

Please remember this is a living document. If you have a question related to records that is not answered here, please reach out to the Director of Legal Affairs. The new question and answer will then be added to this resource.

ACCESS TO RECORDS FREQUENTLY ASKED QUESTIONS

1. Must requests for information, including the creation of copies, be responded to immediately?

Information, including copies, should be provided as soon as reasonably practicable, but does not have to be provided immediately if the compilation of the information or editing, including redaction, of the court documents required to comply with Family Court policy would adversely impact Court operations. Any delay in providing information must be reasonable based on the difficulties associated with making the requested information available at that time. To the extent possible, an estimated time frame for response should be provided to the requestor.

2. What do I need to do before providing the requested documents or information to the requestor?

First, determine whether the requestor is permitted to view the file. If it is a closed file, is the requestor a party to the case or the party's attorney? If not, is the 3rd party otherwise authorized by Family Court's Public Access Policy and Access to Records Procedure (ADM-001) to view the file or receive information related to the case.

Second, review the file for any materials that are labeled confidential or that appear to be sealed and remove them prior to providing to the requestor.

Third, review the file for any materials that are required to be redacted and make required redactions.

****Please see subsequent questions for more information related to redaction and confidential or sealed materials.****

3. A requestor has requested and is entitled to a certified copy of a document; however, the document contains information that is required to be redacted (for example, social security number). Can I certify a redacted copy?

Yes, a certified copy can and should, if it contains material required by law or policy to be redacted, contain redacted material. If a party requests a non-redacted certified copy, such a request will need to be made in writing and directed to the assigned Judge. If the assigned Judge is unavailable, the request can be made to the Chief Judge.

4. The requestor has asked for an authenticated copy of a document. What do I need to do?

First, explain what a certified copy is and ask the requestor if a certified copy will suffice. If the requestor continues to request an authenticated copy, reach out to your supervisor or Director of Operations. An authenticated copy may require the issuance of a letter under seal or include stamping and signing or affixing the seal to each page of the copy. Different states and courts have different requirements. If there are any questions about what the requestor needs, please contact the Director of Legal Affairs.

For reference, Rule 44(a) of the Family Court Rules of Civil Procedure provide that

(a) Authentication. -- (1) Domestic. -- An official record kept within the United States, or any state, district or commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

5. What should I do if I have to deny a 3rd party request because the file is closed and the requestor would like to appeal the denial?

Pursuant to Family Court's Public Access Policy (May 8, 2007), a denial of access can be appealed in writing to the Chief Judge. Pursuant to Rule 90.1 Family Court Rules of Civil Procedure, access to closed files can be granted to "persons specifically approved by the Court because they have a legitimate interest in the records, subject in all events to such reasonable restrictions, conditions or limitations as the Court may impose." This is a determination that will be made by the Chief Judge or his designee based on the circumstances of the request. The appeal may be taken in the form of a letter addressed to the Chief Judge.

6. What if the denial is for a reason other than that the file is closed (for example, inability to pay for copies)?

Regardless of why the request has been denied, a written appeal can be directed to the Chief Judge. The appeal can be in letter form and need not be made by way of a motion.

7. What if there is material labeled "Confidential" within an otherwise open file?

Any material labeled "Confidential" should not be provided in response to a records request.

8. If an address is made confidential in the middle of a case, do I need to redact the address from documents filed prior to the address being made confidential?

Yes, to the extent an address has been made confidential, it should be redacted from all documents provided regardless of when the document was filed.

9. Who is permitted to request and receive a copy of a Divorce Decree?

In accordance with dicta from *Husband C. v. Wife C*, 320 A.2d 717, 729 (Del. 1974), stating that "[t]he public, of course, is always entitled to access to a decree of divorce[,]" Family Court instituted

Procedure OCI-200, which provides the process for providing divorce decree copies to any requesting party, including members of the public.

To be clear, a 3rd party's ability to request a copy of a divorce decree in no way affects the closed nature of the underlying divorce file. Although the fact that a divorce occurred is considered public information and can be confirmed through the issuance of a divorce decree (or letter issued pursuant to Procedure OCI-200), the case file remains closed to 3rd parties. To the extent a 3rd party requests other information from the closed divorce file, such a request would initially be denied. If the 3rd party sought to appeal the staff decision, such a request would need to be made in writing and directed to the Chief Judge to determine whether the requestor has a "legitimate public interest" in the requested materials in accordance with Family Court Rules of Civil Procedure 90.1(c)(4).

10. Can I give out information regarding the existence of a divorce to a non-party over the phone?

As a matter of Family Court policy, we will not be giving out divorce information over the phone to non-parties. Non-parties are free to come to the Courthouse and request a copy of a divorce decree utilizing the system created by Family Court Procedure OCI-200.

11. Is there a difference in the information that can be released to media and to members of the public?

No, there is no distinction between the right of a member of the public or the media with regard to the release of information in a Family Court case.

12. Does the Freedom of Information Act apply to information requests directed to Family Court?

In accordance with the 2007 Opinion of the Delaware Attorney General's Office, Family Court is not subject to the Delaware Freedom of Information Act, Title 29, Chapter 100 of the Delaware Code. *Att'y Gen Op. 07-1002* (February 1, 2007). However, Family Court has in place a Public Access Policy to facilitate public access to records and can convert FOIA requests to a request made pursuant to Family Courts' Public Access Policy. Please forward any FOIA requests to the Director of Legal Affairs.

13. In open cases, is the public or media permitted access to the **exhibits**?

Requests to view exhibits (documents or physical objects) introduced as evidence at trial in an open case are controlled by the Family Court's Public Access Policy, specifically Section IV(B), which states that "documents and physical objects admitted into evidence shall be available for public inspection under such conditions as the reasonable custodian deems appropriate to protect the security of the evidence." **Please note that the public's right is limited to inspection and does not include a right to have exhibits copied.** A request from the public to access exhibits should be forwarded to the County's Director of Operations, who will determine the appropriate conditions for inspection. The conditions of inspections must be such to ensure that no tampering occurs and may include requiring Court staff oversight during the inspection.

14. In open cases, is the public or media permitted to review or copy a **transcript**?

Pursuant to Rule 90.3 of the Delaware Family Court Rules of Civil Procedure, only a party to a proceeding, or the party's authorized attorney, is entitled to request a transcript of the proceeding. A party to the proceeding, or her attorney, would be required to request and pay for the transcript. When a transcript is requested by a party, or her attorney, a copy is then provided to the Court. The Court's copy of the transcript as part of the case record is available for inspection by the public, including the media. However, the public is not entitled to make a copy of the transcript and is limited to onsite inspection.

15. Can another party to a case request a copy of a courtesy copy transcript contained within Family Court's files?

No. If there is a file in which a party has requested and paid for a transcript and therefore a courtesy copy of the transcript exists in our file, the second party would nonetheless need to request a transcript through the transcript company and pay the required fee. The transcript in our file is an exhibit and cannot be copied by either a party or the public, but is available for onsite inspection.

16. In open civil cases, may the public or the media request a copy of **audio recordings** of hearings?

Pursuant to Family Court Rules of Civil Procedure 90.4, electronic copies of audio recordings of hearings are limited to the parties to the proceeding, or the parties' authorized attorneys. Therefore, Records staff may not provide members of the public or the media a recording of an open hearing.

17. Are there special requirements related to **child interviews** in terms of transcript and audio recording requests?

Yes. Family Court Rules of Civil Procedure 90.4(c) requires that requests from a party to a case for an electronic copy of a child interview shall be made by motion setting forth the reason for the request. Although Rule 90.3 is silent as to transcripts of child interviews, it is the policy of Family Court to require a motion be filed setting forth the reasons that a transcript of a child interview is requested.

Please note that the above pertains only to requests for an audio recording or transcript of the child interview. Section 724(c) of Title 13 provides that "[a]ll parties to the matter shall be entitled to review the recorded [child] interview in its entirety." If an attorney of record or litigant to the case requests to listen to a recording of the child interview, no motion is required.

18. A Deputy Attorney General tells me that she always gets audio recordings of PFA hearings. What should I do?

Please direct the DAG to issue a subpoena for the requested hearing. The subpoena should be directed to the attention of Family Court's Director of Legal Affairs. Because PFA hearings are open to the public, Family Court has made a policy decision that it will comply with Attorney General subpoenas requesting an audio recording of PFA hearings. A copy of the subpoena should be placed in the appropriate file.

Special Classes of Requestors:

19. Can an individual who was the child at issue in a closed case have access to documents in that case? Does it matter what type of case it is (Guardianship, Adoption, etc.)?

Pre-March 6, 2017, an individual who was the child at issue, but who was not a party, in a closed case does not have automatic access to the file. However, given the possible legitimate interests that the individual may have in materials in the file (for example, guardianship orders that may be necessary to apply for financial aid), any request for documents made by a child at issue (regardless of current age) should be forward to a Judicial Officer for consideration.

As of March 6, 2017, Delaware Code provides that upon appointment of an attorney, the child shall be a party to any *child welfare proceeding* in which the child is the subject and shall possess all the procedural and substantive rights of a party. As a party, the child would have access to the file. *25 Del. C. § 9007A(b)(3)*. **However**, given the strict confidentiality that attaches to both TPR and adoption records and the statutorily provided process to access such records, individuals requesting information

from their childhood TPR or adoption files should be directed to the statutory requirements found at 13 *Del. C.* § 1112 for TPR requests and 13 *Del. C.* §§ 923-925 for adoption requests.

20. Must DSCYF produce a waiver from the parties to view a closed file to which it is not a party or to which it has not received a referral?

No. Based on Section 1063(b), Title 10 of the Delaware Code, which in relevant part states that "[a]ll records concerning any child shall be made available to the Department of Services for Children, Youth and Their Families," DSCYF is permitted to request and receive from Family Court information concerning a child. Such information would include copies of current orders of guardianship or custody and would extend to providing information (including date and time) concerning hearings related to children not in its care. To confirm, in order to request information and records concerning a child, DSCYF will not need to produce a consent of the parties as would appear necessary based on ADM-001 and Form 205. Staff may respond to such requests without the involvement of a Judicial Officer.

A related issue is to what extent DSCYF can request information that is contained solely in a parent file. A DSCYF request for information contained within a parent file should be directed to a Judge, who will make a determination as to whether the information requested is a "record concerning a child" or is otherwise appropriate for dissemination to DSCYF.

21. May a representative of the Office of the Child Advocate ("OCA") gain access to a file in which no GAL has yet been appointed?

Yes. The Legislature has expressed a clear intent that OCA have broad access to information from Family Court regardless of whether the child at issue has yet been assigned to OCA. OCA is permitted broad access in relation to children it represents and those it is considering representing. *See, 29 Del. C.* § 9002A(a)(2), (b)(1). In order to properly memorialize the request, the OCA representative should check the "Other" box on Form 205 and write in OCA review.

22. Is a family crisis therapist contracted by the Office of the Child Advocate ("OCA") able to review closed Family Court files? If so, how should that access be memorialized?

Yes. The Legislature has expressed a clear intent that the Office of the Child Advocate, which would include its employees, volunteers, etc., have broad access to information from Family Court regardless of whether the child has been assigned to OCA or whether OCA is determining whether to represent the child. *See, 29 Del. C.* § 9002A(a)(2), (b)(1). In order to properly memorialize the request, the OCA representative should check the "Other" box on Form 205 and write in OCA review.

23. As of March 6, 2017, the Court Appointed Special Advocate Program was transferred to the Office of the Child Advocate. To what extent are CASA volunteers still able to access Family Court files?

The CASA Program is now part of the Office of the Child Advocate with CASA volunteers working in conjunction with the child's attorney to accomplish the duties set forth in Section 9007A(c) of Title 25. Section 9007(A) provides that the Court Appointed Special Advocate volunteer shall have the authority to review all documents and interview all pertinent persons having significant information relating to the child and the child's life circumstances. This would include access to the Family Court file.

24. Are Presentence Investigators employed by Delaware Courts entitled to access of closed files in which the defendant was involved (including cases in which the defendant was a litigant or where the defendant was the child at issue)?

Yes. A "presentence investigation" is the procedure by which a Delaware court, subsequent to conviction but prior to sentencing, obtains information concerning the offender sufficient to evaluate the offender's conduct and to determine the offender's potentialities for rehabilitation, with appropriate recommendations for judicial disposition." 11 *Del. C.* § 4302(13). The Investigative Services Office is tasked with inquiring "into such things as the circumstances of the offense, the motivation of the offender, the criminal record, social history, behavior pattern and present condition of the offender." 11 *Del. C.* § 4331(b). Given the critical purpose behind presentence investigations, the Legislature has provided that "[a]ll local and state agencies shall make available to the Investigative Services Office such records as the Investigative Services Office may request." *Id.* Family Court has deemed it appropriate to provide presentence investigators full access to our files.

25. To what extent are State agencies, including the Division of Child Support Services and Delaware Health and Social Services, permitted access to closed files?

Pursuant to the Access to Records Procedure, ADM-001, attorneys for state agencies shall follow the procedure outlined for attorneys generally. The attorney procedure provides that the attorney must be: (1) the attorney of record or (2) shall submit either a signed waiver from their potential client or a letter signed by the attorney indicating that they were contacted by the potential client and authorized to view the file.

If the requesting party is an employee of the state agency and is requesting access to the record for purposes of performing her job duties, the employee must submit a signed consent from the party represented by or involved with the agency.

****This answer shall not affect procedures created by federal or state law or current practice as it relates to the exchange of information between states regarding child support obligations.****

26. Should requests from military recruiters be handled differently than other public requests?

Requests from military recruiters should be handled in accordance with Family Court's Public Access Policy and Access to Records Procedure (ADM-001). Military recruiters may be considered a state agency for purposes of application of the ADM-001 procedure. As such, the military recruiter may view any open file to the same extent as the public and may access closed files to the extent he produces a signed consent from the litigant.

27. Can an individual holding a power of attorney ("POA") sign or file documents on behalf of the principal or otherwise access the closed file of the principal?

No. Delaware Courts have found that based on rules similar to Rule 11 of the Family Court Rules of Civil Procedure and concerns related to the unauthorized practice of law, holders of a POA are engaging in the unauthorized practice of law when they purport to represent the principals in Court. Chief Judge Newell's order in *XMB v. KHS-B*, 2011 WL 1707241 (Del. Fam. Ct. Jan. 20, 2011), is one of the most thorough discussions of the reasoning behind prohibiting a holder of a POA from filing pleadings and otherwise representing the principal in Court. Chief Judge Newell's finding in *XMB* is consistent with similar holdings from the Delaware Superior Court and Court of Common Pleas. *See, Townsend v. Integrated Manufacturing and Assembly*, 2013 WL 4521087, *1 (Del. Super., Jul 30, 2013); *Delaware Health Corp. v. Brooks*, 2010 WL 3103669, *1 (Del. Com. Pl., 2010). The holding in *XMB* is also consistent with the position taken by the Justice of the Peace Court in its 2000 Legal Memorandum.

In following the above logic, Family Court has not allowed the holder of the POA access to the principal's file. The consistent application of this practice has been supported by an informal opinion of the Attorney General's Office. The appropriate course of action is for the holder of the POA to retain legal counsel on behalf of the principal, which legal counsel would then be able to access the file.

Rule 17 of the Family Court Rules of Civil Procedure does contemplate and permit the appearance of an executor, administrator, guardian or trustee of the party in interest in specified circumstances. Possible scenarios for a Rule 17 appearance are situations in which a deceased, infant, or incompetent litigant is involved. To the extent a person appears with a POA for a litigant that may qualify for a Rule 17 appearance, please direct the individual to Rule 17. Rule 17 representation would require the filing of a motion and an Order of the Court.

Criminal Files and Redaction

28. In criminal cases, is there a specific manner in which information must be requested?

Although the Court has created Form 205 "Record Review Request Form" and the Application for Access to Court Records, which request information most helpful in the Court's responding to information requests, Court staff may respond to any form of request for information if the request is made with sufficient particularity such that staff is able to determine with certainty the case involved. Possible forms a request might take include, but are not limited to, phone calls, emails, facsimiles, etc.

29. What type of information, other than allowing access to the file, can I provide to a requestor in a criminal matter?

Staff can provide information regarding the defendant's name, charges, whether a plea has been entered, whether and the amount of any bail, hearing dates, whether a sentence has been entered, and, if so, the sentence. If the request is complicated or unclear, the clerk may require that the requestor complete Form 205 "Record Review Request Form" or the Application for Access to Court Records to ensure that the Court provides correct information. Additionally, although information should be provided as soon as reasonably practicable, should the caller's request require a substantial time investment, it is appropriate to request a call back number to gather the information in a manner that does not adversely affect the operations of the Court.

30. Can I provide the foregoing information even if the defendant is a juvenile?

Yes, at this time based on Family Court Rules of Criminal Procedure, juvenile criminal files are open and information can be disclosed to the same extent as information related to an adult.

31. Does it matter whether the requestor is a citizen or a member of the press?

No. Both the public and the press have equal access to information related to criminal cases.

32. Since Family Court criminal files are open, do I need to review the file before allowing access to the file?

Yes. Initially, you must review the file to determine whether the file or any documents contained therein are sealed. If the entire file is sealed, you should deny the request and alert your supervisor as a sealed file should not be housed in the Records area. If there are documents within the file that are sealed or marked confidential, they should be removed before providing to the requestor. Access to sealed or confidential documents can only be granted by Order of the Family Court. Secondly, you will need to review the file to determine whether any redactions are necessary.

Information that requires redaction includes the following:

a) Information protected by the Delaware Crime Victims Bill of Rights, 11 *Del. C.* § 9403. Pursuant to Section 9403, the Court has an obligation to keep confidential a victim's address, place of employment and telephone number. Additionally, as to any witness, the Court must keep confidential that person's identity (unless the witness to the crime is a law enforcement officer), address, place of employment, and telephone number. Please note that a "**witness**" is defined as anyone (other than a law enforcement officer) who has knowledge of the existence or nonexistence of any fact related to the crime, or any person who has reported the crime.

A careful review of all documents in the criminal file is necessary to ensure that all protected information is redacted from the documents provided to the requestor.

b) Presentence Investigation Reports

c) Unexecuted or Unreturned Warrants

d) Criminal History Reports: Criminal history records, including those obtained through DELJIS or NCIC, shall not be disclosed. DELJIS/NCIC records should not be kept in the file at the conclusion of a hearing.

e) Drivers License Records

f) AIDS/HIV status: The AIDS/HIV status of victims, litigants and witnesses is confidential and shall not be disclosed pursuant to 11 *Del. C.* 3913.

g) Expunged Records: Expunged records should not be accessible in Family Court. If you find an expunged file, please notify your supervisor.

h) Notes of Judicial Officers and staff: Judicial Assistants' manual or electronic notes or other recordings of court proceedings, which do not represent the official record shall not be disclosed.

i) Juvenile Fire Setter Intervention Program Records: Any records or reports compiled by the State Fire Marshall's office related to the State's Juvenile Fire Setter Intervention Program, which may be contained in an affidavit of probable cause, shall not be disclosed pursuant to 16 *Del. C.* 6625.

j) Medical and psychological records, including but not limited to, records of court-ordered examinations and drug and alcohol treatment records, should not be released. *See, e.g.* D.R.E. 503(b),(d)(2); 42 USCA § 290dd-2.

k) Social Security Numbers

l) SBI Numbers (State Bureau of Identification numbers)

33. What is the process for review and redaction?

When a file (or specified documents contained within the file) is requested, please make a complete copy of the requested documents. Review the copy for any protected material and redact with a black marker as necessary. To ensure the material cannot be seen, make a new copy of the redacted copy and ensure that the redaction is complete. A second person should review the redacted copy to confirm that no additional information should be redacted. Once completed, provide the new redacted copy to the

requestor. In order to save time in the future, please place a redacted copy in the file for possible future use.

34. In a criminal case, can a person request a copy of a mental health evaluation conducted by an outside agency?

As explained above, any medical and psychological records, including but not limited to, records of court-ordered examinations and drug and alcohol treatment records, should be removed from the file and may not be released. *See, e.g.* D.R.E. 503(b),(d)(2); 42 USCA § 290dd-2.

Cost Questions

35. How are costs associated with responding to the document request handled?

The person, including an attorney of record, requesting the information shall bear the cost of complying with the request for information. Costs for copying of court records shall be pursuant to the Family Court's Schedule of Assessed Costs.

36. To the extent a state agency is entitled to access records, are copies free to the agency, including non-Delaware state agencies?

It has been the practice of Family Court to provide free copies to state agencies both within and outside Delaware as a courtesy. To the extent a request is especially burdensome, a fee may be imposed by the Director of Operations.

37. If a state agency sends a litigant to retrieve documents, should the litigant incur the cost of the copies even though the documents are intended for a state agency?

It shall be within the discretion of the Director of Operations to waive the costs for copying when the request is clearly made by a state agency but is communicated through the litigant.

Attorneys

38. Is there a required form of letter that an attorney must provide if she is stating that a party to the case has consulted her and authorized her to view the file?

As noted on Form 205, the attorney in such a situation may either produce a signed waiver from one of the parties authorizing the attorney to view the file or the attorney shall produce a letter stating that a party has contacted the attorney and has authorized the attorney to view the file. So long as the letter is signed by the attorney and the letter contains the foregoing language, the form that the letter takes is of no consequence. By way of example, the signed letter may be written formally on the attorney's letterhead or may be handwritten on the back of Form 205.

39. When an attorney has entered her appearance (whether independently retained or court-appointed) for a specific petition, does that give the attorney full access to the complete case file in which the petition exists?

Yes. Based on the inter-related nature of Family Court proceedings, the interest of the litigant in having a fully-informed attorney, and the administrative difficulty in separating documents by petition, once an attorney has been retained by the party, she may have access to the entire file in which the petition exists.

40. An attorney has requested a copy of the litigant's DELJIS criminal history report. May I provide her one?

Generally speaking the Court will not provide an attorney with a DELJIS report on his client. The only exception is for attorneys representing respondents in child welfare cases. In such cases, please refer to Procedure OCI-920.

41. Can an attorney retained by a party for representation in a court other than Family Court access the parties' Family Court file as an authorized attorney? For example, can a criminal defense attorney access the Family Court file of his client?

When an attorney represents a party to a Family Court matter in another court, the attorney should be granted access if she fills out the request form and produces either a signed waiver from her client permitting her access to the file or a letter from the attorney stating that the client has authorized her to view his file. This access includes the ability to request copies.

Information over the phone

42. What type of information (for example, file and petition numbers or court dates) in closed files should be disclosed over the phone?

If the caller adequately identifies himself as the litigant, general information regarding hearings and filings may be disclosed.

43. What type of information can be given out over the phone to the public, including the press, in open civil and criminal cases?

Any information not excluded by the Public Access Policy can be disclosed over the phone to the public. For example, in a criminal case, the clerk may tell the caller the name and spelling of defendant, hearing date and time, the charges against the defendant, whether a plea has been entered, the sentence, if imposed, or the amount and conditions of the bond. To the extent a request for information is extensive, complicated, or confusing, the clerk should request that the caller make the request in writing utilizing either the Application for Access to Court Records or Form 205. Additionally, although information should be provided as soon as reasonably practicable, should the caller's request require a substantial time investment, it is appropriate to request a call back number to gather the information in a manner that does not adversely affect the operations of the Court.