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## **1. Ethics Policy Introduction**

### **1.1 Ethics Policy Establishes Minimal Requirements**

The Ethics Policy for DIR employees establishes minimal requirements that are not all-inclusive. The absence of a specific rule covering any act discrediting an employee or the agency does not mean that the act is permissible or would not call for disciplinary action, including immediate termination, when considered necessary.

### **1.2 Ethics Program**

The Ethics Officer is available to answer questions and research issues that concern state ethics laws and/or the agency's own guidelines and policies. The DIR General Counsel serves as the Ethics Officer for DIR.

DIR employees do not need the permission of a supervisor to discuss any matter with the Ethics Officer.

The DIR Human Resources department provides training and materials for employees concerning the Ethics Policy and the laws and regulations that govern the standards of conduct of state employees.

### **1.3 Training**

To ensure that all DIR employees remain aware of the ethical issues that arise when working in public service, each employee is required to undergo ethics training at least once every two years.

### **1.4 Notification of Loss, Revocation, Suspension or Other Impairment of Professional License**

An employee who holds a professional license that is a requirement of the employee's position with the agency must immediately notify his/her supervisor of any change that occurs in that professional licensure, including revocation, expiration, suspension, forfeiture or being subject to a grievance or complaint filing.

### **1.5 Disciplinary Action**

An employee who violates or fails to comply with this Ethics Policy is subject to disciplinary action, including immediate termination from employment.

## **2. Standards of Conduct**

### **2.1 Introduction**

Texas law sets forth standards of conduct for state employees and prohibits the acceptance of a benefit or gift by a state employee, in certain circumstances, to avoid a conflict of interest or the appearance of impropriety.

The state law requirements are the minimum expected of state employees, and DIR employees are held to ethical standards even higher than those mandated by law to ensure faith and confidence in the agency.

In general, DIR expects each employee to use sound reasoning and his/her best judgment to act ethically. At some point, an employee may be faced with an ethical dilemma the agency did not anticipate and address in this policy, and is encouraged to consult with his/her supervisor or the Ethics Officer for guidance.

Unless otherwise noted herein, DIR will construe this policy consistent with guidance issued by the courts, the Office of the Texas Attorney General, and Texas Ethics Commission.

For the purposes of this policy, the term “employee” includes a public servant as defined by Texas Penal Code §1.07(a)(41).

### **2.2 Conflict of Interest**

The Information Resources Management Act (Texas Government Code, Sec.2054.022), which created the Department of Information Resources, contains the following “conflict of interest” provisions.

“Sec. 2054.022. CONFLICT OF INTEREST.

- A) A member of the board or the executive director may not:
- 1) be a person required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have, a substantial interest in the information resources technologies industry;
  - 2) be an officer, employee, or paid consultant of a business entity that has, or of a trade association of business entities that have, a substantial interest in the information resources technologies industry and that may contract with state government;
  - 3) own, control, or have, directly or indirectly, more than a 10 percent interest in a business entity that has a substantial interest in the information resources technologies industry and that may contract with state government;

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- 4) receive more than 25 percent of the individual's income from a business entity that has a substantial interest in the information resources technologies industry and that may contract with state government;
  - 5) be interested in or connected with a contract or bid for furnishing a state agency with information resources technologies;
  - 6) be employed by a state agency as a consultant on information resources technologies; or
  - 7) accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise.
- B) A person who is the spouse of an officer, employee, or paid consultant of a business entity that has, or of a trade association of business entities that have, a substantial interest in the information resources technologies industry and that may contract with state government may not be a member of the board or the executive director.
- C) An employee of the department, other than the executive director:
- 1) may not participate in the department's bidding process, including the proposal development related to a contract and the negotiation of a contract, if:
    - i) the employee receives more than five percent of the employee's income from any likely bidder on the contract; or
    - ii) the employee's spouse is employed by any likely bidder on the contract; and
  - 2) may not:
    - i) be a person required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have, a substantial interest in the information resources technologies industry; or
    - ii) be employed by a state agency as a consultant on information resources technologies.
- D) For the purposes of this section, a trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.
- E) The executive director shall dismiss an employee of the department who violates a prohibition under Subsection (c), and the board shall remove the executive director if the executive director violates a prohibition under Subsection (a).”

### **2.3 Conflicts of Interest with Official Duties Prohibited**

Pursuant to Texas Government Code, §572.051 (a), “[a] state employee should not:

1. Accept or solicit any gift, favor or service that might reasonably tend to influence the employee in the discharge of official duties or that the employee knows or

should know is being offered with the intent to influence the employee's official conduct.

2. Accept other employment or engage in a business or professional activity that the employee might reasonably expect would require or induce the employee to disclose confidential information acquired by reason of the official position.
3. Accept other employment or compensation that could reasonably be expected to impair the employee's independence of judgment in the performance of the employee's official duties.
4. Make personal investments that could reasonably be expected to create a substantial conflict between the employee's private interest and the public interest.
5. Intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the employee's official powers or performed the employee's official duties in favor of another."

Each employee will read and certify via completion of the Conflict of Interest form that they are not in violation of the Department of Information Resources conflict of interest provisions.

***2.3b Disclosure of Potential Conflicts of Interest; Certain Contracts Prohibited***

Each state agency employee or official who is involved in procurement or in contract management for a state agency shall disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency.

DIR may not enter into a contract for the purchase of goods or services with a private vendor with whom any of the following agency employees or officials have a financial interest:

1. a member of the agency's governing body;
2. the governing official, executive director, general counsel, chief procurement officer, or procurement director of the agency; or
3. a family member related to an employee or official described by subdivision (1) or (2) within the second degree by affinity or consanguinity.

A state agency employee or official has a financial interest if he/she:

1. owns or controls, directly or indirectly, an ownership interest of at least one percent in the person, including the right to share in profits, proceeds, or capital gains; or
2. could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.

A financial interest prohibited by this section does not include a retirement plan, a blind trust, insurance coverage, or an ownership interest of less than one percent in a corporation.

## **2.4 Acceptance of Benefits**

Texas Penal Code, §36.08(d) prohibits an employee who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government from soliciting, accepting or agreeing to accept any benefit from a person the employee knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his or her discretion.

This would include any gift from a supplier, contractor, or vendor that has, or is seeking to contract with DIR. Prohibited benefits include food or other items offered to thank DIR for its business or the opportunity to do business with the agency, or in appreciation for the services or assistance provided by a DIR employee(s).

## **2.5 Exceptions to the Rules Prohibiting the Acceptance of Benefits**

Texas Penal Code §36.10(6) includes an exception that would permit an employee to accept an item with a value less than \$50, DIR's policy is more strict than state law in this area. **DIR policy prohibits employees from accepting any gift or benefit if it does not meet one of the exceptions listed in Texas Penal Code §36.10, regardless of its value or worth.**

DIR has adopted as part of this policy the remaining exceptions included in Texas Penal Code §36.10 as indicated below:

**Gifts from Relatives, Friends and Other Relationships** – An employee may accept a gift or other benefit given on account of kinship or a personal, professional or business relationship independent of the official status of the employee.

**Use of Governmental Facilities** – An employee may accept an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental agency.

**Guest Exception** – With prior approval from the Ethics Officer, an employee may accept food, lodging, transportation or entertainment as a guest: (1) if the donor is present, and (2) if the donor is required by law to report those items, they are reported in accordance with that law. This exception will apply only in very limited circumstances. The agency will consider whether the reason for the employee's attendance is job-related, whether the employee's attendance will benefit the agency or state of Texas, and the risk that acceptance as a guest could raise a conflict of interest or the appearance of impropriety.

Please contact the Ethics Officer before accepting an item if there is any question whether doing so is prohibited by these rules.

## **2.6 Fee Paid for Other Services Rendered**

An employee may accept a fee for which he or she gives legitimate consideration (goods or services) in a capacity other than as an employee.

Please review the agency's Outside Employment, Business or other Activities policy 4.1 through 13 for further information on review and approval requirements.

## **2.7 Acceptance of an Honorarium**

Pursuant to Texas Penal Code §36.07, an employee commits an offense if he or she solicits, accepts, or agrees to accept an honorarium. An "honorarium" is any payment or benefit, in money or property, for services that the employee would not have been requested to provide but for the employee's official position or duties.

For example, an employee should not accept any benefit in exchange or appreciation for giving a speech as a DIR representative.

The Texas Ethics Commission has determined that an ordinary plaque is not a prohibited honorarium because it is not a "benefit," but most other payments and gifts are prohibited. An employee may, however, accept transportation and lodging expenses in connection with a conference or similar event in which the employee renders services, such as addressing an audience, to the extent those services are not merely superficial, and may accept meals in connection with such an event.

The exceptions that apply to the acceptance of an honorarium are different than those that apply to the acceptance of benefits (discussed above). Please contact the Ethics Officer for advice if you have received an honorarium.

An offense under this section is a Class A misdemeanor.

## **2.8 Returning or Donating Prohibited Gifts or Benefits**

An employee who receives an unsolicited benefit he or she is prohibited from accepting may return the benefit, donate the benefit to a governmental entity that has the authority to accept the gift, or donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious or scientific purposes. A form gift letter may be obtained from the Ethics Officer and is included on the Employment and Ethics division webpage on Gator. Please customize the letter before sending it and send a copy of the letter to the Ethics Officer for retention.

Please contact the Ethics Officer if you have any questions or to arrange donations to governmental entities or charitable organizations.

## **2.9 Bribery**

Pursuant to Texas Penal Code §36.02, a person commits an offense if he or she intentionally or knowingly offers, gives or agrees to give any benefit as consideration for the employee's decision, opinion, recommendation, vote, or other exercise of discretion as an employee of DIR. An employee that accepts or agrees to accept the benefit also commits an offense. An offense under this section is a second degree felony, and should be immediately reported through the chain of command and directly to the Ethics Officer.

## **2.10 Misconduct by a Supplier, Contractor, or Vendor**

Pursuant to Texas Penal Code §36.03, a person commits an offense if by means of coercion he or she influences or attempts to influence an employee in a specific exercise of his or her official power or a specific performance of his or her official duty or influence an employee to violate the employee's known legal duty. An employee should report through the chain of command or directly to the Ethics Officer concerns regarding unethical practice by a supplier, contractor, or vendor, misconduct of an employee or any attempt to coerce an employee.

## **2.11 Gifts from Employees to Management**

In an effort to avoid the appearance that a gift is intended or accepted in exchange for employment benefits or preferential treatment, it is agency policy that employees may not give gifts to their management, except for gifts or donations of nominal value or those made on special occasions such as marriage, illness, seasonal holidays, birthday or retirement.

## **2.12 Authority**

Texas Government Code §572.051

Texas Penal Code §§36.01-.10

## **2.13 Political Aid and Legislative Influence**

DIR and its employees are subject to state laws regulating the use of state resources and official authority to provide political aid and legislative influence.

## **2.14 Prohibited Acts of Agencies and Individuals**

Pursuant to Texas Government Code §556.003, a state employee has the rights of freedom of association and political participation guaranteed by the state and federal constitutions except as provided by §556.004.

Section 556.004 provides:

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- a. A state agency may not use any money under its control, including appropriated money, to finance or otherwise support the candidacy of a person for an office in the legislative, executive or judicial branch of state government or of the government of the United States. This prohibition extends to the direct or indirect employment of a person to perform an action described by this subsection.
- b. A state officer or employee may not use a state-owned or state-leased motor vehicle for a purpose described by Subsection (a).
- c. A state officer or employee may not use official authority or influence or permit the use of a program administered by the state agency of which the person is an officer or employee to interfere with or affect the result of an election or nomination of a candidate or to achieve any other political purpose.
- d. A state employee may not coerce, attempt to coerce, command, restrict, attempt to restrict or prevent the payment, loan or contribution of anything of value to a person or political organization for a political purpose.
- e. For purposes of Subsection (c), a state officer or employee does not interfere with or affect the results of an election or nomination if the individual's conduct is permitted by a law relating to the individual's office or employment and is not otherwise unlawful.

### **2.15 Employment of a Lobbyist**

Pursuant to Texas Government Code §556.005:

- a. A state agency may not use appropriated money to employ, as a regular full-time or part-time or contract employee, a person who is required by Chapter 305 to register as a lobbyist. Except for an institution of higher education as defined by Section 61.003, Education Code, a state agency may not use any money under its control to employ or contract with an individual who is required by Chapter 305 to register as a lobbyist.
- b. A state agency may not use appropriated money to pay, on behalf of the agency or an officer or employee of the agency, membership dues to an organization that pays part or all of the salary of a person who is required by Chapter 305 to register as a lobbyist.
- c. A state agency that violates Subsection (a) is subject to a reduction of amounts appropriated for administration by the General Appropriations Act for the biennium following the biennium in which the violation occurs in an amount not to exceed \$100,000 for each violation.
- d. A state agency administering a statewide retirement plan may enter into a contract to receive assistance or advice regarding the qualified tax status of the plan or on other federal matters affecting the administration of the state agency or its programs if the contractor is not required by Chapter 305 to register as a lobbyist.

## **2.16 Legislative Lobbying**

Pursuant to Texas Government Code §556.006:

- a. A state agency may not use appropriated money to attempt to influence the passage or defeat of a legislative measure.
- b. This section does not prohibit a state officer or employee from using state resources to provide public information or to provide information responsive to a request.

## **2.17 Termination of Employment**

Pursuant to Texas Government Code §556.007, “a state employee who causes an employee to be discharged, demoted or otherwise discriminated against for providing information under Section 556.006(b) or who violates Section 556.004(c) or (d) is subject to immediate termination of employment.”

## **2.18 Prohibition Regarding Compensation**

Pursuant to Texas Government Code §556.008, “a state agency may not use appropriated money to compensate a state officer or employee who violates Section 556.004(a), (b) or (c) or Section 556.005 or 556.006(a) or who is subject to termination under Section 556.007.”

## **2.19 Authority**

Texas Government Code §§556.001–.009

### **3. Post-Employment Restrictions (Revolving Door Law)**

#### **3.1 Introduction**

In accordance with Section 572.054, Texas Government Code (the “revolving door” law), almost all DIR employees who leave the agency are subject to restrictions regarding subsequent employment. The revolving door law applies to any agency employee who is compensated at or above the annual salary of a Group A17 position.

#### ***3.1a Certain Employment Restrictions for DIR Employees***

In accordance with Section 572.069, Texas Government Code, DIR officers or employees who during the period of state service or employment participated in an agency procurement or contract negotiation involving any individual or business entity may not accept employment from that individual or business entity before the second anniversary of the date the officer’s or employee’s service or employment ceased.

#### **3.2 Lifetime Prohibition**

A person covered by this law may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which he or she participated while employed at the agency. This is a lifetime prohibition.

This law does not prohibit a former employee from representing someone on the type of matters on which he or she worked at the agency.

#### **3.3 “Particular Matter” Defined**

A “particular matter” means a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest or judicial or other proceeding.

The Texas Ethics Commission has provided the following clarifications of what is a “particular matter:”

- A particular matter includes the continuation of an ongoing matter.
- A new proceeding that involves the same parties (e.g., a new audit of a person who was previously audited) is not a “particular matter.”

#### **3.4 “Participated” Defined**

“Participated” means to have taken action as an employee through decision, approval, disapproval, recommendation, giving advice, investigation or similar action.

A supervisor has participated in a matter if that matter is handled or assigned to employees within the official responsibility of that supervisor.

A state officer or employee has not participated in a matter merely because the matter is pending before another division of the agency.

### **3.5 Violation is a Class A Misdemeanor**

A violation of the revolving door law is a Class A misdemeanor, which includes the following:

1. a fine not to exceed \$4,000;
2. confinement in jail for a term not to exceed one year; or
3. both fine and confinement.

### **3.6 Lawyers Subject to Disciplinary Rules**

Agency lawyers who leave the agency to engage in private practice or other governmental employment are subject to the Texas Disciplinary Rules of Professional Conduct Rule 1.10 (Successive Government and Private Employment) and Rule 1.05 (Confidentiality of Information).

### **3.7 Limitations on Contracts with Former Employees**

Former agency employees are prohibited from entering into a contract for employment with the agency for a period of 12 months from the employment separation date.

This prohibition also includes a contract for consulting services, professional services or a personal services contract, regardless of whether the performance of the contract involves the traditional relationship of employer and employee.

## **4. Policy Prohibiting Fraud, Waste, Theft and Abuse**

### **4.1 Introduction**

DIR is committed to preventing fraud, waste, theft and abuse by its employees and any consultant, vendor, contractor, other government entity or person in dealings with the agency or the state of Texas.

### **4.2 Fraud**

Fraud is defined as an intentional deception designed to obtain a benefit or advantage, or to cause some benefit that is due another to be denied.

Engaging in fraudulent activity prohibited by federal or state law carries criminal penalties and may subject an individual or entity to civil action. Engaging in activity deemed fraudulent or attempting to do so may also result in termination of employment or the business relationship with the state of Texas.

### **4.3 Waste, Theft and Abuse**

*Waste* is the loss or misuse of state resources that results from deficient practices, system controls or decisions.

*Theft* is the act of taking something from someone unlawfully.

*Abuse* is the intentional, wrongful or improper use of resources or misuse of rank, position or authority that causes the loss of resources.

Waste, theft and abuse that is not illegal but violates agency policy may still result in disciplinary action up to, and including, termination of employment. An employee may also be required to reimburse the agency.

There is some overlap in the definitions of fraud, waste, theft and abuse. Based on the circumstances, the agency will determine whether waste, theft, abuse and/or fraud has been attempted or committed, and take appropriate action.

### **4.4 Fraud awareness training**

Fraud awareness information and fraud awareness training will be provided annually to agency employees.

### **4.5 Responsibility to Report Suspected Fraud, Waste, Theft and Abuse**

Each employee is required to report any suspected fraud, theft, waste or abuse to the agency. An employee may make a report to his or her supervisor, to the Ethics Officer or to the Internal Auditor. Fraud boxes and fraud reporting posters will be posted at conspicuous locations throughout the agency.

Employees can report suspected fraud involving state funds to the State Auditor's Office (SAO) by calling (800) TX-AUDIT (892-8348) or by making a report online at <http://sao.fraud.state.tx.us/>.

The agency will not retaliate against any individual for making a good faith report of suspected fraud, waste, theft or abuse. Any employee who believes he or she has suffered retaliation should immediately contact the Ethics Officer.

### **4.6 Role of the Ethics Officer**

DIR takes allegations of fraud, waste, theft and abuse seriously and will investigate any allegation made in good faith.

The Ethics Officer receives allegations of suspected fraud, waste, theft and abuse. The Ethics Officer may collect additional information from the employee or other person making the report and will make a preliminary determination whether the allegations should be investigated by the Criminal Investigations Division, Internal Audit, Human Resources, the Ethics Officer, some combination of these, or another appropriate person or entity.

The Ethics Officer may provide legal advice to the agency regarding the investigation and findings.

### **4.7 Investigation of Allegations of Fraud, Waste, Theft and Abuse**

The agency will take measures to protect the identity of the person making the report of suspected fraud, waste, theft and abuse if requested by the person making the report. The agency may, however, be required by law to disclose the identity of the person making the report or may need to do so in connection with a criminal investigation by an outside entity.

Employees reporting suspected fraud, waste, theft and abuse should not conduct any investigation on their own or demand compliance with the law or agency policy. An investigator assigned to investigate the allegation will contact the employee making the report to obtain additional information and will conduct the investigation on behalf of the agency.

The employee making the report and any employee interviewed in connection with a report of suspected fraud, waste, theft and abuse should keep information about the report, and any related interview, confidential. An employee should not discuss facts, suspicions or allegations with anyone in or outside the agency without permission from the investigator.

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The investigator will conduct a thorough investigation of the allegations and make written findings. The agency will take action deemed appropriate to address any finding of fraud, waste, theft, or abuse by the investigator.

Internal Audit will report any finding of fraud to the State Auditor's Office as required.

### **4.8 Prohibited Acts**

An employee may be subject to disciplinary action up to, and including, termination of employment for the following:

- Committing or attempting to commit fraud, waste, theft or abuse in violation of the law and/or agency policy;
- Failing to report suspected fraud, waste, theft or abuse by an agency employee or consultant, vendor, contractor, outside agency or person in dealings with the agency or the state of Texas;
- Making a report of fraud, waste, theft or abuse he or she knows to be false;
- Interfering with an investigation of fraud, waste, theft or abuse by failing to cooperate with investigators or providing false information;
- Retaliating against an employee for reporting suspected fraud, waste, theft or abuse in good faith; and
- Failing to maintain the confidential nature of an investigation of suspected fraud, waste, theft or abuse.

### **4.9 Authority**

Governor's Executive Order RP 36 (July 12, 2004)

Texas Government Code §321.022

## **5. Outside Employment Business or Other Activities**

### **5.1 Introduction**

DIR employees are free to engage in employment, business or other outside activities provided that prior approval has been obtained from division management.

### **5.2 How to Obtain Prior Approval**

Approval may come in one of two ways:

- The specific activity is indicated on the list of director-approval activities and is approved by the employee's management; or
- The activity is approved by the employee's management and the Ethics Officer.

### **5.3 What is an Outside Activity?**

An "outside activity" includes, but is not limited to: (1) other employment, including self-employment; and (2) government service as an elected or appointed government official, a board member or commissioner of a governmental entity.

An employee's volunteer work for a non-profit, charitable, community or religious organization is not considered an "outside activity" for the purposes of this policy. Employees are encouraged, however, to talk with their supervisor or the Ethics Officer about any such activities that could be a conflict of interest or raise the appearance of impropriety.

### **5.4 Time Period**

Unless an employee's outside activity approval is revoked as provided by this section, approval will remain effective as long as the nature and extent of the employment or activity remains the same, and the employee's position within the agency does not create a conflict of interest.

### **5.5 Status Change**

Each employee who has received approval to engage in an outside activity is responsible for notifying the supervisor of any changes from the original approval and receiving a new approval agreement.

### **5.6 Approval Guidelines**

Approval is based on the following guidelines:

- The employment, business or other outside activity is not prohibited by any constitutional provision, statute, regulation order, directive or policy.
- The employment, business or outside activity does not involve matters under this agency's jurisdiction or matters for which this agency is responsible.

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- The employment, business or outside activity is NOT with any business, agency or other entity that is involved with DIR in a business or working relationship. Such relationships include, but are not limited to, contractors and subcontractors who provide supplies and services to DIR or to a DIR customer under a DIR contract.
- No apparent conflict between an employee's private interests or those of third parties will arise in regard to his or her duties and responsibilities to the agency.
- The employee's outside activity does not create even the appearance of a conflict.
- No information, public or confidential, obtained from DIR can be used by employees to influence or guide the conduct of their outside employment, business or other activity.
- The employment, business or other outside activity will not impair the employee's availability or efficiency in performing his or her official duties in the agency.
- Employees may not receive financial benefits based on either public or confidential information obtained by DIR.
- The employee's performance evaluation indicates that his or her overall performance meets expectations, and the employee has had no formal disciplinary actions related to job performance within the past year.

### **5.7 Disapproval of Request**

An employee's request for approval may be disapproved by the employee's management or the Ethics Officer if:

- the request is outside the guidelines for approval; or
- disapproval is in the best interest of the agency.

### **5.8 Examples of Allowed Outside Activities**

An employee may engage in an employment, business or other outside activity where the customer is not directly solicited other than by general advertising.

Unless specifically prohibited by one of the above general policy guidelines, employees may engage in occupations in professional and semi-professional fields such as law, teaching, music, nursing or other fields not involving direct contact with the agency in their areas of responsibility.

### **5.9 Examples of Other Allowed Outside Activities**

Examples of other areas an employee is allowed to accept employment, engage in a business or other outside activity include such jobs as:

- hunting and fishing guide
- hotel clerk

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- hospital attendant
- waiter and similar personal service jobs
- clerical employment; including the operation of office machines and equipment repair or maintenance employment
- delivery or distribution employment
- carpentry service
- agricultural or horticultural activities

### **5.10 Examples of Prohibited Outside Activities**

An employee may not represent, advise or act as an agent or attorney for any person, corporation or partnership in any matter administered by the agency.

### **5.11 Revocation of Approval**

The Ethics Officer or the Division Director for the employee's division may at any time revoke an employee's permission if for any reason, the employment or activity embarrasses or brings discredit upon the agency or is not in the best interest of the agency.

If approval is revoked, the division director shall notify the employee in writing of the revocation and forward a copy of the revocation notice to the manager of the Human Resources Division for attachment to the initial application and to the Ethics Officer for updating request records.

### **5.12 Termination of Outside Activity**

When an employee is no longer engaged in an outside activity, the employee must write a memo notifying management of the termination of employment, business or other outside activity. The Division Director will send a copy of this memo to Human Resources to be filed in the employee's personnel file.

### **5.13 Disciplinary Action**

An employee who violates or fails to comply with this section (Outside Employment, Business, or Other Activities) is subject to disciplinary action, including immediate termination from employment.

## **6. Confidential Information Access and Penalties for Illegal Disclosure**

### **6.1 Responsibility for Official Documents**

All records and documents, including computer files, are in the custody of agency employees for official purposes only. Disposal or destruction of records and documents is to be made in accordance with the Records Retention Schedule of the agency.

Employees are held responsible and are subject to disciplinary action and possible criminal prosecution for the loss, disappearance or theft of official documents when attributable to the employee's actions. Employees are cautioned against leaving official documents unprotected in automobiles, on public transportation, in restrooms or in other public areas.

Copies of confidential or sensitive information should be disposed of by shredding or by placing in "secured" trash containers.

### **6.2 Copyrighted Material/Computer Software**

The term "copyright" refers to the exclusive right of a copyright holder to reproduce, distribute, display or sell an original work of authorship. Materials that may be copyrighted include books, articles, stories, drawings, graphs, computer programs, motion pictures and video tapes.

### **6.3 "Infringe" Upon the Copyright**

Anyone violating this exclusive right by copying or otherwise reproducing the copyrighted work without authorization is said to "infringe" upon the copyright.

### **6.4 Violation of Copyright Laws**

Violation of copyright laws, including computer software, may result in fines, imprisonment or disciplinary action including immediate termination from employment.

### **6.5 Questions Regarding Copyright**

There are, however, certain instances when copyrighted material may be used without liability or infringement, depending on the purpose of the use. Questions regarding copyright should be referred to a DIR attorney.

### **6.6 Confidential Information provided by the Comptroller's Office**

Employees that are granted access to confidential information provided by the Comptroller's Office as part of their job duties and responsibilities are required to complete a Confidential Treatment of Information Acknowledgement (CTIA) form 70-223 and read the Comptroller's Public Information Summary Disclosure Manual for Employees and Contractors. By signature of this form, the employee attests by that

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confidential information made available to him by the Comptroller's office is to be held in strictest confidence. Employees will act in accordance with applicable federal and state laws, regulations, and Comptroller policy with regard to the safekeeping and disclosure of confidential information. Employees will maintain confidentiality of passwords granted to access computer systems and not write or post passwords where they may be viewed by unauthorized people. The employee is responsible for any computer transactions performed as a result of access authorized by use of his password.

Employees may be subjected to civil penalties for unauthorized access to or unauthorized disclosure of certain types of confidential information (e.g., IRS Federal Taxpayer Information, Protected Health Information, Sensitive Personal Information). Such penalties may include, but not limited to, the following:

- A misdemeanor, punishable by up to 1 year in jail and/or up to a \$1,000 fine (Texas Tax Code §171.361)
- A misdemeanor, punishable by up to 180 days in jail and/or a fine of up to \$2000 (Texas Tax Code §22.27 (c))
- A felony, punishable by up to 5 years in prison and/or a fine of up to \$5000 (26 U.S.C. §7213(a))

An attempt to circumvent any computer security system or other security control by any means is a violation of Comptroller policy and may constitute a "Breach of Computer Security" as defined in Texas Penal code, Section 33.02 (b), and that such an offense constitutes a Class A or Class B misdemeanor, a state jail felony, or a felony of the first, second or third degree.

It is the responsibility of the Human Resources USAS/USPS Security Administrators to ensure that an employee has signed a Confidential Treatment of Information Acknowledgement (CTIA) form 70-223 and been provided a Comptroller's Public Information Summary Disclosure Manual for Employees and Contractors before granting computer access. The Confidential Treatment of Information Acknowledgement (CTIA) form 70-223 will be maintained in the employee's personnel file.

### **6.7 Disciplinary Action**

An employee who violates or fails to comply with this section is subject to disciplinary action, including immediate termination from employment.