



March 2, 2005

Lisa Hobbs
Rules Attorney
Supreme Court Building
Room 104
201 W. 14th
Austin, Texas 78701

RE: Proposed Rule 14 of the Rules of Judicial Administration "Public Access to Case Records"

Dear Ms. Hobbs:

Thank you for the expeditious manner in which you emailed me the information regarding the proposed Rule 14 of the Rules of Judicial Administration. I have reviewed this information and would like to submit the following comments to the Supreme Court Advisory Committee.

I. Background.

- A. Imperative Information Group, Inc. is a private investigations firm licensed by the Texas Department of Public Safety. Provision of employment-related background investigations and other due diligence investigations to businesses is our core practice area. Our clients include Fortune 500 companies, churches, schools, and a variety of other firms in Texas and across the nation.
- B. An orderly means of accessing both criminal and civil case records is crucial to the interests of Texas businesses and consumers. These records are relevant to daily business decisions affecting employment, contracting, extension of credit, and other decisions requiring due diligence.
- C. These comments refer to the draft rule dated February 25, 2005.

II. Date of birth is a key piece of information when conducting legitimate court research.

- A. Paragraph 14.4 (a) (iv) includes the date of birth on the sensitive data sheet, thereby excluding it from the case file. Paragraph 14.5 (c) (iv) prohibits the inclusion of the date of birth in case pleadings.
- B. When researching criminal records, one often finds many cases related to a single individual's name – some or all of which may not be associated with the individual on whom research is being conducted. The date of birth is the key additional identifier that associates an individual with a particular case. Removing the date of birth from criminal case records will result in:

1. Texas employers will be unable to obtain effective employment background investigations, leaving them vulnerable to negligent hiring and negligent retention suits, and
 2. Innocent Texas citizens will be associated by name-match-only with criminal records.
- C. The removal of date of birth from court records will hide real criminals from public awareness while casting undeserved suspicion on many innocent Texans. The date of birth must continue to be included on criminal case indexes and filings in order to ensure that Texas businesses and their customers are protected from criminals.

III. Rule 14 should apply to both criminal and civil cases.

- A. Paragraph 14.2 (c) of the proposed rule limits the definition of *case record* to "a record of any nature in a civil case..." Limiting this definition to civil cases seems to limit the entire rule to civil cases because paragraph 14.1 defines the scope of the rule as "public access to case records."
- B. However, other paragraphs in the proposed rule seem to address criminal case records, including paragraph 14.4 (c) (ii) which prohibits remote access to "pretrial bail or pre-sentence investigation reports" and paragraph 14.5 (a) (v) which includes on the sensitive data form "the address and phone number of a person who is a crime victim."
- C. I encourage the Court **not to limit** this important guideline to civil cases. The public deserves the same consistent methodology for accessing criminal court records as outlined in this proposed rule for civil case records.

IV. Prohibit all commercial bulk distribution of case information

- A. Paragraph 14.3 (h) allows the bulk distribution of "index, calendar, docket, or register of actions" information. Because these terms are not defined in the rule, I am assuming that case numbers, party names, causes of action, filing descriptions and related dates, and case disposition information might be included under "index, calendar, docket, or register of actions."
- B. While this information may seem innocuous, it is important to understand that these records, when sold in bulk, are routinely dumped into large databases of consumer information and access is sold to the public over the Internet.
- C. Choicepoint, one of the largest database companies, owns several companies that provide this sort of information over the Internet. Recent news accounts have revealed that access to Choicepoint's records has been fraudulently obtained, leaving millions of US consumers potential victims of identity theft.
- D. These public records databases are often marketed for use for employment or tenant screening purposes, often in direct violation of the federal Fair Credit Reporting Act, which applies to all background investigations used in the employment or credit context, regardless of whether or not a credit report is included as part of the investigation. This practice deprives consumers of their

right to dispute incorrect information upon which an employer, landlord, or lender may make an adverse decision.

- E. Because case dispositions often change over time, these records quickly become outdated and this stale data inevitably has adverse impact on consumers' ability to find employment, obtain credit, or find housing.
- F. In order to assure that court information is used in a manner that ensures that both businesses and consumers are treated fairly, all court records used in any commercial context should be sourced solely from the records of the court at the time that the information is provided. Please exclude all court records from bulk distribution for any commercial purpose.

V. All remote access users should register with the court

- A. Paragraph 14.4 (b) states that a court that "allows remote access may do so under a system that requires users to register with the court, obtain a log-in and password, and pay a reasonable fee."
- B. Many counties have made their courts' records freely open to the public over the Internet. I believe this is ill-advised in the face of the public's growing concern over identity theft and a perceived diminishing of personal privacy. The privilege of remote access should be accompanied with due diligence from the court clerk and accountability from the requester.
- C. In this matter, I strongly endorse the methods employed by Tarrant County District Clerk Tom Wilder to ensure that orderly access is available to those with legitimate needs to access case information while presenting barriers to those who would use case information in a malicious manner. Such a system would include:
 - 1. An application agreement with verifiable information about the applicant,
 - 2. A subscriber agreement that details the court's expectations of the applicant and requires the applicant to agree to work within the court's guidelines,
 - 3. Due diligence to ensure that the requester of remote access is who they claim, and
 - 4. A secure system for accessing court records and case documents.

VI. All court records should be treated the same.

- A. Paragraph 14.4 (c) excludes certain items from availability over remote access. If the court has in place a subscriber agreement requirement for all users who access court records remotely, there seems to be no need for a different level of access for remote users and in-courthouse users.

VII. Limited access to the Sensitive Data Sheet information is necessary and prudent

- A. Paragraph 14.5 (b) states that the sensitive data form "is not available for public access in any form."
- B. When conducting court records research, it is often necessary to search the case file for identifiers that may be matched against the identity information already in the possession of the researcher so that the case can be properly associated with the individual being researched or eliminated from consideration.
1. For example, if a landlord is researching a potential tenant and finds eviction records for a defendant with a similar name, the social security number listed on the rental agreement filed as an exhibit in the eviction case will determine whether the individual previously evicted is the potential tenant.
- C. The proposed rule wisely seeks to protect sensitive personal data such as social security number and drivers license number from routine public access. However, some allowance needs to be made so that a researcher can verify whether or not the personal data in a court record matches the personal information for the person being researched.
- D. The following revision to paragraph 14.5 (b) is suggested to meet this need while continuing to protect personal sensitive data:
- a) **No Access Permitted.** A sensitive data form is not available for public access in any form. However, a court clerk may verify whether the personal identifiers listed in paragraphs 14.5 (a) (i) (*social security numbers*), (iii) (*drivers license and other government-issued numbers*), and (iv) (*date of birth*) for a party to a case match the identifiers provided by a court records requestor.

Thank you for your kind consideration of these comments.

Sincerely,



Mike Coffey
President
Imperative Information Group, Inc.