



Supreme Court - THE JUDICIARY • COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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Miguel S. Demapan
CHIEF JUSTICE

MEMORANDUM

TO: Margaret M. Palacios, Director of Court
Sonia A. Camacho, Special Assistant to the Presiding Judge
Jonathan Grayson, Supreme Court Clerk of Court
Bernie A. Sablan, Superior Court Clerk of Court
Evelyn Calvo, Accountant
Ursula Lifoifoi-Aldan, Chief Probation Officer
Luise S. Deleon Guerrero, Commonwealth Recorder
Patrick V. Diaz, Family Court Manager
Wayne Archibald, System Administrator
Jesus N. Santos, Deputy Marshall
Joseph R. Guzman, Building Superintendent
Naomi Lujan-Gonzales, LRC Executive Director

FROM: Chief Justice Miguel S. Demapan *msd*

DATE: September 6, 2007

SUBJECT: OPEN GOVERNMENT ACT

The Commonwealth Judiciary has issued a policy statement on the issue of the Open Government Act. It is noted in the Order that the Commonwealth Judiciary is exempted from the application of the Act. The policy of the judiciary has always been that we be up-front and transparent with our work and dealings, unless it is required by law to seal court matters or to protect the innocent or juvenile members of our community. It is within this spirit that our judiciary has set up the framework from which certain activities or records in our courts or its administrative offices must be open to the public. Please review the policy and I trust that your sound judgment will prevail with respect to its implementation.

Should you have questions or concerns, please feel free to contact me or Presiding Judge Robert Naraja.



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Jonathan Grayson

**IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**IN RE POLICY ON PUBLIC ACCESS TO
JUDICIAL BRANCH ADMINISTRATIVE RECORDS**

SUPREME COURT NO 2007-ADM-0028-RUL

ORDER

¶ 1 This matter is before the Court on its own motion in an effort to ensure ordered public access to court administrative records. Public access promotes government accountability and public trust in the judiciary. However, no express procedure controlling public access to court administrative records currently exists as the Open Government Act does not apply to the judicial branch, 1 CMC § 9902(e)(1).

¶ 2 There are legitimate concerns warranting restricted access to certain court administrative records. Thus, the public good in disclosing a particular record must be weighed against other important interests. Such interests may include protecting personal safety and privacy, guarding against security risks, conforming to local and federal laws, upholding confidentiality agreements, and shielding drafts, work product, and other proprietary information related to judicial administration from public scrutiny. These considerations are not exhaustive, and additional information may be unavailable if its disclosure would unduly burden the court's limited resources.

¶ 3 The judicial branch recognizes a procedure controlling public access to court administrative records will serve both the public and the judiciary. The public benefits by gaining increased and ordered access to administrative records. The judiciary benefits by having guidelines when faced with public requests for information.

¶ 4 **IT IS THEREFORE ORDERED** the attached Policy on Public Access to Judicial Branch Administrative Records shall become effective immediately.

DATED this 6th day of September, 2007.

MIGUEL S. DEMAPAN, Chief Justice
ALEXANDRO C. CASTRO, Associate Justice
JOHN A. MANGLONA, Associate Justice

**POLICY ON PUBLIC ACCESS TO
JUDICIAL BRANCH ADMINISTRATIVE RECORDS
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

(Effective September 6, 2007)

I. SCOPE. This policy applies only to public access to administrative records maintained by the judicial branch of the Commonwealth of the Northern Mariana Islands.

II. DEFINITIONS

- A. *Administrative Record.* “Administrative record” means any document, information, data, or other item created, collected, received and maintained by the judicial branch pertaining to administration and not associated with any case information.
- B. *Custodian.* “Custodian” means the official charged with the responsibility of the care, storage, and supervision of the records. All references to “custodian” include either the custodian or the custodian’s designee.

III. GENERAL ACCESS TO ADMINISTRATIVE RECORDS

Administrative records are open to the public, subject to the exceptions in Section IV below.

IV. EXCEPTIONS

The following administrative records are not open to the public:

- A. *Personnel, discipline, applicant, unpaid volunteer, and independent contractor records.*
1. Personnel records other than names, dates of employment, offices assigned, position classifications, pay grades, and gross salaries of employees.
 2. Records of employment investigations and hearings.
 3. Records on individuals collected because the individual is or was an applicant for employment.
 4. Information about unpaid volunteers other than the names of such volunteers.
 5. Information about independent contractors other than name, type of work performed and amount paid.

- B. *Court interpreter information.* Records relating to individual court interpreters other than the name of interpreter, type of work performed, and the amount billed.
- C. *Attorney billing records.* Billing records of any court appointed attorney before the case is final unless otherwise ordered by a judge.
- D. *Testing records.* Test questions, scoring keys, other examination data, including testing results (unless the person tested has consented to the release) used in administering an examination given for employment or for inclusion on any roster.
- E. *Proprietary and licensed materials.* Any materials, including, but not limited to, computer programs and related records and proposals from and contracts with independent contractors, shall only be disclosed in accordance with the terms and conditions of the agreements or licenses.
- F. *Competitive bidding records.* Sealed bids, including the number of bids received prior to the opening of the bids at the time specified in the judiciary's bid request.
- G. *Trade secrets.* Trade secrets and commercial or financial information of a privileged or confidential nature.
- H. *Judicial case assignments.* The name of the judge to whom any matter is to be assigned is not subject to disclosure until after the assignment is made.
- I. *Informal/preliminary correspondence, internal deliberations, notes, memoranda, drafts or work product.*
 - 1. Any correspondence transmitted by whatever means, including electronic, which is not a formal:
 - a. Declaration of policy or procedure.
 - b. Record of a transaction or receipt.
 - 2. Internal deliberations on or records relating to cases before a court or judicial administration matters. Any record relating to internal deliberations.
 - 3. Notes, outlines, and similar preliminary materials.
 - 4. Preliminary and draft reports, documents, records, evaluations, investigations, audits, or compliance reviews, including materials prepared by a consultant.
 - 5. The work product of any attorney, law clerk or law intern employed by or representing the judiciary which is produced in the regular course of business or representation of the judiciary.
- J. *Records relating to litigation.* Records pertaining to pending or potential litigation which are not filed with a court as part of a case shall not be disclosed.

- K. *Security records.* Records likely to substantially jeopardize or diminish the security of information, possessions, individuals, or property in the possession or custody of the courts against theft, tampering, improper use, illegal disclosure, trespass or physical injury such as security plans or codes or individual records of telephone or cell phone calls.
- L. *Law library information.* Any record in a law library linking a patron's name with the materials requested or borrowed.
- M. *Calendar information.* Any record reflecting an individual's future appointments or engagements, other than case assignments, constituting a clearly unwarranted invasion of privacy.
- N. *Juror Records.* Personal information regarding jurors, such as name, juror address, and phone number are not subject to disclosures unless authorized by a judge.
- P. *Records otherwise made inaccessible.*
 - 1. Administrative records made inaccessible to the public pursuant to Commonwealth or federal statutes, common law, or rule or directive promulgated by the Commonwealth Supreme Court.
 - 2. Information presenting a risk to personal privacy, or the fair, impartial and orderly administration of justice as determined by the Chief Justice.

V. PROCEDURES FOR REQUESTING ACCESS

A. In General.

- 1. *To whom the request is made.* A request to inspect or obtain copies of records open to the public shall be filed with the Clerk of Court of the relevant court (Supreme Court or Superior Court). Requests for records not specifically associated with either court, or records relevant the judicial branch as a whole, shall be filed with the Clerk of the Supreme Court.
- 2. *Detailed Requests.* All requests must include sufficient detail to reasonably identify what information is being sought and to allow the information to be accessed. A form for records requests is attached to this policy as Appendix B.
- 3. *Response.* The custodian of the records shall respond to a request for examination of public records orally or in writing within 15 working days from the date on which the request was filed.
 - a. If the custodian determines the records can be made available for inspection or can be copied without unreasonable disruption to the operations of the Court, the custodian shall notify the requestor of the cost of complying with the request . If the

custodian determines more than 15 working days are required to determine whether access to the records is permissible, the custodian shall notify the requestor of the reasons for the delay and when a determination will be made.

- (1) The person requesting the information must pay the cost of complying with the request within 10 working days after being notified of such cost.
 - (2) After receiving payment, the records shall be made available for inspection or copying or the information otherwise produced within 15 working days, or as soon as practicable.
 - (3) If the person requesting the information does not pay the cost of complying with the request in full within 10 working days, the request shall be deemed withdrawn, but may be renewed by re-submitting the request.
- b. If access to the records is not permitted, the response shall indicate the basis for denying the inspection request and the statute, rule, or policy upon which the denial is based.
 - c. If the records do not exist, the response shall so indicate.
 - d. If the request does not provide sufficient information to locate the records, the request shall be returned, and the requestor notified.
 - e. If the custodian determines compliance with the request would create an undue burden on court operations, or if the number of records requested is so great that inspection or reproduction would create an unreasonable disruption of court work, the custodian may require the request be limited, or the custodian may limit the request.
 - f. If the person making the request does not inspect or obtain the copies of the records during the time period permitted by the custodian, the request shall be deemed withdrawn, but may be renewed by re-submitting the request.

B. Inspection and photocopying

1. *Access to original records.* Upon request, a person shall be allowed to inspect or to obtain copies of original versions of records that are open to the public in the location where such records are kept during regular working hours. If access to the original records would result in disclosure of information which is not permitted, jeopardizes the security of the records, or is otherwise impractical, copies, edited copies, reasonable facsimiles or other appropriate formats may be produced for inspection.

Unless expressly authorized by the custodian or judicial order, records shall not be removed from the location where they are normally kept.

2. *Costs.* The person requesting the information shall bear the cost of complying with the request as determined by the custodian. Reasonable fees may be imposed for providing public access to administrative records pursuant to this policy.

C. Appeal of denial of access to records.

Appeals of the denial of access to information shall be made to the Court Administrator in writing within 10 business days of the custodian's denial of access to the records. The Court Administrator's decision may be appealed to the Commonwealth Supreme Court within 10 business days from the date of denial.

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APPENDIX A

TRAVEL EXPENSES

To further make judicial branch operations transparent whenever possible, without unduly impacting the courts' administrative operations, beginning in Fiscal Year 2008 information related to travel expenses of judicial branch employees will be provided upon request to the Court Administrator in the following format:

1. Name of the traveler
2. Purpose or description of a trip, which includes all work-related off-island travel funded by Commonwealth.
3. Destination city(ies) and state(s), unless disclosure might create a security risk.
4. An itemized list of costs for transportation, lodging, meals, registration, and incidentals.

APPENDIX B

THE JUDICIARY
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**APPLICATION FOR ACCESS TO
ADMINISTRATIVE RECORDS**

[Requests should be submitted to the applicable court]

NOTICE TO APPLICANT:

This application will be processed and evaluated in accordance with the judicial branch policy for public access to administrative records. Applicant agrees to indemnify and hold harmless the court and its officers and employees from any claim for damages arising from applicant's use or distribution of the information provided pursuant to this application.

Applicant shall be responsible for the cost of complying with this request. Notification of such cost will be provided to applicant if the custodian determines the requested documents may be made available.

APPLICANT DATA: *(Please type or print)*

Name: _____

Daytime telephone: _____ **Email address:** _____

Address: _____

REQUEST *(Describe the records requested in as much detail as possible. Attach additional pages as required):*

Applicant Signature: _____ **Date:** _____