

## APPENDIX A

### ACCESS TO JUDICIAL RECORDS IN THE FIFTY STATES

STATE	AUTHORITY GOVERNING ACCESS Statute (S), Rule (R), Const. (C), Common Law (CL), AG Op. (AG)	JUDICIAL DISCRETION	COMMENTS (access, privacy, confidentiality, problems, types of requests)
Alab ama	<p>S: broad definition of public records that includes court records (41-13-1).</p> <p>R: Procedure for computer based information (Rule 33 ARJA)</p> <p>CL: Caselaw construing access to certain types of records and policy concerns.</p>		<p>Contains various other rules for fees, removal of case files, and maintenance.</p> <p>Various exceptions to disclosure in rules and statutes. Also allows for adoption of local rules (Rule 19 AJRP) subject to Sup. Court approval.</p> <p>Although there are court rules, statutes, courts, and Attorney General have established that all court records are open unless statutorily required to be closed.</p>
Alas ka	<p>S: definition of public agency doesn't include courts/judiciary (9.25.220), but statute gives court express authority to make rules for reasonable fees for inspection and copying of public records (9.25.110).</p> <p>C: Rulemaking power (Art. 4, Sec. 15) and general court administration (Art. 4, Sec. 16).</p> <p>R: Defines public records; excludes certain personal information, work product, sealed matters, and certain memos, notes, or drafts (Rule 37.5). Requires administrative director to establish guidelines for access.</p>	<p>Constitutional authority to make rules is the governing provision of court's policy for public access.</p>	<p>According to staff attorney, broad rulemaking authority of court has never been tested.</p> <p>Administrative Director has outlined specific policy for custody, access, etc.</p>

## APPENDIX A

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Ariz ona	<p>S: "Public body" means...any branch....." (39-121.01)</p> <p>R: Definitions include <u>administrative record</u> (pertains to the administration of the courts, court systems, or any non-adjudicatory records) and <u>case record</u> (pertains to particular case or controversy). (Rule 123. Effective Dec. 1, 1997).</p>	<p>Constitutional authority "to administer courts" is the governing provision of court's policy for public access. (Art. 6, Sec. 3).</p> <p>In addition to prescribing which records are open/closed, Rule 123 also allows a judge to close a case record by court order.</p>	<p>Rule 123 and access:</p> <ul style="list-style-type: none"> <li>*Case records (open with few exceptions, eg, adoption, judicial work product/drafts)</li> <li>*Administrative records (open with few exceptions, e.g., attorney/judicial work product)</li> <li>*Records in paper medium (sets out procedures for filing a request, cost, etc. Also, see grounds for denial of requests).</li> <li>*Records on audio, video, film, <u>computer/electronic</u> (see text of rule)</li> </ul>
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## APPENDIX A

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Arka nsas	<p>S: "Public records" includes those held by "a public official or employee, governmental agency, any other agency wholly or partially supported by public funds or expending public funds" (29-19-103).</p> <p><u>29-19-105(a) Exemptions:</u></p> <p>(5) unpublished drafts of judicial or quasijudicial opinions and decisions;</p> <p>(6) unpublished memoranda, working papers, and correspondence of the...Supreme Court Justices...;</p> <p>(7) documents which are protected from disclosure by order or rule of court.....</p>	<p>Statute authorizes the court to protect certain documents by order or by rule.</p>	<p>Statute is consistently viewed as broad in its application.</p>
Calif ornia	<p>S: "State agency" definition excludes agencies established under Article VI of state constitution. Article VI includes the judiciary.</p> <p>CL: <u>Copley Press, Inc. v. Superior Court; Matter of Hearst's Estate</u>: General policy that court files are open. Doesn't address administrative records.</p>	<p>Broad judicial discretion.</p>	<p>Courts allow access to court records, including administrative records, for public policy reasons, but at their discretion.</p> <p>Types of requests: Mostly pro se cases.</p>

## APPENDIX A

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Colorado	<p>S: "Public records" does not mention courts. But Supreme Court has statutory authority to promulgate rules limiting access to public records (24-72-202 et seq.).</p> <p>C: <u>Anderson v. Home Ins. Co.</u>, 924 P.2d 1123 (Colo. App. 1996). ( Court files should generally be open to litigants). Doesn't address administrative records.</p>	<p>Supreme Court has statutory authority to promulgate rules for limited access to "public records."</p>	<p>Court files are presumed open, but Court can limit access to files by rule. Not clear how administrative files are affected because OAC says they have few requests and judicial discretion has not been challenged.</p>
Connecticut	<p>S: "Public agency ...includes any judicial office, official or body or committee thereof but only in respect to its or their <u>administrative functions.</u>" (1-18a(a)). Records kept on file by a "public agency" are open. (1-19).</p> <p>CL: <u>Connecticut Bar Examining Committee v. FOI Comm'n.</u> (has to involve institutional machinery of the court to be administrative); <u>Rules Committee v. FOI Comm'n</u> (rulemaking process by Court not an administrative function).</p>	<p>Court determines "administrative" on case by case basis.</p>	<p>Connecticut courts mostly get requests for court records (ex: motions), but not administrative records. Superior Court rules control access to non-administrative records.</p>
Delaware	<p>S: "Public body" does not mention courts. (Title 29, 10002, et seq.)</p> <p>AG: Opinion 96-1B03, 1996 WL 440925 (Public access statute excludes the judiciary).</p>		<p>Delaware OAC counsel says that phone and administrative records would probably be open for public policy reasons.</p>

## APPENDIX A

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Dist. of Colu mbia	Found no useful information.		
Flori da	<p>S: "Agency" has been construed not to apply to courts. (119.011).</p> <p>C: Constitutional right of access to judicial records "except for....records exempted pursuant to court rules in effect on Nov. 3, 1992." (Art. 1, Sec. 24).</p> <p>R: Presumes all records of judiciary are open, with certain exceptions (e.g., trial and appellate court memoranda and draft opinions, information about court security, complaints alleging judicial misconduct or other persons licensed by the courts until probable cause is established, etc. Rule 2.051).</p>		<p>Generally, records relating to the administrative function of the courts are open.</p> <p>Note: Makes no distinction between hard copy and electronic records.</p>
Geor gia	<p>S: "Agency" definition does not mention courts.</p> <p>CL: 417 S.E.2d 11, 12 (Ga. 1992) (Declining to address the question of whether the judiciary is excluded from the Act).</p>	<p>Court has broad discretion to release administrative records and they typically do.</p>	<p>Administrative records in legislative and judicial branches are impliedly exempt from open records statute because statute is intended to target executive agencies.</p> <p>Travel records are open because they are administered by an executive agency.</p>

## APPENDIX A

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Haw a11	S: "Agency .....does not include the non-administrative functions of the courts of this State." (92F-3).  R: Rule for access to administrative records is currently being promulgated.	Because the statute doesn't establish procedures for courts to comply with open records requests, the Supreme Court is promulgating a rule to clarify those unresolved issues.	The Court is also drafting the rule to protect itself from liability, to establish procedures to avoid the disclosure of protected material and for equitable, consistent treatment of public access requests. The rule is currently on a "fast track" and is being drafted to parallel the state's public information act.  The court is currently working with the Office of Information Practices on the draft.

## APPENDIX A

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Idah o	<p>S: "State agency means every state officer, department, division, bureau, commission and board or any committee of a state agency including those in the...judicial branch..." (9-337). Certain information can be excluded by rules of Supreme Court (9-340).</p> <p>R: Administrative or other records of the clerk, justice, judge, magistrate, or staff of the court are open unless exempt by statute, caselaw, or court rule. Rule provides numerous exemptions from disclosure. (Rule 32).</p> <p>C: Crime victim has right to read presentence reports relating to a crime. (Art. 2, Sec. 1).</p>		<p>OAC counsel says the biggest problem is determining what to do with files or reports that come from an executive agency but that have become part of the judicial record.</p> <p>Idaho's open records law was amended to cover the judiciary, except to the extent that the judiciary developed rules to the contrary.</p>

## APPENDIX A

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Illinois	<p>S: "Public body" definition lists legislative and executive branches but does not mention courts. (5 ILCS 140/2).</p> <p>CL: <u>Copley Press v. Admin. Office of Courts</u>, 648 N.E.2d 324 (Ill. App. 2 Dist. 1995) (public info law does not apply to judicial branch.)</p>	<p><u>Copley</u> exempted records on the operation, policies, and procedures of the electronic monitoring system used for home incarceration of felons on the grounds that the administering agency performed a purely judicial function.</p>	<p>Counsel for Illinois AOC says they don't get a lot of requests for administrative records.</p>
Indiana	<p>S: "Public agency" includes a body that is "...exercising any part of the ...judicial power of the state." (5-14-3-2). Records that are "declared confidential by or under rules adopted by the supreme court of Indiana" are exempt from disclosure. (5-14-3-4(a)(8)).</p> <p>R: Rule 9 lists court records that are declared confidential. Administrative records are not listed in the rule.</p>		<p>Counsel for Indiana AOC says that if a record is not listed in the rule as restricted, then it is presumed by their office and the courts to be open.</p>

## APPENDIX A

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Iowa	<p>S: "Government body" means ..... "any branch..." (22.1(1))</p> <p>No rule, but there are some statutory exemptions for personnel information, judicial conduct evaluations, attorney decisions, juvenile files, adoption records, and initial divorce filings.</p>		Iowa has a public access terminal that provides a statewide court information system.
Kansas	<p>S: "Public agency" definition excludes "(B) any municipal judge, judge of the district court, judge of the court of appeals or justice of the supreme court..."(45-217(e)(2))</p> <p>Excludes records from disclosure if they are restricted by ... "rule of the Kansas supreme court..." (45-221)</p> <p>AG: (1) judges' phone records excluded from open records (AG OP. No. 96-77 (Sept. 1996); but (2) records held by the office of the Clerk of Kan. Sup. Court are subject to the Act AG OP. No. 88-117).</p> <p>CL: <u>Stephens v. Van Arsdale</u>, 608 P2d 972 (Kan. 1980)-Court found that the common-law right of access of the public, including the press, to court records is not absolute. Although the Court was construing court records in <u>Van Arsdale</u>, this case is looked to as authority for granting or denying access to administrative records.</p>	<p><u>Stephens v. Van Arsdale</u>, 608 P2d 972</p>	Kansas OCA reports that most open requests are from militia groups who want judge's oaths which the OCA views as open.

## APPENDIX A

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Kentucky	<p>S: "Public agency" definition includes "(e) every state or local court or judicial agency... ." (61.870(1))</p> <p>R: Some Rules that address disciplinary process for attorneys and judges and provide exemptions. No specific rules for administrative records.</p> <p>CL: <u>Ex Parte Farley</u>; Supreme Court limited the statute's application to the judiciary by holding that the statute did not apply to records in the custody of the Administrative Office of the Courts until <u>after</u> the Court had reviewed and examined them. The court based its decision on its fundamental right to control its own records.</p>	<p>Under <u>Farley</u>, the judiciary's records are not subject to statutory regulation.</p>	<p><u>Farley</u> has been given an expansive reading in Kentucky (i.e., that it applies to any records that are in the custody of a court, including judicial records) and is widely viewed as the controlling authority for access to judicial records.</p>
Louisiana	<p>S: "Public body " means "any branch... ." (R.S. 44:1).</p>		<p>There are some standard statutory exemptions for certain records that apply to all agencies (e.g., personnel records).</p>
Maine	<p>S: Statute is silent as to its application to judiciary.</p> <p>R: Supreme Court Rule prescribes measures for access to "confidential information" and "non-routine requests." Non-routine-requests. (SJC-138)</p>		<p>Neither the court or the administrative office has directly addressed the issue.</p> <p>SJC-138 appears to treat court records as if they were subject to the public info law.</p>

## APPENDIX A

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Maryland	<p>S: "Public record means...any documentary material that...Is made by a unit or instrumentality of the State government..." (10-611).</p> <p>Required denial if disclosure would be contrary to the "rules adopted by the court of appeals..." (10-615(2)(iii)).</p>		<p>Maryland OAC reports that requests for administrative records are not common.</p> <p>Despite rulemaking authority, no rules on administrative records have been promulgated.</p>
Massachusetts	<p>S: Not clear that statute applies to courts. Courts have held that it does not apply.</p>		<p>OCA counsel says that there have been no problems with administrative records.</p>
Michigan	<p>S: "The judiciary...is not included in the definition of public body. (15.232(2)(d)(v)).</p> <p>R: Administrative Order 1997-10. Newly adopted administrative rule for administrative records.</p> <p>R: Michigan Court Rule 8.105 is a court rule governing access. There are "sub-rules" that also control access, that appear to relate mostly to certain types of proceedings.</p>		<p>Although the judiciary is expressly excluded from the Michigan open records statutes, the Michigan Supreme Court issued an order in December 1997 to open administrative records. Commentary period from 12/9/97-1/31/98 saw very little input, public or otherwise. The Supreme Court adopted the rule as drafted.</p> <p>Problem area: Most of the requests are very broad and difficult to narrow down.</p>

## APPENDIX A

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Minn esota	<p>S: "The Judiciary is not governed by this chapter. Access to data of the judiciary is governed by rules adopted by the supreme court." (Sec. 13.90(2)).</p> <p>R: <u>Rules of Public Access to Records of the Judicial Branch (Rules 1-8)</u>. All administrative records are open except for those listed in Rule 5.</p>		<p>The statute's definition of "judiciary" is very broad.</p> <p>Like Florida, Minnesota's judiciary was covered by the public access statute until rules could be adopted by its supreme court for access to data.</p> <p>See Court Rules for more information.</p>
Miss issip pi	<p>S: "Public body means...any other entity created by the Constitution or by law..." (25-61-3). But "records developed among judges and among judges and their aides..." are exempt. (9-1-38)</p> <p>Also a statutory exemption for records exempted by court decision. (25-61-11).</p>		<p>Courts interpret the statutes as an express exemption from open records, but services that are provided by an executive agency (like Texas' General Service Commission) is open (e.g., travel vouchers, phone records financial records). Computer contents and memos are not open.</p>

## APPENDIX A

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Missouri	<p>S: "Public governmental body" includes "judicial entities when operating in <u>administrative</u> capacity... ." (610.010)</p> <p>R: Administrative Rule 20 addresses public access to case records, meetings and deliberations of the Supreme Court when operating in an "administrative" or a "judicial" capacity.</p>		<p>Statute does not define administrative.</p> <p>Note: Access to non-case administrative records is probably statutory.</p>
Montana	<p>C: Public has the right to "examine documents... ." (Art 2, Sec. 9).</p> <p>S: "Public writings are the written acts of...public officers...judicial... ." (2-6-101). Defines "judicial records" as one of four classes of "public writings."</p> <p>R: Disciplinary actions are exempt (Rule 13).</p>		
Nebraska	<p>S: Neither the courts nor the judicial branch are mentioned in the statutory definition of "public records" (Sec. 84-712.01(1)).</p> <p>C: Open courts provision has widely been interpreted to mean that records held by courts are presumed to be open. (Art. 1, Sec. 13). Standard statutory and caselaw exceptions for adoption, parental notification for abortion, disciplinary records, and minutes of court meetings.</p>		

## APPENDIX A

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Nev ada	<p>S: "Public agency means any officer of the state...and any office of this state." (239.010)</p> <p>CL: <u>Whitehead v. Nev. Comm'n on Judicial Discipline</u>: Records that Supreme Court declares not public are not "public records" for purposes of open records statute.</p>		
New Ham pshir e	<p>S: No definitions, but exempts records of grand/petit juries, parole and pardon boards from open records.</p> <p>R: Supreme Court rule allows public access to "court records" but doesn't define the term.</p>		
New Jerse y	<p>S: Judiciary is excluded from "state agency", so courts interpret open records law as not applicable to the judiciary.</p> <p>All records that are required by law to be made or kept on file are open except "as otherwise provided by ...rule of court... ." (47:1A-1.2).</p> <p>R: Establishes a public right of access to judicial records, except for those records specifically exempted ( Rule 1:38 is the general rule, but there are other more specific court rules for certain types of records).</p>		<p>Rule 1:38 opens "all records which are required by statute to be made, maintained, or kept on file by any court, office or official within the judicial branch of government... "</p>

## APPENDIX A

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New Mexico	<p>S: "Public body means the executive, legislative and judicial branches... ." (14-2-6).</p> <p>R: Supreme Court Amended Order No 96-8500 opens all records, including administrative, in the custody of the clerk — except those that are confidential under other law, rule or court order.</p>		
New York	<p>S: For the purposes of case files, the judiciary is statutorily exempt from freedom of information law (Sec. 86) but is covered under other provisions (Sec. 255, Judiciary Law).</p> <p>R: Outlines procedures for access to administrative records, but does not define "administrative." (Rule 124)</p>		<p>Although the judiciary is exempt from the public access statute, courts have interpreted this exemption to apply only to court records. "Administrative" records would fall under the public access statute and Rule 124 (which procedurally implements the public access law). New York's OCA/Open Records officer says that it's not clear what is administrative.</p> <p>"Administrative" is determined on case-by-case basis.</p> <p>Problem areas: Lots of open records requests from prisoners, unions, disgruntled litigants in civil cases, and counsel for death penalty inmates. Often the requests are voluminous and burdensome.</p>

## APPENDIX A

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North Carolina	S: Definition of "Agency" includes "every public office, officer, or official...elected or appointed... ." (132-1)		Basically, everything is public except for standard exceptions (juvenile, abuse, adoption, disciplinary cases, etc.)
North Dakota	S: Although "public entity means all public or governmental bodies...", a "record does not include records in the possession of a court in this state." (44-04-18)		Also see <u>Williston Herald, Inc. v. O'Connell</u> , 151 N.W.2d 758 (N.D. 1967) and <u>Grand Forks Herald v. Lyons</u> , 101 N.W.2d 543 (N.D. 1960) (both cases exempting records that are held by county courts).

## APPENDIX A

### ACCESS TO JUDICIAL RECORDS IN THE FIFTY STATES

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Ohio	<p>S: "Public record means any record that is kept by any public office, including...state units..." Exemptions provided for probation, parole proceedings, etc. (149.43(1)).</p> <p>AG: Opinion No. 74-097 declared most court records open (1974).</p> <p>R: Various rules for issues relating to the bar (scores, discipline, etc.) , but no rules for administrative records.</p> <p>CL: <u>State Ex Rel Cincinnati Post v. Schweikert</u>, 527 N.E.2d 1230 (Ohio 1988) (report by a court administrator from factual information in public records is a public record and subject to disclosure under the ORA, even though such compilations are made for the use of judges in sentencing).</p> <p><u>State ex rel. Martinelli v. Corrigan</u>, 593 N.E. 2d 364 (Ohio 1991) (holding that a judge's personal notes are not subject to disclosure under the ORA).</p>	<p>Courts have defined "public record" in numerous cases.</p>	<p style="text-align: center;">Local courts have various retention and management policies.</p> <p style="text-align: center;">Problem: Ohio OCA says it's never clear how to define "public record."</p>
Okla homa	<p>S: Except for a statutory requirement that they keep records of the receipt and expenditure of public funds, judges and justices are excluded from the open records statute (24A.3-A.4)</p>		<p>Unable to obtain additional information, but we were told that local/municipal courts have policies in place.</p>

## APPENDIX A

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Oregon	<p>S: "State agency means any...court... ." (192.410(5))</p> <p>CL: <u>Koin-TV v. Olsen</u>, 711 P.2d 966 (Or. 1985) ("The failure of the legislature to include reference to courts and court records such as those particularly named in ORS 192.005 tells against application of these sections to the courts.").</p>		
Pennsylvania	<p>S: Broad definition of "agency", but doesn't mention courts (Title 65, Sec. 66.1).</p> <p>R: Supreme Court has established a public access policy for records that is fairly broad and that has generally been interpreted as including any piece of information used in the management of the courts.</p>		
Rhode Island	<p>S: "Agency or public body" means "judicial... ." (38-2-2(a)), but "judicial bodies are included in the definition only in respect to their administrative function..." (38-2-2(T))</p>		
South Carolina	<p>S: "Public body means any...public or governmental body...of the State... ." (30-40-20)</p>		No rules for administrative files. Just rules for disciplinary proceedings, bar admissions, etc.

## APPENDIX A

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South Dakota	S: Requires an officer or public servant who is required to keep a record or preserve a document to keep the record or document open for public inspection. (1-27-1)		Very broad statute, although there are statutory exceptions for mental health proceedings and juvenile proceedings.
Tennessee	S: "All state, county and municipal records...are open for personal inspection by any citizen..." (10-7-503)		No rules or provisions for administrative records. There are some statutory exclusions for judicial conduct and files maintained by the Tennessee Bureau of Investgtn.
Texas	S: "Governmental body...does not include the judiciary." (Govt Code 552.003(1)(B)). AG: Judiciary exception applies only to those records which relate to the exercise of judicial powers. (ORD 657) CL: Supreme Court issued an order and opinion denying an open records request under the Act and found ORD 657 incorrect.		See: Tex. Const. Art. 5, Sec. 31(a) and Section 74.024, Government Code, for rulemaking authority of the Texas Supreme Court.

## APPENDIX A

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Utah	<p>S: "Governmental entity means...courts, the Judicial Council, the Office of Court Administration, and similar administrative units in the judicial branch..." (63-2-103(9)(a)), but "record does not mean...notes or internal memoranda prepared as part of the deliberative process by a member of the judiciary...or a member of any other body charged by law with performing a quasi-judicial function." (63-2-103(18)(ix).</p> <p>A record is not public if "access is restricted pursuant to court rule..." (63-2-201).</p> <p>R: Main categories are: public administrative, public judicial, private administrative, private judicial, controlled administrative, controlled judicial, protected administrative, protected judicial records, juvenile court legal records, juvenile court and social probation records, sealed judicial records, expunged judicial records. See Rule 4-202.01 et seq.</p>		<p>At the request of the legislature, Supreme Court of Utah developed its rule for classifying judicial records. The initial language for the court's rule was developed by the Utah Judicial Council Policy Planning Committee.</p> <p><u>Rule 4-202.01 et seq.</u> defines several categories of records and provides rules for access to those records</p>

## APPENDIX A

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Ver mont	<p>S: "Public agency or agency means any...branch... ." (Title 1, Sec. 317(a)). A public record is exempt from public inspection and copying if it is a record "of internal materials prepared for the deliberations of any public agency acting in a judicial or quasi-judicial capacity." (T.1. Sec. 317(c)(24)).</p> <p>CL: <u>Herald Ass'n, Inc. v. Judicial Conduct Bd.</u>, 544 A.2d 596, 601 n.7 (Vt. 1988) (interpreting PIA statute) ("It is doubtful that the public records law applies to all judicial records in light of the specific statutes [governing access to records] in the trial courts and the power of the judicial branch over its own records.").</p>		
Virgi nia	<p>S: "Public body" doesn't describe courts, but the act is generally seen as applying to the judiciary. (Section 2.1-341).</p> <p>AG: Opinion 1976-77 #309 (Open records act applies to executive, judicial, and legislative branches of government).</p>		Rule and statutory exemptions for juvenile proceedings, adoption cases, etc. No rules for administrative files.

## APPENDIX A

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Was hingt on	<p>S: No statutory definitions given; not clear that open records statutes apply to courts. (42.17.250 et seq.).</p> <p>CL: <u>Nast v. Michels</u>, 730 P.2d 54 (1986) (Public Disclosure Act does not apply to court case files).</p> <p>R: Court rule that prescribes policies for access to public records, private records, and quasi-public documents that are in the possession of the state's Administrative Office of the Courts. (Policy 11.03)</p>	<p>Courts rely on <u>Nast v. Michels</u> as an exemption from application of the open records statutes.</p>	<p>Washington OCA says that as a general rule, courts follow the open records law when possible, even though they do not view it as binding on the courts.</p>
West Virgi nia	S: "Public body" includes the judicial branch. (29B-1-2(3)).		
Wisc onsi n	S: "Authority means...any court of law... ." (19.32)		
Wyo ming	S: Exempts a record from public inspection if the inspection "is prohibited by rules promulgated by the supreme court or by the order of any court of record." (16-4-203).		

**PUBLIC ACCESS TO JUDICIAL RECORDS**

**TEXAS JUDICIAL COUNCIL**

**September 1998\***

*\*With changes adopted by the Texas Judicial Council on June 25, 1998*

*September 10, 1998*

*September 10, 1998*

## **TABLE OF CONTENTS**

<b>Section 1</b>	<b>Policy Statement</b>
<b>Section 2</b>	<b>Definitions</b>
<b>Section 3</b>	<b>Applicability of Rule</b>
<b>Section 4</b>	<b>Right of Access to Judicial Records</b>
<b>Section 5</b>	<b>Exemptions from Disclosure</b>
<b>Section 6</b>	<b>Procedures for Access to Judicial Records</b>
<b>Section 7</b>	<b>Costs for Copies of Judicial Records</b>
<b>Section 8</b>	<b>Denial of Access to Judicial Records</b>
<b>Section 9</b>	<b>Relief from Denial of Access to Judicial Records</b>
<b>Section 10</b>	<b>Violation of Rule</b>

**RULE \_\_\_\_\_.**

**PUBLIC ACCESS TO JUDICIAL RECORDS**

**1. POLICY**

The Supreme Court of Texas adopts this rule consistent with this state's longstanding philosophy that government functions best when the public is informed and while recognizing that the best interests of the citizenry is served by preserving a free and independent judiciary. Records of all courts, court personnel, and judicial agencies are open to the general public as provided by this rule, other rules, or by law.

**2. DEFINITIONS**

(a) In this rule:

(1) "Actual cost" has the meaning assigned by Section 111.62, Title 1, Texas Administrative Code.

(2) "Correctional facility" has the meaning assigned by Section 1.07(a), Penal Code.

(3) "Court record" means a document of any nature that is created, produced, or filed in connection with any matter before a court.

(4) “Custodial Judge ” means a judge of the court whose records are requested. The

term includes:

- (A) the chief or presiding judge of a multiple judge court;
- (B) the presiding judge of an administrative region;
- (C) a judge who serves as a local administrative judge; and
- (D) the presiding judge of the statutory probate courts.

(5) “Judge” means a justice, judge, former or retired visiting judge, judicial officer, referee, commissioner, special master, court-appointed arbitrator, or other person exercising adjudicatory powers in the judicial branch.

(6) “Judicial agency” means an office, board, commission, or other similar entity that is in the judicial branch and that serves an administrative function for a court. The term does not include a governmental body as defined by Section 552.003(1)(A), Government Code.

(7) “Judicial record” means a document, paper, letter, map, book, tape, photograph, film, recording, data processing software, or other material created by a court, court personnel, or a judicial agency, regardless of electronic or physical form, characteristics, or means of transmission, that is:

- (A) made or maintained as provided by law, court rule, or ordinance; or
- (B) made or maintained in the regular course of business by a court or judicial agency.

(b) A reference in this rule to a provision in the Texas Administrative Code, a court rule, or a statute includes any subsequent amendment to that provision, rule, or statute.

### **3. APPLICABILITY OF RULE**

(a) This rule does not apply to a court record.

(b) This rule does not apply to a judicial record , access to which is controlled by:

- (1) a state or federal rule of civil or criminal procedure, including Rule 76a, Texas Rules of Civil Procedure;
- (2) a state or federal rule of appellate procedure; or
- (3) common law, court order, judicial decision, or another provision of law.

(c) This rule does not apply to a record or other information relating to an arrest or search warrant or a supporting affidavit, access to which is controlled by:

- (1) a state or federal rule of civil or criminal procedure;
- (2) a state or federal rule of appellate procedure; or
- (3) common law, court order, judicial decision, or another provision of law.

(d) This rule does not apply to a record or information to which access is controlled by Chapter 552, Government Code, or another statute.

(e) This rule does not prohibit a Custodial Judge from voluntarily making part or all of the information in a judicial record available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law. Information in a judicial record that is made available under this subsection must be made available to any person who requests the information.

#### **4. RIGHT OF ACCESS TO JUDICIAL RECORDS**

(a) Judicial records other than those exempt under Sections 3 and 5 of this rule are open to the general public for inspection and copying during regular business hours.

(b) This rule does not require a court or judicial agency to create or to retain a judicial record for a specific period of time, other than to print information stored in a computer.

(c) This rule does not require a Custodial Judge to allow the inspection of or provide a copy of information in a book or publication purchased or acquired by the Custodial Judge if the book or publication is commercially available to the public.

(d) This rule does not require a Custodial Judge to respond to or comply with a request for a judicial record from or on behalf of an individual who is imprisoned or confined in a correctional facility.

## **5. EXEMPTIONS FROM DISCLOSURE**

The following judicial records are exempt from disclosure under this rule:

(1) *Judicial work product and drafts*: Notes, memoranda, drafts, data processing software, or other any other materials that relate to a judge's adjudicative decision making process prepared by that judge, by another judge, or by court staff, an intern or any other person acting on behalf of or at the direction of the judge;

(2) *Security Plans*: A record, including a security plan or code, the release of which would jeopardize the security of an individual against physical injury or jeopardize information or

property against theft, tampering, improper use, illegal disclosure, trespass, unauthorized access, or physical injury;

(3) *Personnel Information*: Information in personnel records that:

(A) is requested by a person other than the Custodial Judge or the current or former employee, or unpaid volunteer who is the subject of the file;  
and

(B) if disclosed, would constitute a clearly unwarranted invasion of personal privacy;

(4) *Home address and Family Information*: Information that, if the person chose not to allow public access to that information:

(A) discloses a current or former Custodial Judge's or employee's or unpaid volunteer's home address, home or personal telephone number, or social security number; or

(B) reveals whether the current or former Custodial Judge or employee or unpaid volunteer has family members;

(5) *Applicants for Employment or Volunteer Services:* Information that relates to an applicant for employment or volunteer services;

(6) *Internal Administration of a Court:* Notes, memoranda, drafts, or other material that relate to the administration of a court if the notes, memoranda, drafts, or other material:

(A) have not been circulated outside the court or disclosed to a member of the general public; or

(B) require confidentiality to protect a compelling governmental interest;

(7) *Court Law Library Information:* A record in a court or county law library that links a patron's name with the materials requested or borrowed by that patron;

(8) *Judicial Calendar Information:* A calendar or any other document that:

(A) reflects the future appointments or engagements of a custodial judge; or

(B) reflects the appointments or engagements of a Custodial Judge that are conducted outside regular business hours; and

(9) *Information Confidential Under Other Law:* A record or information that, regardless of the format in which the record or information is stored, is confidential or exempt from disclosure under a state or federal statute or common law , including information that relates to:

- (A) a complaint alleging misconduct against a judge, if the complaint is exempt from disclosure under Chapter 33, Government Code, or other law;
- (B) a complaint alleging misconduct against a person who is licensed or regulated by the courts, if the information is confidential under applicable law; or
- (C) a trade secret , bid, or other proprietary material.

## **6. PROCEDURES FOR ACCESS TO JUDICIAL RECORDS**

(a) A request to inspect or copy a judicial record must be in writing and include sufficient information to reasonably identify the information that is being sought. A requestor is not required to have detailed knowledge of the filing system or procedures of the Custodial Judge or to disclose the purpose of the request in order to obtain the information.

(b) A Custodial Judge who receives a request to inspect or copy a judicial record shall promptly allow the requestor to inspect the judicial record, if the judicial record is available, at a convenient, public area within a reasonable time not to exceed the 20<sup>th</sup> business day after the date that the Custodial Judge receives the request. If a requestor requests copies of a judicial record, the Custodial Judge may deliver the record to the clerk for copying. A Custodial Judge may comply with a request for copies of a judicial record by sending the judicial record to the requestor by first class United States mail, if the person requesting the judicial record requests that copies be provided by mail and agrees to pay the postage.

(c) If the Custodial Judge has an administrative judge, the Custodial Judge may:

- (1) refer the request to the administrative judge for a response; and
- (2) promptly notify, in writing, the person requesting the record of the referral.

(d) If another person or entity has actual physical custody of the judicial record, the Custodial Judge shall:

- (1) refer the request to the other person or entity for a response; and
- (2) promptly notify, in writing, the person requesting the information of the referral.

(e) A Custodial Judge who is unable to provide a judicial record within the time required by

Subsection (b) shall notify the requestor of that fact, in writing, not later than the 20<sup>th</sup> business day after receiving the request and set a date and hour within a reasonable time when the information will be available for inspection or duplication. Compliance with this subsection is not a waiver of a denial of access to a judicial record.

(f) A Custodial Judge or a judicial agency may not ask the requestor of a judicial record to disclose the purpose of the request as a condition of obtaining the judicial record. The Custodial Judge or judicial agency may make an inquiry to:

- (1) establish the proper identification of the requestor; or
- (2) clarify the nature or scope of a request for a judicial record.

## **7. COSTS FOR COPIES OF JUDICIAL RECORDS**

(a) The cost for a copy of a judicial record, if the cost for the copy is not prescribed by statute, shall be the actual cost not to exceed 125 percent of the amount prescribed by the General Services Commission for providing public information under Title 1, Texas Administrative Code, Sections 111.63, 111.69, and 111.70.

(b) A person who believes the person has been charged in excess of the amount allowed for a copy of a judicial record may appeal the overcharge in the manner prescribed by Section 9 of this rule for the appeal of the denial of access to a judicial record.

(c) A Custodial Judge may provide a copy of a judicial record without charge or at a reduced charge if the Custodial Judge or officer determines that waiver or reduction of the charge is in the public interest because providing the copy of the record primarily benefits the general public.

(d) If a Custodial Judge determines that the cost of processing the collection of a charge for providing a copy of a judicial record will exceed the amount of the charge, the Custodial Judge may waive the charge.

## **8. DENIAL OF ACCESS TO A JUDICIAL RECORD**

(a) A Custodial Judge may deny a request for a judicial record under this rule only if the Custodial Judge reasonably determines that:

- (1) the requested judicial record is exempt from required disclosure under this rule; or
- (2) compliance with the request would substantially and unreasonably impede the routine operation of the court or judicial agency.

(b) A Custodial Judge who denies access to a judicial record shall notify the person requesting the record of the denial in writing within a reasonable time not to exceed the 10<sup>th</sup> business day after the date that the Custodial Judge receives the request unless the time for responding to the request has been extended under Section 6(e) of this rule. A notice of denial must:

(1) state the reason for the denial;

(2) inform the person that the person is entitled to appeal the denial as provided by Section 9 of this rule; and

(3) include the name and address of the Administrative Director of the Office of Court Administration.

## **9. RELIEF FROM DENIAL OF ACCESS TO JUDICIAL RECORDS**

(a) A person who is denied access to a judicial record may appeal the denial by filing a petition for review with the Administrative Director of the Office of Court Administration.

(b) The petition for review:

(1) must include a copy of the Custodial Judge's notice of denial;

(2) may include any supporting facts, arguments, and authorities that the petitioner believes to be relevant; and

(3) may contain a request for expedited review, the grounds for which must be stated.

(c) To be valid, the petition must be filed not later than the 30<sup>th</sup> day after the date that the petitioner receives notice of a denial of access to the judicial record.

(d) Upon receipt of the petition for review, the Administrative Director shall promptly notify the Custodial Judge who denied access to the judicial record and the presiding judge of each administrative judicial region of the filing of the petition.

(e) Upon receiving notice under Subsection (d), the presiding judges shall form a special committee of not less than five of the presiding judges to review the petition and notify the Administrative Director of the names of the judges selected to serve on the committee. The Administrative Director shall forward, in writing, the names of the judges selected to serve on the committee to the petitioner and the Custodial Judge.

(f) A Custodial Judge who denies access to a judicial record and against whom relief is sought under this section may submit a written response to the petition for review and include supporting facts and authorities in the response.

(g) Not later than the 60<sup>th</sup> day after the date that the Administrative Director receives a valid petition under this Section, the special committee shall review the petition and the Custodial Judge's response, including any supporting and controverting facts, arguments, and authorities in the petition, and the response and determine whether the requested judicial record should be made available under this rule to the petitioner. On request of the petitioner, and for good cause shown, the special committee may schedule an expedited review of the petition.

(h) Not later than the 60<sup>th</sup> day after the date that the Administrative Director receives the petition for review, the special committee shall issue a signed decision and send the decision to the Administrative Director. The Administrative Director shall immediately notify the petitioner of the decision.

(i) The decision of the special committee must:

(1) grant the petition in whole or in part or sustain the denial of access to the requested judicial record;

(2) state the reasons for the decision, including appropriate citations to this rule; and

(3) describe the record or portions of the record to which access is ordered or denied, but only if the description does not disclose confidential information.

(j) On receipt of the decision from the special committee, the Administrative Director shall:

(1) notify the petitioner and the Custodial Judge of the decision and include a copy of the decision with the notice; and

(2) maintain a copy of the special committee's decision in the Administrative Director's office for public inspection.

(k) The decision of a special committee under this rule is not appealable but does not preclude any other available legal remedy.

**10. VIOLATION OF RULE-** Failure of a Custodial Judge to comply with this rule may be grounds for sanctions under the Code of Judicial Conduct.

**PROPOSED CODE OF JUDICIAL CONDUCT LANGUAGE**

**A judge shall comply with the procedures for providing public access to judicial records in the manner prescribed by Rule \_\_\_\_\_.**

## **Electronic Mail Commentary**

The definition of "judicial records" refers to "material created by a court, court personnel, or a judicial agency, regardless of electronic or physical form, characteristics, or means of transmission... ." This language includes official business information transmitted via an electronic (e-mail) system.

In 1997, the 75<sup>th</sup> Legislature, in response to the recommendations of the Information Technology Task Force of the Commission on Judicial Efficiency, authorized the creation of the Judicial Committee on Information Technology (S.B. 1417). Section 77.031, Government Code, outlines the duties of the Judicial Committee on Information Technology ("Committee") including requiring the Committee to:

"develop minimum standards for voice storage and retrieval services, including voice messaging and electronic mail services . . . ." and "develop security guidelines for controlling access to and protecting the integrity and confidentiality of information available in electronic form... ."

The use of computer technology in Texas courts is new and the Committee's role in developing standards and guidelines for the use of this technology will significantly impact the formulation of policies for public access to electronic information. Until the Committee completes these tasks, courts should be guided by the general principles of this rule in addressing concerns relating to public access to electronic information.

