

Section 1.00 DEFINITIONS

- A. “CPCMS” means the Common Pleas Criminal Court Case Management System.
- B. “Custodian” is the person, or designee, responsible for the safekeeping of electronic case records held by any court or office and for processing public requests for access to case records.
- C. “Electronic Case Record” means information or data created, collected, received, produced or maintained by a court or office in connection with a particular case that exists in the PACMS, CPCMS, or MDJS and that appears on web docket sheets or is provided in response to bulk distribution requests, regardless of format.
- D. “MDJS” means the Magisterial District Judge Automated System.
- E. “Office” is any entity that is using one of the following automated systems: Pennsylvania Appellate Court Case Management System (PACMS); Common Pleas Criminal Court Case Management System (CPCMS); or Magisterial District Judge Automated System (MDJS).”
- F. “PACMS” means the Pennsylvania Appellate Court Case Management System.
- G. “Party” means one by or against whom a civil or criminal action is brought.
- H. “Public” includes any person, business, non-profit entity, organization or association.

“Public” does not include:
 - 1. Unified Judicial System officials or employees, including employees of the office of the clerk of courts, prothonotary, and any other office performing similar functions;
 - 2. people or entities, private or governmental, who assist the Unified Judicial System or related offices in providing court services; and
 - 3. any federal, state, or local governmental agency or an employee or official of such an agency when acting in his/her official capacity.
- I. “Public Access” means that the public may inspect and obtain electronic case records, except as provided by law or as set forth in this policy.

- J. “Request for Bulk Distribution of Electronic Case Records” means any request, regardless of the format the information is requested to be received in, for all or a subset of electronic case records.
- K. “UJS” means the Unified Judicial System of Pennsylvania.
- L. “Web Docket Sheets” are internet available representations of data that have been entered into a Unified Judicial System supported case management system for the purpose of recording filings, subsequent actions and events on a court case, and miscellaneous docketed items.

COMMENTARY

In adopting the definitions to the above terms, the Committee considered Pennsylvania law, other states’ laws and public access policies, and the CCJ/COSCA Guidelines. In most cases, the definitions that the Committee chose to adopt are found in one of the above-mentioned sources. The following list sets forth the source for each of the above definitions.

Subsection B, Custodian, is derived from Arizona’s definition of custodian which is the “person responsible for the safekeeping of any records held by any court, administrative office, clerk of court’s office or that person’s designee who also shall be responsible for processing public requests for access to records.”⁷⁸ To ensure that this definition would encompass any court or office that is the primary custodian of electronic case records the Committee chose to replace the phrase “any court, administrative office, clerk of court’s office” with “any court or office.”

Subsection C, Electronic Case Record, the Committee opines it is necessary to set forth a term for those records that exist within one of the UJS’ automated case management systems (PACMS, CPCMS, or MDJS). This definition is derived from Minnesota’s definition of “case record.”⁷⁹ Nonetheless, this definition includes responses to requests for bulk distribution of electronic case records as well as web docket sheets as defined in this policy. However, paper documents concerning a single case produced from the PACMS, CPCMS, or MDJS are not included in this definition except as otherwise provided for in this definition.

Subsection E, Office, is a Committee-created term. The Committee wanted to ensure that the Policy applies only to the office that is the primary custodian of an electronic case record, regardless of the title of the office. The Committee also wanted to avoid creating an obligation on the part of an office that possessed only a copy of a record to provide access to a requestor.

⁷⁸ ARIZ. SUP. CT. R. 123(b)(6).

⁷⁹ *Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch* (June 28, 2004), p. 2.

Subsection G, Party, is a Committee-created term. The Committee wanted to clarify who a party to an action is. This definition is a combination of the definition for party set forth in 42 Pa.C.S. § 102⁸⁰ and Seventh Edition of Black's Law Dictionary.⁸¹

Subsection H, Public, is a variation of a provision in the CCJ/COSCA Guidelines.⁸² The most significant difference is that the CCJ/COSCA Guidelines provide for two additional classes of individuals and/or entities that are included in the definition of "public." The first class is "any governmental agency for which there is no existing policy defining the agency's access to court records."⁸³ In the Committee's judgment, all government requestors should be treated differently than non-government requestors. Thus, the Committee chose not to adopt this statement, as further explained below.

The second class is "entities that gather and disseminate information for whatever reason, regardless of whether it is done with the intent of making a profit, and without distinction as to nature or extent of access."⁸⁴ The Committee opines that any person or entity that falls within this category would also fall within our definition of the public. Therefore, this statement was thought to be redundant.

In the judgment of the Committee every member of the public should be treated equally when requesting access to electronic case records. The Policy creates three categories of individuals and entities that do not fall within the definition of the "public;" thus, the Policy's provisions are not applicable to them. Specifically, these three categories are (1) court employees, (2) those who assist the courts in providing court services (e.g., contractors), and (3) governmental agencies.

With regard to court employees and those who assist the courts in providing court services (e.g., contractors), the Committee asserts that they should also have as much access to electronic case records as needed to perform their assigned duties and tasks.

With regard to requests from governmental agencies, the Committee noted that AOPC's practice when responding to government requests for MDJS information has been to place few restrictions on fulfilling said requests. AOPC has provided to governmental agencies the following information: social security numbers, driver license numbers, dates of birth, and many other pieces of sensitive information that MDJS Policy prohibits access to by public (non-government) requestors. The Committee considers this to be consistent with the approach taken by other branches of Pennsylvania's government. Specifically, the RTKA provides that a requestor is defined as "a person who is a resident of the Commonwealth and requests a record

⁸⁰ "A person who commences or against whom relief is sought in a matter. The term includes counsel for such a person who is represented by counsel." See 42 Pa.C.S. § 102.

⁸¹ "One by or against whom a lawsuit is brought." Black's Law Dictionary Seventh Edition 1144 (Bryan A. Garner, et al. eds. 1999).

⁸² Steketee, Martha Wade and Carlson, Alan, *Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts*, October 18, 2002, available at www.courtaccess.org/modelpolicy [hereinafter *CCJ/COSCA Guidelines*], p. 10.

⁸³ Id.

⁸⁴ Id.

pursuant to this act.”⁸⁵ Thus, it appears that the intent of the RTKA is for it to be only applicable to public (non-governmental) requestors.

Although the Committee is aware that the RTKA does exclude non-residents of Pennsylvania,⁸⁶ it sees no reason to limit the definition of public to exclude non-residents of the Commonwealth (for example, an executor in New York asking for court records concerning a Pennsylvania resident in order to settle an estate).

The Committee also noted that the CCJ/COSCA Guidelines provide that the policy “applies to governmental agencies and their staff where there is no existing law specifying access to court records for that agency, for example a health department....If there are applicable access rules, those rules apply.”⁸⁷ Thus, the CCJ/COSCA Guidelines provide that unless there is specific legal authority governing the release of court records to a particular governmental agency, the governmental agency should be considered a member of the public for the purposes of access to information.

The Committee maintains that limitations upon the information provided to public requestors is a result of a balance struck between providing access to public information, and protecting the privacy and safety of the individuals whose information the courts and related offices possess. With regard to governmental entities, no such balance needs to be struck in that providing access to restricted information to another governmental agency does not presumably endanger individuals’ safety or privacy. To ensure that the requests are for legitimate governmental reasons, all government requestors should be required to complete a government request form, a separate form from that used by public requestors. This government request form should require the requestor to state the reason for the request, in contrast to the public request form, which should not. The justification for requiring more information about governmental requests lies with the much greater access afforded to governmental entities. However, information pertaining to these requests and the court’s response to the same should not be accessible to the public.

Nonetheless, while in the Committee’s judgment government requestors should be provided with greater access to information, there are some pieces of information that absolutely should not be released -- for example, information sealed or protected pursuant to court order. Therefore, the Committee recommends that government requestors continue to be provided with greater access to information than public requestors, but such access should not be completely unrestricted.

Lastly, the Committee decided with regard to foreign government requestors that if a foreign government is permitted access pursuant to law, then access will be provided.

When the Committee was considering whether to include or exclude litigants and their attorneys in the definition of the “public,” the Committee noted that the current MDJS practice is to treat litigants and their attorneys the same as non-litigants or non-attorneys. However, it is

⁸⁵ PA. STAT. ANN. tit. 65, § 66.1 (West 2006).

⁸⁶ Id.

⁸⁷ *CCJ/COSCA Guidelines*, p. 11.

noted that the CCJ/COSCA Guidelines provides that the parties to a case and their attorneys do not fall within the definition of the term “public.”⁸⁸ Therefore, in the CCJ/COSCA Guidelines, they will have nearly unrestricted access to the electronic case records, whereas the public’s access will be restricted.

Subsection I, Public Access, is a Committee created term because the Committee was unable to find an existing definition that was deemed adequate.

Subsection J, Request for Bulk Distribution of Electronic Case Records, is derived from the CCJ/COSCA Guidelines.⁸⁹ This definition includes all requests regardless of the format the requestors want to receive the information in (i.e., paper, electronic, etc.). It appears that this is a term of art that is commonly used nationwide.⁹⁰

Subsection M, Web Docket Sheets, is a term created by the Administrative Office of Pennsylvania Courts. Currently, web docket sheets for the appellate and criminal divisions of the courts of common pleas are located at <http://ujportal.pacourts.us/>.

⁸⁸ *CCJ/COSCA Guidelines*, p. 10.

⁸⁹ *CCJ/COSCA Guidelines*, p. 29.

⁹⁰ For example this term is used by Indiana (Ind. Admin. R.9(C)(9)), Minnesota (*Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch* (June 28, 2004), p. 15; MN ST ACCESS TO REC RULE 8(3) (WEST 2006).), and California (Cal. CT. R. 2073(f)).