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**CHAPTER 42**  
**PUBLIC ACCESS TO MICROFILMED RECORDS**  
**CONTAINING RESTRICTED CRIMINAL HISTORY**  
**INFORMATION**

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Indiana courts may now order court records restricted from public access under legislation that prohibits access to criminal history information. I.C. 35-38-5-5.5; I.C. 35-38-5. A dilemma is, however, present in allowing access to microfilmed records that may contain the restricted criminal history information. If the public is permitted to have unfettered access to those records, the public could see the restricted criminal history information. If the public is denied access to those records, the public is prevented from examining records that should be publicly accessible.

Under Ind. Administrative Rule 9(L), a court, court agency, or clerk of court employee who unintentionally and unknowingly discloses confidential or erroneous information is immune from liability for such a disclosure. Yet knowingly allowing public access to microfilmed records containing restricted criminal history information could put this immunity at some risk. An argument can also be made that the immunity contained in Admin. R. 9(L) applies only to court records declared confidential under Rules 9(G) and 9(H) and may not apply to records restricted by the statutes mentioned above.

The Division does not have a perfect solution to this dilemma. It recommends that the best framework to resolve the dilemma is through a local rule that sets up a protocol that is enacted after thorough discussion of the options and public comment. There are myriad ways in which clerks use microfilm and scanning systems, and a best practice is difficult to recommend that would have widespread application.

As petitions to restrict access to criminal history information are filed, the Division does recommend that the location of the case file in question be determined. If it is in a microfilm storage box, the box in question should be marked as having restricted court records, with instructions that a supervisor be consulted so that access to the records can be handled under the protocol established by the local rule. For records that have been scanned, the scanning technology may make the solution simpler. If a petition to restrict access is granted, the file in question should be marked and access to it should be granted only under the protocol established by the local rule. While the Division welcomes feedback on the resolution of this dilemma, the optimal solution may ultimately be legislative.

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