

REQUEST FOR INPUT

The Committee on Privacy and Court Records has been directed by the Florida Supreme Court to make three sets of recommendations:

- < to recommend strategies to reduce the amount of personal and sensitive information that may unnecessarily become a part of a court record;
- < to recommend categories of information that are routinely included in court records that the legislature should consider for public records exemption, and;
- < to recommend comprehensive policies to regulate the electronic release of court records, including protection of confidential records and specification of information which is not to be released electronically.

To address this charge the Committee seeks to classify information in court files into four types. Access policies will be developed with respect to each type. The four types are:

- Type I: Personal information unnecessarily entered into court records.
- Type II: (a) Information that is presently confidential or exempt by statute or court rule,
and
(b) information which the Committee might *recommend* for consideration for exemption or confidential status.
- Type III: Information which is not appropriate for electronic release.
- Type IV: Information which is acceptable for unlimited electronic release.

Responses to the following questions will help the Committee classify court record information into these four types, and will provide valuable input into the development of policies regarding each type.

Narrative responses to the questions are welcome and will be gladly accepted. It would be most helpful, however, if responses were also provided in the form of the attached tables. An explanation of the tables is provided.

A. To identify Type I information (Column A):

What types of personal information are you aware of that is routinely entered into court records without a justifiable need for purposes of adjudication or case management?

Please be as specific as possible. Include explanations as appropriate. Provide copies of documents as examples if available.

Discussion:

Article I, Section 23 of the Florida constitution provides that “[e]very natural person has the right to be let alone and free from governmental intrusion into the person’s private life” This has been interpreted to mean that government should require private information only when there is a compelling state reason to do so, and should then do so in the least intrusive manner.

A common example of personal information unnecessarily entered into a court file is the practice of including the social security number of the deceased in a letter of administration.

B. To identify Type II(a) information (Column B):

What information is routinely filed in court records which you believe to be confidential and/or exempt?

Please be as specific as possible. Include explanations as appropriate. Please identify the applicable statute, federal law, or court rule which you believe makes the information confidential. Please provide redacted examples if available.

Discussion:

A substantial challenge in protecting confidential information is the identification of that information within court records. There are approximately 800 statutory confidentiality and exemptions created by the legislature pursuant to Article I, Section 24 of the Florida constitution. Some of these restrictions are complex and not easily applied. Further, Florida Rule of Judicial Administration 2.051(c)(8) provides that information in court records that is confidential or exempt from the right of access under Florida or federal law is to be considered confidential when entered into a court file.

C. To identify Type II(b) information (Column B):

What information routinely contained in court records should the committee recommend to the legislature for exemption from the right of access?

Please be as specific as possible. Please explain the necessity you see for the proposed exemption. Provide copies of examples as appropriate.

Discussion:

Article I, Section 24 of the Florida constitution provides that the legislature can make information exempt from the general right to inspect and copy, but can only do so when a specific public necessity to justify the exemption is articulated, and the exemption is no broader than necessary to accomplish the articulated purpose. The Committee has been directed to recommend information which the legislature should consider for exemption.

D. To identify Type III information (Column C):

What information routinely contained in court records should be restricted from electronic release?

Please identify as specifically as possible the information which you think should be restricted from electronic release, including via the Internet and transmission to commercial data aggregation firms. Please explain your reasoning for limiting electronic dissemination. Provide copies of examples as appropriate.

Discussion:

There is no legal right to electronic access to public records. Florida Rule of Judicial Administration 2.051 governs access to the records of the judicial branch. While the present rule does not differentiate electronic access from direct access at a clerk's office, such release is subject to the rule-making authority of the Florida Supreme Court.

E. To identify Type IV information (Column D):

Information not captured in Types I, II and III would be appropriate for unrestricted electronic release. To clarify, **please identify records that should be made electronically available without restriction, including via the Internet and transmission to commercial data aggregation firms.**

COURT RECORDS ACCESS MATRIX

The following tables, once compiled and finalized by the Committee, will create a matrix of court information to help guide development of policies.

Each table has two variables: each column represents a Type: “unnecessary,” “is or should be confidential,” “not appropriate for electronic release” and, “appropriate for electronic release,” and each row represents a different level of data, including case type,¹ document, and data element. Note that Type II is further broken down between information that is *presently exempt* (IIa) or confidential and information which *should be recommended to be made exempt* or confidential (IIb).

A response is entered into a table by identifying the information in question as specifically as possible, and recording it under the desired classification. Several examples are provided on the first page of the attached tables. One example is “a social security number included in a letter of administration in a probate case” entered in the Type I column to indicate that this information is often filed unnecessarily. In this example the information is a data element (SSN) when included within a certain document (a letter of administration) in case type (probate). While all entries need not be this specific, specificity is encouraged.

Responses can be entered into the attached tables by hand, or copies of the tables can be downloaded for completion on a computer by visiting the Florida Supreme Court website (www.flcourts.org) and selecting “Judicial Administration” on the menu, then “Privacy and Court Records.” Other information about the Committee on Privacy and Court Records is also available at this location.

Please send responses to:

**Committee on Privacy and Court Records
Supreme Court of Florida
500 South Duval Street
Tallahassee, FL 32399-1900**

¹ A list of common case types is attached. Local terminology may vary.