

1. SCOPE OF ORDER

This order governs access to the records of all courts and administrative offices of the judicial department of the State of Arizona.

2. GENERAL PROVISIONS

2.1 Open Records Policy

Records of all courts and administrative offices in the state of Arizona are presumed to be open to any member of the public for inspection or copying at all times during regular office hours of the office having custody of the records. However, an unlimited right of inspection might lead to substantial and irreparable private or public harm. Thus, in view of the countervailing interests of confidentiality, privacy or the best interests of the state, public access to some records is restricted in accordance with the provisions of this order and other provisions of law and such records shall be closed.

2.2 Records Production and Management

Whenever possible persons generating records shall segregate confidential information from the public record. The custodian shall utilize reasonable records management practices and procedures to assure that all closed records are properly identified as "confidential" and maintained segregated or apart from records open to the public. Upon request, the custodian shall produce records containing public information that would otherwise be closed by redacting all confidential information from the records unless release of the entire record is prohibited by law.

COMMITTEE COMMENT

This provision is a mandate to the producer and the custodian of records to identifiably segregate administrative documents containing confidential information from the public case record to avoid inadvertent disclosures.

2.3 Confidential and Personal Financial Records

Documents containing social security, credit card, debit card, or financial account numbers or credit reports of an individual, when collected by the court for administrative purposes, are closed unless made public in a court proceeding.

2.4 **New Records**

The court is not required to index, compile, recompile, reformat, program or otherwise reorganize existing information to create new records not maintained in the ordinary course of business. Removing, deleting or redacting confidential information from a record, or reproducing a record in non-original format, is not deemed to be creating a new record as defined herein.

3. **DEFINITIONS**

Closed (Records)

"Closed", when used in reference to records, means that members of the public may not inspect, copy or otherwise have access to such records except by court order.

Court

"Court" means the Supreme Court, the Court of Appeals, Superior Court, Justice Courts, and Municipal Courts.

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.

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.

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.

Information

"Information" is any recognizable alpha/numerical data which constitute a record or any part thereof.

Judge

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

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.

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.

- (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.

4. ACCESS TO CASE RECORDS

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

4.1 Juvenile Proceedings Records

Records of all juvenile proceedings are open to the public to the extent provided for in the Rules of Procedure for the Juvenile Court.

4.2 Adult Criminal Records

- (a) Diagnostic evaluations, psychiatric and psychological reports, medical reports, social studies, predisposition reports, probation supervision histories or any other records maintained as the work product of probation officers and staff for use by the court in formulating and implementing a rehabilitation plan for the probationer and his or her family are closed, and shall be withheld from public inspection except upon order of the court, or if filed with the clerk of court or attached to any

- filed document or by being offered, considered or used for any purpose in open court proceedings.
- (b) In adult criminal cases the probation department or limited jurisdiction courts shall separate and identify as "confidential" all records defined herein as "criminal history record information." Such records shall be closed and placed in an envelope marked "confidential", and shall only be disclosed as authorized by ARS §41-1750 et seq. or by court order.

COMMITTEE COMMENT

The intent of this subsection is to eliminate ambiguities regarding the responsibility for handling criminal history record information (CHRI) under section (9) of the Victims' Rights Implementation Procedures Administrative Order, No. 94-16. The probation department is charged with having primary responsibility to identify and segregate the CHRI from the open portions of the records. The clerk's office has continuing responsibility to maintain the confidentiality of the CHRI marked confidential by the probation office.

- (c) All other information in the adult criminal case files maintained by the clerk of the court is open to the public.

4.3 Judicial Work Product and Drafts

Notes, memoranda or drafts thereof prepared by a judge or other court personnel at the direction of a judge and used in the process of preparing a final decision or order are closed.

5. ACCESS TO ADMINISTRATIVE RECORDS

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

5.1 Employee Records

Records maintained concerning individuals who are employees or who perform volunteer services are closed except for the following information:

- (a) Name of individual;
- (b) Date of employment;
- (c) Current and previous job titles and descriptions, and effective dates of employment;
- (d) Name, location and phone number of court and/or office to which the individual has been assigned;
- (e) Current and previous salaries and dates of each change;
- (f) Name of current or last known supervisor;
- (g) Information previously made public;

- (h) Information authorized to be released by the individual;
- (i) Information regarding conviction of a felony.

COMMITTEE COMMENT

This section is based on applicable Department of Administration personnel rules, Arizona Administrative Code R2-5-105. Additional provisions have been added that expand access to information previously made public, eg., applicant information, information regarding felony convictions, and information authorized to be released by the subject employee.

5.2 Applicant Records

Records concerning applicants for employment or volunteer services are closed, except the applications and resumes of those individuals who are final candidates are open to the public, when the home addresses, telephone numbers and social security numbers are redacted.

5.3 Judicial Case Assignments

Records regarding the identity of any appellate judge or justice assigned to prepare a written decision or opinion until the same is filed are closed.

5.4 Security Records

All records, such as security plans or codes, that provide for the security of information, individuals, or property in the possession or custody of the courts against theft, tampering, improper use, illegal releases, trespass, or physical abuse or violence are closed.

5.5 Procurement Records

Bid records are open to the public except as provided herein:

(a) **Sealed Bids**

Sealed bid records are closed to the public prior to opening the bids at the time specified in the bid request.

(b) **Invitation for Bid**

Bid records submitted under Rule 18 of the Judicial Branch Procurement Code or equivalent rules shall remain closed to the public after opening until a contract is signed, except that the amount of each bid and the name of each bidder shall be recorded and available for public inspection.

(c) **Competitive Sealed Proposals and Requests for Qualification**

Records containing competitive sealed proposals and requests for qualification submissions under Rules 26 or 35 of the Judicial Branch Procurement

Code or equivalent rules, shall remain closed to the public after opening until a contract is signed, except that the name of each bidder shall be publicly read and recorded.

(d) **Trade Secrets**

Bid records designated by the bidder as containing trade secrets or other proprietary data shall remain closed to the public only when the judicial branch unit concurs in the designation.

5.6 Preliminary and Draft Reports

Reports or other documents prepared for review at a policy-making level prior to final publication shall be closed unless disclosed by the court.

5.7 Library Records

Records maintained in any court law library 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.

COMMITTEE COMMENT

This section is intended to assure the confidentiality of the record of materials borrowed by any patron; however, the patron's name and address are public records.

5.8 Attorney and Judicial Work Product

The legal work product and other records of any attorney or law clerk employed by or representing the judicial branch, that are produced in the regular course of business or representation of the judicial branch, are closed unless disclosed by the court. All notes, memoranda or drafts thereof prepared by a judge or other court personnel at the direction of a judge and used in the course of deliberations on rule or administrative matters are closed.

5.9 Proprietary and Licensed Material

Computer programs or other records which are subject to proprietary rights or licensing agreements shall only be disclosed in accordance with the terms and conditions of the agreements, licenses or by court order. Records shall not be closed to the public solely because access is provided by programs or applications subject to licensing agreements, or because the materials are subject to proprietary rights.

6. GENERAL PROCEDURE FOR REQUESTING ACCESS

6.1 To Whom Request is Made

A request to inspect or obtain copies of records that are open to the public shall be made to the custodian orally or in writing. The custodian may require a written request if the complexity, burden, or volume of records requested would jeopardize the efficiency and accuracy of the response to an oral request. All requests must include sufficient information to reasonably identify what is being sought. The applicant shall not be required to have detailed knowledge of the court's filing system or procedures.

6.2 Timely Response

Upon receiving a request to inspect or copy records the custodian shall promptly respond orally or in writing concerning the availability of the records, and provide the records in a reasonable time based upon the following factors:

- (a) Immediate availability of the requested records;
- (b) Specificity of the request and need for clarification;
- (c) Amount of equipment, materials, staff time and other resources required to satisfy the request;
- (d) Disruption or adverse impact on the ongoing operations or functions of the court or the office of the custodian; or
- (e) Whether the requested records are located at the court or in off site storage.

6.3 Cost

- (a) The applicant shall bear the cost of complying with the request for copies of records. The custodian shall collect any per page fee or other fee prescribed by law to provide copies of documents. If no fee is prescribed by law, the custodian shall collect a per page fee based upon the reasonable cost of reproduction. No fee shall be charged for the cost of searching for a record or redacting confidential information from a record except as provided by law.
- (b) The custodian shall make payment arrangements with the applicant before satisfying the request and is authorized to receive and hold deposits for estimated costs until actual costs are determined.
- (c) Unless otherwise prescribed by law, the custodian may use the collected copying fees described in (a) to compensate for the cost of staff time, transportation, equipment, materials, and

supplies necessary to provide the requested records.

6.4 Delay or Denial; Explanation

- (a) If a request cannot be granted within a reasonable time or at all, the custodian shall inform the applicant orally, or in writing if requested by the applicant, of the nature of any problem delaying or preventing access, and if applicable, the specific statute, federal law, court or administrative rule that is the basis of the delay or denial.
- (b) The custodian is not required to consider any request for records within one month following the date of a prior request, that is substantially identical to one received from the same source or applicant and previously denied, unless applicable rules, law or circumstances restricting access have changed.

6.5 Review of Denials.

Any applicant who is denied the right to inspect, copy or access any administrative record pursuant to the authority of this order, shall be entitled to a review of that decision within five (5) days from the date of submitting a written request for review, to the legal custodian of the requested records.

7. ACCESS TO COMPUTER OR ELECTRONIC BASED RECORDS

7.1 Scope

This section applies to all requests for computer or electronic based records maintained by the court except for requests initiated by judges, court administrators, or clerks of the court for use in the administration or internal business of the court. Data bases and their files may contain information which is not disclosable to the public by authority of this order.

7.2 Authority

Except by court order, only the custodian or designee is authorized by this order to release computer or electronic based records.

7.3 Cost

The applicant shall bear the actual cost incurred by the court to comply with the request for copies of records. If no fee is prescribed by law, the custodian shall collect a fee covering the cost of producing the requested records, including staff time, computer time, equipment, materials, supplies, and other necessary costs. No fee shall be charged for

the cost of searching for a record or redacting confidential information from a record except as provided by law. Additionally, the requirements set forth in section 6.3(b) and (c) shall apply to requests submitted pursuant to this section.

8. INSPECTION AND PHOTOCOPYING

8.1 Access to Original Records

During regular business hours a person shall be allowed to inspect or to obtain copies of original versions of records that are open to the public in the office where such records are normally kept. If access to original records would result in disclosure of information which is not permitted, redacted copies of the closed records may be produced. If access to the original records would jeopardizes the integrity of the records, or is otherwise impracticable, a copy of the complete records in other appropriate formats may be produced for inspection. Unless expressly authorized by the custodian or court order, records shall not be removed from the office where they are normally kept.

8.2 Access to Certain Evidence

Documents and physical objects admitted into evidence shall be available for public inspection under such condition as the responsible custodian may deem appropriate to protect the security of the evidence.

Dated this 7th day of June _____, 1995.

~~STANLEY G. FELDMAN~~
Chief/Justice