

Utah Court of Appeals



Chambers of
Judge Pamela T. Greenwood

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October 14, 2004

The Honorable Christine M. Durham
Presiding Officer, Utah Judicial Council
P.O. Box 140241
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Dear Chief Justice Durham and members of the Judicial Council:

In the American governmental structure, the people are entitled to access to the workings of their judiciary. At the same time, in our modern age, people struggle increasingly for the simple right to be left alone. The Judicial Council charged the Committee on Privacy and Public Court Records with the task of re-examining the fulcrum on which to balance these important and sometimes competing rights.

I am pleased to submit to you our report and recommendations. Our recommendations for changes are progressive, but conservative. We remain in the mainstream of both law and policy, recognizing the basic strength of Utah's existing statutes and court rules. The challenge of our task has been to apply the fundamental principles that support our existing system--and our recommendations--in an ever-changing environment where virtually instantaneous communication is possible. We concluded that the principles endure; the balance, while difficult to achieve, is worth the effort. This new environment makes available in actuality to many that which has historically been available to only very few. This reality may appear troubling at first, but presents exciting new opportunities.

We remain committed to the principle of equal access to records, whether they be in electronic or traditional form. We recommend codifying by rule what our research shows to be the prevailing process, including notice to the press, for closing select records. We recommend, with some exceptions, that most personal identifying information included in individual records remain public. We recommend that aggregate records remain private, but that the Council adopt a simpler and more streamlined process for recognizing exceptions. We believe these recommendations will put the Utah courts on sound footing as we

move into a world of electronic case processing and electronic record keeping. But, as in any transition, the Judicial Council should remain alert to the changing environment and the need to adjust based on experience.

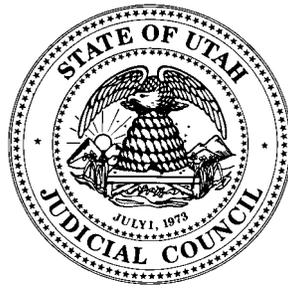
I extend my thanks to the Judicial Council for the opportunity to shepherd this important task to completion. I also extend my thanks to the members and staff of the Committee, without whose grasp of the big picture and understanding of minute detail this would not have been possible.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pamela T. Greenwood". The signature is fluid and extends across the width of the text area below it.

Pamela T. Greenwood
Committee Chair

Privacy and Public Court Records



Report
of the Ad Hoc Committee
Appointed by the
Utah Judicial Council

October 25, 2004

Invitation for Comments

The Judicial Council releases this report for the purpose of obtaining comments on the recommended policies and rules. This report is the product of public meetings, including testimony and debate, of the Committee on Privacy and Public Court Records. It does not necessarily represent the position of the Judicial Council.

This report is available for free at: http://www.utcourts.gov/Privacy_Public_Records/ or <http://www.utcourts.gov/resources/rules/comments/>. Click on the link to “Final Report”.

To submit comments, go to <http://www.utcourts.gov/resources/rules/comments/>. Click on the link to “Comments”. You will be prompted for your name, which we request, and your email address, which is optional. This is a public website and, if you do not want to disclose your email address, omit it. Time does not permit us to acknowledge comments, but all will be considered.

The deadline for comments is February 1, 2005.

You may also submit comments by writing to:

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(1) Introduction.

The Judicial Council appointed this committee to reexamine court policies on open and closed¹ court records in light of the *Guidelines for Public Access to Court Records*² adopted by the Conference of Chief Justices and the Conference of State Court Administrators. The judiciary has a series of rules³ regulating access to court records. The current rules, originally promulgated in 1992 following passage of the Government Records Access and Management Act (GRAMA) in 1991, pursue the same objectives as GRAMA and are modeled after that act. Although similar, the current and the proposed court rules contain many differences from GRAMA.

The current and proposed court rules are also very similar to the *Guidelines*. This is to be expected. The constitutional and common law underpinnings to open court records are of long standing. The fundamental principles and the overarching design will not vary significantly from one state to another. Our recommendations sometimes differ from the *Guidelines* in those areas in which the basic principles allow discretion and judgment to be applied.

We met 20 times in as many months in open and public meetings. We initiated the process by identifying as many perspectives on the issues as possible and inviting individuals to present those perspectives to the committee.⁴ The presentations are summarized in minutes which are available on the committee's web page.⁵ Although we do not in this report attribute arguments or points of view to people or groups, their arguments and points of view repeatedly influence our discussions and recommendations.

(2) The law.

(a) Open records.

The Utah Constitution directs the Judicial Council to administer the judicial branch of government, and within that sphere of authority is the duty to administer court records. This authority exists independent of GRAMA.

The constitutional law on access to court records is similar to the constitutional law on access to court hearings. Whether there is a constitutional right of access to a particular record depends upon the answer to two threshold questions, often referred to as the “experience and logic” test: “A ... right of access exists only if (1) there has been a tradition of accessibility to the information desired, and (2) public access would play a significant positive role in the functioning of the process in question.”⁶

¹ We use the terms “open” and “closed” advisedly. Because they are not terms defined by rule, as are “public” and “private”, we use them in the report to describe, generically, records that are accessible to the public and those that are not. In the recommended rules, we adhere more rigorously to the defined terms.

² <http://www.courtaccess.org/modelpolicy/18Oct2002FinalReport.pdf>

³ Code of Judicial Administration 4-202.02 through 4-202.12.

⁴ The list of presenters is in Appendix D.

⁵ http://www.utcourts.gov/Privacy_Public_Records/

⁶ *State v. Archuleta*, 857 P.2d 234, 237 (Utah 1993).

Hearings and records of the juvenile court fail these threshold questions, and thus there is no right of access under the United States Constitution or the Utah Constitution to juvenile court hearings or records.⁷

The constitutional right of access to criminal hearings is well established.⁸ In Utah, if the public has a constitutional right of access to a criminal hearing, the public also has a right of access to court records associated with that hearing under the Federal and Utah Constitutions.⁹

While neither the United States Supreme Court nor the Utah Supreme Court has squarely addressed the issue of a constitutional right of access to civil hearings and records, the policies and theoretical underpinnings supporting a constitutional right of access to criminal cases apply equally to civil cases. Applying the “experience and logic” test to determine whether a constitutional right of access exists, one must conclude that civil cases have historically been public and that access plays at least as significant a role in civil cases as in criminal cases. The jurisdictions that have dealt with the issue have held that there is a First Amendment right of access to civil trials, pretrial hearings and documents filed in civil cases.¹⁰

The committee proceeds from the conclusion that access to court records associated with a hearing, both civil and criminal, must conform to constitutional principles. For court records not associated with a hearing, there remains a common law qualified right of access. Under the common law, the court balances the interests involved, just as in the constitutional analysis, but the standard for closing a record is good cause, which is much lower than the constitutional standard.¹¹

(b) Closed records.

Although we deal exclusively with open and closed records, it is useful to understand the standards and procedures by which a judge can close a court hearing.

⁷ *In the Matter of N. H. B.*, 769 P.2d 844 (Utah Ct. App. 1989).

⁸ *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 14, 92 L. Ed. 2d 1, 106 S. Ct. 2735 (1986) (Press Enterprise II). *Society of Professional Journalists v. Bullock*, 743 P.2d 1166 (Utah 1987); *Kearns-Tribune Corp. v. Lewis*, 685 P.2d 515 (Utah 1984).

⁹ *State v. Archuleta*, 857 P.2d 234 (Utah 1993).

¹⁰ *Westmoreland v. Columbia Broadcasting System, Inc.*, 752 F.2d 16, 22-23 (2nd Cir. 1984) (trial); *Publicker Industries, Inc. v. Cohen*, 733 F.2d 1059, 1067-1071 (3rd Cir. 1984) (pretrial hearing); *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988) (documents); *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1179 (6th Cir. 1983) (documents); *Continental Illinois Securities Litigation*, 732 F.2d 1302, 1309 (7th Cir. 1984) (pretrial hearing); *In re Iowa Freedom of Information Council*, 724 F.2d 658 (8th Cir. 1984) (trial); *Newman v. Graddick*, 696 F.2d 796 (11th Cir. 1983) (trial).

Of particular note is *NBC Subsidiary (KNBC-TV), Inc. v. The Superior Court of Los Angeles County*, 20 Cal. 4th 1178, 980 P.2d 337 (Cal. 1999), in which the California Supreme Court thoroughly explores the constitutional principles supporting access to criminal hearings and extends those principles to civil cases. The court finds “that, in general, the First Amendment right of access applies to civil proceedings as well as to criminal proceedings.” The result in the case ultimately is based on a state statute requiring court sittings to be public, which the court interprets in light of the constitutional principles. Utah has a similar statute. Utah Code Section 78-7-3.

¹¹ *Nixon v. Warner Communications*, 435 U.S. 589, 55 L. Ed. 2d 570, 98 S. Ct. 1306 (1978). *State v. Archuleta*, 857 P.2d 234 (Utah 1993).

The right of access to hearings is qualified, and access can be denied if there are sufficient countervailing interests and if proper procedures are followed. The burden is on the interests favoring closure. The constitutionally mandated procedure for closing a court hearing is well established.¹²

- 1) A party seeking closure must serve advance written notice of a closure motion upon the opposing party, the court, and any press representatives who have requested such notice in that particular case.
- 2) A closure hearing must be held, and that hearing must be open to the greatest extent possible.
- 3) Any responsible person who wishes to participate in a closure hearing may do so to the extent consistent with orderly court procedures.
- 4) The court first determines whether there is a qualified right of access. There is a qualified right of access if (a) there has been a tradition of accessibility to the type of hearing at issue, and (b) public access would play a significant positive role in the functioning of the process.
- 5) If there is a qualified right of access to the hearing, the court determines whether there are sufficient countervailing interests supporting closure, such as a substantial probability of prejudice, that outweigh the interests favoring public access.
- 6) If prejudicial information must be disclosed during the hearing on the merits, the court may close that hearing only after first attempting unsuccessfully to procure a voluntary nondisclosure agreement among the parties.
- 7) The court must determine that there are no reasonable alternatives to closure sufficient to protect the countervailing interests.
- 8) The court may close only that portion of the hearing on the merits as is necessary to protect any countervailing interests.
- 9) If closure is necessary, the transcript of any closed proceeding should be released as soon as it is possible to do so without prejudice to the interests that justified closure.
- 10) The order of closure resulting from the closure hearing must be supported by written findings and conclusions.

Since court records are public unless classified otherwise, we believe the same fundamental procedures adopted by the Utah Supreme Court in closing court hearings should apply to closing public court records. Specifically, a party seeking to close a public record must serve advance written notice of a closure motion upon the opposing party, the court and any press representatives who have requested notice in that particular case. The judge must:

- 1) Conduct a hearing when a motion to close a record is contested, when the press has requested notice of closure motions in that particular case or when the judge decides public interest in the record warrants a hearing;
- 2) Identify and analyze with particularity the court record, the interests favoring access and the interests favoring closure;
- 3) Apply the constitutional standard or the common law standard that applies in the circumstances; and

¹² *Society of Professional Journalists v. Bullock*, 743 P.2d 1166, 1177 and fn. 15 (Utah 1987) citing *Kearns-Tribune Corp. v. Lewis*, 685 P.2d 515 (Utah 1984).

- 4) Make written findings that the interests favoring closure outweigh the interests favoring access and that there are no reasonable alternatives to closure sufficient to protect the interests served by closure, such as redaction, etc.

(3) *Guidelines for Public Access to Court Records.*

The Conference of Chief Justices and the Conference of State Court Administrators adopted the *Guidelines* in October 2002. We used the *Guidelines* as a resource for identifying issues and the many factors to be considered in resolving those issues. We used the *Guidelines* as a template for organizing the debate but did not consider ourselves bound by the *Guidelines*' conclusions. Although the *Guidelines* present and justify sound conclusions, there are areas in which we reached a different consensus. We did not use the *Guidelines* for organizing the proposed rules. For that we retained the traditional organization and format of the Judicial Council rules.

(4) *Interests served. Guidelines Introduction & Section 1.00.*

Constitutional law and the common law establish the right of access to court records, but it is helpful to understand the interests served by those legal principles. GRAMA recognizes generally the advantage of access to information concerning the conduct of the public's business: just knowing what one's government is about is a decided benefit. Open records educate the public about the workings of government and the decisions being made on the public's behalf. Open records contribute to informed debate. Open records help to hold officers and employees accountable, increasing public confidence. Open records give the world notice of important claims, rights and obligations. Open records provide the raw material for independent research on improving government policy. This list is by no means exhaustive. In particular circumstances there may be many more interests served by open records.

The interests served by closing records are equally compelling. Perhaps foremost on the list is personal privacy, a right also grounded in our constitutions. What is the right to privacy? Paraphrasing the Utah Supreme Court: The right to privacy extends to those aspects of one's life regarded as so personal as to belong to oneself and to be of no proper concern to others. The right protects against intrusion not only into things which might result in harm, but also into things which might merely violate one's pride in keeping one's affairs to oneself.¹³

Interests other than personal privacy may warrant closing a court record. Records that put the public-at-large, rather than a specified person, at risk of harm might be closed. As might records in which one has a property interest that would be lost or devalued if opened to public view. Closed records may promote the rehabilitation of offenders, especially youthful offenders; after justice has been served by accountability, justice might be further served by social forgiveness. Many people who come before the court are vulnerable or not directly part of the action – victims; witnesses; children; jurors – and their privacy interests may rise above the rest. Again, this list is not exhaustive, but it illustrates the reasonable and important interests served by selectively closing court records.

¹³ *Redding v. Brady*, 606 P2d 1193 (Utah 1980).

The interests favoring closure are particularly compelling in our modern age. The proliferation and combination of databases, the elephantine memory of computers, the heightened risk of identity fraud, the quest for personal and public security. These factors and others give the public pause; give the public, with its fundamental interest in open government, reason to believe that governmental accountability must be achieved without sacrificing an equally important right such as privacy.

(5) Access to open records.

(a) Access by whom? *Guidelines* Section 2.00.

The public has access to open court records under current court rules and the *Guidelines*. The public is, in essence, anyone and everyone. Once a record is identified as open, the identity of the requester and the purpose of the request are irrelevant.

The *Guidelines* do not discuss who may access closed records. To fully administer court records, court rules need to regulate access to closed records. This is discussed more fully in Section (7)(a).

(b) What is access? *Guidelines* Sections 3.20; 3.30.

Current court rules and the *Guidelines* have similar definitions for “access” to a record. The *Guidelines* have separate definitions for “access” and “remote access”. We have combined these two so that “access” for all purposes means to inspect and copy a court record. The means by which this is done will differ depending on whether access is electronic or over-the-counter, but, provided the functionality is satisfied in both circumstances, there is no need for two definitions.

(c) Access to what? *Guidelines* Section 3.10.

Current court rules and the *Guidelines* define “record” to include, interchangeably, a discrete thing (such as a photograph, a file or a document) and information contained in that thing (such as name, address, medical information or financial data). This interchangeability may create difficulties when a public document contains private information, but the term “record” needs to be broad enough to include both. When a complaint is filed, the document itself is a record, the names of the parties and attorneys are records, the description of events is a record, the docket entry reflecting the filing is a record.

There may be multiple iterations of a record. For example, the record of a hearing may exist as a digital audio file, a court reporter’s stenographic notes, a printed transcript and the word processing file of that transcript. The printed transcript may be the only permissible form of the record in an appeal, but the other versions are no less records, which may or may not be open.

The term “record” should include evidence. The Utah Supreme Court has held that there is no constitutional right of access to evidence but does recognize a common law right.¹⁴ The court

¹⁴ *State v. Archuleta*, 857 P.2d 234 (Utah 1993).

is the trustee of evidence, not its owner, and the integrity of the evidence is necessary to the integrity of the trial. The judge therefore needs the discretion to restrict access to evidence (both inspecting it and copying it) to ensure its security and a fair trial, but the initial presumption should be to permit access.

The term includes records for the administration of the judiciary as well as the records associated with a case. The term “record” should exclude personal notes and drafts. Notes belong to the person who prepared them. They are not a record belonging to the court at all. They organize the preparer’s thoughts. Similarly, drafts organize the preparer’s thoughts, and the transition from personal notes to drafts is ill-defined. Earlier versions of drafts are often deleted in the act of preparing a later version. Drafts have no operational purpose once a final version is prepared. Both notes and drafts should be excluded from regulation by court rules. The *Guidelines* include notes and drafts within the definition of a court record and then classify them as closed. To that extent we decline to follow the *Guidelines*; we prefer the policy of the current court rules and GRAMA which exclude notes and drafts from the definition of record.

(d) When is access permitted? *Guidelines* Section 5.00.

The times for access should be as great as reasonably possible. For access at the courthouse, that means normal business hours. For electronic access, that means all hours during which the system is operating. It does not necessarily mean continual access. Planned and unplanned downtime for any number of reasons prevent continual access.

(6) Electronic records. *Guidelines* Section 3.40.

(a) Introduction.

It is impossible to evaluate access to records without including a discussion of the impact of computers and internet communications. But in recommending whether a court record should be open or closed, we focus on the nature of the record, not the medium in which it exists or the medium in which it is moved.

The courts have had electronic records for at least 25 years. What is new is electronic processes and electronic communication. Records, be they open or closed, have been sitting quietly on court computers for many years. Documents, dutifully printed and filed, have had an obscure electronic equivalent for as long. Internet communication has created the ability to move data and documents at near the speed of light, and closely following that ability has come demand.

Commercial, professional and personal transactions increasingly rely on the internet, and the courts cannot avoid this technology. With it come opportunities and risks. The internet lowers barriers to access and makes accessible in a very real sense records that have historically been open, just difficult to get to. This is to the public good. Given the nature of litigation, among the many open court records is a lot of personal and sensitive information. But sensitive information is not necessarily private.

We do not, as do the *Guidelines*, explore which records should and should not be accessible over the internet. Not every record need be published on the court's website, but we make our recommendations fully recognizing that any open record may someday be accessible electronically.

(b) Whether to post records to the court's website.

Increasingly, the courts use the internet for internal communication and case management. The new juvenile court case management system, CARE, is a web-based system using a secure network to file, store, retrieve and move records. Were they open records, world-wide public access would be a modest additional cost. Until electronic procedures such as these become the norm, posting records to the court's website remains a labor-intensive process.

Using methods requiring significant human attention, the district court and the appellate courts feed many electronic records, such as case data, dockets, calendars, orders and opinions to the court's website. Since filings remain mostly on paper, to post records prepared outside the courts requires creating an electronic file of a paper document and uploading the file to the website.

So long as the court's website remains merely a place to put things, the courts will face the issue of whether it's cost effective to produce an electronic image of what has historically been a paper record because the website is separate from court management. Eventually, the court's website will be much more than a repository; it will be an integral part of managing cases.

As electronic procedures, such as electronic filing and case management, grow, electronic access will become the norm simply because that is the medium in which the records exist. This new environment creates additional incentives to carefully consider which records should be open and which closed based on the nature of the record.

The federal district courts have recently committed to filing pleadings electronically using Adobe's portable document format (pdf), and these pleadings are routinely available using the internet. Utah's efforts into electronic filing are not as well funded as the federal effort, and the Utah courts have committed to a model that includes electronically exchanging data as well as documents. Consequently, electronic documents in the state courts, while growing, remain relatively modest. We anticipate that electronic filing in the state courts will someday come of age, and we remain committed to the principle that electronic records will be available electronically, provided they are public records. But how to pursue electronic filing and whether current manual procedures supporting electronic records are cost effective are decisions best left to court managers, and we do not make any recommendations.

(c) Data elements.

The data elements recorded in the courts' computers are records just as much as pleadings and other papers. As such, the public should have access to all data elements, except those that

are not open records. The implications for the courts are significant, but no more so than for simultaneously managing open and closed records generally.¹⁵

The court's websites, both the Xchange subscription service and the free public website, are designed so the most frequently requested information is easily found. Routine web information will evolve as demands change. The AOC should stay attuned to its customers' needs and include on the website the information that is requested routinely. Electronic public records not posted to the web should be available upon request. The AOC should post to the website a list of the electronic data elements recorded in the various case management systems with an indication of which are public records.

The AOC should review with judges, clerks, probation officers and others the data elements now included in the case management systems to determine whether all elements are necessary. If information, especially sensitive personal information, is not used in managing cases, it should not be acquired. Limiting data elements to information that is truly necessary will reduce the burden on clerks and protect the subject of the record. The best way to prevent inadvertent disclosure is to not acquire the information in the first place.

(d) Aggregate data sets. *Guidelines* Sections 4.30; 4.40.

Current court rules and the *Guidelines* use the terms bulk records and compiled records and treat them separately. We have used the term "aggregate data set" as more descriptive of the records involved. Press reports and editorials based on a working draft of this report have misinterpreted our recommendations, claiming we recommend access to public paper records while improperly recommending against access to public electronic records. In other parts of this report we recommend equal access to all public records, regardless of format. That is the law. It is a sound law. Although the principles we discuss regarding aggregate records also apply equally to paper and electronic records, there is little probability of compiling paper records. The issues exist because electronic databases exist. Our ultimate recommendation to keep some aggregate records private does not distinguish between paper and electronic records, but between single and multiple records and the unique nature of the latter.

The *Guidelines* recommend that aggregate records be open to the same extent that the individual records are open. Under current court rules, aggregate records containing personal identifying information are closed, except for specified indexes by which the public can search for individual records.¹⁶ This model has served the court since 1996, and we recommend that it continue with some modifications.

The court's policy has been to support access to electronic records through its Xchange program. Within the last year, that program has been upgraded to a web-based application allowing even greater access, usability and information. Using several indexes, which do compile records, to help find individual records of interest, the public can then inspect those individual records in detail and download them as needed. The individual records contain only

¹⁵ See Section (13).

¹⁶ CJA 4-202.12. The indexes are: party name, attorney name, file date, case number, case status, civil case type or criminal violation, civil judgment or criminal disposition, and daily calendar.

public data. They include the limited electronic documents that exist. The court's policy has been to support research of the court as an institution by public access to aggregate records from which personal identifying information has been removed. We recommend that these policies continue.

These policies are modeled after traditional access to paper records. Historically, one could walk into any courthouse and inspect case files. Indeed, one still can. Given the medium – paper – access is necessarily limited to one case at a time. Historically, courts have had a variety of indexes – now computer-generated, then 3x5 cards – to help clerks and the public find records.

Aggregate records – the database – is itself a record, and whether it is open or closed is determined by the same balancing of interests as for individual records. The United States Supreme Court has held that privacy interests are at their highest when the record being considered is a compilation of other records, and that the compilation can be closed even though the individual records are open.¹⁷

We do not recommend that all aggregate data be closed. To the contrary, we recommend that a great deal of aggregate data be publicly available: more than is currently the case and with an easier process for making even more data available in the future. The proposed rule restricts only aggregate data that contains personal identifying information, even if that information is otherwise available in single records. We further recommend that the indexes into the database remain public, and that there be a streamlined process for adding indexes to those that already exist. These recommendations represent a conservative but significant step forward in increasing public access while remaining sensitive to privacy concerns.

Why limit aggregate data? Aggregate data contends with at least two privacy interests that are limited or absent in individual records. First, aggregate data brings together a large amount of information for some necessary purpose of the courts. Those who provide information to the courts, voluntarily or involuntarily, can be fairly said to anticipate that the courts will use the information for those purposes. They cannot be fairly said to anticipate other uses to which the information might be put once released into the public domain.

Second, aggregate data facilitates the compilation of a “dossier” on individuals that would be difficult with individual records. This is the lesson of *United States Department of Justice v. Reporters Committee For Freedom of the Press*, cited above: compiling individual public records into one neat file introduces a quantitatively and qualitatively different privacy interest that merits separate consideration.

The trend in the private sector is to increase protection against both of the above abuses, either through full disclosure or opt-in/opt-out protections. Unregulated access to the court's database goes against that trend, and threatens to add to the courts' principal role as a forum for resolving disputes the role of a clearinghouse for information increasingly unavailable from private sources. Unregulated access to aggregate data is a significant departure from the status quo, one that threatens to open the floodgates to an unknown future in which – even as financial

¹⁷ *United States Department of Justice v. Reporters Committee For Freedom of the Press*, 489 U.S. 749; 109 S. Ct. 1468; 103 L. Ed. 2d 774; 1989 U.S. LEXIS 1574 (1989).

institutions, insurance companies, health care providers and other private entities restrict access to personal information – court records become the exception that swallows the rule of privacy.

The most compelling argument against protecting aggregate compilations of otherwise public records is the obvious one: the individual records are public. This argument, while persuasive at first blush, ignores the very real benefits of “practical obscurity” that exist when certain public information is available only in discrete, individual units, be they paper or electronic. Practical obscurity may well turn out to be nothing more than a quaint, Luddite notion, but, as things stand today, practical obscurity helps maintain a delicate balance between public access to court records and at least minimal personal privacy.

We conclude that privacy interests in aggregate records remain superior to public interests when, as with court records, access to the individual records is fully supported. The policy of allowing access to aggregate data from which identifiers have been removed should continue. We recommend adding amount in controversy to the existing list of indexes. At the conclusion of our meetings, we discussed whether the name of the judge should be one of the indexes, but decided to remain silent on the question because we did not have time to fully consider it. We recommend that the Judicial Council adopt a process by which one can request additional public indexes without the time-consuming burden of amending a court rule. Additional indexes should be created unless there are substantial interests favoring closure that outweigh the interests favoring access.

(7) Classifying court records. *Guidelines* Sections 4.10; 4.20; 4.50; 4.60.

(a) Classification categories.

GRAMA establishes three categories of closed records: private, controlled, and protected. Court rules divide each of these into administrative and judicial categories and add four more classifications: juvenile legal, juvenile social, expunged, and sealed. That is a total of ten closed-record classifications. Each classification determines who has access to records of that class. In addition, statutes other than GRAMA and even a few court rules classify select records as something other than public.¹⁸

(i) Sealed, expunged, juvenile.

“Sealed,” as a closed class, should be retained. It is a long-standing classification with a special place in case management. If a record is sealed, the court denies even itself access to that record. “Expunged,” as a closed class, should be eliminated. Criminal and juvenile records will continue to be expunged under existing standards and procedures. Expunged records will continue to be sealed, just as adoption records are sealed, but there is no need for a separate classification.

“Juvenile legal” and “juvenile social,” as closed-record classes, should be retained. Although most juvenile court records are not available to the public, they are shared extensively with other

¹⁸ Appendix E contains an extensive, although probably not exhaustive, list of records to which access is regulated by statute or rule.

governmental and non-governmental entities for purposes of investigation, counseling and treatment. These purposes can be achieved only if officials are given designated access.

(ii) Administrative, judicial.

The distinctions between administrative and judicial records should be eliminated. Access policies apply equally to records associated with a case and records associated with court administration. Some records are easily classified as case records; others just as easily classified as administrative. But for many records the distinction is less clear. For example, Rule 4-202.02(1) describes arrest warrants and search warrants as administrative records, yet most people probably think of them as case-related. Distinguishing between administrative and judicial records is useful for establishing the procedures for requesting access, for requesting that a record be classified, or for appealing a denial of either. However, for the purpose of determining who has access, the distinction between administrative and judicial records serves no purpose: the same people should have access, regardless.

(iii) Private, controlled, protected.

The classifications of “private” and “controlled” should be collapsed into a single “private” category. The purpose of the controlled classification is to deny access to the subject of medical records.¹⁹ This objective does not survive passage of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the ensuing federal regulations. HIPAA not only establishes privacy standards for medical records, but also guarantees access to the record by the subject.²⁰ The court may not be an entity covered by HIPAA, but there is no reason for the court to take upon itself discretion denied by federal law to those in the medical profession.

The “protected” classification should be maintained. The purpose of the protected classification is to withhold the record from the subject of the record because the interest protected by closure runs to some other person.²¹

(b) Open records.

(i) Designated public records.

Despite the law that records are public if not expressly classified otherwise, GRAMA and current court rules contain extensive lists of public records. A list of public records is helpful to identify records that in most circumstances are closed or information that is sensitive but public nevertheless. Although logically there may be no need, such a list helps avoid confusion. In this section we summarize a few examples.

¹⁹ In addition to medical records, CJA 4-202.02(6) includes custody evaluations and the record of a closed hearing as controlled records.

²⁰ 45 CFR 164.524.

²¹ GRAMA permits the owner of a mobile home park to access protected records. The owner of a mobile home park should not have access to protected court records unless the person also meets some other qualification for access.

(ii) Record of hearings.

The record of a public hearing is public. This presents a difficult issue with testimony that would be closed if it were presented as a record rather than as evidence. Just as it is difficult and time-consuming to redact private information from a public document, so is it difficult to redact testimony. Once said, it cannot be unsaid. The rules of evidence and the judge's sound judgment determine whether sensitive information is admissible. Constitutional principles determine whether admissible, sensitive evidence can be presented *in camera*. But the record of testimony in a public hearing is a public record absent a law or judicial decision to the contrary.

The record of a closed hearing, including *in camera* testimony, is not necessarily a closed record. Indeed, under constitutional principles, the record of a closed hearing must be opened to the extent that it can be without prejudice to the interests that justified closure.²² If the record of a closed hearing is requested, the judge must determine whether the record can be released.

Utah Rule of Criminal Procedure 15.5 describes a process by which the testimony of a child can be taken in other than the traditional courtroom. The rule does not regulate access to the record of the testimony. We recommend that this process be considered the equivalent of an *in camera* hearing and the record of testimony be closed, subject to the judge determining whether it can be released.

Child protection hearings have historically been closed to the public. Effective July 1, 2004, the Legislature changed the statute to provide for open hearings. The records associated with the case remain closed and the record of the hearing is available only by court order.²³ Because of its novelty, we make no recommendations regarding the record of child protection hearings. It's a new process created by statute that is different from the constitutional law of access to records generally (access to records associated with the hearing and access to the record of the hearing). We noted earlier that one does not have a constitutional qualified right of access to juvenile court records. Whether a legislative declaration of open hearings is sufficient to create a new constitutional right may need to be decided by the Supreme Court.

(iii) Record requests.

Requesting a record is itself a transaction with the court of which a record is sometimes made. Current court rules require that a request to access a court record be in writing unless waived by the custodian of the record. Given the number of record requests received daily, clerks of court routinely and appropriately waive the writing requirement. Processing so many written requests would be an administrative burden out of all proportion to any benefit to record controls. However, when a written record of the request does exist that record should be public. Currently, the law does not designate the record of a request as private, and so it is presumably public. The subject of the record being requested has an interest in knowing who has accessed the record, and the public has an interest in knowing which record requests are granted and which denied.

²² See Section (2)(b).

²³ Utah Code Sections 78-3a-115.1 and 78-3a-116.

(iv) Public notice that a closed record exists.

The *Guidelines* conclude that the existence of a closed record should be a public fact, provided the record can be identified without harming the interests served by closure.²⁴ This policy is sound. Neither GRAMA nor court rules require the court to publish a statement describing closed records, but the policy is satisfied by the rules, which are public, that identify closed records. There should be no secret cases. Even records sealed by protective order should be identified by the name of the case and of the documents being sealed. For adoptions and expunged convictions, in which the privacy interest being protected is the name of the person, the existence of the case might properly be secret.

(v) Discovery.

A discovery record filed with the court is a court record and should be treated as open or closed under the general access rules. If there is no exception, the parties should have the opportunity to show why the record should be closed.²⁵ Usually, however, discovery records are not filed with the court and so are not court records. Whether, under what circumstances, and by whom discovery records not filed with the court are accessible are questions outside the scope of this report.

(vi) Records filed with motion to close; Settlements.

Sometimes a party will file a record for which the party requests protection against disclosure even though the record would otherwise be open. In such circumstances, the party should file a motion to classify the record as closed and the court should keep the record confidential until a judge has ruled on the motion.

A common example of this is financial records. Financial information in court records is routine and pervasive. Financial information is filed in a variety of contexts and in a variety of formats. Often financial information goes to the very core of the decision in a case. Although GRAMA permits the financial records of an individual to be classified as private, existing court rules do not do so, and we recommend this policy be continued. As with any other record for which there is no express exception, a party may file a motion to have the record closed.

Similarly, if a claim is settled, the records in the case should be treated as open or closed under the general rules: presumed open unless an exception applies. If there is no exception, the parties should have the opportunity to show why the records should be closed.

(c) Closed records.

For court records that are not now open, the Judicial Council, Supreme Court or Legislature has determined that the interests favoring closure prevail over the interests favoring access. The many records that are not now open, and for which we recommend no change, are listed in the recommended rules. In this section we summarize a few examples.

²⁴ Section 4.10.

²⁵ *Carter v. Utah Power & Light Company*, 800 P.2d 1095 (Utah 1990).

(i) Personal identifiers.

Court records are widely used by law enforcement, other governmental agencies and in commerce. The collateral use of court records is so widespread that inadvertent misidentification can cause as much harm to a person as fraudulent misuse of identification. The courts are sensitive to the risks posed by public access to sensitive identifying information, but this must be balanced against the genuine public need for data to confirm that the record in hand is that of one person and not another.

A party's name and address are essential for processing a case. The information is required with each filing and is public.²⁶ The privacy interests are minimal in most circumstances. Many people list this information in the telephone book. Date of birth and social security number can be used for identity fraud but also can be used to control identity confusion. Telephone numbers and email addresses may make contact with the individual easier but serve no public purpose. Account numbers, PINs and passwords pose significant risk of damage to the person and serve no public purpose. These examples of records from which a person can be identified are by no means exhaustive, but show the very sensitive nature of such information.

The Legislature requires that a judgment creditor provide to the court the social security number, driver's license number and date of birth of the judgment debtor. The records are public.²⁷ Date of birth is probably the least intrusive of the three. Disclosure of one's social security number is more intrusive of privacy interests. Many commercial organizations are moving away from using social security number as an account number, but a social security number remains a principal means in commerce and in government of confirming identity. Drivers' licenses also are commonly used as identification in commercial transactions, especially in face-to-face consumer transactions.

The courts do not uniformly record a party's date of birth, social security number or driver's license. The information appears most frequently in criminal cases, family law cases probate cases, and when judgment is entered in a civil case. Most of the identifying data about a party acquired by the courts serves the interests of others. The courts have little or no need for the data. We have recommended that the courts review the data recorded during the history of a case and determine how much is genuinely needed.

Of the identifying information that is required, the courts should make public a party's name, address, date of birth, driver's license number and the last four digits of a party's social security number. This information is more than sufficient to protect against identity confusion. Admittedly, the risk of identity fraud increases. The courts should develop a sensitive information sheet for the full social security number and any other required information that is not public. Once recorded in the computer the information sheet should be destroyed.

For information not required by the court, the rules should place the responsibility clearly on the filer to prepare the pleading without the information or, if the information is already present,

²⁶ The petitioner's address in a cohabitant abuse action is "not public". Utah Code Section 30-6-4.1(3).

²⁷ Utah Code Section 78-22-1.5; CJA 4-202.12.

to redact the information. For example, if child support is at issue, the parties must file verification of income. This often consists of pay stubs or tax returns, both of which contain the person's social security number. In this context, the courts need verification of income, not social security number, and it could be redacted. Parties should redact information not needed in the case that is classified as closed or is a clearly unwarranted invasion of personal privacy. The filer should exercise caution when filing documents that contain personal information such as:

- Personal identifying information;
- Medical information, diagnosis, and related records;
- Employment history;
- Individual financial information; and
- Proprietary and/or trade secret information.

Traffic citations present a difficult situation. Citations routinely contain information not required by the uniform citation statute,²⁸ including driver's license number, social security number, date of birth, telephone number, and a physical description of the driver. The citation is the charging document in nearly all criminal infractions and many misdemeanors and so must be public. GRAMA and court rules require the courts to separate open from closed records,²⁹ but the courts simply do not have the resources to redact telephone numbers and social security numbers from the tens of thousands of citations filed annually. Thus, this information will be available from the case file, which is public, although the information itself is private.

The name, business address and telephone number of lawyers have historically been public and the Utah State Bar treats them as such. They should remain public records. But the identification of other non-parties, such as victims, witnesses and jurors should include only the person's name.

(ii) Evaluations.

Much testimony was given to protecting a child from a parent misusing a custodial evaluation. Similarly, we heard arguments that presentence investigation reports or psychiatric or psychological evaluations should be withheld from a party because of the sensitive information they contain.

Judicial decisions frequently rely on very sensitive information. Information that in some professions might not be shared with the other people involved. The court's do not enjoy that luxury. Medical examinations, psychiatric and psychological evaluations, custody evaluations, presentence investigations: all these and more are records upon which the judge relies. When filed, court rules can protect such records from public scrutiny but not from scrutiny by the parties. Due process does not allow it.

The physician, psychologist, investigator and evaluator need candid responses, which are promoted by confidentiality. Whether one can be compelled to produce one's notes of an interview or to testify as to the statements of another are questions governed by the rules of

²⁸ Utah Code Section 77-7-20.

²⁹ Utah Code Section 63-2-307; CJA 4-202.09(6).

discovery and the rules of evidence. They are not court records and so outside our scope. When filed with the court, the report may not be public, but it cannot be denied to the parties. The court should look to control misuse through other rules or through sanctions in a particular case.

Medical examinations, psychiatric and psychological evaluations, custody evaluations, presentence investigations, reports from the guardian ad litem and from the Division of Child and Family Services, and similar sensitive records should be classified as private. The Administrative Office of the Courts should take special steps to educate lawyers and the practitioners who prepare evaluations and reports about the implications of this recommendation.

(iii) Delinquency records.

Most juvenile court records are not public. Juvenile court staff presented a recommendation that the final order in delinquency cases be accessible by the victim, in order to help bring closure, even though the order might not be public. We agree. How a victim deals with a crime is a very personal decision. Some may not want to know the punishment imposed on the perpetrator, but the information should be available to those who do.

(iv) Records of children.

The records of minor children in the district court have historically been treated the same as those of adults. We recommend that this policy continue. This would of course include the new protections recommended by these rules. Typically, minors are not parties in district court actions and thus, under these recommendations, only their names would be public. In addition, the parties should have the opportunity to identify the children in pleadings by initials and other references sufficient to identify the children for the court and the parties, but not the public.

(v) Utah Code Section 30-3-4

Utah Code Section 30-3-4(2) permits the court to seal a divorce file other than the decree upon motion of a party. This statute attempts to protect the privacy interests of people compelled to resolve family disputes in court, but with mixed results. Some parties know to seek this protection; others do not. The statute expressly excludes from the scope of the order subsequent enforcement and modification proceedings, but is silent on whether those records can be sealed by a later motion. There is no similar statute for cohabitant abuse, separate maintenance, or paternity cases, although they produce many of the same records as a divorce. The decision to seal is discretionary, but the statute offers no standards on which to make the decision. Although sealed, the court, the parties and sometimes the Office of Recovery Services may access the file.

Although records in family law cases are sensitive, the respective rights and responsibilities of the parties are as much served by public scrutiny as in general civil litigation. On the other side of the coin, the privacy interests in family law cases in district court are much the same as in juvenile court.

Better protection of closed records under existing law and these recommendations will go far to protect the privacy interests of the parties. If these policies are not sufficient in a particular case, a party should have the opportunity to move that the file be closed. However, the Judicial Council should seek legislation to correct the deficiencies in the statute. Because of the generally sensitive nature of all family law records, the standard for closing a family law record should be less than the usual standard in GRAMA (“compelling interests”),³⁰ but the interests should be substantial. The court should follow the procedures outlined in the proposed rules. The remedy should be available in family law cases generally and not just divorce. Rather than seal the file, the motion should be to classify the file, other than the decree, as private. This will allow the records to be shared with other governmental entities and with researchers upon special request.

(8) Exceptions; appeals. *Guidelines* Section 4.70.

A list of closed records established by rule is necessary for administrative convenience. No matter how carefully drawn, however, a list of closed records cannot be exhaustive, and there will always be exceptions. There remains a need for a process, other than the Judicial Council’s rulemaking process, by which a record can be classified as closed and a closed record released for special purposes.

(a) Interests

The interests to be considered – in an original determination to classify a record as closed, in considering a request for access to a record or in an appeal of either – should be specific enough to give the decision maker guidance, but should enable significant latitude to consider interests raised by the parties in the context of the case at hand.

As interests to be considered, the *Guidelines* list personal and public safety, privacy and proprietary business information. These are often reasons given for closing court records, but personal and public safety weigh in favor of open records when, for example, closing the record would limit information about a continuing danger to individuals or to the public.

Other interests that might be considered are those discussed in Section (4). In addition, whether the information is privileged or is attorney work product might be a factor. The decision maker might also consider the relevance of the record to the inquiry, the purpose of the person seeking the record, whether access or closure may cause an unfair advantage or harm, and whether the information is available from other sources. Even these additional factors are intended only as examples of the many interests that may influence decisions on access to records.

(b) Closure orders.

The *Guidelines* contain a process by which a person can request that a court record be classified as closed. There is no comparable provision in the Utah court rules. Utah Rule of Civil Procedure 26(c) permits the judge to enter a protective order to seal discovery records. Closure

³⁰ Utah Code Section 63-2-405.

orders for settlements are common, although there's no express authority for them. GRAMA permits a court to order "confidential treatment of records for which no exemption from disclosure applies," but the provision is part of the process for appealing the denial of a request for records, and its wider applicability is open to question.³¹

The stipulation of the parties, while perhaps sufficient to raise the issue, is not sufficient to close the record. We have recommended earlier that the court should enter findings and conclusions sufficient to support a closure order.³² For records associated with a court hearing that would be a constitutional standard and for other court records a common law standard. The focus should be on particular records and the interests surrounding them. The closure order should be a public record.

This is nothing more than a recommendation to apply the existing law and so of little controversy. Under the current practice, however, settled cases are sometimes sealed and blanket closure orders sometimes issued based largely on the stipulation of the parties and without significant judicial oversight. The press of business and the lack of resources combine to prevent the judge from acting as gatekeeper to protect the public's interests. So, while our recommendation may not reflect a change in policy, it does represent a change in practice.

We have included in the recommended rules a process for closing an otherwise open record. This might include the entire case file or just select records. The process is not difficult, but it is time-consuming. In addition to adopting the proposed rules, the courts should ensure training for judges on the process and the substantive law for closing court records.

(c) Select access to private records.

The *Guidelines* and current court rules permit the court to allow select access to closed records subject to conditions if the interests served by the request for access outweigh the interests favoring closure. The typical example is research for which access to closed records is necessary. We recommend that the term "research" be broadly applied and not limited to academic research. The decision to permit access to closed records in some circumstances and not others necessarily involves discretion. Given that access could be denied everyone, permitting access to those who meet established standards and comply with established conditions is sound policy.

(d) Appeals.

An appeal process is necessary to protect the public interest if a record is improperly classified as open or closed. The *Guidelines* and current court rules contain such a process. Rules governing the administrative appeal process should more clearly establish the authority and discretion of the state court administrator and the records committee to balance the competing interests in the circumstances of the particular case and allow access even though the record is properly classified as closed or closure even though the record is one that is usually open.

³¹ Utah Code Section 63-2-405.

³² See Section (2)(b).

(9) Fees. *Guidelines* Section 6.00.

All of government is funded by some combination of general tax revenue and fees charged to users of government services. Access to records is so integral to the mission of the judiciary that general fund appropriations are necessary to reflect the broad public benefit. But access benefits primarily the requesting party, and fees are most legitimate for services that benefit an individual or small segment of society rather than society at large.

Fees are in the nature of a tax, which is a legislative prerogative. In GRAMA, the Legislature has delegated that authority to the Judicial Council. The Council has established a fee schedule for access to records.³³ The Council has only recently amended that rule to reflect the upgrades to Xchange, and we see no need for further changes.

Currently, GRAMA limits fees to an amount sufficient to recover costs, and the courts have made every effort to provide a good service for a reasonable fee. During the 2004 General Session, the Legislature referred to committee HB 287 by Representative Douglas Aagard, which would require the courts and government agencies to charge commercial value for records that have a commercial value. The courts should comply with the decision of the Legislature on what is essentially a tax issue.

The judiciary should continue to waive its fees in the circumstances described in the current rules.

(10) Vendors. *Guidelines* Section 7.00.

The Utah state courts have designed and built their own electronic document and case management systems and other record keeping systems. To that extent, the *Guidelines*, which recommend that vendor contracts include clauses to bind the vendor to the court's access policies, are not applicable. However, the justice courts, which are funded and operated by counties and municipalities, have a variety of support software: some self-built; others purchased from vendors. The *Guidelines'* policy is sound, and access to court records should not be limited or qualified by the circumstance that the court buys rather than builds its electronic support. Access to records must be transparent to the public. People should not have to purchase proprietary software in order to read electronic records.

(11) Security.

Closed records should be secure from public view. Even among court personnel, access should be limited to those with a need to know.

Sometimes a record is classified by name as closed, in which case the record should be secured as a matter of course. Often, however, public records contain private information. The person who prepares a document bears the ultimate responsibility to excise unneeded sensitive information. Once filed and in the court's record keeping stream, clerks do not have the time to

³³ CJA 4-202.08.

review papers and redact private data. If an otherwise public record contains private information, the filer should redact the information if it is not needed for the case. If the private information is necessary, the filer should submit the information separately, provided the document with the redactions continues to suit its original purpose, or the filer may request that the court classify the record as closed.

For cases in which the courts routinely process closed information as part of an otherwise open record, the Administrative Office of the Courts and clerks of court should develop a sensitive information sheet and procedures by which to record and segregate closed information. The Administrative Office of the Courts should work with clerks to improve record keeping procedures and systems to more conveniently separate closed records from an otherwise open file. The need for security will produce the greatest burden in family law cases and probate cases, in which there is the greatest mix of public and private information, but the principles, procedures and systems should apply to all case types.

(12) Education. *Guidelines Sections 8.10; 8.20; 8.30; 8.40.*

The courts should do more to educate the public, lawyers and court personnel about the fine line that represents the balance between privacy and open government.

The courts should prominently publish a privacy statement on its website and in courthouses. The privacy statement should go well beyond the Governmental Internet Information Privacy Act.³⁴ The privacy statement's purpose should be to educate the public about the rights they enjoy and the responsibilities they carry, not as visitors to the court's website, but as observers and participants in the judicial process.

People sacrifice a good deal of their privacy to participate in the judicial process. It's a sacrifice necessary to protect the integrity of the process, and participants should be commended for it. Certainly they should be advised of it and the reasons for it. The courts should advise participants and the public of what records are open and how they can be accessed, of what records are closed and how that treatment can be requested, of how to correct errors. The courts should advise court personnel of their responsibilities to make open records easily accessible and closed records absolutely secure and develop procedures to ensure both.

In addition to a privacy statement, the courts should look to the Judicial Education Committee and the Judicial Outreach Committee to develop an education program for lawyers, court personnel and the public.

Educating lawyers will be particularly important. Lawyers serve the best interests of their clients by keeping confidential information from public view, but the opportunity to protect information – and to some extent the responsibility itself – are new. Redacting unnecessary sensitive information from pleadings, and separately processing necessary sensitive information, will fall principally to the lawyers, so this education effort is critical.

³⁴ Utah Code Section 63D-2-101 et seq.

(13) Record keeping.

The impact of our recommendations will be felt most in the district court, to a lesser extent in the justice court and appellate courts, and probably least in the juvenile court. Not because the principles apply any less in those courts, but simply the circumstance that they manage a lower mix of open and closed records than the district court. Managing records that are nearly all open is relatively simple, as is managing records that are nearly all closed. Managing highly mixed records is difficult. It requires planning, systems designed to meet the goals, training and attention to detail. But to meet the objective of truly protecting privacy while truly encouraging access requires nothing less.

The courts should:

1. Rigorously reevaluate their acquisition policies and dispense with all information that is not necessary for sound case management.
2. Develop private information files and procedures so parties can submit required non-public information and documents in a confidential manner.
3. Improve their paper record keeping systems so clerks can more conveniently separate non-public from public records.
4. Develop a list of the most commonly filed documents that contain non-public information, such as custody evaluations, home studies, guardian ad litem reports, presentence investigation reports and the like, so clerks can more easily manage records based on the information they contain.
5. Ensure that their computer records protect data elements that are not public as well as non-public electronic documents.
6. Train clerks and others on the new record keeping systems.

(14) Areas for continued observation

We have tried in this report to anticipate the future and apply the lessons of the past. But we have no priestess of Delphi on this panel, and the Judicial Council should continue to watch for developments in several areas.

Although we have discussed the implication with the clerks, we do not fully know the workload demands on clerks and programmers to keep closed records from public scrutiny. Computerized data and documents are probably more easily protected than paper records, but computers may have to be reprogrammed. Paper record keeping systems, which are not to be changed lightly, may have to be changed to protect closed records.

We recommend maintaining the court's policy that aggregate data is usually closed. Public concern over the widespread availability of compiled data appears very high. That concern may someday wane as we become more familiar with the uses and misuses of data. The Conference of Chief Justices and the Conference of State Court Administrators, which adopted the *Guidelines*, concluded that aggregate data should be public to the extent that the individual records are public. The law permits either result in the exercise of discretion. This is an area that warrants periodic consideration.

The Legislature will consider whether to charge fees for records with commercial value. This poses a significant issue – for the courts and for government generally. Supreme Court and Court of Appeals opinions, Supreme Court and Judicial Council rules, and the Legislature’s own statutes have the effect of law in Utah. The judiciary provides its opinions and rules to any who ask and to many commercial publishers free of charge. The publishers then publish the opinions and rules – for their commercial benefit to be sure but for the public benefit as well. Will we now charge for access to these laws and other public records?

We recommend extensive education of judges, clerks, lawyers and others who work with the courts. Education is a never-ending effort, and the Judicial Council should monitor its effect and adjust accordingly.

(15) Summary of Recommendations

The public has a qualified right of access to court records. For records associated with a hearing, the right must be protected under constitutional standards. For records not associated with a court hearing and for exhibits, the right must be protected under common law standards. We recommend that courts consider motions to close records under the same standards and procedures that apply to closing hearings.

We recommend only a few changes in the classification of court records:

- Personal identifying information of a party other than name, address, date of birth, driver’s license number and last four digits of a social security number should be private.
- The classification of “controlled” records should be eliminated and those records reclassified as private.
- The distinction between administrative and judicial records should be eliminated, but the process to access administrative and judicial records should be better delineated.

We recommend improving record keeping systems, especially paper systems, so non-public records are more easily separated from public records.

We recommend improved education on the rights, the responsibilities and the benefits of privacy and public court records.

The table compares our recommendations with current Utah policy and the policy recommended by the *Guidelines* in several of the major topic areas.

Topic	Committee Recommendations	Current Utah Policy	Guidelines
Account numbers, credit cards and PINs	Private	Private	Private
Address of party	Public	Public	Public
Address, date of birth, driver’s license number of non-party	Private	Private	Private

Topic	Committee Recommendations	Current Utah Policy	Guidelines
Aggregate data w/o personal identifiers	Public	Public	Public
Aggregate data w/ personal identifiers	Private except for indexes	Private except for indexes	Public
Custody evaluations	Private	Controlled	Private
Date of birth & driver's license number of party	Public	Public	Private
Family law records	Public unless private under §30-3-4	Public unless sealed under §30-3-4	Private
Financial Records	Public	Public	Private
Medical Records	Private	Controlled	Private
Notes, Drafts	Not a record	Not a record	Private
Presentence investigation reports	Private	Protected	Private
Social security numbers	Private except last 4 digits of civil judgment debtor public	Private except for civil judgment debtor	Private

1 **(16) Appendix A. Recommended Court Rules.**

2 **(a) Rule 4-202. Purpose.**

3 Intent:

4 To recognize the delicate balance of interests served by open and closed court records.

5 Applicability:

6 This rule applies to the judicial branch.

7 Statement of the Rule:

8 (1) This list of interests served by public court records is not exhaustive but is meant to
9 illustrate the important objectives of open government:

10 (1)(A) to obtain information concerning the conduct of the public’s business;

11 (1)(B) to educate the public about the workings of government and the decisions being
12 made on the public’s behalf;

13 (1)(C) to contribute to informed debate;

14 (1)(D) to hold public officers and employees accountable;

15 (1)(E) to increase public confidence;

16 (1)(F) to give notice of important claims, rights and obligations; and

17 (1)(G) to provide material for independent research on improving government policy.

18 (2) This list of interests served by non-public court records is not exhaustive but is meant to
19 illustrate the important objectives protected by selectively closing court records:

20 (2)(A) to protect personal privacy;

21 (2)(B) to protect personal and public safety;

22 (2)(C) to protect a property interest that would be lost or devalued if opened to public
23 view;

24 (2)(D) to promote the rehabilitation of offenders, especially youthful offenders; and

25 (2)(E) to protect non-parties participating in the court process, such as victims, witnesses,
26 and jurors.

27
28 **(b) Rule 4-202.01. Definitions**

29 Intent:

30 To provide a uniform definition for special terms.

1 Applicability:

2 This rule applies to the judicial branch.

3 Statement of the Rule:

4 As used in these rules:

5 (1) “Access” means to inspect and obtain a copy.

6 (2) “Court record” means a record prepared, owned, received, or retained by a court or the
7 administrative office of the courts.

8 (3) “Record” means books, letters, documents, papers, maps, plans, photographs, films,
9 cards, tapes, recordings, data or other materials, regardless of form or characteristics, that are
10 reproducible.

11 (4) “Record” does not mean any of the following unless received into evidence:

12 (4)(A) drafts, calendars, notes or similar materials prepared for the originator’s personal
13 use or for the personal use of an individual for whom the originator works;

14 (4)(B) materials legally owned by an individual in the individual’s private capacity;

15 (4)(C) materials to which access is limited by the laws of copyright or patent unless the
16 copyright or patent is owned by the courts;

17 (4)(D) proprietary software or software developed or purchased by or for the courts for its
18 own use;

19 (4)(E) junk mail or commercial publications received by the courts or an official or
20 employee of the courts; or

21 (4)(F) materials contained in the collection of libraries open to the public.

22
23 **(c) Rule 4-202.02. Records classification.**

24 Intent:

25 To classify court records as public or non-public.

26 Applicability:

27 This rule applies to the judicial branch.

28 Statement of the Rule:

29 (1) Court records are public unless otherwise classified by this rule.

30 (2) Public court records include but are not limited to:

1 (2)(A) aggregate records without non-public information and without personal
2 identifying information;

3 (2)(B) arrest warrants, but a court may restrict access before service;

4 (2)(C) audit reports;

5 (2)(D) case files;

6 (2)(E) committee reports after release by the Judicial Council or the court that requested
7 the study;

8 (2)(F) contracts entered into by the judicial branch and records of compliance with the
9 terms of a contract;

10 (2)(G) drafts that were never finalized but were relied upon in carrying out an action or
11 policy;

12 (2)(H) exhibits, but the judge may regulate or deny access to ensure the integrity of the
13 exhibit, a fair trial or interests favoring closure;

14 (2)(I) financial records;

15 (2)(J) indexes approved by the Management Committee of the Judicial Council, including
16 the following, in courts other than the juvenile court; an index may contain any other index
17 information:

18 (2)(J)(i) amount in controversy;

19 (2)(J)(ii) attorney name;

20 (2)(J)(iii) case number;

21 (2)(J)(iv) case status;

22 (2)(J)(v) civil case type or criminal violation;

23 (2)(J)(vi) civil judgment or criminal disposition;

24 (2)(J)(vii) daily calendar;

25 (2)(J)(viii) file date;

26 (2)(J)(ix) party name;

27 (2)(K) name of a person other than a party, but the name of a juror or prospective juror is
28 private until released by the judge;

29 (2)(L) name, address, date of birth, driver's license number and last four digits of a social
30 security number of a party;

1 (2)(M) name, business address, business telephone number, and business email address of
2 a lawyer appearing in a case;

3 (2)(N) name, business address, business telephone number, and business email address of
4 court personnel other than judges;

5 (2)(O) name, business address, and business telephone number of judges;

6 (2)(P) name, gender, gross salary and benefits, job title and description, number of hours
7 worked per pay period, dates of employment, and relevant qualifications of a current or
8 former court personnel;

9 (2)(Q) opinions, including concurring and dissenting opinions, and orders entered in open
10 hearings;

11 (2)(R) order or decision classifying a record as not public;

12 (2)(S) private record if the subject of the record has given written permission to make the
13 record public;

14 (2)(T) publications of the administrative office of the courts;

15 (2)(U) record in which the judicial branch determines or states an opinion on the rights of
16 the state, a political subdivision, the public, or a person;

17 (2)(V) record of the receipt or expenditure of public funds;

18 (2)(W) record or minutes of an open meeting or hearing and the transcript of them;

19 (2)(X) record of formal discipline of current or former court personnel or of a person
20 regulated by the judicial branch if the disciplinary action has been completed, and all time
21 periods for administrative appeal have expired, and the disciplinary action was sustained;

22 (2)(Y) record of a request for a record;

23 (2)(Z) reports used by the judiciary if all of the data in the report is public or the Judicial
24 Council designates the report as a public record;

25 (2)(AA) rules of the Supreme Court and Judicial Council;

26 (2)(BB) search warrants and search warrant affidavits after filing of the return, but a court
27 may restrict access before trial;

28 (2)(CC) statistical data derived from public and non-public records but that disclose only
29 public data;

30 (2)(DD) Notwithstanding subsections (6) and (7), if a petition, indictment, or information
31 is filed charging a person 14 years of age or older with a felony or an offense that would be a

1 felony if committed by an adult, the petition, indictment or information, the adjudication
2 order, the disposition order, and the delinquency history summary of the person are public
3 records. The delinquency history summary shall contain the name of the person, a listing of
4 the offenses for which the person was adjudged to be within the jurisdiction of the juvenile
5 court, and the disposition of the court in each of those offenses.

6 (3) The following court records are sealed:

7 (3)(A) adoption records, which are private until sealed;

8 (3)(B) expunged records;

9 (3)(C) order authorizing installation of pen register or trap and trace device under Utah
10 Code Section 77-23a-15;

11 (3)(D) records showing the identity of a confidential informant;

12 (3)(E) records relating to the possession of a financial institution by the commissioner of
13 financial institutions under Utah Code Section 7-2-6;

14 (3)(F) wills deposited for safe keeping under Utah Code Section 75-2-901;

15 (3)(G) records designated as sealed by rule of the Supreme Court; and

16 (3)(H) other records as ordered by the court under Rule 4-202.04.

17 (4) The following court records are private:

18 (4)(A) adoption records until sealed;

19 (4)(B) aggregate records other than public aggregate records under subsection (2);

20 (4)(C) alternative dispute resolution records;

21 (4)(D) applications for accommodation under the Americans with Disabilities Act;

22 (4)(E) custody evaluations;

23 (4)(F) eligibility for benefits or services or the determination of the benefit level;

24 (4)(G) home studies;

25 (4)(H) the following personal identifying information about a party: email address,
26 telephone number; account description and number, password, identification number, maiden
27 name and mother's maiden name;

28 (4)(I) the following personal identifying information about a person other than a party:
29 address, email address, telephone number; date of birth, driver's license number, social
30 security number, account description and number, password, identification number, maiden
31 name and mother's maiden name;

1 (4)(J) medical, psychiatric, or psychological records;

2 (4)(K) personnel file of a current or former court personnel or applicant for employment;

3 (4)(L) photograph, film or video of a crime victim or of the petitioner in a cohabitant
4 abuse action or civil stalking action;

5 (4)(M) presentence investigation report;

6 (4)(N) record classified as private or controlled by a governmental entity and shared with
7 the court under Utah Code Section 63-2-206;

8 (4)(O) non-public record provided by a governmental entity of a state or the United
9 States;

10 (4)(P) record regarding the character or competence of an individual;

11 (4)(Q) record containing information the disclosure of which constitutes an unwarranted
12 invasion of personal privacy;

13 (4)(R) record involving the commitment of a person under Title 62A, Chapter 15,
14 Substance Abuse and Mental Health Act;

15 (4)(S) record of a court hearing closed to the public or of a child's testimony taken under
16 URCrP 15.5

17 (4)(S)(i) permanently if the hearing is not traditionally open to the public and public
18 access does not play a significant positive role in the process; or

19 (4)(S)(ii) if the hearing is traditionally open to the public, until the judge determines it
20 is possible to release the record without prejudice to the interests that justified the
21 closure;

22 (4)(T) record of a delinquency proceeding against an insurer under Utah Code Section
23 31a-27-203;

24 (4)(U) record submitted by a judge regarding judicial performance evaluation and
25 certification other than records showing whether the judge has met a standard of
26 performance;

27 (4)(V) record submitted for *in camera* review until its public availability is determined;

28 (4)(W) other records as ordered by the court under Rule 4-202.04.

29 (5) The following court records are protected:

30 (5)(A) attorney's work product, including the mental impressions or legal theories of an
31 attorney or other representative of the courts concerning litigation, privileged communication

1 between the courts and an attorney representing, retained, or employed by the courts, and
2 records prepared solely in anticipation of litigation and not subject to discovery;

3 (5)(B) bids or proposals until the deadline for submitting them has closed;

4 (5)(C) budget analyses, revenue estimates, and fiscal notes of proposed legislation before
5 issuance of the final recommendations in these areas;

6 (5)(D) budget recommendations, legislative proposals, and policy statements, that if
7 disclosed would reveal the court's contemplated policies or contemplated courses of action;

8 (5)(E) court security plans;

9 (5)(F) investigation and analysis of loss covered by the risk management fund;

10 (5)(G) investigative subpoenas under Utah Code Section 77-22-2;

11 (5)(H) memorandum prepared by staff for a member of any body charged by law with
12 performing a judicial function and used in the decision-making process;

13 (5)(I) confidential business records under Utah Code Section 63-2-308;

14 (5)(J) a record classified as protected by a governmental entity and shared with the court
15 under Utah Code Section 63-2-206;

16 (5)(K) record created or maintained for civil, criminal, or administrative enforcement
17 purposes, audit or discipline purposes, or licensing, certification or registration purposes, if
18 the record reasonably could be expected to:

19 (5)(K)(i) interfere with an investigation;

20 (5)(K)(ii) interfere with a fair hearing or trial; or

21 (5)(K)(ii) disclose the identity of a confidential source;

22 (5)(L) record identifying property under consideration for sale or acquisition by the court
23 or its appraised or estimated value unless the information has been disclosed to someone not
24 under a duty of confidentiality to the courts;

25 (5)(M) record that would reveal the contents of settlement negotiations other than the
26 final settlement agreement;

27 (5)(N) record the disclosure of which would impair governmental procurement or give an
28 unfair advantage to any person;

29 (5)(O) record the disclosure of which would interfere with supervision of an offender's
30 incarceration, probation or parole;

31 (5)(P) record the disclosure of which would jeopardize life, safety or property;

- 1 (5)(Q) search warrants and search warrant affidavits before the filing of the return;
- 2 (5)(R) strategy about collective bargaining or pending litigation;
- 3 (5)(S) test questions and answers;
- 4 (5)(T) trade secrets as defined in Utah Code Section 13-24-2; and
- 5 (5)(U) other records as ordered by the court under Rule 4-202.04

6 (6) The following are juvenile court social records:

- 7 (6)(A) correspondence relating to juvenile social records;
- 8 (6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations,
- 9 substance abuse evaluations, domestic violence evaluations;
- 10 (6)(C) medical, psychological, psychiatric evaluations;
- 11 (6)(D) pre-disposition and social summary reports;
- 12 (6)(E) probation agency and institutional reports or evaluations;
- 13 (6)(F) referral reports;
- 14 (6)(G) report of preliminary inquiries; and
- 15 (6)(H) treatment or service plans.

16 (7) The following are juvenile court legal records:

- 17 (7)(A) accounting records;
- 18 (7)(B) discovery filed with the court;
- 19 (7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes,
- 20 findings, orders, decrees;
- 21 (7)(D) name of a party or minor;
- 22 (7)(E) record of a court hearing;
- 23 (7)(F) referral and offense histories
- 24 (7)(G) and any other juvenile court record regarding a minor that is not designated as a
- 25 social record.

26
27 **(d) 4-202.03. Records access.**

28 Intent:

29 To identify who may access court records.

30 Applicability:

31 This rule applies to the judicial branch.

1 Statement of the Rule:

2 (1) Any person may access a public court record.

3 (2) No one may access a sealed court record except by order of the court.

4 (3) The following may access a private court record:

5 (3)(A) the subject of the record;

6 (3)(B) the attorney for the subject of the record or an individual who has a power of
7 attorney from the subject of the record;

8 (3)(C) the parent or guardian of the subject of the record if the subject is an
9 unemancipated minor or under a legal incapacity;

10 (3)(D) a person with a notarized release from the subject of the record or the subject's
11 legal representative dated no more than 90 days before the date the request is made;

12 (3)(E) a party or attorney for a party to litigation in which the record is filed;

13 (3)(F) the person who submitted the record;

14 (3)(G) anyone by court order;

15 (3)(H) court personnel, but only to achieve the purpose for which the record was
16 submitted;

17 (3)(I) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and

18 (3)(J) a governmental entity with which the record is shared under Rule 4-202.10.

19 (4) The following may access a protected court record:

20 (4)(A) the person or governmental entity whose interests are protected by closure;

21 (4)(B) the attorney for the person or governmental entity whose interests are protected by
22 closure or an individual who has a power of attorney from such person or governmental
23 entity;

24 (4)(C) the parent or guardian of the person whose interests are protected by closure if the
25 person is an unemancipated minor or under a legal incapacity;

26 (4)(D) a person with a notarized release from the person or governmental entity whose
27 interests are protected by closure or their legal representative dated no more than 90 days
28 before the date the request is made;

29 (4)(E) a party or attorney for a party to litigation in which the record is filed;

30 (4)(F) the person who submitted the record;

31 (4)(G) anyone by or court order;

1 (4)(H) court personnel, but only to achieve the purpose for which the record was
2 submitted;

3 (4)(I) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and

4 (4)(J) a governmental entity with which the record is shared under Rule 4-202.10.

5 (5) The following may access a juvenile court social record:

6 (5)(A) all who may access private record;

7 (5)(B) a prosecuting attorney;

8 (5)(C) a governmental entity charged with custody, guardianship, protective supervision,
9 probation or parole of the subject of the record in the juvenile justice system or criminal
10 justice system; and

11 (5)(D) the Division of Child and Family Services for investigations under Utah Code
12 Section 62A-4a-409 and administrative hearings under Utah Code Section 62A-4a-116.5.

13 (6) The following may access a juvenile court legal record:

14 (6)(A) all who may access the juvenile court social record;

15 (6)(B) a law enforcement agency;

16 (6)(C) a children's justice center;

17 (6)(D) a public or private agency providing services to the subject of the record or to the
18 subject's family; and

19 (6)(F) the victim of a delinquent act may access the disposition order entered against the
20 defendant.

21 (7) Court personnel shall permit access to court records only by authorized persons. The
22 court may order anyone who accesses a non-public record not to permit further access, the
23 violation of which may be contempt of court.

24 (8) If a court or court employee in an official capacity is a party in a case, the records of the
25 party and the party's attorney are subject to the rules of discovery and evidence to the same
26 extent as any other party.

27
28 **(e) Rule 4-202.04. Request to access a record associated with a case; request to**
29 **classify a record associated with a case.**

30 Intent:

31 To establish the process for accessing a court record associated with a case.

1 Applicability:

2 This rule applies to court records associated with a case.

3 Statement of the Rule:

4 (1) A request to access a public court record shall be presented in writing to the clerk of the
5 court unless the clerk waives the requirement. A request to access a non-public court record to
6 which a person is authorized access shall be presented in writing to the clerk of the court. A
7 written request shall contain the requester's name, mailing address, daytime telephone number
8 and a description of the record requested. If the record is a non-public record, the person making
9 the request shall present identification.

10 (2)(A) If a written request to access a court record is denied by the clerk of court, the person
11 making the request may file a motion to access the record.

12 (2)(B) A person not authorized to access a non-public court record may file a motion to
13 access the record. If the court allows access, the court may impose any reasonable conditions to
14 protect the interests favoring closure.

15 (2)(C) A person with an interest in a court record may file a motion to classify the record as
16 private, protected or sealed. The court shall deny access to the record until the order is entered.

17 (2)(D) Motions shall be filed under Utah Rule of Civil Procedure 7 and served under Utah
18 Rule of Civil Procedure 5. The person filing the motion shall serve any representative of the
19 press who has requested notice in the case. The court shall conduct a closure hearing when a
20 motion to close a record is contested, when the press has requested notice of closure motions in
21 the particular case or when the judge decides public interest in the record warrants a hearing.

22 (3) In deciding whether to allow access to a court record or whether to classify a court record
23 as private, protected or sealed, the court may consider any relevant factor, interest or policy
24 presented by the parties, including but not limited to the interests described in Rule 4-202. In
25 ruling on a motion under this rule the judge shall:

26 (3)(A) make findings and conclusions about specific records;

27 (3)(B) identify and balance the interests favoring opening and closing the record; and

28 (3)(C) if the record is ordered closed, determine there are no reasonable alternatives to
29 closure sufficient to protect the interests favoring closure.

30 (4) A request under this rule is governed also by Rule 4-202.06. A motion under this rule is
31 not governed by Rule 4-202.06 or Rule 4-202.07.

1
2 **(f) Rule 4-202.05. Request to access an administrative record; research; request**
3 **to classify an administrative record; request to create an index.**

4 Intent:

5 To establish the process for accessing an administrative court record, aggregate records and
6 court records for the purpose of research.

7 Applicability:

8 This rule applies to court records associated with the administration of the judiciary,
9 aggregate records and indexes, and requests to access non-public records for the purpose of
10 research.

11 Statement of the Rule:

12 (1) A request to access a public court record shall be presented in writing to the custodian of
13 the record unless the custodian waives the requirement. A request to access a non-public court
14 record to which a person is authorized access shall be presented in writing to the custodian of the
15 record. A written request shall contain the requester's name, mailing address, daytime telephone
16 number and a description of the record requested. If the record is a non-public record, the person
17 making the request shall present identification.

18 (2)(A) A request to access a private or protected court record, including aggregate
19 records, to which the person is not authorized access shall be presented in writing to the state
20 court administrator. The request shall contain the requester's name, mailing address, daytime
21 telephone number, a description of the record and a statement of facts, authority and
22 argument in support of the request. If the state court administrator allows access, the state
23 court administrator may impose any reasonable conditions to protect the interests favoring
24 closure. The person making the request shall sign an agreement to be bound by the
25 conditions.

26 (2)(B) Before allowing access to a private or protected record to someone not authorized
27 access, the state court administrator shall mail notice of the request for access to any person
28 whose interests are protected by closure and allow 10 business days for that person to submit
29 a statement of facts, authority and argument in support of closure.

30 (2)(C)(i) The state court administrator may disclose non-public court records,
31 including records associated with a case other than sealed records, for research purposes

1 without the notice required in this rule if the state court administrator decides that the
2 research is bona fide and cannot reasonably be completed without disclosure of the
3 records, and the interests favoring the research outweigh the interests favoring closure.

4 (2)(C)(ii) If the state court administrator discloses non-public court records for
5 research purposes, the researcher shall sign a written statement acknowledging that
6 violating the agreement may be grounds for criminal prosecution under Utah Code
7 Section 63-2-801. The agreement may include any reasonable condition to protect the
8 interests favoring closure, including an agreement to:

9 (2)(C)(ii)(a) maintain the integrity, confidentiality and security of the records;

10 (2)(C)(ii)(b) return or destroy records from which a person can be identified as
11 soon as the research has been completed;

12 (2)(C)(ii)(c) not disclose the record, except for the purpose of auditing or
13 evaluating the research and the auditor or evaluator agrees not to disclose the record;

14 (2)(C)(ii)(d) use the record only for the described research;

15 (2)(C)(ii)(e) indemnify the courts for any damages awarded as a result of injury
16 caused by the research; and

17 (2)(C)(ii)(f) if the research involves human subjects, comply with state and
18 federal laws regulating research involving human subjects.

19 (2)(C)(iii) A request to access a court record under this rule is also governed by Rule
20 4-202.06 and Rule 4-202.07.

21 (3) A request to classify a court record as private or protected shall be presented in writing to
22 the state court administrator. The request shall contain the relief sought and a statement of facts,
23 authority and argument in support of the request. The state court administrator may deny access
24 to the record until the determination is entered.

25 (4) In deciding whether to allow access to a court record or whether to classify a court record
26 as private or protected, the decision maker may consider any relevant factor, interest or policy
27 presented by the parties, including but not limited to the interests described in Rule 4-202.

28 (5) A request to identify a data element as an index shall be presented in writing to the state
29 court administrator. The request shall contain the relief sought and a statement of facts, authority
30 and argument in support of the request. The state court administrator shall present the request to

1 the Management Committee, which shall consider the request in the same manner as provided
2 for appeals in Rule 4-202.07.

3
4 **(g) Rule 4-202.06. Response to request to access or classify a court record.**

5 Intent:

6 To establish the steps required for responding to a request.

7 Applicability:

8 This rule applies to requests to access or to classify a court record other than a motion under
9 Rule 4-202.04.

10 Statement of the Rule:

11 (1) The court shall take all steps necessary for responding to a request for records as soon as
12 reasonably possible. The judge presiding over a trial may withhold the names of jurors for up to
13 5 business days after trial.

14 (2) The person to whom a written request is submitted shall respond within 10 business days,
15 or within 5 business days if the request demonstrates that:

16 (2)(A) an expedited response benefits the public rather than the requester; or

17 (2)(B) the record is for a story or report for publication or broadcast to the general public.

18 (3) The person to whom the request is submitted shall respond by:

19 (3)(A) providing the record;

20 (3)(B) denying the request; or

21 (3)(C) notifying the requester that the court does not maintain the record and providing, if
22 known, the name and address of the governmental entity that does maintain the record.

23 (4) Under extraordinary circumstances, the person to whom the request is submitted may
24 respond by identifying the circumstance that prevents the request from being timely approved or
25 denied and the estimated date when the final response will be made. The following constitute
26 extraordinary circumstances:

27 (4)(A) another governmental entity is using the record;

28 (4)(B) the request is for a large number of records;

29 (4)(C) the court is currently processing a large number of requests for records;

30 (4)(D) the court must locate the records;

1 (4)(E) the court must separate records that the requester may access from records the
2 requester may not access;

3 (4)(F) the court must provide notice of the request to a person whose interests are
4 protected by closure; or

5 (4)(G) the court must seek legal advice on whether to allow access.

6 (5) A written request to access a court record or to classify a court record as private or
7 protected is deemed denied if the initial response is not mailed within 10 business days after
8 receiving the written request or the final response is not mailed within the time estimated in the
9 initial or subsequent response.

10 (6) The response shall be mailed to the requester. If the request is denied, the response shall:

11 (6)(A) describe the record or portions of the record to which access is denied in a manner
12 that does not disclose information other than public information;

13 (6)(B) refer to the authority under which the request is being denied;

14 (6)(C) make findings and conclusions about specific records;

15 (6)(D) identify and balance the interests favoring opening and closing the record; and, if
16 the record is closed, determine there are no reasonable alternatives to closure sufficient to
17 protect the interests favoring closure;

18 (6)(E) state that the requester may appeal or seek judicial review; and

19 (6)(F) state the time limits for filing an appeal or petition for judicial review and the name
20 and address of the person to whom the appeal or petition must be directed.

21 (7)(A) If the request is to access an adoption record, the person to whom the request is
22 submitted shall respond by providing only the case number.

23 (7)(B) If the request is to access a sealed record or a record in which the name of a person
24 is the interest protected by closure, the person to whom the request is submitted shall
25 respond, without indicating whether the record exists, that such records are not accessible.

26 (8) The court shall retain custody of and keep safe any record to which access is denied until
27 the period for an appeal has expired or the appeal process has concluded.

28 (9) A document required to be sent by mail may be sent by email, fax or hand-delivery.

29
30 **(h) Rule 4-202.07. Appeals.**

31 Intent:

1 To establish the rights and procedures in an appeal of a record request.

2 Applicability:

3 This rule applies to requests to access or to classify a court record other than a motion under
4 Rule 4-202.04.

5 Statement of the Rule:

6 (1) A person requesting access to a court record may appeal a denial of the request, a claim
7 of extraordinary circumstances or the time claimed necessary to address the extraordinary
8 circumstances. A person requesting that a court record be classified as private or protected may
9 appeal a denial of the request. A person whose interests are protected by closure may appeal a
10 decision to permit access to a court record. An appeal shall be made in writing within 30 days
11 after the decision giving rise to the appeal. A person described in this subsection may petition for
12 judicial review as provided by statute.

13 (2) If the original request was to the custodian of the record, the appeal is to the state court
14 administrator. If the original request was to the state court administrator, the appeal is to the
15 Management Committee of the Judicial Council. The appeal of a decision by the state court
16 administrator is to the Management Committee.

17 (3) The notice of appeal shall contain the appellant's name, mailing address, daytime
18 telephone number, the relief sought, and a statement of facts, authority and argument in support
19 of the appeal.

20 (4) An appeal to the state court administrator is deemed denied unless a decision on the
21 appeal is mailed within 5 business days after receiving the appeal or within 15 business days
22 after mailing notice under Rule 4-202.05(2)(B). An appeal to the Management Committee is
23 deemed denied unless a decision on the appeal is mailed within 5 business days after the first
24 meeting of the Committee held more that 15 business days after receiving the appeal.

25 (5) The state court administrator shall mail notice of the Management Committee meeting to
26 all participants at least 10 business days before the meeting. At least 7 business days before the
27 meeting, all participants shall mail to the state court administrator and to the other participants a
28 written statement of facts, authority and argument in support of or opposition to the appeal. The
29 Management Committee may permit any person whose interests are substantially affected by a
30 decision to participate. The deliberations of the Management Committee are closed, but the

1 balance of the hearing on the appeal is an open and public meeting of which notice will be given
2 in accordance with Rule 2-103.

3 (6) The Management Committee shall allow the participants a reasonable opportunity to
4 present facts, authority and argument in support of or opposition to the appeal. The order of
5 presentation shall be decided by the Management Committee. The Management Committee may
6 review the record in a closed meeting. Discovery is prohibited, but the Management Committee
7 may compel the production of evidence.

8 (7) The state court administrator shall mail the decision on an appeal to all participants. The
9 decision shall:

10 (7)(A) describe the record or portions of the record to which access is denied in a manner
11 that does not disclose information other than public information;

12 (7)(B) refer to the authority under which the request is being denied;

13 (7)(C) make findings and conclusions about specific records;

14 (7)(D) identify and balance the interests favoring opening and closing the record; and, if
15 the record is closed, determine there are no reasonable alternatives to closure sufficient to
16 protect the interests favoring closure;

17 (7)(E) state that the requester may appeal or seek judicial review; and

18 (7)(F) state the time limits for filing an appeal or petition for judicial review, and the
19 name and address of the person to whom the appeal or petition must be directed.

20 (8) The time periods in this rule may be extended by mutual agreement. A document required
21 to be sent by mail may be sent by email, fax or hand-delivery. The duties of the state court
22 administrator may be delegated.

23
24 **(i) Rule 4-202.08. Fees for records, information and services.**

25 No change.

26
27 **(j) Rule 4-202.09. Miscellaneous.**

28 Intent:

29 To set forth miscellaneous provisions for ~~this Article~~ these rules.

30 Applicability:

1 This rule applies to ~~all courts of record and not of record and to the Administrative Office of~~
2 ~~the Courts~~ the judicial branch.

3 Statement of the Rule:

4 (1) The judicial branch shall provide a person with a certified copy of a record if the
5 requester has a right to inspect it, the requester identifies the record with reasonable specificity,
6 and the requester pays the ~~lawful~~ fees.

7 (2)(A) The judicial branch is not required to create a record in response to a request.

8 (2)(B) Upon request, the judicial branch shall provide a record in a particular format if:

9 (2)(B)(i) it is able to do so without unreasonably interfering with its duties and
10 responsibilities; and

11 (2)(B)(ii) the requester agrees to pay the additional costs, if any, actually incurred in
12 providing the record in the requested format.

13 (2)(C) The judicial branch need not fulfill a person's records request if the request
14 unreasonably duplicates prior records requests from that person.

15 (3) If a person requests copies of more than 50 pages of records, and if the records are
16 contained in files that do not contain records that are exempt from disclosure, the judicial branch
17 may provide the requester with the facilities for copying the requested records and require that
18 the requester make the copies, or allow the requester to provide his own copying facilities and
19 personnel to make the copies at the judicial branch's offices and waive the fees for copying the
20 records.

21 (4) The judicial branch may not use the ~~physical form, electronic or otherwise,~~ in which a
22 record is stored to deny or unreasonably hinder the rights of persons to inspect and receive copies
23 of a record.

24 (5) Subpoenas and other methods of discovery under state or federal statutes or rules of ~~civil,~~
25 ~~criminal, administrative, or legislative~~ procedure are not records requests under ~~this Article~~
26 ~~these rules.~~ Compliance with ~~civil, criminal, administrative, and legislative~~ discovery shall be
27 governed by the applicable statutes and rules of procedure.

28 (6) If the judicial branch receives a request for access to a record that contains both
29 information that the requester is entitled to inspect and information that the requester is not
30 entitled to inspect, it shall allow access to the information in the record that the requester is

1 entitled to inspect, and shall deny access to the information in the record the requester is not
2 entitled to inspect.

3 ~~(7) Records may not be removed from court premises without court order. Inspection and~~
4 ~~copying of records may occur only in those places designated at each court location. If necessary~~
5 ~~to ensure the security of court records, or to comply with multiple requests to review the same~~
6 ~~record, the court clerk may set reasonable time and place restrictions as to when and where the~~
7 ~~record may be inspected. Rule 4-205 shall further govern the security and inspection of court~~
8 ~~records.~~

9 ~~(8) Court records are not the official records for individual cumulative histories, such as~~
10 ~~driver's license records, criminal identification or tax liens. Although such information may be~~
11 ~~provided by the courts, the courts do not assume any responsibility for the manner in which~~
12 ~~individuals may use this information.~~

13 ~~(9)-(7) The Administrative Office shall create and adopt a schedule governing the retention;~~
14 ~~microfilming and destruction of all court records.~~

15 (8) The courts will use their best efforts to ensure that access to court records is properly
16 regulated, but assumes no responsibility for accuracy or completeness or for use outside the
17 court.

18 (9) A person filing a record may redact non-public information and sensitive information if
19 the information is not necessary to the case. If the information is necessary, the person may move
20 to classify the record in whole or in part as private, protected or sealed.

21 (10) A vendor or governmental agency that provides a court information technology support
22 to gather, store, or make accessible court records is bound by rules 4-202 through 4-202.10.

23

24 **(k) Rule 4-202.10. Record sharing.**

25 Intent:

26 To establish the authority and limits of sharing non-public records with governmental
27 entities.

28 Applicability:

29 This rule applies to non-public court records.

30 Statement of the Rule:

1 The court may share court records classified as other than public as provided in Section 63-2-
2 206. The court may share records classified as other than public with the Judicial Conduct
3 Commission if the Commission certifies in writing that:

4 (1) the record is necessary for investigating a complaint;

5 (2) the need for the record outweighs the interests protected by closure;

6 (3) the Commission will take the steps necessary to protect the interests favoring closure if
7 the record is sent to the Supreme Court as part of the review of the Commission's order; and

8 (4) the Commission will restrict access to the record to the same degree as the court.

9
10 **(1) Rule 4-202.12. Access to electronic data elements.**

11 ~~Rule 4-202.12. Access to electronic data elements.~~

12 ~~Intent:~~

13 ~~To define the extent of access to data elements maintained in a computer data base.~~

14 ~~To protect the right of access by the public to information regarding the conduct of court~~
15 ~~business.~~

16 ~~To protect privacy interests from intrusion made possible by the increased accessibility of~~
17 ~~information recorded, stored, and transmitted in an electronic medium.~~

18 ~~To protect the independence of the judicial decision making process from undue influence~~
19 ~~due to the release of court data.~~

20 ~~Applicability:~~

21 ~~Notwithstanding any other provision of law, this rule shall apply to all requests for data~~
22 ~~elements contained in case management applications of the court computer systems.~~

23 ~~This rule does not apply to data elements contained in other applications on court computers.~~

24 ~~This rule does not apply to requests for data elements by the Judicial Council and its Boards~~
25 ~~and Committees, state court judges, court commissioners, or employees of the state judiciary.~~

26 ~~This rule imposes no obligation upon the judiciary to create a data element or to make a data~~
27 ~~element available electronically when it is not technologically feasible to do so.~~

28 ~~Statement of the Rule:~~

29 ~~(1) Public data only. Data elements classified by Rule 4-202.02 or other provision of law as~~
30 ~~other than public records will not be made available.~~

31 ~~(2) Person specific data.~~

1 ~~(2)(A) Electronic records from which a person can be identified will be made available~~
2 ~~upon request only by inquiry of a single case or in the following indexes. An index shall~~
3 ~~contain only other index information.~~

4 ~~(2)(A)(i) attorney name.~~

5 ~~(2)(A)(ii) case number.~~

6 ~~(2)(A)(iii) case status.~~

7 ~~(2)(A)(iv) civil case type or criminal violation.~~

8 ~~(2)(A)(v) civil judgment or criminal disposition.~~

9 ~~(2)(A)(vi) daily calendar.~~

10 ~~(2)(A)(vii) file date.~~

11 ~~(2)(A)(viii) party name.~~

12 ~~(2)(B) Electronic records from which a person can be identified will include only the~~
13 ~~following data elements. Other data elements are private.~~

14 ~~(2)(B)(i) amount in controversy.~~

15 ~~(2)(B)(ii) arrest date.~~

16 ~~(2)(B)(iii) bail amount.~~

17 ~~(2)(B)(iv) case number.~~

18 ~~(2)(B)(v) case status.~~

19 ~~(2)(B)(vi) case type.~~

20 ~~(2)(B)(vii) civil judgment amount balance due.~~

21 ~~(2)(B)(viii) civil judgment amount credit.~~

22 ~~(2)(B)(ix) civil judgment amount paid.~~

23 ~~(2)(B)(x) civil judgment amount total.~~

24 ~~(2)(B)(xi) civil judgment date.~~

25 ~~(2)(B)(xii) civil judgment debtor's service of process address.~~

26 ~~(2)(B)(xiii) civil judgment debtor's social security number.~~

27 ~~(2)(B)(xiv) civil judgment debtor's driver license number.~~

28 ~~(2)(B)(xv) criminal finding code.~~

29 ~~(2)(B)(xvi) criminal finding date.~~

30 ~~(2)(B)(xvii) criminal sentence.~~

31 ~~(2)(B)(xviii) date of birth.~~

- 1 ~~(2)(B)(xix) disposition type.~~
- 2 ~~(2)(B)(xx) domestic violence flag.~~
- 3 ~~(2)(B)(xxi) file date.~~
- 4 ~~(2)(B)(xxii) judge assigned.~~
- 5 ~~(2)(B)(xxiii) judge disposition.~~
- 6 ~~(2)(B)(xxiv) law enforcement agency.~~
- 7 ~~(2)(B)(xxv) offense tracking number.~~
- 8 ~~(2)(B)(xxvi) party address.~~
- 9 ~~(2)(B)(xxvii) party name.~~
- 10 ~~(2)(B)(xxviii) party type.~~
- 11 ~~(2)(B)(xxix) plea date.~~
- 12 ~~(2)(B)(xxx) plea.~~
- 13 ~~(2)(B)(xxxi) stay date.~~
- 14 ~~(2)(B)(xxxii) stay reason.~~
- 15 ~~(2)(B)(xxxiii) violation code.~~
- 16 ~~(2)(B)(xxxiv) violation date.~~
- 17 ~~(2)(B)(xxxv) violation description.~~

18 ~~(3) Medium of transmission.~~

19 ~~(3)(A) The judiciary may use any convenient medium for transmission of requested data~~
20 ~~elements. The judiciary shall use the medium requested if the medium is available and does~~
21 ~~not interfere with court business. The data may be transmitted by means of public on line~~
22 ~~services or copied to floppy disk, compact disk, or other storage medium.~~

23 ~~(3)(B) Public data elements not included within paragraph (2) may be made available~~
24 ~~orally, in writing, or by permitting inspection or copying of public records that contain the~~
25 ~~information. Data elements not included within paragraph (2) shall not be made available~~
26 ~~through the case management applications of the court computer systems nor, except as~~
27 ~~provided within paragraph (4), through a report generated by the case management~~
28 ~~applications of the court computer systems.~~

29 ~~(4) Reports. If a report used within the judiciary is prepared from or contains case~~
30 ~~management data elements, the report shall be made available only if:~~

1 ~~(4)(A) all of the data elements in the report would have been made available under this~~
2 ~~rule;~~

3 ~~(4)(B) the report is of summary data; or~~

4 ~~(4)(C) the Judicial Council classifies the report as a public record.~~

5 ~~(5) Data quality. Data elements provided under this rule represent information furnished to~~
6 ~~the court by parties, lawyers, and others. Data elements provided under this rule represent the~~
7 ~~best effort of the judiciary to record information accurately and timely. However, the judiciary is~~
8 ~~not responsible for incomplete or erroneous information.~~

9 ~~(6) Requests. Requests for data elements are subject to the procedures for requests for~~
10 ~~records established in Rules 4 202.04, 4 202.05, and 4 202.06. Subscription to public on line~~
11 ~~services is deemed a request for any information posted to public on line services. Subscribers to~~
12 ~~public on line services are subject to the restrictions of this rule.~~

13 ~~(7) Fees. The fees for requests for data elements shall be as established in Rule 4 202.08.~~

14
15 **(m)Rule 4-205. Security of court records.**

16 Intent:

17 To assure that the security and accuracy of court records are maintained.

18 To assure that authorized personnel have access to court records when appropriate.

19 To establish responsibility of court personnel for security of court records.

20 To establish the procedures for securing non-public records.

21 Applicability:

22 This rule shall apply to all courts of record and not of record.

23 Statement of the Rule:

24 (1) Court records restricted. All court records shall be kept in a restricted area of the court
25 closed to public access.

26 (2) The clerk of the court may authorize, in writing, abstractors, credit bureau
27 representatives, title company representatives and others who regularly research court records to
28 have direct access to public court records. The clerk of the court shall ensure that persons to
29 whom such authorization is granted are trained in the proper retrieval and filing of court records.
30 The clerk of court may set reasonable restrictions on time and place for inspecting and copying
31 records.

1 (3) Removal of records. Court records shall not be removed from their normal place of
2 storage except by court personnel or by individuals obtaining the written authorization of the
3 clerk of the court or the judge assigned to the case. Court records shall not be removed from the
4 courthouse without permission of the court. Records removed from the courthouse shall be
5 returned within two days, except that records removed for the purpose of an appeal shall be
6 returned within such time as specified by the clerk of the court, unless otherwise ordered by the
7 judge. Any person removing a record is responsible for the security and the integrity of the
8 record.

9 (4) Management of non-public records.

10 (4)(A) Method of sealing and storage. ~~Private, protected, controlled and sealed~~ Non-
11 public records which are part of a larger public record, ~~and expunged records~~ shall be filed
12 apart from the public record or in a manner that clearly distinguishes the record as not public.
13 Sealed records shall be placed in an envelope which is securely sealed. The clerk of the court
14 shall record the case number and record classification on the envelope and shall inscribe
15 across the sealed part of the envelope the words "Not to be opened except upon permission of
16 the court."

17 (4)(B) Expunged records. Upon entry of an order of expungement, the clerk of the court
18 shall:

19 (4)(B)(i) obliterate or destroy all reference to the expunged portion of the record in
20 the paper copy of the index and maintain a separate index of expunged records not
21 available to the public;

22 (4)(B)(ii) cover, without obliterating or destroying, all entries in the paper copy of the
23 register of actions, including case identifying information other than the court docket
24 number; and

25 (4)(B)(iii) place an entry in the computer record that restricts retrieval of case
26 identifying information and the register of actions to court personnel with authorization to
27 review such information. The security restriction shall not be removed except upon
28 written order of the court.

29 (4)(C) Record of event. The record of expunging or sealing a record shall be entered in
30 the register of actions.

31 ~~(D) Inquiries regarding non-public records.~~

1 ~~(i) Upon receiving a records request concerning a private, protected, controlled, juvenile~~
2 ~~social or legal, or expunged record, from a person not entitled to review the record, the clerk~~
3 ~~of the court shall, without indicating that the record does or does not exist, respond that the~~
4 ~~information requested is not available to the public.~~

5 ~~(ii) Upon receiving a records request concerning a sealed judicial record, the clerk of the~~
6 ~~court shall confirm the existence of the record and provide the case or docket number, but~~
7 ~~shall not provide any other data from the record.~~

8

1 **(17) Appendix B. Recommended Statutory Changes**

2
3 **(a) 30-3-4. Pleadings -- Findings -- Decree -- Use of affidavit -- Sealing.**

4 (1)(a) The complaint shall be in writing and signed by the petitioner or petitioner's attorney.

5 (b) A decree of divorce may not be granted upon default or otherwise except upon legal
6 evidence taken in the cause. If the decree is to be entered upon the default of the respondent,
7 evidence to support the decree may be submitted upon the affidavit of the petitioner with the
8 approval of the court.

9 (c) If the petitioner and the respondent have a child or children, a decree of divorce may not
10 be granted until both parties have attended the mandatory course described in Section 30-3-11.3,
11 and have presented a certificate of course completion to the court. The court may waive this
12 requirement, on its own motion or on the motion of one of the parties, if it determines course
13 attendance and completion are not necessary, appropriate, feasible, or in the best interest of the
14 parties.

15 (d) All hearings and trials for divorce shall be held before the court or the court
16 commissioner as provided by Section 78-3-31 and rules of the Judicial Council. The court or the
17 commissioner in all divorce cases shall enter the decree upon the evidence or, in the case of a
18 decree after default of the respondent, upon the petitioner's affidavit.

19 ~~(2) The file, except the decree of divorce, may be sealed by order of the court upon the~~
20 ~~motion of either party. The sealed portion of the file is available to the public only upon an order~~
21 ~~of the court. The concerned parties, the attorneys of record or attorney filing a notice of~~
22 ~~appearance in the action, the Office of Recovery Services if a party to the proceedings has~~
23 ~~applied for or is receiving public assistance, or the court have full access to the entire record.~~
24 ~~This sealing does not apply to subsequent filings to enforce or amend the decree.~~

25 (2)(a) A party to an action brought under this Title or to an action under Title 78, Chapter 45,
26 Uniform Civil Liability for Support Act, Title 78, Chapter 45a, Uniform Act on Paternity, Title
27 78, Chapter 45c, Utah Uniform Child Custody Jurisdiction and Enforcement Act, Title 78,
28 Chapter 45f, Uniform Interstate Family Support Act or to an action to modify or enforce a
29 judgment in the action may file a motion to have the file other than the final judgment, order or
30 decree classified as private.

31 (b) If the court finds that there are substantial interests favoring restricting access that clearly
32 outweigh the interests favoring access, the court may classify the file, or any part thereof other

1 than the final order, judgment or decree, as private. An order classifying part of the file as private
2 does not apply to subsequent filings.

3 (c) The record is private until the judge determines it is possible to release the record without
4 prejudice to the interests that justified the closure. Any interested person may petition the court
5 to permit access to a record classified as private under this section. The petition shall be served
6 on the parties to the closure order.

7

(18) Appendix C. Committee Members and Staff.

Committee Members

Ms. Kim Allard, Director of Court Services, Administrative Office of the Courts
Hon. John L. Baxter, Judge, Salt Lake City Justice Court
Ms. Alyson Brown, Clerk of the Court, Second District Court
Professor Joel J. Campbell, Brigham Young University
Mr. Stephen C. Clark, Attorney at Law
Mr. Randy L. Dryer, Parsons Behle & Latimer
Professor Leslie P. Francis, S. J. Quinney College of Law
Hon. Pamela T. Greenwood, Judge, Court of Appeals, Committee Chair
Hon. Thomas M. Higbee, Judge, Fifth District Juvenile Court
Mr. Brent M. Johnson, General Counsel, Administrative Office of the Courts
Mr. Thomas A. Mitchell, Assistant Attorney General
Hon. Frank G. Noel, Judge, Third District Court
Mr. Paul Sheffield, Trial Court Executive, Fourth District Court

Committee Staff

Ms. Carolyn Carpenter, Administrative Assistant, Administrative Office of the Courts
Mr. Timothy M. Shea, Senior Staff Attorney, Administrative Office of the Courts

(19) Appendix D. List of Presenters.

Presenter	Testimony summarized in minutes of:
Mr. Nelson Abbot, Abbott & Walker	June 3, 2003
Mr. Paul Belnap, Strong & Hanni	August 5, 2003
Mr. Charles Bennett, Blackburn & Stoll	June 3, 2003
Ms. Kristin Brewer, Director, Office of the Guardian ad Litem	April 1, 2003
Mr. Mark Buchi, Holme Roberts & Owen	August 5, 2003
Mr. Michael Christensen, Salt Lake District Attorney's Office	May 6, 2003
Ms. Lucy DalGLISH, Reporters Committee for Freedom of the Press, Washington, DC	September 2, 2003
Ms. Candace Daly, TransUnion	May 6, 2003
Mr. Sylvester Daniels, Chief Probation Officer, Third District Juvenile Court	May 6, 2003
Dr. Matthew Davies, Psychologist	April 1, 2003
Ms. Lucinda Dillon, Deseret News	September 2, 2003
Ms. Karma Dixon, Office of the Attorney General	June 3, 2003
Mr. Phil Fishler, Strong & Hanni	July 1, 2003
Mr. Jack Green, Division of Child and Family Services	April 1, 2003
Ms. Katie Gregory, Utah Children	April 1, 2003
Mr. George Haley, Holme Roberts & Owen	July 1, 2003
Ms. Barbara Hanson, Director of Human Resources, AOC	July 1, 2003
Ms. Audrey Hicker, University of Utah	October 7, 2003
Mr. Rich Humpherys, Attorney at Law	July 1, 2003
Mr. Jeff Hunt, Parr Waddoups Brown Gee & Loveless	September 2, 2003
Mr. Doug Klunder, ACLU, State of Washington	November 4, 2003
Mr. Chet Loftis, Utah Medical Association	August 5, 2003
Ms. Lisa Lokken, Lokken & Associates	April 1, 2003
Ms. Heather Mackenzie-Campbell, Director of Internal Auditing, AOC	July 1, 2003
Mr. Dennis Martinez, Operations Manager, Third District Juvenile Court	May 6, 2003
Ms. Sheila McCann, Salt Lake Tribune	September 2, 2003
Mr. Kent Morgan, Salt Lake District Attorney's Office	May 6, 2003
Mr. Mark Munger, University of Utah	October 7, 2003
Ms. Heidi Nestel, Utah Victim's Council	May 6, 2003

Presenter	Testimony summarized in minutes of:
Mr. Michael O'Brien, Jones Waldo Holbrook & McDonough	September 2, 2003
Mr. Stewart Ralphs, Legal Aid Society of Salt Lake	June 3, 2003
Mr. Eric Rosenberg, TransUnion	October 7, 2003
Mr. Alan Sullivan, Snell & Wilmer	August 5, 2003
Mr. Russ Van Vleet, University of Utah	October 7, 2003
Mr. Kelly Wuthridge, Office of the Attorney General	June 3, 2003
Mr. Marcus Zimmer, Clerk of the Court, U.S. District Court for Utah	August 5, 2003

(20) Appendix E. Current Classification of Court Records by Statutes and Rules.

Record Description	Classification	Reference	Notes
Expunged criminal file	Cannot be divulged	77-18-14(5)	
ADR: Memoranda, motions, exhibits, affidavits, and other written or oral communication to the ADR provider	Confidential	UCADR 103(a)	
Record of a delinquency proceeding against an insurer	Confidential	31A-27-203(2) and (3)	
Custody evaluations or home studies	Controlled	CJA 4-202.02(6)	
Medical, psychiatric, or psychological data about an individual	Controlled	CJA 4-202.02(5) & (6)	Subject to rules of procedure and evidence.
Medical: Record the disclosure of which would be detrimental to the subject's mental health or to the safety of an individual	Controlled	CJA 4-202.02(5) & (6)	
Medical: Record the release of which would constitute a violation of normal professional practice or medical ethics	Controlled	CJA 4-202.02(5) & (6)	
Presentence investigation report	Controlled	CJA 4-202.02(6)	Classified as "protected" by 77-18-1(14). Proposed rule amendment to pending conform to statute.
Record of closed court hearing	Controlled	CJA 4-202.02(6)	Permanently if the hearing is not traditionally open to the public and public access does not play a significant positive role in the process; or if the hearing is traditionally open to the public, until the judge determines it is possible to release the record to the public without prejudice to the interests that justified the closure of the hearing
Expunged case files	Expunged	CJA 4-202.02(12)	
Accounting records	Juvenile Legal	CJA 4-202.02(9)	
Discovery depositions or interrogatories	Juvenile Legal	CJA 4-202.02(9)	
Evidence	Juvenile Legal	CJA 4-202.02(9)	
Petition, pleadings, summonses, subpoenas, motions, affidavits, minutes, findings, orders, decrees	Juvenile Legal	CJA 4-202.02(9)	Felony against person 14 or older: petition, adjudication order, the disposition order, and the delinquency history summary of the juvenile are public records
Record of court hearing	Juvenile Legal	CJA 4-202.02(9)	Electronic records, court reporter records. Note: Many delinquency hearings are public and the record of a public hearing is usually a public record. Note: Pilot project to allow public inspection of record of proceedings in child protection cases.

Record Description	Classification	Reference	Notes
Record of court hearing	Juvenile Legal	CJA 4-202.02(9)	Transcripts. Note: Many delinquency hearings are public and the record of a public hearing is usually a public record. Note: Pilot project to allow public inspection of record of proceedings in child protection cases.
Referral and offense histories	Juvenile Legal	CJA 4-202.02(9)	Felony against person 14 or older: petition, adjudication order, the disposition order, and the delinquency history summary of the juvenile are public records
Correspondence relating to other juvenile social records	Juvenile Social and Probation	CJA 4-202.02(10)	
Custody evaluations or home studies	Juvenile Social and Probation	CJA 4-202.02(10)	
Medical, psychological, psychiatric evaluations	Juvenile Social and Probation	CJA 4-202.02(10)	
Pre-disposition and social summary reports	Juvenile Social and Probation	CJA 4-202.02(10)	
Probation agency and institutional reports or evaluations	Juvenile Social and Probation	CJA 4-202.02(10)	
Referral reports or forms	Juvenile Social and Probation	CJA 4-202.02(10)	
Report of preliminary inquiries	Juvenile Social and Probation	CJA 4-202.02(10)	
Treatment or service plans	Juvenile Social and Probation	CJA 4-202.02(10)	
Trade secret or other confidential research, development, or commercial information	Not disclosed	URCP 26(c)(7)	Not disclosed as part of discovery
ADR records	Not public	78-31b-8(2)	
Juvenile court records	Not Public	78-3a-206(2)	Access regulated by statute
Petitioner's address in a cohabitant abuse action	Not Public	30-6-4.1(3)	
Divorce file	Private	CJA 4-202.02(4)	If sealed under 30-3-4
Driver's license histories	Private	CJA 4-202.02(4)	
Eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels	Private	CJA 4-202.02(3)	
Informal reprimand of an individual	Private	CJA 4-202.02(3)	

Record Description	Classification	Reference	Notes
Location information	Private	62A-11-304.4(5)	Limited to parties of child support orders. Location information is private, but will be disclosed to the other party if that other party produces a visitation order signed by the judge and the information is not "safeguarded" and the party has been given notice of the opportunity to contest release and the party has not provided the office with reason to believe there is domestic violence or child abuse (a protective order, order prohibiting contact, a criminal order or documentation of a pending case for any of the above). If "safeguarded," the information will not be disclosed.
Medical history, diagnosis, condition, treatment, evaluation, or similar medical data	Private	CJA 4-202.02(3)	Subject to rules of procedure and evidence.
Name, address or telephone number of a juror or prospective juror or other information from which a juror or prospective juror could be identified or located	Private	CJA 4-202.02(4)	Names of jurors who tried a case are public after the trial. Judge can hold for up to 5 days after trial.
Personnel file of a current or former employee or applicant for employment	Private	CJA 4-202.02(3)	
Record containing data on individuals the disclosure of which constitutes an unwarranted invasion of personal privacy	Private	CJA 4-202.02(3)	
Record describing an individual's finances	Private	CJA 4-202.02(3)	
Record involving the commitment of a person under Title 62a, Chapter 12	Private	CJA 4-202.02(4)	
Record provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records	Private	CJA 4-202.02(3)	If the providing entity states in writing that the record would not be subject to public disclosure if retained by it
Record submitted by a judge to the Judicial Council in support of certification for retention election other than records showing whether the judge has met a standard of performance	Private	CJA 4-202.02(3)	

Record Description	Classification	Reference	Notes
Audit: Environmental audit report	Privileged	URE 508(b); 19-7-106	The existence of an environmental audit report, but not its content, is subject to discovery but is not admissible as evidence in an administrative or judicial proceeding. Use of an environmental audit report in a criminal proceeding does not waive or eliminate the privilege in an administrative or civil proceeding. Court can conduct in camera review and release non-privileged portions.
Attorney's work product, including the mental impressions or legal theories of an attorney or other representative of the judicial branch concerning litigation	Protected	CJA 4-202.02(7)	
Audit: Record created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes	Protected	CJA 4-202.02(7)	If release of the records: (i) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes; (ii) reasonably could be expected to interfere with audits, or disciplinary or enforcement proceedings; (iii) would create a danger of depriving a person of a right to a fair trial or impartial hearing; (iv) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or (v) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government, if disclosure would interfere with enforcement or audit efforts
Audit: Record relating to an ongoing or planned audit	Protected	CJA 4-202.02(7)	Until the final audit is released
Budget analyses, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas	Protected	CJA 4-202.02(7)	

Record Description	Classification	Reference	Notes
Budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the judicial branch's contemplated policies or contemplated courses of action before the judicial branch has implemented or rejected those policies or courses of action or made them public	Protected	CJA 4-202.02(7)	
Commercial information or non-individual financial information obtained from a person	Protected	CJA 4-202.02(7)	If disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future, the person submitting the information has a greater interest in prohibiting access than the public in obtaining access, and the person submitting the information has provided the judicial branch with the information specified in 63-2-308
Drafts of opinions or orders	Protected	CJA 4-202.02(8)	
Drafts, unless otherwise classified as public	Protected	CJA 4-202.02(7)	
Expunged criminal file	Protected	77-18-15	If expunged file is released by court order, file is classified as protected until resealed.
Investigations and analysis of loss occurrences covered by the risk management fund	Protected	CJA 4-202.02(7)	
Location information of crime victim	Protected	77-38-3	Address, phone number, impact statement
Memoranda or notes prepared by a judge or any person charged by law with performing a judicial function and used in the decision-making process	Protected	CJA 4-202.02(8)	
Memoranda prepared by staff and used in the decision-making process by a member of any body charged by law with performing a quasi-judicial function	Protected	CJA 4-202.02(7)	
Memoranda prepared by staff for a member of any body charged by law with performing a judicial function and used in the decision-making process	Protected	CJA 4-202.02(8)	
Presentence investigation report	Protected	77-18-1(5)(d)	
Recommendation concerning an individual other than personnel evaluations	Protected	CJA 4-202.02(7)	If disclosure would constitute an unwarranted invasion of personal privacy, or disclosure is not in the public interest

Record Description	Classification	Reference	Notes
Record identifying real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired	Protected	CJA 4-202.02(7)	Unless: public interest in obtaining access to the information outweighs the judicial branch's need to acquire the property on the best terms possible; the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity; in the case of records that would identify property, potential sellers of the described property have already learned of the judicial branch's plans to acquire the property; or, in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the judicial branch's estimated value of the property
Record of communications between the judicial branch and an attorney representing, retained, or employed by the judicial branch	Protected	CJA 4-202.02(7)	If considered privileged
Record of meeting of a public body - closed	Protected	CJA 4-202.02(7)	Except as provided in 52-4-7
Record prepared by or on behalf of the judicial branch solely in anticipation of litigation	Protected	CJA 4-202.02(7)	If not available under the rules of discovery
Record prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, before the transaction is completed, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property,	Protected	CJA 4-202.02(7)	Unless: the public interest in access outweighs the interests in restricting access, including the judicial branch's interest in maximizing the financial benefit of the transaction; or when prepared by or on behalf of the judicial branch, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the judicial branch
Record provided by the United States or by a government entity outside the state that are given to the judicial branch with a requirement that they be managed as protected records	Protected	CJA 4-202.02(7)	If the providing entity certifies that the record would not be subject to public disclosure if retained by it
Record that would reveal the contents of settlement negotiations	Protected	CJA 4-202.02(7)	Not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure
Record the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with the judicial branch	Protected	CJA 4-202.02(7)	Does not restrict the right of a person to see bids submitted to or by the judicial branch after bidding has closed

Record Description	Classification	Reference	Notes
Record the disclosure of which would jeopardize the life or safety of an individual, including court security plans	Protected	CJA 4-202.02(7)	
Record the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental record-keeping systems from damage, theft, or other appropriation or use contrary to law or public policy	Protected	CJA 4-202.02(7)	
Record the disclosure of which would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole	Protected	CJA 4-202.02(7)	
Report by a presiding judge about a judge's performance and requests by a judge to exclude a lawyer from that judge's attorney survey respondent pool	Protected	CJA 4-202.02(7)	
Strategy about collective bargaining or pending litigation	Protected	CJA 4-202.02(7)	
Test questions and answers to be used in future license, certification, registration, employment, or academic examinations	Protected	CJA 4-202.02(7)	
Trade secret as defined in 13-24-2	Protected	CJA 4-202.02(7)	If the person submitting the trade secret has provided the judicial branch with the information specified in 63-2-308
Account, voucher, or contract that deals with the receipt or expenditure of funds	Public	CJA 4-202.02(1)	
Administrative orders	Public	CJA 4-202.02(1)	
Amount in controversy	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Annual reports	Public	CJA 4-202.02(1)	
Arrest date	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Arrest warrants after issuance	Public	CJA 4-202.02(1)	For good cause, a court may order restricted access to arrest warrants prior to service
Attorney name	Public	CJA 4-202.12(2)(A)	Single case or bulk record. Electronic access rule.
Audit final report	Public	CJA 4-202.02(1)	
Bail amount	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Bench books	Public	CJA 4-202.02(1)	

Record Description	Classification	Reference	Notes
Case number	Public	CJA 4-202.12(2)(A)	Single case or bulk record. Electronic access rule.
Case status	Public	CJA 4-202.12(2)(A)	Single case or bulk record. Electronic access rule.
Case files	Public	CJA 4-202.02(2)	
Civil case type or criminal violation	Public	CJA 4-202.12(2)(A)	Single case or bulk record. Electronic access rule.
Civil judgment amount balance due	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Civil judgment amount credit	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Civil judgment amount paid	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Civil judgment amount total	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Civil judgment date	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Civil judgment debtor's driver license number	Public	CJA 4-202.12(2)(B)	Conforms to 78-22-1.5. Single case only. Not in bulk record. Electronic access rule. Other DLN private.
Civil judgment debtor's service of process address	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Civil judgment debtor's social security number	Public	CJA 4-202.12(2)(B)	Conforms to 78-22-1.5. Single case only. Not in bulk record. Electronic access rule. Other SSN private.
Civil judgment or criminal disposition	Public	CJA 4-202.12(2)(A)	Single case or bulk record. Electronic access rule.
Compensation paid to a contractor or private provider	Public	CJA 4-202.02(1)	
Contractor or a private provider services	Public	CJA 4-202.02(1)	To the extent the records would be public if prepared by the judicial branch
Contractor's or private provider's compliance with the terms of a contract	Public	CJA 4-202.02(1)	
Contracts entered into by the judicial branch	Public	CJA 4-202.02(1)	
Correspondence by and with the judicial branch in which the judicial branch determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person	Public	CJA 4-202.02(1)	
Criminal finding code	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Criminal finding date	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Criminal sentence	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Daily calendar	Public	CJA 4-202.12(2)(A)	Single case or bulk record. Electronic access rule.

Record Description	Classification	Reference	Notes
Data on individuals that would otherwise be private if the individual who is the subject of the record has given written permission to make the records available to the public	Public	CJA 4-202.02(1)	
Date of birth	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Disposition type	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Domestic violence flag	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Drafts circulated to anyone other than a governmental entity, a political subdivision, a federal agency	Public	CJA 4-202.02(1)	If the judicial branch and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved, a government-managed corporation, or a contractor or private provider
Drafts that have never been finalized but were relied upon in carrying out action or policy	Public	CJA 4-202.02(1)	
Empirical data contained in drafts	Public	CJA 4-202.02(1)	If the empirical data is not reasonably available to the requester elsewhere in similar form and if the judicial branch is given a reasonable opportunity to correct any errors or make non-substantive changes before release
Evidence	Public	CJA 4-202.02(2)	
File date	Public	CJA 4-202.12(2)(A)	Single case or bulk record. Electronic access rule.
Final interpretations of statutes or rules	Public	CJA 4-202.02(1)	Unless prepared in anticipation of litigation and are not subject to discovery, are attorney work product, or contain privileged communications between the judicial branch and an attorney
Final opinions, including concurring and dissenting opinions, and orders in administrative or adjudicative proceedings	Public	CJA 4-202.02(1)	If the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected
Final reports of special task forces, committees or commissions	Public	CJA 4-202.02(1)	After release by the Council or the court that requested the study
Fine/bail schedule	Public	CJA 4-202.02(1)	
Formal charges or disciplinary actions against a past or present judicial branch employee	Public	CJA 4-202.02(1)	If the disciplinary action has been completed and all time periods for administrative appeal have expired, and if the formal charges were sustained
Instructions to staff	Public	CJA 4-202.02(1)	
Judge assigned	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Judge disposition	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.

Record Description	Classification	Reference	Notes
Judicial nominating commission procedures	Public	CJA 4-202.02(1)	
Justice court manuals	Public	CJA 4-202.02(1)	
Law enforcement agency	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Names, gender, gross compensation (reported as gross salary and benefits), job titles, job descriptions, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of former and present employees and officers	Public	CJA 4-202.02(1)	
Notice of violation, a notice of agency action under 63-46b-3, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by the judicial branch, but not including records that initiate employee discipline	Public	CJA 4-202.02(1)	
Offense tracking number	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Original data in a computer program	Public	CJA 4-202.02(1)	If the judicial branch chooses not to disclose the program
Party address	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Party name	Public	CJA 4-202.12(2)(A)	Single case or bulk record. Electronic access rule.
Party type	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Personnel policies and procedures	Public	CJA 4-202.02(1)	
Petition, adjudication order, the disposition order, and delinquency history summary	Public	78-3a-206(4) and (6)	Felony against person 14 or older:
Petition, adjudication order, the disposition order, and delinquency history summary	Public	CJA 4-202.02(2)	Felony against person 14 or older:
Plea	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Plea date	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Record of meeting - open	Public	CJA 4-202.02(1)	
Record of an open court hearing	Public	CJA 4-202.02(2)	
Record retention schedule	Public	CJA 4-202.02(1)	
Rules	Public	CJA 4-202.02(1)	
Search warrants after execution and filing of the return	Public	CJA 4-202.02(1)	A court, for good cause, may order restricted access to search warrants prior to trial
Special reports	Public	CJA 4-202.02(1)	
Staff manuals	Public	CJA 4-202.02(1)	

Record Description	Classification	Reference	Notes
Statements of policy	Public	CJA 4-202.02(1)	
Stay date	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Stay reason	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Summary data	Public	CJA 4-202.02(1)	
Violation code	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Violation date	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Violation description	Public	CJA 4-202.12(2)(B)	Single case only. Not in bulk record. Electronic access rule.
Adoption records	Sealed	78-30-15	
Adoption records	Sealed	CJA 4-202.02(11)	
Discovery documents	Sealed	URCP 26(c)(8)	Will be opened as directed by the court.
Discovery: Motion requesting that discovery be denied, restricted, or deferred.	Sealed	URCrP 16(f)	The showing required to support the motion can be made ex parte and sealed.
Disease records	Sealed	26-6-7	
Disease testing; Petition for	Sealed	78-29-102	Petition is sealed. Identity of tested person and results are confidential.
Divorce file	Sealed	30-3-4(2)	Excludes decree. Requires motion and court order. No minimum standard or process in the statute. Treated as "private" by 4-202.02
Evidence on the issue of whether a confidential government informant "may be able to give testimony necessary to a fair determination of the issue of guilt or innocence in a criminal case or of a material issue on the merits of a civil case"	Sealed	URE 505(d)(1)	
Evidence: Motion to admit evidence of the sexual behavior of a victim, the record of the hearing to determine admissibility, and any related papers	Sealed	URE 412(c)(2)	
Expunged criminal cases	Sealed	CJA 4-207	
Expunged juvenile court records	Sealed	78-3a-905(2); URJP 56(c)	
Jury verdict if the parties reach an agreement settling a case	Sealed	URCP 47(p)	As directed by the court
Order authorizing installation of pen register or trap and trace device	Sealed	77-23a-15	
Record showing the identity of a confidential informant	Sealed	URE 505(d)(2)	
Records relating to the commissioner's possession of financial institution.	Sealed	7-2-6(1)(b)	Statutorily identified conditions
Will deposited for safe keeping	Sealed	75-2-901	

Record Description	Classification	Reference	Notes
Discovery depositions	Sealed but available for public inspection	Carter v. Utah Power & Light Company, 800 P.2d 1095 (Utah 1990)	For good cause, the court can enter a protective order keeping a sealed deposition from public inspection. URCP 26(c)(6)
Investigative subpoenas	Secret	77-22-2	The prosecutor may make written application showing a reasonable likelihood that releasing the identity of a witness or the substance of the evidence would pose a threat of harm to a person or otherwise impede the investigation. Request for secrecy is a public record.
Trade secret	Secret	13-24-6	Court shall preserve the secrecy of an alleged trade secret by reasonable means