

APPENDIX I-7A

POLICY DIRECTIVE 14-249

TO: ALL JUSTICES OF THE PEACE
ALL NON-JUDICIAL COURT EMPLOYEES

FROM: ALAN G. DAVIS
CHIEF MAGISTRATE

DATE: OCTOBER 21, 2014

RE: PUBLIC ACCESS TO ADMINISTRATIVE RECORDS

Scope:

This Policy Directive provides guidance regarding which administrative records are available to the public for inspection and/or copying.

Justice of the Peace Court Policy:

It is the Policy of the Justice of the Peace Court to support the presumption of open public access to court records, including court administrative records, in order to promote government accountability and greater public trust and confidence in the Judiciary.¹ This is counterbalanced by a policy of not releasing information that is confidential or prohibited from release by statute or for good cause.

Policy Directives/Legal Memoranda Affected:

This Policy Directive supersedes the following, which are hereby rescinded as of this writing:

Policy Directive 80-021 (Revised) (June 23, 1999)
Policy Directive 80-021 (Supplement) (June 23, 1999)
Policy Directive 80-021 (3rd Supplement) (November 14, 2000)
Policy Directive 80-021 (4th Supplement) (November 27, 2000)
Policy Directive 80-021 (5th Supplement) (January 25, 2006)

¹ From Delaware Supreme Court Administrative Directive No. 162, page 1.

Effective Date:

This policy shall take effect immediately upon issuance and shall continue until further notice.

Discussion:

On June 27, 2007, the Delaware Supreme Court issued a revised Administrative Directive No. 162, which directed each court to adopt a formal public access policy or procedure governing the release of court administrative records. This policy balances the presumption of open public access to court administrative records with the restriction of access for reasonable purposes. This Policy Directive is broken down into three parts: access to administrative records, travel expenses and procedures for requesting access. Additionally, the Application for Access to Court Records is attached for reference. For purposes of this Policy Directive, the following definitions apply:

- (a) Administrative Record: 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. This includes information about travel.
- (b) Custodian: the official charged with the responsibility of the care, storage, and supervision of the records. All references to the custodian include either the custodian or the custodian's designee. For administrative records, the custodian is the Court Administrator, but s/he may assign designees to handle specific inquiries.

I. ACCESS TO ADMINISTRATIVE RECORDS

Generally, all administrative records are open to the public except the following:

A. Personnel records. Personnel records, applications for employment and records of employment investigations and hearings shall not be disclosed. Information contained within personnel records, applications for employment and records of employment investigations and hearings shall not be disclosed, except for:

- (1) Name of individual;
- (2) Dates of employment;
- (3) Name, location and phone number of court and/or office to which the individual has been appointed;
- (4) Position classification, pay grade, pay range, and gross salary;
- (5) Basis for and amount of any added remuneration;
- (6) Travel expenses as explained in section III;
- (7) Records on individuals collected because the individual is or was an applicant for employment;
- (8) Information about unpaid volunteers other than the names of such volunteers; and
- (9) Information about independent contractors other than name, type of work performed and amount paid.

*This section does not apply to inter-agency requests for personnel information or transfer of a personnel file from one state agency to another.

B. Proprietary and licensed materials. Computer programs and related records, which are subject to proprietary rights or licensing agreements (including technical users manuals) shall only be disclosed in accordance with the terms and conditions of the agreements or licenses.

C. Judicial case assignments. If the Chief Magistrate or a Deputy Chief Magistrate makes a specific case assignment, the name of the Judge to whom a matter is assigned shall not be disclosed until after the assignment is made.

D. 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 shall not be disclosed. Requests for access to security records shall be evaluated on a case-by-case basis.

E. CCTV Surveillance Footage. Individuals may submit a written request to view surveillance footage from Justice of the Peace Court locations. The Court shall review the request and the footage to determine if any captured images are consistent with the request. This footage would then be available for viewing at the Court or released pursuant to a subpoena. The location, numbers and focus of cameras shall not be disclosed. Footage shall be retained pursuant to the Justice of the Peace Court retention policy unless otherwise requested by an individual in writing.

F. Trade secrets. Trade secrets and commercial or financial information obtained from a person that is of a privileged or confidential nature shall not be disclosed.

G. Competitive bidding records. Sealed bids, including the number of bids received, shall not be disclosed prior to the opening of the bids at the time specified in the judiciary's or OMB's bid request.

H. Attorney work product. The work product of any attorney or law clerk employed by or representing the judiciary which is produced in the regular course of business or representation of the judiciary shall not be disclosed.

I. Preliminary and draft reports. Preliminary or draft reports, documents, records, evaluations, investigations, audits, or compliance reviews shall not be disclosed unless authorized, in writing, by the court.

J. Records controlled by statute or common law. Administrative records that are made inaccessible to the public pursuant to state statutes or common law shall not be disclosed.

K. Court interpreter information. Records relating to individual court interpreters other than the name of the interpreter, type of work performed and amount billed shall not be disclosed.

L. Attorney billing records. Billing records of any court appointed attorney shall not be disclosed before the case is final unless otherwise ordered by a judge.

M. Testing records. Test questions, scoring keys and other examination data, including testing results (unless the person has consented to the release) used in administering an examination given for employment or for inclusion on any roster shall not be disclosed.

N. Internal documents. Informal/preliminary correspondence, internal deliberations, notes, memoranda, drafts or work product shall not be disclosed. This includes the following:

- i. Any correspondence transmitted by whatever means, including electronic.
- ii. Internal deliberations on or records relating to cases before a court or judicial administration matters. Any record relating to internal deliberations.
- iii. Notes, outlines and similar preliminary materials.

- iv. Preliminary and draft reports, documents, records, evaluations, investigations, audits, or compliance reviews, including materials prepared by a consultant.
- v. 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.

O. 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.

P. Law library records. Any record in a law library that links a patron's name with the materials requested or borrowed shall not be disclosed.

Q. 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 shall not be disclosed.

R. Juror Records. Personal information regarding jurors, such as name, juror address, and phone number shall not be disclosed unless authorized by a judge.

S. Administration of justice. Information presenting a risk to personal privacy, or the fair, impartial and orderly administration of justice as determined by the Chief Magistrate shall not be disclosed.

II. 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 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.

Such records may be held until after the travel is completed if release prior to or during a trip would create a security risk.

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 may be made in any way deemed appropriate by the court. This may include requests made orally, in writing, by email or by fax. All requests must include sufficient detail to reasonably identify what information is being sought and to allow the information to be accessed. An Application for Access to Records, attached herein for reference, may be used by the requesting party to ensure that all necessary information is provided.

2. Where the request is made. A request for access to administrative records must be made to the Justice of the Peace Court Administrative Office.

3. Costs related to requests for court records. The person requesting the information shall bear the cost of complying with the request for information as determined by the Justice of the Peace Court administrative office.

Costs for copying of administrative records shall be pursuant to the master fee schedule set forth by the Justice of the Peace Court. If an individual is unable to pay for the cost of copying administrative records, the person requesting the information may file a request to proceed in forma pauperis.

Courts may accept cash payment for copies. Individuals wishing to establish an account to utilize an alternate form of payment may contact the Justice of the Peace Court Controller at (302) 323-4530.

4. Response. The custodian of the records (Justice of the Peace Court Administrator) shall respond to a request for examination of public records orally or in writing as promptly as practicable. In determining whether to grant the request and for the purposes of estimating the time period necessary for providing the information, the custodian will consider whether information is normally generated as requested; the difficulty of making the information available that is not normally generated as requested; the extent to which information must be compiled to satisfy the request; the amount of equipment, materials, staff time and other resources required to satisfy the request and whether preparation or release of information would disrupt or adversely impact internal operations or functions of the court.

5. Explanation for delay or denial. If a request cannot be granted promptly, or at all, the custodian shall inform the person requesting the information orally or in writing of the nature of any problem delaying or preventing access and the specific statute, federal law, or court or administrative policy or rule that is the basis of the denial.

6. Referral of certain cases. If the custodian is uncertain as to the status of the record, the custodian may ask for a determination on the request from the Chief Magistrate.

7. **Appeal from denial of access.** If the custodian denies a request to inspect or copy records, the denial may be appealed in writing to the Chief Magistrate, who will consider the appeal.

B. Inspection and Photocopying.

1. **Access to original records.** Upon request, using the process outlined above, 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. **Redaction.** Prior to releasing an administrative record, staff shall redact the record to ensure that no personally identifying information is visible. This includes addresses, telephone numbers and social security numbers.

Redaction shall be done with black magic marker or other method authorized by the Court. The document shall then be photocopied and colored until there is no trace of redacted information visible. Once redaction is complete, a second staff member also review the document to ensure that nothing was missed.

Conclusion:

It is the Policy of the Justice of the Peace Court to support the presumption of open public access to administrative records. This policy balances the presumption of open public access to administrative records with the restriction of access for reasonable purposes and provides guidance in the following areas: access to administrative records, travel expenses, and procedures for requesting access.

cc: Honorable Leo E. Strine, Jr
Honorable Andre Bouchard
Honorable James T. Vaughn, Jr.
Honorable Alex J. Smalls
Honorable Chandlee Johnson Kuhn
Patricia Griffin, State Court Administrator
All Justice of the Peace Courts
Marianne Kennedy, Justice of the Peace Court Administrator
Jody Huber, Justice of the Peace Court Staff Attorney
Mark Hitch, Operations Manager
Dave Nesler, Chief of Uniformed Services
Law Libraries: New Castle County, Kent County, Sussex County,
Widener University School of Law

APPLICATION FOR ACCESS TO COURT RECORDS

This application will be processed and evaluated in accordance with the Justice of the Peace Court's policy for public access to judicial records. The applicant agrees to indemnify and hold harmless the court, 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.

Applicant Information: (Please print)

Request Date: _____

Name or Agency (If applicable): _____

Address: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Describe Information Requested:

For civil case information: please provide litigants' names, JP Court number, and the approximate date of the case (if possible).

For criminal case information: please provide defendant's full name, date of birth, JP Court number, the approximate date of arrest, case number and lead charge (if possible).

Litigant/Defendant name: _____

Justice of the Peace Court #: _____ Case #: _____ Arrest/Ticket _____

Date of birth (Criminal cases): _____ Date of case or arrest: _____

Lead Charge (if applicable): _____

Request (Check One): Criminal Disposition Record (\$7.00) Criminal Certified Copy (\$7.00)

Civil Certified Copy (\$10.00) Civil Docket (\$.25 per page) Audio Recording CD (\$25.00)

Media Package (\$.25 per page) Other Copies (\$.25 per page) Specify: _____

Method of delivery requested: In person Mail Fax E-Mail

Fax number _____ Email _____

The applicant shall be responsible for the costs incurred in fulfilling this request. **Enclose a check or money order payable to the State of Delaware.**

Requested delivery date: _____ **We will attempt to accommodate your request as soon as possible but cannot guarantee that we can provide the information by the requested date.**

Applicant Signature: _____ Date: _____