STATE OF MAINE
SUPREME JUDICIAL COURT

ADMINISTRATIVE ORDER JB-05-20 (A. 12-13)

PUBLIC INFORMATION AND CONFIDENTIALITY

Effective: October 9, 2013

This order amends JB-05-20 (A. 9-11), signed and effective on September 19, 2011.

I. SCOPE AND PURPOSE

This order governs the release of public information and the protection of confidential and other sensitive information within the Judicial Branch. It is the policy of the Judicial Branch to provide meaningful access to court dockets, case files, and related information to the public; to appropriately and consistently respond to nonroutine requests by the public for information; to protect information which is designated as confidential from inadvertent or inappropriate disclosure and to assure that sensitive information is only communicated to appropriate recipients outside of the Judicial Branch. This order applies to all case types, including civil and criminal cases.

II. DEFINITIONS

As used in this order, the following terms have the following meanings:

A. "Aggregate information" means a request for information that is not maintained in the requested form and that would have to be assembled or derived from other records.

B. "AOC" means the Administrative Office of the Courts.

C. "At and by courts" means information or records of public judicial proceedings that are maintained at a clerk's office or transferred to the Records Center or other records storage under the control of a clerk's office.

D. "Clerk's office" means the office of the Clerk of the Law Court or of any Superior or District Court.

E. "Criminal history record information" has the same meaning as is defined by Title 16, section 611, subsection 3, of the Maine Revised Statutes.

F. "Criminal justice agency" has the same meaning as is defined by Title 16, section 611, subsection 4, of the Maine Revised Statutes and includes, but is not limited to, police agencies, border patrol, sheriff's offices, probation and parole, jails, Department of Attorney General, and District Attorneys' offices.

G. "Confidential information" means:

1. the information or a portion of the information is made confidential by statute, policy, Administrative Order[1] or rule; or

2. the information or a portion of the information was impounded or sealed by a judge or is the subject of a pending motion or other request for impoundment or sealing;[2] or

3. the information is contained in judge's, magistrate's, or law clerk's notes, judge's, magistrate's, or law clerk's drafts, communications between judges, magistrates, or clerks regarding the decision of cases, or other judicial working papers; or

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[1] For example, Access to Social Security Numbers and Qualified Domestic Relations Orders ("Quadros"), Me. Admin. Order JB-09-2 (effective April 1, 2009), restricts access to Social Security Numbers and QUADROS.

[2] In some limited circumstances, all information about a case may be impounded, specific information within a case, such as the identity of a party, or the fact that an impoundment motion was made and granted may be impounded or sealed. In these circumstances, judges need to make the scope of the impoundment order clear to the clerk's office. The clerk's office and OIT staff must take appropriate steps to ensure that the impounded information is not reflected in publicly available materials such as dockets, indices, and displays at public access terminals.

4. the information is contained in or relates to a pending request for an outstanding search warrant, arrest warrant, or other document that contains confidential law enforcement information;[3] or

5. psychiatric and child custody reports which shall be impounded upon their receipt by the clerks subject to the following rules:

   (a) The clerks shall notify counsel of record or self-represented parties of the receipt of any such reports and permit counsel or self-represented parties to inspect such reports at the clerks' offices; in criminal cases the clerks shall also make available to counsel or self-represented parties copies of the same if they have not otherwise received copies; and

   (b) Such reports may in whole or in part be released from impoundment by specific written authorization of the court under such conditions as the court may impose; and

   (c) Such reports may be used in evidence in the proceeding in connection with which it was obtained; or

6. reports of cellphone or other electronic device location information filed with the Kennebec County Consolidated Clerk's Office pursuant to the provisions of 16 M.R.S. § 650 unless otherwise ordered released by the court.

H. "Judge" means a Justice of the Supreme Judicial Court or Superior Court, a Judge of the District Court, or the Chief Justice or Judge of those courts.

I. "Nonconviction data" has the same meaning as defined by Title 16, section 611, subsection 9, of the Maine Revised Statutes.

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[3] This provision does not prohibit the release of executed or unexecuted warrants for failure to appear or failure to pay fines, fees, or restitution.

J. "Noncriminal justice agency" means a governmental entity or agency which is not engaged in the administration of the criminal justice system.

K. "Nonroutine request" means a request for information that is not contained in case files, dockets, indices, lists, or schedules, or a request that seeks confidential, impounded, or sealed information.

L. "OIT" means the Office of Information Technology within the Administrative Office of the Courts.

M. "Public information" means any information that is not confidential information.

N. "Routine request" means a request for information that is contained in case files, dockets, indices, lists, or schedules, or a request that does not seek confidential, impounded, or sealed information.

O. "SBI" means State Bureau of Identification.

P. "Scheduling information" means information listing or pertaining to the scheduling of a judicial activity related to a pending case.

Q. "Standing request" means a request for information or record or a type of information or record that is intended to be a continuing request, with supplementary responses as new information becomes available.

III. RECORDS MAINTAINED AT OR BY COURTS

A. In Person or Mail Requests

1. Information and records relating to cases that are maintained in case files, dockets, indices, lists, or schedules by and at the District, Superior, or Supreme Judicial Courts are generally public and access will be provided to a person who requests to inspect them or have copies made by clerk's office staff unless the information or a portion of it is confidential as provided in Part II, ¶ G.

Clerks will endeavor to provide the information requested using the following timetable:

1-5 names within 5 working days
6-10 names within 30 working days
11-15 names within 45 working days
16-20 names within 60 working days
21+ names to be determined by the Clerk

Persons making requests for information for multiple names or cases for which both case name and case docket are not provided will be charged a research fee as provided in the Judicial Branch fee schedule.

2. Records that are confidential or that contain information designated as confidential, materials that have been impounded or sealed by a judge, materials that are subject to a pending motion or other request for impoundment or sealing; or judge's, magistrate's, and law clerk's notes and workpapers will be placed in a separate sealed envelope in the file, and the file or record must have a label conspicuously affixed to it indicating that the file or record contains confidential materials.[4] If a request for access is made concerning the nonconfidential portion of a record, the clerk will remove the confidential materials before making the record available for inspection. Requests for inspection of confidential materials contained within a case file must be made by motion with notice to all parties of record as provided in the Maine Rules of Civil Procedure or Maine Rules of Criminal Procedure.

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[4] Clerks are encouraged to use a separate filing system for confidential materials, in which the materials are separately kept from the case files, where space and operational considerations permit such a system.

Judges may also maintain a confidential filing system for notes and workpapers, or may destroy them at the conclusion of the case.

3. Individual criminal history records containing both conviction and nonconviction data maintained by and at a clerk's office are open to public inspection and copying, and will be supplied if the records or indexes are not located in a publicly accessible place.

4. If there is any doubt whether information is confidential information, Judicial Branch personnel should proceed cautiously in responding to the information request and provide access to information only when it is clearly appropriate to do so, or after consultation with a judge or the Director of the Office of Clerks of Court. Nonroutine requests should be referred to the appropriate administrator.

5. Requests for information that would require clerk's office staff to perform research or provide aggregate information and standing requests must be declined, unless the Chief Judge or Justice has preauthorized a response, and the requestor should be informed that the requestor may conduct the research by examining the dockets themselves, or by using the public access terminal where one is available.

6. Admitted and proffered exhibits, including both documents and physical items, are part of the public record of a case, and while in the custody of the clerk's office, are available for inspection and copying unless they are otherwise confidential. Exhibits submitted to the clerk, but never proffered or admitted, will be made available to the submitting party, but are subject to inspection or copying while in the custody of the clerk's office. Public copying or inspection may be limited by the terms of a protective order or by a judicial order or administrative order governing the handling of contraband or dangerous materials.

7. Juror questionnaires, the records and information used in connection with the juror selection process, and the names drawn are confidential and may not be disclosed to any person, except by judicial order. During the period of service of jurors and prospective jurors, the names of the

members of the jury pool are confidential and may not be disclosed, except to the attorneys and their agents and investigators and the pro se parties.

Once the period of juror service has expired, a person may file a written request for disclosure of the names of the jurors and an affidavit stating the basis for the request. The court may disclose the names of the jurors only if the court determines that the disclosure is in the interests of justice.

B. Telephone Requests for Information

1. Due to the risks of misunderstanding, misinterpretation, or incorrect quotation of oral information, it is the policy of the Judicial Branch to carefully limit the release of information by telephone. Clerks' office staff may respond to telephone requests for information **only** in the following circumstances:

   (a) Information about the status of a particular case may be given to parties, counsel, or other agencies with an interest[5] in that matter, and

   (b) Scheduling information on nonconfidential cases may be released to any caller.

   (c) Information may be given to criminal justice agencies as follows:

      (i) Police emergencies or other urgent legitimate needs. If information is needed to respond to an emergency or for another situation in which an immediate response is needed, such as a patrol stop, border check, suspect in custody, check of imposed sentencing conditions, including conditions of probation, or a check of

[5] If a clerk has reason to doubt that the caller is a party or party's counsel, the clerk should call back at the telephone number kept on file for that party or counsel. Agencies with an interest in a matter include, for example, Probation and Parole, the Department of Corrections, or other law enforcement agencies.

pending charges against a person under investigation, court personnel may provide the requested information by telephone, with a caution that it is partial information and that it only reflects the information maintained at that court.

(ii) Other criminal justice agency requests. Court personnel should evaluate the nature of the requested information and the need for a quick response against the other workload considerations in the court. The general rule is not to respond by phone, but to refer the requestor to SBI or to tell the requestor to get the information when next in court. However, for one-time requests when common sense dictates it, court personnel may provide the information over the telephone.

(d) Information may be given to noncriminal justice governmental agencies (i.e., Health and Human Services, Department of Environmental Protection, military recruiters, etc.) in limited circumstances. These requests, in general, should not be responded to over the phone and should be responded to in the same manner as other telephone requests. However, all situations cannot be anticipated and clerks will sometimes be presented with an urgent need for information by a noncriminal justice agency (i.e., a request from the Department of Health and Human Services about a criminal record when they are in the process of preparing an emergency child protective matter). In those limited situations, clerks have the discretion to respond by telephone, with the caution that the provided information is partial and reflects only the information maintained at that court.

2. Telephone requests for comprehensive criminal history record information must be referred to the State Bureau of Investigation pursuant to Title 16, section 616, of the Maine Revised Statutes. Telephone requests for traffic record information must be referred to the Bureau of Motor Vehicles, which maintains records of motor vehicle violations pursuant to Title 29-A, section 2607, of the Maine Revised Statutes. Telephone requests for Fish and Wildlife offense information should be referred to the Maine Warden's Service, which maintains records of violations of related portions of Title 12 of the Maine Revised Statutes. Telephone requests for Marine Resources offense information should be referred to the Marine Patrol, which maintains records of violations of related portions of Title 12 of the Maine Revised Statutes.

3. In order to eliminate the dangers of misunderstanding or inaccuracy, telephone requestors of other information about a specific case should be told to make a written inquiry or to visit the court to examine the records themselves.

4. Telephone requests for information that would require clerk's office staff to perform research or provide aggregate information and standing requests for categories of information must be declined, and the requestor informed that the requestor may conduct the research at the clerk's office.

C. Transcripts or Recordings of Court Hearings

Requests for transcripts or recordings of court hearings are governed by Administrative Order JB-05-15.

IV. RECORDS MAINTAINED AT OR BY AOC OR OIT

A. Routine Information Requests

Staff members may respond to routine requests for nonconfidential information if the information can be provided

without a material expenditure of staff time to compile or aggregate the requested information and if the request does not involve personnel information or other sensitive or controversial issues. The staff member shall notify the State Court Administrator of the nature of the request and the type of information provided.

B. Nonroutine Information Requests

If,
(1) a formal request for information is made, or
(2) responding to a request will require a material expenditure of staff time, or
(3) a request involves confidential information or information that the receiving staff member considers potentially sensitive or controversial in light of the identity of the requestor, the content of the information, or the nature of the request,

the staff member shall consult with the appropriate Administrative Team member.

C. Routine Personnel Information Requests

Personnel information is not generally available to the public. An employee may request information from that employee's personnel file or employment records by contacting the Director of Human Resources. An employee may also authorize a third party to verify employment or to obtain specified information from the employee's file or records through the Director of Human Resources. A union may request information about an employee or group of employees, to the extent authorized by statute or an applicable collective bargaining agreement, from the Director of Human Resources. The Director shall provide the requested information unless the request is not properly authorized, or violates the affected employee's rights to privacy, and in those circumstances the Director shall refer the request as provided in paragraph B.

Requests for information pertaining to an employee or group of employees, including performance or statistical information, from

requestors other than the employee or an authorized union are nonroutine requests subject to referral under paragraph B.

D. Fees

Fees will be charged for the provision of documents or information in accordance with applicable statutes, court rules, administrative orders, and fee schedules, where they apply. If there is no applicable statute, court rule, policy, or fee schedule which applies to a specific document or record, inspection of the document shall be provided at no charge and copies of documents shall be made and provided at the rate then in effect as set by the Fee Schedule.

Requestors may use cameras to make copies of court records as provided in Administrative Order JB-05-15, *Cameras And Audio Recording In The Courts*. Copies made in accordance with JB-05-15 are not subject to fees.

Requests for electronic data, or for extracts, abstracts, or compilations of documents or records which involve a material expenditure of effort by Judicial Branch personnel require a special determination and will be responded to after consideration of:

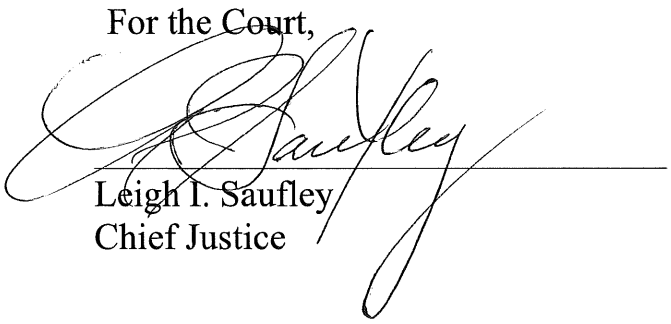
(1) the availability of personnel to fulfill the request,
(2) the response time, if any was requested, and
(3) the other workload of the affected staff.

If such a request is granted, the requestor shall be assessed a fee which is sufficient to cover the Judicial Branch's full actual costs, including staff time and associated overhead, for producing the requested information. The response and fee shall be determined by the appropriate member of the Administrative Team in consultation with the State Court Administrator.

V. DISSEMINATION OF OTHER INFORMATION

Pursuant to the Judicial Branch Code of Conduct, Judicial Branch employees are limited from disclosing court-related information other than in the performance of an official duty.

For the Court,



Leigh I. Saufley
Chief Justice

Promulgation Date: December 3, 2013

Public Information and Confidentiality
AO JB-05-20 (A. 12-13), dated December 3, 2013, effective October 9, 2013
Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court
The amendment clarifies that reports of cellphone or other electronic device location information filed with the Kennebec County Consolidated Clerk's Office pursuant to the provisions of 16 M.R.S. § 650(4) is confidential information unless otherwise ordered released by the court.

Historical Derivation of JB-05-20:

Public Information and Confidentiality
AO JB-05-20 (A. 9-11), dated and effective September 19, 2011
Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

Public Information and Confidentiality
AO JB-05-20 (A. 5-09), dated May 1, 2009, effective May 1, 2009
Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

Public Information And Confidentiality
AO JB-05-20 (A. 2-09), dated February 27, 2009, effective February 27, 2009
Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

Public Information And Confidentiality
AO JB-05-20 (A. 1-06), dated December 19, 2005, effective January 1, 2006
Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court
Public Information And Confidentiality
AO JB-05-20, dated June 29, 2005, effective August 1, 2005
Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

Public Information And Confidentiality
AO JB-03-04, dated May 13, 2003
Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court; Nancy Mills, Chief Justice, Maine Superior Court; and Vendean V. Vafiades, Chief Judge, Maine District Court which replaced SJC-138, dated May 28, 1996; and SJC-138, dated June 11, 1996

Amended Order Regarding Psychiatric And Child Custody Reports
AO dated March 31, 1980
Signed by: Vincent L. McKusick, Chief Justice; and Sidney W. Wernick, Edward S. Godfrey, David A. Nichols, Harry P. Glassman, David G. Roberts, Associate Justices, Maine Supreme Judicial Court