

# MEMORANDUM

*This is a PRELIMINARY DRAFT*

**TO:** Steve Henley  
**FROM:** Sunshine M. Bradshaw, Legal Intern  
**DATE:** March 24, 2005  
**RE:** Public Records Access Policies

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This document provides summary information of existing or proposed policies regarding electronic access to court records for selected states.

The included states are: Arizona, California, Indiana, Maryland, Massachusetts, Minnesota, and New York.

## ARIZONA

- Recommendations of the Ad Hoc Committee to Study Public Access to Electronic Court Records (2002) (*attach 1*)
  - Incorporate a sensitive data sheet, that would be a confidential record, for the collection of:
    - Social security numbers
    - Bank and credit card account numbers
    - Victim contact info (address/phone)
    - Juvenile victims' names
  - NO internet access should be given to the public, until the order has been served, on petitions for:
    - Orders of protection
    - Injunction against work place harassment
    - Injunctions against harassment
  - Internet access to criminal records available to the public through a 3 year pilot program with the following restrictions:
    - Users are required to register and obtain a user name and password
    - When accessing must sign in and acknowledge security statement
    - Note that their use will be monitored
    - Use of the website should be tracked by the court
    - Users, other than parties and attorneys of record, will be required to pay a fee
    - Case information should be available on a case by case basis only; bulk data should not be electronically accessible via the Internet
- Arizona Rules of Court, Rules of the Supreme Court, Rule 123. Public access to judicial records of the state of Arizona (*attach 2*)

- Ariz. St. S. Ct. R. 123 (2004)
  - (c)(3) “Confidential and personal financial records. Documents containing social security, credit card, debit card or financial account numbers or credit reports of an individual, when collected by the court for administrative purposes, are closed unless made public in a court proceeding or upon court order.”
  - (g)(5) Remote electronic access to records and costs
  - (g)(5)(A) “Every presiding judge may authorize on-line, remote electronic access to both case and administrative records in their perspective court.”
  - (g)(5)(B) “Each court...shall permit access to information by case number, party name and counsel name”

## CALIFORNIA

- California Rules of the Court, Title Five, Special Rules for Trial Courts, Chapter 3. Public Access to Electronic Trial Court Records (*attach 3*)
  
- Cal. Rules of Court R. 2073 (2005)
  - (b) A court that maintains the following records in electronic form must provide electronic access to them, both remotely and at the courthouse, to the extent it is feasible to do so.
    - (1) Register of actions, calendars, and indexes in all cases; and
    - (2) All records in civil cases, except those listed in (c)(1)-(6)
      - (c)(1) Any record in a proceeding under Family Code
      - (c)(2) Any record in a juvenile proceeding
      - (c)(3) Any record in a guardianship or conservatorship
      - (c)(4) Any record in a mental health proceeding
      - (c)(5) Any record in a criminal proceeding
      - (c)(6) Any record in a civil harassment proceeding
  
  - (e) Notwithstanding (b)(2), the presiding judge of the court may exercise discretion to permit electronic access by the public to all or a portion of the public court records in an individual criminal case if the number of requests for access to documents in the case is extraordinarily high
    - (2) The court should, to the extent feasible, redact the following information to which it allows remote access
      - Driver license numbers
      - Date of birth
      - Social security number
      - Criminal Identification and Information and National Crime Information numbers
      - Address and Phone numbers of
        - Parties
        - Victims

- Witnesses
    - Court personnel
    - Medical or psychiatric information
    - Financial information
    - Account numbers
    - Other personal identifying information
  - \*\*The court may order any party who filed a document containing such information to provide the court with both an original unredacted version of the document for filing in the court file and a redacted version of the document for remote electronic access
- (g) A court may provide bulk distribution of only its calendar, register of actions and index
- Cal Rules of Court R 2077 (2005) (*attach 4*)
  - To the extent that it is feasible to do so, the court must maintain court calendars, indexes, and registers of actions available to the public by electronic means
  - Minimum contents for electronically accessible court calendars, indexes, and register of action:
    - The electronic court calendar must include:
      - Date of court calendar
      - Time of calendared event
      - Court department number
      - Case number; and
      - Case title
    - The electronic index must include:
      - Case title
      - Party names
      - Party type
      - Date on which the case was filed; and
      - Case number

- The register of actions must be a summary of every proceeding in a case, and must include:
  - Date case commenced
  - Case number
  - Case type
  - Case title
  - Party names
  - Party type
  - Date of each activity
  - Description of each activity
- The following information must be EXCLUDED from a court's electronic calendar, index, and register of actions
  - Social security number
  - Any financial information
  - Arrest warrant information
  - Search warrant information
  - Victim information
  - Witness information
  - Ethnicity
  - Age
  - Gender
  - Government-issued identification card numbers
  - Driver's license number; and
  - Date of birth

## INDIANA

- Indiana Administrative Rules—Rule 9. Access to Court Records (1/1/05)  
(attach 5)
  
- Burns Ind. Admin R. 9 (2004)
  - (E) Remote Access. Courts should endeavor to make at least the following information, when available, in electronic form, remotely accessible to the public unless public access is restricted pursuant to sections (G) or (H):
    - (1) Litigant/party indexes to cases filed with the court
    - (2) Listings of new case filings, including the names of the parties
    - (3) The chronological case summary of cases
    - (4) Calendars or dockets of court proceedings, including case numbers and captions, date and time of hearings, and location of hearings
    - (5) Judgments, orders, decrees
  
  - This section encourages courts to make the designated information available to the public through remote access, this is not required, even if the information already exists in an electronic format
  
  - (G) Court Records Excluded from Public Access
    - (1) Case records. The following information in case records is excluded from public access and is confidential:
      - (a) Information that is excluded pursuant to federal law
      - (b) Information that is excluded pursuant to state or other court rule
        - (i) Adoption records
        - (ii) AIDS records
        - (iii) Child abuse records not admitted into evidence

- (iv) Drug testing records not admitted into evidence
- (v) Records of grand jury proceedings
- (vi) Juvenile proceedings
- (vii) Paternity records
- (viii) Pre-sentence reports
- (ix) Written petition to permit marriage
- (x) Only those search warrants, indictments, and information ordered confidential by the trial court
- (xi) All medical, mental health, or tax records unless determined by law not to be confidential
- (xii) Personal information relating to jurors
- (xiii) Information relating to protection orders
- (xiv) Mediation proceedings
- (xv) Information in probation files
- (xvi) Information deemed confidential pursuant to Alcohol or Drug treatment programs
- (xvii) Information deemed confidential pursuant to Drug Court Rules

- (c) Information excluded from public access by specific court order
- (d) Social Security Numbers
- (e) Address, phone numbers, dates of birth and other information which tends to explicitly identify
- (f) Account numbers of specific assets, liabilities, accounts, credit cards, and personal identification numbers
- (g) All orders of expungement entered in criminal or juvenile proceedings

## MARYLAND

- Maryland Rules, Title 16. Courts, Judges and Attorneys, Chapter 1000. Access to Court Records (*attach 6*)
  
- Md. Rule 16-1008 (2004)
  - (a) A court record that is kept in electronic form is open to inspection to the same extent that the record would be open to inspection in paper format
    - (a)(4) Subject to procedures and conditions established by administrative order of the Chief Judge of the Court of Appeals, a person may view and copy electronic records that are open to inspection under Rules in this chapter:
      - (B) by remote access that the court or other judicial agency makes available though dial-up modem, web site access, or other technology

## MASSACHUSETTS

- Policy Statement by the Justices of the Supreme Judicial Court Concerning Publication of Court Case Information on the Web—May, 2003 (*attach 7*)
  - Policy is intended to govern public access to docket and calendar information that is or will be maintain in computerized case management systems—does not require courts to provide electronic access
  - Trial court case information that is available to the general public
    - Intend to provide some information about every case
    - Civil cases—include case caption, names of parties, docket number, judge, court in which the case is pending, case type, attorney information, and past and future calendar events
    - Criminal cases—include docket number, indication that it is a criminal case, information about the offense, and about attorneys involved, only the first initial of defendant
      - Should NOT list—the full case caption or any information likely to identify defendants, victims, witnesses (except expert)
    - Impound cases—include the case docket number, indication that the case is impounded, information about the progress of the case, name of the judge, and except where pro se, attorney information
    - Personal identifying information should not appear on a Court Web site—including individual’s address, telephone number, social security number, and date of birth
  - Appellate court case information
    - Civil cases and impounded case should be treated the same as described above
    - Criminal cases—include the same type of information as civil cases, but not include the Trial Court docket number
  - Searches of case information on a Court Web site

- Civil cases—allow searches by docket number, party name, judge, attorney, calendar event date, court and type of case should be permitted
- Criminal cases—allow searches by docket number, judge, attorney, calendar event date and court
  - Should NOT permit searches by defendant name in Trial Court, but should be allowed in appellate court
  - Searches by victim name or witness name are not permitted
- Impounded cases—allow searches by docket number, judge, attorney and court
  - Searches by party name, victim name, or witness name NOT permitted
- Except where a single division of a Trial Court Department covers the entire state, statewide searches should NOT be permitted
- Attorneys and litigants have heightened access to cases in which they are directly involved
  - Require registration of user name and password
  - Should not grant heightened access to amicus curiae or to persons acting on behalf of someone who is unsuccessful in seeking to become a party
  - Attorneys, litigants, and the media should have no greater access than the general public to cases in which they are not directly involved

## MINNESOTA

- Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch—June 2004 (*attach 8*)
  - Minn. Statute—Court Rules—Rules of Public Access to Records of the Judicial Branch (Proposed changes)
  - Rule 4. Accessibility to Case Records
    - Sub 1. All records are accessible to the public except the following:
      - Domestic abuse
      - Court services records
      - Judicial work product and drafts
      - Criminal cases; Juvenile appeal cases
      - Race census records
  - Rule 8. Inspection and Photo Copying, Bulk Distribution and Remote Access
    - Sub 2. (a) A court administrative office that maintains the following electronic case records must provide remote electronic access to those records to the extent that the office has the resources and technical capacity to do so
      - (1) Register of actions
      - (2) Calendars
      - (3) Indexes
      - (4) Judgment dockets
      - (5) Judgments, orders, appellate opinions, and notices prepared by the court
      - (6) All other electronic case records that are accessible to the public under Rule 4 shall not be made remotely accessible but shall be made accessible in either electronic or in paper form at the courthouse

- Notwithstanding Rule 8, sub. 2(a), the public shall not have remote access to the following with regard to parties, their family, jurors, witnesses, or victims of criminal or delinquent act:
  - Social security number
  - Street address
  - Telephone number
  - Financial account numbers
  - In the case of jurors, witness, or victim of a criminal or delinquent act, information that specifically identifies the individual or from which the identity of the individual could be ascertained
- Advisory Committee Comment –2004
  - The rule[s] limit Internet access to records that are created by the court themselves as this is the only practical method of ensuring that necessary redaction will occur

## NEW YORK

- Commission on Public Access to Court Records—February 2004 (*attach 9*)
- Recommendation and Conclusions
  - 1. Public court case records in electronic form should be made available to the public by the Unified Court System (UCS) remotely over the Internet. No additional limitations should be placed, on an across-the-board basis, on placing court case records on the Internet so long as those records are public in nature and conform to the requirements of the Commission's recommendations
    - If a court record is public, and is therefore accessible to the public in paper form at the courthouse or County Clerk's office, the same record should, as a general matter, be publicly accessible on the Internet if it is filed in or converted to electronic form
    - Commission considered, but rejected idea that electronic case records should be subjected to special limitations not applicable to paper records
    - Commission recommends that public criminal case records should be made accessible to the same extent as civil case records
    - Commission considered, and rejected, the notion that access to electronic case records should be made dependent upon the status of the individual or entity seeking access
  - 2. Without leave of court, no public court case records, whether in paper, or electronic form, should include the following information in full:
    - (1) Social security number
    - (2) Financial account numbers
    - (3) Names of minor children
    - (4) Full birth dates of any individual