

EXPLANATORY REPORT

AMENDMENTS TO THE CASE RECORDS PUBLIC ACCESS POLICY OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA

On October 6, 2021, effective January 1, 2022, upon recommendation of the Administrative Office of Pennsylvania Courts, the Court amended Sections 7.0 and 9.0 of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* to require the statewide use of the Confidential Information Form. The specific amendments are detailed below.

Sections 7.0(A) and (C) have been amended to require filers to safeguard confidential information using a Confidential Information Form. Prior to these amendments, an appellate or trial court could permit the filing of any document in two versions, a "Redacted Version" and "Unredacted Version" rather than require the use of the Confidential Information Form. Now, all courts throughout the Commonwealth will utilize the same method to safeguard confidential information.

New Section 9.0(H) provides that these amendments do not apply retroactively to documents filed with a court or custodian prior to the effective date of the amendments. Specifically, an unredacted version of a document filed under prior versions of this Policy shall not be accessible to the public.

Implementing a single, statewide approach for the treatment of confidential information throughout the courts of the Commonwealth will establish procedural uniformity and support the statewide practice of law by members of the bar.

IN THE SUPREME COURT OF PENNSYLVANIA

IN RE:	:	NO. 556
	:	
ORDER AMENDING CASE RECORDS	:	JUDICIAL ADMINISTRATION
PUBLIC ACCESS POLICY OF THE	:	DOCKET
UNIFIED JUDICIAL SYSTEM	:	

ORDER

PER CURIAM

AND NOW, this 6th day of October, 2021, upon the recommendation of the Administrative Office of Pennsylvania Courts, the amendments to Sections 7.0 and 9.0 as well as the addition of Section 9.0(H) to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* which require the statewide use of the Confidential Information Form, having been published for public comment before adoption at 49 Pa.B. 3298 (June 29, 2019):

IT IS ORDERED that:

- 1) The Policy is amended to read as attached hereto.
- 2) The Administrative Office of Pennsylvania Courts shall publish the amended Policy and accompanying *Explanatory Report* on the Unified Judicial System's website.
- 3) Every court and custodian's office, as defined by the Policy, shall continuously make available for public inspection a copy of the amended Policy in appropriate physical locations as well as on their website.

This **ORDER** shall be processed in accordance with Pa.R.J.A. No. 103(b) and shall be effective on January 1, 2022.

Additions are shown in bold and are underlined.
Deletions are shown in bold and brackets.

Section 7.0 Confidential Information

A. The following information is confidential and shall not be included in any document filed with a court or custodian, except on a Confidential Information Form filed contemporaneously with the document [or as provided in Subsection C]:

1. Social Security Numbers;
2. Financial Account Numbers, except an active financial account number may be identified by the last four digits when the financial account is the subject of the case and cannot otherwise be identified;
3. Driver License Numbers;
4. State Identification (SID) Numbers;
5. Minors' names and dates of birth except when a minor is charged as a defendant in a criminal matter (see 42 Pa.C.S. § 6355); and
6. Abuse victim's address and other contact information, including employer's name, address and work schedule, in family court actions as defined by Pa.R.C.P. No. 1931(a), except for victim's name.

This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority.

B. The Administrative Office of Pennsylvania Courts shall design and publish the Confidential Information Form.

C. [Instead of using the Confidential Information Form, a court of record may adopt a rule or order permitting the filing of any document in two versions, a "Redacted Version" and "Unredacted Version." The "Redacted Version" shall not include any information set forth in Subsection A, while the "Unredacted Version" shall include the information. Redactions must be made in a manner that is visibly evident to the reader. This Subsection is not applicable to filings in a magisterial district court.] Reserved.

D. Parties and their attorneys shall be solely responsible for complying with the provisions of this section and shall certify their compliance to the court. The certification that shall accompany each filing shall be substantially in the following form: "I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents." The certification language may be inserted in the document to be filed, thereby obviating the need for a separate certification form.

E. A court or custodian is not required to review or redact any filed document for compliance with this section. A party's or attorney's failure to comply with this section shall not affect access to case records that are otherwise accessible.

F. If a filed document fails to comply with the requirements of this section, a court of record may, upon motion or its own initiative, with or without a hearing, order the filed document sealed, redacted, amended or any combination thereof. A court of record may impose sanctions, including costs necessary to prepare a compliant document for filing in accordance with applicable authority.

G. If a filed document fails to comply with the requirements of this section, a magisterial district court may, upon request or its own initiative, with or without a hearing, order the filed document redacted, amended or both.

H. This section shall apply to all documents for any case filed with a court or custodian on or after the effective date of this policy.

COMMENTARY

This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority, for example, cases filed under the Juvenile Act that are already protected by 42 Pa.C.S. § 6307, and Pa.Rs.J.C.P. 160 and 1160.

Attorneys are reminded that Rules 1.1 and 1.6 of the Rules of Professional Conduct require familiarity and compliance with this policy.

While Pa.R.C.P. No. 1931 is suspended in most judicial districts, the reference to the rule is merely for definitional purposes.

Unless constrained by applicable authority, court personnel and jurists are advised to refrain from inserting confidential information in court-generated case records (e.g., orders, notices) when inclusion of such information is not essential to the resolution of litigation, appropriate to further the establishment of precedent or the development of law, or necessary for administrative purposes. For example, if a court's opinion contains confidential information and, therefore, must be sealed or heavily redacted to avoid release of such information, this could impede the public's access to court records and ability to understand the court's decision.

[Whether] When using a Confidential Information Form [or filing a redacted and unredacted version of a document in a court of record], the drafter shall indicate where in the document confidential information has been omitted **by use of an alternative reference.** For example, the drafter could insert minors' initials in the document, while listing full names on the Confidential Information Form. If more than one child has the same initials, a different moniker should be used (e.g., child one, child two, etc.). The Confidential Information Form published by the Administrative Office of Pennsylvania Courts includes alternative references that should be used by the drafter.

[The option to file a redacted and unredacted version of a document does not apply to filings in a magisterial district court.] Most filings in magisterial district courts are completed on statewide forms designed by the Administrative Office of Pennsylvania Courts. Safeguarding the information set forth in this Section for magisterial district courts is achieved through the use of a Confidential Information Form **[(see Subsection A)]** in tandem with other administrative protocols (e.g., a public access copy page that shields confidential information was added to the citation form set).

With regard to Subsection D, the certification of compliance is required whether documents are filed in paper form or via an e-filing system. Moreover, the certification is required on every document filed with a court or custodian regardless of whether the filing contains "confidential information" requiring safeguarding under this policy. The certification is included on many forms that parties and attorneys file with the magisterial district courts. For documents e-filed through PACFile, available in the appellate courts and some common pleas courts, the filer can certify compliance by checking a box. In addition, the Administrative Office of Pennsylvania Courts included the certification **on** the Confidential Information Form, as well as created a sample stand-alone certification form that parties and attorneys may use or simply incorporate the language into their filed documents. This form may be found on the Unified Judicial System's website, www.pacourts.us.

With regard to Subsection E, a court or custodian is not required to review or redact documents filed by a party or attorney for compliance with this section. However, such activities are not prohibited.

With regard to Subsection F, any party may make a motion to the court of record to cure any defect(s) in any filed document that does not comport with this section.

With regard to Subsection G, any party may file a request form designed and published by the Administrative Office of Pennsylvania Courts with a magisterial district court when there is an allegation that a filing was made with that court that does not comply with this policy.

With regard to Subsection H, the policy was amended in 2021 to implement the Confidential Information Form as the single statewide method to safeguard the information identified in Subsection A. Prior to this amendment, an appellate or trial court could permit the filing of any document in two versions, a "Redacted Version" and "Unredacted Version," rather than require the use of the Confidential Information Form.

Section 9.0 Limits on Public Access to Case Records at a Court Facility

The following information shall not be accessible by the public at a court facility:

- A. Case records in proceedings under 20 Pa.C.S. § 711(9), including but not limited to case records with regard to issues concerning recordation of birth and birth records, the alteration, amendment, or modification of such birth records, and the right to obtain a certified copy of the same, except for the docket and any court order or opinion;
- B. Case records concerning incapacity proceedings filed pursuant to 20 Pa.C.S. §§ 5501-5555, except for the docket and any final decree adjudicating a person as incapacitated;
- C. Any Confidential Information Form [or any Unredacted Version of any document] as set forth in Section 7.0;
- D. Any document filed with a Confidential Document Form as set forth in Section 8.0;
- E. Information sealed or protected pursuant to court order;
- F. Information to which access is otherwise restricted by federal law, state law, or state court rule; and
- G. Information presenting a risk to personal security, personal privacy, or the fair, impartial and orderly administration of justice, as determined by the Court Administrator of Pennsylvania with the approval of the Chief Justice. The Court Administrator shall publish notification of such determinations in the *Pennsylvania Bulletin* and on the Unified Judicial System's website.
- H. **The Unredacted Version of any document filed in accordance with prior versions of this policy.**

COMMENTARY

Unless constrained by applicable authority, court personnel and jurists are advised to refrain from inserting confidential information in or attaching confidential documents to court-generated case records (e.g., orders, notices) when inclusion of such information is not essential to the resolution of litigation, appropriate to further the establishment of precedent or the development of law, or necessary for administrative purposes. For example, if a court's opinion contains confidential information and, therefore, must be sealed or heavily redacted to avoid release of such information, this could impede the public's access to court records and ability to understand the court's decision.

With respect to Subsection F, Pennsylvania Rule of Appellate Procedure 104(a), Pa.R.A.P. 104(a), provides that the appellate courts may make and amend rules of court governing their practice. The Administrative Office of Pennsylvania Courts shall from time to time publish a list of applicable authorities that restrict public access to court records or information. This list shall be published on the Unified Judicial System's website and in the *Pennsylvania Bulletin*. In addition, all custodians shall post this list in their respective court facilities in areas accessible to the public and on the custodians' websites.

With respect to Subsection G, the Administrative Office of Pennsylvania Courts shall include any such determinations in the list of applicable authorities referenced above. The same provision appears in the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania*. The provision is intended to be a safety valve to address a future, extraordinary, unknown issue of statewide importance that might escape timely redress otherwise. It cannot be used by parties or courts in an individual case.

With regard to Subsection H, the policy was amended in 2021 to implement the Confidential Information Form as the single statewide method to safeguard the information identified in Subsection A. Prior to this amendment, an appellate or trial court could permit the filing of any document in two versions, a "Redacted Version" and "Unredacted Version," rather than require the use of the Confidential Information Form.