

APPENDIX I-7B

POLICY DIRECTIVE 14-250

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 COURT RECORDS

Scope:

This Policy Directive provides guidance regarding which court records are available to be released 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 in order to promote government accountability and greater public trust and confidence in the Judiciary.¹ This presumption is counterbalanced by a policy of not releasing information that is confidential or prohibited from release by statute or 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This Policy Directive supersedes the following, which are hereby rescinded as of this writing: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)

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 indicated that there are, in some instances, reasonable bases for restricting public access to certain court records. This policy balances the presumption of open public access to court records with the restriction of access for reasonable purposes. This Policy Directive is broken down into four parts: access to court records, procedures for requesting access, procedures for sealing criminal records and a question and answer section regarding the release of information. Additionally, the Application for Access to Court Records is attached for reference. For purposes of this Policy Directive, the following definitions apply:

- (a) **Court Record:** 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.
- (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 court records, the custodian is the court manager; however, the court manager may designate clerks to handle specific inquiries.

I. ACCESS TO COURT RECORDS

Generally, all case records, including the name of the judge involved in a matter, are open to the public except the following²:

- a. Sealed records.** Files, or portions thereof, which are sealed or closed to the public by court order or decision shall not be disclosed.
- b. Judicial work product.** Notes, memoranda or drafts prepared by a Justice of the Peace or other court personnel which are not a part of a court's order or judgment shall not be disclosed.
- c. Unexecuted or unreturned warrants.** Unreturned search warrants, arrest warrants or summonses in a criminal case and affidavits or sworn testimony and records of proceedings in support of the issuance of search or arrest warrants, except related to grand jury indictments, shall not be disclosed until such time as the warrants are executed or returned.

² In order for a document to be open to the public, it must not fall into any of the categories listed.

Sealed warrants shall not be disclosed even if executed or returned until such time as a judicial officer unseals the warrant by written order.

d. Criminal history records. Criminal history records containing cumulative case-related information on individuals related to criminal proceedings in more than one court (i.e., criminal history records obtained through DELJIS) shall not be disclosed.³

e. Driver's license records. Driver's license records maintained by the Division of Motor Vehicles shall not be disclosed.

f. Witness or Victim Information. The identity of a witness (other than a law enforcement or probation officer), or the residential address, telephone number or place of employment of a victim or witness shall not be disclosed, except to the extent that disclosure is of the site of the crime or is required by law or the Rules of Criminal Procedure.⁴

g. AIDS/HIV status. The AIDS/HIV status of crime victims, other litigants and witnesses is confidential and shall not be disclosed, pursuant to Administrative Directive Number 84 of the Supreme Court of Delaware, dated July 2, 1990.⁵

h. Jury panels. Personal information regarding jurors, such as juror address, phone number and social security number, shall not be disclosed, unless disclosure is authorized by a Judge.

i. Expunged records. Expunged judicial records shall not be disclosed.

j. State Juvenile Fire Setter Intervention Program records. Any records and reports compiled by the State Fire Marshall's office related to the States Juvenile Fire Setter Intervention Program, which may be contained in an affidavit of probable cause, shall not be disclosed.⁶

k. Medical records. Medical and psychological records, including, but not limited to, records of court-ordered examinations and drug and alcohol treatment records, shall not be disclosed.⁷

l. Records controlled by statute or common law. Case records that are made inaccessible to the public pursuant to state statutes or common law may not be disclosed.

³ Pursuant to 11 Del.C. §8602, Criminal history record information means, "a subset of CJJ, set forth in 11 Del.C. §8602(2), that includes identifiable descriptions and notations of arrests, detentions, indictments, informations and other formal criminal charges and any disposition arising therefrom, sentencing, correctional supervision and release."

⁴ See 11 Del.C. §9403.

⁵ See also 11 Del.C. §3913

⁶ See 16 Del.C. §6625.

II. 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 Court 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 information related to a criminal matter may be made at any Justice of the Peace Court criminal court location. A request for information related to a civil matter may be made any Justice of the Peace Court civil court location. Information related to proceedings occurring at a Justice of the Peace Court may be disclosed even when the case has been transferred to a higher court. Information regarding a Justice of the Peace Court case may be disclosed from any Justice of the Peace Court location with the exception of search warrant information, which is physically maintained only at the court from which it was issued.

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 court where the records are located.

Costs for copying of court 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 court 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 manager or their designee) 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 Justice of the Peace Court Administrator, the court official designated by the Chief Magistrate to handle these referrals.

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 Justice of the Peace Court Administrator, the official designated by the Chief Magistrate to hear these appeals.

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. **Access to certain evidence.** Documents and physical objects admitted into evidence shall be available for public inspection under such conditions as the custodian deems appropriate to protect the security of the evidence.

3. **Redaction.** Prior to releasing a court record, staff shall redact the record to ensure that no personally identifying information is visible. This includes addresses, telephone numbers and social security numbers. Witness and victim information shall be redacted as well, including names, addresses, telephone numbers and any information that is identifying given the circumstances, such as place of employment or school.

Redaction shall be done with black magic marker or other mechanism determined 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 shall review the document to ensure that nothing was missed.

III. PROCEDURES FOR SEALING CRIMINAL RECORDS

Although the General Assembly has not explicitly authorized the practice of sealing warrants or other criminal records by statute, it has long been the practice of Delaware Courts to seal documents when the situation is appropriate. While no statutory authority exists to permit the sealing of a warrant, Superior Court Rule of Civil Procedure 5(g)(2) permits court records to be placed under seal if a party shows good cause and the court enters an Order to that effect. Because Justice of the Peace Court Criminal Rules are silent on this issue, we follow the rules of Superior Court.

A. Requests to Seal the Record

1. Upon application from either the State (through a Deputy Attorney General or a law enforcement officer) or the defendant, the Court having jurisdiction over the defendant will entertain a request to seal a file or a portion of it.
2. Upon receipt of an application, the Court will schedule a hearing and provide notice of the hearing to all parties. In the event that all parties are present at the time of the application, such as at forthwith presentment of the defendant, the hearing may take place immediately, without additional notice. Notwithstanding the foregoing, when an application has been filed by the State prior to the defendant's arrest on the charge or charges identified in the documents for which the application is made, the Court may proceed ex parte.

B. Factors to Consider

1. The decision to grant or deny the application rests in the sound discretion of the Court.
2. Since there is a presumption of openness that attaches to Court records, a decision to grant an application may be made only where the Court finds that circumstances that warrant sealing the file outweigh the presumption.
3. A non-exclusive list of reasons to grant the State's application includes:
 - a. The public release of the file or any portion of it will jeopardize the security of the victim, the State's witnesses, or the investigation; or
 - b. The public release of the file or any portion of it will adversely affect the State's chances to arrest the defendant or other perpetrators of the offense(s) charged.
4. A non-exclusive list of reasons to grant the defendant's application includes:
 - a. The public release of the file or any portion of it will irreparably damage the defendant's right to receive a fair trial, and there are no alternative safeguards to protect the defendant's right to receive a fair and impartial trial; or
 - b. The public release of the file or any portion of it will jeopardize the defendant's opportunity to present a meaningful defense to the charge or charges.

C. Necessity of an Order

1. In all cases where the Court orders all or any part of a file sealed, the Court shall prepare a written order that:
 - a. Provides instructions regarding the unsealing of the warrant. For purposes of consistency, and to ensure clarity in the process of unsealing a criminal record, the following language is to be used on all orders sealing a criminal record: ***It is hereby ordered that the document enclosed be sealed until further Order of this Court or another Court of appropriate jurisdiction.***

- b. Identifies with particularity, if the order seals only a portion of the file, the documents or other contents of the file subject to the order, and
 - c. Articulates the factors the Court considered in reaching its determination.
 2. The order granting the application shall be included in the file. The order sealing the warrant shall be placed on the outside of the envelope containing the warrant itself. The file itself shall be marked to readily identify that it or a portion of it is subject to an order sealing the record. The order sealing the warrant shall accompany the file if transferred to the Court of Common Pleas.
 3. The order itself shall be open to the public.
 4. There must be either a written order or an action on the record in the court to open a sealed record.

Conclusion:

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

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

NOTICE TO APPLICANT:

-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 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.

APPLICANT DATA: (Please print)

Name: _____ Daytime telephone: _____
(First-Middle-Last)

Address: _____

City: _____ State: _____ Zip: _____

Describe Information Requested: (**For civil case information**, please provide litigants' names, court no., and the approximate date of the case(if possible); **For criminal case information**, please provide the following: Defendant's full name, date of birth, approximate date of arrest, and court no. Charge(s) and case number(s) (if possible).

(Attach Additional Pages As Required)

CHECK ONE: DISPOSITION _____ CERTIFIED COPY _____ OTHER _____

Applicant Signature: _____ Date: _____

Method of delivery requested: In person _____ By facsimile _____ (Fax number: (302)_____)

Other _____

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.]

ADDENDUM TO POLICY DIRECTIVE 14-250

RELEASE OF INFORMATION – QUESTIONS AND ANSWERS

Q.1. A member of the public or a reporter comes to court and asks to see the case file on a defendant in a particular case. What information can the court let the person see?

A.1. The person, whether a reporter or a member of the public, can see everything in the case file that is not excluded under the Justice of the Peace Court policy on public access to judicial records.

- For example, they can see and receive a copy of a warrant (search or arrest) and the affidavit of probable cause unless the warrant and affidavit have been sealed or the warrant has not been executed or returned. The return of a search warrant may also be released, unless the warrant has been sealed.
- Information on the warrant related to the identity of a witness (other than a law enforcement or probation officer) or to the residential address, telephone number or place of employment of such a witness or of a victim shall not be released and should be marked out if, for some reason it is shown on the copy provided to the defendant, news media or anyone else.
- Information on the AIDS/HIV status of a litigant, victim or witness shall not be released and any reference to AIDS/HIV status should be removed from any file prior to giving it to an outside person to review.
- DELJIS criminal history or DMV driving records contained in the file shall not be released and should be removed prior to giving the file to an outside person to review.
- Medical and psychological records, including, but not limited to, records of court-ordered examinations and drug and alcohol treatment records, shall be removed from the file prior to giving the file to an outside person to review.
- Any notes of the judge or staff which are not a part of a court's order or judgment shall not be released and shall be removed prior to giving the file to an outside person to review. Since the public information contained on the bail and disposition form is also available on other forms, bail and disposition sheets containing Judges notes shall not be released and shall be removed prior to releasing a file.
- Any reference to the States Juvenile Fire Setter Intervention Program, in an affidavit of probable cause, shall also be marked out. In addition, any records which have been expunged shall not be disclosed.

If persons want a copy of a warrant or affidavit of probable cause, we should try to accommodate their reasonable requests. The cost of copying is available on the court's master fee list.

Q.2. Is there a difference in the information which can be released to the media and to members of the public?

A.2. No, there is no distinction between the right of a member of the public or the news media with regard to the release of public information pursuant to the Freedom of Information Act.

Q.3. A reporter calls a Justice of the Peace Court clerk on the telephone and asks for case information about a defendant's case over the phone. Can the clerk give that information?

A.3. Yes, so long as the information is not excluded from release by the policy. For example, the clerk can tell the reporter the full name and spelling of the name of the defendant, the charges against the defendant, whether the defendant pleaded guilty or not guilty, the sentence (if the defendant pleaded guilty) or the amount and conditions of the bond (if the defendant pleaded not guilty), and the name of the arresting agency. If the reporter's request is complicated or confusing, the clerk may provide a copy of the "Application for Access to Court Records" or direct the reporter to the website and ask that the reporter complete the form to ensure that the court provides correct information. A copy of the "Application for Access to Court Records" is attached for your use.

Q.4. A reporter submits a request for case information by filing an "Application for Access to Court Records" by facsimile with the court. Can the court release the requested information?

A.4. Yes, so long as the information is not excluded from release by the Justice of the Peace Court policy on public access to judicial records. See A.3. above.

Q.5. How much identification or information should the court require of those who request information?

A.5. Please refer to the general procedures for requesting access to information described above. Although not required, it is helpful to have persons complete the "Application for Access to Court Records" and provide that to the court by facsimile or in person. The information on the completed form is helpful in case there is a subsequent question concerning the information released. Persons who regularly request case information from a Justice of the Peace Court do not need to complete an application for each request, but may complete one noting what information is generally requested. Applications should be completed for requests which the court finds complicated or confusing, or involving more than one case. A person requesting information does not need to provide identification in order to receive information. However, the person must provide sufficient distinguishing information about their request for the court to determine with certainty the defendant and/or the case involved. For example, a request about an arrest of John Smith which occurred in the winter of 1995 does not provide sufficient information, in my mind, for the court to be certain that the case information being released relates to a particular "John Smith." A request for information about a case involving John Smith who was arrested in early February 1995 for assault may be sufficient for the court to pin down the exact information requested. If there is more than one "John Smith" who fits the description, additional identifying information must be provided to the court to differentiate between the John Smiths or the request should be denied.

Q.6. A reporter or credit bureau comes to a court and wants to review a large number of court files immediately. Does a court have to let a person have access to information as soon as they request access?

A.6. Although credit bureaus and reporters should be allowed access to the information, the court can control when the persons have access to court files. The information should be provided as soon as reasonably practicable, but does not have to be provided immediately if the compilation of the information or editing of the court documents required to comply with the release of information policy (i.e., the marking out of victims address and telephone information and/or review of the file to ensure exclusion of other information) would impact adversely on the court operations at that time. Any delay in providing information must be reasonably based on difficulties associated with making the requested information available at that time. To minimize complaints from reporters, court clerks can offer the availability of the Executed Warrant report at the 24 hour courts or other readily accessible information, for the reporter to review at that time. Costs may be associated with providing copies of this court data.

Q.7. Can case information be released once the case has been transferred to another court?

A.7. Yes, if that information is related to proceedings which occurred in the Justice of the Peace Court where the request is being made. For example, defendant is charged with a felony, arrested and brought to a Justice of the Peace Court for the initial presentment. Bail is set and the case is transferred to the Court of Common Pleas for a preliminary hearing. A reporter arrives after the paperwork has left the Justice of the Peace Court for the Court of Common Pleas and requests information about the bail and to see the affidavit of probable cause. Contrary to the Justice of the Peace Court's previous policy, the reporter can have access to information about the Justice of the Peace Court proceedings (charges filed, affidavit of probable cause, the warrant, and the amount of bail set) but not information about what occurred in other courts (not to the final disposition in Superior Court). [NOTE: For all requests related to cases that have been transferred, the court should remind the person requesting information that additional actions may have been taken with regard to the case in another court. To obtain the most accurate information on a case, requests should be directed to the appropriate court.]

Q.8. A reporter comes to J.P. Court 11 for information about a warrant and arraignment which took place in J.P. Court 4. Can J.P. Court 11 give the reporter the information which is available on DELJIS about that case?

A.8. Yes. A request for information related to a criminal matter may be made at any Justice of the Peace Court criminal court location, with the exception of a search warrant, which is physically maintained only at the court from which it was issued.

Q.9. A warrant has been issued on a misdemeanor or felony charge against a juvenile and a presentment conducted for that juvenile in a Justice of the Peace Court. The judge sets a secured bond of \$3,000 and the juvenile is placed in a secured detention facility. A reporter from the local newspaper wants information about the name of the juvenile, the charges against the juvenile, the amount of bond and whether the juvenile was placed in a secured detention facility. Can the court give the reporter that information?

A.9. Yes, regardless of whether the charge is a felony or misdemeanor. I concur with the view of the Chief Judge of Family Court that the statutory prohibition on release of juvenile information pertains only to proceedings occurring in Family Court. See 10 Del.C. § 1063(a)("[a]ll proceedings before the Court [referring to Family Court] and all records of such proceedings may be private except . . ."). Thus, all proceedings and court records pertaining to proceedings in the Justice of the Peace Court, including those involving a juvenile, are open to the public.

Q.10. A reporter comes to a JP Court to attend an arraignment of a prominent local official who has been charged with soliciting a prostitute. Should the reporter be allowed in the courtroom?

A.10. Reporters should be allowed in the courtroom since Justice of the Peace Court proceedings are open to the public, except broadcasting, televising, recording or taking photographs are not allowed in the Justice of the Peace courtrooms and areas immediately adjacent to the courtrooms. (In most instances, the prohibition extends to court lobbies due to the small size of the Justice of the Peace courthouses.) See Canon 3(7) of the Judges Code of Judicial Conduct. Also, pursuant to Canon 3(2) of the Judges Code of Judicial Conduct, a Judge must maintain order and decorum in judicial proceedings. Thus, reporters and members of the public may be excluded from a courtroom if their presence affects the decorum of the proceeding (i.e., the courtroom is not of sufficient size to accommodate all the reporters and/or members of the public).

Q.11. John Smith's girlfriend calls the court to ask if John Smith is wanted so that he can turn himself in. There is an arrest warrant for John Smith, which is unexecuted (so information about the warrant should not be released.) What should the court do?

A.11. The court should advise that there is an arrest warrant for John Smith. This information is also available to the public on the DELJIS website.

Q.12. Courts sometimes receive phone calls from Federal and/or local Probation and Parole Offices requesting dispositional information on all cases on an individual that were filed in that particular court. How are we to handle these requests?

A.12. These types of requests are not considered criminal histories and therefore the court should honor the request from Federal Offices. The requesting party should have the appropriate identifying information and follow the access to information procedures. This type of request usually requires the use of the Application for Access to Court Records unless the court manager or Judge determines otherwise. As for the local Probation and Parole Offices, they have access to DELJIS and are to be directed to use this valuable tool. Other state agencies who have access to DELJIS should also be directed to access DELJIS for information they request.

Q.13. What does the court do in a situation where the driver of a car involved in an accident, but not charged, requests a certified copy of the traffic ticket issued to the other driver, to be used to pursue an insurance claim?

A.13. As discussed in A.5., once the requesting party presents the appropriate identifying information, the court should honor the request and charge the appropriate copying costs.

Q.14. How should the court handle requests from military recruiters for dispositions on specific cases?

A.14. These types of requests should be handled in accordance with the Justice of the Peace Court policy on public access to judicial records and procedures for requesting access.