

Task Force on Access to Court Records

Proposed Revision of Indiana Administrative Rule 9

~~Rule 9. Confidentiality of court records.~~

~~—In accordance with IC 5-14-3-4(a)(9), the following court records are hereby declared confidential:~~

~~(A) All adoption records created after July 8, 1941, except those specifically declared open under statute;~~

~~(B) Pursuant to statute, all records relating to Acquired Immune Deficiency Syndrome;~~

~~(C) Pursuant to statute, all records relating to child abuse not admitted into evidence as part of a public proceeding;~~

~~(D) Pursuant to statute, all records relating to drug tests not admitted into evidence as part of a public proceeding;~~

~~(E) Grand jury proceedings;~~

~~(F) All juvenile proceedings, except those specifically open under statute;~~

~~(G) All paternity records created after July 1, 1941;~~

~~(H) Pursuant to statute, all presentence reports;~~

~~(I) Written petitions to permit underage marriages and orders directing the Clerk of Court to issue a marriage license to underage persons;~~

~~(J) Only those arrest warrants, search warrants, indictments and informations ordered confidential by the trial judge, prior to return of duly executed service;~~

~~(K) All medical, mental health, or tax records unless:~~

~~(1) determined by law or regulation of any governmental custodian not to be confidential;~~

~~(2) released by the subject of such records; or~~

~~(3) declared by a court of competent jurisdiction to be essential to the resolution of litigation;~~

~~(L) Personal information relating to jurors or prospective jurors not disclosed in open court, other than for the use of the parties and counsel;~~

~~(M) All orders of expungement entered in criminal or juvenile proceedings; and~~

~~(N) Pursuant to statute, all confidential information relating to protection from abuse orders, no contact orders and workplace violence restraining orders not admitted into evidence as a part of a public proceeding.~~

Rule 9. Access to Court Records

(A) Scope and Purposes.

(1) Pursuant to the inherent authority of the Indiana Supreme Court and pursuant to Indiana Code §5-14-3-4(a)(8), this rule governs public access to, and confidentiality of, court records. Except as otherwise provided by this rule, access to court records shall be governed by the Indiana Access to Public Records Act (Indiana Code §5-14-3-1, et. seq.).

(2) The purposes of this rule are to:

- (a) Promote accessibility to court records;**
- (b) Support the role of the judiciary;**
- (c) Promote governmental accountability;**
- (d) Contribute to public safety;**
- (e) Minimize the risk of injury to individuals;**
- (f) Protect individual privacy rights and interests;**
- (g) Protect proprietary business information;**
- (h) Minimize reluctance to use the court system;**
- (i) Make the most effective use of court and clerk of court staff;**
- (j) Provide excellent customer service; and**
- (k) Avoid unduly burdening the ongoing business of the judiciary.**

(3) This rule applies only to court records as defined in this rule and does not authorize or prohibit access to information gathered, maintained, or stored by a non-judicial governmental agency or other entity.

(4) Disputes arising under this rule shall be determined in accordance with this and, to the extent not inconsistent with this rule, by all other rules of procedure, evidence, and appeal.

(5) This rule applies to all court records; however clerks and courts need not redact or restrict information that was otherwise public in case records and administrative records created before January 1, 2005.

Commentary

The objective of this rule is to provide maximum public accessibility to court records, taking into account public policy interests that are not always fully compatible with unrestricted access. The public policy interests listed above are in no particular order. This rule attempts to balance competing interests and recognizes that unrestricted access to certain information in court records could result in an unwarranted invasion of personal privacy or unduly increase the risk of injury to individuals and businesses. This rule recognizes there are strong societal reasons for allowing public access to court records and denial of access could compromise the judiciary's role in society, inhibit accountability, and endanger public safety.

This rule starts from the presumption of open public access to court records. In some

circumstances; however, there may be sound reasons for restricting access to these records. This rule recognizes that there are times when access to information may lead to, or increase the risk of, harm to individuals. However, given the societal interests in access to court records, this rule also reflects the view that any restriction to access must be implemented in a manner tailored to serve the interests in open access. It is also important to remember that, generally, at least some of the parties in a court case are not in court voluntarily, but rather have been brought into court by plaintiffs or by the government. A person who is not a party to the action may also be mentioned in the court record. Care should be taken that the privacy rights and interests of such involuntary parties or 'third' persons are not unduly compromised.

Subsection (A)(3) is intended to assure that public access provided under this Rule does not apply to information gathered, maintained or stored by other agencies or entities that is not necessary to, or is not part of the basis of, a court's decision or the judicial process. Access to this information is governed by the law and the access policy of the agency collecting and maintaining such information. The ability of a computer in a court or clerk's office to access the information because the computer uses shared software and databases does not, by itself, make the information subject to this rule.

The Division of State Court Administration may provide advisory information to individuals or entities about the provisions, restrictions, and limitations of this rule.

(B) Who Has Access Under This Rule.

(1) All persons have access to court records as provided in this rule, except as provided in section (B)(2) of this rule.

(2) The following persons, in accordance with their functions within the judicial system, may have greater access to court records:

(a) court, court agency or clerk of court employees;

(b) private or governmental persons or entities who assist a court in providing court services;

(c) public agencies whose access to court records is defined by other statutes, rules, orders or policies; and

(d) the parties to a case or their lawyers with respect to their own case.

Commentary

Subsection (B)(1) provides the general rule that all persons, including members of the general public, the media, and commercial and noncommercial entities, are entitled to the same basic level of access to court records. Access to court records is not determined by who is seeking access or the purpose for seeking access, although some users, such as court employees or the parties to a particular case, may have greater access to those particular records than is afforded the general public.

Subsection (B)(2) provides the exception to the general rule and specifies the entities and persons for whom courts may provide greater access. This greater level of access is a result of the need for effective management of the judicial system and the protection of the right to a fair trial.

The means of access may depend upon the form in which the court record exists. Certain circumstances relating to compilation or bulk distribution of information gleaned from court records may affect access to court records.

(C) Definitions. For purpose of this rule:

(1) "Court Record" means both case records and administrative records.

(2) "Case Record" means any document, information, data, or other item created,

collected, received, or maintained by a court, court agency or clerk of court in connection with a particular case.

(3) “Administrative Record” means any document, information, data, or other item created, collected, received, or maintained by a court, court agency, or clerk of court pertaining to the administration of the judicial branch of government and not associated with any particular case.

(4) “Court” means the Indiana Supreme Court, Court of Appeals, Tax Court, and all Circuit, Superior, Probate, County, City, Town, or Small Claims Courts.

(5) “Clerk of Court” means the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court, the Clerk of a Circuit, Superior, Probate, or County Court, the Clerk of a City or Town court, and the Clerk of a Marion County Small Claims Court, including staff.

(6) “Public access” means the process whereby a person may inspect and copy the information in a court record.

(7) “Remote access” means the ability of a person to inspect and copy information in a court record in electronic form through an electronic means.

(8) “In electronic form” means any information in a court record in a form that is readable through the use of an electronic device, regardless of the manner in which it was created.

(9) “Bulk Distribution” means the distribution of all, or a significant subset of the information in court records in electronic form, as is, and without modification or compilation.

(10) “Compiled Information” means information that is derived from the selection, aggregation or reformulation of some of all or a subset of all the information from more than one individual court record in electronic form.

Commentary

“Case record” refers to records connected with a particular case. It does not include other records maintained by the clerk of court, including, but not limited to, election records, marriage and other license functions; copies of notary bonds; oaths and certificates of public officials other than oaths of judicial officers and attorneys; lists, including those for distressed sales, licensed child placing agencies; reports of perpetual care of cemetery endowment accounts; and certificates of inspection and compliance of chemicals and chemical tests results and certifications of breath test operators; delinquency personal property taxes; hunting and fishing licenses; conflict of interest statements, passports; and the filing of reports from state agencies, such as the Alcohol Licensing Board.

The definition of case record is medium neutral and access neutral, and is intended to apply to every case record, regardless of the manner in which it was created, the form(s) in which it is stored, or other form(s) in which the information may exist.

An “administrative record” may include, but not be limited to, the roll of attorneys, rosters of medical review panels and group legal services, records relating to elections to the Judicial Nominating Commission, statistical reports, local court rules, jury pool list records, general court orders, budget and expenditure records, and record of receipts of funds. The term “court agency” in subsection (C)(3) includes without limitation the Indiana Judicial Center and the Judicial Conference of Indiana.

(D) General Access Rule.

(1) A court record is accessible to the public except as provided in sections (G) and (H) of this rule, or as otherwise ordered sealed by the trial court.

(2) This rule applies to all court records, regardless of the manner of creation, method of collection, form of storage, or the form in which the record is maintained.

(3) If a court record, or portion thereof, is excluded from public access, there shall be a publicly accessible indication of the fact of exclusion but not the content of the exclusion. This sub-section (3) does not apply to court proceedings or administrative records which are confidential pursuant to law.

Commentary

The objective of this section is to make it clear that this rule applies to information in the court record regardless of the manner in which the information was created, collected or submitted to the court. Application of this rule is not affected by the means of storage, manner of presentation or the form in which information is maintained. To support the general principle of open access, the application of the rule is independent of the technology or the format of the information.

Subsection (D)(3) requires that any and all redactions be identified. The phrase "not-public information" or an equivalent designation may be used.

(E) Remote Access. Courts should endeavor to make at least the following information, when available in electronic form, remotely accessible to the public unless public access is restricted pursuant to sections (G) or (H):

- (1) Litigant/party indexes to cases filed with the court;**
- (2) Listings of new case filings, including the names of the parties;**
- (3) The chronological case summary of cases;**
- (4) Calendars or dockets of court proceedings, including case numbers and captions, date and time of hearings, and location of hearings;**
- (5) Judgments, orders, or decrees.**

Commentary

This rule does not impose an affirmative obligation to preserve information or data or to transform information or data received into a format or medium that is not otherwise routinely maintained by the court. While this section encourages courts to make the designated information available to the public through remote access, this is not required, even if the information already exists in an electronic format.

(F) Bulk Distribution and Compiled Information.

- (1) Upon written request as provided in this section (F), bulk distribution or compiled information that is not excluded by Section (G) or (H) of this rule may be provided.**
- (2) Requests for bulk distribution or compiled information shall be made to the Executive Director of the Division of State Court Administration or other designee of the Indiana Supreme Court. The Executive Director or other designee may forward such request to a court exercising jurisdiction over the records, and in the instance of records from multiple courts, to the Indiana Supreme Court, for further action. Requests will be acted upon or responded to within a reasonable period of time.**
- (3) With respect to requests for case record information not excluded from public access by Sections (G) or (H) of this rule, the request for bulk distribution or compiled information may be granted upon determination that the information sought is consistent**

with the purposes of this rule, that resources are available to prepare the information, and that fulfilling the request is an appropriate use of public resources. The grant of said request may be made contingent upon the requestor paying reasonable costs of responding to the request.

(4) With respect to requests for bulk distribution or compiled information that include information excluded from public access pursuant to Sections (G) or (H) of this rule:

(a) such requests must be verified and can only be made by individuals or entities having a substantial interest or a bona fide research activity for scholarly, journalistic, political, governmental, research, evaluation or statistical purposes, and wherein the identification of specific individuals is ancillary to the purpose of the inquiry. Each request under this sub-section (4) must:

(i) fully identify the requestor and describe the requestor's interest and purpose of the inquiry;

(ii) identify what information is sought;

(iii) describe the purpose for requesting the information and explain how the information will benefit the public interest or public education;

(iv) explain provisions for the secure protection of any information requested to which public access is restricted or prohibited;

(v) provide for individual notice to all persons affected by the release of information, unless, upon prior notice to the Indiana Attorney General and a reasonable opportunity to respond, such individual notice requirement is waived by the Supreme Court;

(vi) demonstrate by clear and convincing evidence that the public interest will be served by allowing access, that denying access will create a serious and imminent danger to the public interest, or that denying access will cause a substantial harm to a person or third parties.

(b) Upon receiving a request pursuant to this sub-section (F)(4), the Supreme Court may permit objections by persons affected by the release of information, unless individual notice required under (F)(4)(a)(v) is waived by the Supreme Court.

(c) The request may be granted only upon determination by the Supreme Court that the information sought is consistent with the purposes of this rule, that resources are available to prepare the information, and that fulfilling the request is an appropriate use of public resources, and further upon finding by clear and convincing evidence that the requestor satisfies the requirements of subsection (F)(4)(a), and that the purposes for which the information is sought substantially outweighs the privacy interests protected by this rule. An order granting a request under this subsection may specify particular conditions or requirements for use of the information, including without limitation:

(i) The confidential information will not be sold or otherwise distributed, directly or indirectly, to third parties;

(ii) The confidential information will not be used directly or indirectly to sell a product or service to an individual or the general public;

(iii) The confidential information will not be copied or duplicated other than for the stated scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose; and

(iv) The requestor must pay reasonable costs of responding to the request, as determined by the court.

(d) When the request includes release of social security numbers, dates of birth, or addresses, the information provided may include only the last four digits of social security numbers, only the year of birth, and only the zip code of addresses. The restrictions on release of social security numbers, dates of birth, and addresses may be waived only upon a petition to the Executive Director of the Division of State Court Administration and a finding of exceptional circumstances by the Indiana Supreme Court.

Commentary

This section authorizes courts, in their discretion, to provide access to bulk distribution and compiled information. It does not require that such information be made available. Permitting bulk distribution or compiled information should not be authorized if providing the data will interfere with the normal operations of the court.

In allowing bulk or compiled data requests, courts must limit bulk data to court records, even if those requesting this information are seeking other information which is governed by other agencies' policies.

Generating compiled data may require court resources and generating the compiled information may compete with the normal operations of the court for resources, which may be a reason for the court not to compile the information. However, it may be less demanding on court resources to instead provide bulk distribution of the requested information pursuant to section (D)(3), and let the requestor, rather than the court, compile the information.

The general intent of (F)(4)(d) is that the last four digits of social security numbers and years of birth, rather than entire birth dates and social security numbers, are sufficient for matching records and to ensure that someone is correctly identified in bulk or compiled records. Courts should provide more complete social security numbers or other identifying information only in extraordinary circumstances.

(G) Court Records Excluded From Public Access

(1) Case records. The following information in case records is excluded from public access and is confidential:

(a) Information that is excluded from public access pursuant to federal law;

(b) Information that is excluded from public access pursuant to Indiana statute or other court rule, including without limitation:

(i) All adoption records created after July 8, 1941, pursuant to Ind. Code § 31-19-19-1 et. seq., except those specifically declared open pursuant to Ind. Code § 31-19-13-2(2);

(ii) All records relating to Acquired Immune Deficiency Syndrome pursuant to Ind. Code § 16-41-8-1 et. seq.;

(iii) All records relating to child abuse not admitted into evidence as part of a public proceeding pursuant to Ind. Code § 31-33-18 et. seq.;

(iv) All records relating to drug tests not admitted into evidence as part of a public proceeding pursuant to Ind. Code § 5-14-3-4(a)(9);

- (v) Records of grand jury proceedings pursuant to Ind. Code § 35-34-2-4;**
- (vi) Records of juvenile proceedings, pursuant to Ind. Code § 31-39-1-2, except those specifically open under statute;**
 - (vii) All paternity records created after July 1, 1941 pursuant to Ind. Code §§ 31-14-11-15, 31-19-5-23, 31-39-1-1 and 31-39-1-2;**
- (viii) All pre-sentence reports pursuant to Ind. Code § 35-38-1-13;**
 - (ix) Written petitions to permit marriages without consent and orders directing the Clerk of Court to issue a marriage license to underage persons, pursuant to Ind. Code § 31-11-1-6;**
 - (x) Only those arrest warrants, search warrants, indictments and informations ordered confidential by the trial judge, prior to return of duly executed service; pursuant to Ind. Code § 5-14-3-4(b)(1);**
 - (xi) All medical, mental health, or tax records unless determined by law or regulation of any governmental custodian not to be confidential, released by the subject of such records, or declared by a court of competent jurisdiction to be essential to the resolution of litigation pursuant to Ind. Code §§ 16-39-3-10, 6-4.1-5-10, 6-4.1-12-12, and 6-8.1-7-1;**
 - (xii) Personal information relating to jurors or prospective jurors, other than for the use of the parties and counsel, pursuant to Jury Rule 10;**
 - (xiii) Information relating to protection from abuse orders, no-contact orders and workplace violence restraining orders not admitted into evidence as a part of a public proceeding as declared confidential by Ind. Code § 5-2-9-6 *et. seq.*;**
 - (xiv) Mediation proceedings pursuant to Alternative Dispute Resolution Rule 2.11, Mini-Trial proceedings pursuant to Alternative Dispute Resolution Rule 4.4(C), and Summary Jury Trials pursuant to Alternative Dispute Resolution Rule 5.6;**
 - (xv) Information in probation files pursuant to the Probation Standards promulgated by the Judicial Conference of Indiana pursuant to Indiana Code § 11-13-1-8(b);**
 - (xvi) Information deemed confidential pursuant to the Rules for Court Administered Alcohol and Drug Programs promulgated by the Judicial Conference of Indiana pursuant to Ind. Code § 12-23-14-13;**
 - (xvii) Information deemed confidential pursuant to the Drug Court Rules promulgated by the Judicial Conference of Indiana pursuant to Ind. Code § 12-23-14.5-9.**
- (c) Information excluded from public access by specific court order;**
- (d) Social Security Numbers;**
- (e) Addresses, phone numbers, dates of birth and other information which tends to explicitly identify:**

- (i) natural persons who are witnesses or victims (not including defendants) in criminal, domestic violence, stalking, sexual assault, juvenile, or civil protection order proceedings;
- (ii) places of residence of judicial officers, clerks and other employees of courts and clerks of court.
- (f) Account numbers of specific assets, liabilities, accounts, credit cards, and personal identification numbers (PINs);
- (g) All orders of expungement entered in criminal or juvenile proceedings;
- (h) All personal notes and e-mail, and deliberative material, of judges, jurors, court staff and judicial agencies, and information recorded in personal data assistants (PDA's) or organizers and personal calendars.

(2) Administrative records: The following information in administrative records is excluded from public access and is confidential:

- (a) all information excluded in sub-sections (a) through (h) of section (G)(1);
- (b) Information that is excluded from public access to the extent provided by Indiana statute or other court rule, including without limitation:
 - (i) the work product of an attorney representing, pursuant to state employment or appointment, a public agency, the state, or an individual, pursuant to Ind. Code § 5-14-3-4(b)(2);
 - (ii) test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment before the examination is given or if it is to be given again, pursuant to Ind. Code § 5-14-3-4(b)(3);
 - (iii) test scores of a person if a person is identified by name and has not consented to the release of the person's scores, pursuant to Ind. Code § 5-14-3-4(b)(4);
 - (iv) records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making, pursuant to Ind. Code § 5-14-3-4(b)(6);
 - (v) diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal, pursuant to Ind. Code § 5-14-3-4(b)(7);
 - (vi) personnel files of employees and files of applicants for employment, except for the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, and dates of first and last employment; information relating to the status of any formal charges against the employee; and information concerning disciplinary actions in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged, pursuant to Ind. Code § 5-14-3-4(b)(8);

- (vii) administrative or technical information that would jeopardize a record keeping or security system, pursuant to Ind. Code § 5-14-3-4(b)(10);**
 - (viii) computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it, pursuant to Ind. Code § 5-14-3-4(b)(11);**
 - (ix) lists of employees of court, court agency, or clerk offices, which may not be disclosed to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes, pursuant to Ind. Code § 5-14-3-4(c)(1);**
 - (x) all information and all records obtained and maintained by the Board of Law Examiners in the performance of its duty pursuant to Admission and Discipline Rule 19, except as otherwise required by court rule or order of the Indiana Supreme Court;**
 - (xi) proceedings and papers in attorney disciplinary matters that relate to matters that have not resulted in the filing of a verified complaint, or investigative reports and other work product of the Executive Secretary, employees or agents of the Disciplinary Commission pursuant to Admission and Discipline Rules 23;**
 - (xii) files, records and proceedings of the Continuing Legal Education Commission, as they may relate to or arise out of an attorney, judge, mediator, or sponsor attempting to satisfy continuing legal educational requirements pursuant to Admission and Discipline Rule 29;**
 - (xiii) all information, including records obtained by the Judges and Lawyers Assistance Program Committee in the performance of its duty and as delegated by the Indiana Supreme Court, with the exception of statistical data, pursuant to Admission and Discipline Rule 31;**
 - (xiv) before the filing and service of formal charges, Judicial Qualifications Commission complaints, inquiries, investigations, or Commission deliberations, settlement conferences and proposed settlement agreements pursuant to Admission and Discipline Rule 25.**
- (3) Information in a case record that is otherwise excluded from public access may be made accessible if the information is declared by a court with jurisdiction over the case to be essential to the resolution of litigation, or, if the information is released by each person to whom such information pertains.**

Commentary

Subsection (1)(a) Federal Law: There are several types of information that are commonly but possibly incorrectly, considered to be protected from public disclosure by federal law. Although there may be restrictions on federal agencies disclosing Social Security Numbers, they may not apply to state or local agencies such as courts. While federal law prohibits disclosure of tax returns by federal agencies or employees, but this prohibition may not extend to disclosure by others. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations adopted pursuant to it limits disclosure of certain health related information. Whether the limitation extends to state court records is not clear. There are also federal restrictions regarding information in alcohol and drug abuse patient records and requiring confidentiality of information acquired by drug court programs. This rule does not supersede any federal law or regulation requiring privacy or non-disclosure of information.

This section does not limit the authority of a judge in a particular case to order the sealing of particular records or to exclude from public access during the pendency of a case motions to suppress or motions otherwise seeking to limit or exclude matters from presentation at a jury trial, and all proceedings and rulings thereon. Such exclusion of public access to pre-trial proceedings should be invoked sparingly and only when the court is convinced that admonitions to prospective jurors and the jury selection process will likely be inadequate to assure a fair trial.

The prohibition of access to addresses under this section includes, without limitation, mail and e-mail addresses.

With respect to expungement orders excluded from public access under section (G)(1)(g) of this rule, an interested person may seek a copy or other verification of an expungement order by filing a request under section (I) of this rule.

In addition to deliberative material excluded under this rule, a court may exclude from public access materials generated or created by a court reporter with the exception of the official transcript.

(H) Prohibiting Public Access to Information In Court Records.

(1) A verified written request to prohibit public access to information in a court record, may be made by any person affected by the release of the information. The request shall demonstrate that:

(a) The public interest will be substantially served by prohibiting access;

(b) Access or dissemination of the information will create a significant risk of substantial harm to the requestor, other persons or the general public;

(c) A substantial prejudicial effect to on-going proceedings cannot be avoided without prohibiting public access, or;

(d) The information should have been excluded from public access under section (G) of this rule.

The person seeking to prohibit access has the burden of providing notice to the parties and such other persons as the court may direct, providing proof of notice to the court or the reason why notice could not or should not be given, demonstrating to the court the requestor's reasons for prohibiting access to the information. A party or person to whom notice is given shall have twenty (20) days from receiving notice to respond to the request.

(2) A court may deny a request to prohibit public access without a hearing. If the court does not initially deny the request, it shall post advance public notice of the hearing. A court may grant a request to prohibit public access following a hearing if the requestor demonstrates by clear and convincing evidence that any one or more of the requirements of (H)(1)(a) through (H)(1)(d) have been satisfied. An order prohibiting public access to information in a court record may be issued by the court having jurisdiction over the record. An order prohibiting public access to information in bulk or compiled records, or in records under the jurisdiction of multiple courts may be issued only by the Supreme Court.

(3) The court shall balance the public access interests served by this rule and the grounds demonstrated by the requestor. In its order, the court shall state its reasons for granting or denying the request. If the court prohibits access, it will use the least restrictive means and duration. When a request is made to prohibit public access to information in a court record at the time of case initiation, the request and the case information will remain confidential for a reasonable period of time until the court rules

on the request. When a request is made to prohibit public access to information in court records that are already publicly accessible, the information may be rendered confidential for a reasonable period of time until the court rules on the request.

(4) This section does not limit the authority of a court to seal court records pursuant to Ind. Code § 5-14-3-5.5.

Commentary

This section is intended to address those extraordinary circumstances in which information that is otherwise publicly accessible is to be excluded from public access. This section generally incorporates a presumption of openness, and the need for demonstrating compelling grounds to overcome the presumption.

Parties should be aware that their request is not retroactive. Copies of the public record may have been disseminated prior to any request, and corrective action taken under the provisions of this rule will not affect those records.

Notice requirements for this section correspond to those requirements found in Trial Rule 65(b) and are intended to be consistent with T.R. 65(b). Posted notice requirements correspond and are intended to be consistent with those found in Ind. Code § 5-14-2-5 which requires that: “[t]he court shall notify the parties of the hearing date and shall notify the general public by posting a copy of the hearing notice at a place within the confines of the court accessible to the general public.”

(I) Obtaining Access to Information Excluded from Public Access.

(1) A verified written request to obtain access to information in a case or administrative record to which public access is prohibited under this Rule may be made by any person to the court having jurisdiction over the record . The request shall demonstrate that:

(a) Extraordinary circumstances exist which requires deviation from the general provisions of this rule;

(b) The public interest will be served by allowing access;

(c) Access or dissemination of the information creates no significant risk of substantial harm to any party, to third parties, or to the general public, and;

(d) The release of information creates no prejudicial effect to on-going proceedings, or;

(d) The information should not be excluded for public access under Section (G) of this Rule.

The person seeking access has the burden of providing notice to the parties and such other persons as the court may direct, providing proof of notice to the court or the reason why notice could not or should not be given, demonstrating to the court the requestor’s reasons for prohibiting access to the information. A party or person to whom notice is given shall have twenty (20) days from receiving notice to respond to the request.

(2) A court may deny a request to provide access without a hearing. If the court does not initially deny the request, it shall post advance public notice of the hearing. A court may grant a request to allow access following a hearing if the requestor demonstrates by clear and convincing evidence that any one or more of the requirements of (I)(1)(a) through (I)(1)(d) have been satisfied. An order allowing public access to information excluded from public access may be issued by the court having jurisdiction over the

record. An order permitting access to information excluded from public access in bulk or compiled records, or in records under the jurisdiction of multiple courts may be issued only by the Supreme Court.

(3) A court shall consider the public access and the privacy interests served by this rule and the grounds demonstrated by the requestor. In its order, the court shall state its reasons for granting or denying the request. When a request is made for access to information excluded from public access, the information will remain confidential while the court rules on the request.

(4) A court may place restrictions on the use or dissemination of the information to preserve confidentiality.

Commentary

This section is intended to address those extraordinary circumstances in which confidential information or information which is otherwise excluded from public access is to be included in a release of information. In some circumstances, the nature of the information contained in a record and the restrictions placed on the accessibility of the information contained in that record may be governed by federal or state law. This section is not intended to modify or overrule any federal or state law governing such records or the process for releasing information.

Information excluded from public access that is sought in a request for bulk or compiled records request is governed by section (F) of this rule.

(J) When Court Records May Be Accessed.

(1) Court records which are publicly accessible will be available for public access in the courthouse during regular business hours established by the court. Court records in electronic form to which the court allows remote access under this policy will be available for access during hours established by the court, subject to unexpected technical failures or normal system maintenance announced in advance.

(2) Upon receiving a request pursuant to section (F)(4), (H), or (I) of this rule, a court will respond within a reasonable period of time.

Commentary

This section does not preclude or require “after hours” access to court records in electronic form. Courts are encouraged to provide access to records in electronic form beyond the hours access is available at the courthouse, however, it is not the intent of this rule to compel such additional access.

(K) Contracts With Vendors Providing Information Technology Services Regarding Court Records.

(1) If a court or other private or governmental entity contracts with a vendor to provide information technology support to gather, store, or make accessible court records, the contract will require the vendor to comply with the intent and provisions of this access policy. For purposes of this section, the term “vendor” also includes a state, county or local governmental agency that provides information technology services to a court.

(2) Each contract shall require the vendor to assist the court in its role of educating litigants and the public about this rule. The vendor shall also be responsible for training its employees and subcontractors about the provisions of this rule.

(3) Each contract shall prohibit vendors from disseminating bulk or compiled information, without first obtaining approval as required by this Rule.

(4) Each contract shall require the vendor to acknowledge that court records remain the

property of the court and are subject to the directions and orders of the court with respect to the handling and access to the court records, as well as the provisions of this rule.

(5) These requirements are in addition to those otherwise imposed by law.

Commentary

This section is intended to apply when information technology services are provided to a court by an agency outside the judicial branch, or by outsourcing of court information technology services to non-governmental entities. Implicit in this rule is the concept that all court records are under the authority of the judiciary, and that the judiciary has the responsibility to ensure public access to court records and to restrict access where appropriate. This applies as well to court records maintained in systems operated by a clerk of court or other non-judicial governmental department or agency.

This section does not supercede or alter the requirements of Trial Rule 77(K) which requires that, before court records may be made available through the Internet or other electronic method, the information to be posted, its format, pricing structure, method of dissemination, and changes thereto must receive advance approval by the Division of State Court Administration.

(L) Immunity for Disclosure of Protected Information.

A court, court agency, or clerk of court employee, official, or an employee or officer of a contractor or subcontractor of a court, court agency, or clerk of court who unintentionally and unknowingly discloses confidential or erroneous information is immune from liability for such a disclosure.

Commentary

This immunity provision is consistent with the immunity and protections provided by Indiana statute as found at IC 5-14-3-10(c).