



Supreme Court of Florida

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PRESS RELEASE

For More Information Contact:

Steve Henley, Court Operations Consultant
(850) 487-9999

Supreme Court Considers Recommendations Regarding Electronic Access to Court Records

TALLAHASSEE— Government agencies across the nation are increasingly troubled by citizen complaints over an unexpected byproduct of the Information Age—the release of sensitive or confidential information through new electronic media like the Internet. The issue is especially difficult for courts, which collect a wide range of personal and sensitive information.

"Florida's judicial branch, like others throughout the nation," said Chief Justice Charles T. Wells, "is facing real problems that can occur when trial court records are placed online. Court records contain a great deal of highly sensitive information, such as Social Security numbers, financial information, names of children who are victims of abuse or sexual crimes, names and addresses of jurors and witnesses, and medical and psychiatric reports, to name only a few."

For that reason, Wells earlier this year asked the state's Judicial Management Council to look into the problem and make recommendations. The Council has completed its report and submitted it to Wells. The Council recommends that a broadly representative committee be created, and that "Florida should move thoughtfully and deliberately forward in developing policies that achieve the benefits of electronic access. But such access must be implemented in a manner that is respectful of people's privacy and does not undermine the ability of the courts to fairly administer justice."

The Council also recommends that there be, in the interim, a temporary moratorium on the placement of trial court records on websites and their release through other electronic means. "Until policies are developed that appropriately balance privacy with access, and which support the core mission of the courts to do justice, unrestricted electronic access to court records should not be available," the report concludes. The restriction would apply to court documents, not general docket information about cases.

The Council's report recommends a temporary moratorium because there currently is no system in place to ensure that confidential information will not be released. Release of confidential information could be used to commit crimes like fraud or identity theft, and may violate privacy rights protected by law.

Wells has submitted the report to the seven-member Supreme Court, which will now consider what action should be taken on the recommendations.

In its report, the Council also noted widely varying practices followed by court clerks throughout Florida. Most do not yet post trial court documents on the World-Wide Web, while others do. Among those that do, some post certain categories of cases but not others, while others post different categories. This inconsistency is itself seen as a problem, as legal rights of privacy and access should be treated the same statewide. There are virtually no mechanisms in place to weed out sensitive information or protect material made confidential by law.

One of the more common complaints from Florida residents involves the placement of divorce documents on websites. The Council noted that these records commonly contain detailed and deeply personal information about the private lives of the two parties and their children, unfounded or speculative claims of wrongdoing, and detailed information about financial assets. Frequently confidential information is placed in documents with information that is not confidential.

Many kinds of trial court records also contain Social Security numbers, which can be used in identity theft. For example, probate documents often include not only Social Security numbers but also detailed information about the property of the deceased.

The problem is not unique to Florida. State and federal agencies throughout the United States now are grappling with the issue, but even here the approaches being considered vary considerably. The Council's report noted that the State of Washington court system is working to build a policy that eventually will treat paper and electronic copies of documents the same.

California, on the other hand, is developing a system that imposes greater restrictions on electronic documents than it imposes on paper copies, regarding them as fundamentally different. Other states like Vermont are working on a policy that anticipates a future day when paper records will be entirely eliminated.

National legal organizations including the National Center for State Courts in Williamsburg, Virginia, are working on a draft model policy governing electronic access to court records. This draft is expected to be presented to the national Conference of Chief Justices and the national Conference of State Court Administrators in July.

A copy of the Council's report is available on the Supreme Court Press Page of the Court's duplicate websites (below).

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