

Supreme Court of Florida

No. AOSC03-49

IN RE: COMMITTEE ON PRIVACY AND COURT RECORDS

ADMINISTRATIVE ORDER

Government agencies across the nation increasingly face concerns over an unexpected byproduct of the Information Age – the broad release of sensitive or confidential information through electronic media. Responding to these concerns with respect to information contained in court records, this Court directed the Judicial Management Council of Florida to study the issue as it affects Florida courts.

The Council produced and submitted to the Court the “Report and Recommendations of the Judicial Management Council of Florida on Privacy and Electronic Access to Court Records.” In its report the Council recognized that emerging technologies hold great promise for advances in the efficiency, effectiveness and openness of the courts. However, it concluded that current regulation is minimal and inadequate to protect the privacy interests of the public. It concluded that the Supreme Court should take steps to keep confidential and

sensitive information secure from inappropriate disclosure through the implementation of carefully considered uniform regulation.

The Council recommended that a select committee be charged with the development of comprehensive policies to be adopted by the Court to guide electronic access to court records in the future. The Council also recommended that, until such policies can be developed and implemented, court records should not be generally available electronically. The Council recognized that policy development and implementation in this area must allow sufficient time to address the complexities of confidentiality requirements imposed by statutes and court rules and the current absence of statewide uniformity in policies governing electronic distribution of court records.

During the 2002 session the Legislature created the Study Committee on Public Records and charged it with studying similar issues of privacy in the electronic release of court records as well as other public records. In our opinion, *In Re Report and Recommendations of the Judicial Management Council of Florida on Privacy and Electronic Access to Court Records*, 832 So. 2d 712 (Fla. 2002), this Court indicated agreement with the recommendations of the Judicial Management Council, but deferred action on the Council's recommendations

pending completion of work by the legislative Study Committee on Public Records.

The Study Committee on Public Records completed its report in February this year, in which it joins the Judicial Management Council in recommending that this Court adopt rules that set forth procedures regulating the electronic distribution of information contained in court records. The Study Committee also agreed that, until such time as electronic dissemination can be properly regulated, court records should not be disseminated electronically, whether via Internet access, bulk electronic release, or by other means.

The recommendations of the Study Committee on Public Records are therefore largely consistent with the recommendations of the Judicial Management Council; Each call for development of comprehensive statewide policies and a limited moratorium until these policies are in place. To effectuate these recommendations, the Chief Justice in April this year directed the Judicial Management Council Ad Hoc Workgroup on Electronic Access to Court records to provide specific guidance on the formation and charge to the recommended policy committee, and on the reach and scope of an interim moratorium. The Ad Hoc Workgroup drafted a proposed order, which it circulated to interested parties

with a request for public comment. Comments were received from fifteen parties, which the Ad Hoc Workgroup consulted in finalizing its recommended order.

Based on the foregoing recommendations, the Court has determined that the Chief Justice should establish the Committee on Privacy and Court Records. The Committee is directed to undertake the following tasks:

1. Recommend to the Florida Supreme Court comprehensive policies to regulate the electronic release of court records. The Committee should consider recommending a plan concerning the electronic release of court records that includes, at a minimum: rules of court that identify requirements that must be met as a condition of authorization to release court records electronically; a process under court rules through which a clerk of court may request and gain approval to electronically release court records; categories of court records that may or may not be authorized for electronic release; and procedures for ensuring that electronic release systems comply with applicable laws, court rules and court orders.
2. Develop and initiate strategies to reduce the amount of personal and sensitive information that may unnecessarily become a part of a court record. In this regard, the Committee should: examine court rules and

practices, including but not limited to Family Law Rule of Procedure 12.285, that may result in the unnecessary inclusion of personal and sensitive information in court records; develop and recommend strategies to educate lawyers and judges regarding the privacy implications of inclusion of personal and sensitive information in court records and official records; and develop policies regarding public education and notification about public access to court records.

3. Develop and submit to the Court recommendations regarding categories of information that are routinely included in court records that the Court should advance to the Florida Legislature for consideration as exemptions from the right of access pursuant to section 24 of Article I of the Florida Constitution.
4. The work of the Committee should be completed as expeditiously as possible in keeping with the importance of the its mission, but in no event shall the report of the Committee be submitted later than July 1, 2005.

The following individuals are appointed to serve on the Committee until the work of the Committee is completed and they are discharged by the Court:

Mr. Jon Mills, Chair
Professor of Law and Director, Center for Governmental
Responsibility
University of Florida Levin College of Law
Box 117625
Gainesville, Florida 32611

Ms. Kristin Adamson
Novoy, Mendelson, and Adamson
851 East Park Avenue
Tallahassee, Florida 32301

Mr. Andrew Z. Adkins
Director, Legal Technology Institute
University of Florida Levin College of Law
P.O. Box 117644
Gainesville, Florida 32611-7644

The Honorable Edward H. Fine
Chief Judge, Fifteenth Judicial Circuit
Palm Beach County Courthouse
Room 5.2500
205 North Dixie Highway
West Palm Beach, Florida 33401

Mr. A. Michael Froomkin
Professor of Law
University of Miami School of Law
1311 Miller Drive
Coral Gables, Florida 33146

The Honorable Lydia Gardner
Clerk of the Court, Orange County
425 North Orange Avenue
P.O. Box 4994
Orlando, Florida 32801

The Honorable Jacqueline R. Griffin
Judge, Fifth District Court of Appeal
300 South Beach Street
Daytona Beach, Florida 32014

The Honorable Thomas D. Hall
Clerk of Court, Florida Supreme Court
500 South Duval Street
Tallahassee, Florida 32399

Mr. Jon Kaney, Jr.
Cobb & Cole
150 Magnolia Avenue
Daytona Beach, Florida 32114

The Honorable Judith L. Kreeger
Judge, Eleventh Judicial Circuit
175 NW 1st Avenue
Miami, Florida 33189

The Honorable Barbara T. Scott
Clerk of the Court, Charlotte County
350 East Marion Avenue
P.O. Box 511687
Punta Gorda, Florida 33951-1687

The Honorable Kim A. Skievaski
Chief Judge, First Judicial Circuit
M.C. Blanchard Building
190 Governmental Center, Fifth Floor
Pensacola, Florida 32501

The Honorable Elijah Smiley
Judge, Bay County
Bay County Courthouse
P.O. Box 2269
Panama City, Florida 32402

Mr. Walt Smith
Court Administrator, Twelfth Judicial Circuit
P.O. Box 48297
Sarasota, Florida 34230

The Honorable Larry Turner
Judge, Eighth Judicial Circuit
Alachua County Courthouse, Room 415
201 East University Avenue
Gainesville, Florida 32601

Justice R. Fred Lewis will serve as the Supreme Court's liaison to the committee. Staff support will be provided by the Office of the State Courts Administrator.

It is further ordered that, effective immediately and until further order of this Court, no court record as defined by Rule of Judicial Administration 2.051(b)(1)(a) shall be released in any electronic form by any Florida clerk of court except as provided herein.¹

¹For purposes of this Administrative Order, "electronic form" is defined by Section 3.40, below, of the Guidelines for Public Access to Court Records developed by the Conference of Chief Justices and the Conference of State Court Administrators. A document transmitted via traditional fax, received on paper and not captured as a digital file, is not contemplated to be within the meaning of "electronic form."

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 electronic image, including a video image, of a document,

The following court records are excepted from this restriction and may be provided in electronic form, except as controlled by statutory or rule restrictions:

- a. a court record which has become an “official record” as defined by Florida law;
- b. a court record in a case may be transmitted to a party or an attorney of record in that case;
- c. a court record may be transmitted to a governmental agency or agent authorized by law, court rule, or court order to have access to that record;
- d. a court record which has been solitarily and individually requested, provided it has been manually inspected by the clerk of court or deputy clerk of court and no information which is confidential or exempt is released;
- e. a court record in a case which the chief judge of the jurisdiction has designated to be of significant public interest, provided it has been

exhibit or other thing;

(c) data in the fields or files of an electronic database; or

(d) an audio or video recording, analog or digital, of an event or notes in an electronic file from which a transcript of an event can be prepared.

manually inspected by the clerk of court or deputy clerk of court and no information which is confidential or exempt is released;

- f. progress dockets limited to: case numbers and case type identification; party names, addresses and dates of birth; names and addresses of counsel; lists or indices of any judgments, orders, pleadings, motions, notices or other documents in the court file; court events, clerk actions and case dispositions, provided no confidential or exempt information is released;
- g. schedules and court calendars;
- h. court records regarding traffic cases;
- I appellate court briefs, orders and opinions; and
- j. court records which have been inspected by the clerk of court or deputy clerk of court may be viewed via a public view terminal within an office of a clerk of court, provided no confidential or exempt information may be viewed.

Any existing Internet or dial-up access systems, including existing subscription access agreements, must be terminated as soon as practicable, but in any event shall not continue beyond January 1, 2004.

Nothing in this Administrative Order shall affect statutory restrictions on the placement of certain court records on a publicly available Internet website or the status of any information that is made confidential or exempt from the right of access by a provision of Florida law or rule of court.

DONE AND ORDERED at Tallahassee, Florida, on November 25, 2003.



Chief Justice Harry Lee Anstead

ATTEST:



Thomas D. Hall, Clerk

