Draft Policy for Public Access to Records Maintained by the Ohio Courts

Privacy and Public Access Subcommittee of the Supreme Court of Ohio Advisory Committee on Technology and the Courts

This document is intended as an information resource. As of January 11, 2005, we are not currently accepting comments on this draft. Pending review by the Advisory Committee on Technology and the Courts, this draft will be released for public comment in the near future. Expect substantial changes to this document.

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Preface

The technology revolution of the past decade has touched virtually every institution in America, from the corner grocer's check out line to the airline ticket counter. 21st-century Americans can buy goods, check their bank balances, take college courses, conduct research, and even find a mate, all in the comfort of their homes, thanks to the Internet revolution.

That same rushing tide of technology is rising in our court system, a system that has traditionally been slow to change. Recognizing the inevitability of this most profound change, Ohio Supreme Court Chief Justice Moyer appointed the Advisory Committee on Technology and the Courts. He charged it with recommending a strategy on how best to bring Ohio's courts into the information age.

In addition to dealing with such issues as hardware and software costs and implementation, the Advisory Committee weighed problems and opportunities associated with a technological transformation of the court system. Chief among those issues was the tension between increased ease of access to court records via the Internet and threats to privacy occasioned by disclosure of intimate details sometimes contained in those records.

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96 Accordingly, Chief Justice Moyer formed a privacy subcommittee to explore
97 those conflicting values and to make recommendations on how to resolve them.
98 The subcommittee drew members from the judiciary, practicing attorneys, court
99 clerks, court administrators, academia, citizen groups, the Auditor of State's
100 office, the Attorney General's office, and the media. Our draft report is the
101 product of monthly meetings conducted over the course of two years, augmented
102 by meetings of work groups drawn from the subcommittee's membership. Guest
103 speakers with specialized expertise also addressed the group.
104
105 The subcommittee has answered the following fundamental question: ***Should***
106 ***electronic records and their traditional paper counterparts be treated***
107 ***identically in terms of public access?*** Our answer was yes, for both practical
108 and philosophical reasons. We believe there should be one set of guidelines for
109 court records regardless of the medium (paper, electronic, etc.) of the record.
110
111 Forcing clerks of the court to maintain two different sets of records, one paper
112 and one electronic, would pose a significant burden on their offices. Additionally,
113 forcing citizens to go to the courthouse for the "full" record would undermine the
114 advantage of greater access guaranteed by electronic records, in addition to
115 causing confusion about which record was the "real" public record.
116

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117 That decision sharpened the debate over privacy concerns and led to our next
118 question: ***What information, currently in the court file, should not be public?***
119 Information on a paper record in the courthouse is far less accessible than
120 information available on the Internet (the notion of "practical obscurity").
121
122 Because information in electronic form can be reduced to data elements that can
123 be either hidden or viewable, we conducted a review of all the materials typically
124 found in a court file. We identified those materials containing sensitive data
125 elements, information that might facilitate identity theft, for example. The group
126 then worked to decide whether those elements should be kept public. Some of
127 these materials were already confidential by statute, adoption records, for
128 example. Others were not, such as credit card numbers in a divorce proceeding.
129
130 Subcommittee members debated the sensitivity of each data element and cast
131 votes on whether to obscure them before public disclosure of the record.
132 Unanimity was relatively rare. Proponents of obscuring, or "redacting," sensitive
133 data elements argued that the data elements do not promote the fundamental
134 purpose of public accessibility to court records, that is, these sensitive data
135 elements do not shed light on the workings of the court system. Those
136 subscribing to this methodology also noted that as court files contain so many
137 intimate personal details, making those details available on the Internet invited
138 abuse, invasion of privacy, even personal danger. In their viewpoint, eliminating

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139 these data elements from the public view did nothing to damage the public's
140 ability to monitor the court system, while the potential for individual harm by
141 disclosure of this personal information was substantial and may ultimately erode
142 the public's trust in the judiciary.
143
144 Conversely, those opposed to redacting these elements typically argued that
145 public access to all but a few aspects of the court's workings was an essential
146 part of the American judicial system, a hallmark of Ohio's Sunshine Laws, and
147 that fears of identity theft, stalking or personal embarrassment were overstated.
148
149 Pages 39-41 of the draft report enumerate the information we believe should be
150 exempt from public access. Pages 56-85 summarize the subcommittee's
151 rationale for its treatment of each data element and the vote. A review of those
152 pages provides insight into the subcommittee's thinking. Documents in the
153 appendix of this draft reflect additional commentary of the Auditor of State's
154 office, the Attorney General's office, the Ohio Judicial Conference,
155 representatives of the Cuyahoga County Juvenile Court, and the two media
156 representatives on the subcommittee.
157
158 All members of the subcommittee agreed that these recommendations apply only
159 to future filings and that access rights to all existing records will remain
160 unchanged. All subcommittee members believe that making records available

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161 via the Internet provides an unprecedented level of citizen access to the courts
162 and promotes greater efficiency in their administration.
163

164 PUBLIC ACCESS TO COURT RECORDS:
165 POLICY DEVELOPMENT

166

167 Historically most court files have been open to anyone willing to come
168 down to the courthouse and examine the files. The reason that court files are
169 open is to allow the public to observe and monitor the judiciary and the cases it
170 hears, to find out the status of parties to cases (for example, dissolution of
171 marriage), or to find out final judgments in cases. Technological innovations
172 have resulted in more court records being available in electronic form. These
173 permit easier and wider access to the records that have always been available in
174 the courthouse. Information in court records can now be "broadcast" by being
175 made available through the Internet. Information in electronic records can be
176 easily compiled in new ways. An entire database can be copied and distributed
177 to others. At the same time, not all courts have the same resources or the same
178 level of technology, resulting in varying levels of access to records across courts
179 in the same state. These new circumstances require new access policies to
180 address the concern that the proper balance is maintained between public
181 access, personal privacy, and public safety, while maintaining the integrity of the
182 judicial process.

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183

184 In response to the need for a thorough review of public access policies, a
185 Privacy Subcommittee of the Supreme Court of Ohio Advisory Committee on
186 Technology and the Courts was established. The goals of the subcommittee are
187 to:

188

189 ▪ Identify the current body of laws, regulations and rules which determine
190 the current operating environment with respect to privacy and public
191 access in records maintained by Ohio courts;

192

193 ▪ Research and define requirements for privacy and public access
194 standards used by case management systems to share information and
195 promulgate those standards with publications, education, training and
196 technical assistance;

197

198 ▪ Define problem areas involving technology with regard to privacy and
199 public access and recommend solutions to the appropriate governing
200 agencies, the Legislature or the Supreme Court; and

201

202 ▪ Identify barriers caused by electronic dissemination of court records.

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204 Courts throughout Ohio are planning and building the next generation of
205 computer systems that feature new services for the sharing of court information
206 with the public, the bar, and government and social service agencies. Although
207 only just beginning, the early deployments of web-based public access systems
208 are already following a diverse path in their implementation. Thus far, few
209 websites currently provide direct access to electronic case files. However, what
210 is available to the public is already published in distinctly different ways. As more
211 of these systems are implemented, there are more approaches to what, and how,
212 information about an individual is disseminated.
213
214 A more deliberate, uniform approach to how court information is collected,
215 stored, and disseminated is recommended. A comprehensive program of
216 research and policy development with regard to the principles of privacy and
217 open access is a top priority. Consistency in how courts implement technology to
218 manage information is important to maintaining trust and confidence in the court
219 system. Although the fundamental issues of privacy and open access are not
220 technology issues per se, technology is driving the issue.
221
222 Among the areas identified with regard to how technology is used to
223 manage court information, these are particularly noteworthy of addressing:
224

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225 1) Most often, those who are party to a court action are not advised as to
226 how information about them is collected, for what purpose it is used and to whom
227 it is disclosed and made available.
228
229 2) There is a growing inconsistency in how information is collected,
230 managed, and disseminated from one court to the next. Bank account numbers,
231 social security numbers, tax returns, information about minors, psychological
232 information, and insurance information are readily available 24 hours a day in
233 one county, available but heavily redacted in another, and completely unavailable
234 in yet another even though each has the same technology capabilities.
235
236 3) Companies that specialize in the packaging and reselling of information
237 routinely obtain entire abstracts of court information. As the official court record
238 changes, those changes are not reflected in the abstracted files. Consequently,
239 information about expunged cases is readily available despite the fact that the
240 official record shows that no case exists.
241
242 4) Few juvenile courts adhere to the body of sealing and expungement
243 provisions in the Ohio Revised Code.
244
245 The *Public Access Policy* provisions proposed by the Committee are
246 based on the following premises:

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247 •The presumption of open public access to court records implied in the Ohio
248 Constitution;
249 •The policy regarding access should not change depending upon the medium of
250 the record, be it paper, electronic or a combination of both. Whether there
251 should be access should be the same regardless of the form of the record,
252 although the manner of access may vary. Public access policy concerning the
253 court record should be consistent, regardless of the medium;
254 •Although there are statutes governing access to public records that provide
255 guidance, the judiciary has inherent power to specify and control access to court
256 records;
257 •The *Public Access Policy* applies to all court records in all courts, trial and
258 appellate;
259 •The nature of the information in some records is such that all public access to
260 the information should be restricted, unless authorized by a judge; and
261 •Access policies should be clear, consistently applied, and not subject to
262 interpretation by individual court or clerk personnel.
263
264 The *Public Access Policy* is organized around the basic questions to be
265 answered by such a policy: What is the purpose of the policy, and who has
266 access to what information, how and when? The *Public Access Policy* concludes
267 with sections regarding notice about information collected that is publicly
268 accessible, public education about accessing information, and obligations of the

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269 executive branch agencies and vendors providing information technology
270 services to the court. Finally, the Public Access Policy includes legislative
271 proposals regarding liability for use of incorrect or stale information derived from
272 court records.
273
274 The *Public Access Policy* does not require courts to convert records to
275 electronic form or to make records in electronic form available remotely, for
276 example through the Internet. The *Public Access Policy* addresses public access
277 to court records, not internal court record management practices, or media on
278 which the court record exists. The decision whether to convert and maintain
279 records in electronic form, and whether to provide remote access to these
280 records is a decision for the state court system or individual courts, after taking
281 into consideration the resources available and the myriad of demands on these
282 resources. In addition, not all courts are currently in a position to provide remote
283 public access to court records. The level and type of technology in use in courts
284 varies widely, across courts within states, as well as across states. The *Public*
285 *Access Policy* is drafted to provide guidance to Ohio courts as their technology is
286 upgraded, and they acquire the ability to make information in court records
287 available remotely.
288
289

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290 **Section 1.00 - Purpose of the Public Access Policy**

291

292 **(a) The purpose of the *Public Access Policy* is to provide a**
293 **comprehensive policy on public access to court records. The**
294 ***Public Access Policy* provides for access in a manner that:**

295

296 **(1) Maximizes accessibility to court records,**
297 **(2) Supports the role of the judiciary,**
298 **(3) Promotes governmental accountability,**
299 **(4) Contributes to public safety,**
300 **(5) Minimizes risk of injury to individuals,**
301 **(6) Protects individual privacy rights and interests,**
302 **(7) Protects proprietary business information,**
303 **(8) Minimizes reluctance to use the court to resolve**
304 **disputes,**
305 **(9) Makes most effective use of court and clerk of court**
306 **staff,**
307 **(10) Supports public service,**
308 **(11) Does not unduly burden the ongoing business of the**
309 **judiciary, and**
310 **(12) Minimizes prejudice to on-going court proceedings.**

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312 **(b) The *Public Access Policy* is intended to provide guidance to 1)**
313 **litigants, 2) those seeking access to court records, and 3)**
314 **judges and court and clerk of court personnel responding to**
315 **requests for access.**
316
317 *Commentary*
318
319 The objective of this *Public Access Policy* is to provide maximum public
320 accessibility to court records, consistent with constitutional or other provisions of
321 law and taking into account public policy interests that are not always fully
322 compatible with unrestricted public access. Twelve significant public policy
323 interests are identified. Unrestricted public access to certain information in court
324 records could result in an unwarranted invasion of personal privacy or unduly
325 increase the risk of injury to individuals and businesses. Denial of public access
326 would compromise the judiciary's role in society, inhibit accountability, and might
327 endanger public safety.
328
329 This *Public Access Policy* starts from the presumption of open public
330 access to court records, consistent with Ohio and Federal Law[1]. In some
331 circumstances, however, there may be sound reasons for restricting access to

[1] Free Speech and Free Press Clause of the First Amendment to the U.S. Constitution; Ohio Constitution Article I, Section 11, Ohio Constitution, Open Courts Provision of Article I, Section 16; Ohio Public Records Act (ORC 149.43); Ohio Common Law; Federal Common Law

332 these records. Examples where there have historically been access restrictions
333 include adoption and mental health records. Additionally, certain interests, like
334 right to privacy, may sometimes justify restricting access to certain court records.
335 The *Public Access Policy* also reflects the view that any restriction to access
336 must be implemented in a manner narrowly tailored to serve the interests in open
337 access.
338
339 *Subsection (a)(1) Maximizes Accessibility to Court Records*. The premise
340 underlying this *Public Access Policy* is that court records should generally be
341 open and accessible to the public. Court records have historically been open to
342 public access at the courthouse, with limited exceptions. Open access serves
343 many public purposes. Open access supports the judiciary in fulfilling its role in
344 our democratic form of government and in our society. Open access also
345 promotes the accountability of the judiciary by readily allowing the public to
346 monitor the performance of the judiciary. Other specific benefits of open court
347 records are further elaborated in the remaining subsections.
348
349 *Subsection (a)(2) Supports the Role of the Judiciary*. The role of the
350 judiciary is to resolve disputes, between private parties or between an individual
351 or entity and the government, according to a set of rules. Although the dispute is
352 between two people or entities, or with the government, having the process and
353 result open to the public serves a societal interest in having a set of stable,

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354 predictable rules governing behavior and conduct. The open nature of court
355 proceedings furthers the goal of providing public education about the results in
356 cases and the evidence supporting them.
357
358 Another aspect of the court's dispute resolution function is establishing
359 rights as between parties in a dispute. The decision of the court stating what the
360 rights and obligations of the parties are is as important to the public as to the
361 litigants. The significance of this role is reflected in statutes and rules creating
362 such things as judgment rolls and party indices with specific public accessibility.
363
364 *Subsection (a)(3) Promotes Government Accountability*. Open court
365 records provide for accountability in at least three major areas: 1) the operations
366 of the judiciary, 2) the operations of other governmental agencies, and 3) the
367 enforcement of laws. Open court records allow the public to monitor the
368 performance of the judiciary and, thereby, hold it accountable. Public access to
369 court records allows anyone to review the proceedings and the decisions of the
370 court, individually, across cases, and across courts, to determine whether the
371 court is meeting its role of protecting the rule of law, and does so in a cost
372 effective manner. Such access also promotes greater public trust and
373 confidence in the judiciary. Openness also provides accountability for
374 governmental agencies that are parties in court actions, or whose activities are
375 being challenged in a court action. Finally, open court proceedings and open

376 court records also demonstrate that laws are being enforced. This includes civil
377 regulatory laws as well as criminal laws.
378
379 *Subsection (a)(4) Contributes to Public Safety*. Open public access
380 contributes to public safety and compliance with the law. Availability of
381 information about court proceedings and outcomes allows people to become
382 aware of and watch out for people, circumstances, or business propositions that
383 might cause them injury. Open public access to information thus allows people
384 to protect themselves. Examples of this are criminal conviction information,
385 protective order information, and judgments in non-criminal cases, which may be
386 useful, for example, in review of employees for caretaker situations, including
387 care of children and care of the elderly and infirm. At the same time, it should be
388 noted that there might be a problem with reliance on incomplete information from
389 yet unresolved cases, where allegations might not be proved.
390
391 Public safety includes consideration of both physical and economic safety,
392 and is enhanced to the extent open public access to court records contributes to
393 the accountability of corporations, businesses, and individuals. Court cases are
394 one source of information about unsafe products, improper business practices, or
395 dangerous conditions. Knowing this information is readily availability to the
396 public from court records is one incentive for businesses and individuals to act

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397 appropriately. Open access to this information also allows individuals and
398 businesses to protect themselves more wholly from injury.
399
400 *Subsection (a)(5) Minimizes Risk of Injury to Individuals*. Other
401 circumstances suggest unrestricted access is not always in the public interest.
402 The interest in personal safety can be served by restricting access to information
403 that someone could use to injure someone else, physically, psychologically or
404 economically. Examples of actual injury to individuals based on information
405 obtained from court records include: intimidation of, or physical violence towards,
406 victims, witnesses, or jurors, repeated domestic violence, sexual assault,
407 stalking, identity theft, and housing or employment discrimination. While this
408 does not require total restriction of access to court records, it supports restriction
409 of access to certain information that would allow someone to identify and find a
410 person to whom they intend harm. This is an especially serious problem in
411 domestic violence cases where the abused person is seeking protection through
412 the court.
413
414 *Subsection (a)(6) Protects Individual Privacy Rights and Interests*. The
415 major countervailing public interest to unrestricted public access is the protection
416 of personal privacy. The interest in privacy is protected by limiting public access
417 to certain kinds of information. The presumption of public access to court
418 records is not absolute, and may be overcome by a judicial determination that the

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419 privacy interest is greater than the public's right to access. For example, the
420 reliance on court records for information about an individual, where positive
421 identification cannot be verified, may also create problems for an individual
422 incorrectly associated with a particular court record.
423
424
425 Appropriate respect for individual privacy also enhances public trust and
426 confidence in the judiciary.
427
428 It is also important to remember that, generally, at least some of the
429 parties in a court case are not in court voluntarily, but rather have been brought
430 into court by plaintiffs or by the government. They have not consented to
431 personal information related to the dispute being in the public domain. For those
432 who have violated the law or an agreement, civilly or criminally, an argument can
433 be made that they have impliedly consented to participation and disclosure by
434 their actions. However, both civil suits and criminal cases are filed based on
435 allegations, so innocent people and those who have not acted improperly can still
436 find themselves in court as a defendant in a case.
437
438 Finally, at times a person who is not a party to the action may be
439 mentioned in the court record. Care should be taken that the privacy rights and

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440 interests of such a 'third' person are not compromised by public access to the
441 court record containing information about the person.
442
443 *Subsection (a)(7) Protects Proprietary Business Information*. Another type
444 of information to which a judge might restrict access is that related to the trade
445 secrets or other proprietary business information. Allowing public access to such
446 information could both thwart a legitimate business advantage and give a
447 competitor an unfair business advantage. It also reduces the willingness of a
448 business to use the courts to resolve disputes.
449
450 *Subsection (a)(8) Minimizes Reluctance To Use The Court To Resolve*
451 *Disputes*. The public availability of information in the court record can also affect
452 the decision as to whether to use the court to resolve disputes. A policy that
453 permits unfettered public access might result in some individuals avoiding the
454 resolution of a dispute through the court because they are unwilling to have
455 information become accessible to the public simply by virtue of it being in the
456 court record. This would diminish access to the courts and undermine public
457 confidence in the judiciary. There may also be an unintended effect of
458 encouraging use of alternative dispute resolution mechanisms, which tend to be
459 essentially private proceedings. If someone believes the courts are not available
460 to help resolve their dispute, there is a risk they will resort to self-help, a

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461 response the existence of the courts is intended to minimize because of the
462 societal interest in the peaceful resolution of disputes.
463
464 *Subsection (a)(9) Makes Most Effective Use of Court and Clerk of Court*
465 *Staff*. This consideration relates to how access is provided rather than whether
466 there is access. Staff time is required to maintain and provide public access to
467 court records. If records are in electronic form, less staff time may be needed to
468 provide public access. However, there can be significant costs to convert
469 records to electronic form in the first place and to maintain them. There may also
470 be added costs for court IT security personnel to prevent hackers from
471 improperly accessing and altering court databases. However, some courts have
472 found increased security through electronic records. Savings from workflow
473 improvements and from reduced staff time in responding to requests for
474 information may partially offset or even exceed additional staff costs. In
475 providing public access, the court and clerk should be mindful of doing it in a way
476 that makes most effective use of court and clerk of court staff. Use of staff may
477 also be a relevant consideration in identifying the method for limiting access
478 under section 4.70(a). Note that the *Public Access Policy* does not require a
479 court to convert records to electronic form, nor to make electronic records
480 available remotely.
481

482 Court records management systems should be designed to improve public
483 access to the court record as well as to improve the productivity of the court's
484 employees and judges and the clerk's office. What is the added cost or savings
485 of providing both? The answer to this involves allocation of scarce resources as
486 well as system design issues. If the public can help themselves to access,
487 especially electronically, less staff time is needed to respond to requests for
488 access. The best options would be to design a system to accommodate access
489 restrictions to certain kinds of information without court staff involvement (see
490 discussion in Commentary to Section 3.20).
491
492 *Subsection (a)(10) Supports Public Service*. An access policy should also
493 support public service while conserving court resources, particular court staff.
494 Having information in electronic form offers more opportunities for easier, less
495 costly access to anyone interested in the information. There is for example
496 savings to the public in reducing legal fees and allowing review of records to
497 hourly workers who are otherwise effectively excluded from the ability to review
498 the court records of their own cases. This consideration relates to how access is
499 provided rather than whether there is access.
500
501 *Subsection (a)(11) Does Not Unduly Burden the Ongoing Business of the*
502 *Judiciary*. An access policy and its implementation should not unduly burden the
503 court in delivering its fundamental service – resolution of disputes. This

504 consideration relates to how access is provided rather than whether there is
505 access. Depending on the manner of public access, unrestricted public access
506 could impinge on the day-to-day operations of the court. This subsection relates
507 more to requests for bulk access (see section 4.30) or for compiled information
508 (see section 4.40) than to the day-to-day, one at a time requests (see section
509 1.00, subdivision (a)(9)). Limited public resources and high case volume also
510 suggest that courts should not add to their current information burden by
511 collecting information not needed for immediate judicial decisions, even if the
512 collection of this information facilitates subsequent use of the collected
513 information. Making information available in electronic form, and making it
514 remotely accessible, requires both staff and equipment resources. Courts
515 receive a large volume of documents and other materials daily, and converting
516 them to electronic form may be expensive. As is the case with all public
517 institutions, courts have limited resources to perform their work. The interest
518 stated in this subsection attempts to recognize that access is not free, that there
519 may be more than one approach to providing, or restricting access, and some
520 approaches are less burdensome than others are.
521
522 *Subsection (a)(12) Minimizes prejudice to on-going court proceedings.*
523 Finally, allowing public access should not prejudice the parties in an on-going
524 proceeding. If public access could prejudice a party, it creates a disincentive to
525 use the justice system, and an incentive to use other non-public means to

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526 resolve the dispute. Generally, such prejudice can be avoided by a short-term
527 restriction to public access, the restriction ending at the conclusion of a particular
528 proceeding or upon the court reaching a decision on a matter or in the case.
529

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530 **Section 2.00 – Who Has Access under the Public Access Policy**

531

532 **Every member of the public shall have the same access to court records as**
533 **provided in this *Public Access Policy*, except as provided in section 4.30(b)**
534 **and 4.40(b).**

535

536 **"Public" includes:**

537 **(a) any person and any business or non-profit entity, organization**
538 **or association;**
539 **(b) any governmental agency for which there is no existing policy**
540 **defining the agency's access to court records;**
541 **(c) media organizations; and**
542 **(d) entities that gather and disseminate information for whatever**
543 **reason, regardless of whether it is done with the intent of**
544 **making a profit, and without distinction as to nature or extent**
545 **of access.**

546

547 **"Public" does not include:**

548 **(e) court or clerk of court employees where access is necessary**
549 **for the employee to complete their work;**

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550 **(f) people or entities, private or governmental, who assist the**
551 **court in providing court services where access is necessary**
552 **for the person or entity to complete their work for the court;**
553 **(g) public agencies whose access to court records is defined by**
554 **another statute, rule, order or policy; and**
555 **(h) the parties to a case or their lawyers regarding access to the**
556 **court record in their case.**
557
558 *Commentary*
559
560 The point of this section is to explicitly state that access is the same for
561 the public, the media, and the information industry. Access does not depend on
562 who is seeking access, the reason they want the information or what they are
563 doing with it. Although whether there is access does not vary, how access is
564 permitted may vary by type of information (see sections 4.20 to 4.70). The
565 exceptions to equal access referred to (sections 4.30(b) and 4.40(b)) permit
566 requests for greater access by an individual or entity based on specified intended
567 uses of the information.
568
569 The section also indicates what groups of people are not subject to the
570 policy, as there are other policies describing their access.
571

572 How the equality of access implied in this section is achieved is addressed
573 in section 3.20 and the associated commentary.
574
575 Subsection (b) and (g): The *Public Access Policy* apply to governmental
576 agencies and their staff where there is no existing law specifying access to court
577 records for that agency, for example a health department. Under subsection (g),
578 if there are other applicable access rules, those rules apply.
579
580 Subsection (d): This subsection explicitly includes organizations in the
581 information industry, watchdog groups, non-governmental organizations,
582 academic institutions, private investigators, and other organizations sometimes
583 referred to as information providers.
584
585 Subsections (e) through (h) identify groups whose authority to access
586 court records is different from that of the public. The concept is that other laws or
587 policies define the access authority for these groups, and this *Public Access*
588 *Policy* therefore does not apply.
589
590 Subsection (e): Court and clerk of court employees may need greater
591 access than the public does to do their work and therefore work under different
592 access rules. Courts should adopt an internal policy regarding court and clerk of
593 court employee access and use of information in court records, including the

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594 need to protect the confidentiality of information in court records. See section
595 8.30 about the court's obligation to educate its employees about their access
596 policy applicable to the public.
597
598 Subsection (f): Employees and subcontractors of entities who provide
599 services to the court or clerk of court, that is, court services that have been
600 "outsourced," may also need greater access to information to do their jobs and
601 therefore operate under a different access policy. See section 7.00 about
602 policies covering staff in entities that are providing services to the court to help
603 the court conduct its business.
604
605 Subsection (g): This subsection is intended to cover personnel in other
606 governmental agencies who have a need for information in court records in order
607 to do their work. Generally, there is another statute, rule, or policy governing
608 their access to court records and this *Public Access Policy* does not apply to
609 them. An example of this would be an integrated justice system operated on
610 behalf of several justice system agencies where access is governed by internal
611 policies, statutes, or rules applicable to all users of the integrated system.
612
613 Subsection (h): This subsection continues nearly unrestricted access by
614 litigants and their lawyers to information in their own case, but no higher level of
615 access to information in other cases. Note that the *Public Access Policy* does

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616 not preclude the court from limiting or providing different means of access for
617 parties and their attorneys to their own case. For example, remote access may
618 be provided to attorneys and parties to their cases, but not be provided to the
619 public. As to cases in which they are not the attorney of record, attorneys would
620 have the same access as any other member of the public.
621

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622 **Section 3.00 – Access to What**

623

624 **Section 3.10 – Definition of Court Record**

625

626 **For purposes of this Public Access Policy:**

627

628 **(A) "Court record" includes both judicial records and**
629 **administrative records.**

630

631 **(1) "Judicial records" include the following items that have**
632 **historically been available to the public and that are vital to**
633 **the understanding the adjudication of matters brought**
634 **before the courts:**

635

636 **(a) Case files as defined under the Rules of**
637 **Superintendence 26(B)(2), including, but not limited to**
638 **any document, information, or other thing that is**
639 **collected, received, or maintained by a court or clerk of**
640 **courts in furtherance of the adjudication of a judicial**
641 **proceeding;**

642

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643 **(b) Any index, calendar, docket, journal, register of actions,**
644 **official record of the proceedings, order, decree,**
645 **judgment, minutes, and any information in a case**
646 **management system created by or prepared by the**
647 **court or clerk of courts that is related to a judicial**
648 **proceeding;**
649
650 **(2) "Administrative records" have the same meaning as the**
651 **term is defined under the Rule of Superintendence 26(B)(1)**
652 **and includes:**
653
654 **(a) Any information created, sent or maintained by the**
655 **court or clerk of courts or any other public office in**
656 **carrying out the functions activities, policies or other**
657 **procedures of the public offices, not including any**
658 **judicial records associated with any particular case.**
659
660 **(B) "Court record" does not include:**
661
662 **(1) Information exchanged between the parties that is not filed**
663 **with the court or incorporated into documents filed with the**
664 **court, including without limitation, unfiled discovery**

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665 **(including depositions), financial information, and medical**
666 **and psychological evaluations or reports.**
667

668 **(2) Documents accompanying a Motion to Seal filed pursuant to**
669 **Section 4.70 by a party within active judicial proceeding that**
670 **have been clearly marked as "sealed" and enclosed within an**
671 **envelope. Such documents do not become Judicial Records**
672 **until the envelope is opened and the motion is ruled upon by**
673 **the court in consideration of the motion to seal.**
674

675 **(3) Information gathered, maintained, or stored by a**
676 **governmental agency or other entity to which the court has**
677 **access, but which is not part of a court record as defined in**
678 **section 3.10(a).**
679

680 **Commentary**

681

682 This section defines a court record broadly. Two categories of court
683 records are identified: judicial records and administrative records. Judicial
684 records are defined as those that constitute what is classically called the case
685 file, but also information that is created by the court such as databases that are
686 not in a case file. Administrative records include information that relates to the

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687 operation of the court, but not to a specific case or cases. These definitions deal
688 with what is in the court record, not whether the information is accessible. The
689 definitions are the same as set forth under the Ohio Supreme Court Rules of
690 Superintendence 26. Limitations and exclusions to access are provided for in
691 sections 4.60, and 4.70.
692
693 This Access Policy is intended to apply to every court record, regardless
694 of the manner in which it was created, the form(s) in which it is stored, or other
695 form(s) in which the information may exist (see section 4.00).
696
697 *Subsection (a)(1)(a)*: This first definition of judicial record is meant to be all
698 inclusive of information that is provided to, or made available to, the court that
699 relates to a judicial proceeding. The term "judicial proceeding" is used because
700 there may not be a court case in every situation. The definition is not limited to
701 information "filed" with the court or "made part of the court record" because other
702 types of information are often necessary for the court needs to make a fully
703 informed decision. This other information may not technically be "filed" or
704 technically part of the court record. The language, therefore, is written to include
705 information delivered to, or "lodged" with, the court, even if it is not "filed." An
706 example is a complaint accompanying a motion to waive the filing fee based on
707 indigency.
708

709 The definition is also intended to include exhibits offered in hearings or
710 trials, even if not admitted into evidence, unless otherwise ordered by the court.
711 One issue is with the common practice in many courts of returning exhibits to the
712 parties at the conclusion of the trial, particularly if they were not admitted into
713 evidence. These policies will have to be reviewed in light of an Access Policy. It
714 may be that this practice should be acknowledged in the Access Policy,
715 indicating that some exhibits may only be available for public access until
716 returned to the parties as provided by court policy and practice.
717
718 The definition includes all information used by a court to make its decision,
719 even if an appellate court subsequently rules that the information should not have
720 been considered or was not relevant to the judicial decision made. In order for a
721 court to be held accountable for its decision, all of the information that a court
722 considered and which formed the basis of the court's decision must be
723 accessible to the public.
724
725 The language is intended to include materials that are submitted to the
726 court, but upon which a court did not act because the matter was withdrawn or
727 the case was resolved (e.g. an out of court settlement by the parties). Once
728 relevant material has been submitted to the court, it does not become
729 inaccessible because the court did not, in the end, act on the information in the
730 materials because the parties resolved the issue without a court decision.

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731

732 *Subsection (a)(1)(b)*: The second definition of judicial record is written to
733 cover any information that relates to a judicial proceeding generated by the court
734 itself, whether through the court administrator's personnel or the clerk's office
735 personnel. This definition applies to proceedings conducted by temporary judges
736 or referees hearing cases in an official capacity. This includes two categories of
737 information. One category includes documents, such as notices, minutes, orders
738 and judgments, which become part of the court record. The second category
739 includes information that is gathered, generated, or kept for managing the court's
740 cases. This information may never be in a document. It may only exist as
741 information in a field of a database such as a case management system, an
742 automated register of actions, a document, or image management system, or an
743 index of cases or parties.

744

745 Another set of items included within the definition is the official record of
746 the proceedings, whether it is notes and transcripts generated by a court reporter
747 of what transpired at a hearing, or an audio or video recording (analog or digital)
748 of the proceeding[2]. The court reporter's notes themselves are not considered
749 part of the record, but the transcript produced from the reporter's notes is
750 considered part of the record.

751

[2] See Ohio Sup. Rule 11(A) for description of forms the verbatim record may take.

752 *Subsection (a)(2)(a)*: The definition of administrative record includes
753 information and records maintained by the court or clerk of court that is related to
754 the management and administration of the court or the clerk's office, as opposed
755 to a specific case. Examples of this information include: internal court or clerk
756 policies, memoranda and correspondence, court and clerk budget and fiscal
757 records, and other routinely produced administrative records, memos and
758 reports, and meeting minutes. Subsection 4.60(b) identifies categories of
759 information in administrative records to which public access is restricted.

760

761 *Subsection (b)(1)*: This subsection makes it clear that some information
762 exchanged between parties in a case pending before the court is not part of the
763 court record and therefore, not available to the public. Parties often exchange
764 and gather information through discovery or other means that is used by the
765 parties in preparing their case. However, much of the information may never be
766 presented to the court. Since the information is not presented to the court, it is
767 not part of the court's deliberative process. Since the court does not consider the
768 information, the policy argument that the public should be able to access
769 whatever the court considers in order to hold the court accountable does not
770 apply. Examples of information in this category include all forms of unfilled
771 discovery, including depositions, financial information and psychological
772 evaluations or reports.

773

774 Another category of information that is associated with pending cases but
775 does not occur directly within the judicial sphere is that associated with private
776 alternative dispute resolution (ADR) activities. These activities are pursued by
777 the parties with vendors that are independent of the court. Since the information
778 is not delivered to the court, and does not form part of the basis of the court's
779 decision, it does not fall within the definition of this section.
780
781 *Subsection (b)(2)*: The definition excludes information gathered,
782 maintained or stored by other agencies or entities that is not necessary to, or is
783 not part of the basis of, a court's decision or the judicial process. Access to this
784 information should be governed by the laws and Access Policy of the agency
785 collecting and maintaining such information. The ability of a computer in a court
786 or clerk's office to access the information because the computer uses shared
787 software and databases should not, by itself, make the court's public Access
788 Policy applicable to the information. An example of this is information stored in
789 an integrated criminal justice information system where the database and
790 software is shared by law enforcement, the prosecutor, the court, defense
791 counsel, and probation and corrections departments. The use of a shared
792 system can blur the distinctions between agency records and court records.
793 Under this section, if the information is provided to the court as part of a case or
794 judicial proceeding, the court's access rules then apply, regardless of where the
795 information came from, or the access rules of that agency. Conversely, if the

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796 information is not made part of the court record, the Access Policy applicable to
797 the agency collecting the data still applies even if the information is stored in a
798 shared database.
799
800 **Section 3.20 – Definition of Public Access**
801
802 **"Public access" means that the public may inspect and obtain a copy of**
803 **the information in a court record.**
804
805 *Commentary*
806
807 This section defines "public access" very broadly. The unrestricted
808 language implies that access is not conditioned on the reason access is
809 requested or on prior permission being granted by the court. Access is defined
810 to include the ability to obtain a copy of the information, not just inspect it. This is
811 consistent with the Ohio Public Records Act.[3] The section does not address the
812 form of the copy, as there are numerous forms the copy could take, and more will
813 probably become possible as technology continues to evolve.
814
815 At a minimum, inspection of the court record can be done at the
816 courthouse where the record is maintained. It can also be done in any other

[3] Ohio Rev. Code Ann. § 149.43(B).

817 manner determined by the court[4] that makes most effective use of court or clerk
818 staff, provides quality customer service, and is least disruptive to the operations
819 of the court—that is, consistent with the principles and interests specified in
820 section 1.00. The inspection can be of the physical record or an electronic
821 version of the court record. Access may be over the counter, fax, regular mail, e-
822 mail, internet, or courier. The section does not preclude the court from allowing
823 inspection to occur via electronic means at other sites, or remotely. It also
824 permits a court to satisfy the request to inspect by providing a printed report,
825 computer disk, tape, or other storage medium containing the information
826 requested from the court record. The issue of the costs of obtaining a copy is
827 addressed in section 6.00.
828
829 Another aspect of access is the need to redact restricted information in
830 documents before allowing access to the balance of the document (see section
831 4.70(a) and associated commentary). In some circumstances, this may be quite
832 costly. Limited or insufficient, resources may present the court with an awkward
833 choice between funding normal operations and funding activities related to
834 access to court records. As technology improves it is becoming easier to
835 develop software that allows redaction of pieces of information in documents in
836 electronic form based on "tags" (such as XML tags) accompanying the
837 information. When software to include such tags in documents becomes

[4] The court has control over its records even though they are physically maintained by the clerk. See Ohio Attorney General Opinion no. 2003-030 requested by the Butler County Prosecuting Attorney.

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838 available and court systems acquire the capability to use the tags, redaction will
839 become more feasible, allowing the balance of a document to be accessible with
840 little effort on the part of the court.
841
842
843 **Section 3.30 – Definition of Remote Access**
844
845 **"Remote access" means the ability to electronically search, inspect, or**
846 **copy information in a court record without the need to visit the physical**
847 **court facility where the record is maintained.**
848
849 *Commentary*
850
851 The objective of defining this term is to describe a means of access that is
852 technology neutral for use in the *Public Access Policy* to distinguish means of
853 access for different types of information. The term is used in section 4.20
854 regarding information that should be remotely accessible. The key elements are
855 that: 1) the access is electronic, 2) the electronic form of the access allows
856 searching of records, as well as viewing and making an electronic copy of the
857 information, 3) a person is not required to visit the courthouse to access the
858 record, and 4) no assistance of court or clerk of court staff is needed to gain
859 access (other than staff maintaining the information technology systems).

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860
861 This definition provides a term to be used in the policy that is independent
862 of any particular technology or means of access. Access could, for example, be
863 via the Internet or through a dial-up system Remote access may be
864 accomplished electronically by any one or more of a number of existing
865 technologies, including a dedicated terminal or kiosk (for example in the clerk's
866 office, the government center, a library, or even a shopping mall), a dial-up
867 subscription service, or an Internet site. Attaching electronic copies of information
868 to e-mails, and mailing or faxing copies of documents in response to a letter or
869 phone request for information would not constitute remote access under this
870 definition because of the need for court or clerk assistance in finding the
871 document and attaching it to an e-mail or faxing it.
872
873
874 **Section 3.40 – Definition of in Electronic Form**
875
876 **Information in a court record is "in electronic form" if it exists as:**
877 **(a) an electronic representation of text or graphic documents;**
878 **(b) an electronic image, including a video image, of a document,**
879 **exhibit or other thing;**
880 **(c) data in the fields or files of an electronic database; or**

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881 **(d) an audio or video recording, analog or digital, of an event or**
882 **notes in an electronic file from which a transcript of an event**
883 **can be prepared.**
884
885 *Commentary*
886
887 The breadth of this definition makes clear that the *Public Access Policy*
888 applies to information that is available in any type of electronic form. The point of
889 this section is to define what "in electronic form" means, not to define whether
890 electronic information can be accessed or how it is accessed.
891
892 *Subsection (a)*: This subsection refers to electronic versions of textual
893 documents (for example documents produced on a word processor, or stored in
894 some other text format such as PDF format), and pictures, charts, or other
895 graphical representations of information (for example, graphics files, spreadsheet
896 files, etc.).
897
898 *Subsection (b)*: A document might be electronically available as an image
899 of a paper document produced by scanning, or another imaging technique (but
900 not filming or microfilming). This document can be viewed on a screen and it
901 appears as a readable document, but it is not searchable without the aid of OCR
902 (optical character recognition) software that translates the image into a

903 searchable text format. An electronic image may also be one produced of a
904 document or other object using a digital camera, for example in a courtroom as
905 part of an evidence presentation system.
906
907 *Subsection (c)*: Courts are increasingly using case management systems,
908 data warehouses, or similar tools to maintain information about cases and court
909 activities. The *Public Access Policy* applies equally to this information even
910 though it is not produced or available in paper format unless a report containing
911 the information is printed out. This section, as well as subsection (a), would also
912 cover files created for, and transmitted through, an electronic filing system for
913 court documents.
914
915 *Subsection (d)*: Evidence can be in the form of audio or videotapes of
916 testimony or events. In addition audio and video recording (ER - electronic
917 recording) and computer-aided transcription systems (CAT) used by court
918 reporters are increasingly being used to capture the verbatim record of court
919 hearings and trials. In the future real-time video streaming of trials or other
920 proceedings is a possibility. Because this information is in electronic form, it
921 would fall within this definition and the *Public Access Policy* would apply to it as
922 well.
923

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924 **Section 4.00 – Applicability of Rule**

925

926 **This *Public Access Policy* applies to all court records kept in all courts,**
927 **regardless of the physical form of the court record, the method of**
928 **recording the information in the court record, or the method of storage of**
929 **the information in the court record. Paper records and electronic records**
930 **shall match, regardless of the means of distribution.**

931

932

933 *Commentary*

934

935 The objective of this section is to make it clear that the *Public Access*
936 *Policy* applies to information in the court record regardless of the form in which
937 the information was created or submitted to the court, the means of gathering,
938 storing or presenting the information, or the form in which it is maintained.
939 Section 3.10 defines what is considered part of the court record. However, the
940 materials that are contained in the court record come from a variety of sources.
941 The materials are offered and kept in a variety of forms. Information in electronic
942 form exists in a variety of formats and databases and can be accessed by a
943 variety of software programs. To support the general principle of open access,
944 the application of the policy must be independent of technology, format, and
945 software and, instead, focus on the information itself.

946

947 *Overview of Section 4.00 Provisions*

948

949 Five categories of information accessibility are created in the following
950 sections of the *Public Access Policy*. The first reflects the general principle that
951 information in court records is generally presumed to be accessible (section
952 4.10). Second, there is a section that indicates what information should be
953 accessible remotely (section 4.20). Following these provisions are sections on
954 bulk release of electronic information (section 4.30) and release of compiled
955 information (section 4.40). A fifth category identifies information prohibited from
956 public access because of overriding privacy or other interests (section 4.60).
957 Having defined what information is presumptively accessible or not
958 accessible, there is a section that indicates how to request the restriction of
959 access to information generally accessible, and how to gain access to
960 information to which public access is restricted (section 4.70).
961

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962 **Section 4.10 – General Access Rule**

963

964 **(a) Information in the court record is accessible to the public**
965 **except as prohibited by section 4.60 or section 4.70(a).**

966

967 **(b) There shall be a publicly accessible indication of the existence**
968 **of information in a court record to which access has been**
969 **prohibited, which indication may disclose the nature of the**
970 **information protected.**

971

972

973 *Commentary*

974

975 Subsection (a) states the general premise that information in the court
976 record will be publicly accessible unless access is specifically prohibited. There
977 are two exceptions noted. One exception is information in the court record that is
978 specifically excluded from public access by section 4.60. The second exception
979 provides for those individual situations where the court orders a part of the record
980 to be restricted from access pursuant to the procedure set forth in section
981 4.70(a).

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983 The provision does not require any particular level of access, nor does it
984 require a court to provide access in any particular form, for example, publishing
985 court records in electronic form on a web site or dial-in database. (See section
986 4.20 on information that a court should make available remotely.)
987
988 The provision, by omission, reiterates the concept noted in the
989 commentary to section 2.00 that access is not conditioned on the proposed use
990 of the information, nor is the burden on requestors to show they are entitled to
991 access.
992
993 Subsection (b) provides a way for the public to know that information
994 exists even though public access to the information itself is restricted. This
995 allows a member of the public to request access to the restricted information
996 under section 4.70(b), which they would not know to do if the existence of the
997 restricted information was not known. Making the existence of restricted
998 information known enhances the accountability of the court. Hiding the existence
999 of information not only reduces accountability, it also erodes public trust and
1000 confidence in the judiciary when the existence of the information becomes
1001 known.
1002
1003 In addition to disclosing the existence of information that is not available,
1004 there is also a value in indicating how much information is being withheld. For

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1005 many redactions this could be as simple as using "placeholders," such as gray
1006 boxes, when characters or numbers are redacted, or indicating how many pages
1007 have been excluded if part or all of a document is not accessible. Providing this
1008 level of detail about the information contributes to the transparency and credibility
1009 of the restriction process and rules.
1010
1011 There are two situations where this policy presents a dilemma. One is
1012 where access is restricted to an entire document and the other concerns a case
1013 where the entire file is ordered sealed. This section requires the existence of the
1014 sealed document or file to be public. The problem arises where the disclosing of
1015 the existence of a document or case involving a particular person, as opposed to
1016 some of the information in the court record, reveals the very information the
1017 restriction order seeks to protect. One example would be the title of a document
1018 in a register of actions which describes the type or nature of the information to
1019 which access restrictions is being sought. These problems can be avoided, to
1020 some extent, by using a more generic description in the caption of a document,
1021 or using initials, a pseudonym, or some other unique identifier instead of the
1022 parties full or real name.
1023
1024 There may be technical issues in implementing this provision. Some
1025 automated case management systems now being used by courts may not have
1026 the ability to indicate the existence of information without providing some of the

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1027 very information that is not to be publicly accessible. For example, it may not be
1028 possible to indicate that there is a document to which access is restricted without
1029 providing too much information about what the type or content of the document
1030 is. Other systems may be designed not to indicate the existence of a document
1031 that has been sealed, or the existence of a case that has been sealed. It may be
1032 possible in some systems to add codes for a document or case to which access
1033 is restricted. While it may be possible to modify these old systems, it may not be
1034 cost effective to do so. Rather, the court might have to wait for a new system
1035 that includes these capabilities.
1036
1037 *Issues Not Addressed in the Public Access Policy*
1038
1039 This *Public Access Policy* is silent about keeping track of, or logging, who
1040 requests to see which court records. Most courts require some form of
1041 identification when a physical file is "checked out" from the file room for
1042 examination within the courthouse. Most courts do not keep this information
1043 once the file is returned. Maintaining a record of who has accessed information
1044 can have a chilling effect on access. Logs of access should also not be used as
1045 a basis for denying access. Who has access to such logs also becomes an
1046 issue that needs to be addressed. There are good reasons for maintaining logs
1047 of requestors, at least for certain types of information. For example, in a case of
1048 stalking it would be useful to know who accessed court information that may

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1049 have aided the stalker in finding the victim. Logging is necessary to keep track of
1050 corrections of erroneous information that has been included in the court record,
1051 and for collecting fees, for example for a request for a printed copy of information
1052 in a court record. If Ohio courts decide to log access requests, they should
1053 inform requestors of the logging activity.
1054

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1055 **Section 4.15 – Information that should not be included in Judicial Records**

1056

1057 Information listed within Section 4.60(2)(a)-(ee) should not be filed by
1058 parties to a case within a judicial record unless the information is required by the
1059 court to adjudicate a case. Upon filing such information within a judicial record,
1060 the parties and their counsel understand that the information will be presumed
1061 public and that they may incur liability that may arise from the use or misuse of
1062 the information based on their conduct of placing the information within the public
1063 judicial record.

1064

1065 **Commentary**

1066

1067 The objective of this section is to mitigate the need to restrict public
1068 access to certain information as provided in sections 4.70. If the information is
1069 not included in the judicial record, no effort or resources may be requested in the
1070 future to insure that public access is appropriately restricted. The items listed
1071 identify types of information that may be needed by other parties to verify
1072 allegations, but are not needed by the court in order to decide a matter. To the
1073 extent that some of this information is not necessary, the parties and their legal
1074 counsel should use professional discretion in not filing such matters into the
1075 judicial record. Otherwise, they may be responsible for any adverse
1076 consequences as the result of making such information public.

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1077

1078

1079 **Section 4.20 – Court Records in Electronic Form Presumptively Subject to**
1080 **Remote Access by the Public**

1081

1082 **The following information in court records should be made remotely**
1083 **accessible to the public if it exists in electronic form, unless public access**
1084 **is restricted pursuant to sections 4.60 or 4.70(a):**

1085

1086 **(a) Litigant/party indexes to cases filed with the court;**
1087 **(b) Listings of new case filings, including the names of the**
1088 **parties;**
1089 **(c) Register of actions or docket showing what documents have**
1090 **been filed in a case;**
1091 **(d) Calendars or dockets of court proceedings, including the case**
1092 **number and caption, date and time of hearings, and location of**
1093 **hearings;**
1094 **(e) Judgments, orders, or decrees in a case;**
1095 **(f) Liens affecting title to real property.**

1096

1097 *Commentary*

1098

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1099 Several types of information in court records have traditionally been given
1100 wider public distribution than merely making them publicly accessible at the
1101 courthouse. Typical examples are listed in this section. Often this information is
1102 regularly published in newspapers, particularly legal papers. Many case
1103 management systems include a capability to make this information available
1104 electronically, at least on computer terminals in the courthouse, or through dial-
1105 up connections. Similarly, courts have long prepared registers of actions that
1106 indicate for each case what documents or other materials have been filed in the
1107 case. Again, early case management systems often automated this function.
1108 The summary or general nature of the information is such that there is little risk of
1109 harm to an individual or unwarranted invasion of privacy or proprietary business
1110 interests. This section of the *Public Access Policy* acknowledges and
1111 encourages this public distribution practice by making these records
1112 presumptively accessible remotely, particularly if they are in electronic form.
1113 When a court begins to make information available remotely, they are
1114 encouraged to start with the categories of information identified in this list.
1115
1116 While not every court, or every automated system, is capable of providing
1117 this type of access, courts are encouraged to develop the capability to do so.
1118 The listing of information that should be made remotely available in no way is
1119 intended to imply that other information should not be made remotely available.
1120 Some court's automated systems may also make more information available

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1121 remotely to litigants and their lawyers than is available to the public, but this is
1122 outside the scope of this policy (see section 2.00(h)).
1123
1124 Making certain types of information remotely accessible allows the court to
1125 make cost effective use of public resources provided for its operation. If the
1126 information is not available, someone requesting the information will have to call
1127 the court or come down to the courthouse and request the information. Public
1128 resources will be consumed with court staff locating case files containing the
1129 record or information, providing it to the requestor, and returning the case file to
1130 the shelf. If the requestor can obtain the information remotely, without
1131 involvement of court staff, there will be less use of court resources.
1132
1133 In implementing this section, a court should be mindful about what specific
1134 pieces of information are appropriately remotely accessible. Care should be
1135 taken that the release of information is consistent with all provisions of the
1136 access policy, especially regarding personal identification information. For
1137 example, the information remotely accessible should not include information
1138 presumptively excluded from public access pursuant to section 4.60, or
1139 prohibited from public access by court order pursuant to 4.70(a). An example of
1140 calendar information that may not by accessible by law is that relating to juvenile
1141 cases, adoptions, and mental health cases (see commentary associated with
1142 section 4.60(b)).

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1143

1144 Subsection (e): One role of the judiciary, in resolving disputes, is to state
1145 the respective rights, obligations, and interests of the parties to the dispute. This
1146 declaration of rights, obligations, and interests usually is in the form of a
1147 judgment or other type of final order. Judgments or final orders have often had
1148 greater public accessibility by a statutory requirement that they be recorded in a
1149 "judgment roll" or some similar practice. One reason this is done is to simplify
1150 public access by placing all such information in one place, rather than making
1151 someone step through numerous individual case files to find them. Recognizing
1152 such practices, the policy specifically encourages this information to be remotely
1153 accessible if in electronic form.

1154

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1155 **Section 4.30 – Requests for Bulk Distribution of Court Records**

1156

1157 **(a) Bulk distribution is defined as the distribution of a significant**
1158 **subset of the information in court records, as is and without**
1159 **modification or compilation.**

1160

1161 **(b) To the extent bulk distribution of information in the court**
1162 **record does not require the court to create a new record or**
1163 **compilation (see Section 4.40 (b)), such distribution is required**
1164 **for records that are publicly accessible under section 4.10. The**
1165 **court shall date-stamp the information before distribution.**

1166

1167 **(c) Individuals or entities receiving bulk distribution of**
1168 **information do so with the understanding:**
1169 **(1) They shall maintain the currency of information obtained**
1170 **from the court records;**
1171 **(2) They shall delete information concurrent with the court's**
1172 **deletion of the information from the court record, either in**
1173 **conformance with court record retention policies or**
1174 **otherwise pursuant to law;**
1175 **(3) That the court is not liable for damages proximately caused**
1176 **by the recipient's failure to comply with (1) and (2).**

1177

1178

1179 **(d) In response to a request for bulk distribution of information**
1180 **from the court record, a court is not required to create a new**
1181 **compilation (*see, Section 4.40(b))* of information customized**
1182 **for the requester's convenience.**
1183 **(e) Notwithstanding Internet or other remote access to the**
1184 **requested information, the court shall nevertheless provide**
1185 **bulk distribution of information as outlined in this section.**
1186 **(f) Notwithstanding the court's electronic maintenance of**
1187 **records, upon request, a court shall provide the requested**
1188 **bulk distribution of information in paper form, unless to do so**
1189 **would cause the court to create a new record.**
1190
1191
1192 *Commentary*
1193

1194 This section addresses requests for large volumes of information from court
1195 records, as opposed to requesting information from one particular case or
1196 reformulated information from several cases (see section 4.40). This section
1197 authorizes bulk distribution for information that is publicly accessible.

1198 There are obvious benefits of providing bulk distribution of information
1199 contained in court records, including additional resources from which the public
1200 may obtain this public information. However, there are also potential costs
1201 associated with providing bulk distribution of public information. In addition to
1202 potential technology-associated costs, there may also be added personnel
1203 costs. For example, a court's record system may not be able to separate publicly
1204 accessible information from confidential information when duplicating information
1205 for bulk distribution. Modifying such a system would indicate added technology
1206 cost, or added personnel cost to manipulate the data manually to accomplish the
1207 permissible distribution product, which may unreasonably interfere with the
1208 normal operations of the court.

1209 Additionally, in the event that a recipient of bulk information fails to
1210 maintain the currency of that information, there is also the added 'cost' of
1211 reduced public confidence in the judiciary due to inaccurate, stale or incorrectly
1212 linked information, which, though obtained through third parties, was derived
1213 from court records. For this reason, recipients of bulk information shall be
1214 expressly notified of their duty to update and maintain the currency of the
1215 information obtained from court records.

1216 In recognition of the availability of bulk information, a court should avoid
1217 collecting information superfluous to the court's judicial functions, even if

1218 requesters are interested in obtaining this information. This matter is addressed
1219 in section 4.15.

1220 *Subsection (b)*. Bulk transfer is allowed for information that is publicly
1221 accessible under this *Public Access Policy*. There is no constitutional or other
1222 basis for providing greater access to bulk requestors than to the public generally,
1223 and this section implies there should be no less access.

1224 Consistent with section 3.20, public access, including access via bulk
1225 distribution, is not dependent upon the reason the access is sought or the
1226 proposed use of the data. Court information provided through bulk distribution
1227 may be combined with information obtained from other sources, and may be
1228 used for purposes unrelated to the purpose served by the court's original
1229 collection of the information.

1230 *Subsection (c)*. Transferring large amounts of information from the court
1231 record into databases that are then beyond the court's direct control creates the
1232 very real likelihood that the information will, over time, become incomplete,
1233 inaccurate, stale, or will contain information that has been lawfully removed from
1234 the court's records.

1235 This subsection does not seek to condition availability of this public
1236 information upon a written agreement, but seeks to notify a recipient of bulk
1237 distribution that the court is not responsible for any damages associated with the

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1238 recipient's failure to maintain the currency and accuracy of the information. A
1239 recipient of bulk distribution is encouraged to obtain from the court "refreshed"
1240 information on a frequent, regular, and periodic basis.

1241 Of particular concern is the bulk distribution of criminal conviction
1242 information and application of expungement determinations. If the intent of an
1243 expungement determination is to "erase" a conviction, that intent may be
1244 thwarted where the conviction information is accessible elsewhere because of a
1245 bulk transfer of the information. Subsection (c)(2) is intended to address this
1246 concern by expressly notifying the bulk requestor that it has a duty to keep its
1247 database consistent with the court record, which may include deleting records in
1248 response to an expungement determination.

1249 Potential remote access *en masse* to electronic court information further
1250 highlights the importance of maintaining the accuracy of court records. The
1251 potential for bulk distribution of the information contained in court databases
1252 requires heightened vigilance by court clerks and their employees as to the
1253 accuracy of their databases and the timeliness of entering information. Policies
1254 relating to the internal practices of the court and clerk regarding data entry quality
1255 and accuracy are not included in this access policy.

1256 *Subsection (d)* distinguishes between providing bulk distribution of existing
1257 court information and compiling existing information into a currently non-existent
1258 format. The creation of a new compilation is addressed in Section 4.40.

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1259 *Subsection (e)* clarifies that providing access to court records via the
1260 Internet or by other remote means does not satisfy the court's obligation to
1261 provide access to court records. In other words, a court may not refuse to
1262 comply with a legally appropriate request for bulk distribution because the
1263 information is accessible via the Internet. Upon request, the records must also
1264 be duplicated as required by R.C. 149.43.

1265 *Subsection (f).* This subsection recognizes that some requesters prefer
1266 hard copies of public information to electronically stored information. However, it
1267 also acknowledges that providing a paper copy will occasionally constitute
1268 creation of a new, or currently non-existent public record. For instance, if a
1269 requester asked for an electronically stored docket sheet in paper format,
1270 assuming the court can accomplish that task simply by printing an existing
1271 record, it must do so. On the other hand, where a requester desires a paper
1272 transcript of a proceeding that is stored only on digital audio or video media, the
1273 court would not be required to have the audio transcribed into paper format.

1274

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1275 **Section 4.40 – Access to a New Compilation of Information from Court**
1276 **Records**
1277

1278 **(a) A new compilation of information is defined as information**
1279 **that is derived from the selection, aggregation, or reformulation by**
1280 **the court of some of the information from more than one individual**
1281 **court record. A "new compilation" presumes that the court's**
1282 **computer system is not presently programmed to provide the**
1283 **requested output.**
1284

1285 **(b) The court is not required to create a new compilation of**
1286 **information customized for the requester's convenience. A court**
1287 **may use its discretion to create a new compilation, which shall be**
1288 **considered administrative reports, not new court records.**
1289

1290 **(c) If a court chooses to create a new compilation customized for**
1291 **the requester's convenience, it may charge the requester its actual**
1292 **cost to create the new compilation, which may include added**
1293 **personnel costs.**
1294

1295 **(d) In determining whether to create a new compilation**
1296 **customized for the requester's convenience, the court may**

1297 **consider whether creating the new compilation is consistent**
1298 **with the principles stated in Section 1.00, whether the court**
1299 **has resources available to create the new compilation, and**
1300 **whether it is an appropriate use of public resources to create**
1301 **the new compilation. The court may delegate to the clerk of**
1302 **court the authority to make the initial determination as to**
1303 **whether to create the new compilation, although the court may**
1304 **overrule the clerk's determination.**

1305

1306 **(e) If the court determines, in its discretion, to create the new**
1307 **compilation, the court will maintain a copy of the new**
1308 **compilation and will thereafter make it available to the public**
1309 **as set out in Section ???. After recouping its initial added**
1310 **cost from the original requester, the court may subsequently**
1311 **assess only those costs actually associated with duplicating**
1312 **the record as set out in Section ???.**

1313

1314 *Commentary*

1315

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1316 The primary interests served by release of compiled information are
1317 supporting the role of the judiciary, promoting the accountability of the judiciary,
1318 and providing public education regarding the judiciary. Compiled information
1319 allows the public to analyze and compare court decisions across cases, across
1320 judges and across courts. This information can also educate the public about the
1321 judicial process. It can provide guidance to individuals in the conduct of their
1322 everyday life and business. Compiled information also supports study of the
1323 judiciary's effectiveness and the efficacy of laws as they are interpreted by the
1324 courts.

1325 *Subsection (a)* provides a definition of compiled information. Compiled
1326 information is different from case-by-case access because it involves information
1327 from more than one case. Compiled information is different from bulk distribution
1328 of information in that it involves only certain elements of information from cases,
1329 and the information is reformulated or aggregated; it is not just a copy of existing
1330 information in the court's records.

1331 *Subsection (b)* acknowledges that compiled information may involve the
1332 creation of a new court record. In order to provide a new compilation, a court
1333 generally must write a computer program or report to select the specific
1334 information sought in the request, or otherwise use court resources to identify,
1335 gather, and copy the information. This section grants the court the authority to
1336 determine whether, in its discretion, to create a new court record as requested.

1337 This section is not intended to provide access to a court's case management
1338 system (programming [MBP]), which constitutes an "infrastructure record" under
1339 section 149.433 of the Ohio Revised Code. The decision to create a new
1340 compilation of information pursuant to this subsection does not obligate a court to
1341 create the same or similar compilations in the future.

1342 *Subsection (c)* recognizes that generating compiled information will
1343 consume court resources and may compete with the normal operations of the
1344 court. While such fact may cause the court to decide not to compile the
1345 information as requested, if the court decides to do so nevertheless, this section
1346 permits the court to recoup its actual cost incurred in creating the new record,
1347 which may include added personnel costs, for example, computer
1348 reprogramming.

1349 In determining whether to create a new compilation customized for the
1350 requester's convenience, the court may consider whether creating the new
1351 compilation is consistent with the principles stated in Section 1.00, whether the
1352 court has resources available to create the new compilation, and whether it is an
1353 appropriate use of public resources to create the new compilation. The court
1354 may delegate to the clerk of court the authority to make the initial determination
1355 as to whether to create the new compilation, although the court may overrule the
1356 clerk's determination.

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1357 This subsection also indicates some considerations a court may
1358 contemplate when determining whether to create a new compilation. In some
1359 cases, it may be more appropriate for the court not to create the new compilation,
1360 but rather provide bulk distribution of the requested information pursuant to
1361 section 4.30, thereby permitting the requestor, rather than the court, to compile
1362 the information as desired. This subsection also clarifies that the court may
1363 delegate to the clerk of courts initial authority to determine whether such a new
1364 compilation serves the public purposes outlined in Section 1.00 and in this
1365 subsection.

1366 *Subsection (e)* makes clear that if the court decides to create the new
1367 compilation, the resulting record then becomes a public record. Any subsequent
1368 reproduction of the new compilation, once it has been created, is simply a copy
1369 of a public record. In other words, while the initial requester can be assessed
1370 "creation" costs incurred in creating the new compilation, subsequent requesters
1371 may only be assessed ordinary public records access costs (see Section ???)
1372 when seeking a copy. This subsection is not intended to require the court to
1373 maintain the capability to reproduce the same report, such as personnel,
1374 equipment, or programming. We acknowledge that legacy computer systems and
1375 format types will create retention issues, which are not addressed by this access
1376 policy.

1377

1378

1379 **Section 4.60 – Court Records Excluded from Public Access**

1380

1381 **(1) The following information in a judicial record is excluded from**
1382 **the public access obligations set forth in Section 4.00:**

Deleted: or administrative

1383

1384 **(a) Information that is ruled confidential or sealed by an order of**
1385 **the court pursuant to section 4.70 of this Access Policy and**
1386 **the court's common law authority or another constitutionally**
1387 **enacted sealing statute (e.g. R.C. 2953.52, 2151.358, 2953.32).**

1388

1389 **(b) Information that has categorically been declared by a state**
1390 **law to be confidential (e.g. Adoption Statute).**

1391

1392 **(2) The following information within a judicial or administrative**
1393 **record should be excluded from the public access obligations set**
1394 **forth in Section 4.00:**

1395

1396 **(a) Information within a judicial or administrative court record**
1397 **that does not document the policies, functions, activities, or**
1398 **procedures of the court.**

Deleted: n

1399

1400 **(b) Information otherwise exempt from disclosure under Ohio's**
1401 **Public Records Law, R.C. 149.43 et seq.**
1402
1403 **(c) Judges Notes**
1404
1405 **(d) Social Security Numbers**
1406
1407 **(e) Detention Center Reports (pretrial)**
1408
1409 **(f) Account Numbers of Financial Transactions**
1410
1411 **(g) Juvenile Social History**
1412
1413 **(h) HIV Test Results**
1414
1415 **(i) Probation Notes**
1416
1417 **(j) Civil Commitment Files (juvenile cases)**
1418
1419 **(k) Statement of Expert Evaluation [SPF 17.1 or local variation**
1420 **thereof] (for both initial determination and continuing**
1421 **guardianship)**

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1422

1423 **(l) Investigator's Report (SPF 17.8 or local variation thereof)**

1424

1425

1426 **(m) Personal Identification Numbers of Financial Transactions**
1427 **(not SSN, e.g. Employee Number, Account Number)**

1428

1429 **(n) Law enforcement, peace, and police officer home**
1430 **addresses/phone numbers when appearing in court in their**
1431 **official capacity as a law enforcement, peace, or police officer**

1432

1433 **(o) Adoption Files**

1434

1435 **(p) Names in Civil Commitment Cases prior to finding of being**
1436 **mentally ill and subject to hospitalization by court order**

1437

1438 **(q) Proper Names of Child Victims of Sexual Violence; Proper**
1439 **Names and Information of Child Victims of Non-Sexual**
1440 **Crimes; and Proper Names and Information of Child Victims**
1441 **of Sexual Crimes.**

1442

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1443 **(r) Search warrants, including related documentation, prior to**
1444 **the execution of the warrant**
1445
1446 **(s) Identity (name) of juvenile in a detention facility (Secure**
1447 **facility pending disposition/adjudication)**
1448
1449 **(t) Identification (name) of juvenile in a residential/shelter care**
1450 **facility**
1451
1452 **(u) Childs Prior History with Juvenile Court - Disposition - in**
1453 **abuse, neglect, dependency cases**
1454
1455 **(v) Confidential evaluations (juvenile cases) - medical /**
1456 **psychological (e.g. drug and alcohol treatment) in**
1457 **delinquency / unruly / traffic case**
1458
1459 **(x) Confidential evaluations (juvenile cases) -**
1460 **medical/psychological (e.g. drug and alcohol treatment) in**
1461 **abuse/neglect/dependency/ custody cases**
1462

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1463 **(y) Confidential evaluations of defendant in General Division**
1464 **cases - medical/psychological (e.g. drug and alcohol**
1465 **treatment)**
1466
1467 **(z) Confidential evaluations (MC/CC cases) -**
1468 **medical/psychological (e.g. drug and alcohol treatment)**
1469
1470 **(aa)Staff secure facility (shelter care) reports – pretrial**
1471
1472 **(bb) Residential treatment facility report in juvenile cases**
1473 **(post adjudication)**
1474
1475 **(cc)Post adjudicatory reports from Staff secure facility (shelter**
1476 **care)**
1477
1478 **(dd) Proper names and information of child victims of sexual**
1479 **crime**
1480 **(ee)Post Adjudicatory release of a juvenile's social history except**
1481 **to the extent that it might be relevant to that juvenile's**
1482 **prosecution later as an adult.**
1483

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1484 **A member of the public may request the court to allow access to**
1485 **information excluded under this provision as provided for in section**
1486 **4.70(b).**

1487 **Commentary**

1488 The objective of this section is to identify those categories of information to
1489 which public access may be prohibited. This section recognizes two distinct types
1490 of court records: administrative court records and judicial records. These terms
1491 are defined under section 3.0. Unlike administrative records that are only
1492 required to be made available pursuant to Ohio's Public Records Act, judicial
1493 records have to also be made publicly available pursuant to the Ohio and U.S.
1494 Constitutions.

1495

1496 The concept of Section 1 is that for certain types judicial records an
1497 existing statute, rule or case law expresses a policy determination, made by the
1498 Legislature or the judiciary, that any right to access under Ohio's Public Records
1499 Act or the constitutional presumption of public access has been overcome by a
1500 sufficient reason, and that the prohibition of public access applies on a
1501 categorical or case-by-case basis.

1502

1503 Subsection (a) protects only information that is ruled confidential or sealed
1504 by an order of the court pursuant to the court's common law authority or some
1505 other constitutionally enacted sealing statute (e.g. R.C. 2953.52, 2151.358,

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1506 2953.32). In order for a sealing order, rule, or statute to be constitutional, they
1507 must have been narrowly promulgated in protection of an interest higher than
1508 that of the public's constitutional right to access the judicial records.
1509
1510 Subsection (b) protects information within judicial records that has been
1511 categorically determined to be sealed from the court record. Such law would
1512 have to be narrowly tailored to achieve an interest higher than that of the public's
1513 right to access the judicial record.
1514
1515 The concept of Section 2 is that types of judicial or administrative records
1516 an existing statute, rule or case law expresses a policy determination, made by
1517 the Legislature or the judiciary, that the information should be exempt from the
1518 Public's right to access under Ohio's Public Records Act. To the extent that any
1519 of the listed items are not currently exempt, we have noted that a change in
1520 current law would have to be sought.
1521
1522 *Subsections (a)-(c), (f), (m)*: These items may not be subject to disclosure
1523 or public records. *State ex rel. Fant v. Enright* (1993), 66 Ohio St. 3d 186, 610
1524 N.E.2d 997 (Not every item in an otherwise public record may satisfy the
1525 definition of a "record."); *Steffen v. Kraft* (1993), 67 Ohio St. 3d 439, 1993-Ohio-32,
1526 619 N.E.2d 688 (personal, uncirculated notes made for the judge's own convenience
1527 do not meet the definition of "record" and, thus, are not public records.)

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1528

1529 *Subsection (d)*: Social Security Numbers are not public records. *State ex*
1530 *rel. Beacon Journal Publ. Co. v. City of Akron* (1994), 70 Ohio St. 3d 605, 1994-
1531 Ohio-6, 640 N.E.2d 164. See, also, *State ex rel. Beacon Journal Publ. Co. v.*
1532 *Kent State Univ.* (1993), 68 Ohio St. 3d 40, 1993-Ohio-146, 623 N.E.2d 51.

1533

1534 *Subsection (e)*: R.C. 5139.05 prohibits disclosure of records maintained
1535 by the Department of Youth Services pertaining to the children in its custody.

1536

1537 *Subsection (g)*: Juvenile Social History is prohibited from disclosure
1538 pursuant to Juvenile Rules of Civil Procedure Section 32.

1539

1540 *Subsection (h)*: HIV test results are prohibited from disclosure pursuant to
1541 R.C. 3701.24.3.

1542

1543 *Subsection (i)*: Probation notes are exempt from public records disclosure
1544 pursuant to RC 149.43(A)(1)(b).

1545

1546 *Subsection (j)*: Civil Commitment Files (juvenile cases) are prohibited from
1547 disclosure pursuant to R.C. 5139.05(D).

1548

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1549 *Subsection (n)*: Law enforcement, peace, and police officer home
1550 addresses/phone numbers when appearing in court in their official capacity are
1551 exempt from public disclosure pursuant to R.C. 2921.24(A) and 2921.24(D).
1552
1553 *Subsection (o)*: Adoption Files are exempt from public records disclosure
1554 pursuant to R.C. 149.43(A)(1)(d) & (f); R.C. 3107.17, Ohio Rev. Code Ann. §
1555 3107.42 and R.C..3107.52; State ex rel. Wolff v. Donnelly (1986), 24 Ohio St. 3d
1556 1, 492 N.E.2d 810.
1557
1558 *Subsection (p)*: Names in Civil Commitment Cases if the court does not
1559 find that the find that the person is a mentally ill person subject to hospitalization
1560 by court order and all records of the proceeding shall be expunged pursuant to
1561 ORC 5122.141(c).
1562
1563 *Subsections (k),(l), (q)-(ee)*: These items are currently not confidential or
1564 exempt from disclosure under Ohio's Public Records Law. Therefore, a change
1565 in the law would have to be made in order for these items to be protected.
1566
1567 The last paragraph of Section 2 simply provides a cross-reference to
1568 Section 4.70 that describes the process and standard for requesting access to
1569 information to which access is prohibited pursuant to this section of the Access

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1570 Policy, but where access may not necessarily be prohibited by state or federal
1571 law.
1572
1573 **Section 4.70 – Requests to Restrict Public Access to Information or to**
1574 **Obtain Access to Restricted Information within Judicial Records**
1575
1576 **(a) A request to prohibit public access to information in a judicial**
1577 **record may be made by any party to a case, the individual about**
1578 **whom information is present in the court record, or on the**
1579 **court's own motion. The request shall be made by motion or**
1580 **petition to the court and, when possible, accompanied by a copy**
1581 **of the judicial record with requested redactions. The court may**
1582 **restrict public access to information, including the existence of**
1583 **the information, if it finds that the presumption of public access**
1584 **is outweighed by an interest higher than that of the public's right**
1585 **to access. In making its decision, the court should consider at**
1586 **least the following factors:**
1587
1588 **(1) Risk of injury to individuals;**
1589 **(2) Individual privacy rights and interests;**
1590 **(3) Proprietary business information; and**
1591 **(4) Public safety.**

1592

1593 **Types of information that may be considered by the court for**
1594 **exclusion after the above balancing test is satisfied may include**
1595 **information excluded from administrative records as specifically set forth**
1596 **within Section 4.60 {INSERT CORRECT SECTIONS}**

1597

1598 **When restricting public access from information contained within a**
1599 **judicial record the court shall use the least restrictive feasible means to**
1600 **achieve the purposes of the Access Policy and the needs of the requestor.**
1601 **Less restrictive means to be considered include, without limitation:**

1602

1603 **(1) Redacting the information to which public access is restricted**
1604 **rather than restricting public access to the entire document;**
1605 **(2) Restricting public access remotely while maintaining access at**
1606 **the courthouse;**
1607 **(3) Limiting public access for a limited and finite period of time while**
1608 **proceedings are concluded;**
1609 **(4) Limiting access to a specified set of individuals or those with a**
1610 **specified need to know;**
1611 **(5) Using a generic title or description for the document in a case**
1612 **management system or register of actions; or**

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1613 **(6) Using initials, a pseudonym, or some other unique identifier**
1614 **instead of the parties full or real name.**
1615

1616 **If the court orders the redaction of select information within the**
1617 **judicial record, the court shall order a copy of the redacted judicial record**
1618 **filed within the case along with a copy of the court's order. All original**
1619 **judicial records ordered withheld or redacted pursuant to the court's order**
1620 **shall be maintained separately by the Clerk of Courts along with a copy of**
1621 **the court's order.**
1622
1623

1624 **(b) A request to obtain access to information in an administrative**
1625 **record or judicial record to which access is restricted under**
1626 **section 4.60 or 4.70(a) may be made by any member of the public**
1627 **or on the court's own motion upon notice as provided in**
1628 **subsection 4.70(c). The court may open public access to an**
1629 **administrative record if it finds that no state or federal law**
1630 **prohibits the disclosure of the administrative record and that no**
1631 **public policy is served by withholding the record. The court may**
1632 **open public access to a judicial record if it finds that the**
1633 **presumption of public access has not been outweighed by other**
1634 **factors supporting restriction of access. In making this decision,**

1635 **the court should consider the same factors set forth in Section**
1636 **4.60(b).**
1637
1638 **(1) Risk of injury to individuals;**
1639 **(2) Individual privacy rights and interests;**
1640 **(3) Proprietary business information; and**
1641 **(4) Public safety.**
1642
1643 **When considering opening public access to information contained**
1644 **within a previously sealed judicial record the court shall continue to protect**
1645 **only that portion of the judicial record that warrants protection and release**
1646 **the remainder.**
1647
1648 **(c) The request shall be made by written motion or petition to the**
1649 **court. The requestor or the court shall give notice to all parties**
1650 **in the case pursuant to the applicable rules of procedure. The**
1651 **court shall also require notice to be given by the requestor or**
1652 **another party to any additional individuals or entities as the court**
1653 **may order. When the request is for access to information to**
1654 **which access was previously restricted under section 4.60(a), the**
1655 **court shall provide where possible for notice to be made to the**

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1656 **individual or entity that requested that access be prohibited**
1657 **either itself or by directing a party to give the notice.**
1658
1659 **Commentary**
1660
1661 This section lays out the basic considerations and processes for
1662 prohibiting access to otherwise publicly available information (often referred to as
1663 sealing) or opening access to restricted information (whether restricted under
1664 section 4.60 or section 4.70(a)). The language incorporates the constitutional
1665 presumption of openness with respect to judicial records, and the need for
1666 sufficient grounds to overcome the presumption. The section also specifies the
1667 mechanism for making the request and directs the court to use the least
1668 restrictive approach possible when restricting public access.
1669
1670 The section specifically lists several of the policy interests stated in section
1671 1.00 that the court is to consider in deciding whether there is an interest justifying
1672 restriction of, or opening to, public access. The decision needs to be made by
1673 the court on a case-by-case basis.
1674
1675 Subsection (a) allows anyone who is identified in the court record to
1676 request prohibition of public access. This specification is quite broad and is
1677 intended to include a witness in a case or someone about whom personally

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1678 identifiable information is present in the court record, but who is not a party to the
1679 action. While the reach of the policy is quite broad, this is required to meet the
1680 intent of subsection 1.00 (a)(6) regarding protection of individual privacy rights
1681 and interests, not just the privacy rights and interests of parties to a case.
1682 Protection is available for someone who is referred to in the case, but does not
1683 have the options or protections a party to the case would have.
1684
1685 Subsection (a) does not have any restrictions regarding when the request
1686 can be made, implying it can be done at any time.
1687
1688 This subsection provides that the judge decides whether access will be
1689 prohibited. Even if all parties agree that public access to information should be
1690 prohibited, this is not binding on the judge, who must still make the decision
1691 based on the applicable law and factors listed.
1692
1693 The last paragraph to subsection (a) requires the court to seek an
1694 approach that minimizes the amount of information that cannot be accessed, as
1695 opposed to an "all or nothing" approach. This is directed at the question of what
1696 to do about a document or other material in the court record that contains some
1697 information to which access should be prohibited along with other information
1698 that remains publicly accessible. The issue becomes one of whether it is
1699 technically possible to redact some information from a document and to allow the

1700 balance of the document to be publicly available. Less restrictive methods
1701 include redaction of pieces of information in the record; sealing of only certain
1702 pages of a document, as opposed to the entire document; or sealing of a
1703 document, but not the entire file. There may be an issue of whether it is feasible
1704 to redact information in a record, and whether the court or clerk has the
1705 resources to do so. The work needed to review a large file or document to find
1706 information to be redacted may be prohibitive, such that access to the whole file
1707 or document would be restricted, rather than attempting redaction. Other
1708 approaches to restricting access could include using initials or a pseudonym
1709 rather than a full or real name.

1710

1711 Subsection (b) specifically allows a court to consider providing access to
1712 information to which access is categorically restricted under section 4.60, as well
1713 as, specific information in a court record to which access has previously been
1714 restricted by a court pursuant to section 4.70(a). The basis for authorizing this
1715 is to address a possible change in circumstances where the reasons for
1716 prohibiting access no longer apply, have changed, or there is new information
1717 suggesting now allowing public access.

1718

1719 Subsection (b) provides that "any member of the public" can make the
1720 request for access to prohibited information. This term is defined broadly in
1721 section 2.00, and includes the media and business entities as well as individuals.

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1722

1723 Subsection (c) contemplates a written motion or petition seeking to
1724 prohibit or gain access. Although a motion is specified, the section is silent as to
1725 the need for oral argument or testimony, leaving this up to the court. Notice is
1726 required to be given to all parties by the requestor, except where prohibited by
1727 law. The subsection does not give the court discretion to require notice to be
1728 given to others identified in the information that is the subject of the request. If
1729 public access to the information was restricted by a prior request, the subsection
1730 requires the court to arrange for notice to be given to the person who made the
1731 prior request. The process for seeking review by an appellate court is not
1732 specified in the policy, as the normal appeal process for a judicial decision is
1733 assumed to apply.

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1735 ## Obligation of Vendors

1736

1737 **Section 7.00 – Obligations of Vendors Providing Information Technology**
1738 **Support to a Court to Maintain Court Records**

1739

1740 **(a) If the court or clerk contracts with a vendor to provide**
1741 **information technology support to gather, store, or make**
1742 **accessible court records, the contract shall require the vendor**
1743 **to comply with the intent and provisions of this access policy.**
1744 **For purposes of this section, "vendor" includes a state,**
1745 **county, or local governmental agency that provides**
1746 **information technology services to a court or clerk.**

1747

1748 **(b) By contract the vendor shall be required to comply with the**
1749 **requirement of sections 8.10, 8.20, 8.30, and 8.40 to educate**
1750 **litigants, the public, and its employees and subcontractors**
1751 **about the provisions of the access policy.**

1752

1753 **(c) By contract the vendor shall be required to notify the court of**
1754 **any requests for compiled information or bulk distribution of**
1755 **information, including the vendor's requests for such**
1756 **information for its own use.**

1757

1758 **(d) By contract the vendor shall acknowledge that it has no**
1759 **ownership or proprietary rights to the court records and will**
1760 **comply with the access requirements of this policy.**

1761

1762 *Commentary*

1763

1764 This section is intended to deal with the common situation where
1765 information technology services are provided to a court or clerk by an agency,
1766 usually in the executive branch, or by outsourcing of court information technology
1767 services to non-governmental entities. The intent is to have the *Public Access*
1768 *Policy* apply regardless of who is providing the services involving court records.
1769 Implicit in this *Public Access Policy* is the concept that court records are under
1770 the control of the judiciary, and that the judiciary has the responsibility to ensure
1771 public access to court records and to restrict access where appropriate. This is
1772 the case even if the information is maintained in systems operated by the
1773 executive branch of government, including where the clerk of court function is
1774 provided by an elected clerk or a clerk appointed by the executive or legislative
1775 branch and not the court.

1776

1777 *Subsection (a)*: "Information technology support" is meant to include a
1778 wide range of activities, including records management services or equipment,

1779 making and keeping the verbatim record, computer hardware or software,
1780 database management, document management, web sites, and communications
1781 services used by the court to maintain court records and provide public access to
1782 them. It would also apply to vendors whose service is to providing public access
1783 to a copy of electronic court records.
1784
1785 Vendor compliance is particularly important where the vendor's system is
1786 the only means of accessing the information. The court must ensure that the
1787 vendor is not using the exclusive control of access to limit access, whether
1788 through fees, technology requirements, or a requirement to sign a "user
1789 agreement," particularly if it imposes restrictions on the use of the information
1790 that the court could not impose.
1791
1792 *Subsection (b)*: The requirements of the *Public Access Policy* regarding a
1793 vendor educating its employees or subcontractors, litigants, and the public are in
1794 addition to any incentive to do so provided by the liability or indemnity provisions
1795 of applicable law or the contract or agreement with the court.
1796
1797 *Subsection (c)*: This subsection requires vendors to notify the court of
1798 requests for bulk information (pursuant to section 4.30) or compiled information
1799 (pursuant to section 4.40). The court must receive this notice in order to control
1800 properly the release of information in its records.

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1801

1802 *Issues Not Addressed in the Public Access Policy*

1803

1804 The contract between the court and the vendor could also include
1805 provisions such as: 1) requiring regular updates of the information in the vendor's
1806 database to match the information in the court's database, 2) the vendor
1807 forwarding complaints received about the accuracy of information in the
1808 database, and 3) establishing a process for monitoring the vendor's compliance
1809 with the policy and its record for providing appropriate access and protecting
1810 restricted information. The court should also consider whether it wants to control,
1811 through its contract with the vendor, "downstream" access, and distribution of
1812 information from court records that is held or maintained by the vendor. For
1813 example, the court could require that the vendor require anyone to whom it
1814 distributes information from court records to comply with this policy, or other laws
1815 such as the Fair Credit Reporting Act[5].

1816

[5] Fair Credit Reporting Act, 15 USC §§ 1681 et seq.

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1817 ## Obligation to Inform and Educate

1818

1819 **Section 8.00 – Information and Education Regarding Access Policy**

1820

1821 **Section 8.10 – Dissemination of Information to Litigants about Access to**

1822 **Information in Court Records**

1823

1824 **The court shall provide information visible to the public that:**

1825 **(1) information in court records is generally accessible to the public;**

1826 **(2) courts should encourage parties to seek appropriate legal advice**

1827 **relative to the filing of their documents and their confidentiality.**

1828

1829 *Commentary*

1830

1831 This section of the *Public Access Policy* recognizes that litigants and the

1832 public may not be aware that information provided to the court, by them or other

1833 parties in the case, generally is accessible to the public, including, possibly,

1834 through bulk downloads. Litigants may also be unaware that some of the

1835 information may be available in electronic form, possibly even remotely. To the

1836 extent litigants are unrepresented, this problem is even more significant, as they

1837 have no lawyer who can point this out. To address this possible lack of

1838 knowledge, this section requires a court to inform litigants about public access to

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1839 court records. Providing notice to all litigants may also lessen unequal treatment
1840 and inequity of access based on wealth.
1841
1842 This section also specifically requires the court to inform litigants of the
1843 process for requesting restrictions to public access or restrictions to the manner
1844 of public access. This would be especially important in cases involving domestic
1845 violence, sexual assault, stalking, or requests for protective orders, and
1846 witnesses where there is a greater risk of harm to individuals.
1847
1848 *Issues Not Addressed in the Public Access Policy*
1849
1850 The *Public Access Policy* does not specify how information will be
1851 provided, nor the extent or nature of detail required. These can be addressed
1852 during the implementation of the access policy. There are several approaches to
1853 accomplishing this. The notice could be a written notice or pamphlet received
1854 when filing initial pleadings. The pamphlet could refer the litigant to other
1855 sources of information, including a web site. The court could also provide
1856 materials, including videotapes, through a self-help center or service, or an
1857 ombudsperson. Consideration should also be given to providing the information
1858 in several common languages. Finally, the court could encourage the local bar to
1859 assist in educating litigants.
1860

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1861 This section of the *Public Access Policy* specifically requires the court to
1862 provide information to litigants, and to the public generally. It does not address
1863 informing jurors, victims, and witnesses that information about them included in
1864 the court record is publicly accessible. While it is relatively easy to provide
1865 information to jurors, providing information to victims and witnesses is much
1866 more problematic, as often only the lawyers, or law enforcement agencies, not
1867 the courts, know who the victims and potential witnesses are, at least initially.
1868

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1869 **Section 8.20 – Dissemination of Information to the Public about Accessing**
1870 **Court Records**
1871
1872 **The Court shall develop and make information available to the public about**
1873 **how to obtain access to court records.**
1874
1875 *Commentary*
1876
1877 Public access to court records is meaningless if the public does not know
1878 how to access the records. This section establishes an obligation on the court to
1879 provide information to the public about how to access court records.
1880
1881 *Issues Not Addressed in the Public Access Policy*
1882
1883 This section does not specify how the public should be informed, or what
1884 information should be provided. There are a number of techniques to accomplish
1885 this, and a court may use several simultaneously. Brochures can be developed
1886 explaining access. Access methods can also be explained on court web sites.
1887 Tutorials on terminals in the courthouse or on web sites can be used to instruct
1888 the public on access without the direct assistance of court or clerk's office
1889 personnel.
1890

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1891 **Section 8.30 – Education of Judges and Court Personnel about the Public**
1892 **Access Policy**
1893
1894 **(a) The Court and clerk of court shall educate and train their**
1895 **personnel to comply with the public access policy so that Court**
1896 **and clerk of court offices respond to requests for access to**
1897 **information in the court record in a manner consistent with this**
1898 **policy.**
1899
1900 **(b) The Presiding Judge shall insure that all judges are informed**
1901 **about the access policy.**
1902
1903 *Commentary*
1904
1905 This section mandates that the court and clerk of court educate and train
1906 their employees to be able to implement an access policy properly. Properly
1907 trained employees will provide better customer service, facilitating access when
1908 appropriate, and preventing access when access is restricted or prohibited.
1909 When properly trained, there is also less risk of inappropriate disclosure, thereby
1910 protecting privacy and lowering risk to individuals from disclosure of sensitive
1911 information.
1912

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1913 The section also requires the Presiding or Chief Judge to make sure that
1914 judicial officers serving the court are aware of the local access policy and its
1915 implications for their work and decisions.
1916

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1917 **8.40 Liability and Immunity for Disclosure of Restricted Information**

1918

1919 **(a) A court, court agency, or clerk of court employee, official, or an**
1920 **employee or officer of a contractor or subcontractor of a court, court**
1921 **agency, or clerk of court who unintentionally or unknowingly**
1922 **discloses information to which public access is restricted is immune**
1923 **from liability for such a disclosure.**

1924

1925

1926 *Commentary*

1927

1928 The immunity provision in (a) for court and clerk of court employees is
1929 consistent with typical government immunity provisions for the non-intentional
1930 acts of governmental employees.[6]

1931

1932

1933

1934

1935

1936

1937

[6] See Ohio Revised Code General Provisions, Chapter 9 Miscellaneous, § 9.86. Civil immunity of officers and employees; exceptions.

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APPENDIX A: DATA ELEMENTS

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1	**Data Element:** Proper Names and information of Adult victims of sexual violence **Reasons in favor of confidentiality:** Stigma, requires healing out of the public eye; Situation will be different, and possibly more dangerous, when information is on the internet; technological advances increase the exposure of victims of crime **Reasons against confidentiality:** Eliminating this limits tracking victim's history (possibly filing false complaints); Currently not confidential, there has not been great detremental effect to victims;

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Comments: conversation has centered on the intent for information use – the media has demonstrated reserve and sensitivity in publication of the names of crime victims. The concern is not the publication through popular media, but the capability of an individual with hostile intent to access information about the victim and their whereabouts.

From the Minutes:

- **Data Element: Proper Names of Adult Victims of Sexual Violence**

The Appellate Work Group held a conference call on January 26 to discuss this element and the identities of child crime victims. The work group felt that the names of adult victims of sexual violence should be confidential to avoid potential embarrassment and danger to victims. Confidentiality can be achieved in individual cases by sealing records. The judge must have statutory authority to seal the records, and it is not always an easy process. **The Subcommittee voted to keep the element public.**

- **4/14/04 Data Element: Proper Names and Information of Adult Victims of Sexual Violence**

The subcommittee had distinguished between adults and children in this category. The implications for the publication of the names of each group are different. The current law provides for openness, and there have not been problems for victims. The availability of information online has created more concerns for victims,

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	because previously, anyone wanting to locate them would have to go to the courthouse in person. It is technically possible to perform almost any type of search on text or data, but the functionality of the data repository has not been fully defined yet. Victims, particularly women, have historically been stigmatized, although the situation is improving. There is also the potential for victims to be embarrassed by other sorts of crimes, such as fraud. It is difficult to explain the reasons why rape is different from other crimes, particularly for women. Sensitive cases can be sealed on a case-by-case basis. **Votes in favor of confidentiality:** 5 **Votes opposed to confidentiality:** 9

2	**Data Element:** Proper Names and information of Child crime victims of non-sexual crimes **Reasons in favor of confidentiality:** Prevent embarassment of victims of non-sexually oriented crimes or abuse; Reasonable liklihood of interference with child's development, especially social development **Reasons against confidentiality:** Non-sexual and non-violent cases do not cause embarassment and do not need to be private; Currently public record except in juvenile proceedings; could impact investigation of kidnapping and other cases; Might create additional stigma **Comments:** Judges should have discretion in all cases involving children.

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From the Minutes:

- **Difference Between Child Victims of Sexual and Non-Sexual Crimes**

The procedures and goals of the juvenile system are different from those of the adult system, and there is more danger to children in the revelation of their identities. The goal of the subcommittee is to determine the right thing to do, not to discuss current statutes. The press does not print the names of victims of sex crimes, but that defendants could be disadvantaged by not allowing the broader community to see patterns of repeat accusers. The court system is intended to serve all of society, not just the parties to the case. **The Subcommittee voted to create two data elements, Proper Names of Child Victims of Sexual Violence, and Proper Names of Child Victims of Non-Sexual Crimes.**

- **Data Elements: Proper Names of Child Victims of Non-Sexual Crimes; Proper Names of Child Victims of Sexual Violence**

The subcommittee is only discussing confidentiality in terms of the public, not parties to the case or integrated justice partners. The creation of an atmosphere of secrecy around the information could create additional stigma for crime victims. Some of the juveniles who have appeared in court have been more concerned about the reactions they face from their peers than the decisions of the court. Several subcommittee members discussed the relevance of the 14th Amendment to the privacy issue. Due process requires public access to ensure public scrutiny of the

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	process. **The Subcommittee voted that both elements should be confidential.** • **4/14/04 Data Element: Proper Names and Information of Child Victims of Non-Sexual Crimes** It is likely that the subcommittee's recommendations will involve changes to the public records law, because the increased availability of records through technology has changed the situation. This data element could make it difficult for law enforcement officials to solve kidnapping and other similar cases. There had recently been an article in the American Bar Association Journal about the issue, and there are many types of crimes that could be embarrassing to children. **Votes in favor of confidentiality:** 8 **Votes opposed to confidentiality:** 6

3	**Data Element:** Confidential evaluations (in DR cases) - medical / psychological (e.g. drug and alcohol treatment) **Reasons in favor of confidentiality:** Medical Records are historically confidential, because litigants should be encouraged to fully disclose information to whoever is examining them in order for the court to make an evaluation. **Reasons against confidentiality:** **Comments:**

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	From the Minutes: • **Confidential Evaluations** These evaluations would be medical, psychological, drug treatment, etc. in the Domestic Relations/General Division. Currently, these records are kept by the judge, but are not generally kept in the case file of things that are automatically public. The documents are generally written in prose, instead of on forms. It was also pointed out that each court type uses evaluations differently, so they should be considered separately. It was determined that DNA and similar scientific evidence would not be considered a medical evaluation. The issue had been discussed in relation to probate cases in the spring, so it should not be revisited. Since there was not a record of the earlier vote, the Subcommittee decided to vote on adoptions and medical commitments in probate cases. **Separate votes were taken on competency to stand trial in all court types, then for each court type in the matter of medical/psychological evaluations.** **Votes in favor of confidentiality:** 11 **Votes opposed to confidentiality:** 0

4	**Data Element:** Date of Birth of children (minors) in all cases except juvenile **Reasons in favor of confidentiality:** Sensitive information, In domestic violence form, Safety of child in domestic cases **Reasons against confidentiality:** Used as an identifier (would be acceptable as

	long as used without child's name), Identity needed to verify age **Comments:** **From the Minutes:** • **Date of Birth of Children** There had already been a vote on this element in juvenile cases at a previous meeting. A vote was taken in which the Subcommittee narrowly decided that dates of birth of juveniles should be confidential in non-juvenile cases. The matter was re-opened for discussion, and the Subcommittee weighted the relative risks of identity theft or exploitation versus the public benefit of having the dates of birth public. **A second vote was taken on the element in non-juvenile cases.** **Votes in favor of confidentiality:** 3 **Votes opposed to confidentiality:** 8

5	**Data Element:** Judges Notes **Reasons in favor of confidentiality:** Notes are primarily memory aids and do not document decision-making process. Case law supports confidentiality; Notes may not be valuable in discerning decision making process – no public information is lost by confidentiality **Reasons against confidentiality:** Notes depict the mental process of the judge as a final arbiter

Comments:

From the Minutes:

- **Judges Notes**

The Supreme Court of Ohio has already ruled that judges' notes are confidential. The notes could be useful for the historical record of cases. The subcommittee should express its opinion even in areas where law already exists. The subcommittee needs to balance its opinions with the need to be practical, and items already addressed by case law are out of scope for the group.

- **4/14/04 Data Element: Judges' Notes**

The subcommittee's process was leaning toward the consideration of courts as a private dispute resolution tool rather than as a public forum. Judges' notes have traditionally been confidential, but the notes might show a judge's thought process during a case. Only the final decision in a case reflects the judge's complete thought process, and the meaning of everything contained in notes might not be clear to outside readers. Some judges take a long time to make decisions, so their notes might be valuable as time passes during a case.

Votes in favor of confidentiality: 7

Votes opposed to confidentiality: 2

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6	**Data Element:** Passport information **Reasons in favor of confidentiality:** Contains Key elements used in identity theft **Reasons against confidentiality:** Determining risk of flight **Comments:** **From the Minutes:** • **Data Element Review: Passport Information** Several subcommittee members questioned the inclusion of this element, since it is infrequently collected by most courts, and contains limited information. It can be an issue in bond hearings when flight risk is determined • **4/14/04 Data Element: Passport Information** Courts generally only see passports when they are confiscated to prevent travel, and in those cases they are only held, rather than imaged or otherwise used. Passports contain many of the data elements discussed separately and determined to be confidential. **Votes in favor of confidentiality:** 0 **Votes opposed to confidentiality:** 14

7	**Data Element:** Social security numbers, at any level

	Reasons in favor of confidentiality: Key element in identity theft **Reasons against confidentiality:** Used as an identifier, used by many agencies, would need cross agency agreements **Comments:** Numbers are available for Social Security Administration after a person is deceased. There are reasons for victims and deceased persons to have the numbers available so there is not passive identity theft, e.g. state tax liens. (add social security discussion from 3.10.04 minutes) **From the Minutes:** • **4/14/04 Data Element: Social Security Numbers** Social Security Numbers are the classic data element considered a risk for identity theft. They are also used as a primary identifier by many courts and other entities, since each person's is unique, unlike names. Many documents, such as deeds, contain social security numbers that will have to be redacted. Technology exists and is being improved that will make the redaction of individual elements out of public documents easier. **Votes in favor of confidentiality:** 15 **Votes opposed to confidentiality:** 0

8	**Data Element:** Subpoena Information **Reasons in favor of confidentiality:** Security issue in many types of criminal cases, information could be misused (can be avoided by not filing the subpeona)

Reasons against confidentiality: The public has a right to know, in many cases. Hinders watchdog role of media and other civic minded institutions; necessary for witness to receive reimbursement

Comments:

From the Minutes:

- **Data Element: Subpoena Information**

Subpoenas include widely varying amounts of information in criminal cases – some include only names, while others include addresses and phone numbers. Confidentiality of subpoena information could lead to abuses, such as the subpoena of people when there is no case pending. The primary danger to most witnesses is from the defendant or his friends, who will have the information anyway. **The Subcommittee voted that the element should be public.**

- **4/14/04 Data Element: Subpoenas**

Some courts do not use subpoenas, because they are afraid that they would be made public and tip off people who are going to be subpoenaed. This is a procedural problem for many courts, because they are afraid that witnesses will disappear before they can be served.

Votes in favor of confidentiality: 0

Votes opposed to confidentiality: 14

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9	**Data Element:** Victim information (home address, work address, phone numbers, etc.) of adult victims of non-sexual crimes **Reasons in favor of confidentiality:** Safety/security of victim, Protect from stalking/harassment **Reasons against confidentiality:** Ensuring accuracy (getting the correct person), artificial barrier to public's right to know; too categorically broad to make confidential **Comments:** **From the Minutes:** • **Data Element: Victim Information** To maintain consistency with the previously discussed elements of proper names, this element should be split into categories for adults and children, and sexual and non-sexual crimes. If the subcommittee felt that a person's name should be confidential, it would follow that their personal information should also be confidential. The subcommittee decided that the proper name elements should be amended to include information, rather than considering victim information separately. Victim information for adult victims of non-sexual crimes was considered separately, since they were not included with the proper name data elements.

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From 4/9/03 minutes:

- That information was already protected by statute, and that his court did not receive that information at all in domestic violence cases.
- The defense attorneys would have to be able to contact victims and witnesses for interview purposes, so they would have to have some contact information.
- There would need to be a format for sharing with parties in the case without making the information public record.
- It is currently part of the public record, but not consistently applied in different courts.
- It is currently in case jackets.
- The victim would have to request that their information be kept confidential, and then the public would only receive the name, with no other information.
- There were two different things – what is on the docket, and what is released in a discovery request.
- When there is a discovery request, the information goes into the case file and becomes public record.
- According to the Work Group's recommendations, the witness and victim information would be maintained by the court and available for discovery by the parties, but not released to the public. The public record would contain only

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	names, without any further information. • If the names are public, anyone can go to the Board of Elections and find out where the person lives. **Votes in favor of confidentiality:** 1 **Votes opposed to confidentiality:** 13

10	**Data Element:** Witnesses addresses/phone numbers **Reasons in favor of confidentiality:** Safety/security of witness, Protect from stalking/harassment, **Reasons against confidentiality:** Ensuring accuracy (getting the correct person), artificial barrier to public's right to know. **Comments:** Covered by Criminal Rule 16 **From the Minutes:** • **4/14/04 Data Element: Witness Addresses/Phone Numbers** This information is currently covered by Criminal Rule 16, the Discovery Rule, which requires prosecutors to give a list of witnesses to the defense counsel. The information is generally not filed with the court, but directly exchanged between the

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	parties. **Votes in favor of confidentiality:** 0 **Votes opposed to confidentiality:** 14

11	**Data Element:** Victim information (Residence address, work address, phone numbers, temporary residence, cell phone numbers, etc.) In cases of violent offenses as defined by ORC **Reasons in favor of confidentiality:** Safety/security of victim, Protect from stalking/harassment, Probation officers rept containing info is confidential, R.C.2151.03,R.C. 2151.14., Protect victim from harassment, embarrassment R.C. 2930.14 mandates impact statements are confidential.Juv.R 24 Crim R16 mandates some info release to delinquent **Reasons against confidentiality:** Could impact advocacy groups, Limits advocy groups access to information, may impact services **Comments:** **From the Minutes:**

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	• **2.11.04 Data Element: Victim Information** To maintain consistency with the previously discussed elements of proper names, this element should be split into categories for adults and children, and sexual and non-sexual crimes. If the subcommittee felt that a person's name should be confidential, it would follow that their personal information should also be confidential. The subcommittee decided that the proper name elements should be amended to include information, rather than considering victim information separately. Victim information for adult victims of non-sexual crimes was considered separately, since they were not included with the proper name data elements. **Votes in favor of confidentiality:** 1 **Votes opposed to confidentiality:** 13

12	**Data Element:** Detention Center reports (pretrial) **Reasons in favor of confidentiality:** O.D.Y.S. records are already confidential. R.C. 5139.05. **Reasons against confidentiality:** No public policy is harmed by the release of this information; Inhibits public oversight of DYS. **Comments:** 1 abstained

	From the Minutes: • **Data Element: Detention Center Reports in Juvenile Cases** These reports contain information from social workers about the child's time in detention. They are generated as needed based on the case progression. It is important to distinguish between these reports, which are intended only for the judge and are not currently public, and incident reports. It would be more useful to discuss individual data elements within the form than the form as a whole. The form is written in prose, so it would be difficult to break down into smaller data elements. The subcommittee should first consider whether the identities of the people in detention centers should be public before deciding about the reports. **Votes called on data elements.** **Votes in favor of confidentiality:** 9 **Votes opposed to confidentiality:** 2

13	**Data Element:** Financial Transactions - Account Numbers **Reasons in favor of confidentiality:** Juv. R32 lists as confidential in allocation of parental rights & responsibility cases.Protects from harassment, embarrassment and annoyance. Child support records maintained by the Ohio Department of Job and Family Services for use in locating child support obligors and in detecting fraud are exempt from public disclosure. R.C. 143.43(A)(1)(0) and 5101.312(F). Key element in identity theft. Fraudulent use of accounts; no public policy is advanced by the

release of this information

Reasons against confidentiality: Could be labor intensive and costly to remove (however, the impact on these cases is not as big of an issue as it is with SSN); Inhibits an effective garnishment of the bank account and other financial records, including stock accounts and other accounts.

From the Minutes:

- **4/14/04 Comments: Data Element: Financial Account Numbers**

Account numbers are necessary for garnishments, to ensure that the correct account is being garnished in cases where a person shares the same name with another account holder. Account numbers could still be shared with banks without being available to the public. There is no public records purpose for the publication of account numbers, since the other information such as the name of the bank, the amount in the account, and the type of account would all be public. The only purpose for using an account number is to access the account – no other information is contained in the number. One county has previously posted account information on their public records site, and there has only been one claim of identity theft. The subcommittee would not be having the discussion if online and paper records had not been determined to have the same standard of confidentiality, because the practical obscurity of paper records in the courthouse has previously prevented identity theft.

	Votes in favor of confidentiality: 15 **Votes opposed to confidentiality:** 0

14	**Data Element:** Juvenile Social History **Reasons in favor of confidentiality:** Juv. R32 lists as confidential in allocation of parental rights and responsibility cases. Protects parties from harassment, embarrassment and annoyance. Child support records maintained by the Ohio Department of Job and Family Services for use in locating child support obligors and in detecting fraud are exempt from public disclosure. R.C. 143.43(A)(1)(0) and 5101.312(F). **Reasons against confidentiality:** No public policy is harmed by the release of this information. **Comments:** **From the Minutes:** • **Data Element Review: Juvenile Social History** The subcommittee agreed that there is not a good reason to open juvenile social

	histories, which have traditionally been confidential. • **4/14/04 Data Element: Juvenile Social History** There is a great deal of sensitive and potentially embarrassing information in many juveniles' social histories. The histories have traditionally been confidential. Sensitive cases can be sealed. **Votes in favor of confidentiality:** 14 **Votes opposed to confidentiality:** 0

15	**Data Element:** Childs Prior History with Juvenile Court - Disposition - in unruly, delinquency and traffic **Reasons in favor of confidentiality:** R.C. 109.57 Mandates L.E.A.D.S reports are confidential. R.C. 5139.05 Mandates O.D.Y.S. reports are confidential. Probation officers reports containing this information is already confidential, R.C. 2151.03, R.C. 2151.14.; May inhibit the rehabilitation of the juvenile; The best interests of the child supercede the release of this information **Reasons against confidentiality:** The public will be missing an item of information in which they could judge the effectiveness of juvenile court. **Comments:** **From the Minutes:**

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- **Child's Prior History – Delinquency or Other Adjudications**

The Juvenile Work Group feels that the prior adjudication record, which should be public, is distinct from the social history, which should not be public. There should be a distinction between delinquency, traffic, and unruly cases, and abuse, neglect, and dependency cases. Currently, all of these cases are maintained in the same type of files, and all are public. The recommendation of the work group is that delinquency, traffic, and unruly cases should be public, but abuse, neglect, and dependency cases should not be public. This distinction was made because in one group of cases, the juvenile is the perpetrator, and in the other group, the juvenile is the victim. This goes along with the purpose of juvenile court, which is to rehabilitate and protect children. **Separate votes were taken on whether the child's record of disposition should be confidential in unruly, delinquency, and traffic cases; and all other cases.**

- **4/14/04 Data Element: Child's Prior History with Juvenile Court – Disposition – In Unruly, Delinquency, and Traffic**

The subcommittee had separated this element from abuse, neglect, and dependency cases because many members felt that the juvenile should be more protected in cases where he did not commit any offense to be in court.

Votes in favor of confidentiality: 0

Votes opposed to confidentiality: 11

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16	**Data Element:** Notice of sex offender classification **Reasons in favor of confidentiality:** Sexually orientated offenders usually less serious violators, pose lesser risk than sexual predators and habitual sexual offenders. If a delinquent is not subject to registration the legislature must have concluded they do not pose a risk to…. R.C. 2950.11 (E) and 1997 Ohio Attorney Gen Ops. No 97-038 make it clear that records involving sexual predators and habitual sexual offenders are public. The opinion is silent on whether sexually orientated offenders and non registering habitual sexual offenders are also a public record. Consequently, we may conclude the legislature intended the matter to be confidential. **Reasons against confidentiality:** Ohio Law requires public safety be a goal of juvenile courts. Therefore the public has a right to know so they may protect themselves. **Comments:** **From the Minutes:** • Juvenile social history should be protected, since it contains the same information as the probation report, which is protected. While the identities of registered sex offenders and sexual predators are currently public, there is no policy on sexually oriented offenders. These should also be public, for the protection of the community. Notices of sex offender hearings should be public,

like other court dates.

- The Attorney General's rule does include sexually oriented offenders.
- The court records relating to the trial should be private, but the form would be a sheriff's record, which would be public.
- If all sex offenders are recorded in the same way, there would not be a purpose for having different classifications.
- The legislature must have wanted the various classes of sex offenders treated differently, since they did not address them all in the same way.
- Under new legislation, to take effect in July, all sex offenders will be posted online, and that juveniles will be included.
- The public should also be able to find out if other types of juvenile criminals live in their neighborhoods, and that the need to protect the child should not outweigh the need for the safety of the community.
- The reason sexual offenders are treated differently is that there has been a policy decision made at the legislative level that they are less likely to be rehabilitated than other types of offenders, and more likely to increase the severity of their attacks.
- After three major offenses, there is a hearing to determine whether the child is a habitual offender or a sexual predator. If either of these is found to be true, the court must decide whether to have public notification.
- Once the identity of the offender is known, the public will want to know whether

the victim lives in their neighborhood, so they will know whether they should be concerned for their safety.

- The legislature is still working on this area, so it could still change.
- The current Senate Bill 5 deals with the issue.
- In the future, some offenders may be re-classified.
- Providing notice of re-classification could be more harmful to people's reputations than not issuing any notice.
- The Subcommittee will have to address the fact that information is captured by private companies and re-sold for years without updates.
- The group must be cautious, because once information is released, it cannot be completely redacted.
- It is the notice of sex offender classification.
- A copy is kept in the file of each offender, but there is not a central file of all notices, so a person would have to know whom they were looking for in order to obtain the record.
- Other courts handle this differently.
- By statute, the court must retain a copy, but it does not specify how the copy should be kept.
- The physical location of the file will become less important as more information is stored electronically.
- It would be prohibitively difficult for a clerk to go through every file manually to

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see who is a sexual offender.

- It could be a problem if law enforcement needs to know about the sex offenders in the area.
- A copy is sent to BCI&I.
- The record could be obtained from the county sheriff's office.
- It is officially the responsibility of the sheriff's office to compile and maintain that information.
- The person could use the public access terminal to find case numbers, and then the files could be pulled.
- It is not a clerk's duty to search through records, but if the information is easily available through a database or other searchable source, it must be provided.
- The vote would be on whether it is a public record if the juvenile offender is labeled a sexually oriented offender or a non-registering habitual sexual offender.
- There are no non-registering habitual sexual offenders.
- All sexual offenders register, but not all are subject to notification.
- Gross sexual imposition, sexual battery, and rape are discretionary classifications for 14 and 15 year-olds, so they would not be classified or required to register.
- The question would then be whether classification is equal to registration.
- The question would be about juvenile offenders who are convicted, but not labeled sex offenders or required to register.

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	• The question would be whether the notice that the decision of whether a juvenile is a sex offender is going to be made should be public prior to the hearing. • The hearings are presumed to be open unless otherwise stated. • The notice of a dispositional hearing in juvenile court is not something that is generally public, but the hearing is presumed to be open. • The hearing would then be essentially only open to those with personal relationships, because an open hearing without notice is really a closed hearing. • If the Subcommittee votes to make the notices public, they should also recommend putting the disposition in a single file, so that all sex offender registrations would be in the same place. • That would be something covered by local rule. • The reason behind the public records law was not just to have documents be public, but to let people know where and how to find them. • A model process could be included with the recommendations, but it cannot be mandated. • They would have been found guilty, and the hearing would be done at the time of disposition, unless the offender was a commitment to DYS, in which case it would be done upon release. • It would run simultaneously with the commencement of the appeal, since it would take place at the disposition. • The sexual classification hearing is different than other hearing notices in his

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court. Most are small mailers, but the sexual classification hearing is a longer form.

- Should the notice of sexual offender classification hearing in juvenile court be confidential?
- The form would only be filled out if the person is determined to be a sex offender. A sex offender's form would then be turned over to the sheriff.
- Should the notice of sex offender classification (registration document) arising out of juvenile court be confidential?

- **4/14/04 Data Element: Notice of Sex Offender Classification**

There are different levels of sexual offenders – everyone who is convicted of a sexually oriented offense is a sexually oriented offender, but there are more serious classifications that require registration and other limitations. Sheriff's offices are required to notify local residents of the presence of some types of sex offenders in their community, so the names and addresses are already public through the sheriff.

Votes in favor of confidentiality: 0

Votes opposed to confidentiality: 13

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17	**Data Element:** Notice of sex offender classification hearing **Reasons in favor of confidentiality:** No classification has been arrived at yet so notice of hearing is not public record. No public policy is advanced by the release of this information **Reasons against confidentiality:** The social stigma and fallout from a finding or a disposition of a classification is so profound that it is necessary that the public scrutinize the adequacy of the proceedings and the actions of the court. No compelling privacy interest on the part of the convicted felon. Compelling public interest for both the public and the defendant to have hearings open and well attended. **Comments:** see above **Votes in favor of confidentiality:** 0 **Votes opposed to confidentiality:** 13

18	**Data Element:** Evaluations of competency to stand trial **Reasons in favor of confidentiality:** Encompasses the most sensitive information about the individual; Impairs ability to have a fair trial if competency is determined; may impede candor of evaluation for fear that information may come out about the family or the person being evaluated **Reasons against confidentiality:** If kept private, it would be difficult to evaluate the decision of the court to postpone or cancel the defendant being brought to trial **Comments:**

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From the Minutes:

- **Confidential Evaluations**

These evaluations would be medical, psychological, drug treatment, etc. in the Domestic Relations/General Division. Currently, these records are kept by the judge, but are not generally kept in the case file of things that are automatically public. The documents are generally written in prose, instead of on forms. The issue of competency to stand trial should be considered separately from medical and psychological evaluations, since they serve a different purpose in cases. It was also pointed out that each court type uses evaluations differently, so they should be considered separately. It was determined that DNA and similar scientific evidence would not be considered a medical evaluation. The issue had been discussed in relation to probate cases in the spring, so it should not be revisited. Since there was not a record of the earlier vote, the Subcommittee decided to vote on adoptions and medical commitments in probate cases. **Separate votes were taken on competency to stand trial in all court types, then for each court type in the matter of medical/psychological evaluations.**

Votes in favor of confidentiality: 3

Votes opposed to confidentiality: 8

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19	**Data Element:** HIV test results **Reasons in favor of confidentiality:** Protection of individual from discrimination/embarassment; confidential by federal and state law **Reasons against confidentiality:** Notification of potential partners who could become infected. **Comments:** Confidential by federal law **From the Minutes:** • **HIV Test Results** HIV test results are confidential by state, and possibly federal, law, because their disclosure could lead to discrimination against or embarrassment to the individual. The rights of that individual should be balanced with the right of the public, particularly people who might have contact with the individual, to know about their risk of contracting HIV. • **4/14/04 Data Element: HIV Test Results** This element refers only to tests administered by courts as standard procedure for all inmates, not to cases involving HIV infection as a factor, such as use as a deadly weapon. **Votes in favor of confidentiality:** 8 **Votes opposed to confidentiality:** 1

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20	**Data Element:** Juror Names **Reasons in favor of confidentiality:** Safety/security of jurors, Protect from stalking/harassment, Jury Tampering Protect Privacy, may encourage people to participate **Reasons against confidentiality:** If done for all cases could give the appearance that courts are not open. Could be challenged on first amendment grounds. **Comments:** **From the Minutes:** • **Jurors Names and Addresses and Juror Questionnaires** This element was broken up into three separate parts, since each is a separate issue. It is important to address the issues, so there will be consistency among courts. There is a practical difficulty with confidentiality of jurors' names, since many of them are addressed by name into the record during the selection process. It is important for the public to know who is on a jury, in order to provide oversight. Publication of jurors' identities could scare some people away from jury duty, because they might be concerned for their safety in a controversial case. A juror can ask for their identity to be sealed if they are concerned. **Votes in favor of confidentiality:** 0 **Votes opposed to confidentiality:** 9

21	**Data Element:** Probation notes **Reasons in favor of confidentiality:** Probation notes often contain victims' statements and other unsubstantiated information; could inhibit candor in evaluations **Reasons against confidentiality:** May inhibit public oversight of probation function and judge **Comments:** Reference current probation statute **From the Minutes:** • **Data Element Review: Probation Notes** Several subcommittee members pointed out that probation notes have traditionally been confidential, and there has not been a compelling reason presented for opening them. The notes often contain unsubstantiated information and victims' statements. It was pointed out that this would not prevent counsel from viewing the notes in the course of a trial. **Votes in favor of confidentiality:** 14 **Votes opposed to confidentiality:** 0

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22	**Data Element:** Search warrants, including related documentation, prior to the execution of the warrant. **Reasons in favor of confidentiality:** Safety of the executing officers; to ensure the effectiveness of search warrants; protects the integrity of the evidence **Reasons against confidentiality:** Helps avoid government abuses, **Comments:** Once a warrant is executed and the return filed, it becomes public unless sealed by the court. **From the Minutes:** • **Data Element Review: Search Warrants** It was pointed out that there are procedural reasons for not making search warrants public prior to their execution, including the fact that not all warrants are executed. It will still be necessary to make public that judges are issuing warrants, since some judges issue more than others are. This would not be affected by the confidentiality of the warrant itself. There is no way to prevent judges from sealing warrants, but the fact that the record was sealed will be public, so the judge will still be accountable if they seal a large number of warrants. **Votes in favor of confidentiality:** 14 **Votes opposed to confidentiality:** 0

23

Data Element: Civil Commitment Files

Reasons in favor of confidentiality:

Reasons against confidentiality:

Comments:

From the Minutes:

- **Confidential Evaluations**

These evaluations would be medical, psychological, drug treatment, etc. in the Domestic Relations/General Division. Currently, these records are kept by the judge, but are not generally kept in the case file of things that are automatically public. The documents are generally written in prose, instead of on forms. The issue of competency to stand trial should be considered separately from medical and psychological evaluations, since they serve a different purpose in cases. It was also pointed out that each court type uses evaluations differently, so they should be considered separately. It was determined that DNA and similar scientific evidence would not be considered a medical evaluation. The issue had been discussed in relation to probate cases in the spring, so it should not be revisited. Since there was not a record of the earlier vote, the Subcommittee decided to vote on adoptions and medical commitments in probate cases. **Separate votes were taken on competency to stand trial in all court types, then for each court type in the matter of medical/psychological evaluations.**

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	• **4/14/04 Data Element: Civil Commitments** This data element was too vague, and it should be split into two separate elements – the identities of the people involved in civil commitment cases, and the files relating to the civil commitment cases. The identities of those involved are currently public, and the files are currently confidential **Votes in favor of confidentiality:** 12 **Votes opposed to confidentiality:** 0

24	**Data Element:** Statement of Expert Evaluation [SPF 17.1] (for both initial determination and continuing guardianship) **Reasons in favor of confidentiality:** Statement of medical condition, forms basis for continuation of guardianship. Initial evaluation is not done on a standard form. Delicate nature of the party or circumstance of the party makes them vulnerable/sensitive. The information in these reports can contain personal or sensitive assessments that are not relevant to the determination of continued guardianship. The Statement of Expert Evaluation contains sensitive medical information, including medications. This information corresponds to the same sort of information that is currently required to be kept confidential by statute in civil commitment cases. **Reasons against confidentiality:** Undermine the public's oversight function in assessing the fairness of the probate court (i.e. public would not know if the judge

	disregards the report). Due to the potentially limited capacity of the individual and the likelihood of the absence of other family there lacks a safety net to ensure the proceedings are carried out properly. **Comments:** **Votes in favor of confidentiality:** 12 **Votes opposed to confidentiality:** 2

25	**Data Element:** Investigator's Report (form 17.8) **Reasons in favor of confidentiality:** Statement of medical condition, forms basis for continuation of guardianship. Initial evaluation is not done on a standard form. Delicate nature of the party or circumstance of the party makes them vulnerable/sensitive. The information in these reports can contain personal or sensitive assessments that are not relevant to the determination of continued guardianship. The Investigator's Report contains sensitive medical information, including medications. This information corresponds to the same sort of information that is currently required to be kept confidential by statute in civil commitment cases. **Reasons against confidentiality:** Undermine the public's oversight function in assessing the fairness of the probate court (i.e. public would not know if the judge disregards the report). Due to the potentially limited capacity of the individual and the likelihood of the absence of other family there lacks a safety net to ensure the proceedings are carried out properly.

	Comments: **Votes in favor of confidentiality:** 12 **Votes opposed to confidentiality:** 2

26	**Data Element:** Financial Transactions - Identifictation of Financial Institution **Reasons in favor of confidentiality:** **Reasons against confidentiality:** There is no compelling reason for confidentiality. **Comments:** **Votes in favor of confidentiality:** 0 **Votes opposed to confidentiality:** 15

27	**Data Element:** Financial Transaction - Personal Identificaition Number (not SSN, e.g. Employee Number, Account Number) **Reasons in favor of confidentiality:** No compelling public interest served by publication. The only reason for having the information is to access the account. Account PIN numbers are routinely used for account access and authorization. Could be used fraudulently. **Reasons against confidentiality:** The employee number further identifies the employee, so that in the case of two individuals with the same name, an individual or the media can differentiate between the two.

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	Comments: **Votes in favor of confidentiality:** 14 **Votes opposed to confidentiality:** 1

28	**Data Element:** Financial Transactions - Account amounts **Reasons in favor of confidentiality:** Could be used to identify a target for fraud or other type of crime. Perceived as personal information. **Reasons against confidentiality:** Can be used as a basis for evaluating judicial decision-making. **Comments:** **Votes in favor of confidentiality:** 1 **Votes opposed to confidentiality:** 14

29	**Data Element:** Date of Birth of Juveniles **Reasons in favor of confidentiality:** Protect the identity of the juvenile **Reasons against confidentiality:** Used in place of name to identify the individual, used to confirm identity **Comments:** See under all **From the Minutes:**

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	• **7/9/03 Data Element: Date of Birth in Juvenile Cases** The date of birth is a necessary identifier for law enforcement, but it would be difficult for the public to use it for identity theft. Birth dates are already widely available, and there is a low risk of misuse. The question of risk is the most important in the consideration of whether any data element should be public or private. **Votes called on data elements.** **Votes in favor of confidentiality:** 0 **Votes opposed to confidentiality:** 15

30	**Data Element:** Identity (name) of juvenile in a detention facility (Secure facility where juv pending disposition/adjudication) **Reasons in favor of confidentiality:** Stigma, nothing has been proven, age should be considered. Juvenile matters are different from adult cases – they are charged with delinquency rather than a criminal act. **Reasons against confidentiality:** The juvenile has been charged. Withholding name from public knowledge has the potential to lead to abuse, since the public cannot keep track of them. Compelling juvenile interest in having this information public. Currently pubic. **Comments:** 2 asbstained from vote **Votes in favor of confidentiality:** 12 **Votes opposed to confidentiality:** 2

31	**Data Element:** Identification (name) of juvenile in a residential/shelter care facility **Reasons in favor of confidentiality:** Stigma, nothing has been proven, age should be considered. Juvenile matters are different from adult cases – they are charged with delinquency rather than a criminal act. **Reasons against confidentiality:** The juvenile has been charged. Withholding name from public knowledge has the potential to lead to abuse, since the public cannot keep track of them. Compelling juvenile interest in having this information public. Currently pubic. **Comments:** 1 abstained from vote (did not hear full discussion of questions) Same as previous element (#30) **Votes in favor of confidentiality:** 10 **Votes opposed to confidentiality:** 5

32	**Data Element:** Childs Prior History with Juvenile Court - Disposition - in abuse, neglect, dependency cases **Reasons in favor of confidentiality:** see minutes. **Reasons against confidentiality:** Could potentially allow the public to see if the system has failed the child, but other options to obtain that information currently exist. **Comments:**

	From the Minutes: • **8/13/03 Child's Prior History – Delinquency or Other Adjudications** The prior adjudication record, which should be public, is distinct from the social history, which should not be public. There should be a distinction between delinquency, traffic, and unruly cases, and abuse, neglect, and dependency cases. Currently, all of these cases are maintained in the same type of files, and all are public. The recommendation of the work group is that delinquency, traffic, and unruly cases should be public, but abuse, neglect, and dependency cases should not be public. This distinction was made because in one group of cases, the juvenile is the perpetrator, and in the other group, the juvenile is the victim. This goes along with the purpose of juvenile court, which is to rehabilitate and protect children. **Separate votes were taken on whether the child's record of disposition should be confidential in unruly, delinquency, and traffic cases; and all other cases.** **Votes in favor of confidentiality:** 10 **Votes opposed to confidentiality:** 1

33	**Data Element:** Confidential evaluations (juvenile cases) - medical / psychological (e.g. drug and alcohol treatment) in delinquency / unruly / traffic cases **Reasons in favor of confidentiality:** To incur candor from the person being evaluated. Considered by the individual to be personal information. Contrary to professional standards of the person providing the evaluation. Long-term adverse

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	effect upon a child through disclosure outweighs any benefit of public access to this information. **Reasons against confidentiality:** Cannot evaluate the judicial decision without knowing the components of information available to the judge in decision-making. To ensure that the disposition order matches the individual's needs identified in the reports. **Comments:** **Votes in favor of confidentiality:** 6 **Votes opposed to confidentiality:** 5

34	**Data Element:** Confidential evaluations (juvenile cases) - medical / psychological (e.g. drug and alcohol treatment) in abuse / neglect / dependency / custody cases **Reasons in favor of confidentiality:** Long-term adverse effect upon a child through disclosure outweighs any benefit of public access to this information. In context, the child is involved in the case through no fault of its own, and therefore exposure has high potential for damage. **Reasons against confidentiality:** **Comments:** **From the Minutes:** • **8/13/03 Confidential Evaluations** These evaluations would be medical, psychological, drug treatment, etc. in the

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	Domestic Relations/General Division. Currently, these records are kept by the judge, but are not generally kept in the case file of things that are automatically public. The documents are generally written in prose, instead of on forms. The issue of competency to stand trial should be considered separately from medical and psychological evaluations, since they serve a different purpose in cases. It was also pointed out that each court type uses evaluations differently, so they should be considered separately. It was determined that DNA and similar scientific evidence would not be considered a medical evaluation. The issue had been discussed in relation to probate cases in the spring, so it should not be revisited. Since there was not a record of the earlier vote, the Subcommittee decided to vote on adoptions and medical commitments in probate cases. **Separate votes were taken on competency to stand trial in all court types, then for each court type in the matter of medical/psychological evaluations.** **Votes in favor of confidentiality:** 11 **Votes opposed to confidentiality:** 0

35	**Data Element:** Confidential evaluations of defendant in General Division cases - medical / psychological (e.g. drug and alcohol treatment) **Reasons in favor of confidentiality:** To encourage candor in the person being evaluated. To avoid unintended sanctions or consequences for certain criminal behavior. To prevent people from admitting to offenses they didn't commit to spare

public disclosure of sensitive information.

Reasons against confidentiality: Under current law, nothing is privileged. Provides spotlight on judicial decision-making. Prevents the review of the court's sentence to determine its appropriateness in relation to the needs or issues of the defendant and community. The contents of the evaluation may already be contained in the witness's testimony.

Comments:

From the Minutes:

- **8/13/03 Confidential Evaluations**

These evaluations would be medical, psychological, drug treatment, etc. in the Domestic Relations/General Division. Currently, these records are kept by the judge, but are not generally kept in the case file of things that are automatically public. The documents are generally written in prose, instead of on forms. The issue of competency to stand trial should be considered separately from medical and psychological evaluations, since they serve a different purpose in cases. It was also pointed out that each court type uses evaluations differently, so they should be considered separately. It was determined that DNA and similar scientific evidence would not be considered a medical evaluation. The issue had been discussed in relation to probate cases in the spring, so it should not be revisited. Since there was not a record of the earlier vote, the Subcommittee decided to vote on adoptions and medical commitments in probate cases. **Separate votes were taken on competency**

	to stand trial in all court types, then for each court type in the matter of medical/psychological evaluations. **Votes in favor of confidentiality:** 7 **Votes opposed to confidentiality:** 4

36	**Data Element:** Confidential evaluations (MC/CC cases) - medical / psychological (e.g. drug and alcohol treatment) **Reasons in favor of confidentiality:** To encourage candor in the person being evaluated. To avoid unintended sanctions or consequences for certain criminal behavior. To prevent people from admitting to offenses they did not commit to spare public disclosure of sensitive information. **Reasons against confidentiality:** Under current law, nothing is privileged. Provides spotlight on judicial decision-making. Prevents the review of the court's sentence to determine its appropriateness in relation to the needs or issues of the defendant and community. The contents of the evaluation may already be contained in the witness's testimony. **Comments:** **From the Minutes:** • **8/13/03 Confidential Evaluations**

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These evaluations would be medical, psychological, drug treatment, etc. in the Domestic Relations/General Division. Currently, these records are kept by the judge, but are not generally kept in the case file of things that are automatically public. The documents are generally written in prose, instead of on forms. The issue of competency to stand trial should be considered separately from medical and psychological evaluations, since they serve a different purpose in cases. It was also pointed out that each court type uses evaluations differently, so they should be considered separately. It was determined that DNA and similar scientific evidence would not be considered a medical evaluation. The issue had been discussed in relation to probate cases in the spring, so it should not be revisited. Since there was not a record of the earlier vote, the Subcommittee decided to vote on adoptions and medical commitments in probate cases. **Separate votes were taken on competency to stand trial in all court types, then for each court type in the matter of medical/psychological evaluations.**

Votes in favor of confidentiality: 9

Votes opposed to confidentiality: 2

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38	**Data Element:** Staff secure facility (shelter care) reports - pretrial **Reasons in favor of confidentiality:** They are presented in a narrative form and include many elements previously determined to be confidential such as psychological and physical well-being. The focus of the report is treatment oriented rather than behavioral. Long-term adverse effect upon a child through disclosure outweighs any benefit of public access to this information. **Reasons against confidentiality:** Need to evaluate the treatment being provided. Public oversight. **Comments:** 1 abstained **From the Minutes:** • **9/10/03 Detention Center and Shelter Care Reports** The report is a narrative of the child's behavior in the detention center or shelter care. There is currently not legislative guidance about whether the reports are public, although similar reports from DYS are currently confidential by statute. Shelter care reports are less clearly defined, so they should be separated from detention center reports. Shelter care is a staff-secure facility, so it is another option aside from home detention or detention center for juvenile pre-trial detention. It is not a post-adjudication option, and it differs from group homes, which are more therapeutic and can be either pre- or post-adjudication.

	Votes in favor of confidentiality: 9 **Votes opposed to confidentiality:** 2

39	**Data Element:** Residential treatment facility report in juvenile cases (post adjudication) **Reasons in favor of confidentiality:** They are presented in a narrative form and include many elements previously determined to be confidential such as psychological and physical well-being. The focus of the report is treatment oriented rather than behavioral. Long-term adverse effect upon a child through disclosure outweighs any benefit of public access to this information. **Reasons against confidentiality:** Need to evaluate the treatment being provided. Public oversight. **Comments:** 1 abstained **From the Minutes:** • **9/10/03** • **Group Homes** The subcommittee addressed the issue of group homes, which are a staff-secure, therapeutic post-adjudication sentencing alternative. Not all evaluators would be therapeutic personnel, so these reports would be different.

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	• **Awaiting Transport** Many juvenile offenders spend up to a month in facilities awaiting transport to the facility to which they have been sentenced, and this time is not covered by any of the votes previously taken. Offenders sentenced as adults would be held in an adult detention facility while awaiting transport, so those records would be public. There is also a dispositional alternative of up to 90-day sentences in the local detention facility, which should be addressed. • **Child & Family Services** Another post-adjudication option is placement of the child with child & family services. The confidentiality of those records is defined by statute. The subcommittee's practice of considering data elements solely on the theory of whether they should be public or private should continue, without statutory reference. However, if subcommittee members wish to use reference points for their decisions, they should be based on statute or case law rather than past practices. Additional materials can be included with the final report of the subcommittee to illustrate the reasons for the policies adopted. **Votes in favor of confidentiality:** 9 **Votes opposed to confidentiality:** 2

40	**Data Element:** Records maintained in a dispositionaly placement of a juvenile in a

local detention facility

Reasons in favor of confidentiality: They are presented in a narrative form and include many elements previously determined to be confidential such as psychological and physical well-being. The focus of the report is treatment oriented rather than behavioral. Long-term adverse effect upon a child through disclosure outweighs any benefit of public access to this information.

Reasons against confidentiality: Need to evaluate the treatment being provided. Public oversight.

Comments: 1 abstained, 2 voting members not present at time of vote

From the Minutes:

- **9/10/03 Detention Center and Shelter Care Reports**

This topic had been previously discussed, but no vote had been taken, because the juvenile work group is still awaiting a response from court administrators about the element. The report is a narrative of the child's behavior in the detention center or shelter care. There is currently not legislative guidance about whether the reports are public, although similar reports from DYS are currently confidential by statute. Shelter care reports are less clearly defined, so they should be separated from detention center reports. Shelter care is a staff-secure facility, so it is another option aside from home detention or detention center for juvenile pre-trial detention. It is not a post-adjudication option, and it differs from group homes, which are more therapeutic and can be either pre- or post-adjudication.

	Votes in favor of confidentiality: 7 **Votes opposed to confidentiality:** 9

41	**Data Element:** Post adjudicatory reports from Staff secure facility (shelter care) **Reasons in favor of confidentiality:** They are presented in a narrative form and include many elements previously determined to be confidential such as psychological and physical well-being. The focus of the report is treatment oriented rather than behavioral. Long-term adverse effect upon a child through disclosure outweighs any benefit of public access to this information. **Reasons against confidentiality:** Need to evaluate the treatment being provided. Public oversight. **Comments:** 1 abstained S**From the Minutes:** • **9/10/03 Detention Center and Shelter Care Reports** This topic had been previously discussed, but no vote had been taken, because the juvenile work group is still awaiting a response from court administrators about the element. The report is a narrative of the child's behavior in the detention center or shelter care. There is currently not legislative guidance about whether the reports are public, although similar reports from DYS are currently confidential by statute. Shelter care reports are less clearly defined, so they should be separated from detention center reports. Shelter care is a staff-secure facility, so it is another option

	aside from home detention or detention center for juvenile pre-trial detention. It is not a post-adjudication option, and it differs from group homes, which are more therapeutic and can be either pre- or post-adjudication. **Votes in favor of confidentiality:** 8 **Votes opposed to confidentiality:** 2

42	**Data Element:** Juror Addresses **Reasons in favor of confidentiality:** To protect the interest of jurors who might be frightened of public disclosure and to encourage participation in the jury system. Protection against intimidation of jurors or jurors' families. **Reasons against confidentiality:** Undermines the spirit of the public trial. To allow public review of the jury selection process. Ensures randomness of jury selection process. **From the Minutes:** • **12/10/03 Comments: Jurors Names and Addresses and Juror Questionnaires** This element was broken up into three separate parts, since each is a separate issue. It is important to address the issues, so there will be consistency among courts. There is a practical difficulty with confidentiality of jurors' names, since many of them are addressed by name into the record during the selection process. It is

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	important for the public to know who is on a jury, in order to provide oversight. Publication of jurors' identities could scare some people away from jury duty, because they might be concerned for their safety in a controversial case. A juror can ask for their identity to be sealed if they are concerned. **Votes in favor of confidentiality:** 4 **Votes opposed to confidentiality:** 5

43	**Data Element:** Information that is ruled confidential or sealed by a lower court, or information that by statute is confidential, shall remain confidential at the appellate level unless it is ruled not confidential or not sealed by a court of competent jurisdiction. **Reasons in favor:** Trial court is in the best position to make this determination, because the information is in front of them. Undermines confidentiality and provides consistency. **Reasons against:** To prevent the inappropriate sealing of public records. **Comments:** Not a data element, and should become part of the prose recommendation. **Votes in favor of confidentiality:** 12 **Votes opposed to confidentiality:** 2

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44	**Data Element:** Proper names and information of child victims of sexual crime **Reasons in favor of confidentiality:** Prevent embarassment of victims of non-sexually oriented crimes or abuse; Reasonable liklihood of interference with child's development, especially social development **Reasons against confidentiality:** Non-sexual and non-violent cases do not cause embarassment and do not need to be private; Currently public record except in juvenile proceedings; could impact investigation of kidnapping and other cases; Might create additional stigma. The creation of an atmosphere of secrecy around the information could create additional stigma for crime victims. **Comments:** Split from general category by APP WG **From the Minutes:** • **2.11.04 Data Elements: Proper Names of Child Victims of Non-Sexual Crimes; Proper Names of Child Victims of Sexual Violence** Each charge would be treated separately. The subcommittee is only discussing confidentiality in terms of the public, not parties to the case or integrated justice partners. The creation of an atmosphere of secrecy around the information could create additional stigma for crime victims. Some of the juveniles who have appeared in his courtroom have been more concerned about the reactions they face from their peers than the decisions of the court. Several subcommittee members discussed the relevance of the 14th Amendment to the privacy issue. Due process requires public

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	access to ensure public scrutiny of the process. **The Subcommittee voted that both elements should be confidential.** **Votes in favor of confidentiality:** 9 **Votes opposed to confidentiality:** 5
45	**Data Element:** Post Adjudicatory release of a juvenile's social history except to the extent that it might be relevant to that juvenile's prosecution later as an adult. **Reasons in favor of confidentiality:** The information contained in a child's social history is confidential before adjudication. R.C. 2151.03, R.C. 2151.14 **Reasons against confidentiality:** Public will be missing info needed to judge effectiveness of court. Best interests of the child supercedes the release of this info. Post adjudicatory release of social histories of children does not violate any constitutional rights to privacy **Comments:** NEEDS CLARIFICIATION **From the Minutes:** • **1.14.04 Data Element Review: Post Adjudicatory Release of a Juvenile's Social History** It could become an issue if the social history is read into the record in a later case in which the juvenile is tried as an adult. A situation in which that occurred was not the primary concern of the juvenile work group, since the concern for protection of a

	juvenile would no longer be an issue. **Votes in favor of confidentiality:** 14 **Votes opposed to confidentiality:** 0
46	**Data Element:** Law enforcement, peace, and police officer home addresses/phone numbers when appearing in court in their official capacity as a law enforcement, peace, or police officer. **Reasons in favor of confidentiality:** Safety/security of officer and family. Protect from stalking/harassment **Reasons against confidentiality:** Gives special status to a class of public official not enjoyed by others. **Comments:** **From the Minutes:** • **1.14.04 Data Element Review: Police Officer Home Addresses/Phone Numbers** It was immediately pointed out by several subcommittee members that this data element was not intended to imply that police officers have special protection of their personal information in cases not involving their professional duties. This could be difficult to determine, however, because in many cities, police officers are always considered to be on duty. The phrasing of the data element was changed to reflect this. “Police officers,” “law enforcement officers,” and “peace officers” are all

	separate categories, and should all be listed separately. There was a discussion of whether to include federal agents on the list, but it was decided that their participation is less frequent, and is covered by the other categories listed. This element would not present an operational problem in most jurisdictions, because officers are generally contacted at their substations for information about trials. **Votes in favor of confidentiality:** 14 **Votes opposed to confidentiality:** 0

47	**Data Element:** Adoption Files **Reasons in Favor of Confidentiality:** Protect Family Relationships; existing statutes require confidentiality **Reasons Against Confidentiality:** Growing movement by adoptees to open records for medical information **Comments:** Not a data element – class of information. Move to prose recommendation. **Votes in favor of confidentiality:** 11 **Votes opposed to confidentiality:** 0

48	**Data Element:** Names in Civil Commitment Cases **Reasons in Favor of Confidentiality:** Stigma in being the subject of a civil commitment action.

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	Reasons Against Confidentiality: Potentially denies the community information for their protection, for example, concealed carry. Provides public oversight of commitment process to avoid inappropriate commitment. **Comments:** **Votes in favor of confidentiality:** 0 **Votes opposed to confidentiality:** 12

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2023 APPENDIX B: COMMENTARIES
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2033 **COMMENTARY OF THE OHIO ATTORNEY GENERAL'S OFFICE**

2034

2035 **I. Introduction.**

2036

2037 The Ohio Attorney General's Office is proud of the hard work of the Privacy
2038 Subcommittee in drafting the attached Public Access Policy. However, in the end, our
2039 Office is unable to approve the Access Policy as written.

2040

2041 The problem is two-fold. First, the Access Policy is not limited to addressing the
2042 underlying cause of the problem, i.e., the Internet publication of court records. Rather,
2043 the Policy goes too far in restricting the public's ability to access information within
2044 underlying court records regardless of the means of distribution.[7] Second, since the
2045 policy is not confined to simply the responsible Internet publication of court records, the
2046 policy does not contain appropriate safeguards to assure that the public's constitutional
2047 right to access judicial records (e.g., case files, court orders, etc.) is protected. As an
2048 office of an elected official sworn to uphold the constitution and the laws of Ohio, the
2049 Ohio Attorney General's Office cannot endorse a policy that would limit the ability of the
2050 public to access information within court records that are vital to the public's
2051 understanding of the law and that are necessary in preserving public trust and confidence
2052 in the judicial system.

[7] Ohio's public records laws do not require the Internet publication of court records. At a minimum, they must be made available for inspection and copies must be made available on site or via ordinary U.S. mail. See the Ohio Public Records Act, R.C. 149.43 *et seq.*

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2054 **II. Background.**

2055

2056 Historically, court records (both on paper and electronic media) have been
2057 available to anyone willing to visit the courthouse. Legally speaking, many court records
2058 (e.g., judicial records) are presumed public because of their critical role in our free and
2059 open system of government. Unrestricted public access in the records promotes public
2060 trust and confidence in the courts and provides due process to parties entangled in
2061 litigation.

2062

2063 Recently, the Internet has given the courts the ability to make access to court
2064 records faster and easier than ever before. The availability of court records in an
2065 electronic media has not only made it possible for courts to consolidate court records into
2066 searchable databases, but has given courts the ability to publish the records over the
2067 Internet. Internet publication makes a trip to the courthouse unnecessary while, at the
2068 same time, frees up limited court resources in having to respond to public records
2069 requests.

2070

2071 Notwithstanding, greater access to court records has increased the exposure of
2072 private and financial information within court records to misuse and voyeurism. Internet
2073 publication has eroded the practical obscurity that court records once enjoyed. As a
2074 result, Internet publication has fueled demand for the creation of public access policies

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2075 across the states to ensure that a proper balance is maintained between many of the
2076 competing and often conflicting interests. These interests, include, but are not limited to,
2077 protection against unsubstantiated allegations, identifying the protection, accuracy, public
2078 safety, accountability of the courts and law enforcement, victim and child protection, and
2079 efficiency.
2080
2081 **III. Identification of Sensitive Data Fields.**
2082
2083 One of the first tasks tackled by the privacy subcommittee in creating this Access
2084 Policy was the identification of "sensitive data fields" that should be restricted from
2085 public access. The subcommittee tackled this assignment early in its inception without
2086 first fully exploring and addressing the two critical issues: 1) the scope of the Access
2087 Policy and 2) the preservation of the public's constitutional right to access judicial court
2088 records. The subcommittee voted on whether select data elements should be withheld
2089 upon the assumption that such restrictions would apply across the board to all court
2090 records regardless of the distribution method (e.g., the Internet) and regardless of any
2091 legal limitations that may restrict withholding court records (e.g., the Ohio and U.S.
2092 Constitutions). As a result, the subcommittee was unable to fully address these two
2093 critical issues without being inconsistent with the initial assumption underlying the earlier
2094 votes.
2095
2096 **IV. Issue 1.**

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2098 **A. Scope of the Policy.**

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2100 The first critical issue that needed to be addressed within by the Access Policy is
2101 whether the policy should be limited to addressing the Internet publication of court
2102 records. After all, it is Internet publication that has raised many of the privacy concerns
2103 giving rise to this Access Policy.

2104

2105 There are two competing approaches to resolving this issue: The policy could
2106 address privacy concerns by promoting greater access to court records via the Internet in
2107 a responsible manner by limiting the Internet publication of the sensitive data fields
2108 identified by the subcommittee. Or, alternatively, the policy could promote equal access
2109 to all court records regardless of how the records are distributed, but restrict any type of
2110 access to any sensitive data fields contained within the court records.

2111

2112 The latter approach, restricting information from court records altogether, is the
2113 more bold approach ultimately approved by the subcommittee. It strives for equal
2114 treatment of court records regardless of the means that they are made available by the
2115 courts. However, in order to address privacy concerns, the approach requires that
2116 sensitive data fields be withheld from all court records – records that have historically
2117 been made available for hundreds of years. In other words, in order to obtain the same
2118 level of access to court records via the Internet as is available at the courthouse, the

2119 approach requires that the public will have to forego the current level of unfettered access
2120 at the courthouse that is currently enjoyed.[8] Proponents of this approach believe all or
2121 some of the following:[9]
2122
2123 1) Requiring a person to come to the courthouse to receive a complete copy
2124 of the public court records is not meaningful access but rather is a
2125 restriction of the public's legitimate use of the information otherwise
2126 easily available over the Internet in electronic format;
2127
2128 2) If there is a valid public use for a certain record in paper format, than it
2129 should also be made available on the Internet;
2130
2131 3) It is unrealistic to conclude that the courts will have all of their files in an
2132 electronic format but only make them available unredacted at the
2133 courthouse;
2134

[8] Worth noting is that, in an attempt to soften the impact of this approach, the Privacy Committee voted to have the Access Policy apply only prospectively to court records. In other words, courts will not be obligated to release sensitive data fields from court records created after the policy would go into effect, but will be obligated to provide access to the same data fields in court records created before the policy went into effect. Unfortunately, this decision complicates matters and creates two different treatments for all court records.

[9] See Minnesota's Public Access Policy at http://www.courtaccess.org/states/mn/documents/mn-accessreport-2004.pdf. The policy is currently under consideration for adoption by the Minnesota Supreme Court as a proposed amendment to its Rules of Public Access to Records of the Judicial Branch.

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2135 4) Where unfettered access is limited to the courthouse, commercial data
2136 brokers will harvest the information anyway and will make it available to
2137 anyone willing to pay their broker's fee;
2138
2139 5) There are enormous benefits to allowing an equal level of access to court
2140 records via the Internet as is available at the courthouse, including:
2141
2142 a. reducing burdens on court staff;
2143 b. improving the accuracy and timeliness of newsgathering;
2144 c. ensuring public safety and national security; and
2145 d. minimizing risks to financial institutions,
2146
2147 6) Redacting under this approach is more feasible than the competing
2148 approach; and
2149
2150 7) Trying to resolve privacy concerns by keeping information off the Internet
2151 is not good public policy.
2152
2153 The prior approach, which is preferred by the Ohio Attorney General's Office
2154 because limiting restrictions would apply <u>only</u> to Internet publication, is the "take it slow
2155 while only expanding public access" approach. It promotes greater access to court

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2156 records through Internet publication while at the same time preserving the current level of
2157 access to court records available at the courthouse. This approach recognizes that:
2158
2159 1) There is a difference between making court records available to the public
2160 and publishing them on the Internet;
2161
2162 2) Addressing only the Internet publication of court records limits the
2163 "backlash" effect could tempt the courts and/or general assembly to
2164 exempt large categories of information from court records without regard
2165 to the context of the information or the necessity in its public availability
2166 in preserving constitutional rights; and
2167
2168 3) It allows the courts and/or General Assembly to most directly address
2169 privacy concerns by limiting the cause of those concerns – the worldwide
2170 Internet publication of private and financial details from otherwise public
2171 court files.
2172
2173
2174 **V. Issue 2.**
2175
2176 **B. Constitutional Safeguards**
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2178 The Access Policy must respect the public's constitutional right to access judicial
2179 records. This second critical issue arises only as the result of the subcommittee's
2180 approach to the first issue. Since the Access Policy recommends restricting access to
2181 sensitive data fields within all court records, regardless of means of accessing those
2182 records, the Access Policy must not infringe upon the public's constitutional right to
2183 access judicial records.
2184
2185 Under Ohio law, court records can generally be divided into two categories:
2186 Judicial records, comprised of all records documenting the adjudicatory functions of the
2187 court such as Dockets, Journals, Indexes and Case Files, and Administrative records,
2188 comprised of all remaining records necessary for the day to day operations of the court.[10]
2189 The distinction between these two types of records is crucial because the public enjoys a
2190 greater right to access to judicial records than that of administrative records.[11]
2191 Specifically, both types of court records are covered by Ohio's Public Records Act, but
2192 judicial records are constitutionally protected. This constitutional right of access
2193 requires, at a minimum, the right to inspect and copy the records upon reasonable
2194 terms.[12]

[10] Findings of the Supreme Court of Ohio Task Force on Records Management, September, 1996.

[11] The Free Speech and Free Press Clauses of the First Amendment to the United States Constitution, the analogous provisions of Section 11, Article I of the Ohio Constitution, and the "open courts" provision of Section 16, Article I of the Ohio Constitution create, a qualified right of public access to proceedings which have historically been open to the public and in which public access plays a significantly positive role. *In re. T.R.* (1990), 52 Ohio St.3d 6, 556, paragraph two of the syllabus; *Press-Enterprise Co. v. Superior Court* (1986), 478 U.S. 1 ("Press-Enterprise II"); See also 2004 Op. Atty Gen. Ohio 045.

[12] See 1988 Op. Atty Gen. Ohio 415. (A public body may not impose unreasonable restrictions upon the public's right to access.)

2195

2196 Given the elevated status of judicial records under the state and federal
2197 constitutions, any modification of the public's right to access court records promulgated
2198 by the General Assembly or the Ohio Supreme Court based on this Access Policy should
2199 satisfy the following requirements: (1) the restriction will have to respect the courts'
2200 common law power over their own records and files, (2) the restriction will have to
2201 constitute state law prohibiting access to the specific record such that the restriction will
2202 qualify as an exemption from the Ohio Public Records Act under R.C. 149.43(A)(1)(v),
2203 and (3) the restriction will have to overcome the public's presumed constitutional right of
2204 access to judicial records by requiring a finding that the restriction is essential to preserve
2205 higher values than that of the public's right of access and is narrowly tailored to serve
2206 that overriding interest.

2207

2208 The Access Policy, as presently written, was prepared, in part, with the assistance
2209 of Attorney General's Office. Therefore, it originally incorporated appropriate
2210 safeguards to assure that the courts will not withhold sensitive data fields from
2211 constitutionally protected judicial records. However, language within the Access Policy
2212 was modified at the last meeting of the subcommittee in order to comply with the initial
2213 assumption that all sensitive data elements voted upon should be withheld from all court
2214 records without regard to lawfulness. Therefore, the Access policy is flawed.

2215

2216 **VI. Conclusion.**

2217

2218 The Ohio Attorney General's Office would have approved the Access Policy if it
2219 were only limited to the Internet publication of court records and did not infringe upon
2220 present levels of public access to court records. In order to strive toward greater equality
2221 between courthouse and Internet access, the policy could have set forth measures to
2222 reduce the number of sensitive data elements from being inserted within the court records
2223 in the first place and even procedures for the lawful sealing of information that may
2224 inappropriately sneak into the court record.

2225

2226 In the alternative, the Access Policy, at a minimum, must assure that any new
2227 restrictions to the public's current level of access in the underlying court records contain
2228 appropriate safeguards to preserve their constitutional rights. Although language setting
2229 forth such safeguards is still within the Access Policy, it currently does not have full
2230 effect.

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