




Public Access to Court Records – Policies and Technologies (E-07)

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Presentation Overview

- I. What has changed about public access?
- II. CCJ/COSCA Access Guidelines - Premises and assumptions
- III. Major provisions and issues in the Access Guidelines
- IV. Policy development lessons
- V. Where do we go from here?

I. What's New in Public Access

Why Review Public Access Guidelines?

- ✓ Growing public expectation of high speed access to information
- ✓ Growing public concern about release of personal information by government
- ✓ Increasing volume of electronic court records and commercial interest in them
- ✓ Common issues across states
- ✓ Common issues regarding the policy development process

I. What's New in Public Access

Press Coverage of Access Issues

Governing Magazine/December 2000

FEATURE: PRIVACY

THE PRIVACY PANIC

By Christopher Conte

Millions of Americans are convinced that government is careless with their personal secrets. Government isn't doing much to reassure them.

<http://www.governing.com/archive/2000/dec/privacy.txt>

I. What's New in Public Access

Press Coverage of Access Issues

BALTIMORE SUN / December 20, 2000

PANEL DROPS PROPOSAL TO LIMIT ONLINE ACCESS

By Eric Siegel and Gail Gibson

Faced with a torrent of criticism from the media, businesses and private investigators, a committee of the Maryland judiciary has decided to scuttle its proposal to limit public access to computerized criminal court records.

I. What's New in Public Access

Press Coverage of Access Issues

Governing Magazine/May 2002

FEATURE: PRIVACY

GETTING TO KNOW YOU

By Christopher Conte

Corporations have an insatiable appetite for personal data about the habits of consumers. Critics say they shouldn't compile it without asking permission.

<http://www.governing.com/archive/2002/may/privacy.txt>

I. What's New in Public Access

Press Coverage of Access Issues

New York Times / September 5, 2002

Dirty Laundry, Online for All to See

By Jennifer Lee

Skeletons have come out of the closets and are creeping along Cincinnati's streets. People say that Jim Cissell released them.

Four years ago, Mr. Cissell decided that it was time to move the county's court records onto the Web. The documents were already public. They were already electronic. Where else to put public electronic documents but on the Internet?

"It was the natural progression of technology," said Mr. Cissell, the clerk of courts for Hamilton County, whose seat is Cincinnati. ...

<http://people.csp.edu/tesch/Dirty%20Laundry,%20Online%20for%20All%20to%20See.htm>

I. What's New in Public Access

Press Coverage of Access Issues

The Recorder / 01-28-2003

Resolution Reached Over Access to Court Database

By Shannon Lafferty

Santa Clara County, Calif., Superior Court has agreed to hand over a copy of its electronic case management database in a settlement that could serve as a road map for courts struggling with opening computer records to the public....

The *Mercury News* negotiated with the court for nearly a year to obtain the database, [James] Chadwick said. The newspaper filed suit after the courts repeatedly refused to release the information and then shut off the public's access to case management terminals in the courthouse.

"The records of the courts are expressly not subject to the California Public Records Act nor is there much in the way of federal statutes," Chadwick said. But "the First Amendment creates a presumption of public access to most court records."

<http://www.law.com/jsp/article.jsp?id=1043457922878>

I. What's New in Public Access

Press Coverage of Access Issues

The Cincinnati Enquirer / Tuesday, July 8, 2003

Web cutoff causes Butler backlash **Order from judges burdens Butler office**

By Janice Morse

When a pair of Butler County judges shut off Internet access to their courts' records, they opened the floodgates, says Cindy Carpenter, the county's clerk of courts.

Hundreds of citizens have complained to Carpenter's employees since judges Leslie Spillane and Sharon Kennedy ordered Domestic Relations cases removed last week from Carpenter's Web site (www.butlercountyclerk.org)

http://www.enquirer.com/editions/2003/07/08/loc_wwwloc2butler8.html

I. What's New in Public Access

Press Coverage of Access Issues

The Cincinnati Enquirer/ Sunday July 13, 2003

Should records go on 'Net? Butler court's removal stirs controversy

By Janice Morse

The more information technology spreads, the more privacy rights are colliding with information-access rights -

If the judges are truly motivated by privacy concerns, they need to stop making the issue more complex than it really is, Fox said. "Collection of information does not require disclosure of information," he said. "They can keep the personal information in their administrative files. It's as simple as that."

http://www.enquirer.com/editions/2003/07/13/loc_wwwloc3net13.html

I. What's New in Public Access

Press Coverage of Access Issues

The Cincinnati Enquirer / Wednesday October 1, 2003

Clerk asks for Web site ruling: Domestic court judges block info

By Janice Morse

The Butler County Clerk of Courts wants court to reverse order to remove all Domestic Relations Court information from Internet site.

[The Domestic Relations Court judges] took action as soon as they became aware of privacy concerns ... about information that is better left off the Internet, where it is widely available.... [The judges were] not as concerned about it being released to a limited number of people [in the clerk's office]

"I don't think the Supreme Court or anyone else is going to find my order unreasonable or arbitrary or not authorized by law," [the judge] said. And she offered another prediction: "It won't end here - and it's certainly not a local issue. This is a problem everywhere."

http://www.enquirer.com/editions/2003/10/01/loc_recordsfight01.html

II. The CCJ/COSCA Access Guidelines “Hot Topics” for a Public Access Policy

What do you see as the most pressing issues for a public access policy, based on your experience, or in your jurisdiction?

II. The CCJ/COSCA Access Guidelines

Example of Policy and Development Process

- National advisory committee drafted guidelines for use by states
- Process for developing guidelines is a model for states
- Guidelines provide structure and language for a new policy

II. The CCJ/COSCA Access Guidelines

What They DO and DO NOT Provide

DO provide:

- Starting point for drafting a policy
- Issues that ought to be addressed in a policy
- Options for framing a policy

DO NOT provide:

- Requirements for a particular level of electronic access
- Requirement to convert paper records
- Specific language on internal court policies

II. The CCJ/COSCA Access Guidelines

Premises

- Court records presumptively open
- Access should not change depending on form (paper or electronic) of court record
- Access policies should be clear, consistently applied, and non-arbitrary
- Assumption that public officials will comply with the law

III. Major Elements of the Access Guidelines Policy Interests to be Furthered (§1.00)

1. Maximizes accessibility to court records
2. Supports the role of the judiciary
3. Promotes governmental accountability
4. Contributes to public safety
5. Minimizes risk of injury to individuals
6. Protects individual privacy rights and interests

III. Major Elements of the Access Guidelines Policy Interests to be Furthered (§1.00 continued)

7. Protects proprietary business information
8. Minimizes reluctance to use the court to resolve disputes
9. Makes most effective use of court and clerk of court staff
10. Provides excellent customer service, and
11. Does not unduly burden the ongoing business of the judiciary

III. Major Elements of the Access Guidelines

Organization of Guidelines

- ⊕ Access by whom (§ 2.00)
- ⊕ Access to what (§ 3.00 & § 4.00)
- ⊕ When accessible (§ 5.00)
- ⊕ Fees (§ 6.00)
- ⊕ Obligation of vendors (§ 7.00)
- ⊕ Obligation to inform and educate (§ 8.00)

III. Major Elements of the Access Guidelines

Access by Whom (§ 2.00)

Key Points

- Public access

Issues

- Media and information industry treated same as other members of the public
- Does not apply to lawyers or litigants as to their case
- May not apply to member agencies of an integrated justice system

III. Major Elements of the Access Guidelines

Access to What - Definitions (§ 3.00)

Key Points

- “Court record” defined broadly

Issues

- Information associated with the administration of the court
- Non-court records maintained by Clerk

III. Major Elements of the Access Guidelines

Access to What – Basic Premise (§ 4.00)

“These CCJ/COSCA Guidelines apply to all court records, regardless of the physical form of the court record, the method of recording the information in the court record or the method of storage of the information in the court record.”

III. Major Elements of the Access Guidelines

Access to What – Tiers (§ 4.00)

Three tiers of Access:

- Publicly available, including remotely
- Available only at the courthouse
- Not publicly available

III. Major Elements of the Access Guidelines

Access to What - General Rule (§ 4.10)

Key Points

- Records generally publicly available
- Indication of existence of restricted information in the record

Issues

- Informing people about existence of sealed information

III. Major Elements of the Access Guidelines

Presumptive Remote Access (§ 4.20)

Key Points

- Information that ought to be remotely available - some information has historically been “published”

Issues

- Specifics of what is included in information remotely available
- Names of parties

III. Major Elements of the Access Guidelines

Bulk Access (§ 4.30)

Key Points

- Definition: “Dump” of entire database
- Bulk access is allowed
- Bulk access to restricted information

Issues

- Bulk access versus case-by-case access
- Downstream use
- Burden on court resources to produce

III. Major Elements of the Access Guidelines

Compiled Access (§ 4.40)

Key Points

- Definition: Selected portions of database
- Compiled access is allowed
- Criteria for access
- Conditions on use

Issues

- Burden on court resources
- Nature of conditions on use

III. Major Elements of the Access Guidelines Available Only at the Courthouse (§ 4.50)

Key Points

- Some information to be available only at the courthouse
- Process to request limiting access to the courthouse

Issues

- What is included in the list to be limited
- Criteria for limiting access

III. Major Elements of the Access Guidelines Records Excluded from Public Access (§ 4.60)

Key Points

- Some information should not be publicly accessible
 - ◆ By case category,
 - ◆ By type of information, or
 - ◆ By individual case

Issues

- What information should be excluded?

III. Major Elements of the Access Guidelines

Requests to Restrict Public Access (§ 4.70)

Key Points

- Requests to restrict access (seal)
- Requests to open (unseal) (§4.70(b))
- Requesting procedures

Issues

- Criteria for restricting/opening access
- Who can make the motion
- Notice

III. Major Elements of the Access Guidelines Obligation of Vendors (§ 7.00)

Key Points

- Definition of 'vendor'
- Compliance with policy
- Notice of requests

Issues

- Who owns the information
- Executive branch versus private vendor
- Data quality

III. Major Elements of the Access Guidelines

Obligation to Inform (§ 8.00)

Key Points

- Informing litigants that records are public (§ 8.10)
- Informing people how to request restrictions on public access (§ 8.10)
- Informing public how to access court records (§ 8.20)
- Educating judges and staff about policy (§ 8.30)
- Correction of records (§ 8.40)

III. Major Elements of the Access Guidelines Obligation of Court (§ 8.00)

Issues

- How to inform people
- Likelihood of restricting access
- Consistency of applying policy

IV. Policy Development Lessons

Share Experiences

Where is your jurisdiction on the path to a revised public access policy:

- Recently revised access policy
- Circulating drafts of a new policy
- Have formed committee to review
- Watching other jurisdictions
- Other activities
- I need to find out

IV. Policy Development Lessons

Policy Review Committee

Representatives from a range of perspectives:

- Judicial Officers
- Court Administration
- Clerk of Court
- The Bar
- Law Enforcement
- Privacy Interests
- Media
- Data Industry

Who else?

IV. Policy Development Lessons

Drafting Process

- Review state's existing access policies: Constitution, statutes, rules and case law
- Review *CCJ/COSCA Guidelines* and other states' access policies
- Draft language based on identified premises and existing policies
- Structure of policy language with extensive commentary

IV. Policy Development Lessons

Request for Comment Process

- Open Advisory Committee meetings to the public
- Widely distribute “Draft for Comment”
- Conduct Public Hearing – open invitation
- Revise document and adopt
- Other ideas from your experiences?

V. Where Do We Go From Here?

NCSC and JMI

- Final project report posted at www.courtaccess.org/modelpolicy/
- JMI and NCSC providing technical assistance to states seeking to apply the Guidelines
- Focus of continuing work:
 - ◆ Family and juvenile issues
 - ◆ Internal Court policies
 - ◆ Education requirements

V. Where Do We Go From Here?

Activity in the States

- Revisions to existing policies:
CA, CO, MD, NE, VT, WA
- Commissions/Committees under way:
NY, MN, OH, DC
- Just getting started: AK, PA (statewide)
- Started, then stopped, now wondering:
FL
- Used *Guidelines* to generate draft rules
now under re view: IN, NE

V. Where Do We Go From Here?

Final Words

And remember the words of our
Butler County, Ohio
Domestic Relations Court judge:

"It won't end here - and it's certainly
not a local issue. This is a problem
everywhere."

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