

REVISED
ADMINISTRATIVE DIRECTIVE NO. 162

This 27th day of June, 2007,

IT APPEARS THAT:

- (1) The Attorney General's office released an opinion reconfirming that it is the Attorney General's view that the Delaware Freedom of Information Act, 29 *Del.C.* Chapter 100, does not apply to the Judicial Branch, a separate, coequal Branch under our State Constitution. *Att'y Gen Op. 07-1002* (February 1, 2007).
- (2) The Judicial Branch supports the presumption of open public access to court records, including court administrative records, to promote government accountability and greater public trust and confidence in the Judiciary.
- (3) However, the Judicial Branch recognizes that, in some instances, there are reasonable bases for restricting access to certain court records. The interests of the public in disclosure of information must be weighed against other important interests, such as the personal safety of those affected; the protection of personal privacy; security concerns; conformity with state and federal statutes constitutionally applicable to the Judicial Branch or common law requirements; protection of sealed records or confidentiality agreements between parties, drafts and work product related to court administration, and proprietary information; as well as the other interests necessary to ensure the integrity and independent operation of the courts. In addition, there are instances where information cannot be made available because the provision of that information is unduly burdensome to the court, based upon limited resources and related concerns. The above-noted list of interests which support reasonable limitation on access is not intended to be all inclusive.
- (4) There is a benefit to the public to clarify the Delaware Judicial Branch's approach with regard to public access of court administrative records, as established through individual courts' policies.

NOW THEREFORE, IT IS DIRECTED, with the unanimous approval of the members of the Supreme Court, pursuant to Del. Const. Art. IV, § 13(1), that:

- (1) If they have not already done so, each court will adopt formal public access policies or procedures covering the release of court administrative records. A template setting forth a policy related to the

release of administrative records is attached for each court's consideration. The template provides a consistent format which it is believed balances, to the extent possible, the fundamental goal of openness of court administrative records with the reasonable limited circumstances necessitating the restriction of that access.

BY THE COURT:

Chief Justice Myron T. Steele

c: The Honorable Ruth Ann Minner
The Honorable Randy J. Holland
The Honorable Carolyn Berger
The Honorable Jack B. Jacobs
The Honorable Henry duPont Ridgely
Members of the Judicial Conference
The Honorable Joseph R. Biden, III

The Honorable Lawrence Sullivan
State Court Administrator
Court Administrators
Clerk of the Supreme Court
Counsel to the Governor
Chair Senate Judiciary Committee
Chair House Judiciary Committee

TEMPLATE
POLICY ON PUBLIC ACCESS TO
JUDICIAL BRANCH ADMINISTRATIVE RECORDS

I. SCOPE. This policy applies only to public access to administrative records maintained by _____.

II. DEFINITIONS

- A. *Administrative Record.* “Administrative record” means any document, information, data, or other item created, collected, received and maintained by the Court pertaining to the administration of the judicial branch and not associated with any case information.
- B. *Case Record.* “Case record” means any document, information, data, or other item created, collected, received and maintained by the court system in connection with a particular case, as well as compiled information that is derived from the selection, aggregation or reformulation of information from multiple cases.
- C. *Custodian.* Custodian means the official charged with the responsibility of the care, storage, and supervision of the records. All references to “custodian” include either the custodian or the custodian’s designee.

III. GENERAL ACCESS TO ADMINISTRATIVE RECORDS

Administrative records are open to the public except the following:

A. *Personnel, applicant, unpaid volunteer, and independent contractor records.*

- 1. Personnel records and records of employment investigations and hearings except for:
 - a). Name of individual
 - b). Dates of employment
 - c). Name of office to which the individual has been appointed
 - d). Position classification, pay grade, and gross salary
 - e). Basis for and amount of any added remuneration; and
 - f). Travel expenses as provided for in Appendix A of this policy.

g). Other expense reimbursements

2. Records on individuals collected because the individual is or was an applicant for employment.
3. Information about unpaid volunteers other than the names of such volunteers.
4. Information about independent contractors other than name, type of work performed and amount paid.

B. *Court interpreter information.* Records relating to individual court interpreters other than the name of interpreter, type of work performed, and the amount billed.

C. *Attorney billing records.* Billing records of any court appointed attorney before the case is final unless otherwise ordered by a judge.

D. *Testing records.* Test questions, scoring keys, other examination data, including testing results (unless the person tested has consented to the release) used in administering an examination given for employment or for inclusion on any roster.

E. *Proprietary and licensed materials.* Any materials, including, but not limited to, computer programs and related records and proposals from and contracts with independent contractors, shall only be disclosed in accordance with the terms and conditions of the agreements or licenses.

F. *Competitive bidding records.* Sealed bids, including the number of bids received prior to the opening of the bids at the time specified in the judiciary's bid request.

G. *Trade secrets.* Trade secrets and commercial or financial information obtained from a person that is of a privileged or confidential nature.

H. *Judicial case assignments.* The name of the judge to whom any matter is to be assigned is not subject to disclosure until after the assignment is made.

I. *Informal/preliminary correspondence, internal deliberations, notes, memoranda, drafts or work product.* The following are not subject to disclosure:

1. Any correspondence transmitted by whatever means, including electronic that is not a formal declaration of policy or procedures, or is not a formal record of a transaction or a receipt.
2. Internal deliberations on or records relating to cases before a court or judicial administration matters. Any record relating to internal deliberations.
3. Notes, outlines, and similar preliminary materials
4. Preliminary and draft reports, documents, records, evaluations, investigations, audits, or compliance reviews, including materials prepared by a consultant.
5. The work product of any attorney, law clerk or law intern employed by or representing the judiciary which is produced in the regular course of business or representation of the judiciary.

J. *Records relating to litigation.* Records pertaining to pending or potential litigation which are not filed with a court as part of a case shall not be disclosed.

K. *Security records.* Records that would be likely to substantially jeopardize or diminish the security of information, possessions, individuals, or property in the possession or custody of the courts against theft, tampering, improper use, illegal disclosure, trespass or physical injury such as security plans or codes or individual records of telephone or cell phone calls.

L. *Law library information.* Any record in a law library that links a patron's name with the materials requested or borrowed.

M. *Calendar information.* Any record that reflects an individual's appointments or engagements, other than case assignments, that are in the future or that constitute a clearly unwarranted invasion of privacy.

N. *Records relating to deadly weapons.* Records which disclose the identity or address of any person holding a permit to carry a concealed deadly weapon are exempt from disclosure, except that records relating to such permits shall be available to all bona fide law enforcement officers. [*Superior Court only.*]

O. *Juror Records.* Personal information regarding jurors, such as name, juror address, and phone number are not subject to disclosures unless authorized by a judge.

P. *Records otherwise made inaccessible.*

1. Administrative records that are made inaccessible to the public pursuant to state or federal statutes, common law, or rule or directive promulgated by the Supreme Court.
2. Information presenting a risk to personal privacy, or the fair, impartial and orderly administration of justice as determined by the Chief Judge.

III. PROCEDURES FOR REQUESTING ACCESS

A. *In General.*

1. *To whom the request is made.* A request to inspect or obtain copies of records that are open to the public shall be made to the _____ in writing addressed as follows:

[address noted]

OR

FAX: (302) _____

All requests must include sufficient detail to reasonably identify what information is being sought and to allow the information to be accessed. A form for records requests is attached to this policy as Appendix B.

2. *Response.* The custodian of the records shall respond to a request for examination of public records orally or in writing within 10 working days.

- a. If the custodian determines the records can be made available for inspection or can be copied without unreasonable disruption to the operations of the Court, the custodian shall notify the requestor within 10 working days and shall provide an estimate of the administrative and/or computer costs if they will exceed \$100. If the custodian determines that there will be a

delay of more than 10 working days from the date of receipt of the request before the custodian can determine whether access to the records is permissible, the custodian shall notify the requestor of the reasons for the delay and when a determination will be made. If the custodian determines that access to the records is permissible, once the requestor has agreed to any cost estimate and provided any required deposit for costs, the records shall be available for inspection or copying or the information otherwise produced as soon as practicable.

- b. If access to the records is not permitted, the response shall indicate the basis for the denial of the inspection request and the statute, rule, or policy that is the basis of the denial.
- c. If the records do not exist, the response shall so indicate.
- d. If the request does not provide sufficient information to locate the records, the request shall be returned, and the requestor notified.
- e. If the custodian determines that compliance with the request would create an undue burden on court operations, or if the number of records requested is so great that inspection or reproduction would create an unreasonable disruption to the work of the court, the custodian may require that the request be limited, or the custodian may limit the request.
- f. If the person making the request does not inspect or obtain the copies of the records during the time period permitted by the custodian, the request shall be deemed withdrawn, but may be renewed by re-submitting the request.

B. *Inspection and photocopying*

- 1. *Access to original records.* Upon request, a person shall be allowed to inspect or to obtain copies of original versions of records that are open to the public in the location where such records are kept during regular working hours. If access to the

original records would result in disclosure of information which is not permitted, jeopardizes the security of the records, or is otherwise impractical, copies, edited copies, reasonable facsimiles or other appropriate formats may be produced for inspection. Unless expressly authorized by the custodian or judicial order, records shall not be removed from the location where they are normally kept.

2. *Costs.* The person requesting the information shall bear the cost of complying with the request as determined by the custodian. Reasonable fees may be imposed for providing public access to administrative records pursuant to this policy. The custodian may charge a copying charge of \$.25 per page and an administrative charge equal to the cost of the staff time in fulfilling the request based upon the salary and benefits of the lowest paid person capable of fulfilling the request. If electronic retrieval of documents is required, the custodian may, in addition to staff time, assess a charge for computer time based upon the reasonable direct costs of computer processing time. If the custodian believes that the costs may exceed \$100, the custodian shall prepare an estimate of the costs and notify the requestor to determine whether the requestor wishes to proceed. The final fees charged may not exceed the estimated cost by more than 30%. If the requestor wishes to proceed, the custodian may require a deposit of one-half of the estimated costs. If the requestor has an unpaid balance from a previous request, the custodian may require payment of the unpaid balance before fulfilling the new request. The custodian may reduce or waive the charge if doing so is in the public interest because providing the copy of the record primarily benefits the general public or the cost of processing collection of the charge will exceed the amount of the charge.

C. *Appeal of denial of access to records.*

Appeals of the denial of access to information shall be made to the State Court Administrator in writing within 10 business days of the custodian's denial of access to the records. The State Court Administrator's decision may be appealed to the Delaware Supreme Court within 10 business days from the date of that decision.

APPENDIX A

TRAVEL EXPENSES

In the interest of extending the openness of the Delaware courts whenever possible, without unduly impacting the administrative operations of the Courts, information available from court and Administrative Office of the Courts records related to expenses for travel of judges, other judicial officers, or court staff will be provided, pursuant to any requests under this policy, by the State Court Administrator, in the following format:

- Name of the traveler
- Purpose or description of a trip, which includes all work-related out-of-state travel and work-related non-routine in-state travel (i.e., in-state continuing legal education programs) funded by state or federal funding, or third parties. Third parties may include, for example, the American Bar Association, the National Center for State Courts, the State Justice Institute (judicial scholarships) and various law schools and foundations.
- Date(s) of the trip, including either specific dates or general dates (i.e., fall) if a trip occurs on a regular basis such that disclosure could create a security risk.
- City and state of the trip destination, unless disclosing the location of a trip, occurring on a regular basis could create a security risk.
- It will be noted whether each trip has been funded through the court's state or federal grant funding, or through a third party.
- If funded by state or federal funds, total costs for each trip, with the total travel costs, including transportation, lodging, meals and trip incidentals, and registration costs noted separately except that costs for attending Judicial Conference educational activities need not be broken out separately for each judge, unless reimbursements are obtained separately from their individual court. The total cost for Judicial Conference events covering lodging, meals and program costs will be given instead of the individual breakdowns by judge.
- If funded by a third party, the following information will be provided from available court and Administrative Office of the Courts records: 1) the name of the third party which funded the trip, and 2) whether the trip included the traveler's participation in an event, such as making a speech, presenting a paper, participating in a panel discussion, etc., which served to promote the interest of the State of Delaware and the Delaware Judiciary. If State funds are initially expended and then reimbursed by the third party, information about the reimbursement to the State will be provided.

APPENDIX B

_____ **COURT**
APPLICATION FOR ACCESS TO
ADMINISTRATIVE RECORDS

[Requests for access to case records or administrative records of the courts should be submitted to the applicable court(s)]

NOTICE TO APPLICANT:

This application will be processed and evaluated in accordance with the _____ Court's policy for public access to administrative records. The applicant agrees to indemnify and hold harmless the court and its officers and employees from any claim for damages that may arise from the applicant's use or distribution of the information provided pursuant to this application

The applicant shall be responsible for the costs incurred in responding to this request. An estimate of costs will be provided if the administrative or computer costs will exceed \$100. A deposit for costs may be required.

APPLICANT DATA: (Please print)

Name: _____

Daytime telephone: _____

Address: _____

City: _____ **State:** _____ **Zip** _____

E-mail address: _____

REQUEST (Describe the records requested in as much detail as possible and attach additional pages as required):

Applicant Signature: _____

Date: _____