

Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts

INTRODUCTION

Article V, Section 10(c) of the Pennsylvania Constitution vests the Supreme Court with the authority to prescribe practices and procedures for public access to the records of the Unified Judicial System (UJS) including magisterial district courts. Guided by constitutional and common law principles, the policies governing access to UJS records begin with the presumption of openness.

This presumption in the Judiciary is long-standing, both in policy and practice. In 1994, the Supreme Court established standards and protocols for public access to court records, beginning with the policy on access to magisterial district court (formerly district justice) records, whether stored electronically or in hard copy. With the advancements in the Court's automation efforts, the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania* ("Electronic Record Policy") was adopted by the Court effective January 1, 2007. The Electronic Record Policy covers access to the case record information maintained in the UJS' three automated statewide case management systems – the Pennsylvania Appellate Court Management System (PACMS), the Common Pleas Criminal Court Case Management System (CPCMS), and the Magisterial District Judge System (MDJS). Specifically, the Electronic Record Policy addresses what electronic case record information is available to the public; how requests for access are handled; applicable fees; and other related issues. In addition to the Electronic Record Policy, the Supreme Court also promulgated Rule of Judicial Administration 509 in 2007, subsequently amended in 2008, that sets forth procedures for access to the financial records of the Unified Judicial System.

The promulgation of the aforementioned policies and rule affirms that the endeavor to ensure that UJS records are publicly accessible has been methodical and focused. The next logical step in such work was a review of the standards governing access to magisterial district court paper records that are maintained in the case files.

In the spring of 2007, the Court Administrator of Pennsylvania convened a working group to formulate a statewide public access policy for official case records of magisterial district courts. The working group was comprised of magisterial district judges, district court administrators, representatives of the clerks of court and prothonotaries, counsel from the Supreme Court's rules committees, and staff of the Administrative Office of Pennsylvania Courts (AOPC). Its mission was to precisely define which official case records of the magisterial district courts are accessible and how requests should be facilitated in light of current UJS access policies, statutory provisions governing access to records (including the recently enacted Right-to-Know Law (RTKL), Act 3 of 2008, found at 65 P.S. §§ 67.101-67.3104) and other jurisdictions' access rules and policies related to limited jurisdiction courts. The working group was asked to specifically address release of sensitive information, such as social security numbers.

Court records, including those maintained in the magisterial district courts, often contain sensitive and private information, particularly related to litigants' personal identifiers (e.g., social security numbers). Any objective to uniformly protect that information residing in *existing and future* court records would necessarily involve careful scrutiny of each case record and redaction of pertinent information in accord with applicable policy provisions prior to permitting access by the public.

Redaction of sensitive information was considered, but this approach was ultimately rejected for the following reasons. Depending on individual court resources, this approach could cause delays in fulfilling public access requests to official case records of the magisterial district courts, result in the inadvertent release of non-public information, and/or impede the business of the court. Hence, redaction and retroactive application of this policy is not viewed as a viable solution.

The procedures set forth in the policy are intended to further the UJS' open records principles, protect individual privacy and personal security, assure uniform response by UJS court staff, and eliminate any artificial barriers that may delay or complicate access by the public.

Lastly, it is important to note that AOPC in collaboration with its criminal justice partners has significantly advanced the development of the technological protocols necessary to allow electronic filing of criminal complaints and citations into the MDJS on a statewide basis. Statewide electronic filing promises to ensure that sensitive and personal information filed with a court is adequately protected without placing additional burdens upon litigants or court staff.

Section 1.00 Definitions

- A. "Access" means that the public may inspect and photocopy the official case records of the magisterial district courts, except as provided by law or set forth in this policy.
- B. "Financial information" means financial institution account numbers, credit card account numbers, debit card numbers, PINS or passwords to secure accounts.
- C. "Official case records of the magisterial district courts" means the records filed with the magisterial district courts and maintained in the paper case files pursuant to specific legal authority.
- D. "Public" means any person, business, non-profit entity, organization or association. "Public" does not include Unified Judicial System officials or employees, or any federal, state, or local government agency, or employees or officials of such an agency if acting in their official capacity.

COMMENTARY

This policy does not govern access to the official case records of the magisterial district courts by Unified Judicial System officials or employees, or any federal, state, or local governmental agency, or employees or officials of such an agency if acting in their official capacity. The term "Unified Judicial System officials or employees" includes, but is not limited to, magisterial district judges and staff, clerks of court, prothonotaries, and any other office performing similar functions.

Section 2.00 Statement of General Policy

- A. It is the policy of the Unified Judicial System to facilitate access by the public to the official case records of the magisterial district courts consistent with all relevant legal authority.
- B. This policy shall govern access by the public to the official case records of the magisterial district courts.
- C. Security, possession, custody and control of the official case records of the magisterial district courts are generally the responsibility of the magisterial district judge and his or her designated staff.
- D. Facilitating access by the public shall not substantially impede the orderly conduct of magisterial district court business.

COMMENTARY

Subsection A recognizes that public access to the official case records of the magisterial district courts is grounded in constitutional and common law principles. The Pennsylvania Supreme Court summarized the interests protected in providing public access as:

“generally, to assure the public that justice is done even-handedly and fairly; to discourage perjury and the misconduct of participants; to prevent decisions based on secret bias or partiality; to prevent individuals from feeling that the law should be taken into the hands of private citizens; to satisfy the natural desire to see justice done; to provide for community catharsis; to promote public confidence in government and assurance that the system of judicial remedy does in fact work; to promote the stability of government by allowing access to its workings, thus assuring citizens that government and the courts are worthy of their continued loyalty and support; to promote an understanding of our system of government and courts.” Commonwealth v. Fenstermaker, 530 A.2d 414, 417 (1987).

Subsection B provides consistency and predictability across courts and furthers equal access to the official case records of the magisterial district courts. The intent of this provision is to preclude the adoption of different policies or local rules by judicial districts and/or courts that may be inconsistent with Unified Judicial System policy.

Subsection C acknowledges the responsibility of the magisterial district judges and their designated staff to maintain the integrity of the official case records. See also Rule 17 of the Rules Governing Standards of Conduct of Magisterial District Judges relating to supervision of magisterial district courts by president judges.

Subsection D recognizes that implementing the provisions of this policy should not unduly burden or impinge upon the courts' business. Specifically, any requirements

imposed upon courts to facilitate public access must not interfere with the courts' ability to conduct their day-to-day operations, especially in light of the limited resources with which many courts have to function. Flexibility in implementing the provisions of this policy is necessary to accommodate the differences in resources and caseloads among the more than 500 magisterial district courts.

Requests for case record information that cannot be satisfied without substantially impeding the orderly conduct of court business in a magisterial district court may be referred to the AOPC, provided that the requestor is not requesting access to the official case records of the magisterial district court but is merely interested in obtaining electronic case record information that is maintained in the MDJS. Because the AOPC does not have access to the official case records of the magisterial district courts, any requests to inspect or copy the paper records should be handled by the appropriate magisterial district court. However, if the requestor is willing to accept access to the electronic case record information in lieu of the official case records, the request can be handled by the AOPC. Access to information maintained in the MDJS is governed by the Electronic Record Policy, which along with pertinent request forms can be found at <http://www.pacourts.us/T/AOPC/PublicAccessPolicy.htm>

In addition, the AOPC publishes web docket sheets on the Internet for all magisterial district court cases that are filed on the criminal, non-traffic and traffic dockets in the MDJS. Web docket sheets are intended to provide anyone who has access to the Internet with an electronic subset of the case information that resides in the court's paper file. There is no charge to view or print web docket sheets. The web docket sheets contain a wide range of information including scheduling, charge disposition and sentencing information. Viewing the web docket sheets may be a preferable alternative to traveling to the court location to access the official case records. MDJS web docket sheets can be found at: <http://ujportal.pacourts.us/docketsheets/mdj.aspx>.

Section 3.00 Requesting Access to Official Case Records of the Magisterial District Courts

- A. A request for access by the public to official case records of the magisterial district courts shall be made to the court that maintains the record.
- B. The court may require a requestor to submit a completed request form if the information that is the subject of the request is complex or voluminous. If the requestor does not submit a completed request form when requested by the court, access may be delayed until the form is completed or a time when an individual designated by the court is available to monitor such access to ensure the integrity of the case records is maintained. The Administrative Office of Pennsylvania Courts shall design and publish the request form.
- C. A request shall identify or describe the records sought with specificity to enable the court staff to ascertain which records are being requested. A request need not include any explanation of the requestor's reason for requesting or intended use of the records.

COMMENTARY

Most requests received by the courts are very straightforward and for a small number of records. Therefore, artificial administrative barriers should not be erected to inhibit the courts from fulfilling these requests in an efficient manner.

Nonetheless, subsection B provides a court with the flexibility to require that a more complex request be submitted in writing to avoid misunderstandings and errors that can often result in more time being expended to provide the requested information than is necessary. The AOPC has required requestors to complete a form for access to electronic case record information since 1994.

If a requestor is unable or unwilling to complete the form when requested by the court, access shall not be denied for that reason but may be delayed until an individual designated by the court is available to sit with the requestor and monitor the use of the file to ensure its integrity.

A court may wish to implement a practice whereby persons who regularly request information from the court do not need to complete a request form for each request, but may complete one form noting what information is generally requested.

Subsection C does not require a requestor to identify a case by party or case number in order to have access to the files. Nonetheless, the request must identify or describe the records being requested with sufficient specificity to enable the court staff to ascertain which cases are the subject of the request. Such a requirement is embodied in the recently enacted RTKL as well as its predecessor.

Section 4.00 Responding to Requests for Access to Official Case Records of the Magisterial District Courts

- A. A court shall fulfill a request for access to the official case records of the magisterial district courts as promptly as possible under the circumstances existing at the time of the request.
- B. If a court cannot fulfill the request promptly or at all, the court shall inform the requestor of the specific reason(s) why access to the information is being delayed or denied.
- C. If a court denies a request for access, the denial shall be in writing on a form designed and published by the Administrative Office of Pennsylvania Courts. A denial may be appealed in writing to the president judge of the judicial district or president judge's designee within 15 business days of service of the written notification by the magisterial district court. Within 20 business days of receipt of the appeal, the president judge or designee shall make a determination and forward it in writing to the requestor. This remedy is not exclusive and need not be exhausted before other relief is sought.

COMMENTARY

Requests for access shall be fulfilled as promptly as possible under the circumstances existing at the time of the request. Given that most requests received by the courts are very straightforward and for a small number of records, courts should process the same in an expeditious fashion. This has been and should continue to be the manner in which magisterial district courts respond to requests. There are a number of factors that can affect how quickly a court may respond to a request. For example, the court's response may be slowed if the request is vague, requires compilation of a large amount of information or information that is stored off-site. Ultimately, the goal is to have a prompt and timely response to a request for information. This standard is consistent with the RTKL.

In those unusual instances in which access to the case records cannot be granted in an expeditious fashion, the court shall inform the requestor of the specific reason(s) why access to the information is being delayed or denied which may include:

- the request involves such voluminous amounts of information that the court is unable to fulfill the same without substantially impeding the orderly conduct of the court;
- records in closed cases are located at an off-site facility;
- a particular file is in use by the judge or court staff. If the judge or court staff needs the file for an extended period of time, special procedures

should be considered, such as making a duplicate file that is always available for public inspection.

- the requestor failed to pay the appropriate fees, as established pursuant to Section 5.00 of this policy, associated with the request.
- the requested information is restricted from access pursuant to legal authority (e.g., statute, court rule).

The protocols for addressing appeals set forth in subsection C are consistent with the appeal provision found in Rule 509(c)(5) of the Pennsylvania Rules of Judicial Administration concerning access to financial records.

Section 5.00 Fees

- A. Reasonable fees incurred in providing public access to the official case records of the magisterial district courts may be charged. Such fees may include, but are not limited to, postage, copying onto electronic media, transmission by facsimile or other electronic means, and other means of duplication.
- B. Fees for photocopying shall not exceed \$0.25 per page.
- C. The president judge of each judicial district shall establish a fee schedule by local rule pursuant to Pa.R.J.A. No. 103. The fee schedule shall be publicly posted.

COMMENTARY

The objective of courts in responding to public access requests is to foster the values of open court records without unduly burdening court resources. Put simply, fees should not be financial barriers to accessing case record information. Fees assessed by courts in satisfying public access requests must be reasonable, fair and affordable.

The charging of fees in responding to public access requests is not novel. Subsection A is consistent with the fee provisions of Rule 509(d) of the Rules of Judicial Administration concerning access to financial records. Moreover, the RTKL provides that fees may be charged by agencies in fulfilling RTKL requests. In general, the fees must be reasonable and based on the prevailing fees for comparable services provided by local business entities, except for postage fees which must be the actual cost of postage.

A public access request may be for information that is not readily available. Costs incurred by magisterial district courts in fulfilling a request should be passed on to the requestor. Clearly, absent the request, the court would not incur these costs.

With regard to photocopying fees, the prior public access policy for magisterial district court records that was implemented in 1994 provided “[f]ee[s] for photocopying shall not exceed \$.50 per page.” Given that the cost of producing a photocopy has decreased since 1994, it is appropriate to adjust the maximum fee that can be charged to \$.25 per page. One “page” is either a single-sided copy or one side of a double-sided copy. The Commonwealth’s Office of Open Records similarly set the maximum fee for photocopying at the same rate.

Except for the establishment of a maximum fee for photocopying, the great regional diversities in the Commonwealth counseled against any attempt to set statewide fees that should be charged in fulfilling requests. It is important to note that the RTKL also provides that “[f]ees for local agencies may reflect regional price

differences.” Thus, it is envisioned that access fees will be uniform, to every extent possible, across the judicial districts if only on a regional basis.

Subsection C requires the president judge of each judicial district to establish a fee schedule by local rule which would necessitate providing a copy of the same to the AOPC. See Pa.R.J.A. No. 103 regarding the procedure for adoption, filing and publishing a local rule.

Section 6.00 Official Case Records of the Magisterial District Courts Not Accessible by the Public.

- A. The following items or information residing in the official case records of the magisterial district courts are not accessible to the public:
 - 1. Forms filed pursuant to Section 7.00 of this policy;
 - 2. Information sealed pursuant to a court order;
 - 3. Information to which access is restricted by federal law, state law, or state court rule; and
 - 4. Notes, drafts, and work product of the magisterial district court.
- B. With the approval of the Chief Justice of Pennsylvania, the Court Administrator of Pennsylvania may determine that additional information in the official case records of the magisterial district courts is not accessible by the public because it presents a risk to personal security, personal privacy, or the orderly administration of the courts. The Court Administrator shall publish notification of such determinations in the Pennsylvania Bulletin and on the Unified Judicial System's website.

COMMENTARY

Examples of information that may be sealed pursuant to a court order include arrest warrants, search warrants and accompanying affidavits of probable cause.

Examples of information for which access is restricted by specific legal authority include identities of child victims of sexual or physical abuse pursuant to 42 Pa.C.S. § 5988 and unexecuted search warrants as provided for in Pa.R.Crim.P. 212.

The provisions of subsection B are consistent with those contained in the Electronic Record Policy and Rule of Judicial Administration 509. The Judiciary's commitment to the principle of open and accessible case records is reflected in the inclusion of a publication requirement.

Section 7.00 Confidential Information in Pleadings or Other Papers Filed with Magisterial District Courts.

- A. Except as set forth in subsections B and C, parties and their attorneys are directed to refrain from including social security numbers and financial information in all documents and exhibits filed with the court.
- B. If inclusion of the information set forth in subsection A is required by law or requested by the court, a party shall file the information on a separate form prescribed by the Administrative Office of Pennsylvania Courts. This form shall not be accessible to the public.
- C. If the identity of a financial institution account number, credit card account number, or debit card number must be established, only the last four digits of the number may be included in the documents and exhibits filed with the court.
- D. The parties and their attorneys are solely responsible for complying with the provisions in subsection A. The court staff will not review any document for compliance with subsection A. A party's or attorney's failure to comply with these provisions shall not affect access to official case records of the magisterial district courts that are otherwise accessible.

COMMENTARY

The rise in the occurrence of the crime of identity theft and the availability of sensitive information in the official case records of the magisterial district court records has prompted significant concerns and questions. Should sensitive information be recorded in documents filed with the court? Should sensitive information be accessible to the public? Is this information necessary for the courts to function effectively?

In developing the list of identifiers in Subsection A that must be excluded from documents and exhibits filed with the court, consideration was given to including operator license numbers, dates of birth, and names of minor children. Nonetheless, these identifiers were not included because the benefits of continuing to include such identifiers in court documents in terms of adjudication and administration outweighs any additional privacy protections gained.

Restricting access to social security numbers on non-court documents has been the focus of recently enacted legislation in Pennsylvania. Act 60 of 2006 (codified at 74 P.S. § 201) prohibits *inter alia* the public posting or display of an individual's social security number. In addition, the RTKL exempts social security numbers, financial information and personal identification numbers maintained in government records from public access. 65 P.S. § 67.708(b)(6)(i)(a).

Most of the forms that are found within the official case records of the magisterial district courts are statewide forms that are generated from the MDJS. There are approximately 150 forms generated by the MDJS for use by litigants, the courts, and other governmental entities in Pennsylvania (for example, the Department of

Transportation, State Police, Department of Public Welfare, and Department of Health). Approximately 15 MDJS forms and/or citations include fields for the entry of social security numbers, including the non-traffic citation, criminal complaint and those related to the suspension and/or revocation of a defendant's driver's license. In the civil, criminal and landlord-tenant context, some forms provide "narrative" sections where the affiant/litigant may include sensitive information, such as social security numbers.

The protection of social security numbers and financial information captured on current MDJS forms requires a multi-faceted approach that takes into account how each form that contains such information is used. For example, the AOPC has removed or suppressed the social security number field from 15 MDJS forms and citations because the information is extraneous to the court's adjudication of the case or the collection of the information is not otherwise required. Quite simply, if the information is not collected in the first place, concerns regarding personal privacy and security can be avoided.

For other forms, parties or their attorneys shall provide the information to the court on a separate form rather than inserting the same on the pleading(s) or exhibit(s) filed with the court. This separate form shall not be accessible to the public.

Subsection D provides that parties and their attorneys are responsible for removing all social security numbers and financial information from the documents before filing the same with the court. Court staff will not review or redact each pleading or other paper for compliance with this section.

Compliance by parties and their attorneys with these provisions is necessary and important. Other court jurisdictions have struggled with achieving compliance, including the federal courts. Of the other state court systems that have implemented similar measures, there does not appear to be a consistent approach with regard to ensuring compliance, whether it be by sanction, corrective measure, and/or education. It is recommended that the Unified Judicial System take all possible steps to educate and communicate the requirements imposed by Section 7.00, including amendment of instructions on pertinent MDJS forms, to court staff, attorneys and parties.

Although courts may incur some additional administrative responsibilities in handling the forms under subsection B, it is not believed the burden of processing the same will be substantial. Rather, the burden of removing the information from the document(s) filed with the court is appropriately placed on the parties and their attorneys, rather than court staff.