# Vocational Rehabilitation Services Manual A-200: Customer Rights and Legal Issues

**Retired/replaced January 15, 2020** - This entire chapter has been reorganized and content moved to and from this chapter with no substantial changes except for clarifying content, such as litigation. This document reflects the new presentation of content.

Texas Workforce Commission (TWC) staff members may experience a variety of requests for customer information for which various protocols are appropriate. Generally, the table of contents directs individuals on the protocols to follow.

When contacting the TWC Office of General Counsel (OGC), individuals can first review the information and instructions in this chapter that seem most directly related to their question, and then call, email, or open a ticket in the self-service portal to submit the question. Calling is always fastest, but if it would be easier to explain in writing, individuals can use email or the OGC portal. Subpoenas, court orders, letters from attorneys, and out-of-the-ordinary customer releases will almost always need to be emailed. Individuals can call or email either the Open Records Department or the attorney designated to support their division. If individuals do not know which attorney is designated to support their division, they can ask the OGC receptionists or legal assistants. If the designated attorney is not available, then speaking with any other attorney is acceptable.

The Open Records Department can answer most ordinary questions. Telephone calls may be placed through the OGC receptionist at (512) 463-3300 or directly to the main number (512) 463-2422. The OGC portal to submit subpoenas and customer releases is located at [TWC-OGC portal](https://twcgov.service-now.com/ogc). E-mail may be sent to open.records@twc.state.tx.us or faxes may be sent to (512) 463-2990.

## A-201: Legal Authorization

The Rehabilitation Act of 1973 (Act) was amended by the Workforce Innovation and Opportunity Act (WIOA), which was signed into law on July 22, 2014. Changes to the Act made by WIOA have been implemented through amendments to the regulations governing the State Vocational Rehabilitation Services program (VR program) (34 Code of Federal Regulations (CFR) part 361) and State Supported Employment Services program (Supported Employment program) (34 CFR part 363), administered by the Rehabilitation Services Administration (RSA).

1. Customer rights under the individualized plan for employment (IPE) include the following:

The changes to 34 CFR §361.45, "Development of the individualized plan for employment," are intended to efficiently and effectively serve eligible individuals, move them through the VR process with minimal delay, and achieve employment outcomes in competitive integrated employment.

It is important to note that the state is required to provide certain information to each eligible individual or, as appropriate, the individual's representative, which include the option to develop all or part of the IPE, with assistance from various individuals or organizations; an explanation for determining an eligible individual's financial commitments under an IPE; a description of the rights and remedies available to the individual; and a description of and contact information for a client assistance program (CAP). Subsection (c) of 34 CFR §361.45 is set out below, relating to requirements for development of the IPE.

§361.45(c) Required information. The State unit must provide the following information to each eligible individual or, as appropriate, the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or the individual's representative:

(1) Options for developing an individualized plan for employment. Information on the available options for developing the individualized plan for employment, including the option that an eligible individual or, as appropriate, the individual's representative may develop all or part of the individualized plan for employment—

(i) Without assistance from the State unit or other entity; or

(ii) With assistance from—

(A) A qualified vocational rehabilitation counselor employed by the State unit;

(B) A qualified vocational rehabilitation counselor who is not employed by the State unit;

(C) A disability advocacy organization; or

(D) Resources other than those in paragraph (c)(1)(ii)(A) through (C) of this section.

(2) Additional information. Additional information to assist the eligible individual or, as appropriate, the individual's representative in developing the individualized plan for employment, including—

(i) Information describing the full range of components that must be included in an individualized plan for employment;

(ii) As appropriate to each eligible individual—

(A) An explanation of agency guidelines and criteria for determining an eligible individual's financial commitments under an individualized plan for employment;

(B) Information on the availability of assistance in completing State unit forms required as part of the individualized plan for employment; and

(C) Additional information that the eligible individual requests or the State unit determines to be necessary to the development of the individualized plan for employment;

(iii) A description of the rights and remedies available to the individual, including, if appropriate, recourse to the processes described in §361.57; and

(iv) A description of the availability of a client assistance program established under part 370 of this chapter and information on how to contact the client assistance program.

(3) Individuals entitled to benefits under Title II or XVI of the Social Security Act. For individuals entitled to benefits under Title II or XVI of the Social Security Act on the basis of a disability or blindness, the State unit must provide to the individual general information on additional supports and assistance for individuals with disabilities desiring to enter the workforce, including assistance with benefits planning.

2. Customer rights to review of determinations include the following:

Section 102(c) of the Act, as amended by WIOA, establishes an appeals process for individuals who are not satisfied with the services that the VR program is or is not providing, giving individuals the right to pursue mediation as a means of resolving the complaint. The Act also establishes a formal hearing process and a judicial review process for individuals.

Additionally, the Act establishes a CAP, which assists individuals in resolving disputes with the VR agency. The CAP has the authority to advocate on an individual's behalf to resolve a dispute between the individual and the VR agency. Customers can contact the CAP in their state directly for further advice and assistance regarding rights to appeal.

Section 361.57 of 34 CFR requires the designated state unit (DSU) to develop and implement procedures to ensure a customer can request a review of any determination made by DSU personnel. These procedures must provide notification of the customer's rights, including the right to obtain a review of DSU determinations through an impartial due process hearing or through mediation, and the right to receive assistance from the CAP through either process.

It is important to note that the DSU may not suspend, reduce, or terminate a customer's VR services pending resolution through an informal process, mediation, or a formal hearing unless the customer or their representative, as appropriate, agrees or TWC has evidence that services have been obtained through misrepresentation, fraud, collusion, or criminal conduct. The Office of the Attorney General (OAG) will inform the VR counselor if TWC has evidence that services have been obtained through unlawful means.

TWC rules governing VR hearings and mediation procedures are found in 40 Texas Administrative Code (TAC), Chapter 850.

#### 34 CFR §361.38. Protection, use, and release of personal information.

(a) *General provisions.* (1) The State agency and the State unit must adopt and implement written policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must ensure that—

(i) Specific safeguards are established to protect current and stored personal information, including a requirement that data only be released when governed by a written agreement between the designated State unit and receiving entity under paragraphs (d) and (e)(1) of this section, which addresses the requirements in this section;

(ii) All applicants and recipients of services and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;

(iii) All applicants and recipients of services or their representatives are informed about the State unit's need to collect personal information and the policies governing its use, including—

(A) Identification of the authority under which information is collected;

(B) Explanation of the principal purposes for which the State unit intends to use or release the information;

(C) Explanation of whether providing requested information to the State unit is mandatory or voluntary and the effects of not providing requested information;

(D) Identification of those situations in which the State unit requires or does not require informed written consent of the individual before information may be released; and

(E) Identification of other agencies to which information is routinely released;

(iv) An explanation of State policies and procedures affecting personal information will be provided to each individual in that individual's native language or through the appropriate mode of communication; and

(v) These policies and procedures provide no fewer protections for individuals than State laws and regulations.

(2) The State unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches and must establish policies and procedures governing access to records.

(b) *State program use.* All personal information in the possession of the State agency or the designated State unit must be used only for the purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program. In the administration of the program, the State unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

(c) *Release to applicants and recipients of services.* (1) Except as provided in paragraphs (c)(2) and (3) of this section, if requested in writing by an applicant or recipient of services, the State unit must make all requested information in that individual's record of services accessible to and must release the information to the individual or the individual's representative in a timely manner.

(2) Medical, psychological, or other information that the State unit determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

(3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(4) An applicant or recipient of services who believes that information in the individual's record of services is inaccurate or misleading may request that the designated State unit amend the information. If the information is not amended, the request for an amendment must be documented in the record of services, consistent with §361.47(a)(12).

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program or for purposes that would significantly improve the quality of life for applicants and recipients of services and only if, in accordance with a written agreement, the organization, agency, or individual assures that—

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

(e) *Release to other programs or authorities.*

(1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's representative, the State unit may release personal information to another agency or organization, in accordance with a written agreement, for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

(2) Medical or psychological information that the State unit determines may be harmful to the individual may be released if the other agency or organization assures the State unit that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The State unit must release personal information if required by Federal law or regulations.

(4) The State unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.

(5) The State unit also may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Authority: Sections 12(c) and 101(a)(6)(A) of the Rehabilitation Act of 1973, as amended; 29 USC 709(c) and 721(a)(6)(A))

## A-202: Basic Customer Rights

VR customers are afforded certain basic rights, which include the right to:

* informed choice;
* be informed in writing of their rights;
* services that are nondiscriminatory;
* protection of personal information contained in the division's records, and
* appeal decisions regarding their planned services or their eligibility for such services.

Applicant and customer rights applicable to each VR program are summarized in a brochure titled [Vocational Rehabilitation Appeal Procedures - Can We Talk? (PDF)](https://twc.texas.gov/files/jobseekers/vocational-rehabilitation-appeal-process-twc.pdf). A copy of the brochure is to be provided to the customer, at a minimum:

* at application;
* at the time of initial plan development or IPE amendment;
* when services are being denied, reduced, suspended, or terminated; and
* upon applicant/customer request.

For a detailed description of the appeals process, see [VRSM A-204: Appeals and Hearings](https://twc.texas.gov/vr-services-manual/vrsm-a-200#a204) in this chapter.

### A-202-1: Nondiscrimination Policy

VR does not exclude, deny benefits, limit participation, or otherwise discriminate against any individual who is otherwise qualified in the administration of services based on:

* race;
* color;
* sex;
* national origin;
* age;
* disability; or
* religion.

### A-202-2: Civil Rights Complaints

All discrimination complaints received by VR, either directly from a customer or through an external compliance agency, must be forwarded immediately to the TWC Equal Opportunity Officer (Attn: EO Program, Regulatory Integrity Division) by the VR staff member receiving the complaint.

Detailed information about policies, services, and procedures may be found on TWC's Equal Opportunity is the Law web page.

## A-203: Mediation

Any party in an appeal may request mediation. Mediation is a voluntary process in which an appellant and a VR representative may work with a trained mediator to try to resolve a dispute with VR about determinations that affect the appellant's VR services.

Participation in the mediation process is voluntary on the part of the customer and VR.

The mediation process cannot deny or delay:

* the appellant's right to pursue resolution of the dispute through an impartial hearing held 60 days from receipt of the appellant's request for a due-process hearing; or
* any other rights described in this chapter.

At any point during mediation, either party or the mediator may decide to end the mediation. When mediation is ended, either party may pursue resolution through an impartial hearing.

When the VR hearings coordinator receives a request for mediation, the hearings coordinator selects an individual from a list of qualified mediators who are knowledgeable about the laws and regulations concerning VR services.

Mediation sessions are scheduled and conducted in a timely manner and can be held over the telephone, if that is the customer's preference, or in person. If an in-person hearing is conducted, the location is usually the VR regional or field office nearest the appellant's residence or a place agreed to by both parties. Arrangements can be made to address the need for any accommodations.

Discussions that occur during the mediation process are kept confidential and are not used as evidence in any subsequent due-process hearing or civil proceedings. The parties to the mediation process may be required to sign a confidentiality pledge before the process begins.

Any agreement reached during the mediation must be in writing and signed by all parties. The agreement becomes a part of the customer's record.

VR pays the cost of a mediation session. However, VR does not pay for costs related to the appellant's representation by counsel or another advocate selected by the appellant.

## A-204: Appeals and Hearings

An appeal, also known as a due-process hearing, provides the opportunity to:

* resolve disputes about decisions concerning furnishing or denying services; and
* submit additional evidence and information to an impartial hearing officer (IHO), who decides on the issues in dispute.

VR fairly and impartially addresses a customer's complaints about furnishing or denying services. To avoid an interruption of services, VR handles complaints promptly and at the lowest possible management level.

It is TWC's policy to explore all options in VR policy to resolve the complaint. This requires VR staff to address any complaint through an informal resolution process. However, if the VR counselor or his or her VR Supervisor or VR Manager cannot resolve the complaint, the customer must be given the right to appeal.

This policy applies to customer appeals involving VR and Independent Living Services for Older Individuals Who Are Blind.

Refer to Office of [General Counsel-Due Process Hearing](https://intra.twc.texas.gov/intranet/gc/html/vr-appeals.html) for additional information.

### A-204-1: Notifying the Customer of the Appeals Process

VR provides a customer (or as appropriate, the customer's representative) written notice of:

* the right to a review of VR determinations that affect the provision of services to the customer through an impartial due-process hearing as described in this chapter;
* the right to pursue mediation with respect to VR determinations that affect the customer's VR services;
* the address of OGC, with whom the customer may file a request for mediation or a due-process hearing;
* the way a mediator or IHO may be selected consistent with the requirements of this chapter; and
* the availability of the [CAP](https://www.disabilityrightstx.org/en/handout/vocational-rehabilitation-system-in-texas-2/) to help the customer during a mediation session or due-process hearing.

Decisions subject to review by appeal include:

* denial, reduction, suspension, or termination of services;
* the nature or content of the customer's IPE; or
* the delivery or quality of vocational counseling services or other services provided by VR.

### A-204-2: Time Limit of an Appeal

A customer who is not satisfied with a determination by VR must file the appeal within 180 days of the date on which VR made the determination. Otherwise, the appeal is not timely.

### A-204-3: Time Limit for the Hearing

An IHO must conduct a hearing within 60 days of VR's receipt of a customer's request for a due-process hearing, unless the parties to the dispute:

* achieve informal resolution or a mediation agreement before the sixtieth day; or
* agree to a specific time extension, which must be:
  + in writing;
  + signed by the appellant; and
  + filed with OGC.

The IHO may grant reasonable time extensions for good cause at the request of either party.

### A-204-4: Roles and Responsibilities in a Due-Process Hearing

#### Independent Hearing Officer

The IHO's authority is limited to reviewing the appellant's dissatisfaction with the furnishing or denial of services by VR.

The IHO may not:

* change TWC rules, policies, or procedures;
* hear alleged violations of the Americans with Disabilities Act, §504 of the Rehabilitation Act, or other federal laws;
* hear or decide class actions; or
* grant compensatory or monetary relief.

#### Office of General Counsel

OGC provides administrative support to the IHO during the appeal process and is the point of contact for the appellant's questions about the due-process hearing.

OGC’s role depends on whether the appellant represents himself or herself or designates an attorney as a representative.

If the appellant represents himself or herself or is represented by someone who is not an attorney, OGC’s role is primarily that of advisor to the VR representative. The VR representative prepares and presents the case. OGC provides all requested support to the VR representative.

Before the hearing, OGC is available to meet with the VR representative to discuss:

* developing the issues;
* gathering the evidence;
* preparing witnesses; and
* preparing exhibits.

If the appellant's representative is an attorney, OGC prepares and presents the case with the VR representative's help.

#### VR Representative

The VR representative is a VR deputy regional director or regional director.

If the appellant is not represented by an attorney, the VR representative:

* has the authority to settle the dispute with the appellant;
* prepares and presents the case;
* represents VR at the due-process hearing;
* fields all content calls; and
* may request support from OGC.

If the appellant is represented by an attorney, the VR representative:

* no longer has total responsibility for the due-process hearing;
* supports counsel legal staff members who are representing VR;
* is the rehabilitation content and case file expert; and
* helps counsel legal staff to reach a settlement.

The VR representative is the contact person for witnesses who are VR employees regarding the date, time, and location of the hearing and for any changes that occur.

#### The Appellant

The appellant is a customer who has filed an appeal and is the primary party to the hearing process. The purpose of the hearing is to resolve the issues that the appellant raised in the petition.

When the appellant does not have a representative, the appellant presents the case (for example, presents all the evidence and witness testimony) alone.

#### A Witness

A witness has:

* personal knowledge of the facts; or
* special knowledge (expert) of the alleged facts and issues.

A witness is usually prepared for testimony by the party's representative. An untrained witness may be asked to provide "impressions," and an expert is often asked to render an opinion based on a hypothetical question. All admissible witness testimony is entered into the record.

It is generally expected that the appellant's VR counselor is called as a witness.

### A-204-5: Serving Customers During an Appeal

A pending appeal decision by a mediator or IHO does not suspend, reduce, or stop services being provided for an appellant, including evaluation and assessment services and plan development, unless the:

* appellant or the appellant's representative requests it; or
* services have been obtained through misrepresentation, fraud, collusion, or criminal conduct by the appellant or the appellant's representative.

If a customer completes a term of training or similar services before the appeal is resolved, and the next term has not yet begun, the training or services under appeal will not continue to be provided for the next term. Training or services not under appeal will not be suspended, reduced, or stopped.

### A-204-6: Designating an Appellant's Representative

An appellant may represent himself or herself, or may designate someone to act as his or her representative, by completing [VR1487, Designation of Applicant or Customer Representative](https://twc.texas.gov/forms/index.html). The representative may be an attorney licensed to practice law in Texas, but he or she is not required to be an attorney.

The appellant's representative:

* speaks for the appellant;
* handles the hearing for the appellant; and
* holds the same status in the appeals process as:
  + the VR representative; or
  + TWC's OGC attorney.

Once the appellant has designated a representative, the VR employee provides copies of all notices, pleadings, and other correspondence to the appellant's representative.

When the appellant's representative is an attorney, then:

* an attorney-client privilege relationship exists; and
* all communication with the appellant must occur through the appellant's representative.

The appellant's authorized representative remains the representative of record in the absence of a formal request to withdraw and an order approving the withdrawal issued by IHO.

When the appellant or the appellant's representative communicates that a representative designation is no longer in effect, the VR representative:

* stops communicating with the representative about the case;
* documents the appellant's oral or written notice in a case note; and
* asks the appellant to provide the request for revocation in writing, if applicable.

VR does not pay expenses for legal services or for witnesses requested by the appellant.

### A-204-7: Client Assistance Program

In addition to providing information about the availability of a CAP during the IPE process, VR must provide this information in any determination provided to the customer. Information specific to the hearings process is also provided by the hearings coordinator. The required information for the appellant must include the address and telephone number of the nearest [CAP](https://www.disabilityrightstx.org/en/handout/vocational-rehabilitation-system-in-texas-2/) office.

Other free legal services and referrals may be available through [Texas Legal Services Center](http://www.tlsc.org/), [Texas Lawyers for Texas Veterans](http://www.texasbar.com/AM/Template.cfm?Section=Texas_Lawyers_for_Texas_Veterans), or, depending on the customer's location:

* [Legal Aid of Northwest Texas](https://internet.lanwt.org/home), which serves the Dallas/Fort Worth area and Northwest Texas;
* [Lone Star Legal Aid](http://www.lonestarlegal.org/), which serves the Houston area and East Texas; or
* [Texas Rio Grande Legal Aid](http://www.trla.org/), which serves the Austin/San Antonio area, El Paso area, and South Texas.

### A-204-8: Communications with the Impartial Hearing Officer

Unless authorized by law, the VR representative or the appellant may not communicate directly or indirectly with the IHO about any issue of fact or law unless all parties may participate in the communication.

### A-204-9: Witness Mileage and Fees

The party that requests the witness's appearance or deposition pays witness mileage and fees.

VR employees' expenses are paid by the office to which they are assigned.

Any witness who is not a VR employee and who is subpoenaed by TWC is entitled to:

* mileage based on state travel rates for travel to and from the hearing or deposition, if the place is more than 25 miles from the individual's residence; and
  + a fee of at least $10 a day for each day or part of a day that the individual is required to be present; or
  + a fee equal to the per diem and travel allowances of a state employee, if an overnight stay is required.

### A-204-10: Providing Reasonable Access

During the appeal process, VR provides reasonable access on requests to the customer or other individuals with disabilities, as required by the Rehabilitation Act of 1973, as amended, §101(a)(6)(B) and §504.

Hearings or proceedings are always held at a time and place that is reasonably accessible to the appellant and any witnesses and convenient for the parties.

During the appeal process, the IHO must require that VR provide, upon reasonable notice and request, and at VR's expense, special communication help, including translators, readers for blind or visually impaired customers, and interpreters or communication access real-time translation (CART) for deaf and hard-of-hearing customers during proceedings.

For an appellant who is deaf and has sign language skills, VR uses certified interpreters when possible.

A VR employee may not serve as an interpreter during an appeal process.

An appellant who has a different hearing and/or speech impairment might need communication help such as:

* special environmental arrangements; or
* other communication technologies.

Technical assistance with interpreters and other communication alternatives may be obtained from the [Texas Office of Deaf and Hard of Hearing Services](https://hhs.texas.gov/services/disability/deaf-hard-hearing).

### A-204-11: Computing Time

In computing any period stated in these procedures, the VR representative:

* does not include the date of the act, event, or default (the period begins on the next day); and
* includes the last day of the period, unless it falls on a Saturday, Sunday, or legal holiday. (The period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.)

Unless stated otherwise, the word "days" refers to calendar days.

### A-204-12: Prehearing Procedure

#### Notification of Appeal

An appeal is made when the customer files a [VR1505, Request for Due Process Hearing and/or Mediation](https://twc.texas.gov/forms/index.html), with OGC. A customer may file an appeal when he or she disagrees with any determination affecting the provision of rehabilitation services.

#### Selection of the IHO for Hearing or Mediation

After receiving VR1505, Request for Due Process Hearing and/or Mediation, OGC randomly selects an IHO from a pool of IHOs.

#### VR Representative

If the appellant is not represented by an attorney,

* the deputy regional director prepares and presents the case; and
* OGC provides all requested support to the deputy regional director.

If the appellant is represented by an attorney, the roles change. See "Roles and Responsibilities in a Due-Process Hearing," in this section for more information.

#### Action Before the Hearing

The IHO sets the date, time, and place for the hearing and notifies the parties. Hearings can be held over the telephone or in person. If an in-person hearing is conducted, the location is usually at the VR regional or field office nearest the appellant's residence, or a place agreed to by both parties. Arrangements can be made to address the need for any accommodations.

The IHO schedules a prehearing conference to acquaint all parties with the laws, regulations, and rules to be followed during the hearing. The prehearing conference also allows all parties to raise and address concerns about any relevant matter, including:

* pending motions;
* stipulations;
* issues;
* witnesses;
* disclosures;
* reasonable access; or
* settings.

Names and addresses of witnesses must be filed before the hearing date set by the IHO.

The IHO may order that the parties be prepared to do the following at the prehearing conference:

* Discuss the prospects of settlement and report on them at the prehearing conference
* File and discuss preliminary motions
* Specify the facts and legal issues in the case
* State concisely the disputed facts and issues

All of the discovery, prehearing conference, and due-process hearing is electronically recorded. VR provides one copy of the recording at no cost to the appellant. There is a charge for additional copies or transcripts.

#### Discovery

VR must provide to the appellant, or the appellant's representative, a copy of the appellant's case file without the appellant having to request it.

A party may request in writing that the other party:

* provide the names of potential witnesses, including experts;
* summarize the anticipated testimony of the witnesses;
* state the issues as the party sees them and the factual basis for the issues; and
* provide other information requested by the IHO.

### A-204-13: Action During the Due-Process Hearing

The appellant and VR representative may:

* offer into evidence any relevant information;
* examine all material offered into evidence;
* object to any evidence offered;
* provide testimony;
* call witnesses to testify; and
* cross-examine witnesses.

#### Conduct of the Parties During the Hearing

The IHO maintains and enforces standards of conduct. Every party, witness, attorney, and representative must participate in all proceedings with professionalism, dignity, courtesy, and respect for all other parties.

#### Order of Procedure at the Hearing

1. The appellant may state:
   * the claim or defense;
   * what the appellant expects to prove; and
   * the relief sought.
2. VR may make a similar statement.
3. The IHO may allow others to make statements.
4. The appellant introduces evidence.
5. VR and any other parties may cross-examine each of the appellant's witnesses.
6. Parties may redirect and re-cross-examine.
7. Unless the statement has already been made, VR may state:
   * the claim or defense;
   * what VR expects to prove; and
   * the relief sought.
8. VR introduces evidence, if any.
9. The appellant and any other parties may cross-examine each of VR's witnesses.
10. The parties then may present rebuttal evidence.
11. The IHO may allow the parties to make their closing statements.

The IHO may deviate from this order of procedure in the interest of justice or to expedite the proceedings.

At the hearing, parties must provide four copies of each exhibit offered as evidence.

No evidence may be admitted that is irrelevant, immaterial, or unduly repetitious.

### A-204-14: The Impartial Hearing Officer's Decision

The IHO renders a decision within 30 days after the hearing completion date.

### A-204-15: Motion for Reconsideration

Either party to a hearing may file a motion for reconsideration with OGC within 20 days after the IHO issues a decision.

The motion for reconsideration must specify the matters in the IHO's decision that the party considers erroneous. The opposing party must file a response to the motion within 15 days of the date that the motion was served on the opposing party.

### A-204-16: Final Decision

The IHO acts for VR, and the IHO's decision is final.

### A-204-17: Civil Action or Judicial Review

Any party aggrieved by an IHO's final decision may bring a civil action for review of the decision. Without regard to the amount in controversy, the action may be brought in:

* any state court of competent jurisdiction; or
* a US district court of competent jurisdiction.

In any such action, the court:

* receives the records relating to the hearing;
* hears additional evidence at the request of a party to the action;
* bases a decision on the preponderance of the evidence; and
* grants appropriate relief.

Exhausting all administrative remedies, including a motion for reconsideration, is a prerequisite to judicial review. A party seeking judicial review of the final VR decision must begin civil action no later than 30 days after the date of the final decision.

If a party brings a civil action to challenge an IHO's final decision, the IHO's final decision must be implemented, pending a court's review.

## A-205: Subrogation

Subrogation is a process in which TWC recovers all or part of the costs of providing rehabilitation services when a customer:

* was injured in an accident that was somebody else's fault; and
* stands to recover monetary damages in a lawsuit or insurance settlement.

TWC-VR's statutory authority for subrogation is Texas Labor Code §352.058. When TWC-VR funds are expended on behalf of a customer who has filed litigation or other legal claims, OGC helps recover those funds.

### A-205-1: Legal Authorization

Section 352.058 provides that TWC-VR be subrogated to the customer's right of recovery when TWC-VR pays for rehabilitation or medical care services for a customer. In other words, TWC-VR is put in the customer's place and assumes the customer's right of recovery from:

* personal insurance;
* another person for personal injury caused by the other individual’s negligence or wrongdoing; or
* any other source.

VR's right of subrogation is limited to the cost of the services VR has provided to the customer.

Example: VR pays for rehabilitation or medical services made necessary by a motor vehicle accident, and the customer later receives a court judgment or insurance settlement for the accident. VR is entitled to be reimbursed out of the proceeds of the settlement or judgment for the services VR provided to the customer.

TWC-VR has the ability to waive, totally or partially, VR's subrogation interest when it is found enforcement will tend to defeat the purpose of the customer's rehabilitation.

### A-205-2: Asking the Right Questions

When completing or updating the **Personal Information** page in ReHabWorks (RHW), the VR counselor must ask the customer whether he or she has retained an attorney for any issues associated with his or her disability or the requested VR services.

If the customer confirms that he or she has retained an attorney, then it is presumed that there is a pending claim or litigation and the VR counselor must ascertain whether VR may pursue subrogation. Refer to [A-205-3: Types of Subrogation](https://twc.texas.gov/vr-services-manual/vrsm-a-200#a205-3) for additional information about pursuing subrogation.

### A-205-3: Types of Subrogation

When the customer has retained an attorney or there is a disability-related lawsuit pending, the VR counselor reviews the following scenarios with the customer to determine whether a [VR3500, Subrogation Report](https://intra.twc.texas.gov/intranet/gl/html/vocational_rehab_forms.html) should be completed:

**TWC-VR pursues recovery of expenditures in the following types of cases:**

* A customer is bringing claims or suing another party for personal injury caused by the other party's negligence or wrongdoing, and when VR has expended, or will expend, funds for rehabilitation services due to the negligence or wrongdoing.
* A customer was injured on the job, but there is no workers' compensation coverage, and the customer has filed a liability claim or lawsuit.
* The Texas Department of Insurance, Division of Workers' Compensation, has denied the customer's claim, and the customer is appealing the denial either to the Texas Department of Insurance, Division of Workers' Compensation, or in court, and TWC-VR has provided or will provide diagnostic or restorative services related to the injury.

**TWC does not pursue subrogation when any of the following are true:**

* The Texas Department of Insurance, Division of Workers' Compensation, is paying or will pay for the customer's medical expenses.
* When the customer is applying for Supplemental Security Income (SSI) or Social Security Disability (SSD) benefits.
* When TWC-VR has expended no funds and expects to spend no funds.
* When TWC-VR expenditures in on-the-job injury cases include no medical costs relating to the original injury.

### A-205-4: Subrogation and Use of Comparable Benefits

TWC-VR usually does not purchase goods or services for customers when there are other sources to cover these expenses. However, per 34 CFR §361.53(a), VR funds can be used before a settlement or judgment is reached in a workers' compensation or liability case when funds are not available at the time needed to ensure that the customer's progress toward the employment goal is not delayed.

### A-205-5: Subrogation Procedure

If it is determined that TWC-VR may be entitled to pursue subrogation there are several steps required to ensure that OGC is notified of the pending subrogation case in a timely manner.

As part of the diagnostic interview or when completing the IPE, Joint Annual Review, or IPE amendment, VR staff must complete the [VR3500, Subrogation Report](https://intra.twc.texas.gov/intranet/gl/html/vocational_rehab_forms.html). Include the details of the subrogation in either the diagnostic interview or another case note.

Enter "yes" in the "lawsuit pending" section of the RHW **Personal Information** page and send the form to OGC by email, fax, or regular mail to:

Legal Assistant  
Office of the General Counsel  
Texas Workforce Commission  
101 East 15th Street, Room 608  
Austin, Texas 78778

Tel: (512) 936-3511  
Fax: (512) 463-1426  
Email: [subrogation@twc.state.tx.us](mailto:subrogation@twc.state.tx.us)

One copy of the VR3500 is filed in the customer's paper case file and another copy of the VR3500 is provided to the customer to inform them of TWC-VR's subrogation rights under Texas law.

If the customer has questions about the subrogation process, VR staff can escalate those questions through their chain of management to OGC for additional guidance and support.

Once the [VR3500, Subrogation Report](https://intra.twc.texas.gov/intranet/gl/html/vocational_rehab_forms.html) has been completed and submitted to OGC, recovery will begin when funds that are recoverable have been encumbered,

TWC-VR field staff is not required to track a subrogated case until it is resolved.

### A-205-6: Role of Office of General Counsel in Subrogation Process

OGC provides all legal support and representation regarding subrogation, including legal intervention in lawsuits. Additionally, the office acts as a liaison with the OAG.

Within OGC, the subrogation coordinator:

* helps identify cases that are appropriate for subrogation;
* begins efforts to recover costs when OGC is notified of a subrogation case; and
* communicates with field counselors and private attorneys to facilitate reimbursement.

### A-205-7: The Recovery Process

When OGC finalizes a settlement of a subrogation claim, the customer's attorney often will submit a request for a waiver of all or part of the TWC-VR subrogation lien. When this happens, the TWC subrogation coordinator:

* communicates with the customer's attorney regarding the subrogation claim; and
* sends a list of assessment questions to the counselor of record or the VR Manager of that unit.

The VR counselor of record or VR Supervisor:

* completes the list of assessment questions; and
* sends the completed document to the subrogation coordinator within three workdays.

When all necessary documents, including the VR counselor's assessment responses, are received, TWC-OGC will use the information provided to negotiate an appropriate settlement amount for the subrogation claim, if warranted.

The final settlement amount may range from 0 percent to 100 percent of the total lien amount claimed by TWC-VR.

## A-206: Litigation

Litigation is an action or lawsuit filed in a state or federal court in which TWC and/or its employee(s) are named a party. If an employee is served and/or named as a defendant in a lawsuit related to TWC business, he or she should immediately contact OGC at (512) 463-7902.

The OAG represents the agency and may represent individual employees named individually in the lawsuit if related to agency duties.

The attorney general cannot represent an employee in a legal matter if the employee is being sued for conduct not:

* on state time; or
* related to agency duties.

If an employee is sued in the employee's individual capacity, not related to agency duties, VR staff or OGC will not accept service on behalf of the employee. The employee must personally receive and accept service of the lawsuit.

### A-206-1: Responding to Litigation Proceedings

In a state lawsuit, the lawsuit document (petition) is hand-delivered by a process server (constable, deputy sheriff, or any other individual who is not interested in the outcome of the case).

In a federal lawsuit, the document (complaint) is hand-delivered by a federal marshal or delivered through first-class mail. Delivery of these documents is known as "service of process."

TWC does not accept service of process documents that name an employee and the employee's conduct is not:

* on state time; or
* related to agency duties.

If TWC, one of TWC’s three Commissioners, or a member of executive management is sued in his or her official capacity, OGC may accept service of the lawsuit on behalf of TWC.

**A-206-2: Guidelines Regarding a Litigation**

Discuss the lawsuit only with TWC attorneys or the assistant attorney general assigned to the case.

### A-206-3: Depositions and Other Discovery

TWC employees may be required to provide sworn testimony through a deposition by attorneys involved in a lawsuit wherein TWC may or may not be a party to the litigation. TWC employees will assist OGC attorneys and the OAG through the deposition process, including making themselves available for both preparation for a deposition and the actual deposition.

TWC may also be served with discovery such as interrogatories, requests for admissions, requests for production, and requests for disclosures. When requested, TWC employees will assist OGC attorneys and OAG attorneys to make timely responses to discovery requests.

## A-207: Confidentiality and Use of Customer Records and Information

This section applies to all customer records and information pertaining to individuals who apply for or receive VR services. The [VR Release Forms Desk Aid](https://intra.twc.texas.gov/intranet/vrs/docs/vr-release-forms-desk-aide.docx) is available for additional guidance.

A customer is anyone who applies for or receives VR services.

A customer representative is any individual chosen by an applicant or eligible individual, including a parent, guardian, other family member, or advocate. If a court has appointed a guardian or representative for an applicant or eligible individual, that person is the individual's representative.

The customer representative for a child who is less than 18 years old and not emancipated or married is the parent or court-appointed guardian. The parent is presumed to be the representative unless documentation is provided showing otherwise.

For VR to safeguard the customer's confidentiality, the customer or the customer's representative must provide documentation of representation to VR. The customer's representative has responsibilities related to the provision of VR services until VR is notified by the customer or the customer's representative that the person is no longer the representative.

A customer's representative must:

* complete [VR1487, Designation of Applicant or Customer Representative](https://twc.texas.gov/forms/index.html); or
* provide power of attorney documentation or a written statement by the customer designating a representative.

A court-appointed guardian or representative must provide current legal documentation of guardianship.

The paper case file for an emancipated or married minor child must include current legal documentation as proof of emancipation or marriage.

### A-207-1: Request for Records Procedures

The VR employee contacts OGC immediately, and notifies the immediate VR Supervisor, when:

* a customer, customer's representative, or lawyer requests that a TWC employee discusses a customer's case with a lawyer;
* a lawyer, judge, magistrate, or clerk of court calls or writes TWC concerning a subpoena; or
* the VR employee is served with a subpoena that requires a TWC employee to appear:
  + in court;
  + before an administrative proceeding; or
  + for a deposition.

The VR staff member sends a copy of the subpoena via email to [open.records@twc.state.tx.us](mailto:open.records@twc.state.tx.us) or fax to (512) 463-2990. Responses to subpoenas, court orders, or summons are centrally coordinated through the OGC Open Records Section. Release of records is prohibited unless expressly approved by OGC. The VR staff member should contact OGC via email at [open.records@twc.state.tx.us](mailto:open.records@twc.state.tx.us) or call the VR Records Coordinator at (512) 936-6355 for instructions in the following circumstances.

### A-207-2: Obtaining Customer Information

Customer information usually is obtained from:

* the customer;
* another individual; and/or
* various agencies and organizations.

To authorize release of customer information at the time of application, the applicant completes and signs the [VR5060, Permission to Collect Information](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html).

### A-207-3: Safeguarding Customer Records and Information

Employees are responsible for protecting the confidential nature of information in customer case files, in accordance with this policy, and for prohibiting unauthorized access to them.

Information is not to be disclosed directly or indirectly, other than in the administration of the rehabilitation programs, unless:

* the consent of the customer has been obtained in writing;
* in compliance with a court order; or
* in accordance with a federal or state law or regulation, as described in this chapter.

The confidential information that is protected includes all customer-identifying information contained in:

* reports;
* lists; and
* other paper or electronic documents.

Specifically, this means any information that would identify an individual as being a VR customer.

Protected customer information includes information normally filed in a customer case file, such as:

* applications, medical reports, IPE, and contact reports; and
* any document held outside customer case records, such as Internal Audit reports containing information that identifies a customer by name, Social Security number (SSN), or other means.

A customer's case files and materials scheduled for inclusion in the customer's folders are kept in a locked desk, filing cabinet, or other suitable locked container when VR employees are not present to ensure proper security.

All other information identifying the customer is kept in a locked VR building, office area, or room when VR employees are not present to ensure proper security.

Good judgment must be exercised, and reasonable precautions taken, to ensure unauthorized individuals do not have access to confidential records. Employee violations of VR policy on protecting the confidential nature of customer records are grounds for appropriate disciplinary action.

All TWC employees must maintain a professional respect for the confidential nature of the data on individuals and refrain from indiscreet and/or casual conversation that might reveal to unauthorized individuals information concerning VR customers.

## A-208: Release of Customer Records and Information

Unless specifically authorized by OGC, confidential customer information is released only when:

* authorized by the customer or customer's representative on a valid release;
* responding to a valid subpoena or other legal process;
* directly connected with the customer's rehabilitation; or
* needed in certain investigative and emergency circumstances.

After an Open Records request has been completed by OGC and returned to the VR counselor, the VR counselor must complete [VR1514, Request from Open Records](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html), certifying that the information was released per TWC policy. The form allows the VR counselor to identify information not provided to the requestor because it would be potentially harmful to the customer if released.

### A-208-1: Release of Information from Governmental Agencies with Restrictions

When information is rereleased based on a valid release by the customer or the customer's representative, personal information in the file obtained from another governmental agency or governmental organization, either local, state, or federal, can be rereleased only by, or under the conditions established by, the other agency or organization, and specified in the records.

Customers are required to sign [VR5061, Notice and Consent for Disclosure of Personal Information](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html), during the application process. This form, when signed, is the customer's acknowledgment that personal information, by law, may be shared with other governmental entities.

It is possible that due to stringent controls, VR cannot release to the requestor the information obtained from the other agency or organization, but must refer the requestor to the source to obtain the information. OGC determines when information of this type is needed to respond to a request in a court order, subpoena, or is needed for other purposes described in this chapter.

### A-208-2: Release of Customer Criminal History Records

Occupations requiring a license permit or other credential may include a computerized customer criminal history (CCH) search as part of the credentialing process.

If a customer wants to work in an occupation or participate in a training program requiring a license, permit, or other type of credentialing, the VR counselor should explain to the customer why the CCH search is necessary and document in a case note the reasons for obtaining the CCH, along with a summary of the discussion with the customer.

Requests for the CCH search can be submitted only on cases determined eligible or that are in active status. Criminal history cannot be considered part of the eligibility determination process, only as part of the employment planning occurring during the comprehensive assessment and plan development process or when in active status.

To request a CCH search on a customer, the VR counselor completes [VR1510, Request for Computerized Criminal History (CCH) Search](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html), and sends it by email to the regional point of contact. The CCH requested by VR covers offenses that occurred in Texas.

The CCH report is critical to the decision-making process. A VR counselor should not approve a vocational goal for any occupation requiring a license that the [Texas Department of Licensing and Regulation (TDLR)](http://www.tdlr.texas.gov/) has determined would be prohibited to individuals with criminal backgrounds. The VR counselor should discuss other vocational goals with the customer if the customer has a criminal history that precludes a licensed profession. If an occupation requires a license not issued by the Texas Department of Licensing and Regulation, the VR counselor must contact the appropriate licensing entity to determine if it is feasible for the customer to be licensed.

Refer to [VRSM B-405-4: Evaluating and Documenting Computerized Criminal History Results](https://twc.texas.gov/vr-services-manual/vrsm-b-400#b405-4) for policy and procedure on documenting and storing a CCH.

VR receives customer criminal history records from the Texas Department of Public Safety (DPS) on the assurance that the records will:

* be used for rehabilitation purposes only; and
* not be further released by VR to another organization or individual, including the customer or customer's representative, unless there is a valid release or written request from the customer or a valid court order.

Except for requests contained in valid subpoenas after the release is approved by OGC, or other court orders or for a written request from a customer, the VR counselor does not honor any requests for such records and does not release the documents obtained from DPS outside of VR.

Based on Texas Government Code §411.085(a)(2).

### A-208-3: Release of Information Obtained from Disability Determination Services

VR releases customer information in the customer's case record that was obtained from Disability Determination Services in accordance with the provisions of this chapter.

### A-208-4: Release of Alcohol and Drug Abuse Patient Records

Customer "alcohol and drug abuse patient records" means any records in a customer's file provided to VR from an outside source and accompanied by the following written statement, attached by the source providing the records:

"This information has been disclosed to you from records protected by Federal Confidentiality rules (42 CFR 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient."

Alcohol and drug abuse patient records do not include records such as psychological reports or medical records, which are not accompanied by a cover sheet or other attached document containing the statement quoted above.

#### Labeling and Maintaining Alcohol and Drug Abuse Patient Records

Any time a customer's alcohol and drug abuse patient records are released, this same restrictive statement must be printed on a cover sheet and attached to the records. If the statement attached by the source providing the records to TWC was on a cover sheet, a copy of that same cover sheet may be used by VR. Otherwise, the VR counselor prints the restrictive statement on a new cover sheet and attaches it to the records.

Based on 42 CFR 2.32. Alcohol and drug abuse patient records may not be maintained in customer files unless the file contains a properly signed [VR5061, Notice and Consent for Disclosure of Personal Information](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html).

### A-208-5: Educational and Noneducational Records

TWC discloses records to a juvenile service provider (JSP) to prevent the duplication of services and to improve the quality of services for certain juvenile customers. "Juvenile service provider" means a governmental entity that provides juvenile justice or prevention, medical, educational, or other support services to a juvenile. (Texas Family Code §58.0051(2))

#### Educational Records

VR has the authority to obtain educational records from an independent school district or a charter school for a student who has been taken into custody or referred to a juvenile court. VR is required to certify in writing that the information will be disclosed only to another JSP to verify the identity of the student and to provide delinquency or treatment services. VR is required to provide a [VR5060, Permission to Collect Information](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html) to a JSP when requesting educational records.

#### Noneducational Records

VR is required to disclose to a JSP a multisystem youth's personal health information or history of governmental services for the purposes of identifying the youth and to coordinate, monitor, and improve the quality of juvenile services.

Personal health information or a history of governmental services include the multisystem youth's:

* identity;
* medical records;
* assessment results;
* special needs;
* program placement; and
* psychological diagnoses.

TWC may charge a fee or may be required to pay a fee for records in accordance with the Texas Public Information Act unless an agreement with the JSP:

* prohibits the payment of a fee;
* provides for the waiver of a fee; or
* provides an alternate method of assessing a fee.

### A-208-6: Labeling “Confidential” on Released Customer Records

Any customer records released must have a "CONFIDENTIAL" stamp imprint on each file, assuring that the information will:

* be safeguarded;
* be used only for the purpose provided; and
* not be released to unauthorized individuals.

Exception: If more than 10 pages are released, the pages may be stapled together with the stamp imprint on a cover page, or, if appropriate, the VR counselor may use:

* [VR1515, Notice for Release of Confidential Records Pursuant to Legal Process or Investigation](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html); or
* [VR1516, Notice for Release of Confidential Records for Audit, Research, Evaluation, or Other Program Purposes](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html).

## A-209: Valid Release Authorized by the Customer or a Representative

When the customer or his or her representative submits a valid release, that is, a properly completed written request for information, the VR counselor must provide in a timely manner the information requested from the customer's case file. The following are valid releases and are accepted by VR:

* A properly completed [VR1517-2, Authorization for Release of Confidential Customer Records and Information](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html);
* [Social Security Administration (SSA) Form SSA-827, Authorization to Disclose Information to the Social Security Administration (SSA)](https://www.ssa.gov/disability/professionals/ssa827_informationpage.htm), version dated April 2009 or later (versions of Form SSA-827 dated before April 2009 are not valid and must not be honored); or
* An authorization or form provided by the customer, which, after evaluation on a case-by-case basis, has been found to meet the criteria set forth below.

To qualify as a valid release, a customer's authorization form must:

* be in writing (either handwritten or typed);
* identify the records or other information to be released;
* be signed by the customer or a representative;
* be dated;
* identify the individual (as appropriate, by name, telephone number, address) or entity to whom VR is authorized to release the information; and
* be specifically directed to VR. (Exception: Release forms that are not addressed, or releases addressed "To Whom It May Concern" or "To Custodian of Records," are valid if they identify the records to be released as VR records.)

### A-209-1: Examples of Invalid Releases

General release forms, not addressed to VR and not identifying the records to be released as VR records, are not valid.

Example: "I authorize any organization having any records concerning me to release those records to..."

When the customer's own form authorizes individuals or organizations that are not part of VR to release the information, the release is not valid, and VR cannot honor the request.

Example: "I authorize all doctors, hospitals, and other medical providers who have treated me to release..."

Only the records that are identified in the request may be released.

Example: "I request release of my medical records" is valid for releasing copies of medical records but not valid for releasing rehabilitation records or other records in the customer's file.

### A-209-2: Exceptions

In responding to requests submitted on a valid release, the VR counselor may not release the following:

* Information obtained from other governmental agencies with restrictions on re-release
* Customer criminal history records obtained from the DPS to anyone other than to the customer or the customer's representative
* Information that may be harmful to the customer, which may be released to the customer only through the customer's designated representative. (Information delivered directly to the customer's representative or a third party is releasable without regard to this restriction.) This exception does not apply to a Form SSA-827 request because the information is not released directly to the customer.
* Human immunodeficiency virus (HIV) test results, unless the authorization specifically states that HIV test results may be released

### A-209-3: Release to Guardian or Court-Appointed Representative

When a guardian or court-appointed representative of the customer asserts entitlement to receive customer information without the customer's consent, before releasing any information, the VR counselor:

* obtains from the individual a certified copy of a court-issued letter of guardianship;
* files the letter or other appointment letter in the customer's case file; and
* ensures that the appointed representative completes and provides to TWC a valid release.

This applies only to adults who have been specifically identified by the court to be the customer's representative.

### A-209-4: Release to Customer-Appointed Representative

Although the most common way of releasing customer information to family members and friends is using a valid release signed by the customer, occasionally information is released to an individual in his or her capacity as the customer's appointed representative. If information is to be released to an individual in his or her capacity as the customer's own representative, the customer must have appointed the representative by:

* completing the [VR1487, Designation of Applicant or Customer Representative](https://twc.texas.gov/forms/index.html);
* obtaining power of attorney; or
* providing the customer's own form designating a representative.

The VR counselor files in the customer's case file the:

* VR1487;
* power of attorney; or
* the customer's own form designating a representative.

### A-209-5: Release to a Customer's Relative

Unless the customer's relative is the customer's authorized representative, a customer's relative may not receive the customer's records without an explicit, written, and signed authorization on a valid release by the customer or the customer's representative.

When one of the following applies, the VR counselor ensures that the relative properly completes a valid release, before releasing the information:

* The customer is a minor, and the customer's parent is the authorized representative.
* There is a judicial finding of the customer's incompetence, and a relative of the customer, who also is the customer's legal guardian, is the authorized representative.
* A relative appointed by the court, also named as the customer's guardian, is the customer's representative.

### A-209-6: Release to Individuals Accompanying a Customer to a Counseling Session

When a spouse, minor child, or another individual accompanies a customer or applicant to a counseling session, unless the individual is the customer's authorized representative, a VR employee must ensure that:

* the customer completes a [VR1517-2, Authorization for Release of Confidential Customer Records and Information](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html), or other valid release described in VRSM D-300: Records Management, authorizing the spouse, minor child, or other individual to be present during the discussion of confidential customer information; or
* any previously provided consent has not expired and contains information applicable to the current situation.

### A-209-7: Release to Medical and Mental Health Professionals

In this section the following will be covered:

* Release of Information Potentially Harmful to the Customer
* Release of HIV Test Results
* Release to a Designated Mental Health Professional
* Release to a Designated Medical Professional
* Consultation to Review Potentially Harmful Information
* Release to the Client Assistance Program

#### Release of Information Potentially Harmful to the Customer

Medical, psychological, or other information that the VR counselor believes could be potentially harmful if released to a customer must not be released directly to the customer.

Information considered potentially harmful must be released to the customer through a third party chosen by the individual, designated by an explicit, written consent form signed by the customer using either:

* [VR1517-2, Authorization for Release of Confidential Customer Records and Information](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html), or other valid release described in VRSM D-300: Records Management; or
* the customer's own form designating the third party chosen by the individual.

A third party chosen by the individual may include, among others:

* a family member;
* an advocate;
* a qualified mental health professional; or
* a medical professional.

Third parties chosen by individuals are expected to use appropriate professionals, as needed, to discuss potentially harmful information with the customer.

If the customer chooses to designate an individual already named to represent him or her before VR on one of the forms for designating a representative, then, as an exception, the additional consent form described here is not required.

When psychological or psychiatric records are stamped as "not to be shared with the customer," the VR counselor should refer the customer to the psychologist or psychiatrist limiting the distribution of the document.

#### Release of HIV Test Results

VR staff members must not reveal HIV test results to anyone, including the customer, without the customer's explicit, written, and signed authorization on a valid release. The valid release must specifically authorize the release of HIV test results.

The confidentiality of customer HIV test results is strictly regulated under Texas Health and Safety Code §85.115 and 40 TAC §101.117.

#### Release to a Designated Mental Health Professional

Psychological information that the VR counselor believes could be harmful if released to the customer may be released to a licensed psychologist whom the customer has designated as the third party chosen by the individual.

#### Release to a Designated Medical Professional

When the potentially harmful information is related to a medical condition, the representative may be a physician skilled in the diagnosis and treatment of the disorder, among others.

#### Consultation to Review Potentially Harmful Information

When comparable services and benefits are not available, TWC can pay for a single-visit consultation (in accordance with a medical access program), with a physician or psychologist, to review potentially harmful information with the customer.

Based on 34 CFR §361.38(c)(2).

#### Release to the Client Assistance Program

A customer may designate the [CAP](https://www.disabilityrightstx.org/en/handout/vocational-rehabilitation-system-in-texas-2/) to be the third party chosen by the individual for receiving potentially harmful information.

When releasing records containing mental health information to the CAP, the VR counselor:

* obtains the customer's or court-appointed representative's signature on a valid release; and
* in the description of released records, specifically states that records related to mental health or an intellectual disability are being requested.

### A-209-8: Charging for Copies of Customer Records

VR may charge for copies of customer records. For guidance, see the [TWC Open Records Unit Manual](http://intra.twc.state.tx.us/intranet/gc/docs/iru_manual.doc).

### A-209-9: Release for Administration of the Customer's VR Program

The scope of the customer's rehabilitation is determined by the provisions of the customer's IPE.

Releasing customer information for a purpose directly connected with the customer's rehabilitation usually poses no problem. This release does not legally require express or written customer consent. At application, the customer signed [VR5061, Notice and Consent for Disclosure of Personal Information](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html).

When it is difficult to ascertain whether the purpose of the release is "directly connected with the customer's rehabilitation program," the VR counselor obtains the customer's written authorization on a valid release to provide information to an organization or individual.

Based on 34 CFR 361.38(b).

#### Release to an Employer or Prospective Employer

The VR counselor may provide to an employer or prospective employer customer information that the VR counselor considers relevant and appropriate for achieving the customer's employment goals. However, the VR counselor must not divulge any information concerning the customer's disability without the customer's permission to do so.

Additionally, the VR counselor obtains a valid release from the customer to release the information:

* when it is difficult to ascertain whether the information is relevant and appropriate to the customer's employment goals;
* before releasing information contained in CCH records obtained from DPS;
* before releasing alcohol and/or drug abuse patient records; and
* before releasing HIV test results.

#### Release to Another Agency or Organization for Its Program Purposes

Unless the customer information requested by another agency or organization is for a purpose directly connected with the customer's rehabilitation program, the information may be released to another agency or organization for its own program purposes only with specific written customer authorization.

The VR counselor uses [VR1516, Notice for Release of Confidential Records for Audit, Research, Evaluation, or Other Program Purposes](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html), and obtains a valid release from the customer.

After receiving a valid release containing the customer's authorization, the VR counselor selects the appropriate checkboxes, signs, and attaches a copy of VR1516 as a cover sheet to the released documents. Individual documents are stamped as explained above.

### A-209-10: Release to Law Enforcement, Courts, and Organizations in Emergency Situations

VR releases, with or without written consent, customer information in response to requests involving law enforcement, including official investigations concerning:

* national security violations;
* tax fraud;
* apprehension related to illegal immigration; and
* public assistance fraud.

VR also releases relevant customer information to an authorized state agency and other organizations for reports and investigations required by state law concerning:

* child support enforcement (see public law 93-647);
* child abuse; and
* abuse, exploitation, or neglect of the elderly or disabled.

Under Chapter 614 of the Texas Health and Safety Code, VR must disclose information about a customer when the disclosure supports a program under the Texas Correctional Office on Offenders with Medical or Mental Impairments, and the customer:

* has criminal charges pending;
* has been convicted or adjudicated; or
* is in custody or under any form of criminal justice supervision.

These circumstances require TWC to provide the customer's:

* identity;
* needs, treatment, social, criminal, and vocational history;
* status of and compliance with supervision by a criminal justice agency; and
* mental and medical health history.

Except for emergency situations, or as required by law, the request must be:

* in writing; and
* signed by an appropriate official, stating that the information is required for:
  + an official investigation in connection with the above subjects; or
  + a program under the Texas Correctional Office on Offenders with Medical or Mental Impairments; and
  + the specific information required from the customer's record.

When releasing information to a governmental law enforcement agency, the VR counselor attaches a copy of the request and [VR1515, Notice for Release of Confidential Records Pursuant to Legal Process or Investigation](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html), with the second checkbox selected, as a cover sheet to advise the agency of the confidential nature of the documents.

The VR counselor contacts OGC for advice on all requests from law enforcement or other agencies.

#### Release of Customer Records Pursuant to a Subpoena

TWC releases customer information to a federal or state court, an administrative hearing officer, or a judge when presented with a subpoena, court order, or summons. Valid subpoenas are binding upon TWC, with or without the customer's consent.

If the employee receives a subpoena, the VR counselor immediately contacts OGC directly by emailing [Subpoena Requests](mailto:subpoena.requests@twc.state.tx.us). The employee notifies his or her immediate VR Supervisor or VR Manager if he or she receives any subpoena, court order, or other summons.

For detailed information on handling subpoenas, see A-207: Confidentiality and Use of Customer Records and Information and OGC Letters on the TWC intranet at [Office of General Counsel](http://intra.twc.state.tx.us/intranet/gc/html/index.html).

#### Release to Other Individuals or Organizations in Emergency Situations

Emergency situations are those that pose a threat to the safety of the customer or others. The VR counselor releases only the information necessary to protect the customer or others. A written request is not required if time is of the essence to meet the threat, but the VR counselor or employee providing the information must carefully record all the facts and circumstances in the customer's case file.

The VR counselor contacts OGC for advice on all requests in emergency situations.

### A-209-11: Release of Information to Elected Officials

Customer information is released in accordance with federal and state laws when requested by members of the US Congress, the Texas legislature, and other elected officials.

Upon receiving such a request, the VR counselor must forward the pertinent information to:

* the TWC-VR Inquiries Office (see [TWC's External Relations Manual, Chapter 2.0, Government Relations](http://intra.twc.state.tx.us/intranet/comm/docs/external-relations-manual-twc.pdf)), including a copy or complete description of the information requested for release; and
* TWC's External Relations Division, in coordination with OGC.

Then, the VR counselor:

* determines whether the appropriate release has been obtained; and
* notifies the customer in the event that a valid release is required.

A letter signed by a customer and delivered to a member of the legislature or other elected official requesting assistance is a sufficient authorization to release information. However, if the customer's records contain alcohol and drug abuse patient records or HIV test results, the customer must provide TWC with a valid release, and must specifically authorize the release of alcohol and drug abuse patient records or HIV test results. In other instances, if consent cannot be obtained, the VR counselor contacts OGC for advice.

VR staff members must not reveal HIV test results to anyone, including the customer, without the customer's explicit, written, and signed authorization on a valid release.

State law prohibits release by VR of criminal history record information documents received from DPS to members of US Congress, the Texas legislature, or other elected officials. Requesters should be referred to DPS to obtain these records.

Based on Texas Government Code §411.085(a)(2).

### A-209-12: Release of Information for Audit and other TWC Purposes

Under certain circumstances, VR may be authorized to release personal information to an organization, agency, or individual engaged in an audit, evaluation, or research for purposes that would significantly improve the quality of life for individuals with disabilities.

When such a request is received, the VR counselor contacts OGC to determine whether VR is authorized to provide the information and to obtain the documentation that must be signed by the recipient when such information is released.

Based on 34 CFR §361.38(d).

#### Release to Workforce Solutions Offices

Texas Workforce Solutions staff employed by local Workforce Solutions Offices are not VR staff. Therefore, when sharing information about a customer with Workforce Solutions Office staff, a [VR1517-2, Authorization for Release of Confidential Customer Records and Information](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html), is required.

### A-209-13: Release for Media Purposes

TWC requires written consent from the customer to release, disseminate, and/or use the customer's information—including written or recorded information, photographs, and film or videotape—for print, broadcast, or electronic publication, including social media use. The TWC Media Release form is used to meet this requirement and is located on the [TWC Communications Department web page](https://intra.twc.texas.gov/intranet/comm/html/index.html). It is available in both English and Spanish. The signed Media Release Form is kept in the customer's paper case file.

When circumstances arise that involve use of customer information in a media format, VR staff must consult with the unit management team and coordinate with the [TWC Communications Department](https://intra.twc.texas.gov/intranet/comm/html/index.html).

For additional information about media and external communications, refer to the TWC Communications Department web page and the [TWC External Relations Manual](https://intra.twc.texas.gov/intranet/comm/docs/external-relations-manual-twc.pdf).

Note: A TWC media release form is not required to provide VR services to a customer or for a customer to participate in public events associated with VR services and supports. Signing a TWC media release form is only required if customer information will be shared as described in this section.

### A-209-14: Release of Information from a Provider

A provider must not share with a customer documents received from TWC-VR. When a customer requests such documents, the provider must refer the customer to the customer's VR counselor.

A provider may share with a customer documents that relate to the services provided by the provider and that have been signed by the customer or legal guardian.

### A-209-15: Records Requests Received From TWC Open Records

Records requests that are received from TWC Open Records must by processed by the receiving VR office within five business days.

The assigned VRC/RA team fills out the VR1514, Request from Open Records, and follows the instructions below:

* Review records for any items to be withheld, such as information harmful to the individual if released regarding certain medical/psychological notations. Release only items within the scope of the authorization and only to those authorized to receive the information.
* Make copies of the records that will be released.
* Sign the Official Certificate and attach it to a copy of the records being released. Open Records does NOT need to see the records before they are provided.
* Make a copy of the signed Official Certificate and retain it in the case file along with a description of the records that are being provided.
* Regardless of what is requested, do NOT answer any questions, complete depositions, or complete affidavits that may arrive as part of the request.
* Do not notarize the certification or other documents.
* If a question or section does not apply, enter "Not Applicable" and explain why. Type or handwrite responses using blue or black ink.
* Return a scanned copy of the VR1514, Request from Open Records, and the signed Official Certificate to Open Records (open.records@twc.state.tx.us) via email.

If there are no records available in RHW or in a paper case file that is located in the field office, notify Open Records via email ([open.records@twc.state.tx.us](mailto:open.records@twc.state.tx.us)) within five business days of receipt of this form.

For specific information on policies, procedures, and costs pertaining to open records requests, see the TWC Open Records Unit Manual.

## A-210: PIN Procedures

RHW automatically assigns the last four digits of a customer's SSN as a pseudo (temporary) personal identification number (PIN) when the initial contact is created.

The customer sets a new four-digit PIN:

* before completing the application for services; and
* at any time that the PIN is reset throughout the life of the case.

For more information about setting and resetting a PIN in RHW, see the [ReHabWorks User's Guide, Chapter 8: PINs](https://online.twc.state.tx.us/services/rhwhelp/ch8.htm).

The customer enters a PIN as a signature of authorization on the application and on all other electronic RHW documents that require a signature of authorization (for example, the IPE and any IPE amendment).

When the customer is setting his or her PIN, VR staff encourages the customer to use a number that is easy to remember and is not the last four digits of the customer's SSN. (RHW uses the last four digits to create the pseudo PIN.) The customer should make a personal note of the PIN and keep it where it can be found easily.

VR staff must not record the PIN or any type of prompts or hints that could inadvertently compromise the confidentiality of the PIN in the customer's case record.

### A-210-1: Parent or Guardian Signature

The signature of either a parent or guardian is required when the customer is:

* a minor (that is, under 18 years of age); or
* legally incompetent and assigned a legal guardian.

Usually a foster parent is not the legal guardian for his or her foster child and cannot sign an application for services, releases, or the IPE on behalf of the child. The child's managing conservator has the legal authority to sign these documents. Locate the conservator by contacting the nearest office of the Texas Department of Family and Protective Services.

Under Texas law, an individual who is under 18 years of age and is legally married is not considered a minor. Customers under 18 years of age must provide documentation of marriage if they assert that they are their own legal guardian.

When required, the parent or guardian sets a PIN in RHW. When parents or guardians set their PIN, VR staff encourages them to use a number that is easy to remember and is not the last four digits of the customer’s SSN. (RHW uses the last four digits to create the pseudo PIN.) The parent or guardian should make a personal note of the PIN and keep it where it can be found easily.

VR staff must not record the PIN or any type of prompts or hints that could inadvertently compromise the confidentiality of the PIN in the customer's case record. For more information about setting a PIN in RHW, see the [ReHabWorks User's Guide, Chapter 8: PINs](https://online.twc.state.tx.us/services/rhwhelp/ch8.htm).

When required, VR staff asks the parent or guardian to:

* enter the PIN in the designated field on the RHW document; or
* sign on the designated signature line on the paper version of the form.

### A-210-2: Representative's Signature

A customer or his or her legal guardian may designate an individual to serve as his or her representative in all or part of the rehabilitation process. The representative may be authorized to sign documents, speak on the customer's behalf, or serve in other capacities indicated on the [VR1487, Designation of Applicant or Customer Representative](https://twc.texas.gov/forms/index.html). In some cases, a representative can help facilitate communication and help the rehabilitation process move forward to a successful outcome.

For guidelines on establishing an individual or parent as the representative for the customer, see [A-200: Customer Rights and Legal Issues](https://twc.texas.gov/vr-services-manual/vrsm-a-200).

When required, the representative sets a PIN in RHW. When the representative is setting the PIN, VR staff encourages him or her to use a number that is easy to remember and is not the last four digits of the customer’s SSN. (RHW uses the last four digits to create the pseudo PIN.) The representative should make a personal note of the PIN and keep it where it can be found easily.

VR staff must not record the PIN or any type of prompts or hints that could inadvertently compromise the confidentiality of the PIN in the customer's case record. For more information about setting a PIN in RHW, see the [ReHabWorks User's Guide, Chapter 8: PINs](https://online.twc.state.tx.us/services/rhwhelp/ch8.htm).

When required, VR staff asks the representative to:

* enter the PIN in the designated PIN field on the RHW document; or
* sign on the signature line on the paper version of the form.

To learn how to reset the customer's representative, parent, or guardian PIN, see the [ReHabWorks User's Guide, Chapter 8: PINs](https://online.twc.state.tx.us/services/rhwhelp/ch8.htm).

### A-210-3: When VR Staff Members May Enter a PIN on Behalf of a Customer

A PIN is the equivalent of a legal signature. VR staff must not enter it in RHW without the direct consent and involvement of the customer.

The only circumstances under which VR staff members may enter a pseudo PIN in RHW on behalf of the customer are as follows:

* The customer completed a paper application when RHW was not available; or
* The customer is not present when the PIN needs to be entered but did agree to let VR staff enter a pseudo PIN on his or her behalf. For procedure and management documentation requirements, refer to A-206-4.; or
* The customer cannot physically enter a PIN.

For more information about setting and resetting a PIN in RHW, refer to the [ReHabWorks User's Guide, Chapter 8: PINs](https://online.twc.state.tx.us/services/rhwhelp/ch8.htm).

### A-210-4: When RHW Is Not Available and a Paper Application Is Completed

As soon as RHW is available, create the pseudo PIN using one of the following two procedures, depending upon the circumstance:

#### When a Customer Has a PIN

If the customer has already set his or her PIN, ask a member of the unit management team to:

* reset the PIN to the last four digits of the customer's SSN; and
* document the action in a case note.

#### When a Customer Does Not Have a PIN

If the customer has not already set his or her PIN, the VR counselor:

* enters the information from the signed paper form into RHW; and
* enters the pseudo PIN (last 4 digits of SSN) to sign the RHW form.

VR staff documents in a case note the use of the pseudo PIN and the reason for using.

The signed paper application must be kept in the paper case file, even after recording the information in RHW.

VR staff must ask the customer to reset the PIN on his or her next visit to the VR office, when RHW is available.

#### When the Customer Is Not Present

A customer does not have to be present to apply for services, but the application is not complete until there is a signature on the application.

If the customer is not able to come into the office in a timely manner, the VR counselor asks the VR Manager, VR Supervisor, or their designee to:

1. verify permission directly with the customer;
2. reset the PIN to the last four digits of the customer's SSN; and
3. document the reason for resetting the PIN in a case note.

The next time that the customer is in the office and RHW is available, the VR counselor:

1. asks the customer to reset the PIN to a new number; and
2. documents the action in a case note.

#### Customer Cannot Physically Enter the PIN

When a customer cannot physically enter a PIN in RHW, VR staff:

1. asks a coworker to serve as a witness;
2. enters the witness's name in RHW in the appropriate space; and
3. enters a PIN for the customer.

## A-211: Accessing Customer Records in RHW

Records in RHW are confidential and can be accessed only for purposes directly associated with the provision of VR services.

Staff must not:

* access their own record of VR services in RHW;
* access RHW records of family members; or
* access any records in RHW for which they do not have an official VR business need.

For the purposes of this section, "family" includes the employee's:

* spouse;
* child;
* parent;
* grandparent;
* brother;
* sister;
* cousin;
* aunt;
* uncle;
* niece; and
* nephew.

"Family" also includes any individual related to the employee by:

* kinship;
* adoption; or
* marriage (such as a step relative, for example, stepchild, stepparent); and
* all related individuals who are dependent upon the employee or employee's family member for personal care or services on a continuing basis; and
* all individuals living in the same household with the employee or with an employee's family member (regardless of kinship).

For more information on ethics see the [TWC Personnel Manual, 1.9 Ethics Policy (PDF)](https://intra.twc.texas.gov/intranet/manuals/hr/ch1.pdf#page=32) and the [2017 Code of Professional Ethics for Rehabilitation Counselors (PDF)](https://www.crccertification.com/filebin/pdf/ethics/CodeOfEthics_01-01-2017.pdf).