

Supreme Court of Kentucky

2017-09

**IN RE: ADMINISTRATIVE PROCEDURES OF THE COURT OF JUSTICE,
PART XVII, OPEN RECORDS POLICY OF THE
ADMINISTRATIVE OFFICE OF THE COURTS**

Pursuant to Sections 110(5)(b) and 116 of the Constitution of Kentucky and KRS 26A.200, it is HEREBY ORDERED that the Administrative Procedures of the Court of Justice are amended by the addition of the following Part XVII, Open Records Policy of the Administrative Office of the Courts:

Section 1. Statement of Purpose

This administrative procedure constitutes the Open Records Policy of the Administrative Office of the Courts (AOC) and governs access by the public to the administrative records of the AOC.

Section 2. Definitions

For purposes of this administrative procedure, unless the context or subject matter otherwise requires:

- (1) “Administrative Record” means documents, papers, discs, recordings, or other documentation, regardless of physical form or characteristics, created, received, or maintained by the AOC pertaining to the administration of the Court of Justice and not associated with any particular court case or cases. “Administrative records” do not include case records or compiled information.
- (2) “AOC” means the Administrative Office of the Courts. This definition does not include the Supreme Court, Court of Appeals, Circuit Court, District Court, the Kentucky Office of Bar Admissions, the Judicial Conduct Commission, the Judicial Ethics Commission, or the Kentucky Bar Association and any of its affiliated entities.
- (3) “Commercial purpose” means the direct or indirect use of any part of an administrative record or records, in any form, for sale, resale, solicitation, rent or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee.

- (a) “Commercial purpose” shall not include:
 - (i) Publication or related use of an administrative record by a newspaper, periodical, radio station, television station, or other media entity engaged in the aggregation, generation, and dissemination of reports on issues of public interest; or
 - (ii) Use of an administrative record in the preparation for prosecution or defense of litigation, or claims settled by the parties to such action, or the attorneys representing the parties.
- (4) “Case Record” means documents, papers, discs, recordings, or other documentation created, received, or maintained by a court, court agency, or court clerk in connection with a particular court case or cases.
- (5) “Compiled information” means statistical information that is derived from the selection, aggregation, or re-formation of some or all or a subset of all the information from more than one individual case record in electronic form. Statistical reports are available from the Division of Research and Statistics and can be requested on the Court of Justice website at www.courts.ky.gov.
- (6) “Court of Justice” means the Kentucky Court of Justice as defined in Section 109 of the Kentucky Constitution.
- (7) “Court” means the Kentucky Supreme Court, Court of Appeals, Circuit Court, Family Court, and District Court.
- (8) “Custodian” means the Director of AOC or designee.
- (9) “Public access” means the process whereby a person may inspect and/or obtain copies of an administrative record.
- (10) “Terrorist act” means a criminal act intended to:
 - (a) Intimidate or coerce a government entity or all or part of the civilian population;
 - (b) Disrupt a system identified in Section 4(1)(f); or
 - (c) Cause massive destruction to a building or facility owned, occupied, leased, or maintained by a government entity.

Section 3. Retention Schedule

The retention of records shall be governed by the AOC and the Court of Justice Records Retention Schedules. The KCOJ Records Retention Schedules are available on the Supreme Court's Rules & Procedures page of the Court of Justice website at www.courts.ky.gov.

Section 4. General Public Access to Administrative Records of the AOC

- (1) Administrative records. Administrative records of the AOC are open for public access except the following:
 - (a) Records and information the disclosure of which is prohibited by federal law or regulation;
 - (b) Records and information the disclosure of which is prohibited or restricted or otherwise made confidential by Kentucky law or court order;
 - (c) Records which constitute the following:
 - (i) Preliminary and draft reports, documents, records, evaluations, investigations, and audits or compliance reviews, including materials prepared by a consultant;
 - (ii) Advisory opinions, recommendations, notes, drafts, work product, and deliberations relied upon to make decisions, take official actions, or formulate policy and procedure;
 - (iii) Notes, outlines, memoranda, and similar preliminary materials;
 - (iv) Any correspondence transmitted by any means, including electronic, that is not a formal declaration of policy or procedures, or is not intended to give notice of a final official action, or is not a formal record of a transaction or a receipt;
 - (v) The work product of any attorney employed by or representing the Court of Justice generated in the regular course of business or representation of the Court of Justice;

- (d) Legal research and analysis;
- (e) Records containing information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (f) Records, the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:
 - (i) Criticality lists resulting from consequence assessments;
 - (ii) Vulnerability assessments;
 - (iii) Antiterrorism protective measures and plans;
 - (iv) Counterterrorism measures and plans;
 - (v) Security and response needs assessments;
 - (vi) Infrastructure records that expose a vulnerability referred to in this subsection through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;
- (g) The following records when their disclosure will expose a vulnerability referred to in subsection (f) of this section: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a government entity;
- (h) Records when their disclosure will expose a vulnerability referred to in subsection (f) and that describe the exact physical location of hazardous chemical, radiological, or biological materials;
- (i) Test questions, scoring keys, and other examination data used in administering examinations for employment or elected office;

- (j) Test scores of a person if the person is identified by name and has not consented to the release of his or her scores;
- (k) With respect to the Circuit Court Clerk's examination administered pursuant to Section 100 of the Kentucky Constitution and SCR 1.060, the following information will not be disclosed: Names of examination registrants, names of unsuccessful examinees, examination scores, examination questions, scoring keys, and any materials used in the development and preparation of the examination;
- (l) The contents of real estate appraisals, engineering or feasibility estimates, and evaluations made by or for the Court of Justice or other government entity relative to acquisition of property, until such time as all of the property has been acquired;
- (m) Any information or files the disclosure of which is prohibited by the Personnel Policies for the Kentucky Court of Justice (Administrative Procedures of the Court of Justice Part III);
- (n) Any document or record protected by attorney/client privilege;
- (o) Email addresses of justices, judges, and their staff;
- (p) Documents, records, or information including, but not limited to, security plans or security recordings, the disclosure of which could jeopardize the safety of judges, court staff, jurors, or the public, or could jeopardize the integrity of the court's facilities, records, or the court's administration of justice and its operations;
- (q) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal;
- (r) Administrative or technical information the disclosure of which would jeopardize a record-keeping or security system;
- (s) Computer programs, computer codes, computer filing systems, or other software that are developed or owned by or licensed to the Court of Justice or entrusted to it;
- (t) Lists of employees of the Court of Justice, if requested for a commercial purpose;

- (u) Records confidentially disclosed to the AOC or required by the AOC to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.
- (2) Personal identifying information, including social security numbers, drivers' license numbers, dates of birth, home addresses, personal email addresses, personal phone numbers, passwords, and financial account numbers, should be redacted from administrative records prior to complying with a request for public access.
- (3) Case records. Requests for case records or case-related information must be made to the clerk of the applicable court.

Section 5. Denial of Public Access for Cause.

The custodian may deny access, in whole or in part, to administrative records:

- (1) When the request to inspect places an unreasonable burden in producing administrative records or otherwise disrupts or compromises the business of the court, or when the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the Court of Justice. However, refusal under this paragraph must be sustained by clear and convincing evidence;
- (2) When the request to inspect is advanced primarily for a commercial purpose of the requesting entity and the request does not advance primarily a public interest or a legitimate private interest; or
- (3) To any individual who has previously been convicted of stealing, destroying, defacing, or tampering with records or has refused to comply with statutes or court rules, policies, or orders concerning records.

Section 6. Procedure for Public Access to Administrative Records

- (1) All requests for public access to administrative records must be in writing, must specifically describe the record(s) to be inspected, and must be signed by the requestor. The requestor's name must also be printed legibly on the request. The request must be hand-delivered, mailed, emailed, or delivered via other means approved by the AOC to the custodian of the records. The AOC may develop and make available a form for requests for public access to administrative records.

- (2) The written request must include identifiers to assist the custodian in locating the records. If a specific record cannot be located due to lack of adequate identifiers, the requestor must be advised by the custodian as to what identifiers are needed.
- (3) If the custodian does not have custody or control of the record(s) requested, he or she will notify the requestor and furnish the name and location of the person or agency having custody of the records, if known. The response time will not begin to run until the custodian of records receives the written inspection request.
- (4) The custodian, upon a request for public access to administrative records under this Open Records Policy, must determine within three days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request whether to comply with the request and must notify in writing the person making the request, within the three day period, of his or her decision. A response complying with the request for administrative records will include an estimate of the copy fee and the cost of mailing. A response denying, in whole or in part, inspection of any record must include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.
 - (a) A requestor may receive copies of administrative records from the AOC through the mail or in person. The AOC may charge a reasonable fee for making copies of administrative records, which should represent the actual cost of reproduction incurred by the AOC, not including the cost of staff required, but in any event not less than \$0.10 per page. The cost for copies of administrative records other than documents shall be in accordance with court rule.
 - i. All copy fees, including mailing costs if applicable, must be paid prior to a requestor receiving copies of administrative records.
 - ii. If the custodian believes that the costs may exceed \$100, the custodian may prepare an estimate of the costs and notify the requestor to determine whether the requestor wishes to proceed.
 - (b) A requestor may inspect administrative records in the presence of an AOC employee upon providing photo identification.

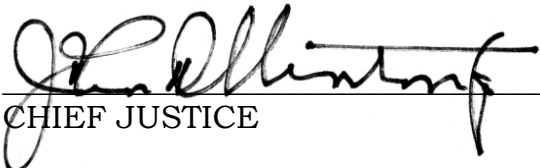
- (5) If the administrative record is in active use, in storage, or not otherwise available, the custodian must immediately notify the requestor of the earliest date on which the administrative record will be available for public access.
- (6) The custodian will not be required to compile information or create lists.

Section 7. Reconsideration of Denial of Public Access to Administrative Records

- (1) A request for reconsideration of a decision denying public access to administrative records may be made to the Chief Justice of Kentucky, in the form of a detailed letter, within 30 days from the date of the decision.
- (2) If the Chief Justice sustains the decision denying public access, a request for reconsideration may be made to the full Supreme Court, in the form of a letter, within 10 days from the date of decision.

This Order shall be effective August 15, 2017, and until further Order of this Court.

Entered: August 10, 2017.


CHIEF JUSTICE

All sitting; all concur.