

SUPREME COURT OF ARKANSAS

IN RE AMENDMENTS TO
ADMINISTRATIVE ORDER
NO. 19

Opinion Delivered May 24, 2012

PER CURIAM

We published for comment two recommendations to amend Administrative Order No. 19 on February 23, 2012. *In re Administrative Order No. 19 – Proposed Amendments*, 2012 Ark. 81 (per curiam). Our Automation Committee recommended amendments to section (VI) for the handling of bulk and compiled records. Because of these revisions, it was necessary to revise the Commentary and cross-references in other sections. We thank the committee for its work and accept its recommendation.

The second amendment addresses a current gap in the law regarding access to court security and emergency-preparedness plans. By their very nature, security plans should not be readily accessible, but current law does not prohibit access to, or disclosure of, those plans. We correct this problem in the amendment to section (VII)(B)(3).

We adopt the amendments and republish the order as set out below. The amendments are effective immediately.

Order 19. Access to Court Records

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Section VI. Bulk Distribution and Compiled Information.

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 medium reproduction, supplies, equipment, and maintenance, and including the actual costs of mailing or transmitting the records by facsimile or 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 individuals, 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 individuals, 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 sections (VI) 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. 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.

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.