

Section 4.00 RESPONDING TO A REQUEST FOR ACCESS TO ELECTRONIC CASE RECORDS

- A. Within 10 business days of receipt of a written request for electronic case record access, the respective court or office shall respond in one of the following manners:
1. fulfill the request, or if there are applicable fees and costs that must be paid by the requestor, notify requestor that the information is available upon payment of the same;
 2. notify the requestor in writing that the requestor has not complied with the provisions of this policy;
 3. notify the requestor in writing that the information cannot be provided; or
 4. notify the requestor in writing that the request has been received and the expected date that the information will be available. If the information will not be available within 30 business days, the court or office shall notify the Administrative Office of Pennsylvania Courts and the requestor simultaneously.
- B. If the court or office cannot respond to the request as set forth in subsection A, the court or office shall concurrently give written notice of the same to the requestor and Administrative Office of Pennsylvania Courts.

Commentary

Implementing the provisions of this policy should not unduly burden the courts and offices, nor should implementation impinge upon the judiciary's primary service – the delivery of justice. The question raised by this section is not whether there is to be access, but rather *how and when access should be afforded*.

In drafting this section, the Committee was faced with two competing interests. First, any requirements imposed upon courts and offices regarding how and when they should respond to these requests must not interfere with the courts' and offices' ability to conduct their day-to-day operations, often with limited resources. Second, all requests should be handled by courts and offices in a predictable, consistent, and timely manner statewide. It is the Committee's opinion that the provisions of this section strike the appropriate balance between these two competing interests.

As noted earlier in this Report, FOIA and RTKA are not applicable to the judiciary. However, the Committee when drafting this section of the policy paid particularly close attention as to how both Acts address this issue. In fact, the Committee incorporated elements of those Acts into this section of the policy.²¹²

²¹² 5 U.S.C. § 552(a)(6) (2006) and PA. STAT. ANN. tit. 65, §§ 66.3-3 (West 2006).

Under subsection A(4), the court or office shall specifically state in its written notification to the requestor the expected date that the information will be available. If the information will not be available within 30 business days, the court or office shall provide written notification to the requestor and the Administrative Office of Pennsylvania Courts at the same time. Possible reasons a court or office may need the additional period of time include:

- the request, particularly if for bulk distribution of electronic case records, involves such voluminous amounts of information that the court or office may not be able to fulfill the same within the initial 10 business day period without substantially impeding the orderly conduct of the court or office; or
- the court or office is not able to determine if this policy permits the release of the requested information within the initial 10 business day period. Therefore, the court or office may require an additional period of time to conduct an administrative review of the request to make this determination.

If the court or office believes that the requestor has failed to comply with this policy, written notification to the requestor should set forth the specific areas of non-compliance. For example, a requestor may have failed to pay the appropriate fees associated with the request.

Any written notification to the requestor stating that the information requested cannot be provided shall set forth the reason(s) for this determination.

If the court or office is unable to respond to the request as set forth above, the AOPC should work with the record custodian or appropriate administrative authority (e.g., district court administrator) to facilitate the fulfillment of the request consistent with the policy, as currently is done for MDJS requests. As a last resort, the AOPC may handle these requests directly.

The phrase "in writing" includes but is not limited to electronic communications such as email and fax.

The Committee also discussed when a request is partially fulfilled (e.g., if the requestor asked for a defendant's name, address, and social security number, pursuant to Section 3.00 of this policy a court or office could not release the defendant's social security number or street address) whether the court or office should specifically set forth that it has the restricted information on record although it did not release the same. In the judgment of the Committee it is important that requestors are apprised that all requests for information are fulfilled pursuant to a statewide policy without necessarily pointing out each piece of information that is in the court's or office's possession but not released under the policy. Therefore, when responding to any request, a court or office should provide a general statement to the requestor that "your request for information is being fulfilled consistent with the provisions of the Unified Judicial System Public Access Policy."

The time frames set forth in this section will usually only concern requests for bulk distribution for electronic case records.