

Subchapter H. DISCOVERY PROCEDURES.

§22.144. Requests for Information and Requests for Admission of Facts.

- (a) **Availability.** At any time after an application is filed, and subject to the provisions of §22.141 of this title (relating to Forms and Scope of Discovery), any party may serve upon any other party written requests for information and requests for admission of fact.
- (b) **Making requests for information.**
 - (1) **Contents.** A request under this section shall identify with reasonable particularity the information, documents or material sought. A request seeking inspection of documents or property shall describe with reasonable particularity the documents to be produced or the property to which access is requested, and shall set forth the items to be inspected by individual item or by category.
 - (2) **Service.** A copy of each request for information shall be served upon all parties to the proceeding. Requests for information may be served by facsimile transmittal on the recipient of the request if the recipient has a facsimile machine available for use in the proceeding. Requests for information that are received after 3:00 p.m. shall be deemed to have been received the following business day. Responses to requests for information shall be served on the requesting party and any party that has requested, in writing, to be served.
- (c) **Responding to requests for information.**
 - (1) **Time for response.** The party upon whom a request is served shall serve a full written response to the request within 20 days after receipt of the request. The presiding officer, on motion and for good cause shown, may extend or shorten the time for providing responses.
 - (2) **Requirements of response.**
 - (A) Each response to discovery under this subsection shall identify the preparer or person under whose direct supervision the response was prepared, and the sponsoring witness, if any.
 - (B) Each request for information shall be answered separately. Responses to requests for information shall be preceded by the request to which the answer pertains.
 - (C) Responses to requests for production of documents, property, or other items, shall state, for each item or category of items for which an objection has not been raised, that inspection or other requested action will be permitted at a mutually convenient time at the location where the documents, property, or other items are maintained. If compliance with the request is impossible, a written response shall be filed stating the reasons for the unavailability of the information.
 - (D) Where the response to a request for information may be derived or ascertained from local public records, the responding party shall not be obligated to produce the documents for the requesting party. It shall be sufficient answer to identify with particularity the public records that contain the requested information.
 - (E) Where a request may be answered by production of or reference to information that currently exists in the form of a document, computer record, or other existing tangible thing that is voluminous, as defined in subsection (h) of this section, it is a sufficient answer to the request to specify the records from which the answer may be derived or ascertained and to afford a reasonable opportunity to the requesting party to examine, to audit or to inspect such records and to allow the requesting party to make copies, compilations, abstracts or summaries from such records. The specification of records provided shall include sufficient detail to permit the requesting party to locate and to identify, as readily as can the responding party, the records from which the answers may be ascertained.

Subchapter H. DISCOVERY PROCEDURES.

- (F) Responses to requests for information shall be filed under oath, unless the responding party stipulates in writing that responses to requests for information can be treated by all parties as if the answers were filed under oath.

Subchapter H. DISCOVERY PROCEDURES.

- (d) **Objections to requests for information.** Parties shall negotiate diligently and in good faith concerning any discovery dispute prior to filing an objection. The objections shall include a statement that negotiations were conducted diligently and in good faith. If negotiation fails, objections to requests for information, if any, shall be filed within ten calendar days of receipt of the request for information. The objections shall state the date the request for information was received.
- (1) The objections shall be a separate pleading and entitled "Objections of (name of objecting party) to (style of RFI objected to)." The request for information to which an objection is being filed shall be stated and the specific grounds for the objection shall be separately listed for each question. If an objection pertains only to a part of a question, that part shall be clearly identified. All arguments upon which the objecting party relies shall be presented in full in the objection.
 - (2) If the objection is founded upon a claim of privilege or exemption under the Texas Rules of Civil Procedure, the objecting party shall file within two working days of the filing of the objections, an index that lists, for each document: the date and title of the document; the preparer or custodian of the information; to whom the document was sent and from whom it was received; and the privilege(s) or exemption(s) that is claimed. A full and complete explanation of the claimed privilege or exemption shall be provided. The index shall be sufficiently detailed to enable the presiding officer to identify the documents from the list provided. The index and explanations shall be public documents and shall be served on all parties who are entitled to receive copies of responses to requests for information under subsection (b)(2) of this section. If a document is to be provided pursuant to the terms of a protective order, the responding party need not comply with the procedures of this paragraph.
 - (3) A party raising objections on the grounds of relevance as well as grounds of privilege or exemption is not required to file an index to the privileged or exempt documents at the time the objections are filed. A party may instead include an objection to the filing of the index. The objections shall show good cause for postponement of the filing of the index. An index to the privileged or exempt documents shall be due within five working days of receipt of an order denying the relevance objection or overruling the objection to the filing of an index.
 - (4) The requirement to respond to those requests, or portions thereof, to which objection is made shall be postponed until the objections are ruled upon and for such additional time thereafter as the presiding officer may direct.
 - (5) In the interests of narrowing discovery disputes, the responding party may agree to provide certain information sought by a request while objecting to the provision of other information sought by the request.
- (e) **Motions to compel.** The party seeking discovery shall file a motion to compel no later than five working days after the objection is received. Absence of a motion to compel will be construed as an indication that the parties have resolved their dispute. The presiding officer may rule on the motion to compel based on written pleadings without allowing additional argument.
- (f) **Responses to motions to compel.** Responses to a motion to compel shall be filed within five working days after receipt of the motion, and shall include all factual and legal arguments the respondent wants to present regarding the motion.
- (g) **In camera inspection.** If an objection is founded on a claim of privilege or an exemption under the Texas Rules of Civil Procedure, the burden is on the objecting party to request an in camera inspection and to provide the documents for review. Any request shall be filed within three working days of the receipt of the motion to compel. The request shall contain the factual and legal basis to support the claimed exemption or privilege. The objecting party shall review the documents and note with

Subchapter H. DISCOVERY PROCEDURES.

§22.144(g) continued

specificity any portions to which the claimed privilege or exemption claim does not apply. The objecting party shall provide the documents to the presiding officer, under seal, no later than one working day after it requests an in camera inspection. Documents submitted for in camera review shall not be filed with the commission filing clerk. Documents submitted for in camera review shall be submitted to the presiding officer and enclosed in a sealed and labeled container accompanied by an explanatory cover letter. The cover letter shall identify the control number and style of the proceeding and explain the nature of the sealed materials. The container shall identify the control number, style of the case, name of the submitting party, and be marked "IN CAMERA REVIEW" in bold print at least one inch in size. Each page for which a privilege is asserted shall be marked "privileged."

- (h) **Production of voluminous material.** The following procedures shall apply to production of voluminous materials:
- (1) Responses to particular questions that consist of less than 100 pages are not voluminous and shall be filed in full.
 - (2) Subject to paragraph (3) of this subsection, the responding party shall make available all voluminous material provided in response to a request for information at a designated location in Austin.
 - (3) A party will be released from its obligation to make available the requested voluminous material at a designated location in Austin, only if the volume of the material exceeds eight linear feet. In that event, the party shall make the material available where the material is located.
 - (4) The party providing the voluminous material shall file with its response a detailed index of the voluminous material responsive to a particular question and shall organize the responses and material to enable parties to efficiently review the material, including labeling of material by request for information number and subparts and sequentially numbering the material responsive to a particular question. The index shall include:
 - (A) information sufficient to locate each individual document by page number, file number, and box number;
 - (B) the date of each document;
 - (C) the title of the document, or, if none exists, a description of the document;
 - (D) the name of the preparer of each document; and
 - (E) the length of each document.
- (i) **Duty to supplement.** A responding party is under a continuing duty to supplement its discovery responses if that party acquires information upon the basis of which the party knows or should know that the response was incorrect or incomplete when made, or though correct or complete when made, is materially incorrect or incomplete. The responding party shall amend its prior response within five working days of acquiring the information.
- (j) **Requests for admission of facts.** Requests for admission of facts shall be made in accordance with the Texas Rules of Civil Procedure.
- (k) **Modifications of deadlines.** Modification of the deadlines for responses, objections, and motions to compel may be modified by agreement of the affected parties, by filing a letter or other document evidencing the agreement.