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THE ALLIANCE
for Equal Justice
SUPPORTER

March 24, 2016

Justice Mary Fairhurst
Chair, Justice Information Systems Committee
Temple of Justice PO Box 40929
Olympia, WA 98504-0929

Judge Thomas J. Wynne
Chair, Data Dissemination Committee
Judicial Information Systems Committee
3000 Rockefeller Ave
Everett, WA 98201-4060

Re: Comments on Proposed Changes to Data Dissemination Policy

Dear Justice Fairhurst and Judge Wynne:

Our liaison to the Judicial Information Systems Committee meeting reported back to the Access to Justice Board, through the Technology Committee co-chairs, that changes have been proposed to the Data Dissemination Policy. The members of the technology committee reviewed the changes and have proposed the following comments, which were approved by the Access to Justice Board at our March meeting.

Does the policy adequately protect individual privacy? One of the primary concerns about the policy is that it appears to anticipate that case management systems will not be developed with a "public facing" version that limits the information that is currently reserved for parties or their designees. It appears that the same information that would be disclosed to parties would also be available to those with no personal interest in the litigation. To the extent this is true, we recommend a more careful balancing of individual privacy rights and GR 31.

Will the courts be collecting data related to representation status or language preference? The technology committee recommends collection of SRL status by party type. In addition, we recommend collection of data regarding language needs of litigants, jurors, and witnesses. This data will be helpful in understanding and projecting the needs of SRL and LEP litigants and participants, both now and in the future. While we understand that the data may be collected in other systems currently, we recommend inclusion in the case management systems for economy and ease of use.

Overall, we appreciate the provisions for the juvenile court records as we believe they represent sound public policy.

The policy does not seem to address the privacy and safety concerns or need of victims of crimes. While we have not had time to research the topic fully, we note that at least two state statutes protect the identity and records of crime victims – the Crime Victims Compensation Act and the Victims of Sexual Assault Act. We recommend careful consideration of the rights of victims of crimes, to the extent information about them is entered into and maintained in case management systems.

There should be a provision for waiver of fees for those who qualify due to inability to pay. We recommend that litigants who qualify for fee waivers under GR 34 be allowed to access and obtain copies of records without cost. This should be true of their attorneys as well.

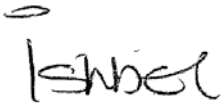
What laws, regulations, and court rules apply and should be consulted? In several locations, the policy indicates compliance with laws, regulations, and/or rules are required. Although we understand that the committee would not want to revise the policy every time a new rule or law is issued, it would be helpful to point to some of the most important rules and laws applicable to the release of data, perhaps with a qualifier of "including but not limited to." Similarly, there are a couple of locations where additional rules should be cited as annotated in the attached appendix.

Personal identifiers should include residential address, email address, mobile phone numbers, and date of birth for all, not just minors. Those should not be disclosed.

Maintaining records of records released. We did not note any provisions requiring courts or AOC, or the case management systems, to maintain records of bulk requests in the event that routine, authorized disclosures have unintended consequences. Cases of data dissemination resulting in inappropriate reidentification of anonymized data are frequently reported. Having an audit trail to identify the source of an unintentional data leak would be helpful in such cases.

In addition, the comments of one member are attached for your consideration. Thank you for the opportunity to provide input on this important policy. If you have any questions, please contact Laura Bradley (laura.bradley@biia.wa.gov or (360) 753-6823 ext. 1239), one of the co-chairs of the technology committee.

Sincerely,



Ishbel Dickens
Chair, Access to Justice Board

C: Paula Littlewood, Executive Director, Washington State Bar Association

Data Dissemination Policy

- AUTHORITY AND SCOPE
- DEFINITIONS
- ACCESS TO JIS LEGAL RECORDS
- JIS PRIVACY AND CONFIDENTIALITY POLICIES
- LIMITATION ON DISSEMINATION OF JUVENILE OFFENDER COURT RECORDS
- PROCEDURES
- ACCESS TO AND USE OF DATA BY COURTS
- ACCESS TO AND USE OF DATA BY CRIMINAL JUSTICE AGENCIES
- ACCESS TO AND USE OF DATA BY PUBLIC PURPOSE AGENCIES
- VERSION HISTORY

I. AUTHORITY AND SCOPE

A. This policy governs the release of information from the case management systems that the Administrative Office of the Courts (AOC) maintains, such as the Judicial Information System (JIS), the Superior Court Management Information System (SCOMIS), the Appellate Court System (ACORDS) and Odyssey, as well as data collected by AOC from other court case management systems. The policy has been approved by the Judicial Information System Committee (JIS Committee), pursuant to JISCR 12 and JISCR 15(d), and applies to all requests for computer-based court information subject to JISCR 15.

B. This policy is to be administered in the context of the requirement of Article I, § 10 of the Constitution of the State of Washington that "Justice in all cases shall be administered openly, and without unnecessary delay," as well as the privacy protections of Article I, § 7, and GR 31.

C. This policy does not apply to requests initiated by or with the consent of the State Court Administrator or his/her designee for the purpose of answering a request vital to the internal business of the courts. See JISCR 15(a).

D. This policy does not apply to documents filed with the local courts and county clerk's offices.

II. DEFINITIONS

A. "JIS" is the acronym for "Judicial Information System" and as used in this policy represents all the case management systems that the AOC currently maintains.

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B. "JIS record" is an electronic representation of information stored within, or derived from the case management systems that the AOC maintains. It is programmed to be available in ~~human~~ readable and retrievable form.

C. JIS Reports

1. "**JIS reports**" are the results of special programs written to retrieve and manipulate JIS records into a readable form. It includes, but is not limited to index reports, compiled aggregate numbers, and statistics.
2. **"Index reports"** are reports containing bulk court data with set data elements**.**
3. **"Compiled aggregate numbers"** are JIS reports containing only total numerical quantities without case level data elements.
4. **"Routine summary reports"** are JIS reports automatically generated by courts, county clerk's offices, or the AOC during the course and in the scope of daily business.

D. Data Dissemination Management

1. "**Data dissemination**" is the reporting or other release of information derived from JIS records.
2. "**Data dissemination administrator**" is the individual designated within the Administrative Office of the Courts and within each individual court or county clerk's office and assigned the responsibility for administration of data dissemination, including responding to requests of the public, other governmental agencies, the judicial system, or other participants in the judicial information system. Courts and county clerk's offices may use multiple staff to satisfy this role.

E. **Data Dissemination Contract**
The "**data dissemination contract**" is an agreement between a county clerk's office, a Washington state court, or the Administrative Office of the Courts and any non-Washington state court entity for release of data contained in the JIS. The data dissemination contract shall specify terms and conditions, as approved by the JIS Committee, concerning the data including but not limited to restrictions, obligations, and cost recovery fees.

III. ACCESS TO JIS RECORDS

A. Access to and release of JIS data will be consistent with Article I, § 10 of the Constitution of the State of Washington, GR 31 and Washington state statutes. Statutes, court rules, case law, and policy guidelines that protect individual privacy and safety, and confidential court records shall be adhered to when JIS records or JIS reports are disseminated. All access to JIS records and JIS reports is subject to the requirements of the criteria for release of data specified in JISCR 15(f): availability of data, specificity of the request, potential for infringement of

Commented [DH1]: Not necessary, plus makes it consistent with rest of document

Commented [DH2]: This is grammatical: "scope" is space; there can be no "during" of scope

Commented [DH3]: Must include all participants in the judicial system generally as well as the judicial system specifically.

Commented [DH4]: What court rules? Supreme Court rules, local court rules? What about Washington Administrative Code provisions?

Commented [DH5]: Safety is at least as much our responsibility as privacy, and loss of privacy often leads to loss of safety.

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personal privacy created by release of the information requested, and potential disruption to the internal ongoing business of the courts. JIS records or JIS reports provided in electronic format shall be subject to provisions contained in the data dissemination contract.~~.~~

B. Privacy or safety protections accorded by the United States Congress and by the Washington State Legislature to records held by other state agencies are to be applied to requests for JIS records or JIS reports, unless such record is a "court record" as defined in GR 31 and access is controlled by GR 31(d) and GR 31(e).

C. **Contact Lists**: The use of JIS records or JIS reports for the purpose in whole or in part of commercial solicitation of individuals named in the court records is prohibited. Requests for JIS data ~~for~~that include this purpose will be denied.

D. Court and county clerk data dissemination administrators will restrict the dissemination of JIS reports to data related to the administrator's particular court, or court operations subject to the supervision of that court.

E. Courts and county clerk's offices may direct requestors to the Administrative Office of the Courts if the request falls under GR 31 (g)(2) or any other General Rule or WAC and creates an undue burden on the court or court clerk operations because of the amount of equipment, materials, staff time, computer time or other resources required to satisfy the request.

F. Routine summary reports will be made available to the public upon request, subject to the payment of an established reasonable fee and so long as such request can be met without unduly disrupting the on-going business of the courts.

G. An index report shall not contain confidential information as determined by Court Rules, Washington state law and Federal law. This includes but is not limited to:

1. social security numbers;
2. financial account numbers;
3. driver's license numbers;
4. date of birth of a minor child;
5. party's telephone number;
~~5.~~6. party's address
~~6.~~7. witness address and phone number;
~~7.~~8. abstract driving record as defined in RCW 46.52.130; and
~~8.~~9. victim information.

An index report provided in electronic format shall be subject to the provisions contained in the data dissemination contract. *(Amended February 27, 1998.)*

Commented [DH6]: We must also include other relevant GR's, such as GR22 and GR15. These should be added wherever we refer to GR31. What about WACs?

Commented [DH7]: What about in forma pauperis? Shouldn't some provision – such as GR34 – be included or referred to? Perhaps after the word "fee the following words should be added "and subject to GR34"

Commented [DH8]: Shouldn't this be included? At least under some circumstances? Why not?

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H. Financial Data.

1. Requests to courts or county clerk's offices will be handled by that individual office in the same manner as all other requests for court data.
2. Requests to the AOC for statewide financial court data or for an individual court's data will be handled in the following manner:
   a. Requestor will provide as much detail as possible regarding specific financial information requested. Explanations may include such information as specific codes, accounting or non-accounting needs, statewide aggregate, court aggregate or case-by-case data, and court levels.
   b. The AOC will review the request and submit any questions or clarifications to the requestor. Communications may need to take place between the AOC staff and the requestor so the parties know what is being asked for and what can be provided. The time taken for clarifications and meetings will be in addition to any time estimates given for compiling the data. Further, the requestor ~~will~~may be charged for the staff time under the approved cost recovery fee for research/programming.
   c. Prior to release of the report, the data will be reviewed by delegated court and/or county clerk representatives.

Commented [DH9]: In forma pauperis or other appropriate reason should be available to waive the fee

IV. JIS PRIVACY AND CONFIDENTIALITY POLICIES

A. Information in JIS records which is sealed, exempted, or otherwise restricted by law, including court rule, whether or not directly applicable to the courts, may not be released except by specific court order or by statutory authority.

B. Confidential information regarding individual litigants, witnesses, or jurors that is contained in case management systems of the courts will not be disseminated. Identifying information (including, but not limited to, residential addresses and residential phone numbers) regarding individual litigants, witnesses, or jurors will not be disseminated, except that the residential addresses of litigants will be available to the extent otherwise permitted by law. *(Section amended September 20, 1996; June 26, 1998.)*

Commented [DH10]: Why not include mobile phone number here as well?

Commented [DH11]: What about personal e-mail addresses?

C. A data dissemination administrator may provide data for a research report when the identification of specific individuals is ancillary to the purpose of the research, the data will not be sold or otherwise distributed to third parties, and the requester agrees to maintain the confidentiality required by these policies. In such instances, the requester shall complete a research agreement in a form prescribed by the Administrative Office of the Courts. The research agreement shall 1) require the requester to explain provisions for the secure protection of any data that is confidential, using physical locks, computer passwords and/or encryption and ~~; 2)~~

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other appropriate and effective tools; 2) prohibit the disclosure of data in any form which identifies an individual; 3) prohibit the copying or duplication of information or data provided other than for the stated research, evaluative, or statistical purpose. *(Amended June 6, 1997.)*

V. LIMITATION ON DISSEMINATION OF JUVENILE OFFENDER COURT RECORDS*

The dissemination of juvenile offender court records maintained in the Judicial Information System shall be limited as follows:

A. Juvenile offender court records shall be excluded from any bulk distribution of JIS records by the Administrative Office of the Courts otherwise authorized by GR 31(g), except for research purposes as permitted by statute or court rule.

B. The Administrative Office of the Courts shall not display any information from an official juvenile offender court record on a publicly-accessible website that is or contains a statewide index of court cases.

* Juvenile offender court records shall remain publicly accessible on the JIS Link notwithstanding any provision of this section. *(Section added September 6, 2013.)*

VI. PROCEDURES

A. Uniform procedures for requesting JIS information, and for the appeal of decisions of data dissemination administrators, shall be as set forth in writing and ~~policies~~ issued by the Administrative Office of the Courts pursuant to JISCR 15(d).

B. In any case where a report is provided, the report must be accompanied by a suitable disclaimer noting that the court, the county clerk's office, and the Administrative Office of the Courts can make no representation regarding the identity of any persons whose names appear in the report, and can make no representation as to the accuracy and completeness of the data except for court purposes.

VII. ACCESS TO AND USE OF DATA BY COURTS

The courts, the county clerk's offices, and their employees may access and use JIS records only for the purpose of conducting official court business. Such access and use shall be governed by appropriate security policies and procedures. Each year, all court staff, county clerk staff, and anyone receiving access from a court or a county clerk's office, including prosecutors and public defenders with access to JABS, will sign a confidentiality agreement by January 31. The courts and the county clerk's offices will then submit a Statement of Compliance to the AOC by March 31 confirming that their staff and any other users receiving access from their office have executed the agreements.

Commented [DH12]: What court rule? Supreme Court Rules , Local Rules, Juvenile Rules, others, etc.

Commented [DH13]: This is not understandable, and seems contradictory. It needs more)

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VIII. ACCESS TO AND USE OF DATA BY CRIMINAL JUSTICE AGENCIES AND BY THE WASHINGTON STATE ATTORNEY GENERAL'S OFFICE

A. "Criminal justice agencies" as defined in chapter 10.97 RCW shall have additional access to JIS records beyond that which is permitted the public.

B. The JIS Committee shall approve the access level and permitted use(s) for classes of criminal justice agencies including, but not limited to, law enforcement, prosecutors, and corrections. An agency that is not covered by a class may request access.

C. Agencies requesting access under this provision shall identify the information requested and the proposed use(s).

D. Access by criminal justice agencies shall be governed by a data dissemination contract with each such agency. The contract shall:

1. Specify the data to which access is granted.
2. Specify the uses which the agency may make of the data.
3. Include the agency's agreement that its employees will access the data only for the uses specified.

E. The Washington State Attorney General's Office will be provided additional access to JIS records for those cases in which it represents the State.

IX. ACCESS TO AND USE OF DATA BY PUBLIC PURPOSE AGENCIES

A. "Public purpose agency" includes governmental agencies included in the definition of "agency" in RCW 42.56.010 and other non-profit organizations whose principal function is to provide services to the public.

B. A public purpose agency may request court records not publicly accessible for scholarly, governmental, or research purposes where the identification of specific individuals is ancillary to the purpose of the request.

C. Agencies requesting additional access under this provision shall identify the information requested and the proposed use(s). In reviewing such requests, the courts, the county clerk's offices, and the JIS Committee will consider such criteria as:

1. The extent to which access will result in efficiencies in the operation of a court or courts.
2. The extent to which access will enable the fulfillment of a legislative mandate.
3. The extent to which access will result in efficiencies in other parts of the criminal justice system.

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4. The risks created by permitting such access.

The courts, the county clerk's offices, and the JIS Committee must determine that fulfilling the request will not violate GR 31, and must determine and specify the minimum access to restricted court records necessary for the purpose of the request.

Commented [DH14]: Should also refer to other relevant GRs as I earlier stated – such as GR22 and GR15, and perhaps others such as Juvenile rules. Also perhaps WACs

D. Access by public purpose agencies shall be governed by a data dissemination contract. The contract shall:

1. Require the requestor to specify provisions for the secure protection of any data that is confidential.
2. Prohibit the disclosure of data in any form which identifies an individual.
3. Prohibit the copying, duplication, or dissemination of information or data provided other than for the stated purpose.
4. Maintain a log of any distribution of court records which will be open and available for audit by the court, the county clerk's office or the AOC. Any audit should verify that the court records are being appropriately used and in a manner consistent with GR 31.

X. VERSION HISTORY

These policies shall take effect 30 days from the date of their adoption by the Judicial Information Systems Committee, May 19, 1995.

- Adopted May 19, 1995
- Amended June 21, 1996
- Amended September 20, 1996
- Amended June 6, 1997
- Amended December 5, 1997
- Amended February 27, 1998
- Amended June 26, 1998
- Amended September 6, 2013

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