



# JUSTICE ADMINISTRATIVE COMMISSION

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## PUBLIC RECORDS REQUEST POLICY OF THE JUSTICE ADMINISTRATIVE COMMISSION

### SPECIFIC AUTHORITY

- Florida Constitution: Article 1, Section 24
- Florida Statutes: s. 43.16, Chapter 119
- 2016 Government-in-the-Sunshine Manual

### OBJECTIVE

To provide access to public records as quickly as 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.”

### 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:* Not subject to inspection by the public, but may be disclosed at the discretion of the JAC. JAC’s General Counsel (General Counsel), in deciding whether such information should be disclosed, must determine whether there is a statutory or substantial policy need for disclosure and in the absence of a statutory

or other legal duty to be accomplished by disclosure, whether release of such information is consistent with the exemption's purpose.

*Extensive Use of JAC Resources:* The nature or volume of a public records request to be inspected or copied is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved. Requests requiring more than one (1) hour of JAC resources will constitute extensive use of JAC Resources.

*Justice Administrative Commission (JAC):* A Commission which maintains a central state office for administrative services and assistance to and on behalf of the Offices of State Attorney, Public Defender, Capital Collateral Regional Counsel, Criminal Conflict and Civil Regional Counsel, and the Statewide Guardian Ad Litem Program of Florida (ss. 43.16, 27.511, and 27.702, F.S.). Services provided are primarily in the areas of accounting, budget, financial services, and human resources. JAC also provides compliance and financial review of billings 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.)

*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.).

## **II. PUBLIC ACCESS TO JAC RECORDS**

Because JAC provides administrative services including accounting, budget, financial services, and human resources to 49 judicial related offices throughout the state, JAC's Executive Director has designated JAC's Public Records Coordinator (Coordinator) to coordinate the agency's response to a public records request on behalf of JAC and to act as JAC's Records Management Liaison Officer and Records Custodian. The Coordinator is responsible to receive, log, acknowledge, coordinate a response, adhere to JAC Public Records Request Policy and respond to a public records request on behalf of JAC. The statutory obligation of the Coordinator is to

provide access to, or copies of, responsive public records and is not required to give out information or answer questions regarding the records of his or her office. The Coordinator has authority to respond to a public records request on behalf of JAC only.

#### A. Submission of 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	<a href="https://www.justiceadmin.org">https://www.justiceadmin.org</a>
Phone	(850) 488-2415
Regular Mail	JAC Public Records Coordinator P.O. BOX 1654 Tallahassee, FL 32302
In Person	227 North Bronough Street, Suite 2100 Tallahassee, FL 32301

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 review.

So that JAC can provide access to records promptly, please provide specific information about the requested record(s), including

- record name,
- case number,
- date range, etc.

A public records request does not have to be made in person or in writing as a prerequisite for completing a request. If the individual making the request chooses not to submit the request in writing, JAC shall ask the requestor for as much information regarding the request as possible; i.e., name, contact information – whether telephone number, email or mailing address, documents requested, and

any additional information. Furthermore, the individual making the request is not required to disclose their identity, provide information about the reason for the request or 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.

The JAC does not honor "standing" public records requests that demand future copying or production. See Inf. Op. to Worch, June 15, 1995. The Public Records Act requires access to present documents that are available and does not require JAC to anticipate future documents that may or may not be generated. If a request is not sufficiently clear to conduct a meaningful search, JAC will request further clarification in order to respond in a timely manner.

#### B. JAC's Response to a Request

A public records request of JAC records will be promptly acknowledged. 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 amount 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 either 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 believes the records requested are not public records under Chapter 119, Florida Statutes, the General Counsel will be consulted for confirmation.

#### C. Charging for Requests

If the response to a public records request requires "extensive use of agency resources", s. 119.07(4), F.S., allows JAC to charge for copies of a public record. In determining whether a special service charge is warranted, the Coordinator shall

consider whether the nature or volume of a public records request 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 special service charge, the requestor will be provided an estimated cost(s) for their determination as to whether or not they would like JAC to proceed with preparation of the response to their request based on the fee estimate communicated. Full payment will be collected before producing the records responsive to the request available. If the actual costs incurred are less than the payment, JAC will refund the overpayment to the requestor. If cost is an issue, the Coordinator will work with the requestor in refining their request. By refining a request, JAC is able to provide better results and reduce unnecessary costs.

As authorized by s. 112.07(4), F.S., the JAC will charge 15 cents for single-sided copies and an additional 5 cents for double-sided copies for any request where the volume exceeds 100 copies. For requests involving extensive use of JAC Resources, a special service charge may be assessed for the production of public records.

<b>Material</b>	<b>Cost</b>
<b>One-sided Copy</b>	\$0.15 per page
<b>Double-sided Copy</b>	\$0.20 per page
<b>CD-Rom/ DVD</b>	\$1.00 each

In no instance will any office served by the JAC, including the offices of State Attorney, Public Defender, Capital Collateral Regional Counsel, Criminal Conflict and Civil Regional Counsel, or the Statewide Guardian ad Litem Program of Florida be charged for such documents or services. In other circumstances, including requests from other state or federal entities, any special service charge may be waived at the discretion of JAC's Executive Director or General Counsel.

#### D. Confidential/ Exempt Information

##### 1. JAC Records

A public records request is not confidential. If the requested record is confidential 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 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 or exempt, JAC will redact the confidential 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 to determine whether the redaction of such information is consistent with statute, case law, or other basis. The Coordinator is responsible for the redaction of any readily apparent confidential (e.g., Social Security Numbers and Bank Account Numbers) or exempt (e.g., Biometrics and Driver License Numbers) information.

When a public records request for aggregate agency or office type (the offices of State Attorney, Public Defender, Capital Collateral Regional Counsel, Criminal Conflict and Civil Regional Counsel), information, i.e., rather than office specific, does not compromise the prosecution of a case or the constitutional rights of a defendant, JAC will release records containing aggregate information after notifying the affected office group.

JAC encourages all offices that it serves, as well as private Court-Appointed Attorneys and Due Process Vendors, to highlight confidential or exempt information and cite the statutory, case law, or other basis for exemption when submitting documents to JAC. Doing so will alert JAC that the record contains confidential or exempt information. If the confidential or exempt information is not necessary for JAC to process a billing for payment, JAC encourages redaction of that information prior to submission to JAC.

## 2. JAC Records - From Offices Administratively Served

When a requested record originated at an office administratively served by JAC, that office will be notified of the request and copies of any records distributed to the requestor will be provided to the affected office(s) for review.

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 JAC not to disclose the request. Under these circumstances, JAC will not automatically notify the office 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.

JAC administratively serves 49 judicial-related offices which either prosecute or defend parties in court. Because JAC's services to these offices are administrative in nature, JAC is often unable to determine whether specific information in a record is confidential or exempt. Additionally, JAC does not wish to compromise the prosecution of a case or a defendant's constitutional rights. Accordingly, when a public records request involves records that originated at an office administratively served by JAC, a copy of the responsive records will be provided to the affected office(s) for review and further redaction before final release to the requestor. The affected office shall redact any confidential or exempt information and provide the statutory citation supporting the confidentiality or exemption to JAC. Because JAC must provide access to the records within a reasonable amount of time, JAC relies on the prompt review and redaction of offices administratively served to comply with the law. Furthermore, JAC encourages offices to highlight confidential or exempt information on initial submission of payment packages to JAC, so that JAC is alerted that the record contains confidential or exempt information.

In Board of Trustees, Jacksonville Police & Fire Pension Fund, etc. v. Curtis Lee, SC13-1315 (April 14, 2016), the Court held there is no "good faith exception" to an award of attorney fees in a public records lawsuit. As a result, the General Counsel shall review the proposed redactions for consistency with the Public Records Act or other provisions of Florida law. If the General Counsel has concerns regarding the redaction or citation proposed by the affected office, the Executive Director and/or General Counsel shall consult the affected office. As the entity liable, JAC is ultimately responsible to determine whether to disclose information or claim an exemption in responding to a public records request.

### **III. JAC Records – From Court-Appointed Attorneys and Vendors**

JAC provides compliance and financial review of billings for services provided by private court-appointed attorneys and associated due process vendors representing indigent citizens. As a result, JAC has implemented the following:

#### A. Court-Appointed Attorneys

Section XII(8) of JAC's Court-Appointed Registry Attorney Contract (Registry Contract) addresses public records, and provides:

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.

#### B. Due Process Vendors

JAC's Due Process Vendor Contract also addresses public records. Section XVIII(2) of the contract 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.

### C. JAC Attorney/Vendor Privacy Indicator Questionnaire

The JAC maintains attorney and vendor contact information, which may potentially be disclosed in response to a public records request. Please note, Florida law protects certain personal information for some positions and individuals who fill those positions. To determine if you are entitled to an exemption and which information is protected, please refer to the specific statutory authority. There is no statutory exemption from a public records request for information concerning an individual's compensation. Please be aware that JAC publishes due process vendors' contact information on JAC's website. JAC does not require personal contact information such as a home address for compensation purposes. You may wish to use a P.O. Box or a business address instead. To assert an exemption, please complete and submit a "Justice Administrative Commission Attorney/Vendor Privacy Indicator Questionnaire" to JAC. Furthermore, JAC highly encourages that Court-Appointed Attorneys and Due Process Vendors utilize a Federal Tax ID Number rather than their Social Security Number when submitting invoices. By doing so, they are protecting themselves against Identity theft.

## **IV. Records Requests from Offices Administratively Served by JAC**

### A. Two Types of Records Requests

Currently, JAC administratively serves the Offices of State Attorney, Public Defender, Capital Collateral Regional Counsel, Criminal Conflict and Civil Regional Counsel, and the Statewide Guardian Ad Litem Program of Florida. Services provided are primarily in the areas of accounting, budget, financial services, and human resources. In the course of providing administrative services to these offices, JAC receives many records requests. Typically, these take two forms. The first is a "Request for Information", this is when an office JAC administratively serves requests information or records related to that office. The second, is a "Public Records Request", this is when an office JAC administratively serves requests documents or information pertaining to another office JAC administratively serves. This distinction ensures that all the offices JAC administratively serves are aware of requests made of JAC for their information. Therefore, please know that when JAC receives a public records request from one

of the offices it serves for information concerning another office(s) it serves, JAC will notify all offices affected by the request.

B. Public Records Request related to the Offices of Public Defender and the Offices of State Attorney.

When JAC receives a public records request for information concerning several offices it serves, JAC notifies the affected offices of the request; sends each office its own information for review; compiles the reviewed information; and provides the compiled response to the requestor. Many times, these requests give rise to additional public records requests for the compiled response (containing the information of all the offices affected by the request). These additional public records requests result in further notification emails from JAC. As a result, JAC is implementing the following procedures:

The Offices of Public Defender

When a public records request encompasses most or all of the 20 Offices of Public Defender, each interested office is welcome to ask JAC for a copy of the compiled response. Please note the request will be treated as a public records request and all affected offices will be notified.

The Offices of State Attorney

When a public records request encompasses most or all of the 20 Offices of State Attorney, the person designated by the Florida Prosecuting Attorneys Association will request the complete response from JAC, copy the offices affected by the request, and then disseminate the request to the Association or offices affected by the request. Notification of the designated person should be sent to JAC's Executive Director and/or General Counsel every fiscal year.

C. What JAC Cannot Do

Although JAC administratively serves 49 judicial-related offices, JAC cannot respond to a public records response made of the offices it serves. Moreover, JAC cannot provide legal advice on how to respond to a public records request; nor respond or correspond with a public records requestor on behalf of your office. Additionally, JAC's records may not be the same as the records or information in your office's

custody; please know that providing JAC's records in response to a public records request made of your office may not be considered responsive to the request.

**V. Records Retention**

Public records requests, responses, and related documentation will be maintained for a minimum of three calendar years 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*. The Coordinator will also act as JAC's Records Management Liaison Officer and Records Custodian.

**VI. Archival Procedures**

All public records requests will be archived in JAC's Electronic Document Management System.