

Proposed Rule Changes re Access to Public Records

Rules of the Supreme Court of Arizona

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Rules of the Supreme Court of Arizona

Rule 123. ~~Public~~ Access to the Judicial Records of the State of Arizona

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(b) Definitions.

(1) *Bulk Data.* As used in this rule “Bulk Data” means all, or a significant subset, of the non-confidential case information maintained in a court case management system, either with or without modification or customized compilation.

~~(2)~~ (2) *Closed or Confidential (Records).* "Closed" or "Confidential", when used in this rule in reference to records, means that members of the public may not inspect, obtain copies of, or otherwise have access to such records unless authorized by law.

~~(3)~~ (3) *Commercial Purpose.* As used in this rule "Commercial Purpose" means the use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from such public records for the purpose of solicitation or the sale of such names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from direct or indirect use of such public records. "Commercial Purpose" does not mean the use of a public record as evidence or as research for evidence in an action in a judicial or quasi-judicial body of this state or a political subdivision of this state.

~~(4)~~ (4) *Court.* "Court" means the Supreme Court, the Court of Appeals, Superior Court, Justice Courts, Municipal Courts and all judges of those courts.

~~(5)~~ (5) *Court Administrator or Clerk of the Court.* "Court Administrator" or "Clerk of the Court" means a person employed, appointed or elected for the purpose of administering the operations of any court or court system.

~~(6)~~ (6) *Criminal History Record Information (CHRI).* "Criminal History Record Information" means only those records of arrests, convictions, sentences, dismissals and other dispositions of charges against individuals that have been provided to the court by the National Crime Information Center (NCIC), Arizona Crime Information Center

(ACIC), or any other criminal justice agency for use in juvenile and adult criminal justice cases, employment, licensing or other authorized investigations.

~~(6)~~ (7) Custodian. "Custodian" is the person responsible for the safekeeping of any records held by any court, administrative office, clerk of court's office or that person's designee who also shall be responsible for processing public requests for access to records.

(8) Custodian of Bulk Data. "Custodian of Bulk Data" means, depending on local practice, in a superior court or appellate court the custodian may be either the clerk of court or the presiding judge. In a justice of the peace or municipal court, the custodian is the presiding judge of the court.

~~(7)~~ (9) Information. "Information" is any recognizable alpha/numerical data which constitute a record or any part thereof.

~~(8)~~ (10) Judge. "Judge" means any justice, judge, judicial officer, referee, commissioner, court-appointed arbitrator or other person exercising adjudicatory powers in the judicial branch.

~~(9)~~ (11) Law. "Law" means statute, rule, administrative order, court order or case law.

~~(10)~~ (12) Presiding Judge. "Presiding Judge" means the presiding judge of the superior court for each county, or the chief judge for each division of the court of appeals or the chief justice of the supreme court. For municipal and justice courts "Presiding Judge" means the presiding judge of the superior court.

~~(11)~~ (13) Public. "Public" means ~~those persons who are not judges, clerks, administrators, professionals or other staff employed by or working under the supervision of the court, or employees of other public agencies who are authorized by state or federal rule or law to inspect and copy closed court records~~ all users of court records, including Arizona judicial officers and employees, employees of government agencies and private organizations.

~~(12)~~ (14) Record. "Record" means all existing documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other materials, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of any official business by the court, and preserved or appropriate for preservation by the court as evidence of the organization, functions, policies, decision, procedures, operations or other governmental activities.

(A) Administrative Record. "Administrative record" means any record pertaining to the administration of the courts, court systems or any non-adjudicatory records.

~~(B) Case Record. "Case record" means any record pertaining to a particular case or controversy.~~

(B) Case Record. "Case Record" means:

(1) any record that is collected, received, or maintained by a court or clerk of court in connection with a judicial proceeding; and

(2) any order, judgment, or minute entry that is related to a judicial proceeding; and

(3) any index, calendar, docket, or register of actions associated with a case or in connection with a judicial proceeding.

(15) Sensitive Data. "Sensitive Data" means social security number, bank account number, credit card number, other financial account number, a juvenile victim's name, and a victim's address and telephone number or other locating information.

(c) General Provisions.

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(5) Judicial Officers and Employees. Arizona judicial officers, clerks, administrator, professionals or other staff employed by or working under the supervision of the court shall have such access as needed to carry out their assigned duties and as directed by their supervisor.

(6) Employees Of Government Agencies And Private Organizations. Employees of federal, state, tribal, and local government agencies and political subdivisions, and private organizations, in order to serve a public purpose, such as criminal justice, child welfare, licensing, mental health treatment, or research for scholarly, journalistic, political, or governmental purposes may be granted such access to court records as required to serve that purpose according to this rule or as provided by any supplemental supreme court policies or court order.

(7) Access To Bulk Data. Persons who execute a dissemination contract and disclaimer containing provisions specified by the supreme court may have such access as permitted by subsection (j) of this rule.

(d) Access to Case Records.

All case records are open to the public except as may be closed by law, or as provided in this rule. Upon closing any record the court shall state the reason for the action, including a reference to any statute, case, rule or administrative order relied upon.

(1) Juvenile Delinquency Proceedings Records.

(A) Records of all juvenile delinquency and incorrigibility proceedings are open to the public to the extent provided for in the Rules of Procedure for the Juvenile Court or by law.

(B) Records of all juvenile adoption, dependency, severance and other related proceedings are closed to the public as provided by law unless opened by court order.

(C) All information and records obtained in the course of evaluation, examination or treatment of juveniles who have been referred to a treatment program funded by the juvenile probation fund (pursuant to ~~ARS § 8-230.01, or renumbered as ARS § 8-321, effective June 30, 1998~~) or the family counseling fund (ARS § 8-261 et seq.) are confidential and shall not be released unless authorized by rule or court order. These records include, but are not limited to, clinical records, medical reports, laboratory statements and reports, or any report relating to diagnostic findings and treatment of juveniles, or any information by which the juvenile or his family may be identified, wherever such records are maintained by the court.

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(e) Access to Administrative Records.

All administrative records are open to the public except as provided herein:

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(7) ~~Library Patron Records.~~ Records maintained in any court law library, clerk's office or court which link a patron's name with materials requested or borrowed by the patron, or which link a patron's name with a specific subject about which the patron has requested information or materials are closed. This provision shall not preclude a library, clerk's office or court from requiring that the request specify any commercial use intended for the records as provided in section (f) of this rule.

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(12) ~~Judicial Branch Training Materials And Records.~~ Evaluation materials and records generated by participants in judicial education programs such as test scores, educational assessments, practical exercise worksheets, and similar materials are closed.

(13) ~~Certification Records.~~ Proprietary materials required to be submitted to the supreme court by applicants for certification or licensing are closed. Applicants for certification or licensure shall be responsible for clearly identifying any material they consider to be proprietary at the time the material is submitted.

(f) Access to Records in Paper Medium.

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(5) *Review of Denials to Access Records.*

(A) Any applicant who is denied the right to inspect, receive copies or access any record, bulk data, or compiled data pursuant to the authority of this rule, shall be entitled to an administrative review of that decision by the presiding judge. The request for review must be filed in writing with the custodian who denied the request within 10 business days of a denial made under Paragraph (f)(4) above. The custodian shall forward the request for review, a statement of the reason for denial and all relevant documentation to the presiding judge or a designee within 3 business days of the request for review. The presiding judge shall issue a decision as soon as practicable considering the nature of the request and the needs of the applicant, but not more than 10 business days from the date the written request for review was received.

(B) Any party aggrieved by the decision of the presiding judge may seek review by filing a special action in the Court of Appeals pursuant to the Rules of Procedure for Special Actions.

(g) Remote Electronic Access to Case Records.

(1) A court may provide remote electronic access to case records as follows:

(A) Parties, Attorneys, and Arbitrators. Parties, attorneys, and arbitrators may be provided remote electronic access, upon registering, to case records which are not sealed in all case types in which the person is an attorney of record, arbitrator, or named party, including an individual, partnership, corporation, association, or public or private organization. An attorney of record on the staff of a public or private law firm may extend access to any other attorney or person working for or on behalf of that public or private law firm, upon the other attorney's or person's registration.

(B) General Public, Registered Users.

(i) Members of the public who hold an Arizona driver license or nonoperating identification license may be provided remote electronic access, upon registering and paying any established fee, to all of the following categories of case records unless sealed or otherwise made confidential by rule or law:

(a) Civil case records in any action brought to enforce, redress, or protect a private or civil right but not:

- Juvenile dependency and delinquency or other matters brought under ARS Title 8;
- Family law, paternity, or other matters arising out of ARS Title 25;

- Orders of protection, injunctions against harassment and all proceedings, judgments or decrees related to the establishment, modification or enforcement of such orders, including contempt; or
- Probate proceedings brought under ARS Titles 14 and 32.

(b) Civil traffic case records in any action brought as such under ARS Titles 28 or 41 or a matter expressly designated as a civil traffic violation by a traffic ordinance of a city or town and any boating violation punishable by a civil sanction under ARS Title 5, chapter 3, articles 1 through 11, or expressly designated a civil violation or a boating ordinance by a city or town.

(c) Criminal case records in any action instituted by the government to punish offenses classified as a misdemeanor or felony brought pursuant to ARS Titles 4, 13, 28, or local ordinance.

(ii) The following documents shall not be accessible by remote electronic access to users registered under subsection (g)(1)(b) due to the inability to protect sensitive data that is likely to be contained within these documents:

- (a) Booking-related documents;
- (b) Warrants, including search warrants, confidential wiretaps, pen registers, handwriting exemplars, trap and trace, and bench warrants;
- (c) Charging documents, including criminal and civil traffic charging documents;
- (d) Pre-sentence reports;
- (e) Defendant's financial statement;
- (f) Disposition report;
- (g) Transcripts
- (h) The complete case record in criminal cases in which a juvenile is alleged to be the victim of sexual assault, including ARS §§ 13-1403, 13-3201, and 13-3552. The prosecuting agency, upon filing a charging document, shall advise the clerk that the case is subject to this provision.

Upon motion by a party, by any person, or upon the court's own motion, and for good cause shown, the court in which such action is pending, may issue an order to allow remote electronic access to members of the public, as provided in this section, to any case in which a juvenile is alleged to be the victim under (B)(ii)(h). The order may include any appropriate provision required to protect the juvenile from embarrassment or oppression. The burden of showing good cause for an order shall remain with the person seeking remote electronic access to the case record. Irrespective of an order limiting electronic access under this subsection, the clerk shall provide non-registered users remote electronic access as set

forth in section (C)(ii) herein when the court generally provides such non-registered access in other cases.

(iii) any federal, state, or local governmental entity may be provided remote electronic access at no charge, upon registering, and without producing an Arizona driver license or nonoperating identification license, to the same case records as may be provided to members of the public under section (g)(1)(B), in order to carry out a particular governmental responsibility as identified by the governmental agency and as authorized by the court or clerk.

(C) *General Public, Non-Registered Users.* Unless otherwise provided by rule or law, members of the public may be provided remote electronic access, without registering, to:

(i) The following data elements in closed cases, juvenile delinquency; mental health; probate and criminal cases in which a juvenile is alleged to be the victim, as identified in section (g)(1)(B)(ii)(h) above:

- Party names,
- Case number,
- Judicial assignment; and
- Attorneys' names

(ii) Individual case information in all civil, criminal, and civil traffic cases identified in subsection (g)(1)(b)(i)(a) through (c), and family law cases extracted from a case management system, such as a list of documents filed, events, dates, calendars, party names, month and year of birth, residential city, state and zip code, case number, judicial assignment, attorneys, charges filed or claims made, interim rulings, and case outcomes, including sentence, fines, payment history, minute entries, and notices.

(iii) court of appeals and supreme court opinions and decisions in all case types, except that any appendix in criminal cases in which a juvenile is alleged to be the victim, as identified in subsection (g)(1)(B)(ii)(h), above, shall not be provided by remote electronic access.

(2) Registration and fees. The registration process and fees for remote electronic access to case records shall be established by the supreme court and shall not exceed the cost of the service provided. All information provided by a potential user for registration purposes shall be closed.

(3) Courts and clerks of court shall not display case records online except as provided herein, as provided by ARS § 12-283(i), or as ordered by the court in a particular case. Any remote electronic access shall be conditioned upon the user's agreement to access the information only as instructed by the court, to not attempt any unauthorized access, and to consent to monitoring by the court of all use of the system. The court will also notify

users that it will not be liable for inaccurate or untimely information, or for misinterpretation or misuse of the data. Such agreement and notices shall be provided to the users in any manner the court deems appropriate. The court may deny access to users for failure to comply with such requirements. The court or clerk of court that establishes remote electronic access to case records may also establish limitations on remote electronic access based on the needs of the court, limitations on technology and equipment, staff resources and funding.

(4) Courts and clerks of court must clearly and prominently display current charge dispositions for any case which the court or clerk of court makes publicly available online.

(5) Removing case records from online access.

(A) Courts or clerks of court may remove case management system data and case records from online display once the applicable records retention schedule period is met.

(B) For cases scheduled to be retained more than twenty-five years, courts or clerks of court may remove case management system data and case records from online display after twenty-five years, if the data and records are then retained through an electronically preserved method. In place of the records, the court or clerk of court shall display a notice online which directs the viewer to contact the court or clerk for access to the case record.

(6) The clerk of the court, court, court agency, or their employees shall be immune from suit for any conduct relating to the electronic posting of case documents in accordance with this rule.

(7) Data or information which would disclose that a user of a remote electronic access system has accessed a particular court record is closed. Record access information shall be accessible by the public only on a showing of good cause pursuant to the process set forth in subsection (f) of this rule.

(8) This section shall not limit the public's right of access to records at a courthouse, whether in paper or electronic format.

~~(g)~~ **(h) Access to Audiotape, Videotape, Microfilm, Computer or Electronic Based Records.**

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~~(5) Remote Electronic Access to Records and Cost.~~

~~(A) Pursuant to the provisions of this paragraph, every presiding judge may authorize on-line, remote electronic access to both case and administrative records in their respective courts. Fees may be charged for the value added and custom~~

~~remote electronic access service as authorized by ARS §§ 12-119.02, 12-120.31, 22-281.01, 22-404.01 and 12-284.02. The fees shall be based on the recovery of costs incurred in the provision of remote electronic access, including the cost of providing a general public access information system, but shall not exceed the applicable statutory limits. For the supreme court, court of appeals and superior court records, the fees shall be paid to the clerk of each respective court. For justice and municipal court records, the fees shall be paid to an appropriate official designated by the court. The presiding judge of the superior court will consult with the local funding authority before any municipal court fee is imposed.~~

~~(B) Prior to establishing value-added remote electronic access for which fees are charged, each court shall establish a remote electronic access information system that, subject to available funding, will be available to the general public without additional court fees. At a minimum, both the public remote electronic access system and the value-added remote electronic access shall permit access to information by case number, party name and counsel name, if maintained electronically. Both systems shall contain the same case data elements. Any difference between the two systems shall be limited to providing enhanced services in the value-added remote electronic access, such as guaranteed response times and service levels, search and reporting tools, help desk services, etc. Courts are encouraged to make data elements available to both systems at the same time. If a court chooses to make additional data elements available in the value-added remote electronic access system first, the same data elements must be made available in the public remote electronic access system within six months.~~

~~(C) Additional policies and procedures for remote electronic access to court records shall be adopted when necessary by the supreme court through subsequent rules or separate administrative orders after considering applicable comments and recommendations, including those of the court's Commission on Technology and the Arizona Judicial Council.~~

~~(D) Any on-line electronic access shall be conditioned upon the user's agreement to access the information only as instructed by the court, to not attempt any unauthorized access, and to consent to monitoring by the court of all use of the system. The court will also notify users that it will not be liable for inaccurate or untimely information, or for misinterpretation or misuse of the data. Such agreement and notices shall be provided to the users in any manner the court deems appropriate. The court may deny access to users for failure to comply with such requirements.~~

~~(E) For value-added or custom remote electronic access, each court will utilize a published standard fee schedule or written contracts with each subscriber. The fee schedule or contract shall set forth the services and service levels to be provided, the fee structure, manner of billing, payment requirements, and grounds for~~

~~termination of the service. The state of Arizona, its county and municipal governments and agencies shall be exempt from such fees.~~

~~(F) The presiding judge of each court may establish limitations on remote electronic access based on the needs of the court, limitations on technology and equipment, staff resources and funding.~~

~~(G) All courts and clerks of court shall employ appropriate security measures, procedures, devices and software to protect assets and records and to prevent unauthorized access.~~

~~(J) Communication protocols shall be adopted that are consistent with standards adopted for the Arizona Judicial Information Network (AJIN) as reflected in Supreme Court Administrative Order 95-37. Free public remote electronic access shall, at a minimum, be available by means of standard telnet or an industry-standard hypertext mark up language (HTML) browser. By December 31, 1999, a single non-proprietary, open systems communications protocol for value-added and custom remote electronic access shall be determined by the Commission on Technology. By January 30, 2004, all courts shall comply with and use the communication protocols and standards adopted for remote electronic access by the Commission on Technology.~~

(5) Correcting Data Errors; Administrative Review.

(A) An individual seeking to correct a data error or omission in an electronic court record shall be entitled to apply for relief with the court in which the original record was filed. If the record was filed in a superior court, the request should be made with the clerk of the superior court. If the record was filed in a justice court, the request should be made with the justice of the peace. If the record was filed in a municipal court, the request should be made to the presiding municipal court judge.

(B) If the request is denied, the individual may then apply for administrative review of that decision by the presiding superior court judge. The request for administrative review must be filed in writing with the custodian who denied the request within ten business days of a denial. The custodian shall forward the request for review, a statement of the reason for denial and all relevant documentation to the presiding superior court judge or a designee within three business days of the request for review. The presiding superior court judge shall issue a decision as soon as practicable considering the nature of the request and the needs of the applicant, but not more than ten business days from the date the written request for review was received.

(C) Any party aggrieved by the decision of the presiding judge may seek review by filing a special action in the court of appeals pursuant to the rules of procedure for special actions.

~~(h)~~ **(i) Inspection and Photocopying.**

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(j) Bulk or Compiled Data Dissemination in Bulk.

(1) Requests for bulk or compiled court data

(A) Before releasing bulk data, a custodian shall require the recipient to execute a dissemination contract and disclaimer containing provisions specified by the supreme court.

(B) A custodian of bulk data may contract with a private company or public organization for the provision of bulk data and specialized reports of compiled data under this policy.

(2) Denying requests for bulk data. The custodian may deny a request for bulk data in compliance with supreme court rule 123(c)(1), (f)(4), or (h)(4)(A).

(3) Personal identifiers available in bulk court data. The custodian of bulk data may release data that contains the following personal identifying information about a petitioner, plaintiff, respondent, or defendant other than a petitioner seeking an order of protection:

(A) Address

(B) Month and year of birth

(C) Last four digits of the social security or driver license number.

(4) Bulk or compiled data dissemination in bulk is not permitted except as provided in this rule or as permitted by court order.

Arizona Rules of Criminal Procedure

Rule 2.3. Content of complaint

(A) A complaint is a written statement of the essential facts constituting a public offense, that is either signed by a prosecutor, or made upon oath before a magistrate, or made in accordance with ARS § 13-3903.

(B) Upon filing a charging document in a criminal cases in which a juvenile is alleged to be the victim of sexual assault, such as ARS §§ 13-1403, 13-3201, and 13-3552, the prosecuting agency shall advise the clerk that the case is subject to the provisions of Rules of the Supreme Court of Arizona, Rule 123(g)(2)(B)(ii)(h).

Arizona Rules of Civil Procedure

Rule 5. Service and filing of pleadings and other papers

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5(f) Sensitive Data

A. In all civil cases, a filer shall refrain from including the following sensitive data from all pleadings or other documents filed with the court, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the court or as otherwise provided by law:

1. Social Security Numbers. If an individual's social security number must be included in a pleading or other document, only the last four digits of that number shall be used.
2. Financial Account Numbers. If financial account records are relevant or set forth in a pleading or other document, only the last four digits of these numbers shall be used.
3. Juvenile Victim's Name. If a juvenile victim must be identified in a pleading or other document, only the initials of the juvenile victim shall be used. In the alternative, the filer may refer to the juvenile victim in a manner that shields the identity of the juvenile victim in the context of the proceeding, for example, by symbol, such as child a, child b, or as doe 1, doe 2, or by the child's status, such as victim.

4. Victim's Address And Telephone Number Or Other Locating Information. If a victim's address is relevant, only the city and state shall be used.
- B. The responsibility for redacting sensitive data shall rest solely with counsel, the parties, or any other filer. The clerk of the court or the court is not required to review documents for compliance with this rule, seal documents that contain sensitive data on the clerk's own initiative, or redact pleadings or other documents. However, subject to rule 123(h)(5), rules of the supreme court of Arizona, each court shall develop procedures for correcting data errors, redacting sensitive data, and sealing case records in a civil case that is subject to availability by remote electronic access when such errors, sensitive data, and sealing are brought before the court.
- C. For violation of this rule, the court may impose sanctions against counsel or the parties to insure future compliance with this rule.