

## SUPREME COURT OF COLORADO

### OFFICE OF THE CHIEF JUSTICE

#### Public Access to Administrative Records of the Judicial Branch

This interim Chief Justice Directive governs public access to administrative records maintained for the Judicial Branch of the State of Colorado. This Directive shall remain in place unless or until the Colorado Supreme Court addresses the subject matter contained in this Directive by adoption of Rule.

#### I. DEFINITIONS

For purposes of this interim Chief Justice Directive, the following definitions apply:

- A. “Administrative record” means a record maintained for the purpose of managing the business or performing the duties of the Judicial Branch that is not defined as a court record in Chief Justice Directive 05-01.
- B. “Custodian” means the person designated by law, rule, or order as the keeper of the record, regardless of possession. Where no law, rule, or order designates, the custodian is as provided in this Subsection as follows.
  - 1) **Colorado State Courts and Probation** - the custodian is the Chief Justice. The Chief Justice has delegated custodial authority to the following: the chief judge in each judicial district; the chief judge of the court of appeals; and the presiding judge of the Denver Probate and Denver Juvenile courts in their respective courts. Each chief judge or presiding judge may delegate authority to the district administrator, clerk of court, chief probation officer, or other designee.
  - 2) **Office of the State Court Administrator** - the custodian is the State Court Administrator or his or her designee.
  - 3) **Office of the Presiding Disciplinary Judge** - the custodian is the Presiding Disciplinary Judge or his or her designee.
  - 4) **Office of Judicial Performance Evaluation** - the custodian is the Executive Director of the Office of Judicial Performance Evaluation or his or her designee.
  - 5) **Office of Attorney Regulation Counsel and the Office of Attorney Registration** - the custodian is the Attorney Regulation Counsel or his or her designee.
  - 6) **Colorado Lawyer Assistance Program** - the custodian is the Executive Director of the Colorado Lawyer Assistance Program or his or her designee.

- 7) **Colorado Attorney Mentor Program** - the custodian is the Executive Director of the Colorado Attorney Mentor Program or his or her designee.
  - 8) **Office of Alternate Defense Counsel** - the custodian is the Executive Director of the Office of Alternate Defense Counsel or his or her designee.
  - 9) **Office of the Child's Representative** - the custodian is the Executive Director of the Office of the Child's Representative or his or her designee.
  - 10) **Office of the State Public Defender** - the custodian is the State Public Defender or his or her designee.
- C. **"Financial record"** means any documentation maintained to show the receipt, management or disbursement of funds by the Judicial Branch.
- D. The **"Judicial Branch"** includes Colorado State Courts and Probation, the Office of the Presiding Disciplinary Judge, the Office of Judicial Performance Evaluation, the Office of Attorney Regulation Counsel, the Office of Attorney Registration, the Colorado Lawyer Assistance Program, the Colorado Attorney Mentor Program, the Office of Alternate Defense Counsel, the Office of the Child's Representative, and the Office of the State Public Defender. The Judicial Branch does not include the Judicial Discipline Commission or the Independent Ethics Commission.
- E. **"Person"** means any natural person acting in an official or personal capacity, and any corporation, limited liability company, partnership, firm or association.
- F. **"Person in interest"** means the person who is the subject of a record.
- G. **"Personnel file"** means any record maintained because of the employer-employee relationship.

## II. ACCESS TO ADMINISTRATIVE RECORDS

- A. **General Provision.** All Judicial Branch administrative records shall be available for inspection by any person at reasonable times, except as provided in this interim Chief Justice Directive or as otherwise provided by law, rule, or order. The custodian of any administrative records shall make policies governing the inspection of administrative records that are reasonably necessary to protect the records and prevent unnecessary interference with the regular discharge of the duties of the custodian or the custodian's office.
- B. **Reasonable Actions Necessary to Locate Records.** The custodian must take reasonable measures to locate any specific administrative record sought and to ensure

public access to the administrative record without unreasonable delay or unreasonable cost.

- C. **Trademark or Copyright Protection of Records.** This Rule does not preclude the Judicial Branch from obtaining and enforcing trademark or copyright protection for any administrative record. The Judicial Branch is specifically authorized to obtain and enforce such protection in accordance with applicable federal law. This authorization does not restrict public access to or fair use of copyrighted materials and does not apply to writings that are merely lists or other compilations.

### **III. EXCEPTIONS AND LIMITATIONS ON ACCESS TO RECORDS**

- A. **Exceptions and Limitations on Access to Records.** The custodian of any administrative record shall allow any person to inspect a record or any portion thereof except based on the following grounds or as provided in subsection B or C if such inspection:

- 1) Would be contrary to any state statute;
- 2) Would be contrary to any federal statute or regulation;
- 3) Is prohibited by court order or rule; or
- 4) Could compromise the safety or security of a Judicial Branch employee.

B. **Grounds for Denial of Inspection.**

- 1) Unless otherwise provided by law, rule, or order, the custodian may deny inspection of the following records on the ground that disclosure would be contrary to the public interest:
  - a. Applications, screening grids, results of employment examinations, and interview notes pertaining to the recruitment and selection of personnel.
  - b. Information related to research projects conducted by or in affiliation with the Judicial Branch.
  - c. E-mail addresses provided by a person to the Judicial Branch for the purpose of future electronic communications to the person from the Judicial Branch.
  - d. E-mail addresses of any person currently or formerly associated with the Judicial Branch by virtue of employment, internship, volunteer position, contracting, or appointment to a board, commission, or committee.

- e. Individual signatures that may constitute confidential personal information.
  - f. Contracts and assignment letters related to the Senior Judge Program unless financial and personal contact information has been redacted.
  - g. Financial records of judges and justices unless personal contact information has been redacted.
  - h. Training, professional development, and professional education materials created by Judicial Branch employees, contractors, interns, or volunteers.
  - i. Written communication from the public implying that the author intended the communication to be confidential and written communication from the public for the purpose of requesting assistance with personal matters affecting the author that are not publicly known, as well as any communication from the Judicial Branch in response.
  - j. Records related to legislation, including documents related to fiscal notes, proposed or introduced legislation, and the drafting of bills or amendments.
  - k. Overly broad or ambiguous requests that encompass all or substantially all of a large category of records and that are without sufficient specificity to reasonably allow the custodian to prepare or gather the records as set forth in Section 4.
- 2) Notwithstanding any provision to the contrary in this Subsection, the custodian shall deny inspection of any record that is confidential by law, rule, or order.
- C. **Mandatory Denial of Inspection.** Unless otherwise provided by law, rule, or order, the custodian must deny inspection of the following records:
- 1) Medical, mental health, sociological, and scholastic achievement data on individual persons and groups from which individuals can be identified.
  - 2) Personnel files, with the following exceptions:
    - a. Dates of employment;
    - b. Classification, job title, job description including duties, and salary range;
    - c. Salary;
    - d. The cover sheet of an evaluation; and

e. The fact of discipline.

This paragraph 2) does not prevent the person in interest from requesting information from his or her own personnel file or from granting written, signed permission for a third party to access specific components of his or her personnel file that are subject to inspection by the employee.

- 3) Trade secrets and proprietary information including copyright and trademark materials; software programs; network and systems architectural designs; source code; source documentation; project management materials developed or maintained by the Judicial Branch; information in tangible or intangible form relating to released and unreleased Judicial Branch software or hardware, user interface specifications, use case documents, images and design screens, database design structures and architecture, security structures and architecture; the Judicial Branch's original design ideas; the Judicial Branch's non-public business policies and practices relating to software development and use; and the terms and conditions of any actual or proposed license agreement or other agreement concerning the Judicial Branch's products and licensing negotiations.
- 4) Library and museum records contributed by private persons, to the extent of any limitations placed thereon as conditions of such contributions.
- 5) Privileged information; confidential legal, commercial, financial, geological, or geophysical data; and confidential personal information, including home addresses, telephone numbers, social security numbers, birth dates, and other unique identifying information.
- 6) All data pertaining to administration of a licensing or certification examination, including test questions, applicant answers, scoring keys, all grading information and materials, and graded answers.
- 7) Names, addresses, e-mail addresses, telephone numbers, and personal financial information of users of public facilities or cultural services that are owned and operated by the Judicial Branch. This Subsection does not prohibit the publication of such information in an aggregate or statistical form if the identity, location, or habits of individuals are not revealed. This Subsection does not prohibit the custodian from transmitting data to any agent of an investigative branch of a federal agency or any criminal justice agency as defined in section 24-72-302(3), C.R.S., who makes a request to the custodian to inspect such records and who asserts that the request for information is reasonably related to an investigation within the scope of the agency's authority and duties.

- 8) Security records, including records regarding security plans developed or maintained by the Judicial Branch, such as:
- a. Details of security plans and arrangements, investigation reports, audit reports, assessments reports, specific incident reports, warnings, investigations, emergency plans, building floor plans and blueprints, building access details, equipment, visitor and vendor logs, surveillance, network and systems topology, and network and systems security design;
  - b. Reports of loss that relate to security measures;
  - c. Any records of the intelligence information or security procedures of any sheriff, prosecuting attorney, or other law enforcement agency, or investigatory files compiled for any law enforcement purpose related to security measures;
  - d. Portions of records of the expenditure of public moneys containing details of security plans and arrangements or investigations. Records of the expenditure of public moneys on security arrangements or investigations, including contracts for security plans and arrangements and records related to the procurement of, budgeting for, or expenditures on security systems, are otherwise available for inspection; and
  - e. Any record provided by another public entity that contains specialized details of security arrangements or investigations. The Judicial Branch custodian must refer a request to inspect the record to the public entity that provided the record and shall disclose to the requestor the name of the public entity.

Paragraph 8) does not prohibit the custodian from transferring records containing specialized details of security arrangements or investigations to the Division of Homeland Security and Emergency Management in the Department of Public Safety, the governing body of any city, county, or other political subdivision of the state, or any federal, state, or local law enforcement agency. The custodian shall not transfer any record received from a nongovernmental entity without the prior written consent of the entity unless such information is already publicly available.

- 9) Any probation supervision files not included in Chief Justice Directive 05-01.
- 10) Useful Public Service supervision files. This Subsection does not prevent the disclosure of records related to nonprofit agencies partnering with the Judicial

Branch in the Useful Public Service program once signature verification pages have been redacted.

- 11) Portions of records that reveal a crime victim's personal identifying information.
- 12) Juror records, except as provided by law, rule, or order.
- 13) Collection files pertaining to a person, including collections investigator files. Such files shall be available to the person in interest to the extent permitted by law, rule, or order. Aggregate or statistical information related to collection files is available for inspection.
- 14) Search warrants that do not have a return of service, except when requested by the law enforcement agency that sought the warrant.
- 15) Individual-level responses to surveys conducted by or for the Judicial Branch to collect Judicial Branch performance evaluation information. The aggregate results of such surveys are available for inspection.
- 16) Reports and related documents, which are prepared by or for the Judicial Branch for internal use in evaluating the performance of the Judicial Branch if material is so candid or personal that public disclosure is likely to stifle the frank exchange of ideas and opinions critical to decision-making processes.
- 17) Reports and related documents prepared by the Judicial Branch to monitor protected party proceedings unless ordered by a judge in a specific court action. Aggregate or statistical information related to protect party proceedings is available for inspection.
- 18) Purchasing records related to a service or product purchased from a vendor that reveals information related to a particular court case or trade secrets or that are marked confidential by the vendor. Records related to the purchasing process, including the criteria and scoring, are not available for inspection until the purchasing process is finalized and any information identifying the scorekeeper on the scoring sheets has been redacted.
- 19) The following financial records:
  - a. Financial records that involve or implicate confidential information or privileged attorney-client communication, work product, or advice given in the course of professional employment;
  - b. Financial records that involve or implicate security measures;

- c. Identifying bank account information such as bank account number, Public Deposit Protection Act account number, and account owner signature card;
  - d. Federal Tax Identification information including Employer Identification Number;
  - e. Financial records that reveal a crime victim's or a witness's personal identifying information; and
  - f. Portions of financial records that contain personal identifying information of Judicial Branch employees or payees.
- 20) Records regarding an independent contractor's personal financial information and records maintained for the purpose of evaluating an independent contractor's contract with respect to qualifications and performance under the contract.
- 21) Case-related communication between independent contractors, or their agents, and the contracting Judicial Branch agency. This communication may include billing records; requests for fees in excess of presumptive maximums; requests for experts, investigators, paralegals, social workers, and interpreters; requests for litigation support including motions, legal research, exhibits, and travel; complaint investigations; and communication related to case strategy.
- 22) Investigation records, such as:
- a. Any record of civil or administrative investigations authorized by law, rule, or order conducted by the Judicial Branch unless the record is available for inspection pursuant to law, rule or order; and
  - b. Any record of an internal personnel investigation. If the person in interest appeals a final personnel action taken, disclosure may only be made pursuant to applicable law, rule, or order.
- 23) Judicial application records submitted by or on behalf of an applicant for any judicial office, in any court of record who is not listed on the nominee list certified to the governor as described in the Colorado Constitution, article VI, section 20. Portions of the Judicial Nominating Commission Application for Colorado State Court Judgeship designated as confidential, including letters of reference, are not available for inspection. Any record submitted by or on behalf of a nominee certified to the governor is available for inspection until a judicial appointment is made. After a judicial appointment is made, the public portions of the application only of the person appointed are available for inspection.



- 24) Work product, including all advisory or deliberative materials assembled for the benefit of the Judicial Branch that express an opinion or are deliberative in nature and are communicated for the purpose of assisting the Judicial Branch in performing its duties, such as:
- a. Communication, notes, and memoranda that relate to or serve as background information for such duties; and
  - b. Preliminary drafts and discussion copies of documents that express a decision, determination, or conclusion by the Judicial Branch.
- 25) Records protected under the common law governmental or deliberative process privilege, if the material is so candid or personal that public disclosure is likely to stifle honest and frank discussion within the Judicial Branch. The Judicial Branch adopts the position that public disclosure of such records impairs the decision-making process, causing substantial injury to the public interest. If any administrative record is withheld pursuant to this Subsection, the custodian must provide a statement describing the record withheld.

**D. Petition for Order Permitting Restriction.**

- 1) In addition to any of the foregoing, if in the opinion of the custodian access to the contents of a record would do substantial injury to the public interest, notwithstanding the fact that the record might otherwise be available for inspection, or if the custodian is unable, in good faith, after exercising reasonable diligence, and after reasonable inquiry, to determine if this interim Chief Justice Directive restricts access to the record, the custodian may petition the district court of the district in which the record or the custodian is located for an order permitting restriction of access to the record or for the court to determine if access to the record is restricted. Hearing on the petition shall be held at the earliest practical time. The person seeking access to the record must be served with notice of the hearing pursuant to the Colorado Rules of Civil Procedure and has the right to appear and be heard.
- 2) In the case of a record otherwise available for inspection pursuant to this interim Chief Justice Directive, after a hearing the court may, upon a finding that access would cause substantial injury to the public interest, issue an order authorizing the custodian to restrict access. In the case of a record that may be restricted from access pursuant to this interim Chief Justice Directive, after a hearing the court may, upon a finding that access to the record is restricted, issue an order restricting access. In an action brought pursuant to this Subsection, the custodian has the burden of proof.

- 3) The court costs and attorney fees provision of Section 5 does not apply to petitions filed pursuant to this Subsection if the custodian proves and the court finds that the custodian, in good faith, after exercising reasonable diligence, and after making reasonable inquiry, was unable to determine if this interim Chief Justice Directive restricts access to the record without a ruling by the court.

#### **IV. PROCEDURE TO ACCESS RECORDS**

- A. **Request for Inspection.** Each Judicial Branch agency will develop and make information available to the public outlining how to obtain access to administrative records pursuant to this interim Chief Justice Directive. Any request for inspection must be made in accordance with the adopted procedures.
- B. **Acknowledgment.** Within 3 business days following the receipt of a request for inspection, the custodian must acknowledge receipt of the request. If a request does not provide information sufficient to identify the record sought, the custodian may deny the request. The custodian may notify the requestor that a new request with additional information identifying the records sought may be submitted.
- C. **Response.** Within 7 calendar days of the acknowledgment, the custodian must provide one or more of the following responses:
  - 1) The record is available for inspection.
    - a. When a record is available for inspection, the custodian must provide access to a record or provide written notice of a time and location for inspection of the record within a reasonable time. Production is subject to payment of any fee required under Subsection (d); and
    - b. The custodian may determine whether the record may be copied and the format in which the record will be provided.
  - 2) The record is not available for inspection.
    - a. When a record is not available for inspection, the custodian must provide written notice that:
      - i. The record requested is not maintained by the custodian to whom the request was made;
      - ii. The request did not provide information sufficient to identify the record sought; or

- iii. The record is not available for inspection pursuant to Section 3.
  - b. If the custodian denies access to a record, the requestor may request a written statement of the grounds for the denial. Upon receipt the custodian must, within a reasonable time, provide a written statement setting forth the grounds for denial.
- 3) The custodian requires an additional 14 calendar days to respond because extenuating circumstances exist. A finding that extenuating circumstances exist must be made in writing by the custodian and provided to the requestor. Extenuating circumstances exist only when:
- a. The record requested is in active use, in storage, or otherwise not readily available;
  - b. The custodian or the person best situated to respond to the record request is temporarily unavailable;
  - c. All or substantially all of the resources necessary to respond to the request are dedicated to meeting an impending deadline or to a period of peak demand that is either unique or not predicted to recur more frequently than once a month; or
  - d. The request involves such a large volume of records that the custodian cannot reasonably prepare or gather the records within the 7-day period without substantially interfering with the custodian's obligation to perform other responsibilities.

**D. Fees.**

- 1) A custodian may impose a fee in response to a record request if the custodian has, before the date of receiving the request, either posted on the custodian's website or otherwise made publicly available a written policy that specifies the applicable conditions and fees for research, retrieval, redaction, copying, and transmission of a record. Assessment of fees shall be consistent with CJD 06-01. Where the fee for a certified copy or other copy, printout, or photograph of a record is specifically prescribed by law, rule, or order, the specific fee shall apply.
- 2) The custodian may notify the requestor that a copy of the record is available but will only be produced once the custodian either receives payment or makes arrangements for receiving payment for all costs associated with records research, retrieval, redaction, copying, and transmission and for all other fees lawfully imposed.

## V. RESOLUTION OF DISPUTES

A. **Resolving Denial of Inspection.** Any person denied inspection of a record under this interim Chief Justice Directive may petition the district court of the district where the custodian maintains a principal place of business for an order directing the custodian to show cause why the custodian should not permit inspection of the record. At least 3 business days before filing a petition with the district court, the person who has been denied inspection of a record must file a written notice with the custodian who denied inspection of the record informing the custodian that the person intends to file a petition with the district court. Hearing on a petition shall be held at the earliest practicable time.

- 1) If the court finds that the denial of inspection was contrary to this interim Chief Justice Directive, it must order the custodian to permit inspection. The court may award court costs and reasonable attorney fees to the person denied inspection of the record if the court determines that the person prevailed on a significant issue in the litigation and derived some of the benefits sought by the litigation. No court costs and attorney fees may be awarded to a person who is a party engaged in litigation with a Judicial Branch agency and who petitions the court for an order pursuant to this Section for access to a record of the Judicial Branch agency if the court finds that the record sought is related to the pending litigation and is discoverable pursuant to applicable rules of procedure.
- 2) If the court finds that the denial of inspection was not contrary to this interim Chief Justice Directive, the court must award court costs and reasonable attorney fees to the custodian if the court finds that the petition was frivolous, vexatious, or groundless.

B. **Defense Against Petition.** In defense against a petition for an order permitting inspection, the custodian may raise any issue that could have been raised and is not limited by any response under Sections 3 or 4.

This interim directive is effective May 11, 2015.

Done at Denver, Colorado this 24th day of April 2015.

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Nancy E. Rice, Chief Justice