

# CCJ/COSCA Guidelines for Public Access to Court Records<sup>1</sup>

October 18, 2002

## A. Purpose

### **Section 1.00 – Purpose of the CCJ/COSCA Guidelines**

- a. The purpose of these CCJ/COSCA Guidelines is to provide a comprehensive framework for a policy on public access to court records. The CCJ/COSCA Guidelines provide for access in a manner that:
  1. Maximizes accessibility to court records,
  2. Supports the role of the judiciary,
  3. Promotes governmental accountability,
  4. Contributes to public safety,
  5. Minimizes risk of injury to individuals,
  6. Protects individual privacy rights and interests,
  7. Protects proprietary business information,
  8. Minimizes reluctance to use the court to resolve disputes,
  9. Makes most effective use of court and clerk of court staff,
  10. Provides excellent customer service, and
  11. Does not unduly burden the ongoing business of the judiciary.
- b. The CCJ/COSCA Guidelines are intended to provide guidance to 1) litigants, 2) those seeking access to court records, and 3) judges and court and clerk of court personnel responding to requests for access.

## B. Access by Whom

### **Section 2.00 – Who Has Access Under These CCJ/COSCA Guidelines**

Every member of the public will have the same access to court records as provided in these CCJ/COSCA Guidelines, except as provided in section 4.30(b) and 4.40(b).

“Public” includes:

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

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<sup>1</sup> A full version of the *CCJ/COSCA Guidelines* is available at <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/accessfair/id/210>.

“Public” does not include:

- e. court or clerk of court employees;
- f. people or entities, private or governmental, who assist the court in providing court services;
- g. public agencies whose access to court records is defined by another statute, rule, order or policy; and
- h. the parties to a case or their lawyers regarding access to the court record in their case.

### **C. Access to What**

#### **Section 3.00 – Definitions**

##### **Section 3.10 – Definition Of Court Record**

For purposes of these CCJ/COSCA Guidelines:

a. “Court record” includes:

1. Any document, information, or other thing that is collected, received, or maintained by a court or clerk of court in connection with a judicial proceeding;
2. Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created by or prepared by the court or clerk of court that is related to a judicial proceeding; and
3. The following information maintained by the court or clerk of court pertaining to the administration of the court or clerk of court office and not associated with any particular case.

[Include a list of court administrative records and information to be considered part of the court record for purposes of this policy.]

b. “Court record” does not include:

1. Other records maintained by the public official who also serves as clerk of court.

[Court should identify and list non-court records, for example: land title records, vital statistics, birth records, naturalization records and voter records];

2. Information gathered, maintained or stored by a governmental agency or other entity to which the court has access but which is not part of the court record as defined in section 3.10(a)(1).

### **Section 3.20 – Definition Of Public Access**

“Public access” means that the public may inspect and obtain a copy of the information in a court record.

### **Section 3.30 – Definition Of Remote Access**

“Remote access” means the ability to electronically search, inspect, or copy information in a court record without the need to physically visit the court facility where the court record is maintained.

### **Section 3.40 – Definition Of In Electronic Form**

Information in a court record “in electronic form” includes information that exists as:

1. electronic representations of text or graphic documents;
2. an electronic image, including a video image, of a document, exhibit or other thing;
3. data in the fields or files of an electronic database; or
4. an audio or video recording, analog or digital, of an event or notes in an electronic file from which a transcript of an event can be prepared.

### **Section 4.00 – Applicability of Rule**

These CCJ/COSCA Guidelines apply to all court records, regardless of the physical form of the court record, the method of recording the information in the court record or the method of storage of the information in the court record.

### **Section 4.10 – General Access Rule**

- a. Information in the court record is accessible to the public except as prohibited by section 4.60 or section 4.70(a).
- b. There shall be a publicly accessible indication of the existence of information in a court record to which access has been prohibited, which indication shall not disclose the nature of the information protected.

- c. A local court may not adopt a more restrictive access policy or otherwise restrict access beyond that provided for in this policy, nor provide greater access than that provided for in this policy.

### **Section 4.20 – Court Records In Electronic Form Presumptively Subject to Remote Access by the Public**

The following information in court records should be made remotely accessible to the public if it exists in electronic form, unless public access is restricted pursuant to sections 4.50, 4.60 or 4.70(a):

- a. Litigant/party indexes to cases filed with the court;
- b. Listings of new case filings, including the names of the parties;
- c. Register of actions showing what documents have been filed in a case;
- d. Calendars or dockets of court proceedings, including the case number and caption, date and time of hearing, and location of hearing;
- e. Judgments, orders, or decrees in a case and liens affecting title to real property.

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

Bulk distribution is defined as the distribution of all, or a significant subset, of the information in court records, as is and without modification or compilation.

- a. Bulk distribution of information in the court record is permitted for court records that are publicly accessible under section 4.10.
- b. A request for bulk distribution of information not publicly accessible can be made to the court for scholarly, journalistic, political, governmental, research, evaluation or statistical purposes where the identification of specific individuals is ancillary to the purpose of the inquiry. Prior to the release of information pursuant to this subsection the requestor must comply with the provisions of section 4.40(c).

### **Section 4.40 – Access to Compiled Information From Court Records**

- a. Compiled information is defined as information that is derived from the selection, aggregation or reformulation by the court of some of the information from more than one individual court record.

- b. Any member of the public may request compiled information that consists solely of information that is publicly accessible and that is not already available pursuant to section 4.20 or in an existing report. The court may compile and provide the information if it determines, in its discretion, that providing the information meets criteria established by the court, that the resources are available to compile the information and that it is an appropriate use of public resources. The court may delegate to its staff or the clerk of court the authority to make the initial determination as to whether to provide compiled information.
- c.
  1. Compiled information that includes information to which public access has been restricted may be requested by any member of the public only for scholarly, journalistic, political, governmental, research, evaluation, or statistical purposes.
  2. The request shall:
    - i. identify what information is sought,
    - ii. describe the purpose for requesting the information and explain how the information will benefit the public interest or public education, and
    - iii. explain provisions for the secure protection of any information requested to which public access is restricted or prohibited.
  3. The court may grant the request and compile the information if it determines that doing so meets criteria established by the court and is consistent with the purposes of the access policy, the resources are available to compile the information, and that it is an appropriate use of public resources.
  4. If the request is granted, the court may require the requestor to sign a declaration that:
    - i. The data will not be sold or otherwise distributed, directly or indirectly, to third parties, except for journalistic purposes,
    - ii. The information will not be used directly or indirectly to sell a product or service to an individual or the general public, except for journalistic purposes, and
    - iii. There will be no copying or duplication of information or data provided other than for the stated scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose.

The court may make such additional orders as may be needed to protect information to which access has been restricted or prohibited.

## **Section 4.50 – Court Records That Are Only Publicly Accessible At A Court Facility**

- a. The following information in a court record will be publicly accessible only at a court facility in the jurisdiction, unless access is prohibited pursuant to section 4.60 or 4.70(a).

[Include a list of information available only at a court facility here.]

- b. A request to limit public access to information in a court record to a court facility in the jurisdiction may be made by any party to a case, an individual identified in the court record, or on the court’s own motion. For good cause the court will limit the manner of public access. In limiting the manner of access the court will use the least restrictive means that achieves the purposes of the access policy and the needs of the requestor.

## **Section 4.60 – Court Records Excluded From Public Access**

The following information in a court record is not accessible to the public:

- a. Information that is not to be accessible to the public pursuant to federal law;
- b. Information that is not to be accessible to the public pursuant to state law, court rule or case law as follows:

[List those categories or types of information to which public access is to be restricted here.]

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

## **Section 4.70 – Requests To Prohibit Public Access to Information In Court**

Records Or To Obtain Access to Restricted Information

- a. A request to prohibit public access to information in a court record may be made by any party to a case, the individual about whom information is present in the court record, or on the court’s own motion. The court must decide whether there are sufficient grounds to prohibit access according to applicable constitutional, statutory and common law. In deciding this the court should consider at least the following:

1. Risk of injury to individuals;

2. Individual privacy rights and interests;
3. Proprietary business information; and
4. Public safety.

In restricting access the court will use the least restrictive means that will achieve the purposes of the access policy and the needs of the requestor.

- b. A request to obtain access to information in a court record to which access is prohibited under section 4.60 or 4.70(a) of these CCJ/COSCA Guidelines may be made by any member of the public or on the court's own motion upon notice as provided in subsection 4.70(c). The court must decide whether there are sufficient grounds to continue to prohibit access according to applicable constitutional, statutory and common law. In deciding this the court should consider at least the following:
  5. Risk of injury to individuals;
  6. Individual privacy rights and interests;
  7. Proprietary business information;
  8. Access to court records; and
  9. Public safety.
- c. The request shall be made by a written motion to the court. The requestor will give notice to all parties in the case except as prohibited by law. The court may require notice to be given by the requestor or another party to any individuals or entities identified in the information that is the subject of the request. When the request is for access to information to which access was previously prohibited under section 4.60(a), the court will provide notice to the individual or entity that requested that access be prohibited either itself or by directing a party to give the notice.

#### **D. When Accessible**

##### **Section 5.00 – When Court Records May Be Accessed**

- a. Court records will be available for public access in the courthouse during hours established by the court. Court records in electronic form to which the court allows remote access under this policy will be available for access at least during the hours established by the court for courthouse access, subject to unexpected technical failures or normal system maintenance announced in advance.
- b. Upon receiving a request for access to information the court will respond within a reasonable time regarding the availability of the information and provide the information within a reasonable time.

## **E. Fees**

### **Section 6.00 – Fees for Access**

The court may charge a fee for access to court records in electronic form, for remote access, or for bulk distribution or compiled information. To the extent that public access to information is provided exclusively through a vendor, the court will ensure that any fee imposed by the vendor for the cost of providing access is reasonable.

## **F. Obligation of Vendors**

### **Section 7.00 – Obligations Of Vendors Providing Information Technology Support To A Court To Maintain Court Records**

- a. If the court contracts with a vendor to provide information technology support to gather, store, or make accessible court records, the contract will require the vendor to comply with the intent and provisions of this access policy. For purposes of this section, “vendor” includes a state, county or local governmental agency that provides information technology services to a court.
- b. By contract the vendor will be required to comply with the requirement of sections 8.10, 8.20, 8.30, and 8.40 to educate litigants, the public, and its employees and subcontractors about the provisions of the access policy.
- c. By contract the vendor will be required to notify the court of any requests for compiled information or bulk distribution of information, including the vendor’s requests for such information for its own use.

## **G. Obligation of the Court to Inform and Educate**

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

#### **Section 8.10 – Dissemination of Information to Litigants About Access To Information In Court Records**

The court will make information available to litigants and the public that information in the court record about them is accessible to the public, including remotely and how to request to restrict the manner of access or to prohibit public access.

#### **Section 8.20 – Dissemination of Information To The Public About Accessing Court Records**

The Court will develop and make information available to the public about how to obtain access to court records pursuant to these CCJ/COSCA Guidelines.

### **Section 8.30 – Education of Judges and Court Personnel About An Access Policy**

The Court and clerk of court will educate and train their personnel to comply with an access policy so that Court and clerk of court offices respond to requests for access to information in the court record in a manner consistent with this policy.

The Presiding Judge shall insure that all judges are informed about the access policy.

### **Section 8.40 – Education About Process To Change Inaccurate Information in A Court Record**

The Court will have a policy and will inform the public of the policy by which the court will correct inaccurate information in a court record.