

## **PROLOGUE**

**By**

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Efforts by the Administrative Office of Pennsylvania Courts (AOPC) to develop a proposed statewide public access policy for case records of the magisterial district courts, criminal divisions of the courts of common pleas and appellate courts commenced in 2002. Appointed by the Court Administrator of Pennsylvania, an internal AOPC ad hoc committee was established to accomplish the objective of crafting a policy that balances the equally important interests of transparency, privacy and security.

Initially, the Committee concentrated its labors in identifying the scope of the proposed policy, concluding that its sole focus should be on electronic case record information (i.e., data captured by the Unified Judicial System's appellate, criminal common pleas and magisterial district court case management systems). Information contained within the automated case management systems of the Unified Judicial System is not the official court file, but merely a derivative of that file. Electronic case record information supplements, but does not replace the official case file maintained by the court that has jurisdiction over the matter. Accordingly, the Committee preserves the concept of open records by permitting unrestricted access to paper case records, even though certain electronic case record information may be restricted, in whole or in part.

To assist in framing the issues attendant to an electronic case records public access policy, the AOPC looked to the pioneering work of 19 other state court systems and the federal judiciary, as well as the model guidelines for access to court records issued by the Conference of Chief Justices and Conference of State Court Administrators in 2002. These paradigms, in conjunction with analysis of case law, legislation, and journal articles, provided the underpinnings from which the Committee could construct a proposed policy. They also confirmed what the Committee suspected early on -- that its experience would be no different (that is, no less complicated) than that of other court systems.

During its pursuit of crafting a sound proposal, the Committee sought an annual opportunity to gather with those interested in the subject of public access to court records and keep abreast of the latest developments. This opportunity was presented at an annual conference on privacy and public access to court records in Williamsburg, Virginia (hosted by William and Mary Law School, the National Center for State Courts

and the Administrative Office of the United States Courts). Initiated in 2001, this conference is attended by jurists and staff from state and federal courts, law professors, access and privacy advocates, data collection companies, and others who are involved in efforts to develop policies on public access to court records.

In the summer of 2005, the Committee completed its task of developing a proposed policy. It recognized the critical importance of gathering public input, particularly from the citizens of Pennsylvania, about the proposal. Accordingly, on September 17, 2005, the proposed policy was published in the *Pennsylvania Bulletin* and on an interactive page of the Pennsylvania Judiciary's website ([www.courts.state.pa.us](http://www.courts.state.pa.us)) for a 60 day public comment period. A total of 70 comments were received – including responses from the general public, media, private attorneys, bar associations, public interest groups, data harvesters, government officials and staff.

The comments not only came from a wide range of constituencies but also expressed differing and quite frankly conflicting views. For example, some commentators contend that *absolutely no* case information should be available on the Internet whereas others suggest that *all* case information (including victim and witness information, social security numbers, etc.) should be available on the Internet. The Committee recognized that whatever policy is finally promulgated will be to the chagrin of some constituencies. Nonetheless, the Committee attempted to find as much “common ground” as it could in reviewing the various comments.

However, the Committee believed that additional public input was needed to assist it in resolving some issues on which a substantial number of comments were received, but the Committee required further information and in some cases clarification. Not surprisingly, many other court systems have struggled with these issues as well, usually only to arrive at different conclusions. The specific issues were:

- What specific amendments should be made to Section 6.00 (Correcting Data Errors) to delineate the procedure that an individual must follow to correct an error in an electronic case record?
- Whether providing electronic case record information that contains a party's full date of birth will sufficiently ensure that the “right” party is matched with the “right” case?
- Whether electronic case record information concerning pre-convictions should be available to the public?

The Committee received this additional public input through a public hearing held on March 2, 2006 at 9 a.m. in Courtroom 1 of the Commonwealth Court of Pennsylvania in Harrisburg's Capitol Complex.

The public hearing presented an opportunity to witness first-hand the divergent views taken by those who testified and the inherent difficulty in reconciling the interests of transparency and personal privacy/security in crafting a statewide policy. Despite a late winter storm, the public hearing provided the opportunity to hear from 21 individuals representing a wide variety of interests and perspectives.

In response to the extensive public comment received, the Committee recommends the following:

- Correction of Data Errors: Many comments received on the proposed policy indicated that the Section 6.00 (Correcting Data Errors) should provide specific procedures for requestors to follow. Specifically, it was suggested that this section set forth in detail the process by which an individual can ask a court or office to correct an alleged error in an electronic case record and the procedure that the court or office must follow in responding to said request. In response, the Committee has set forth a specific correction of data errors procedure that borrows heavily from the correction of errors section in the Criminal History Record Information Act (CHRIA).
- Date of Birth: An overwhelming number of those who commented on the proposed policy indicated that release of only a year of birth and age was not sufficient to match the “right” party with the “right” case. Many expressed concern that releasing only the year of birth would result in an innocent person being wrongly associated with criminal case records because s/he shares the same name and birth year as the defendant. Therefore, the Committee amended the report to provide that a party’s full date of birth is releasable.

As a correlative action, the Committee has removed Section 3.00(B) from the proposed policy. This section provided that the electronic case record information available at the public access terminal in the courthouse may include, in addition to all the other information that the policy deems accessible, a party’s full date of birth and address. As noted in the commentary, the Committee believed that providing this information would not greatly increase the risk of harm to an individual because one could only get this information if s/he traveled to the courthouse (recognizing that this information is already available at the courthouse in the paper files). In addition, the Committee noted that the benefit of providing these two additional pieces of information was to enable individuals to distinguish one “John Smith” from another without needing to review the paper file.

As noted above, the Committee has learned through written comments and testimony that providing access to the full date of birth will sufficiently accomplish the goal of permitting an individual to distinguish one individual from other given

all the other electronic case record information about the person and case that is releasable to the public. Therefore, the Committee does not believe that there is a need to provide a “higher” level of access to electronic case records at the courthouse. Thus, individuals accessing the public access terminal in the courthouse will have the same access to electronic case record information as those who are accessing the information remotely. If additional information is needed, the individual should review the official court record (paper file).

In addition, the Committee noted that in order to comply with the provisions of former Section 3.00(B) the AOPC’s Judicial Automation Department would have had to overcome some technological hurdles.

- Release of Preconviction Information: The Committee received many comments on both sides of this issue. Many comments set forth a concern that releasing this electronic case record information on the Internet will impede individuals who are arrested but not convicted of a crime in acquiring employment and housing. Other comments set forth that the public has a great interest in knowing when criminal charges are filed against a member of the public and therefore this information should be available. It has become apparent to the Committee that these views are diametrically opposed, and thus, there is no middle ground to be had.

The Committee informally surveyed 16 other state court systems and the federal judiciary to ascertain how they have resolved this issue in either their proposed or enacted public access rule or policies. The results revealed that 14 of the 16 states and the federal judiciary do permit release of preconviction information to the public. Specifically, these states include: Alaska, Arizona, California, Colorado, Florida, Indiana, Maryland, Missouri, New Hampshire, New York, North Carolina, Utah, Wisconsin, and Washington.

The Committee did find that Connecticut and Minnesota do not release pre-conviction information. The Committee was informed that in Connecticut the decision not to release this information on the Internet was made in part out of a concern for youthful offenders whose records would eventually become not available to the public based upon the disposition of these cases. The concern was that once information is made available on the Internet, the information may remain available even though the “paper” record has become non-public. Interestingly, the Connecticut legislature has introduced a bill this term that would require its judiciary to release this information.

With regard to Minnesota, the decision to not release this information appears to be related to the fact that there is a high percentage of African American citizens who are arrested for various crimes that result in a very low conviction rate. As such, releasing this information to the public may result in undue harm to these

individuals who will eventually be found not guilty of any crime. Nonetheless, the Committee was informed that Minnesota does release on the Internet court calendar information that does provide information regarding pre-conviction cases. This calendar information is not searchable and must be manually scrolled through to ascertain information about a specific case or individual, but it is available on the Internet.

Additionally, the Committee noted that over 3.2 million web docket sheets of CPCMS cases have been accessed by the public via the Internet, and CPCMS is currently installed in 66 of the 67 counties (Philadelphia implementation is scheduled for later this year)\*. The AOPC has been releasing preconviction information from the Magisterial District Judge System (MDJS) for over a decade, apparently without incident.

The Committee also explored the concept of restricting access to preconviction electronic case record information with the AOPC's Judicial Automation Department. Based on the information that is captured by CPCMS, it would be extremely difficult to define exclusive criteria for when a record should not be posted on the web portal page. The difficulty in distinguishing between what constitutes a "preconviction" record versus a "post-conviction" record is dependent upon what court dispositions would fall within each category. For example, if a case has a guilty disposition but sentencing is deferred (such that the guilty plea may be withdrawn prior to sentencing), is that a preconviction record? Are accelerated rehabilitative disposition cases "adjudicated" at the time of entrance to the program or after completion? Given the complexity of the automated rules, it might be the case that the preconviction data would have to be manually selected by the individual counties, leaving room for error.

In light of the above, it is the Committee's recommendation that preconviction information should continue to be available to the public. However, given the serious concerns that were raised in the proposal's public comment period, this issue should continue to be monitored and assessed.

- Other Actions: In response to public commentary received, the Committee made a number of other minor changes to the proposal that was published in September 2005, a summary of which is appended to its report.

The dedication and commitment by the Committee to the principles of open records, interests in individual privacy and security, and public trust and confidence is

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\* Since the issuance of this report, CPCMS was implemented in Philadelphia County as of September 18, 2006.

reflected in the product of its proposed policy and report. We thank the Committee for its thorough research and analysis.

Without question, however, the Committee's work is not yet complete. The Committee has identified additional areas concerning public access to court record information that require attention (e.g, court staff and public education, sensitive data sheets), not to mention the issues that may arise upon the policy's implementation and subsequent technological advances. We are, therefore, recommending to the Supreme Court that the AOPC continue to dedicate its time and efforts to this important matter for the Unified Judicial System and the citizens of our Commonwealth.