



CHARLES BACARISSE
HARRIS COUNTY DISTRICT CLERK

COPY

October 13, 2004

Hon. Chief Justice and Justices
Supreme Court of Texas
P. O. Box 12248
Austin, Texas 78711

Ladies and Gentleman:

I appreciate the opportunity provided my office to offer input to the draft report *Public Access to Court Case Records in Texas*.

I recognize the importance and presumption that the public has related to accessing court case records and the essential need to implement technological advances. I too understand how these advances will increase accessibility to court documents and recognize concerns related to disseminating court case records that contain sensitive and personal information.

In the course of developing and implementing remote access to civil court case records here in Harris County, we addressed concerns expressed by the Houston Family Bar Association by making family law orders available only to practicing family law attorneys who must obtain a log in and password.

I do have concerns with some sections of the draft *Rules of Judicial Administration Rule 14. Public Access to Case Records*. I have outlined my concerns below and appreciate your consideration when approving and adopting these rules.

14.4 Public Access to Case Records.

(a) Generally.

Comment: This section seems to give the court(s) authority to establish my office hours of operation. I should have the sole responsibility to establish my office hours so long as those hours of operation are not in conflict with the court. I too have two sections within my office wherein the hours of operation are 24/7. I do not agree that the courts should have authority to establish my hours of operation.

(c) Case-by-Case Basis for Access to Case Records in Electronic Form.

Comment: Limiting an individual's electronic access to a case record only if the individual is able to identify the case record by the number of the case, the caption of the case, or the name of a party poses a problem. In many instances, an individual must first conduct an electronic record search to ascertain this information so they can continue their search and access the desired record.

(g) Uniform treatment of requests.

Comment: There are occasions when requests for public access to case records may be handled outside customary or uniform procedures. Depending upon the nature of the requests, volume or type of records, and time constraints, it may become necessary to step outside what is considered uniform procedures. This section should be deleted from the rules.

14.5 Exemptions from Public Access.

(d)(1) Case Records other than Court-Created Records.

Comment: This section provides that remote access to case records, other than court-created case records, may be granted only through a subscriber type system. The inference is that court-created case records are open for inspection remotely without having to go through a subscriber type system, although the proposed rule does not refer to court-created case records. It would be a problem if we are required to have these two record types kept separate within our records management system. Under this requirement, our case management system would be responsible for differentiating between *court-created case records* versus *case records* as defined in these proposed rules. There would likely be confusion and inaccurate designations due to the fact that some documents may be considered *case records* in a civil environment and the same documents may be considered *court-created records* in a criminal environment.

(d)(3) Family Code Proceedings.

Comment: More than 70% of our civil public requests for copies are related to family court proceedings, specifically requests for copies of a divorce decree. If sensitive and personal information is kept separate from the public record, there is no reason to restrict remote access to these types of records.

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(f) Public Access to Part of Case Record.

Comment: It will be very costly and time consuming if we are required to redact a portion of any case record prior to making it available for public access. The court should either rule the entire record is accessible or the entire record is kept confidential or sealed.

14.6 Sensitive Data.

(a)(5) date of birth

Comment: The date of birth is an essential identifier when conducting a criminal name search. It is often the only unique identifier available to help distinguish between people with similar names. Prohibiting remote access to or otherwise restricting the use of complete date of birth information, when conducting a record search, will likely result in various public and private entities taking action based on inaccurate information as a result of not being able to distinguish between similar names.

14.7 Disallowing Public Access.

Comment: This section seems to allow, one could conclude, to order, retroactive to the effective date of these rules, the redaction of sensitive or personal information within existing case records. If such sensitive or personal information is a part of a public record at the time these rules are adopted, such records should be deemed accessible or the entire record should be ordered sealed or kept confidential. To redact a portion of a case record will be very costly and time consuming.

Again, I appreciate the opportunity to provide input on this important issue. Please do not hesitate to contact me should you have any questions.

Respectfully,



CHARLES BACARISSE
District Clerk
Harris County, Texas

CEB/WM/jtm