

MEMORANDUM

TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

**TO: Chair and Members
Department of Family and Protective Services Council**

**FROM: Howard G. Baldwin, Jr.
Commissioner**

SUBJECT: Agenda Item 6e: Recommendation to propose rule changes in 40 TAC, Part 19, Chapter 700, Child Protective Services; Chapter 702, General Administration; and Chapter 705, Adult Protective Services, relating to the prioritization of requests to release certain case records maintained by the Department of Family and Protective Services (DFPS)

DATE: July 20, 2012



BACKGROUND AND PURPOSE

House Bill (HB) 3234, enacted by the 82nd Legislature, added Texas Family Code § 264.0145, which requires DFPS to establish guidelines by rule for assigning priorities to requests for the redaction and release of confidential client case records, including records requested by former foster youth who are adults at the time of the request. This rule action would add new 40 TAC §702.223, which establishes the order of priority for fulfilling requests for client records in the Child Protective Services, Child Care Licensing, and Adult Protective Services programs. A conforming amendment is made to both 40 TAC §700.205(c) and 40 TAC §705.7111, which currently set similar priorities for client records in the CPS and APS programs, respectively. The current prioritization rule for CPS does not separately prioritize requests from former foster youth as a stand-alone category of requests.

Prior to enactment of HB 3234, some advocates for young adults exiting the foster care system expressed concern to DFPS about the length of time that young adults must wait to obtain a copy of their case records from DFPS. Prior to this expressed concern, the turn-around time for fulfilling such requests could be two or more years. Due to a restructuring of the records redaction process and implementation of a number of efficiencies in the past two years, the Records Management Group has decreased the average turn-around time for fulfilling such records requests to 45 days or less. These improvements have been noted by stakeholders who have expressed their appreciation for the faster handling of client records for former foster youth.

DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
702.223	New	This rule establishes the priority order for the handling of confidential client case records that require redaction prior to release, including records requested by a former foster child who is an adult at the time records are requested.

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
700.205(c)	Amend	Subsection (c) is amended to delete a sentence relating to the priority handling of requests for CPS records, and to refer instead to the records prioritization rule at 702.223, which applies to all three program areas.
705.7111(c)	Amend	Subsection (c) is amended to delete a sentence relating to the priority handling of requests for APS records, and to refer instead to the records prioritization rule at 702.223, which applies to all three program areas.

STATUTORY AUTHORITY AND STATUTES AFFECTED

The modification is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Department of Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department. This modification implements Section 264.0145, Family Code, which requires the department to adopt rules concerning the prioritization of requests for client case records.

FISCAL IMPLICATIONS

- (a) Fiscal Impact. For each of the first five years that the rules will be in effect there will not be costs or revenues to state or local government as a result of enforcing or administering these sections.
- (b) Public Costs and Benefits. For each of the first five years that the proposed sections will be in effect, the public benefit anticipated as a result of the rule change will be that the public will have notice of the priority order in which requests for confidential records are handled. There is no anticipated economic cost to persons who are required to comply with the proposed sections.
- (c) Impact on Business. There is no anticipated adverse impact on small, micro, and large businesses as a result of the proposed rule change because the proposed rule change should not affect the cost of doing business; does not impose new requirements on any business; and does not require the purchase of any new equipment or any increased staff time in order to comply.
- (d) Local Employment Impact and Takings Statements. No local employment impact statement was required for this rule. The agency is not required to complete a takings impact assessment regarding the proposed section(s).
- (e) Technology Impact. There is no anticipated impact on technology as a result of the proposed rule change.

STAKEHOLDER INPUT

Stakeholder input will be considered as it is received during the period for comments on the rule.

RECOMMENDATION

It is recommended that the Council consider the proposed rule action, as discussed in this memorandum, and that the Council recommend proposal, with or without changes to the rules as they are attached to this memo.

ATTACHMENTS

Attached is a copy of the proposed change to the rule section as staff recommended for submittal to the *Texas Register*.