

Public Access to Case Records
SCAC Subcommittee Draft Rule
February 25, 2005

RULES OF JUDICIAL ADMINISTRATION

RULE 14. PUBLIC ACCESS TO CASE RECORDS

14.1 Scope. This Rule covers public access to case records regardless of the physical form of the record.

14.2 Definitions. In this Rule:

(a) *Access* means the ability to view or obtain a copy of a case record.

(b) *Bulk distribution* means the distribution of all, or a portion of information in multiple case records without modification.

(c) *Case record* means a record of any nature in a civil case created by a court or filed by a person in connection with any matter that is or has been before a court in its adjudicative function, regardless of the physical form of the record, how it was created or how it is stored.

(d) *Compiled information* means information that is collected from more than one individual case record and put in a separate case record.

(e) *Court* means any court created by the Constitution or laws of the State of Texas including justice of the peace and small claims courts, and municipal courts.

(f) *Court-created Record* means a record of any nature in a civil case created by a court in connection with any matter that is or has been before a court in its adjudicative function, regardless of the physical form of the record, the method of recording the record, or the method of storage of the record, and includes any compiled information, index, calendar, docket, register of actions, minute, notice, order, or judgment, and any information in a case management system created or prepared by the court that is related to a judicial proceeding.

(g) A case record is in *electronic form* if the case record is readable through the use of an electronic device, regardless of the manner in which the record was originally created.

(h) *Remote access* means the ability of a member of the general public to search, inspect, or copy information in a court record by internet or other electronic connection.

(i) “*vendor*” includes a state, county or local governmental agency that provides information technology services to a court.

14.3 Public Access to Case Records.

(a) **Generally.** Except for a Sensitive Data Form and case records listed in Par. 14.3(b) of this rule, all case records are open to the general public for viewing and copying. Neither the provisions of this rule, nor any procedures adopted by a court or court clerk under this rule, can limit access to case records in any given action or proceeding by

- (i) a party to that action or proceeding, or the party’s attorney,
- (ii) criminal justice agencies for criminal justice purposes, or
- (iii) other persons or entities that are entitled to access by law or court order.

(b) **Exemptions from Public Access.** Neither general public access nor remote public access is permitted to any sensitive data form, and any case record containing information that is excluded from public access by federal law, Texas law, this or any court rule, or a court order.

(c) **Limitations on duties of court or clerk:** A court or court clerk is not required by this rule to do any of the following:

- (i) create a case record not otherwise in written or printed form, other than to print information stored in a computer;
- (ii) retain a case record for a specific period of time beyond that time otherwise required by law; or
- (iii) comply with or respond to a request for a case record from or on behalf of an individual who is imprisoned or confined in a correctional facility as defined in Section 1.07(a), Penal Code, or in any other such facility in any state, federal, or foreign jurisdiction. **[Ralph Duggins questions whether this conflict with the requirement of uniform treatment of requests and asks why it is necessary]**

(d) **Exemption for discovery materials and non-adjudicative records:** This rule does not apply to non-filed discovery materials in possession of a party or to court records that are not related to the court’s adjudicative functions including land title records, vital statistics, birth records, naturalization records, voter records, and recorded instruments recorded for public notice.

(e) **Duties of Clerk Upon Subsequent Restriction of Public Access to Case Records.** If, by court order, statute, or rule, a court or court clerk is required to deny public access

to a case record previously available for public access, the court or court clerk is not required to take any action with respect to any previously-made copy of the case record.

(f) Conditions of use. A court or court clerk may make rules to provide for access to case records consistent with the provisions of this rule. The rules may impose reasonable conditions for public access to case records, including,

- (i) an agreement to access the case records in accordance with the local rule,
- (ii) an agreement not to attempt any unauthorized access; and
- (iii) an agreement that the court clerk can monitor the user's access to case records.

Notice of the local rule should be provided in the clerk's office and posted on any court web site. A user's agreement to the conditions of the local rule may be obtained at the court's or court clerk's discretion. The court or court clerk may deny access to case records to a member of the public for past failure to comply with any conditions of use in such local rules.

(f) Inquiry to requestor. Except for requests for bulk distribution or access to compiled information as provided in Par. 14.3(h) of this rule, a member of the public requesting access to a case record may not be asked to disclose the purpose of the request as a condition to granting the request, but a court or court clerk may make reasonable inquiry to establish the identification of the requesting party or to clarify the nature or scope of a request.

(g) Uniform treatment of requests. A court or court clerk must treat all requests for access to case records uniformly.

(h) Bulk Distribution. The only case records a court or court clerk may provide for bulk distribution to the general public are an index, calendar, docket, or register of actions, except that bulk distribution of other case records may be granted to individuals or entities having a bona fide scholarly, journalistic, political, governmental, or other legitimate research purpose, who

(i) file a request that identifies the requestor and the requestor's research purpose, what information is sought, and how the information requested will be secured and protected;

(ii) agree to maintain as confidential the identification of specific individuals in the case records; and

(iii) agree that the court is the owner of the case records and has the exclusive right to control their use.

14.4 Remote Access.

(a) Remote Access permitted:. A court or court clerk may allow remote access to case records. If remote access is allowed, procedures for such access must

- (i) provide appropriate security measures, procedures, devices and software to protect the integrity of case records,
- (ii) except for an index, calendar, docket, minute, or register of actions, permit access only by case number, caption, or the first and last name of a party, and
- (iii) otherwise comply with this rule.

(b) Conditions for Remote Access: A court or court clerk that allows remote access may require parties seeking remote access to sign a user's agreement that requires users to register with the court, obtain a log-in and password, and pay a reasonable fee.

(c) Exclusions from Remote Access: Notwithstanding anything in Par. 14.3(a) of this rule, the following case records must be excluded from any system of remote access:

- (i) medical, psychological or psychiatric records, including any expert reports based upon medical, psychological or psychiatric records;
- (ii) pretrial bail or pre-sentence investigation reports;
- (iii) statements of reasons or defendant stipulations, including any attachments thereto;
- (iv) income tax returns;
- (v) case records in a Family Code proceedings, other than court-created case records; and
- (vi) unpublished or unfiled notes, memoranda, internal communications, and research of judges and court personnel,
- (vi) a sensitive data form as provided by this rule or the Rules of Civil Procedure.

(d) Procedures. Unless otherwise established by local rule, any party that files a case record that contains the type of information that must be excluded from remote access by Par. 14.3(b) or 14.4(c).c of this rule shall – if the court or court clerk permits remote access to case records – state the following on the face of the case record in 36 point type: “CONTAINS INFORMATION EXCLUDED FROM REMOTE ACCESS.” The court or court clerk shall have no obligation to review each case record submitted to determine whether it is a record, or contains such prohibited information or and data.

(e) Public Access to Part of Case Record. If public access is allowed only to part of a requested case record, the court may order the redaction of that portion of the case record to which public access is not allowed.

14.5 Sensitive Data.

(a) Form required: All court clerks shall maintain, as a case record, a Sensitive Data Form that records personal information required by statute, rule or regulation be part of a pleading or other case record. The form must be physically separated from other case records. The obligation for completing and filing the Sensitive Data Form lies with the party that files a case record that must contain the sensitive data. The Sensitive Data Form should contain the following information when such information must be part of a case record:

- (i) social security numbers;
- (ii) bank account, credit card, or other financial account numbers,
- (iii) driver's license numbers, passport numbers, or similar government-issued identification card numbers, excluding attorney state bar numbers;
- (iv) date of birth;
- (v) the address and phone number of a person who is a crime victim, as defined by Article 56.32, Code of Criminal Procedure, in the proceeding in which the case record is filed or in a related proceeding; and
- (vi) the name and address of a minor child

(b) No Access Permitted: A sensitive data form is not available for public access in any form.

(c) Pleading Sensitive Information Prohibited: Unless otherwise ordered by the court or required by rule or statute, any party filing a pleading or any other case record (other than a Sensitive Data Form) shall not include therein any sensitive data listed in Rule 14.5(a), whether filed in written or in electronic form, regardless of the person to whom the sensitive data relates.

If reference to any of the following items of sensitive data is required by rule or statute, or ordered by a court, to be in pleading or other case record filed with the court, the party filing such pleading or case record shall refer to that sensitive data by reference to its location in the Sensitive Data Form and in abbreviated form in the case record as follows:

- (i) Social Security Numbers. If the Social Security Number of an individual must be included in a case record, only the last four digits should be used.

(ii) Names of Minor Children. If the name of a minor child must be mentioned in a case record, only that child's initials should be used.

(iii) Financial Account Numbers. If financial account numbers must be included in a case record, only the last four digits should be used.

(iv) Date of Birth. If a date of birth must be included in a case record, only the month and year should be used.

The responsibility for omitting sensitive data from case records filed with the court (other than a Sensitive Data Form) lies with the party filing the case record. Neither the court nor the court clerk has any obligation to review each pleading or other case record for compliance with this rule.

14.6 Disallowing Public Access on Motion. On its own motion or in response to an application by any interested party, a court where a case record is filed may disallow general public access or remote access to a case record that contains sensitive data disallows access to sensitive data in a case record or exhibit.

14.7 Sanctions. A court may impose just sanctions on any party failing to comply with the provisions of Rule 14.4 or Rule 14.5. The court may also order a party to redact sensitive information included in a case record (or an attachment or exhibit to a case record) in violation of this rule.

14.8 Immunity. A court, court clerk, or court employee who unintentionally and unknowingly discloses a case record that is exempt from public access or that includes erroneous information is immune from liability for such disclosure. A court, court clerk, or court employee is not liable for inaccurate or untimely information, or for misinterpretation or misuse of the data, included in any case record.

14.9 Costs for Copies of Case Records. The cost for a copy of a case record is either:

- the cost prescribed by statute, or
- if no statute prescribes the cost, the actual cost, as defined in Section 111.62, Title 1, Texas Administrative Code, not to exceed 125 percent of the amount prescribed by the Building and Procurement Commission for providing public information under Title 1, Texas Administrative Code, Sections 111.63, 111.69, and 111.70.

14.10 Contracts with vendors providing information technology services. If a court clerk contracts with a vendor to provide technical support to gather, store, or provide public access to case records, the contract must, in addition to all other legal requirements,

- require the vendor to comply with the provisions of this Rule.
- prohibit the vendor from making bulk distribution of case records or from disseminating compiled information, except as provided by this Rule.
- require the vendor to acknowledge that case records remain the property of the court and are subject to the directions and orders of the court with respect to the handling of and public access to the case records, as well as the provisions of this Rule.

14.11 Requests for Deviations. With the consent of a majority of the judges served by a court clerk, the clerk may submit to the Supreme Court of Texas a written request to deviate from this Rule in providing public access to case records. Such request must:

- describe in detail the deviation requested;
- describe the purpose for the deviation; and
- identify the benefits and detriments of the deviation.

Approved deviations from this Rule may be implemented only upon written order by the Supreme Court of Texas.