

POLICY ON PUBLIC ACCESS TO RECORDS IN THE DELAWARE COURT OF CHANCERY

I. SCOPE. This policy applies only to public access to administrative records maintained by the Delaware Court of Chancery.

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

- f). Out-of-state or extraordinary in-state, state-funded travel expenses, and
 - 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 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 court or judicial administration matters. Any record relating to internal deliberations among judicial officers or staff on matters of court or judicial administration.
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 and the court's public calendar of in-court hearings.

N. *Records otherwise made inaccessible.*

1. Guardianship records and uncontested trust case files.
2. 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.
3. Information presenting a risk to personal security, personal privacy, or the fair, impartial and orderly administration of justice as determined by the Chancellor.

IV. 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 Chancellor in writing addressed as follows:

Chief Register/Court Administrator
Register in Chancery
500 N. King St.
Suite 1551
Wilmington, DE 19801

With a copy to:

Delaware Department of Justice
Carvel State Building
820 N. French St.
Wilmington, DE 19801
Attn: State Solicitor

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 A. Requests submitted by electronic mail or facsimile will not be accepted.

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. 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.

APPENDIX A

**COURT OF CHANCERY
APPLICATION FOR ACCESS TO
ADMINISTRATIVE RECORDS**

NOTICE TO APPLICANT:

This application will be processed and evaluated in accordance with the Administrative Office of 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** _____

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

Applicant Signature: _____ **Date:** _____