

# Frequently Asked Questions Regarding Access to Court Records

## Judge and Court Staff FAQ's

**Q1. Is a recording of a court proceeding made by a court reporter a public record? If so, does the public have the right to come and listen to the recording as opposed to acquiring a transcript? Would they be entitled to make their own copy of the recording?**

**A.** Recordings of court proceedings made by court reporters are public records regardless of whether they are produced on magnetic recording tape, compact disk, stenotype, shorthand or digitally recorded upon a computer hard drive unless the specific case type is confidential under Access to Court Records Rule 5. See Access to Court Records Rule 3 regarding the definition of "Case Record" and Rule 4 regarding access to audio and video recordings of proceedings. Management of access does not justify a denial of access to the public record. The public has the right to obtain the record within a reasonable period of time after making the request.

The Access to Public Records law, I.C. 5-14-3, provides that if the requesting party is not present when the request is made, a response is required within seven days. The response must acknowledge the request and provide a statement of when and how the record will be provided even if production cannot be immediate, e.g. duties related to an ongoing trial.

A specific means of providing this type of record has not been defined but the time or difficulty of compliance is an important consideration. Allowing the requestor to listen to the recording may be too time consuming to be reasonable for the reporter or a court staff member since the custody and integrity of the original must be continuously maintained.

Providing a copy of the record is probably the most efficient and least time consuming method to provide public access. A reasonable charge for the production of the copy may be made and guidance on this issue may be found in IC-5-14-3-8. Under Administrative Rule 10, each judge is administratively responsible for the integrity of the judicial records of the court and must ensure that measures and procedures are employed to protect such records from mutilation, false entry, theft, alienation, and any unauthorized alteration, addition, deletion or replacement of items or data elements. Under the Indiana Code of Judicial Conduct, Rule 2.17(1), a judge may authorize the use of electronic or photographic means for the presentation of evidence, the perpetuation of a record or other purposes of judicial administration. Under no circumstances should the original be provided to the requestor for them to create their own copy.

Requiring the purchase of a transcript would be so costly in many cases as to constitute a denial of access to the public record unless the requestor desires to obtain the record in that format. Given the time required to produce a transcript and the other duties of reporters, the reasonable time for producing the record may well lead the requestor to ask for a different format. If the case is on appeal, a copy of the transcript could be obtained from the Clerk upon its completion and filing.

In situations where the requested record results in provision of an audio and/or audiovisual copy of a court proceeding, the judge should issue an order specifically limiting its use and barring the recipient from broadcasting the received record in any manner.

**Q2. Are exhibits offered and/or introduced into evidence in a court proceeding public records? If so, must their review of them be supervised or may copies be created at their cost?**

- A.** Once identified and offered or admitted into evidence all exhibits are part of the public record unless the proceeding is confidential under Access to Court Records Rule 5 or confidentiality was preserved under Rule 6). If a review of the original is granted, the reporter or staff member should supervise because of their duty to maintain the custody and integrity of the exhibit.

The size, nature and extent of the exhibit will have a significant impact upon the time required by the reporter or staff member to allow their reading or viewing. The constraints of time also impact the reasonable time of and nature of the response. In many instances the production of copies of large documents at a reasonable charge will be the most efficient manner of responding to the request.

**Q3. Are documents that are prepared in the normal course of court administration and that may be used for personnel or administrative purposes public records?**

- A.** All administrative records produced by the court are public except for those listed in Access to Court Records Rule 5(D). Personnel records of a court are Court Administrative Records as defined by Administrative Rule 9(C)(3).

**Q4. Are juror questionnaires and the responses supplied by prospective juror's public records?**

- A.** Under Access to Court Records Rule 5(B)(2) and Jury Rule 10 personal information contained in juror questionnaires is confidential except for the use of the parties and counsel unless the information is disclosed in open court. Otherwise juror questionnaires and the responses of prospective jurors are public records.

**Q5. What if the parties waive their rights of confidentiality by filing documents containing information that would be confidential?**

**A.** Under Access to Court Rule 5 a party does not have the right to file a document containing information concerning themselves or third parties deemed confidential under the rule unless they adhere to the requirements of the rule concerning how the information is to be presented.

**Q6. Can the parties waive confidentiality and avoid the filing requirements of Administrative Rule 9 or authorize the release of information?**

**A.** The Access to Court Rules Rule do not contain a provision for a waiver of confidentiality except as stated in Rules 8 and 9 which allows the release of (previously provided) information if it is released by all parties to whom it pertains. Parties must tender all information excluded from public access in the manner required by the rule.

**Q7. Litigation by unrepresented individuals is increasing with the prospect that confidential information will be included in documents filed with the court. Is the court required to examine these documents for compliance with Administrative Rule 9?**

**A.** The responsibility for compliance with the Access to Court Records Rules concerning filed documents rests upon the party filing the document. A court is not required to screen documents presented for filing. Rule 12 provides immunity for unintentional or unknowing disclosure of confidential material. Since the Bar and public must be educated about the requirements of the rule and those that implement it, it would be a good idea to require the Clerk to provide information concerning confidentiality requirements to those who want to initiate a case.

If a pleading or document is offered for filing that violates Access to Court Records Rule 5, the best practice is to file it, note the filing in the Chronological Case Summary but impound it as a confidential document. Refer the confidential document to the Court which can enter an Order to Comply with Access to Court Records 5 or Suffer Sanctions (see Appendix ) within a limited period of time or suffer the striking of the pleading. Pending expiration of the time given, the Court may extend the time for filing a responsive pleading. This same procedure should be followed if a non-conforming document is tendered by a nonparty to the litigation, e.g. a response by an employer concerning a wage assignment, income withholding order or garnishment order.

**Q8. Is it not futile to make Court Records confidential since parties often must present the information to other offices to transact business and those offices will not or cannot keep the information confidential?**

**A.** We can only control the information that comes into our systems but it is better that we reduce the access to sensitive information than to add to the number of sources from which the information can be inappropriately obtained.

**Q9. Where do judges go when they have questions about issues arising from Administrative Rule 9 or the Access to Court Records Rules?**

**A.** Contact Jeffrey S. Wiese at the Indiana Office of Court Services (317-232-2542) for assistance in dealing with the issue.

**Q10. What is the reasonable cost for providing information requested?**

**A.** Standards already exist with respect to the reasonable cost of providing copies of documents by public offices but do not specifically apply to the judicial branch of government. See IC-5-14-3-8 and I.C. 33-37-5-1(b).

Courts should adopt a fee structure substantially in conformance with those authorized by existing statutes. AR 9(F) provides that in granting a request for bulk distribution or compiled information, the Supreme Court may charge the recipient the fair market value of the information received. In establishing a fee structure, a trial court should not exceed a fair market charge for the provision of the requested information.

**Q11. How do we handle questions that ask for more research information about the time cases take to finish, etc.?**

**A.** This really presents a public relations question rather than a question concerning access to public information. Offices are not required to create a special report to respond to any inquiry or reconfigure things to provide information that is not otherwise created or retained in the ordinary course of the business of the office.

**Q12. What do we do with scandalous materials contained in a pleading even if it is true?**

**A.** Unless information contained in a pleading is defined as confidential under the Access to Court Records Rules, it does not have to be treated in a confidential manner.

**Q13. Is information contained in the cover page of a protective order confidential?**

- A.** Access to Court Records Rule 5 defines the information that is confidential and the information that is not. It is important to remember that the identifying information can still be sent to law enforcement.

**Q14. Are bank account numbers and Social Security Numbers on supplemental proceedings and warrants confidential?**

- A.** Generally, information entered into evidence in open court is not confidential and, therefore, accessible to the public. Access to Court Records Rule 7 provides that when confidential information excluded from public access is presented during court proceedings closed to the public, the information remains excluded from public access. Evidence presented with a Notice of Exclusion also remains confidential.

**Q15. How do we deal with the need to put specific account numbers and dollar amounts in an order?**

- A.** Trial Rule 58(C) requires orders to have confidential information put on separate confidential pages.

**Q16. How do we handle the volume of confidential information that will arise in certain types of cases; e.g. small claims cases, and create a burden on staff and courts?**

- A.** The Access to Court Records Rules do not create a “one-size fits all” approach. Each county will have its own opportunity to determine the best and most efficient manner to implement the rule and handle confidential information within the general requirements of the rule.

**Q17. Do the Access to Court Records Rules place a burden on the media or others if they come into possession of materials that should be part of the sealed record?**

- A.** No. Issues such as this would likely have to be handled on a case-by-case hearing basis and would be very dependent upon the position taken, if any, by the person or entity whose information was obtained.

**Q18. What can be done if pleadings are filed that violate Access to Court Records Rule 5?**

- A.** The Clerk, as the recipient of the pleading offered for filing that does not comply, has the first opportunity to address the issue and is justified in declining to accept the document. Alternatively, the Clerk can immediately impound the document as confidential and provide it to the Court for further action.

Upon examination by the Court an order can be entered impounding the document and ordering the offending party to promptly tender a document in compliance with the rule. A failure to comply could result in the striking of the document from the record or another suitable sanction.

**Q19. How do you handle exhibits containing inappropriate materials?**

- A.** Access to Court Record Rule 5 does not make any explicit exception for exhibits. Parties who submit a Court Record that is confidential under Rule 5 are, immediately upon learning of the improper submission, obligated to comply with the requirements of the rule to ensure proper exclusion. See Rule 6.

A Court Record includes both pleadings and their attachments as well as evidentiary exhibits. In the event that an individual or entity wishes to make evidence introduced in a public proceeding non-public, the burden is upon that person or entity whose information will be disclosed to seek entry of an order prohibiting access under Rule 5.

**Q20. What does a probation officer do if an insurance company or a representative of the U. S. military asks for the address of a probationer?**

- A.** Probation records are confidential and may not be disclosed.

**Q21. We have received subpoenas for probation officers to testify about adult and juvenile probationers in civil cases. What should we do?**

- A.** Since the testimony will probably involve a request to disclose confidential information contained in probation records, you should:
- a. consult with your judge,
  - b. develop a response form approved by the judge and county attorney that cites Administrative Rule 9 and its restrictions disclosure of confidential information.

Remember that the parties are entitled to petition the court to allow disclosure of information that would otherwise be confidential.

**Q22. Can a court play its recordings for the media if it might be broadcast?**

- A.** Access to Court Records Rule 4 and Administrative Rule 10 specify that judges must make sure the audio/video isn't broadcast (although it seems the only way to ensure that is to refuse to allow the making of copies).

**Access to Court Records Rule 4 -- General Access Rule.**

- A. A Court Record is accessible to the public except as provided in Rule 5.
- B. 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.
- C. 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 subsection (C) does not apply to court proceedings or Court Administrative Records which are confidential pursuant to law.
- D. A Court may manage access to audio and video recordings of its proceedings to the extent appropriate to avoid substantial interference with the resources or normal operation of the court and to comply with Indiana Judicial Conduct Rule 2.17 [former Canon 3(B)(13)]. This provision does not operate to deny to any person the right to access a Court Record under Rule 4(A).