

Electronic Access Policy for Circuit Court Records of the Illinois Courts



**Administrative Office of the Illinois Courts
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INTRODUCTION

The growing use of electronic imaging technology makes it possible for courts to offer broader public access to case files. Due to the growing interest in electronic filing, courts may offer even broader public access in the future. With this comes an increasing awareness of the personal privacy implications of electronic access to court records. This policy is intended to provide electronic access to court records in a way that mutually benefits the public and the judiciary by making access to certain court records convenient for the public while protecting the privacy of identifiable interests.

Although certain sensitive information contained in court files maintained by the clerk of court is available for public inspection, this information should be protected from indiscriminate disclosure. This policy provides clear directives as to what should and should not be made available to the public in electronic form, and does not affect the public's statutory right to access the official court record. Yet, it gives local jurisdictions flexibility based upon their preferences and case management systems.

This policy makes a distinction between the electronic record and the paper record. By doing so, the privacy of litigants and others whose private information is contained in paper court files is not compromised. Moreover, the risk of harm to these individuals is not increased by allowing unrestricted electronic access to someone using this information for "improper purposes." This policy takes into consideration law enforcement risks that would be created by unlimited public access to information in criminal case files, as well as the safety of defendants who are cooperating with prosecuting authorities.

This *Electronic Access Policy for Circuit Court Records of the Illinois Courts* is an official policy of the Administrative Office of the Illinois Courts. It provides a balance of interests in the context of the new electronic environment and promotes public confidence in the state court system.

SECTION 1

Section 1.00 - PURPOSE OF ELECTRONIC ACCESS POLICY

(a) The purpose of this policy is to provide a comprehensive policy on electronic access to the court records held by the Clerk of the Circuit Court. The policy provides for access in a manner that:

- (1) Provides maximum accessibility to court records;
- (2) Supports the role of the judiciary;
- (3) Promotes governmental accountability;
- (4) Contributes to public safety;
- (5) Avoids risk of harm to individuals;
- (6) Makes most effective use of court and clerk of court staff;
- (7) Provides excellent customer service;
- (8) Protects individual privacy rights and interests;
- (9) Protects proprietary business information;
- (10) Minimizes reluctance to use the court to resolve disputes; and
- (11) Does not unduly burden the ongoing business of the judiciary.

(b) The policy is intended to provide guidance to (1) litigants and the general public seeking electronic access to court records and (2) judges, and court and clerk of court personnel responding to requests for electronic access.

(c) Each circuit court that wishes to provide electronic access to the court records maintained by any clerk of court within its jurisdiction must adopt a local rule or administrative order consistent with this policy. All courts and clerks shall employ appropriate security measures, procedures, devices and software to protect the court's records and to prevent unauthorized access.

(d) This policy does not limit or expand access to the official court record maintained by the clerks of the circuit courts. Access to those records is governed by the Supreme Court's *General Administrative Order on Recordkeeping in the Circuit Courts* and applicable laws. The official court records held by the clerk of court are available for inspection during regular office hours for that office.

(e) The right to access and disseminate any court record may not be subject to any exclusive contract with another person or entity as provided in Section 13 of the Clerks of Courts Act, 705 ILCS 105/13.

(f) No clerk of court shall be required to provide electronic access to court records.

SECTION 2

Section 2.00 – WHO HAS ACCESS UNDER THIS ELECTRONIC ACCESS POLICY

Every member of the public will have the same electronic access to court records as provided in this policy.

“Public” includes:

- (a) any person and any business or non-profit entity, organization or association;
- (b) any governmental agency for which there is no existing court rule, order, or law defining the agency’s access to court records;
- (c) media organizations; and
- (d) entities that gather and disseminate information for whatever reason, and regardless of whether it is done with the intent of making a profit, without distinction as to nature or extent of access.

“Public” does not include:

- (e) court or clerk of court employees;
- (f) people or entities, private or governmental, who assist the court in providing court services;
- (g) public agencies whose access to court records is defined by another court rule, order or law; and
- (h) attorneys of record who may be allowed greater electronic access to their specific cases by local rule, dependant upon the capabilities of the case management system on which those records are stored.

Comments

The point of this section is to explicitly state that access is the same for the general public, the media, and the information industry. Access does not depend on who is seeking access, the reason they want the information or what they are doing with it. The section also indicates that certain groups of people may have other electronic access to court records as may be described by laws, order, this policy, or other policy.

Subsection (f): Employees and subcontractors of entities who provide services to the court or clerk of court, that is, court services that have been “outsourced,” may be provided with a greater need for electronic access to information to do their jobs. These accesses should be provided for by court rule, contract, or law.

Subsection (h): This subsection allows each court to determine its capability to provide electronic access to its records in accordance with the provisions of this policy. However, it does not intend to limit or expand access to the paper records kept by the clerk of the court. Note that this policy does not preclude the court from providing different types of access for parties and their attorneys to their own case, for example remote access for attorneys, which is not provided to the other parties, litigants, or the general public.

SECTION 3

Section 3.00 – DEFINITIONS

For the purposes of this policy the following definitions will apply.

Section 3.10 - DEFINITION OF “ELECTRONIC COURT RECORD”

The “Electronic Court Record” includes information related to the indexes, calendars, record sheets, pleadings, complaints, orders, dispositions, and other case information which are maintained by the clerk of the court in electronic form and not excluded under Sections 4.20 and 4.30 of this policy, by court rule, order of court, or law.

Section 3.20 – DEFINITION OF “PUBLIC ACCESS”

“Public access” means that the public can inspect and copy the electronic court record using electronic access, except as provided for in Section 4.30 of this policy.

Section 3.30 – DEFINITION OF “ELECTRONIC ACCESS”

“Electronic access” means that inspection of the electronic court record can be made through the use of technology, such as the Internet, direct dial, KIOSK, etc., as provided by local rule.

Section 3.40 – DEFINITION OF “IN ELECTRONIC FORM”

Information in a court record “in electronic form” includes information that exists as:

- (a) electronic representations of text or graphic documents;
- (b) an image, including a video image, of a document, exhibit or other thing; or
- (c) data in the fields or files of an electronic database.

Comments

Access to any electronic recording made of a court proceeding is governed by Administrative Order M.R. 15956, entered May 28, 1999 and is not addressed in this policy.

Section 3.50 – DEFINITION OF “OFFICIAL COURT RECORD”

The “official court record” is the basic record as defined under Part 1, Section F of the *Manual on Recordkeeping* or law.

Section 3.60 – DEFINITION OF “COURT RULE”

“Court rule” means any Rule of the Supreme Court of Illinois and any local rule or administrative order established as provided by Supreme Court Rule 21.

Section 3.70 – DEFINITION OF “LAW”

“Law” means any federal or state statutes passed by the U. S. Congress or the Illinois General Assembly.

SECTION 4

Section 4.00 - APPLICABILITY OF ELECTRONIC ACCESS POLICY

This policy applies to access of electronic court records as defined herein and as provided for by local rule.

Section 4.10 – GENERAL ACCESS

(a) Information in the electronic court record is accessible to the public, except as provided in Section 4.20 or excluded by Section 4.30.

(b) Access to the official court record is not affected by this policy.

Comments

The policy does not require information to be made accessible electronically in a particular form if it is not feasible.

Section 4.20 – LIMITATIONS TO ELECTRONIC ACCESS

(a) The *General Administrative Order on Recordkeeping in the Circuit Courts* provides for

the destruction of court records. Any record approved to be destroyed pursuant to those provisions may no longer be available for inspection in electronic form.

(b) A clerk of court may elect to continue to provide access to all or part of the electronic court record where approval has been received to destroy the basic record of the case.

(c) A court's case management system may necessitate that portions of the electronic court record be removed from or not be made available by electronic access.

Section 4.30 – ELECTRONIC COURT RECORDS EXCLUDED FROM PUBLIC ACCESS

(a) Information that is impounded, sealed, or expunged pursuant to law or by court rule, order of court, or pursuant to the *Manual on Recordkeeping* shall be excluded from public access in electronic form. Access and inspection of this information is governed by the existing court rules and laws for public access of the official court record. Requests for inspection must be made in person at the office of the clerk of court.

(b) While there is no authority prohibiting public access to certain other categories of information, there is no need to disclose such information to the public in an electronic form. The following information is excluded from public access in electronic form, unless access is provided at the office of the clerk of court. Such access shall be through the use of a computer terminal which does not allow information to be downloaded or exported, and only if such access is not otherwise prohibited by this Policy.

- Financial information that provides identifying account numbers on specific assets, liabilities, accounts, credit cards, first five digits of social security number, or P.I.N. numbers of individuals or business entities;
- Proprietary business information such as trade secrets, customer lists, financial information, or business tax returns;
- Information constituting trade secrets, copyrighted or patented material or which is otherwise owned by the state or local government and whose release would infringe on the government's proprietary interests;
- Notes, drafts and work products prepared by a judge or for a judge by court staff or individuals working for the judge related to cases before the court;
- Names, addresses, or telephone numbers of potential or sworn jurors in a criminal case;
- Juror questionnaires and transcripts of voir dire of prospective jurors;
- Wills deposited with the court pursuant to the *Manual on Recordkeeping*;
- Arrest warrants (at least prior to the arrest of the person named);
- Any documents filed or imaged, i.e. complaint, pleading, order.

(c) Information not covered in subsections (a) and (b) may be excluded from public access in electronic form by local rule.

Comments

Subsections (b) and (c) provide balance between public access needs and security interests while giving flexibility to accommodate different case management systems within the state. It is recommended that consideration be given to the capabilities of the case management system prior to allowing electronic access to court records.

Section 4.40 – REQUESTS FOR BULK DISSEMINATION OF COURT RECORDS IN ELECTRONIC FORM

A request for bulk dissemination is defined as a request for all, or a significant subset, of the information in court records that is maintained in electronic form, as is and without modification or compilation. Dissemination of bulk information in electronic form is not permitted for court records, except where explicitly provided by court rule, court order, or law.

Comments

It is the intent of this policy not to place any undue burden on the clerk of court if their case management system is unable to accommodate requests under this section. However, this policy does not address requests for bulk dissemination of information from court records in any other form, i.e. hard copy printout, diskette, etc.

Section 4.50 - ACCESS TO COMPILED INFORMATION FROM COURT RECORDS

Compiled information is defined as information derived from the selection, aggregation or manipulation of court information from more than one individual court record, including statistical reports, and information that is not already available in an existing record or report. Dissemination of compiled information in electronic form is not permitted, except where explicitly provided by court rule, court order, or law.

Comments

It is the intent of this policy not to place any undue burden on the clerk of court if their case management system is unable to accommodate requests under this section. However, this policy does not address requests for access to compiled information from court records in any other form, i.e. hard copy printout, diskette, etc.

Section 4.60 – REQUESTS TO RESTRICT INFORMATION IN ELECTRONIC COURT RECORDS FROM PUBLIC ACCESS

Except as provided in Sections 4.20 and 4.30, the electronic court record is an exact representation of the official court record.

Comments

This section is included to eliminate the burden that would be placed on the clerk of court's office resulting from requests to restrict information in an electronic form which is not otherwise restricted by this policy or impounded, sealed, or expunged in the official court record.

Section 4.70 – COURT RECORDS IN ELECTRONIC FORM PRESUMPTIVELY SUBJECT TO ELECTRONIC ACCESS BY THE PUBLIC

If possible, the following information in court records should be made electronically accessible to the public if it exists in electronic form, except as provided in Sections 4.20 and 4.30:

- (a) Indexes to cases as provided in the *Manual on Recordkeeping*;
- (b) Calendars of court proceedings;
- (c) The record sheet as provided for in the *Manual on Recordkeeping*;
- (d) Sentencing information in criminal and quasi-criminal cases.

Comments

Although there is no current authority to prohibit public access to pleadings and court orders, it is not to be presumed that the public should be generally provided with electronic access to these documents due to the private nature of their contents.

SECTION 5

Section 5.00 – WHEN ELECTRONIC COURT RECORDS MAY BE ACCESSED

Electronic court records under this policy will be available for access as established by local rule, subject to unexpected technical failures, normal system maintenance, or as may otherwise be technically feasible.

Comments

This policy does not preclude or require “after hours” access to court records in electronic form beyond the hours access is available at the courthouse.

SECTION 6

Section 6.00 – FEES FOR ACCESS

- (a) There shall be no additional fee for electronic access to the court record as provided for in this policy. However, this does not limit a clerk of court from charging fees for copies regardless of form, format, or media of exchange of documents filed with the clerk.
- (b) This section does not apply to contractual relationships for the provision of any service allowed by court rule or law.

Comments

Subsection (a): The public is allowed free access to inspect the records maintained by the clerk of court as provided by Section 16(6) of the Clerks of Courts Act, 705 ILCS 105/16(6). It is the intent of this subsection to provide the same free access to inspect the electronic court record.

SECTION 7

Section 7.00 – OBLIGATIONS OF VENDORS PROVIDING INFORMATION TECHNOLOGY SUPPORT TO A COURT TO MAINTAIN COURT RECORDS

- (a) It shall be the duty of the court and clerk of court to assure that any contract with a vendor to provide electronic access to court records is consistent with the requirements of this policy. Any contract with a vendor to provide electronic access to court records must be approved by the chief judge.
- (b) For purposes of this section, “vendor” includes a private entity and state, county or local governmental agency that provides information technology services to a court.

SECTION 8

Section 8.00 - NOTICE AND EDUCATION REGARDING ELECTRONIC ACCESS POLICY

- (a) The court or clerk of the court is not required to notify or educate the public regarding electronic access to court records as provided for herein.
- (b) The clerk of court shall maintain for inspection at all times a current copy of this policy, along with any local rule associated with this policy.
- (c) The electronic court record provided for by this policy shall be promptly maintained pursuant to Part 1, Section F of the *Manual on Recordkeeping*.

Comments

Subsection (a) does not relieve the clerk of court from the obligation to provide assistance in his or her office to those who are unable to use a public access computer terminal.