

NOTICE OF COMMENT PERIOD

The Technology Committee of the Nebraska Supreme Court submitted proposed amendments to Neb. Ct. R. § 1-801 et seq., “Public Access to Electronic Court Information.” On March 21, 2018, the Nebraska Supreme Court directed the proposed amendments be published for a public comment period.

The Nebraska Supreme Court invites interested persons to comment on the proposed amendments. Anyone desiring to comment on the proposed amendments should do so in writing to the office of the Clerk of the Supreme Court and Court of Appeals, P.O. Box 98910, Lincoln, Nebraska 68509-8910, or via e-mail to ashley.nolte@nebraska.gov, no later than May 15, 2018.

The full text of the proposed amendments is available below, or a hard copy may be obtained from the office of the Clerk of the Supreme Court and Court of Appeals upon request.

Article 8: Public Access to Electronic Court Records and Information.

§ 1-801. Purpose of policy.

The purpose of this policy is to set forth the method to access ~~summary trial~~ electronic court records and information, which shall be allowed only by means of Public Access through JUSTICE or SCCALES, Remote Access through the court-authorized service provider, and Compiled Information Requests through the Administrative Office of the Courts, as set forth below.

§ 1-802. Definitions.

(A) *Trial Courts* are District Courts, County Courts, and Separate Juvenile Courts. For purposes of this Rule, this definition does not include the Nebraska Workers’ Compensation Court.

(B) ~~*In Electronic Form* means information which exists as data in the fields or files of an electronic database.~~ *Appellate Courts* are the Nebraska Supreme Court and Court of Appeals.

(C) *Case Management System* (CMS) is computer system designed to monitor and track court filings and events, and to account for all financial information in that case. JUSTICE is the case management system for the trial courts and SCCALES is the case management system for the appellate courts developed and maintained by the Nebraska State Court Administrator's Office.

(D) *Public* includes:

- (1) any person and any business or non-profit entity, organization, or association;
- (2) any governmental agency for which there is no existing policy or statute defining the agency's access to court records;
- (3) media organizations; and
- (4) entities which gather and disseminate information for whatever reason, and regardless of whether it is done with the intent of making a profit, without distinction as to the nature or extent of access.

(E) *Public* does not include:

- (1) court or clerk of court employees;
- (2) people or entities, private or governmental, who assist the court in providing court services;

(3) public agencies whose access to court records is defined by another statute, rule, order, or policy; and

(4) the parties to a case or their lawyers regarding access to the court record in their case, or a different case in which the lawyer's client may be involved.

(F) **Public Access** means the public can inspect and obtain a copy of the information in an electronic court record.

(G) **Remote Access** means the ability to electronically search records or information, inspect records, or copy information in a court record ~~without the need to physically visit the court facility where the court record is maintained.~~

(H) **Data** means the quantities, characters, or symbols stored in the fields or files of an electronic database for the case management system. Data can only be distributed when purposefully extracted from the database and placed into an external text file and organized into recognizable values.

(I) **Information** means data that has undergone processing by a computer program to be displayed as an alpha/numeric recognizable component of an electronic court record.

(J) **Electronic Court Record** means case management system information or images of documents related to an individual case, accessed in its entirety via a developed user interface through the court-authorized service provider or the case management system.

(K) **Bulk records** means all, or a significant subset of the Electronic Court Records maintained in the case management system.

(L) **Bulk data** means all, or a significant subset of the data maintained in the case management system, with or without modification or customized compilation.

(~~M~~) **Bulk Distribution** means the distribution of all, or a significant subset, of ~~the information in~~ electronic court records; or data as-is and with or without modification or compilation.

(~~N~~) **Compiled Information** means non-confidential information derived from the selection, aggregation, or reformulation of selected ~~information~~ data from more than one individual court record. Compiled information may be presented in statistical form without unique case identifiers.

§ 1-803. Public access to court records and information.

Every member of the public may access the same information from the same records except as otherwise specifically provided. Stated differently, every public user will see the same information.

§ 1-804. General access rule.

Information in an electronic court record is accessible to the public through remote access with the court-authorized service provider or through public access terminals at a courthouse unless prohibited by this policy or applicable laws.

§ 1-805. Public access to electronic court records and information.

The following ~~records~~ information in a court Case Management System may be accessed ~~via the Internet~~ electronically unless public access is restricted by law, court rule, or this policy.

- (A) Litigant/party indexes to cases filed with the court;
- (B) Summary information about each case including the names of the parties;
- (C) Registers of actions describing the documents filed in a case along with an image of the filing if available;
- (D) Calendars of court proceedings, including the case number, caption, date, time, and location of scheduled hearings;
- (E) Summary information about judgments, orders, or decrees in a case.

§ 1-806. Bulk distribution or collection of court records and information.

(A) Bulk distribution of court records in electronic form is not allowed except to preserve records and comply with courts' records retention schedules. The Supreme Court will not distribute electronic court records, data, or information in bulk except in the following circumstances:

- (1) to preserve records and comply with courts' records retention schedules;
- (2) in accordance with data sharing agreements with other governmental entities/agencies to create operational efficiencies or fulfill statutory obligations;
- (3) for certain scholarly purposes such as research, evaluative, or statistical activities sponsored or approved by the Nebraska Supreme Court or Court Administrator;
- (4) to facilitate better access to court information and data via the court-authorized service provider as designated by the Nebraska Supreme Court or Court Administrator.

(B) Bulk collection and distribution of court records and data is prohibited except as specifically authorized by this Rule. Any person or entity collecting and/or distributing court records, data, or information in violation of this Rule, or any state statute, federal law, or regulation, shall have access to the court-authorized service provider terminated.

§ 1-807. Requests to compile court record information and data.

Requests to compile court record information will be considered only when the public interest will be served through significant scholarly, governmental, research, evaluation, or statistical purposes. Applications should be directed to the ~~Court Records Contact~~. Administrative Office of the Courts:

~~Court Records Contact~~ Deputy Court Administrator for Information Technology
Nebraska State Court Administrator's Office
1220 State Capitol Building
Lincoln, NE 68509-8910

Requests shall be considered and fulfilled on a schedule which does not disrupt normal court business.

§ 1-808. Court records and information excluded from public access; duty to not disclose.

The following information in a court record may not be accessed by the public:

- (A) Information enumerated in Neb. Rev. Stat. § 84-712.05.

(B) ~~Information or records that is not to be~~ accessible to the public pursuant to state law, court rule, or case law, including, but not limited to, the following:

(1) Criminal History Information as set forth in the Security, Privacy, and Dissemination of Criminal History Information Act. See Neb. Rev. Stat. § 29-3501.

(2) Adoption case records ~~See (Neb. Rev. Stat. § 43-113)~~.

(3) Court records sealed pursuant to statute or by court order.

(C) If a public entity or person, as defined in § 1-802(D), obtains court record(s) via access with the court-authorized service provider and furnishes that record to third parties either for or not for profit, the public entity or person who obtained court record(s) via the court-authorized service provider has a duty to periodically update any court record(s) to determine if the court record(s) and any information therein has been sealed pursuant to statute and/or court order. If such court record(s) have been sealed, the public entity or person who obtained the record(s) shall not further disclose the sealed court record(s) for any purpose and shall remove such sealed record(s) from further access. Disclosure of sealed court records and information therein may result in civil or criminal penalties as provided for by law.

(D) A lawyer or party as defined under § 1-802(E)(4) who has possession of a sealed court record that was filed in a court case prior to the record being sealed does not violate this rule if the lawyer or party does not make new or further disclosures of the sealed record. Unlawful disclosure of sealed court records and information therein may result in civil or criminal penalties as provided for by law.

§ 1-809. When electronic court records and information are available.

(A) ~~Electronic C~~ourt records and information accessed at courthouse public access terminals will be available for public access in the courthouse during regular office hours.

(B) ~~Electronic C~~ourt records and information in electronic form which can be accessed remotely will be available for access at least during the hours established by the court for courthouse access, subject to unexpected technical failures or normal system maintenance.

~~(C) Upon receiving a request for access to information, the court will respond within a reasonable time regarding the availability of the information and provide the information within a reasonable time.~~

§ 1-810. Fees for access.

The Nebraska Supreme Court may establish fees for:

(A) remote access to JUSTICE and SCCALES records;

(B) photocopies of court records; and

(C) requests made under § 1-807.