed?
(Y) ___ (N) ___

B. If the request to file under seal is denied, what happens with the information examined in camera?

Returned to requesting party, no record kept by court (Y) ___ (N) ___

Permanently sealed and not considered by the court (Y) ___ (N) ___

Automatically unsealed if not successfully appealed (Y) ___ (N) ___

8. Should unfiled settlement agreements be excluded from the definition of court records? (Y) ___ (N) ___

9. Should unfiled discovery be excluded from the definition of court records?
(Y) ___ (N) ___

10. Should a hearing be required on a request to file documents under seal if no party and no member of the public requests a hearing after notice is given?
(Y) ___ (N) ___

11. Should a court be permitted to schedule a hearing on a request to seal or file documents under seal even when no party and no member of the public requests a hearing after notice is given? (Y) ___ (N) ___

12. Should the court be required to review all documents requested to be filed under seal? Or should courts be encouraged to review all such documents? Or should the Rule say nothing about the court’s duty absent a hearing?

(Required) (Y) ___ (N) ___

(Encouraged) (Y) ___ (N) ___

(Say nothing) (Y) ____ (N) _____

13. Should Rule 76a require that public notice of filing under seal, or requesting to file under seal, or moving to unseal, be posted on the website maintained by the State of Texas for posting public notices (<https://topics.txcourts.gov/>) rather than where notices for meetings of county governmental bodies are required to be posted? (Y) ____ (N) _____

14. What is the *minimum* time after giving notice of intent to file unsealed, a motion to file under seal, a motion to seal, or a motion to unseal, before a hearing can be held?

No minimum (Y) ____ (N) _____

Fourteen days (Y) ____ (N) _____

Another period: _____

15. What is the *maximum* time after receiving a motion to file under seal, a motion to seal, or a motion to unseal, for the court to set a hearing?

No maximum (Y) ____ (N) _____

Fourteen days (Y) ____ (N) _____

Another period: _____

16. Should there be a maximum amount of time for the court to rule on a motion to file under seal, a motion to seal, or a motion to unseal?

No maximum (Y) ____ (N) _____

Fourteen days (Y) ____ (N) _____

Another period: _____

Another period: _____

Another period: _____
Another period: _____
Another period: _____

17. If notice is given of intent to file under seal, and no request for a hearing has been made within the prescribed time, should the party be able to file not unsealed?
(Y) ____ (N) ____
18. If notice is given of a motion to file under seal, or motion to seal, and no request for a hearing has been made within the prescribed time, should the motion be granted without a hearing?
(Y) ____ (N) ____
19. If notice is given of a motion to unseal and no request for a hearing has been made within the prescribed time, should the party be able to file unsealed?
(Y) ____ (N) ____
20. If a non-party intervenes in a sealing or unsealing proceeding, is the intervenor allowed to send written discovery or issue deposition notices or subpoena witnesses or records? (Y) ____ (N) ____
21. Should a temporary sealing order remain in effect until further order of the court or instead expire upon the passage of time, subject to extension?

In effect until further order (Y) ____

Expire after 7 days (Y)	Extension? (Y) ____ (N) ____	How long? ____
Expire after 10 days (Y)	Extension? (Y) ____ (N) ____	How long? ____
Expire after 14 days (Y)	Extension? (Y) ____ (N) ____	How long? ____
Expire after __ days (Y)	Extension? (Y) ____ (N) ____	How long? ____
Expire after __ days (Y)	Extension? (Y) ____ (N) ____	How long? ____

22. A. Should a temporary sealing order be required to state when it expires?
(Y) ____ (N) ____

B. What should the longest period be?

Forever (Y) ____ (N) ____
2 years (Y) ____ (N) ____

5 years (Y) _____ (N) _____
10 years (Y) _____ (N) _____
20 years (Y) _____ (N) _____

23. After the lawsuit ends, who should be allowed to file a motion to seal or unseal?

Parties (Y) _____ (N) _____

Non-parties whose information is at issue (Y) _____ (N) _____

Members of the public who participated in the sealing/unsealing proceeding
(Y) _____ (N) _____

Anyone, upon a showing of changed circumstance (Y) _____ (N) _____

24. Should TRCP mention sanctions for abuse of the rule?

Yes (Y) _____ (N) _____

Yes but only in a comment (Y) _____ (N) _____

No (Y) _____ (N) _____

25. Should the Supreme Court consider adopting a rule for the sealing of exhibits offered or admitted in hearings or trials? (Y) _____ (N) _____

26. Should the Supreme Court consider adopting rules for sealing appellate court records? (Y) _____ (N) _____