

Recent Trends in Public Access Policies

A Survey of 21 States

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Major Policy Decisions

- Court record scope
- Who gets access to what
- Paper vs. electronic
- Local vs. remote
- Bulk records
- Compiled records
- Scope of remote access
- Privacy exceptions
- Commercial use
- Payment
- Retroactive application

Court Record Scope – A General Consensus

- Includes all computer system records, case file documents and exhibits related to cases.
- Excludes all administrative records such as management reports and judicial notes in the deliberative process.
- Makes no formal distinction between documents and data records (partial).

Privacy Exceptions

- Permitted in the public interest.
- Requires a contract to assure that appropriate protections are in place to protect individual privacy.
- No real enforcement mechanisms or punishments except cutting off future access.
- Misdemeanor penalty in a few states.

Retroactive Application

- Sometimes allowed in spite of significant concerns.
- Electronic access may reveal long standing problems with underlying family law business processes.
- The Bar needs to edit and restrict family law submissions appropriately to protect privacy and prevent identity theft if the redaction strategy is on the front end.

Some Baseline Data

Does the public records act apply to judicial records?

Yes	10
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No	9
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How recently was the access rule approved or revised?

In draft	6
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2 years or less	10
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2 to 4 years	4
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Basic Approaches

Followed CCJ/COSCA Guidelines?

Yes 7

Referenced 7

No 6

Covers case-related documents & data?

Yes 16

No 0

Administrative Records

Are administrative records included?

Yes 8

No 6

There is no consensus on what type of administrative records are excluded.

Multiple Access Tiers

Are there multiple access tiers (variable openness, depending on mode or location of access)?

Yes 6

No 8

Excluded Case categories

- Typical excluded case categories include:
adoption, mental health commitments, juvenile dependency and delinquency.
- Exclusion case categories without a consensus:
paternity, guardianships, alcohol and drug treatment, abortion consent.

Excluded Data Categories

- There is no consensus on categories of restricted data.
- Typical exclusions: SSN, accounts, addresses.
- Data categories sometimes excluded:
victim, witness and child contact information;
medical records; custody evaluations; financial
information; pre-trial and pre-sentence
investigations; search warrants.

Most Common Data Elements Protected

[More recent survey of 26 states]

- Social Security Number -- 24
- Financial Account Numbers/PINS – 18
- Contact Information – 11
- Victim and non-party witness identifiers – 9
- Date of Birth -- 8

Bulk Data

Is bulk data access allowed?

Yes	10
Calendar only	1
Subscription by case	4
Local discretion	1
Personal ID's encrypted	1
No	2

Compiled Data

Is compiled data access allowed?

Yes 16

Local discretion 1

No 2

Generally, fees are charged, based on cost recovery only for both bulk and compiled.

Requests for Closed Records

- What is the basis for requests to obtain public access to otherwise closed records?
 - No consensus
 - It is a mix of “good cause,” COSCA Guidelines standard, other and none.

Education Provisions

Supported provisions

Education materials	6 out of 18
Public & litigant training	0 out of 18
Court staff training	6 out of 18
Judge training	5 out of 18
Restriction request materials	0 out of 18
Correction request materials	1 out of 18