

## Public Access Rules Frequently Asked Questions

*The conclusions contained in this document are the views of staff and not the Justices of the Supreme Court of Ohio or the appointees of the Commission on the Rules of Superintendence. Readers are encouraged to consult with their legal counsel when interpreting or applying the Public Access Rules in their jurisdiction.*

**Question:** What types of records are covered by the Public Access Rules?

**Answer:** The Public Access Rules apply to “court records,” which include the two following categories:

- Case documents: A document or information in a document submitted to a court or filed with a clerk of court in a judicial action or proceeding, including exhibits, pleadings, motion, orders, and judgments (Sup. R. 44(C)(1)).
- Administrative documents: A document or information in a document created, received, or maintained by a court that serves to record the administrative, fiscal, or management functions, policies, decisions, procedures, operations, organization, or other activities of the court (Sup. R. 44(G)(1)).

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**Question:** Will courts be required to follow section 149.43 of the Ohio Revised Code (the Public Records Act)?

**Answer:** The application of the Public Records Act is dependent upon the type of document in question:

- Case documents: Case documents in actions commenced *on or after* July 1st will be governed by the Public Access Rules. Case documents in actions commenced *before* July 1st will be governed by the applicable federal or state law. Thus the court will continue to voluntarily comply with the Public Records Act for those case documents in actions commenced before July 1<sup>st</sup>. (Sup. R. 47(A).)

- Administrative documents: The Public Access Rules will govern all administrative documents, regardless of their date of creation (Sup. R. 47(A)).
  - Non-judicial documents: Documents that do not meet the definition of “case document” under Sup. R. 44 (C)(2) or “administrative document” under Sup. R. 44(G)(2), such as auto title records, fall outside the scope of the Public Access Rules and will continue to be governed by the Public Records Law.
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**Question:** Does a document exempt from the definition of “case document” under Sup. R. 44 (C)(2) or “administrative document” under Sup. R. 44(G)(2) have to be maintained separate from the other case documents or administrative documents?

**Answer:** No. The Public Access Rules do not address the storage or maintenance of case documents and administrative documents. If a document falls under one of the exemptions, it simply means it is not a “case document” or “administrative document” for purposes of the Public Access Rules -- i.e., it is not subject to a request for public access.

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**Question:** What information must a party omit when submitting or filing a case document with a court or clerk?

**Answer:** The party must omit only personal identifiers (Sup. R. 45(D)(1)).

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**Question:** What are personal identifiers?

**Answer:** “Personal identifiers” means any of the following (Sup. R. 44(H)):

- Social Security numbers, except for the last four digits;
  - Financial account numbers, including debit card, charge card, and credit card numbers;
  - Employer and employee identification numbers;
  - A juvenile’s name in an abuse, neglect, or dependency case, except for the juvenile’s initials or a generic abbreviation such as “CV” for “child victim.”
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**Question:** May a party include the last four digits of a financial account number in a filed or submitted case document?

**Answer:** No. The last four digits of a *Social Security number* are not a personal identifier, thus allowing the party to include the last four digits in a case document. However, a similar exception does not exist for financial account numbers. As a result, the entire account number must be omitted from the document. (Sup. R. 44(H).)

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**Question:** Does the requirement to omit personal identifiers apply to law enforcement officers filing traffic citation tickets?

**Answer:** Yes. *Any* party submitting or filing a case document must omit personal identifiers (Sup. R. 45(D)(1)).

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**Question:** Does the requirement to omit personal identifiers apply to a court or clerk issuing an order, garnishment, or subpoena?

**Answer:** No. The requirement to omit personal identifiers applies to only a *party* when *submitting or filing* a case document (Sup. R. 45(D)(1)). The court and clerk are not parties and, when issuing the order, garnishment, or subpoena, not submitting or filing the document.

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**Question:** Must a court or clerk redact exempt information from the case file when certifying the record on appeal?

**Answer:** No. The requirements of the Public Access Rules apply only when there is a request for public access to a record.

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**Question:** Must a court or clerk review a case document prior to submission or filing to confirm that the party has omitted personal identifiers?

**Answer:** No. The Public Access Rules specifically provide that the court or clerk is not required to so review the document (Sup. R. 25(D)(3)). However, if a court or clerk is aware of the document containing personal identifiers, it is recommended that the court or clerk suggest the party omit the information.

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**Question:** Can a court or clerk reject a case document if the party fails to omit personal identifiers?

**Answer:** No. The Public Access Rules prohibit the court or clerk from rejecting the document on that basis (Sup. R. 45(D)(3)).

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**Question:** Must a separate personal identifier form be used with each case document, or may one form be used for the entire case?

**Answer:** The Public Access Rules establish no specific requirements for the personal identifier form other than it must be separate from the case document (Sup. R. 45(D)(2)).

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**Question:** Where should the personal identifier form be stored or maintained?

**Answer:** The Public Access Rules do not address the storage or maintenance of the personal identifier form. However, the recommended practice is to store the form in the case file in a manner that allows for its easy removal upon a public access request for the case file. Examples include keeping the form within a separate envelope in the case file or having the form printed upon colored paper.

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**Question:** Should two sets of records be maintained, one redacted version and one unredacted version?

**Answer:** It is not recommended that a court or clerk maintain two sets of records. The intent behind the personal identifier form is to allow courts and clerks to avoid such an approach.

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**Question:** Must a court wait for a motion from a party before restricting public access to a document or information pursuant to Sup. R. 45(E)?

**Answer:** No. The court may restrict public access to the document or information upon its own order (Sup. R. 45(E)).

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**Question:** Must a court or clerk withhold a document or redact information that is exempt from public access prior to disclosure of a document to the requestor?

**Answer:** Generally, no. If a document or information falls under one of the exemptions listed in Sup. R. 44(C)(2) or (G)(2), then the document or information is only exempt from public access, meaning the court or clerk *is not required to provide public access*. However, if a law or rule states a document or information is not to be made public, then the court or clerk would be required to withhold the document or redact the information.

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**Question:** Must a requestor specify a case document, or can the requestor request public access to the entire case file?

**Answer:** A requestor may request public access to the entire case file. In essence, the requestor is making a request for multiple documents.

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**Question:** Must a requestor identify him or herself or make the public access request in writing?

**Answer:** No. The Public Access Rules do not require a requestor to identify him or herself or make the request in writing. However, if it would assist in responding to the request, the court or clerk may request such.

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**Question:** Is there a set length of time for a court or clerk to respond to a public access request?

**Answer:** No. The Public Access Rules require a response to the request “within a reasonable amount of time” (Sup. R. 45(B)(1)). The precise length of time by which the court or clerk must respond is fact based and can only be determined on a case-by-case basis.

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**Question:** Must a court or clerk adopt a policy implementing or create a poster explaining the Public Access Rules?

**Answer:** No. The Public Access Rules do not require a policy or poster.

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**Question:** Do the Public Access Rules apply to Mayor’s Courts?

**Answer:** No. The Public Access Rules are part of the Rules of Superintendence for the Courts of Ohio, which apply only to the courts of appeal, courts of common pleas, municipal courts, and county courts in this state (Sup. R. 1(A)).