

SUPREME COURT OF ARKANSAS

Opinion Delivered February 23, 2012

IN RE ADMINISTRATIVE ORDER
NO. 19—PROPOSED AMENDMENTS

PER CURIAM

We are publishing for comment two proposals to amend Administrative Order No. 19. The first comes from our Automation Committee, which has been examining problems with the current handling of bulk and compiled records under section (VI) of Administrative Order No. 19. After a thorough study of the issue, the committee recommends changes to improve the processing of commercial requests for such records by separating requests for compiled records and bulk records. The committee recommends that the Administrative Office of the Courts (1) license the use of bulk data, and (2) establish a secure server for bulk subscribers to download bulk data. The proposed changes are further explained in the additional commentary, which is set out below. We thank the committee for its work.

The court was requested to address a current gap in the law regarding access to court security and emergency preparedness plans. The court called for the development of such plans in 2007. *In Re Adoption of Recommendations from the Arkansas Task Force on Court Security*, 368 Ark. App'x 701 (per curiam) (2007); *see also* Ark. Code Ann. § 16-10-1003.

By their very nature, security plans should not be readily accessible, but current law does not protect them. The second proposed change is intended to close this loophole and is found in section (VII)(B)(3).

These recommendations are published for comment through April 27, 2012. Comments should be submitted in writing to Les Steen, Clerk of the Supreme Court, Justice Building, 625 Marshall, Little Rock, AR 72201.

Order 19. Access to Court Records

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Section III. Definitions.

A. For purpose of this order: ...

(9) “Bulk Distribution” means the distribution of all, or a significant subset of, the information in court records, as is, and without modification or compilation.

(10) “Compiled Information” means information that is derived from the selection, aggregation or reformulation of information from more than one court record.

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Section VI. Bulk Distribution and Compiled Information.

~~A. Requests for bulk distribution or compiled information shall be made in writing to the Director of the Administrative Office of the Courts or other designee of the Arkansas Supreme Court. Requests will be acted upon or responded to within a reasonable period of time.~~

~~B. Bulk distribution or compiled information that is not excluded by section VII of this order shall be provided according to the terms of this section VI(B).~~

~~(1) Bulk distribution or compiled information that is not excluded by section VII of this order shall be provided when the following conditions are met:~~

~~(a) The requester must declare under penalty of perjury that the request is made for a scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose, and that the identification of specific~~

~~individuals is ancillary to the purpose of the inquiry.~~

~~(b) The requester must declare under penalty of perjury that information obtained pursuant to this section VI(B) will not be used directly or indirectly to sell a product or service to any individual, group of individuals, or the general public. A request for records supporting the news dissemination function of the requester shall not be considered a request that is for commercial use.~~

~~(c) The information is requested in a medium in which the information is readily available, and in a format to which the information is readily convertible with the court or court agency's existing software. At its discretion, the court or court agency may agree to summarize, compile, or tailor electronic data in a particular manner or medium in which the data is not readily available, or in a format to which the data is not readily convertible.~~

~~(d) Information that is excluded from section VII of this order can reasonably be segregated from non-excluded information and withheld from disclosure. The amount of information deleted shall be indicated on the released portion of the record, and, if technically feasible, at the place in the record where the deletion was made.~~

~~(2) The grant of a request under this section VI(B) may be made contingent upon the requester paying the actual costs of reproduction, including the costs of the medium of reproduction, supplies, equipment, and maintenance, and including the actual costs of mailing or transmitting the record by facsimile or other electronic means, but not including existing personnel time associated with searching for, retrieving, reviewing, or copying information.~~

~~(a) If the estimated costs exceed twenty-five dollars (\$25.00), the requester may be required to pay that fee in advance.~~

~~(b) Information may be furnished without charge or at a reduced charge if it is determined that a waiver or reduction of the fee is in the public interest.~~

~~(c) Notwithstanding the other provisions of this section VI(B)(2), if a discretionary request is agreed to under section VI(B)(1)(c), the requester may be charged the actual, verifiable costs of personnel time exceeding two (2) hours associated with the tasks, in addition to the actual costs of reproduction. The charge for personnel time shall not exceed the salary of the lowest paid employee or contractor who, in the discretion of the court or court agency providing the records, has the necessary skill and training to respond to the request.~~

~~(d) The requester is entitled to an itemized breakdown of charges under this section VI(B)(2).~~

~~C. Bulk distribution or compiled information that does or does not include information~~

~~excluded from public access pursuant to section VII of this order may be provided according to the terms of this section VI(C).~~

~~(1) The request must:~~

- ~~(a) fully identify the requestor and describe the requestor's interest and purpose of the inquiry;~~
- ~~(b) identify what information is sought;~~
- ~~(c) explain how the information will benefit the public interest or public education;~~
- ~~(d) explain provisions for the secure protection of any information requested to which public access is restricted or prohibited;~~
- ~~(e) explain procedures for accurately distinguishing the records for individuals according to multiple personal identifiers.~~

~~(2) Upon receiving a request pursuant to this subsection (C), the Director of the Administrative Office of the Courts, or the court or court agency having jurisdiction over the records is the Administrative Office of the Courts is unable to provide the requested records, may permit objections by persons affected by the release of information, unless individual notice as required under section VI(3)(e) below is waived by the Director or court or court agency having jurisdiction over the records.~~

~~(3) The request may be granted only upon determination by the Director of the Administrative Office of the Courts, or by the court or court agency having jurisdiction over the records if the Administrative Office of the Courts is not able to provide the requested records, that the information sought is consistent with the purposes of this order, that resources are available to prepare the information, and that fulfilling the request is an appropriate use of public resources, and further upon finding by clear and convincing evidence that the requestor satisfies the requirements of subsection (C), and that the purposes for which the information is sought substantially outweighs the privacy interests protected by this order. An order granting a request under this subsection may, at the discretion of the Director or the court or court agency having jurisdiction over the records, specify particular conditions or requirements for the use of the information, including without limitation:~~

- ~~(a) The confidential information will not be sold or otherwise distributed, directly or indirectly, to third parties.~~
- ~~(b) The confidential information will not be used directly or indirectly to sell a product or service to an individual, group of individuals, or the general public.~~
- ~~(c) The confidential information will not be copied or duplicated other than for the stated scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose.~~
- ~~(d) The requestor must pay reasonable costs of responding to the request, as determined by the court.~~

~~(e) The requester must provide for individual notice to all persons affected by the release of information.~~

~~(4) When the request includes release of social security numbers, driver's license or equivalent state identification card numbers, dates of birth, or addresses, the information provided shall include only the last four digits of social security numbers, only the last four digits of driver's license or equivalent state identification card numbers, only the year of birth, or only the ZIP code of addresses. Account numbers and personal identification numbers (PINs) of specific assets, liabilities, accounts, and credit cards may not be released. The restrictions may be waived only upon a petition to the responding Director, court or court agency.~~

Request for Bulk or Compiled Information
Pursuant to Administrative Order 19, Section VI of the
Administrative Orders of the Arkansas Supreme Court

To support my request for a bulk distribution or compiled information of court data from the Administrative Office of the Courts, I hereby declare, under penalty of perjury, that:

- 1) The request is made for a scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose; and
- 2) The identification of specific individuals is ancillary to the purpose of the inquiry; and
- 3) The information obtained will not be used directly or indirectly to sell a product or service to any individual, group of individuals, or the general public.

 Signature

 Printed Name

 Company Name and Address

STATE OF _____

COUNTY OF _____

Subscribed and sworn before me this _____ day of _____, 20____.

 Notary Public

My commission expires: _____

A. Requests for bulk distribution or compiled information stored on computers maintained by the Administrative Office of the Courts (AOC) shall be made in writing on the form provided to the Director of the AOC or other designee of the Arkansas Supreme Court. Requests for bulk distribution or compiled information that is not stored on computers maintained by the AOC shall be made in writing on the form provided to the court or

court agency having jurisdiction over the records. The AOC shall maintain on the Arkansas Judiciary website a current description of the records available on AOC computers. Requests will be acted upon or responded to within a reasonable period of time.

B. Compiled information shall be provided according to the terms of this section (VI)(B).

(1) Requests for compiled records shall identify the requested information and the desired format of the compilation.

(2) The grant of a request under this section (VI)(B) may be made contingent upon the requester paying the actual costs of reproduction, including personnel time, the costs of the of the medium reproduction, supplies, equipment, and maintenance, and including the actual costs of mailing or transmitting the records by facsimile o _____ r other electronic means.

(a) The requester may be charged for personnel time exceeding one (1) hour associated with the tasks, in addition to the actual costs of reproduction.

(b) If the estimated costs exceed twenty-five dollars (\$25.00), an estimate will be required and the requester may be required to pay that fee in advance.

(c) Information may be furnished without charge or at a reduced charge if it is determined that a waiver or reduction of the fee is in the public interest.

(d) The requester is entitled to an itemized breakdown of charges under this section (VI)(B)(2).

(e) Costs for compiled records requested from a court or court agency having jurisdiction over the records shall be as otherwise permitted by state law or county or city ordinance.

(3) When the request includes cases or information excluded from public access under section (VII), or the identification of specific individuals is not essential to the purpose of the inquiry, then the requested records may be provided; however, names, addresses (except zip code), month and day of birth shall be redacted from the information.

(4) When the request includes release of social security numbers, driver's license or equivalent state identification card numbers, the information provided shall include only the last four digits of social security numbers, only the last four digits of driver's license or equivalent state identification card numbers. Account numbers and

personal identification numbers (PINs) of specific assets, liabilities, accounts, and credit cards may not be released.

(5) When the identification of specific individuals is essential to the purpose of the request, then the request must include an executed copy of the Compiled Records License Agreement and the requester must declare under penalty of perjury that the request is made for a scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose, and that the identification of specific individuals is essential to the purpose of the inquiry. This license agreement requirement may be waived for information furnished to an agency of the State of Arkansas. Denial of all or part of a compiled records request shall be reviewable by the Supreme Court Committee on Automation by the requestor filing a written request for review within 20 days of the denial. At its next regularly scheduled meeting the Committee shall review the request and make a determination whether the request should be granted. The determination shall be made by a majority of those members of the Committee present and voting. The Chair of the Committee shall communicate its decision to the Director of the Administrative Office of the courts or the court or court agency having jurisdiction over the records. The Committee's decision shall be final.

C. Bulk distribution shall be provided according to the terms of this section (VI)(C).

(1) The Administrative Office of the Courts is authorized to develop a license agreement for bulk records consistent with this rule.

- (a) The license agreement shall provide the terms and conditions for receipt and update of the bulk data.
- (b) The license agreement shall provide for a startup fee not to exceed \$1,000 and a monthly subscription fee not to exceed \$200 for access to the bulk data.
- (c) The license agreement shall provide that recipients of the bulk data shall purge from their databases any records that become confidential or sealed within 24 hours of notice of the records being expunged or sealed.
- (d) The license agreement shall provide that recipients of the bulk data shall replace their data within 24 hours of the availability of a monthly extract or transactional update of the databases.

- (e) Costs for bulk records requested from a court or court agency having jurisdiction over the records shall be as otherwise permitted by state law or county or city ordinance.
- (f) The license agreement requirement may be waived for information provided to an agency of the State of Arkansas. However, agencies of the State of Arkansas shall not be required to post a surety bond.
- (2) The Administrative Office of the Courts shall establish a secure server from which the databases of case information may be downloaded by licensed users.

 - (a) The secure server shall include a monthly extract of all public case data.
 - (b) The secure server shall include transactional updates that will be periodically extracted from the case management databases no less frequently than once every 24 hours.
- (3) The request for bulk distribution must:

 - (a) include an executed copy of the Bulk Records License Agreement or a request for waiver of the Bulk Records License Agreement if the requester is an agency of the State of Arkansas;
 - (b) Include a cashier's check or money order as indicated in the license agreement to set up a bulk distribution account.
- (4) The monthly extract and transactional updates shall include only the last four digits of social security numbers, only the last four digits of driver's license or equivalent state identification card numbers. Account numbers and personal identification numbers (PINs) of specific assets, liabilities, accounts, and credit cards may not be released.
- (5) The bulk data will not include cases or records excluded from public access under section (VII).

Section VII. Court Records Excluded From Public Access.

A. *Case records.* The following information in case records is excluded from public access and is confidential absent a court order to the contrary; however, if the information is disclosed in open court and is part of a verbatim transcript of court proceedings or included in trial transcript source materials, the information is not excluded from public access:

- (1) information that is excluded from public access pursuant to federal law;
- (2) information that is excluded from public access pursuant to the Arkansas Code Annotated;
- (3) information that is excluded from public access by order or rule of court;
- (4) Social Security numbers;
- (5) account numbers of specific assets, liabilities, accounts, credit cards, and personal identification numbers (PINs);
- (6) information about cases expunged or sealed pursuant to Ark. Code Ann. §§ 16-90-901 et seq.;
- (7) notes, communications, and deliberative materials regarding decisions of judges, jurors, court staff, and judicial agencies;
- (8) all home and business addresses of petitioners who request anonymity when seeking a domestic order of protection.

B. *Administrative Records.* The following information in administrative records is excluded from public access and is confidential absent a court order to the contrary:

- (1) information that is excluded from public access pursuant to Arkansas Code Annotated or other court rule;
- (2) information protected from disclosure by order or rule of court;
- (3) security and emergency preparedness plans. Security and emergency preparedness plans shall not be open to the public under this order or the Arkansas Freedom of Information Act, Ark. Code Ann. §§ 25-19-101 et seq., to the extent they contain information that if disclosed might jeopardize or compromise efforts to secure and protect the courthouse or court facility. This exclusion from public access shall include: (A) Risk and vulnerability assessments; (B) Plans and proposals for preventing and mitigating security risks; (C) Emergency response and recovery records; (D) Security plans and procedures; and (E) Any other records containing information that if disclosed might jeopardize or compromise efforts to secure and protect the courthouse or court facility.

Section VIII. Obtaining Access to Information Excluded from Public Access.

A. Any requestor may make a verified written request to obtain access to information in a case or administrative record to which public access is prohibited under this order to the court having jurisdiction over the record. The request shall demonstrate that:

- (1) reasonable circumstances exist that require deviation from the general provisions of this order;
- (2) the public interest in disclosure outweighs the harm in disclosure; or

(3) the information should not be excluded from public access under section (VII) of this order.

The person seeking access has the burden of providing notice to the parties and such other persons as the court may direct, providing proof of notice to the court or the reason why notice could not or should not be given, demonstrating to the court the requestor's reasons for prohibiting access to the information.

B. The court shall hold a hearing on the request, unless waived, within a reasonable time, not to exceed thirty (30) days of receipt of the request. The court shall grant a request to allow access following a hearing if the requestor demonstrates by a preponderance of the evidence that any one or more of the requirements of (VIII)(A)(1) through (VIII)(A)(3) have been satisfied.

C. A court shall consider the public access and the privacy interests served by this order and the grounds demonstrated by the requestor. In its order, the court shall state its reasons for granting or denying the request. When a request is made for access to information excluded from public access, the information will remain confidential while the court rules on the request.

D. A court may place restrictions on the use or dissemination of the information to preserve confidentiality.

Section IX. When Court Records May Be Accessed.

A. Court records that are publicly accessible will be available for public access in the courthouse during regular business hours established by the court; however, public access to trial exhibits and trial transcript source materials shall be granted at the discretion of the court. Court records in electronic form to which the court allows remote access under this policy will be available for access during hours established by the court, subject to unexpected technical failures or normal system maintenance announced in advance.

B. Upon receiving a request pursuant to ~~section~~ sections (VI)(C), or (VIII) of this order, a court will respond within a reasonable period of time.

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Appendix I. Commentary

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Section VI. Commentary

In the past, court information other than that required to be reported to the Administrative Office of the Courts, was available only directly from the courts. In 2001, the Arkansas Court Automation Project began, with its long-term goal to provide a centralized case-management system for all courts in the State of Arkansas. This project is the foundation to provide statewide electronic filing and document imaging for the courts. As courts go online with the new system, the public will have a more convenient central location from which to request court records.

~~Subsection (A) of this rule requires that requests for bulk distribution or compiled information stored on AOC computers be submitted to the Director of the Administrative Office of the Courts or other designee of the Court. If the information requested is contained in the data required to be reported to the Director, then the request will be considered by the Director according to this section. If the information requested is not contained in the data required to be reported to the Director, and either the Administrative Office does not hold the court records or the Administrative Office does hold the court records but does not have permission from the custodian of the court records to disclose the requested records pursuant to this order, then the Director's response will inform the requester which requested records are available only from the court or court agency having jurisdiction over the records. Otherwise requests should be submitted to the court or court agency having jurisdiction over the records. The AOC is required to maintain a description of court records in order to assist requesters in determining where to send their requests.~~

~~This section creates a two-track system for access to bulk distribution and compiled information. The first track, described in subsection (B), pertains only to information that is not excluded from disclosure by section VII of this order. The provision of bulk distribution and compiled information is required when certain conditions are met. The use must be one among specified non-commercial purposes, the court must be able to comply with the request without unreasonably excessive effort to meet the requester's format and medium demands, and information made confidential by this order must be reasonably segregable from the public information requested. The latter two requirements, as well as the "actual costs" principle of subsection (B)(2), are modeled on the Arkansas Freedom of Information Act. Like under the FOIA, custodians and requesters under subsection (B) may reach agreements as to the provision of bulk distribution or compiled information when meeting the request would exceed the reasonableness scope of the medium-format compatibility provision.~~

~~In allowing bulk or compiled data requests, courts must limit bulk data to court records; even if those requesting this information are seeking other information which is governed by other agencies' policies.~~

~~The second track, described in subsection (C), pertains to information requests regardless of whether the information is excluded from disclosure by section VII of this order. Although the second track therefore potentially allows access to more information than the first track, including confidential information, provision of the information is discretionary, and requirements upon requesters are more onerous. Subsection (C) contemplates that the Director of the Administrative Office of the Courts, or the court or court agency having jurisdiction over the records if the Administrative Office of the Courts is unable to provide the records, will balance competing concerns, including the public interests in both privacy and disclosure, the interests of the requester, and the interests of efficient judicial administration. Generating compiled data may require resources, and generating the compiled information may compete with the normal operations of the court or court agency for resources, which may be reasons not to compile the information. However, it may be less demanding on resources to instead provide bulk distribution of requested information and let the requester compile the information.~~

~~In addition to the requirements of subsection (C)(1) pertaining to requests, the Director of the Administrative Office of the Courts, or the court or court agency having jurisdiction over the records if the Administrative Office of the Courts is unable to provide the records, may impose any number of additional restrictions upon requesters concerning the terms by which the requested information is disclosed. The enumerated terms are illustrative and not exhaustive. Indeed, information may be released to a requester who intends to engage in commercial uses, making a limitation on commercial use inappropriate in one case, while in another case, the use may be constrained to the requester's stated governmental purpose. It is anticipated that the Administrative Office of the Courts will develop pattern licensing arrangements for common classes of requests.~~

~~Subsection (C)(1)(e) concerns the avoidance of error in the use of personally identifying information. For example, if a requester obtains only the names of persons involved in a certain class of litigation, and not other personally identifying information about the persons involved, there might occur confusion between those persons and others with the same names. Thus it might be appropriate for a requester to obtain more personally identifying information rather than less, so that, for example, names might be cross-referenced and distinguished by year of birth. A requester should use at least two identifiers when individual identity will be retained in bulk distribution or compiled information. Guidelines of the National Crime Information Center on this point may be consulted.~~

~~At the same time, these measures to avoid mistaken identity operate in careful balance with subsection (C)(4), which limits the disclosure of personally identifying information excluded from public disclosure under section VII to partial but useful data components, such as only the last four digits of a driver's license number. More complete identifying information should be provided only in extraordinary circumstances.~~

Prior to the 2012 amendment, section (VI) provided a two-track system for requesting bulk and compiled records. The system proved to be unworkable in practice, so the 2012 amendment separated and simplified the process for requesting bulk and compiled data.

Section (VI)(B) provides the process for filling compiled records requests. The process recognizes the increased likelihood that requested data is stored on computers, and that to fulfill the requests it is more likely that a computer programmer is required to isolate, analyze and compile the requested information into a desired format. Although section (VI)(B)(2)(a) permits charging a fee for personnel time exceeding one hour, and section (VI)(B)(2)(b) may require paying the fee in advance, section (VI)(B)(2)(c) permits waiver of fees for personnel time if it is in the public interest to provide the compilation at no cost.

Section (VI)(B)(3) recognizes that requesters may require information about cases that are confidential but do not require the confidential information in the cases. For example, researchers considering the efficacy of the juvenile justice system may be interested in age, race, geographic area, and gender of participants in the system relative to the outcomes in those cases. Fulfilling these requests can be completed without disclosing the identification of the individuals.

Section (VI)(B)(4) provides that account numbers, and credit card numbers, full social security numbers and driver license numbers will never be provided in compiled records requests; however, the last four digits of SSN and driver license numbers may be provided in compilations.

Section (VI)(B)(5) provides the limited circumstances under which compiled records will be provided where the request includes information about specific individuals. Names, addresses, and dates of birth will only be provided in compiled form when the requester declares under penalty of perjury that identification of individuals is essential to the inquiry and that the request is for a scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose. Because of the sensitive nature of such compilations, a license agreement governing acceptable use of the records must be provided with the request. Nevertheless the license agreement may be waived when the information is provided to a state agency. Such exchanges of information, especially between criminal justice agencies, are typically managed by a separate interagency agreement and exchanges between state and local agencies are managed by intergovernmental agreement.

Section (VI)(C) contemplates that most bulk records requests will be filled by licensed subscription to bulk databases of otherwise public information. To protect the privacy of individuals while simultaneously promoting access to public information the license agreement will provide the terms for receipt and update of the bulk data. Recipients of bulk data are required to purge records that become confidential within 24 hours of receiving notice that the records have become confidential. By requiring that the recipients

maintain the currency of the bulk data, the risk of downstream disclosure of information which became confidential subsequent to its initial disclosure is significantly reduced. The 2012 amendment to section (VI) eliminates the inquiry into the purpose of the request for bulk records and instead uses the licensing agreement and the cost of participation to balance the privacy and public access provisions of Administrative Order No. 19.