

Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts

Section 1.00 Definitions

- A. “Access” means that the public may inspect and photocopy the official case records of the magisterial district courts, except as provided by law or as set forth in this policy.
- B. “Official case records of the magisterial district courts” means the records filed with the court and maintained in the paper case files pursuant to specific legal authority.
- C. “Public” means any person, business, non-profit entity, organization or association.

Section 2.00 Statement of General Policy

- A. It is the policy of the Unified Judicial System to facilitate access by the public to the official case records of the magisterial district courts consistent with all relevant legal authority.
- B. This policy shall govern the access by the public to the official case records of the magisterial district courts.
- C. Security, possession, custody and control of the official case records of the magisterial district courts are generally the responsibility of the Magisterial District Judge or his/her designated staff.
- D. Facilitating access by the public shall not substantially impede the orderly conduct of magisterial district court business.

Section 3.00 Requesting Access to Official Case Records of the Magisterial District Courts

- A. All requests for access by the public to the official case records of the magisterial district courts shall be made in writing to the court on a form prescribed by the Administrative Office of Pennsylvania Courts.
- B. A request shall identify or describe the records sought with specificity to enable the court staff to ascertain which records are being requested. A request need not include any explanation of the requestor’s reason for requesting or intended use of the records.

- C. If the requestor does not submit a completed form, access may be delayed until the form is completed or until a time when court staff is available to monitor such access to ensure the integrity of the case records.
- D. A requestor, whether acting on his/her own behalf or as another's agent, may request access to a maximum of 10 different case records during any given business day from a magisterial district court.

Section 4.00 Responding to Requests for Access to Official Case Records of the Magisterial District Courts

- A. As promptly as practicable but in no case longer than 5 business days after receipt of a request for access to the official case records of the magisterial district court, the court shall respond in one of the following manners:
 - 1. fulfill the request;
 - 2. notify the requestor in writing that the information requested is available upon payment of applicable fees and specify those fees;
 - 3. notify the requestor in writing that the request cannot be fulfilled because the requestor has not complied with the provisions of this policy and specify the areas of non-compliance;
 - 4. notify the requestor in writing that the information cannot be provided and specify the reasons why; or
 - 5. notify the requestor in writing that the request has been received and the expected date the information will be available. If the information will not be available within 30 business days, the court shall notify the district court administrator and the requestor simultaneously.
- B. If a court denies a request for access, a requestor may seek review of that determination within 10 business days. The request for review shall be submitted in writing to the president judge of the judicial district or president judge's designee. The president judge or designee shall make a determination and forward it in writing to the requestor. This remedy need not be exhausted before other relief is sought.

Section 5.00 Fees

- A. Reasonable fees may be imposed for providing the public with access to the official case records of the magisterial district courts pursuant to this policy.
- B. The president judge of each judicial district shall establish a fee schedule by local rule pursuant to Pa.R.J.A. No 103. The fee schedule shall be publicly posted.

Section 6.00 Official Case Records of the Magisterial District Courts Not Accessible by the Public.

- A. The following items or information residing in the official case records of the magisterial district courts are not accessible to the public:
 - 1. Forms filed pursuant to Section 7.00 of this policy;
 - 2. Information sealed pursuant to an order by a common pleas or appellate court;
 - 3. Information to which access is restricted by federal law, state law, or state court rule; and
 - 4. Notes, drafts, and work product of the magisterial district court.
- B. With the approval of the Chief Justice of Pennsylvania, the Court Administrator of Pennsylvania may determine that additional information in the official case records of the magisterial district courts is not accessible by the public because it presents a risk to personal security, personal privacy, or the fair, impartial and orderly administration of justice.

Section 7.00 Confidential Information in Pleadings or Other Papers Filed with Magisterial District Courts.

- A. Unless otherwise required by law or requested by the court, parties and their attorneys are directed to refrain from including, in all documents filed with the court, including exhibits attached thereto, any of the following information:
 - 1. social security numbers; and

2. financial institution account numbers, credit card numbers, PINS or passwords to secure accounts.
- B. The parties and their attorneys are solely responsible for complying with the provisions in subsection A. The court staff will not review any document for compliance with subsection A.
 - C. If a party is required by law or requested by the court to include any of the information set forth in subsection A, the information shall be filed on a separate form prescribed by the Administrative Office of Pennsylvania Courts. This form shall not be accessible to the public.

EXPLANATORY REPORT

Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts

INTRODUCTION

Article V, Section 10(c) of the Pennsylvania Constitution vests the Supreme Court with the authority to prescribe practices and procedures for public access to the records of the Unified Judicial System (UJS) including magisterial district courts. Guided by constitutional and common law principles,¹ the policies governing access to UJS records begin with the presumption of openness.

This presumption in the Judiciary is long-standing, both in policy and practice. In 1994, the Supreme Court established standards and protocols for public access to court records, beginning with the policy on access to magisterial district judge, formerly district justice, records, whether stored electronically or in hard copy. With the advancements in the Court's automation efforts, the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania* ("Electronic Records Policy") was adopted by the Court effective January 1, 2007. This policy covers access to the case record information maintained in the UJS' three automated statewide case management systems – the Pennsylvania Appellate Court Management System (PACMS), the Common Pleas Criminal Court Case Management System (CPCMS), and the Magisterial District Judge System (MDJS). Specifically, the Electronic Records Policy addresses what electronic case record information is available to the public; how requests for access are handled; applicable fees and other related issues. In addition to the electronic record policy, the Supreme Court also promulgated Rule of Judicial Administration 509, effective July 1, 2007, that sets forth procedures for access to the financial records of the Unified Judicial System.

The promulgation of the aforementioned policies and rules affirms that the endeavor to ensure that UJS records are publicly accessible has been methodical and focused. The next logical step in such work was a review of the standards governing access to magisterial district court paper records that are maintained in the case files.

In the spring of 2007, the Court Administrator of Pennsylvania convened a working group to formulate a statewide public access policy for official case records of magisterial district courts. The working group was comprised of magisterial district judges, district court administrators, representatives for the clerks of court and prothonotaries, counsel from the Supreme Court's rules committees, and Administrative Office of Pennsylvania Courts (AOPC) staff. Its

¹ The constitutional provisions that speak to accessibility of court records can be found in the Fifth and Sixth Amendments of the United States Constitution and Article I §§ 7, 9, and 11 of the Pennsylvania Constitution.

mission was to precisely define what official case records of the magisterial district courts are accessible and how requests should be facilitated in light of current UJS access policies, statutory provisions governing access to records (including proposed changes),² and other jurisdictions' access rules and policies related to limited jurisdiction courts. The working group was asked to specifically address release of sensitive information, such as social security numbers.

Court records, including those maintained in the magisterial district courts, often contain sensitive and private information, particularly related to litigants' personal identifiers (such as, social security numbers). Any objective to uniformly protect that information residing in *existing and future* court records would necessarily involve careful scrutiny of each case record and redaction of pertinent information in accord with applicable policy provisions prior to permitting access by the public.

As is noted in the commentary to Section 7.00, the working group considered this approach, but ultimately rejected it for the following reasons. Depending on individual court resources, this approach could cause delays in fulfilling public access requests to official case records of the magisterial district courts, result in the inadvertent release of non-public information, and/or impede the business of the court. Hence, redaction and retroactive application of this policy is not viewed as a viable solution.

The procedures set forth in this proposed policy are intended to further the UJS' open records policy, protect an individual's privacy and personal security, assure uniform response by UJS court staff, and eliminate any artificial barriers that may delay or complicate access by the public. The working group recommends that this proposal should be applied prospectively.

² See, e.g., PA. STAT. ANN. tit. 65, §§ 66.1-66.9 (West 2006) as well as amendments to the same set forth Act 3 – 2008 (SB 1, PN 1763).

Section 1.00 Definitions

- A. "Access" means that the public may inspect and photocopy the official case records of the magisterial district courts, except as provided by law or as set forth in this policy.
- B. "Official case records of the magisterial district courts" means the records filed with the court and maintained in the paper case files pursuant to specific legal authority.
- C. "Public" means any person, business, non-profit entity, organization or association.

COMMENTARY

This policy is not intended to govern access to the official case records of the magisterial district courts by system and related personnel, as defined in 42 Pa.C.S. § 102; or by any federal, state, or local governmental agency, employees or officials of such an agency if acting in their official capacity.

Section 2.00 Statement of General Policy

- A. It is the policy of the Unified Judicial System to facilitate access by the public to the official case records of the magisterial district courts consistent with all relevant legal authority.
- B. This policy shall govern the access by the public to the official case records of the magisterial district courts.
- C. Security, possession, custody and control of the official case records of the magisterial district courts are generally the responsibility of the Magisterial District Judge or his/her designated staff.
- D. Facilitating access by the public shall not substantially impede the orderly conduct of magisterial district court business.

COMMENTARY

Subsection A recognizes that public access to the official case records of the magisterial district courts is grounded in constitutional and common law principles. The Pennsylvania Supreme Court summarized the interests protected in providing public access as:

“generally, to assure the public that justice is done even-handedly and fairly; to discourage perjury and the misconduct of participants; to prevent decisions based on secret bias or partiality; to prevent individuals from feeling that the law should be taken into the hands of private citizens; to satisfy the natural desire to see justice done; to provide for community catharsis; to promote public confidence in government and assurance that the system of judicial remedy does in fact work; to promote the stability of government by allowing access to its workings, thus assuring citizens that government and the courts are worthy of their continued loyalty and support; to promote an understanding of our system of government and courts.” Commonwealth v. Fenstermaker, 530 A.2d 414, 417 (1987).

Subsection B provides consistency and predictability across courts and furthers equal access to the courts and official case records of the magisterial district courts. The intent of this provision is to preclude the adoption of different policies or local rules by judicial districts and/or courts that may be inconsistent with Unified Judicial System policy.

Subsection C acknowledges the responsibility of the magisterial district judges and their staff to maintain the integrity of the official case records. See also Rule 17 of the Rules Governing Standards of Conduct of Magisterial District Judges relating to supervision of magisterial district courts by president judges.

Subsection D recognizes that magisterial district courts require some flexibility in implementing the provisions of this policy, given the differences in resources and caseloads among the over 500 magisterial district courts. For example, a magisterial district court may set aside a designated time each week in which the public may inspect and copy official case records, or magisterial district court staff may make an extra copy of each notice of court proceeding produced that could be available to the public for review.

Requests for case record information that cannot be satisfied without substantially impeding the orderly conduct of court business in a magisterial district court may be referred to the AOPC, provided that the requestor is not requesting access to the official case records of the magisterial district court but is merely interested in obtaining electronic case record information that is maintained in the MDJS.³ Because the AOPC does not have access to the official case records of the magisterial district courts, any requests to inspect or copy the paper records should be handled by the appropriate magisterial district court. However, if the requestor is willing to accept access to the electronic case record information⁴ in lieu of the official case records, the request can be handled by AOPC. Access to information maintained in the MDJS is governed by the Electronic Record Policy, which along with pertinent request forms can be found at <http://www.aopc.org/index/PublicAccessPolicy>.

³ See Section II.A.3. of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Magisterial District Court Records* which provides in part that “[r]equests for docket or case index information that cannot be satisfied without substantially impeding the orderly conduct of office business may be referred to the AOPC.”

⁴ It is important to note that the electronic case record information maintained in the MDJS is a subset of the information that is maintained in the official case files at the magisterial district courts. That is, all the information contained in the official case records on file with the courts is not captured by the MDJS.

Section 3.00 Requesting Access to Official Case Records of the Magisterial District Courts

- A. All requests for access by the public to the official case records of the magisterial district courts shall be made in writing to the court on a form prescribed by the Administrative Office of Pennsylvania Courts.
- B. A request shall identify or describe the records sought with specificity to enable the court staff to ascertain which records are being requested. A request need not include any explanation of the requestor's reason for requesting or intended use of the records.
- C. If the requestor does not submit a completed form, access may be delayed until the form is completed or until a time when court staff is available to monitor such access to ensure the integrity of the case records.
- D. A requestor, whether acting on his/her own behalf or as another's agent, may request access to a maximum of 10 different case records during any given business day from a magisterial district court.

COMMENTARY

All requests for access, whether for copies or inspection, shall be made in writing on a request form prescribed by AOPC. The form should be designed to include the requestor's name, address, phone number, etc., as contact information will be helpful to court personnel should they have questions about the request upon receipt. Moreover, the requestor must provide sufficient distinguishing information about their request for the court to determine with certainty the parties and/or the case(s) involved. As provided in Subsection C, if the requestor is unable or unwilling to complete the form, access may be delayed until a court staff member is available to sit with the requestor and monitor the use of the file to ensure integrity of the same. Similar procedures are in place in courts of Delaware and New Jersey.⁵

⁵ Delaware Directive 80-021 (5th Supplement) "Policy Directive 80-021: Public Access to Judicial Records – Protection of Witness Information – Procedure for Sealing Files", pp. 9-10 provides in part the following information: "How much identification or information should the court require of those who request information?...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...A person requesting information does not need to provide identification in order to receive the 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...."

The proposed policy establishes 10 records as the maximum number of official case records of the magisterial district courts or files that a single requestor could request per business day for a number of reasons. See Subsection D. First and foremost, the staff of the magisterial district courts must attend to the business of the court – caseload management. Furthermore, a daily limit on the volume of requests helps to ensure that the courts are open to all people, and not just a few individual requestors with sufficient resources to divert the courts’ resources, perhaps to the detriment of other requestors. This provision strikes an appropriate balance between accommodating reasonable requests for official case records of the magisterial district courts in bulk while not impinging upon the court’s ability to conduct its business.

Of course, requestors who are not interested in actually accessing the official case records of the magisterial district courts may make their request to the AOPC, since the AOPC maintains the MDJS, which contains an electronic subset of the magisterial district courts’ official case records. The MDJS does not capture copies or images of case records; it is essentially a database of court record information entered by the magisterial district courts. Access to information maintained in the MDJS is governed by the Electronic Records Policy, posted at <http://www.aopc.org/index/PublicAccessPolicy>. Section 3.10 of the Electronic Records Policy permits bulk requests. Thus, a requestor who wishes access to information captured in the official case records of the magisterial district courts that exceeds the limitation set forth above could receive case information recorded in the MDJS from the AOPC, as permitted under the Electronic Records Policy.

A court may wish to implement a practice whereby persons who regularly request information from the court do not need to complete a request form for each request, but may complete one form noting what information is generally requested.

New Jersey Directive #15-05 “Judiciary Open Records: Policies and Procedures for Access to Case-Related Court Records – Staff Guidelines”, p. 2 provides in part: “While the form asks for the requestor’s name, address, and other information, records requested must still be provided even if the requestor does not provide that personal information...Where a requestor seeks to inspect a file, that is, to have physical custody of the file for some period, there is a legitimate concern to ensure that the file is not tampered with. In such instances, the requestor should be asked to provide some form of personal identification. If the requestor is unable or unwilling to do so, production of the file may be delayed until a court staff member is available to sit with the requestor and monitor the use of the file....”

Section 4.00 Responding to Requests for Access to Official Case Records of the Magisterial District Courts

- A. As promptly as practicable but in no case longer than 5 business days after receipt of a request for access to the official case records of the magisterial district court, the court shall respond in one of the following manners:
1. fulfill the request;
 2. notify the requestor in writing that the information requested is available upon payment of applicable fees and specify those fees;
 3. notify the requestor in writing that the request cannot be fulfilled because the requestor has not complied with the provisions of this policy and specify the areas of non-compliance;
 4. notify the requestor in writing that the information cannot be provided and specify the reasons why; or
 5. notify the requestor in writing that the request has been received and the expected date the information will be available. If the information will not be available within 30 business days, the court shall notify the district court administrator and the requestor simultaneously.
- B. If a court denies a request for access, a requestor may seek review of that determination within 10 business days. The request for review shall be submitted in writing to the president judge of the judicial district or president judge's designee. The president judge or designee shall make a determination and forward it in writing to the requestor. This remedy need not be exhausted before other relief is sought.

COMMENTARY

Implementing the provisions of this policy should not unduly burden or impinge upon the business of the courts. The question addressed by this section is not whether there is to be access, but rather *how and when access should be afforded*. There are two competing interests that must be addressed in this section. First, any requirements imposed upon courts regarding how and when they should respond to these requests must not interfere with the courts' ability to conduct their day-to-day operations, especially in light of the limited resources with which many courts have to function. Second, all requests should be

handled by courts in a predictable, consistent, and timely manner statewide. This section strikes the appropriate balance between these two competing interests.

Subsection A(3) provides that if a requestor has failed to comply with this policy, then written notification to the requestor should set forth the specific areas of non-compliance. For example, a requestor may have failed to pay the appropriate fees associated with the request. Section 5.00 of this policy permits the establishment of reasonable fees for access. Subsection A(4) requires that any written notification to the requestor stating that the information requested cannot be provided shall set forth the reason(s) for this determination. For example, the requested information may be restricted from access pursuant to legal authority (e.g., statute, court rule, etc.).

Under subsection A(5), the court shall specifically state in its written notification to the requestor the expected date that the information will be available. If the information will not be available within 30 business days, the court shall provide written notification to the requestor and the district court administrator at the same time. Possible reasons a court may need the additional period of time include:

- the request, particularly if for official case records of the magisterial district court in bulk, involves such voluminous amounts of information that the court may not be able to fulfill the same within the initial 5 business day period without substantially impeding the orderly conduct of the court;
- records in closed cases may be located at an off-site facility;
- records may be in use by a magisterial district judge or court staff;
or
- the court is not able to determine if this policy permits the release of the requested information within the initial 5 business day period. Therefore, the court may require an additional period of time to conduct an administrative review of the request to make this determination.

Section 5.00 Fees

- A. Reasonable fees may be imposed for providing the public with access to the official case records of the magisterial district courts pursuant to this policy.
- B. The president judge of each judicial district shall establish a fee schedule by local rule pursuant to Pa.R.J.A. No. 103. The fee schedule shall be publicly posted.

COMMENTARY

The objective of courts in responding to public access requests is not to make a profit; rather it is to foster the values of open court records without unduly burdening court resources. Put simply, fees should not be financial barriers to accessing case record information. Fees assessed by courts in satisfying public access requests must be reasonable, fair and affordable.

A public access request may be for information that is not readily available and requires staff intervention to fulfill the same. The staff time and other costs incurred by magisterial district courts in fulfilling a request should be passed on to the requestor. Clearly, absent the request, the court would not incur these costs.

The charging of fees in responding to public access requests is not novel. The *Public Access Policy of the Unified Judicial System of Pennsylvania: Magisterial District Court Records* provides that “[f]ee[s] for photocopying shall not exceed \$.50 per page.” Moreover, the Right To Know Law (“RTKL”) provides that fees may be charged by agencies in fulfilling RTKL requests. The fees must be reasonable and based on the prevailing fees for comparable services provided by local business entities, except for postage fees which must be the actual cost of postage.⁶ Further, it appears that many court systems charge a fee in responding to public access requests, including Arizona,⁷ Delaware,⁸ Florida,⁹ Idaho,¹⁰ Maryland,¹¹ Minnesota,¹² New Jersey,¹³ Utah,¹⁴ and Vermont.¹⁵

⁶ See 65 Pa.C.S. § 66.7. It is important to note that Act 3 of 2008 has substantially amended the RTKL, with the majority of the provisions taking effect on January 1, 2009. Section 1307 of Act 3 retained the fee provisions referenced above.

⁷ Arizona Rule 123 Public Access to the Judicial Records of the State of Arizona, Subsection (f)(3) provides different levels of fees for requestors for non-commercial purposes and commercial purposes. For non-commercial requestors “[i]f no fee is prescribed by statute, the custodian shall collect a per page fee based upon the reasonable cost of reproduction.” See Rule 123(f)(3)(A). For commercial requestors, “the custodian shall collect a fee for the cost of: (i) obtaining the original or copies of the records and all redaction costs; and (ii) the time, equipment and staff used in producing such reproduction.” See Rule 123(f)(3)(B)(i) and (ii).

⁸ Directive 80-021 (5th Supplement) “Policy Directive 80-021: Public Access to Judicial Records”, p.5. “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.” Copies set at \$.25 per page; Civil and Criminal/Traffic transcripts set at \$10.00 and \$7.00, respectively.

Subsection B requires the president judge of each judicial district to establish a fee schedule by local rule which would necessitate providing a copy of the same to the AOPC. See Pa.R.J.A. 103 regarding the procedure for adoption, filing and publishing a local rule.

While fees may vary depending upon the request and particular resources of a court, it is envisioned that access fees will be uniform, to every extent possible, across the judicial districts.

The president judge may wish to implement a policy that requires pre-payment for requests wherein the fees are expected to be in excess of \$100. Such a policy would be consistent with the RTKL¹⁶ as well as Pa.R.J.A. No. 509(d)(2).

⁹ See FLA. J. ADMIN. R. 2.420(f)(3) and FLA. STAT. ANN. § 119.07 which appear to permit the charging for cost of duplication, labor and administrative overhead.

¹⁰ IDAHO ADMIN. R. 32(J)(6). “The cost to make a paper copy of any record filed in a case with the clerk of the district court shall be as specified in I.C. § 31-3201. The cost for any copying of any record shall be the actual cost as designated by the order of the Administrative District Judge.”

¹¹ Maryland Rule of Procedure 16-1002(d)(1)-(4) provides that “Reasonable fees means a fee that bears a reasonable relationship to the actual or estimated costs incurred or likely to be incurred in providing the requested access. Unless otherwise expressly permitted by these Rules, a custodian may not charge a fee for providing access to a court record that can be made available for inspection, in paper form or by electronic access, with the expenditure of less than two hours of effort by the custodian or other judicial employee. A custodian may charge a reasonable fee if two hours or more of effort is required to provide the requested access. The custodian may charge a reasonable fee for making or supervising the making of a copy or printout of a court record.”

¹² MN ST ACCESS TO REC RULE 8(6) (WEST 2006). “When copies are requested, the custodian may charge the copy fee established by statute but, unless permitted by statute, the custodian shall not require a person to pay a fee to inspect a record. When a request involves any person’s receipt of copies of publicly accessible information that has commercial value and is an entire formula, pattern, compilation, program, device, method, technique, process, data base, or system developed with a significant expenditure of public funds by the judicial branch, the custodian may charge a reasonable fee for the information in addition to costs of making, certifying, and compiling the copies.”

¹³ Directive #15-05 “Judiciary Open Records: Policies and Procedures for Access to Case-Related Court Records – Staff Guidelines”, p 2. “The fees that the Judiciary is permitted to charge for copying costs are set by statute; those fees should always be collected, even if the requestor is seeking a copy of just a one page record.”

¹⁴ UTAH J. ADMIN. R. 4-202.08 establishes a uniform fee schedule for requests for records, information, and services.

¹⁵ 1 VT. STAT. ANN. § 316(b)-(d) and (f) provide that if any cost is assessed it is based upon the actual cost of copying, mailing, transmitting, or providing the document.

¹⁶ See 65 P.S. § 66.7(h) and in Act 3 of 2008 the same provision is found in Section 1307(h).

Section 6.00 Official Case Records of the Magisterial District Courts Not Accessible by the Public.

- A. The following items or information residing in the official case records of the magisterial district courts are not accessible to the public:
 - 1. Forms filed pursuant to Section 7.00 of this policy;
 - 2. Information sealed pursuant to an order by a common pleas or appellate court;
 - 3. Information to which access is restricted by federal law, state law, or state court rule; and
 - 4. Notes, drafts, and work product of the magisterial district court.
- B. With the approval of the Chief Justice of Pennsylvania, the Court Administrator of Pennsylvania may determine that additional information in the official case records of the magisterial district courts is not accessible by the public because it presents a risk to personal security, personal privacy, or the fair, impartial and orderly administration of justice.

COMMENTARY

Examples of information that are not accessible to the public pursuant to Subsection A include:

- a. Identities of child victims of sexual or physical abuse (See 42 Pa.C.S. § 5988).
- b. Executed search warrants and affidavits that are sealed (See Pa.R.Crim.P. 211 and PG Publishing Company v. Commonwealth, 614 A.2d 1106 (Pa. 1992)).
- c. Executed arrest warrants and affidavits that are sealed (See Commonwealth v. Fenstermaker, 530 A.2d 414 (Pa. 1987)).
- d. Documents that are not filed or required to be filed with the magisterial district court – e.g. investigative records under the control of law enforcement and prosecutor, are not public judicial documents to which access may be permitted. Commonwealth v. Espola, 9 Pa.D&C 4th 12 (Pa. Com. Pl. 1990)

Subsection B acknowledges that it is difficult to anticipate every possible occurrence that might impact upon public access, whether related to technology, administration, security or privacy, after implementation of this policy. Moreover,

resolution of issues that may have statewide impact need to be accomplished in a timely and coordinated fashion.

By way of example, law enforcement and court personnel raised security concerns with the AOPC almost two years ago concerning the electronic release of MDJS criminal court data prior to the execution of active arrest warrants that jeopardized the safety of police officers and potentially impeded the administration of justice. The Court Administrator reviewed the specific concerns and quickly took action to remedy the situation by instituting a 30-day hold on release of the electronic data. While this example did not involve access to paper court records, it illustrates that in a judicial system as vast as Pennsylvania's it is important that such measures can be taken in an effective manner without delay. This provision is also contained in Section 3.00(m) of the Electronic Records Policy.

It is important to note that other state court systems' policies and rules have similarly provided for the need to promptly address unanticipated privacy and security concerns. See Massachusetts' *Policy Statement by the Justices of the Supreme Judicial Court Concerning Publications of Court Case Information on the Web* (May 2003), p. 3. Moreover, the RTKL provides that the definition of "public records" does not include "a record the disclosure of which...would be reasonably likely to result in a substantial and demonstrable risk of physical harm or the personal security of an individual."¹⁷

¹⁷ Act 3 of 2008, Section 708(b)(1)(ii).

Section 7.00 Confidential Information in Pleadings or Other Papers Filed with Magisterial District Courts.

- A. Unless otherwise required by law or requested by the court, parties and their attorneys are directed to refrain from including, in all documents filed with the court, including exhibits attached thereto, any of the following information:
 - 1. social security numbers; and
 - 2. financial institution account numbers, credit card numbers, PINS or passwords to secure accounts.
- B. The parties and their attorneys are solely responsible for complying with the provisions in subsection A. The court staff will not review any document for compliance with subsection A.
- C. If a party is required by law or requested by the court to include any of the information set forth in subsection A, the information shall be filed on a separate form prescribed by the Administrative Office of Pennsylvania Courts. This form shall not be accessible to the public.

COMMENTARY

The rise in the occurrence of the crime of identity theft and the availability of sensitive information in the official case records of the magisterial district court records has prompted significant concerns and questions. Should sensitive information be recorded in documents filed with the court? Should sensitive information be accessible to the public? Is this information necessary for the courts to function effectively?

As court records are increasingly made available online, the judiciary should be proactive in the review of its forms and procedures to eliminate, to the extent feasible, the inclusion of sensitive information – specifically, social security numbers and financial account numbers -- in publicly filed court documents.¹⁸ However, removal of this information from the official case records of the magisterial district courts is no simple task. Various resolutions to this issue were considered ranging from prohibiting litigants from recording this information on documents filed with the courts to requiring court staff to redact this information from court documents before providing access.

¹⁸ See, e.g., Lehigh County Rule of Civil Procedure 205.2(a)(12) and Bucks County Civil Division Administrative Order No. 6, Paragraph 10 (prohibiting inclusion of social security numbers in documents to be filed with the court). Also, the 2008 Traffic Citation form for Philadelphia Traffic Court has been amended to remove the social security number field.

Most of the forms that are found within the official case records of the magisterial district courts are statewide forms that are generated from the MDJS. There are 149 forms generated by the MDJS for use by litigants, the courts, and other governmental entities in Pennsylvania (including PennDOT, State Police, Department of Welfare, Department of Health, Pennsylvania Commission on Crime and Delinquency). Approximately 18 MDJS forms and/or citations include fields for the entry of full social security numbers, including the Non-Traffic Citation, Criminal Complaint and those related to the suspension and/or revocation of a defendant's driver's license. In the civil, criminal and landlord-tenant context, the forms may also provide "narrative" sections where the affiant/litigant may include sensitive information, such as social security numbers.

While Section 7.00 focuses on the exclusion of specified sensitive information by a party when filing documents with the court, particularly in the narrative sections described above, it is recommended that fields for social security and financial account numbers on MDJS forms be removed entirely, especially if that information is extraneous to the court's adjudication of the case or if collection of the information is not otherwise required by law. Quite simply, if the information is not collected in the first place, concerns regarding personal privacy and security can be avoided.

Alternative solutions to full removal of these sensitive identifiers exist, aside from the procedures outlined in Section 7.00, assuming that the collection of this information by the courts is necessary to conducting its business or required by law. Under those circumstances, it may be advisable to simply require the truncation of social security and financial account numbers to the last four digits on the forms. Truncating the numbers would require the revision of the forms to only provide space for four digits. Another option may be to add a "public inspection copy" to the forms. For example, the non-traffic citation is a multi-page form. An additional sheet could be added to the citation form to "black out" the display of the defendant's social security number. This page along with the court's usual copy would be filed with the court. Upon receipt of a request for access, court staff would provide only the "public inspection copy" to the requestor.

In addition to the approaches listed above, it is recommended that Section 7.00 be adopted. Section 7.00 provides that if the full social security number or financial account information is required, parties or their attorneys should file this information on a separate form. This form shall not be accessible to the public.

This approach of using a separate form is not unique. Arizona,¹⁹ California,²⁰ Kansas,²¹ Minnesota,²² and Washington²³ already use a similar

¹⁹ Rule 43(g) of the Rules of Family Law Procedure restricting the inclusion social security numbers, bank account numbers, credit card numbers and other financial account information.

²⁰ Rule 1.20 of the California Rules of Court amended to permit the inclusion of only the last four digits of social security and financial account numbers, effective January 1, 2008, in documents filed with the courts. A form entitled Reference List of Identifiers (form MC-120) was adopted to carry out the purposes of Rule 1.20.

procedure/form. In addition, in response to the Judicial Conference Policy on Privacy and Electronic Access to Case Files and E-Government Act of 2002, federal courts have adopted local rules to protect sensitive information in court records. For example, the United States District Court for the Middle District of Pennsylvania issued standing order 04-5 “In Re: Notice of Electronic Availability of Case File Information” which provides in part that

“You should not include sensitive information in any civil case document filed with the Court unless such inclusion is necessary and relevant to the case. You *shall not* include sensitive information in any *criminal* case document filed with the Court...The following personal data identifiers must be partially redacted from the document in a civil or criminal case (except a Social Security case), whether it is filed traditionally or electronically: Social Security numbers to the last four digits; financial account numbers to the last four digits....”²⁴

Parties and their attorneys are responsible for removing all social security numbers and financial information from the documents before the documents are filed with the court. Subsection B specifically provides that courts shall not review each pleading or other paper for compliance with this section. Although courts may incur some additional administrative responsibilities in handling the forms under subsection C, it is not believed the burden of processing the same will be substantial. The burden is appropriately placed on the parties and their attorneys, rather than court staff, to eliminate the identifiers.

In developing the list of identifiers in Subsection A that must be excluded, consideration was also given to including operator license numbers, dates of birth, and names of minor children. While some other jurisdictions have included such identifiers, it was concluded that the proposed policy should require the exclusion of only two identifiers, because the benefits of continuing to include such additional information in court documents in terms of adjudication and administration outweigh any additional privacy protections gained.

²¹ Kansas Rules Relating to District Courts Rule 123 (Rule Requiring Use of Cover Sheets and Privacy Policy Regarding Use of Personal Identifiers in Pleading). The Rule provides that in divorce, child custody, child support or maintenance cases, a party must enter certain information only on the cover sheet which is not accessible to the public. Specifically, a party’s or party’s child’s SSN and date of birth must be entered on the cover sheet only. Moreover, the Rule provides that unless required by law, attorneys and parties shall not include SSNs in pleadings filed with the court (if must be included use last four digits), dates of birth (if must be included use year of birth), and financial account numbers (if must be included use last four digits).

²² Minnesota General Rules of Practice for the District Courts, Rule 11.02, restricting the inclusion of the following identifiers: social security numbers, employer identification numbers, and financial account numbers of a party or person.

²³ WASH. CT. GR. 22 (2006). Please note that this rule only applies to family law and guardianship court records.

²⁴ The United States District Court for the Eastern District of Pennsylvania has similar provisions in Local Civil Rule 5.1.3 and Local Criminal Rule 53.2. And the United States District Court for the Western District of Pennsylvania has a similar provision in Local Civil Rule 5.1.1.

The restriction on access to social security numbers has been the focus of recently adopted legislation by the Pennsylvania General Assembly. Act 60 of 2006 prohibits *inter alia* the public posting or display of an individual's social security number. See 74 P.S. §201. In addition, Act 3 of 2008 which rewrote the RTKL exempts social security numbers, financial information and personal identification numbers from access requirements.

It is noteworthy to mention that consideration was given to requiring court staff to redact social security numbers and financial account numbers from court records before permitting access. If such a policy was enacted, each document that is contained in the court's paper file would have to be carefully scrutinized and possibly redacted pursuant to the policy provision before it could be released to the public. Depending on individual court resources, such a policy may cause delays in fulfilling public access requests to official case records of the magisterial district courts, result in the inadvertent release of non-public information, or impede the business of the court. For these reasons, redaction is not viewed as a viable solution for removal of the specified sensitive identifiers.

The implementation of this policy should be prospective (i.e., only applicable to official case records of the magisterial district courts that are filed on or after the date of implementation). It is strongly recommended that the provisions of Section 7.00 be cross-referenced in the applicable Rules of Civil Procedure Governing the Actions and Procedures Before Magisterial District Judges as well as the Rules of Criminal Procedure, so that litigants and counsel are put on notice regarding these new filing requirements.