



# 2010 California Rules of Court

## Rule 10.500. Public access to judicial administrative records

### (a) Intent

- (1) The Judicial Council intends by this rule to implement Government Code section 68106.2(g), added by Senate Bill X4 13 (Stats. 2009-10, 4th Ex. Sess. ch. 22), which requires adoption of rules of court that provide public access to nondeliberative and nonadjudicative court records, budget and management information.
- (2) This rule clarifies and expands the public's right of access to judicial administrative records and must be broadly construed to further the public's right of access.

### (b) Application

- (1) This rule applies to public access to judicial administrative records, including records of budget and management information relating to the administration of the courts.
- (2) This rule does not apply to, modify or otherwise affect existing law regarding public access to adjudicative records.
- (3) This rule does not restrict the rights to disclosure of information otherwise granted by law to a recognized employee organization.
- (4) This rule does not affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state, nor does it limit or impair any rights of discovery in a criminal case.
- (5) This rule does not apply to electronic mail and text messages sent or received before the effective date of this rule.

### (c) Definitions

As used in this rule:

- (1) "Adjudicative record" means any writing prepared for or filed or used in a court proceeding, the judicial deliberation process, or the assignment or reassignment of cases and of justices, judges (including temporary and assigned judges), and subordinate judicial officers, or of counsel appointed or employed by the court.

- (2) "Judicial administrative record" means any writing containing information relating to the conduct of the people's business that is prepared, owned, used, or retained by a judicial branch entity regardless of the writing's physical form or characteristics, except an adjudicative record. The term "judicial administrative record" does not include records of a personal nature that are not used in or do not relate to the people's business, such as personal notes, memoranda, electronic mail, calendar entries, and records of Internet use.
- (3) "Judicial branch entity" means the Supreme Court, each Court of Appeal, each superior court, the Judicial Council, and the Administrative Office of the Courts.
- (4) "Judicial branch personnel" means justices, judges (including temporary and assigned judges), subordinate judicial officers, members of the Judicial Council and its advisory bodies, and directors, officers, employees, volunteers, and agents of a judicial branch entity.
- (5) "Person" means any natural person, corporation, partnership, limited liability company, firm, or association.
- (6) "Writing" means any handwriting, typewriting, printing, photographing, photocopying, electronic mail, fax, and every other means of recording on any tangible thing any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations, regardless of the manner in which the record has been stored.

**(d) Construction of rule**

- (1) Unless otherwise indicated, the terms used in this rule have the same meaning as under the Legislative Open Records Act (Gov. Code, § 9070 et seq.) and the California Public Records Act ( Gov. Code, § 6250 et seq.) and must be interpreted consistently with the interpretation applied to the terms under those acts.
- (2) This rule does not require the disclosure of a record if the record is exempt from disclosure under this rule or is the type of record that would not be subject to disclosure under the Legislative Open Records Act or the California Public Records Act.

**(e) Public access**

- (1) *Access*
  - (A) A judicial branch entity must allow inspection and copying of judicial administrative records unless the records are exempt from disclosure under this rule or by law.
  - (B) Nothing in this rule requires a judicial branch entity to create any record or to compile or assemble data in response to a request for judicial administrative records if the judicial branch entity does not compile or assemble the data in the requested form for its own use or for provision to other agencies. For purposes of this rule, selecting data from extractable fields in a single database using software already owned or licensed by the judicial branch entity does not constitute creating a record or compiling or assembling data.
  - (C) If a judicial administrative record contains information that is exempt from disclosure and the exempt portions are reasonably segregable, a judicial branch entity must allow inspection and copying of the record after deletion of the portions that are exempt from disclosure. A judicial branch entity is not required to allow inspection or copying of the

portion of a writing that is a judicial administrative record unless that portion is reasonably segregable from the portion that constitutes an adjudicative record.

- (D) If requested, a superior court must provide a copy of the certified judicial administrative record if the judicial administrative record requested has previously been certified by the superior court.

(2) *Examples*

Judicial administrative records subject to inspection and copying unless exempt from disclosure under subdivision (f) include, but are not limited to, the following:

- (A) Budget information submitted to the Administrative Office of the Courts after enactment of the annual Budget Act;
- (B) Any other budget and expenditure document pertaining to the administrative operation of the courts, including quarterly financial statements and statements of revenue, expenditure, and reserves;
- (C) Actual and budgeted employee salary and benefit information;
- (D) Copies of executed contracts with outside vendors and payment information and policies concerning goods and services provided by outside vendors without an executed contract;
- (E) Final audit reports; and
- (F) Employment contracts between judicial branch entities and their employees.

(3) *Procedure for requesting records*

A judicial branch entity must make available on its public Web site or otherwise publicize the procedure to be followed to request a copy of or to inspect a judicial administrative record. At a minimum, the procedure must include the address to which requests are to be addressed, to whom requests are to be directed, and the office hours of the judicial branch entity.

(4) *Costs of duplication, search, and review*

- (A) A judicial branch entity, on request, must provide a copy of a judicial administrative record not exempt from disclosure if the record is of a nature permitting copying, subject to payment of the fee specified in this rule or other applicable statutory fee. A judicial branch entity may require advance payment of any fee.
- (B) A judicial branch entity may impose on all requests a fee reasonably calculated to cover the judicial branch entity's direct costs of duplication of a record or of production of a record in an electronic format under subdivision (i). The fee includes:
  - (i) A charge per page, per copy, or otherwise, as established and published by the Judicial Council, or as established by the judicial branch entity following a notice and comment procedure specified by the Judicial Council, representing the direct

costs of equipment, supplies, and staff time required to duplicate or produce the requested record; and

- (ii) Any other direct costs of duplication or production, including, but not limited to, the costs incurred by a judicial branch entity in retrieving the record from a remote storage facility or archive and the costs of mailing responsive records.
- (C) In the case of requests for records for commercial use, a judicial branch entity may impose, in addition to the fee in (B), a fee reasonably calculated to cover the actual costs of staff search and review time, based on an hourly rate for salary and benefits of each employee involved.
- (D) For purposes of this rule:
- (i) "Commercial use" means a request for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is being made. A request from a representative of the news media that supports its news-dissemination function is not a request for a commercial use.
  - (ii) "Representative of the news media" means a person who regularly gathers, prepares, collects, photographs, records, writes, edits, reports, or publishes news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public for a substantial portion of the person's livelihood or for substantial financial gain.
  - (iii) "Search and review time" means actual time spent identifying and locating judicial administrative records, including material within documents, responsive to a request; determining whether any portions are exempt from disclosure; and performing all tasks necessary to prepare the records for disclosure, including redacting portions exempt from disclosure. "Search and review time" does not include time spent resolving general legal or policy issues regarding the applicability of particular exemptions.
- (E) By January 1, 2012, the Judicial Council will review and evaluate the numbers of requests received, the time necessary to respond, and the fees imposed by judicial branch entities for access to records and information. The Judicial Council's review will consider the impact of this rule on both the public's access to records and information and on judicial branch entities' ability to carry out and fund core judicial operations.

(5) *Inspection*

A judicial branch entity must make judicial administrative records in its possession and not exempt from disclosure open to inspection at all times during the office hours of the judicial branch entity provided that the record is of a nature permitting inspection.

(6) *Time for determination of disclosable records*

A judicial branch entity, on a request that reasonably describes an identifiable record or records, must determine, within 10 calendar days from receipt of the request, whether the request, in whole or in part, seeks disclosable judicial administrative records in its possession and must promptly notify the requesting party of the determination and the reasons for the determination.

(7) *Response*

If a judicial branch entity determines that a request seeks disclosable judicial administrative records, the judicial branch entity must make the disclosable judicial administrative records available promptly. The judicial branch entity must include with the notice of the determination the estimated date and time when the records will be made available. If the judicial branch entity determines that the request, in whole or in part, seeks nondisclosable judicial administrative records, it must convey its determination in writing, include a contact name and telephone number to which inquiries may be directed, and state the express provision of this rule justifying the withholding of the records not disclosed.

(8) *Extension of time for determination of disclosable records*

In unusual circumstances, to the extent reasonably necessary to the proper processing of the particular request, a judicial branch entity may extend the time limit prescribed for its determination under (e)(6) by no more than 14 calendar days by written notice to the requesting party, stating the reasons for the extension and the date on which the judicial branch entity expects to make a determination. As used in this section, "unusual circumstances" means the following:

- (A) The need to search for and collect the requested records from multiple locations or facilities that are separate from the office processing the request;
- (B) The need to search for, collect, and appropriately examine a voluminous amount of records that are included in a single request; or
- (C) The need for consultation, which must be conducted with all practicable speed, with another judicial branch entity or other governmental agency having substantial subject matter interest in the determination of the request, or with two or more components of the judicial branch entity having substantial subject matter interest in the determination of the request.

(9) *Reasonable efforts*

- (A) On receipt of a request to inspect or obtain a copy of a judicial administrative record, a judicial branch entity, in order to assist the requester in making a focused and effective request that reasonably describes an identifiable judicial administrative record, must do all of the following to the extent reasonable under the circumstances:
  - (i) Assist the requester in identifying records and information responsive to the request or to the purpose of the request, if stated;
  - (ii) Describe the information technology and physical location in which the records exist; and
  - (iii) Provide suggestions for overcoming any practical basis for denying inspection or copying of the records or information sought.
- (B) The requirements of (A) will be deemed to have been satisfied if the judicial branch entity is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that helps identify the record or records.

- (C) The requirements of (A) do not apply to a request for judicial administrative records if the judicial branch entity makes the requested records available or determines that the requested records are exempt from disclosure under this rule.

(10) *No obstruction or delay*

Nothing in this rule may be construed to permit a judicial branch entity to delay or obstruct the inspection or copying of judicial administrative records that are not exempt from disclosure.

(11) *Greater access permitted*

Except as otherwise prohibited by law, a judicial branch entity may adopt requirements for itself that allow for faster, more efficient, or greater access to judicial administrative records than prescribed by the requirements of this rule.

(12) *Control of records*

A judicial branch entity must not sell, exchange, furnish, or otherwise provide a judicial administrative record subject to disclosure under this rule to a private entity in a manner that prevents a judicial branch entity from providing the record directly under this rule. A judicial branch entity must not allow a private entity to control the disclosure of information that is otherwise subject to disclosure under this rule.

**(f) Exemptions**

Nothing in this rule requires the disclosure of judicial administrative records that are any of the following:

- (1) Preliminary writings, including drafts, notes, working papers, and inter-judicial branch entity or intra-judicial branch entity memoranda, that are not retained by the judicial branch entity in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure;
- (2) Records pertaining to pending or anticipated claims or litigation to which a judicial branch entity is a party or judicial branch personnel are parties, until the pending litigation or claim has been finally adjudicated or otherwise resolved;
- (3) Personnel, medical, or similar files, or other personal information whose disclosure would constitute an unwarranted invasion of personal privacy, including, but not limited to, records revealing home addresses, home telephone numbers, cellular telephone numbers, private electronic mail addresses, and social security numbers of judicial branch personnel and work electronic mail addresses and work telephone numbers of justices, judges (including temporary and assigned judges), subordinate judicial officers, and their staff attorneys;
- (4) Test questions, scoring keys, and other examination data used to develop, administer, and score examinations for employment, certification, or qualification;
- (5) Records whose disclosure is exempted or prohibited under state or federal law, including provisions of the California Evidence Code relating to privilege, or by court order in any court proceeding;

- (6) Records whose disclosure would compromise the security of a judicial branch entity or the safety of judicial branch personnel, including but not limited to, court security plans, and security surveys, investigations, procedures, and assessments;
- (7) Records related to evaluations of, complaints regarding, or investigations of justices, judges (including temporary and assigned judges), subordinate judicial officers, and applicants or candidates for judicial office;
- (8) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the judicial branch entity related to the acquisition of property or to prospective public supply and construction contracts, until all of the property has been acquired or the relevant contracts have been executed. This provision does not affect the law of eminent domain;
- (9) Records related to activities governed by Government Code sections 71600 et seq. and 71800 et seq. that reveal deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy or that provide instruction, advice, or training to employees who are not represented by employee organizations under those sections. Nothing in this subdivision limits the disclosure duties of a judicial branch entity with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision;
- (10) Records that contain trade secrets or privileged or confidential commercial and financial information submitted in response to a judicial branch entity's solicitation for goods or services or in the course of a judicial branch entity's contractual relationship with a commercial entity. For purposes of this rule:
  - (A) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:
    - (i) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
    - (ii) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy;
  - (B) "Privileged information" means material that falls within recognized constitutional, statutory, or common law privileges;
  - (C) "Confidential commercial and financial information" means information whose disclosure would:
    - (i) Impair the judicial branch entity's ability to obtain necessary information in the future; or
    - (ii) Cause substantial harm to the competitive position of the person from whom the information was obtained.
- (11) Records whose disclosure would disclose the judicial branch entity's or judicial branch personnel's decision-making process, provided that, on the facts of the specific request for

records, the public interest served by nondisclosure clearly outweighs the public interest served by disclosure of the record; or

- (12) If, on the facts of the specific request for records, the public interest served by nondisclosure of the record clearly outweighs the public interest served by disclosure of the record.

**(g) Computer software; copyrighted materials**

- (1) Computer software developed by a judicial branch entity or used by a judicial branch entity for the storage or manipulation of data is not a judicial administrative record under this rule. For purposes of this rule "computer software" includes computer mapping systems, computer graphic systems, and computer programs, including the source, object, and other code in a computer program.
- (2) This rule does not limit a judicial branch entity's ability to sell, lease, or license computer software for commercial or noncommercial use.
- (3) This rule does not create an implied warranty on the part of any judicial branch entity for errors, omissions, or other defects in any computer software.
- (4) This rule does not limit any copyright protection. A judicial branch entity is not required to duplicate records under this rule in violation of any copyright.
- (5) Nothing in this subdivision is intended to affect the judicial administrative record status of information merely because the information is stored in a computer. Judicial administrative records stored in a computer will be disclosed as required in this rule.

**(h) Waiver of exemptions**

- (1) Disclosure of a judicial administrative record that is exempt from disclosure under this rule or provision of law by a judicial branch entity or judicial branch personnel acting within the scope of their office or employment constitutes a waiver of the exemptions applicable to that particular record.
- (2) This subdivision does not apply to disclosures:
  - (A) Made through discovery proceedings;
  - (B) Made through other legal proceedings or as otherwise required by law;
  - (C) Made to another judicial branch entity or judicial branch personnel for the purposes of judicial branch administration;
  - (D) Within the scope of a statute that limits disclosure of specified writings to certain purposes; or
  - (E) Made to any governmental agency or to another judicial branch entity or judicial branch personnel if the material will be treated confidentially.

**(i) Availability in electronic format**

- (1) A judicial branch entity that has information that constitutes an identifiable judicial administrative record not exempt from disclosure under this rule and that is in an electronic

format must, on request, produce that information in the electronic format requested, provided that:

- (A) No law prohibits disclosure;
  - (B) The record already exists in the requested electronic format, or the judicial branch entity has previously produced the judicial administrative record in the requested format for its own use or for provision to other agencies;
  - (C) The requested electronic format is customary or standard for records of a similar type and is commercially available to private entity requesters; and
  - (D) The disclosure does not jeopardize or compromise the security or integrity of the original record or the computer software on which the original record is maintained.
- (2) In addition to other fees imposed under this rule, the requester will bear the direct cost of producing a record if:
- (A) In order to comply with (1), the judicial branch entity would be required to produce a record and the record is one that is produced only at otherwise regularly scheduled intervals or;
  - (B) Producing the requested record would require data compilation or extraction or any associated programming that the judicial branch entity is not required to perform under this rule but has agreed to perform in response to the request.
- (3) Nothing in this subdivision shall be construed to require a judicial branch entity to reconstruct a record in an electronic format if the judicial branch entity no longer has the record available in an electronic format.

**(j) Public access disputes**

- (1) Unless the petitioner elects to proceed under (2) below, disputes and appeals of decisions with respect to disputes with the Judicial Council, Administrative Office of the Courts, or a superior court regarding access to budget and management information required to be maintained under rule 10.501 are subject to the process described in rule 10.803.
- (2) Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any judicial administrative record under this rule.
- (3) Whenever it is made to appear by verified petition that a judicial administrative record is being improperly withheld from disclosure, the court with jurisdiction will order the judicial branch entity to disclose the records or show cause why it should not do so. The court will decide the case after examining the record (in camera if appropriate), papers filed by the parties, and any oral argument and additional evidence as the court may allow.
- (4) If the court finds that the judicial branch entity's decision to refuse disclosure is not justified under this rule, the court will order the judicial branch entity to make the record public. If the court finds that the judicial branch entity's decision was justified, the court will issue an order supporting the decision.

- (5) An order of the court, either directing disclosure or supporting the decision of the judicial branch entity refusing disclosure, is not a final judgment or order within the meaning of Code of Civil Procedure section 904.1 from which an appeal may be taken, but will be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of an order under this subdivision, a party must, in order to obtain review of the order, file a petition within 20 days after service of a written notice of entry of the order or within such further time not exceeding an additional 20 days as the court may for good cause allow. If the notice is served by mail, the period within which to file the petition will be extended by 5 days. A stay of an order or judgment will not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court will be cited to show cause why that is not in contempt of court.
- (6) The court will award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed under this subdivision. The costs and fees will be paid by the judicial branch entity and will not become a personal liability of any individual. If the court finds that the plaintiff's case is clearly frivolous, it will award court costs and reasonable attorney fees to the judicial branch entity.

*Rule 10.500 adopted effective January 1, 2010.*

#### **Advisory Committee Comment**

**Subdivision (a).** By establishing a public access rule applicable to all judicial administrative records, the proposed rule would expand public access to these records. The Judicial Council recognizes the important public interest in access to records and information relating to the administration of the judicial branch. The Judicial Council also recognizes the importance of the privacy rights of individuals working in or doing business with judicial branch entities and the public's interest in an effective and independent judicial branch of state government. The report on this rule includes the Judicial Council's findings on the impact of this rule on these interests, and how these interests are protected by the rule.

**Subdivisions (b)(1) and (b)(2).** This rule does not apply to adjudicative records, and is not intended to modify existing law regarding public access to adjudicative records. California case law has established that, in general, subject to specific statutory exceptions, case records that accurately and officially reflect the work of the court are public records open to inspection. (*Estate of Hearst* (1977) 67 Cal.App.3d 777, 782-83.) However, documents prepared in the course of adjudicative work and not regarded as official case records, such as preliminary drafts, personal notes, and rough records of proceedings, are not subject to public access because the perceived harm to the judicial process by requiring this material to be available to the public is greater than the benefit the public might derive from its disclosure. (*Copley Press, Inc. v. Superior Court* (1992) 6 Cal.App.4th 106.)

**Subdivision (c)(2).** The application of this rule is intended to reflect existing case law under the California Public Records Act that exempts from the definition of "public record" certain types of personal records and information. The concept was first discussed in the California Assembly and establishes that if personal correspondence and information are "unrelated to the conduct of the people's business" they are therefore not public records. (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 774, citing Assembly Committee on Statewide Information Policy California Public Records Act of 1968, section B, page 9, Appendix to Assembly Journal (1970 Reg. Sess.)) Case law has further established that only records necessary or convenient to the discharge of official duty, or kept as necessary or convenient to the discharge of official duty, are public records for the purposes of the California Public Records Act and its predecessors. (*Braun v. City of Taft* (1984) 154 Cal.App.3d 332; *City Council of Santa Monica v. Superior Court* (1962) 204 Cal.App.2d 68.)

**Subdivision (e)(4).** The fees charged by a judicial branch entity under this rule are intended to allow the entity to recover an amount not to exceed the reasonable costs of responding to a request for records or information. In accordance with existing practice within the judicial branch and the other branches of government, the Judicial Council intends agencies and entities of the executive and legislative branches of the California state government to receive records or information requested from judicial branch entities for the agency's or entity's use free of charge. This subdivision is intended to provide, however, that requesters of records or information for the purpose of furthering the requester's commercial interests will be charged for costs incurred by the judicial branch entity in responding to the request, and that such costs will not be a charge against the budget of the judicial branch of the state General Fund.

**Subdivision (f)(3).** In addition to the types of records and information exempt from disclosure under the corresponding provision of the California Public Records Act, Government Code section 6254(c), this provision includes a further nonexclusive list of specific information that is exempt under this rule. The rule does not attempt to list each category of information that is specific to judicial branch entities and that may also be exempt under this rule. For example, although they are not specifically listed, this provision exempts from disclosure records maintained by any court or court-appointed counsel administrator for the purpose of evaluating attorneys seeking or being considered for appointment to cases.

**Subdivision (f)(10).** The definition of "trade secret" restates the definition in Civil Code section 3426.1.

**Subdivision (f)(11).** This subdivision is intended to reflect California law on the subject of the "deliberative process" exemption under the California Public Records Act, which is currently stated in the Supreme Court's decision in *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325 and the later Court of Appeal decisions *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159 and *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.

**Subdivision (j)(1).** Under current rule 10.803 a petitioner may file a writ in a superior court regarding a dispute with a superior court or the Administrative Office of the Courts with respect to disclosure of records and information required to be maintained under current rule 10.802. The writ petition must be heard on an expedited basis and includes a right to an appeal. The statutory authority for the hearing process set forth in current rule 10.803, Government Code section 71675 (b), does not extend this procedure to other disputes with respect to public access. The rule provides that petitioners with a dispute with any other judicial branch entity, or with respect to records that are not required to be maintained under rule 10.802, may follow the procedure set forth in (j)(2) through (j)(6), which is equivalent to the dispute resolution procedure of the California Public Records Act. A petitioner eligible for the dispute resolution process set out in current rule 10.803 may also elect to proceed with his or her dispute under the procedure set forth in (j)(2) through (j)(6).

**Subdivision (j)(1).** Under current rule 10.803 a petitioner may file a writ in a superior court regarding a dispute with a superior court or the Administrative Office of the Courts with respect to disclosure of records and information required to be maintained under current rule 10.802. The writ petition must be heard on an expedited basis and includes a right to an appeal. The statutory authority for the hearing process set forth in current rule 10.803, Government Code section 71675 (b), does not extend this procedure to other disputes with respect to public access. The rule provides that petitioners with a dispute with any other judicial branch entity, or with respect to records that are not required to be maintained under rule 10.802, may follow the procedure set forth in (j)(2) through (j)(6), which is equivalent to the dispute resolution procedure of the California Public Records Act. A petitioner eligible for the dispute resolution process set out in current rule 10.803 may also elect to proceed with his or her dispute under the procedure set forth in (j)(2) through (j)(6).

