



JUSTICE ADMINISTRATIVE COMMISSION

PUBLIC RECORDS REQUEST POLICY

SPECIFIC AUTHORITY

- Florida Constitution: Article 1, Section 24
- Florida Statutes: s. 43.16, Chapter 119
- 2023 Government-in-the-Sunshine Manual

OBJECTIVE

To provide access to public records as quickly as is reasonably possible.

OVERVIEW

The Justice Administrative Commission (JAC) is committed to providing access to public records. Section 119.01(1), F.S., provides “It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.”

JAC administratively serves the Offices of State Attorney, Public Defender, Criminal Conflict and Civil Regional Counsel, Capital Collateral Regional Counsel, and the Statewide Guardian Ad Litem Program of Florida (ss. 27.511, 27.702, and 43.16 F.S.). Services provided to these judicial-related offices (JROs) are primarily in the areas of accounting, budget, financial services, and human resources. Although JAC serves these offices, JAC does not direct, supervise, or control these offices. JAC also provides compliance and financial review of bills for services provided by private court-appointed attorneys and associated due process vendors representing indigent citizens (ss. 27.40, 27.425, 27.5304, 27.5305, and 27.710, F.S.).

I. DEFINITIONS

Confidential Information: Not subject to inspection or copying by the public and may be released only to those persons or entities specifically designated by statute, court order, or in some cases, written authorization.

Custody of a Public Record: Supervision and control over a document or legal responsibility for its care. The fact that a public employee temporarily possesses a record does not necessarily mean that the person has custody of the record as defined by s. 119.07, F.S.

Exempt Information: Information not subject to inspection by the public, but may be disclosed at the discretion of the JAC. When deciding whether exempt information should be disclosed, JAC's General Counsel (General Counsel) must determine whether the release of the information would undermine the exemption's purpose.

Extensive Use of JAC Resources: When the nature or volume of a response to a public records request to be inspected or copied requires more than one (1) hour of JAC technological, clerical, or supervisory resources.

Judicial-Related Offices (JROs): The offices served by JAC including the: 20 Offices of State Attorney, 20 Offices of Public Defender, 5 Offices of Criminal Conflict and Civil Regional Counsel, 3 Offices of Capital Collateral Regional Counsel, and the Statewide Guardian Ad Litem Program of Florida.

Public Records: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency (s. 119.011(12), F.S.).

Public Records Coordinator (Coordinator): An employee designated to coordinate JAC's response to a public records requests on behalf of JAC and to act as Records Custodian. The Coordinator's duties are to receive, log, acknowledge, coordinate a response, and respond to public records

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requests on behalf of JAC in accordance with this Policy. The statutory obligation of the Coordinator is to provide access to, or copies of, responsive public records. The Coordinator has authority to respond to public records requests on behalf of JAC only.

II. PUBLIC ACCESS TO RECORDS

A public record request may be made of any employee of JAC. Only the Coordinator may respond to public records requests made of JAC. Any request received by any JAC employee for public records must be immediately referred to the Coordinator.

A. Receipt of a Public Records Request

JAC accepts a public records request in the following manners: in person, by phone, email, regular mail, or via the JAC website (see below). All incoming public records related correspondence shall be delivered to the Coordinator.

| Via | Access |
|---------------------|--------------------------------------------------------------------------------------------------|
| Email | publicrecords@justiceadmin.org |
| JAC Website | https://www.justiceadmin.org |
| Phone | (850) 488-2415 |
| Regular Mail | JAC Public Records Coordinator 227 North Bronough Street, Suite 2100 Tallahassee, FL 32301 |
| In Person | 227 North Bronough Street, Suite 2100 Tallahassee, FL 32301 |

A public records request may be communicated orally or in writing and no specific form is required as a prerequisite for completing a request. If the individual making the request chooses not to submit the request in writing,

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JAC shall ask the requestor for sufficient detail regarding the request as to facilitate processing the request (e.g., name; contact information, whether telephone number, email, or mailing address; documents requested; and any additional information). *However, the individual making the request is not required to disclose their identity, provide information about the reason for the request, or explain how the records will be used.* To respect the anonymity of the requestor, JAC shall attempt to gather as much information as possible without compromising the requestor's identity.

It is the policy of the JAC that upon receipt of a public records request requiring assistance and/or safeguarding of records during inspection, the Coordinator will determine the appropriate location, personnel, and, if necessary, the charge for such assistance or for performing a review of the requested records.

The JAC does not honor "standing" public records requests for future copying or production. See Inf. Op. to Worch, June 15, 1995.

B. JAC's Response to a Public Records Request

A public records request to JAC will be promptly acknowledged. If a request is insufficiently clear to conduct a meaningful search, the Coordinator will request further clarification in order to provide responsive records or otherwise respond in a timely manner.

To ensure that JAC can provide access to responsive records promptly, the Coordinator may request specific information about the records requested, including:

- Record name;
- Case number;
- Date range; and
- Any other clarifying information allowing JAC to conduct an appropriate search.

The Public Records Act does not require JAC to generate or create records not maintained by JAC. Records responsive to a public records request that are available as of the date the request is received will be provided. If the request calls for production of a voluminous number of documents or requires an extensive and time-consuming search, the Coordinator will follow the procedures outlined in the section entitled “Charging for Requests,” below. Should there be some hindrance to providing the requested records, the Coordinator will notify the requestor. Upon independent review to determine the most appropriate method of data collection, the Coordinator will determine whether the request will require a charge, as outlined below, or work with the necessary JAC staff to compile the records requested. The Executive Director and the General Counsel will be informed of all complex requests. If the Coordinator or JAC staff believes the records requested are not public records under Chapter 119, Florida Statutes, the General Counsel will be consulted for confirmation.

C. Charging for Responses

While the majority of responses are provided electronically and at no cost to the requestor, under certain circumstances JAC may assess a fee and require payment before providing records, as described below. Any fee totaling less than twenty-five dollars (\$25.00) may be waived at the discretion of JAC.

In no instance will any JRO served by the JAC or an association of those JROs be charged for a public records request. In other circumstances, including requests from other state or federal entities, any applicable charges may be waived at the discretion of JAC’s Executive Director or General Counsel.

1. Special Service Charge

If the response to a public records request requires “extensive use of agency resources,” s. 119.07(4), F.S., authorizes a special service charge in addition to the actual cost of duplication. In determining whether a special service charge is warranted, the Coordinator shall consider whether the nature or

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volume of a public records request response requires extensive use of JAC resources. The special service charge must be reasonable and based on the cost actually incurred by JAC for such extensive use of JAC resources. The charge for clerical or supervisory assistance will be no greater than the hourly rate (based on salary, including benefits) of the lowest paid personnel capable of providing such services. If fees are imposed for copies and/or a special service charge, the requester will be provided a cost estimate in order for them to determine whether or not they would like JAC to proceed with preparing the response to their request based on the cost estimate communicated. Full payment will be collected before producing the records responsive to the request. If the actual costs incurred are less than the amount paid, JAC will refund the overpayment to the requestor.

2. Copying Costs

As authorized by s. 119.07(4), F.S., if the requestor desires paper copies of the records the JAC will charge copying fees as described in the chart below.

| Material | Cost |
|--------------------------|-----------------|
| One-sided Copy | \$0.15 per page |
| Double-sided Copy | \$0.20 per page |

D. Confidential/Exempt Information

If the requested record is confidential and/or exempt from public disclosure by statute, case law, or other basis, the record may not be disclosed and the requestor will be informed that the record is confidential and/or exempt from disclosure, along with the citation to the applicable statute, case law, or other basis, establishing the exemption. If only part of the record is confidential and/or exempt, JAC will redact the confidential and/or exempt information and provide the remaining record to the requestor along with the citation(s). With requests of this nature, the Coordinator will work closely with the General Counsel or designee to determine whether the redaction of such information is consistent with statute, case law, or other basis. The

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Coordinator is responsible for the redaction of any readily apparent confidential or exempt information (e.g., Social Security Numbers and bank account numbers). A public records request is not confidential or exempt.

If redaction is required, the Coordinator shall redact the confidential and/or exempt portion of the records manually or electronically in a way that completely protects the confidential and/or exempt information before including the record in the response.

1. Records in JAC's possession generated by or about the entities JAC serves

JAC provides administrative services to 49 JROs representing both sides of the adversarial court system and conducts compliance and financial review of bills for services for court-appointed counsel, lawyers representing clients in indigent for costs cases, and due process vendors. Because these services are administrative in nature, JAC may not be in the best position to determine whether specific information in a record originating from outside JAC is privileged, confidential and/or exempt. JAC encourages all JROs, attorneys, and due process vendors to note such information it transmitted to JAC and cite the statutory, case law, or other basis for exemption. If the restricted information is not necessary for JAC to process the billing, personnel action, or other service, JAC encourages redaction of that information prior to submission to JAC.

To decrease the risk of inadvertently compromising the prosecution of a case or a defendant's constitutional rights, JAC follows a courtesy notification process before providing certain records to the public as described in section III of this policy ("Courtesy Notice").

The General Counsel shall review the redactions proposed for consistency with the Public Records Act or other provisions of Florida law. If the General Counsel has concerns regarding a proposed redaction from a JRO, the General Counsel shall consult with the JRO. See Board of Trustees, Jacksonville Police & Fire Pension Fund v. Curtis Lee, 189 So. 3d 120 (Fla. 2016) (holding there is no "good faith" exception to an award of attorney fees

in a public records lawsuit). As the entity liable under Ch. 119, F.S., JAC is ultimately responsible for determining whether to disclose information or claim an exemption when responding to a public records request. See Chandler v. City of Sanford, 121 So. 3d 657 (Fla. 5th DCA 2013); Op. Att’y Gen. Fla. 1988-25 (1988).

E. Subpoenas

JAC’s response to a subpoena is not governed by the Public Records Act or this policy. Absent a requirement that the response to the subpoena be held confidential, JAC will follow the Courtesy Notice procedure as to the JROs. Law enforcement agencies requesting that JAC confidentially provide information and/or documents during an active criminal surveillance or investigation must serve JAC with a subpoena or protective order directing that JAC not disclose the request. Under these circumstances, JAC will not notify the JRO(s) affected by the request or of JAC’s response until JAC is notified that the criminal investigation has been determined inactive by the law enforcement agency or the protective order is lifted by the court.

F. Requests for Information

The Public Record Act requires state entities provide access to public records as defined. It does not require state entities create new records not already in existence pursuant to a request. Requests to identify or analyze information, generate documents, or make calculations not already in existence are considered Requests for Information and are not governed by the Public Records Act or this Policy. If a Request for Information relates to JRO information, JAC may follow the Courtesy Notice procedure set forth herein.

III. IDENTIFICATION OF RECORDS AND COURTESY NOTICE

The process by which JAC will identify and provide records pursuant to a public records request will vary based on the type of record requested. While JAC maintains custody of many records related only to its own business practices and operations, JAC also receives many records originating from

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other governmental and private entities. As stated previously, JAC may not be in the best position to determine whether the information contained in these records is privileged, confidential and/or exempt from disclosure. Therefore, JAC will work with those entities to ensure information is protected as necessary.

The following will describe how JAC will identify privileged, confidential and/or exempt information.

A. Records Generated by or Regarding the Operations of JROs

When JAC receives a public records request for records generated by or regarding the operations of a JRO, JAC will provide notice as a courtesy to the affected JRO(s) before responding to the request. That notice will include (1) the terms of the request itself (2) the records JAC intends to provide in response, divided by individual JRO and redacted as needed, and (3) the date on which JAC intends to transmit the records to the requestor.

If JAC's proposed response includes documents or information the JRO believes to be privileged, confidential and/or exempt, the JRO must notify JAC before the intended response date. If the JRO needs additional time for review, they must make such a request before the intended response date.

B. Records Regarding Active Court-appointed or Indigent for Costs Cases

JAC provides compliance and financial review of bills for services provided by private court-appointed and indigent for costs attorneys and associated due process vendors (vendors) to indigent persons. JAC does not require the submission of confidential or exempt information to process vendor bills. Furthermore, Florida Statutes and JAC's Court-Appointed Attorney (Registry); Indigent for Costs Attorney (IFC); and Due Process Vendor contracts contain provisions providing that when JAC requires the review or submission of additional supporting documentation to process or verify a bill, any confidential or exempt information contained in the supporting documentation may be redacted before transmitting it to JAC.

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Nonetheless, if JAC receives a public record request related to billing records in an *active* court-appointed or indigent for costs case, JAC may notify the attorney of the request including the anticipated release date of the records. The attorney must notify JAC of any privilege to be asserted with regard to those records and file a court action to prevent the release of the records.

1. Court-Appointed Attorneys and Attorneys in Indigent for Costs Cases

JAC's Court-Appointed Registry Attorney Contract (Registry Contract) and Indigent for Costs Attorney Contract (IFC Contract) address public records, and provide:

To the extent that Attorney's records constitute public records under Florida law, Attorney must comply with the requirements of Ch. 119, F.S., and other provisions of Florida law relating to public records. Attorney is solely liable for any fee or costs assessed against Attorney if Attorney fails to comply with a request for public records pursuant to Florida law. In assessing whether records possessed by Attorney constitute public records, Attorney should be familiar with *Kight v. Dugger*, 574 So. 2d 1066 (Fla. 1990), which concluded that files held in furtherance of representation of an indigent client are not public records.

2. Due Process Vendors

JAC's Due Process Vendor Contract also addresses public records, and provides:

To the extent that Vendor's records constitute public records under Florida law, Vendor must comply with the requirements of Ch. 119, F.S., and other provisions of Florida law relating to public records. Vendor is solely liable for any fee or costs assessed against Vendor if Vendor fails to comply with a request for public records pursuant to Florida law. Vendor should consult

with Attorney prior to disclosure of records to ascertain whether the records may be protected by the attorney-client privilege, work product privilege, or the principles set forth in *Kight v. Dugger*, 574 So. 2d 1066 (Fla. 1990), which concluded that files held in furtherance of representation of an indigent client are not public records.

IV. EXCEPTIONS TO THE COURTESY NOTICE

JAC acknowledges that there are circumstances in which JROs may want expedited access to information and a lengthy Courtesy Notice period may not suit their needs. The Florida Prosecuting Attorneys Association and the Florida Public Defenders Association have or will enter into Memorandums of Understanding with JAC describing the process by which the relevant associations may receive public records from JAC without need for a Courtesy Notice(s) to the JROs. Those memoranda are incorporated herein and may be updated from time to time.

V. WHAT JAC CANNOT DO

JAC cannot respond to a public records request made of any JRO it serves. Moreover, JAC cannot provide legal advice to a JRO on how to respond to a public records request. Additionally, JAC cannot respond or correspond with a public records requestor on behalf of a JRO. Because JAC's records may not be the same as the records in a JRO's custody, JAC cannot provide JAC's records in response to a public records request made of a JRO because they are not responsive to the request. See Chandler v. City of Sanford, 121 So. 3d 657 (Fla. 5th DCA 2013). Under s. 119.07(1)(a), F.S., any party having custody of a public record is responsible for allowing a requestor access to that record at a reasonable time under reasonable conditions.

Other than redactions authorized by law, JAC cannot change the records in its possession before responding to a Public Record Request. Records must be provided *as they exist at the time of the request* even if an error is identified through the Courtesy Notice and review process.

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VI. RECORDS RETENTION

All public records requests are archived in JAC's Electronic Document Management System. Public records requests, responses, and related documentation will be maintained for a minimum of one fiscal year by the Coordinator, in accordance with records retention requirements for "Information Request Records" and "Correspondence & Memoranda: Administrative" as published in the *Florida Department of State, General Schedule for State Government Agencies GS1-SL*.

*If revisions to this Public Records Policy are approved, the revised policy will go into effect on August 1, 2024.