

## Rules of Public Access to Records of the Judicial Branch

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Effective July 1, 1988

With amendments effective through January 23, 2017

### TABLE OF HEADNOTES

Rule

5. Accessibility to Administrative Records

### TEXT OF RULES

#### **Rule 5. Accessibility to Administrative Records**

All administrative records are accessible to the public except the following:

**Subdivision 1. Personnel Records.** Records on individuals collected because the individual is or was an employee of, performs services on a voluntary basis for, or acts as an independent contractor with the judicial branch, provided, however, that the following information is accessible to the public: name; actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer-paid fringe benefits; the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary; job title and bargaining unit; job description; education and training background; previous work experience; date of first and last employment; the status of any complaints or charges against the employee, whether or not the complaint or charge resulted in a disciplinary action; the final disposition of any disciplinary action and supporting documentation, excluding information that would identify confidential sources who are employees of the judicial branch; the terms of any agreement settling any dispute arising out of an employment relationship; work location; a work telephone number; honors and awards received; payroll time sheets or other comparable data, that are only used to account for employee's work time for payroll purposes, to the extent that they do not reveal the employee's reasons for the use of sick or other medical leave or other information that is not public; and county of residence.

(a) For purposes of this subdivision, a final disposition occurs when the person or group that is authorized to take the disciplinary action makes its final decision about the disciplinary action, regardless of the possibility of any later court proceedings or other proceedings. In the case of arbitration proceedings arising under collective bargaining agreements, a final disposition occurs at the conclusion of the arbitration proceedings, or upon the failure of the employee to elect arbitration within the time provided by the collective bargaining agreement. Final disposition includes a resignation by an individual when the resignation occurs after the final decision of the person, group, or arbitrator that is authorized to take disciplinary action.

(b) Notwithstanding contrary provisions in these rules, a photograph of a current or former employee may be displayed to a prospective witness as part of an investigation of any complaint or charge against the employee.

(c) Notwithstanding contrary provisions in these rules, if an appointed officer resigns or is terminated from employment while the complaint or charge is pending, all information relating to the complaint or charge is public, unless access to the information would jeopardize an active investigation or reveal confidential sources. For purposes of this paragraph, "appointed officer" means the clerk of the appellate courts, the state court administrator, a judicial district administrator, and a court administrator of district court.

(d) Records under subdivision 1 may be disseminated to a law enforcement agency for the purpose of reporting a crime or alleged crime committed by an employee, volunteer or independent contractor, or for the purpose of assisting law enforcement in the

investigation of a crime committed or allegedly committed by an employee, volunteer, or independent contractor.

(e) Records under subdivision 1 must be disclosed to the Department of Employment and Economic Development for the purpose of administration of an unemployment benefits program under state law including without limitation the investigation, prosecution, settlement or defense of a claim related thereto.

(f) Records under subdivision 1 must be disclosed to the Department of Employee Relations and the Department of Labor and Industry for the purpose of administering workers compensation programs including without limitation the investigation, prosecution, settlement or defense of a claim related thereto.

(g) Records under subdivision 1 may be disseminated to labor organizations to the extent that the custodian determines that the dissemination is necessary to conduct elections, notify employees of fair share fee assessments, and implement the provisions of Minnesota Statutes, chapters 179 and 179A. Records under subdivision 1 shall be disseminated to labor organizations and to the Bureau of Mediation Services to the extent the dissemination is ordered or authorized by the Commissioner of the Bureau of Mediation Services.

(h) If the custodian determines that the release of records under subdivision 1 is necessary to protect an employee, volunteer or independent contractor from harm to self or to protect another person who may be harmed by the employee, volunteer, or independent contractor, records that are relevant to the concerns for safety may be released to: the person who may be harmed and to that person's attorney when the records are relevant to obtaining a restraining order; to a prepetition screening team conducting an investigation under Minnesota Statutes, section 253B.07, subdivision 1; or to a court, law enforcement agency, or prosecuting authority. If the person who may be harmed or that person's attorney receives records under this subdivision, the records may be used or released further only to the extent necessary to protect that person from harm.

**Subd. 2. Personnel Related Records.**

(a) *Collective Bargaining Planning Records.* Management positions on economic and noneconomic labor relations items that have not been presented during the collective bargaining process or interest arbitration, including information specifically collected or created to prepare the management position.

(b) *Applicant Records.* Records on individuals collected because the individual is or was an applicant for employment or for voluntary service with the judicial branch, provided, however, that the following information on employment applicants is accessible to the public: veteran status; relevant test scores; rank on eligible lists; job history; education and training; work availability; and, after the applicant has been certified by the appointing authority to be a finalist for a position in public employment, the name of the applicant.

**Subd. 3. Correspondence.** Correspondence between individuals and judges; but such correspondence may be made accessible to the public by the sender or the recipient.

**Subd. 4. Schedules and Assignments.** The identity of appellate judges or justices assigned to or participating in the preparation of a written decision or opinion, until the decision or opinion is released.

**Subd. 5. Security Records.** Records in the possession or custody of the courts that may substantially jeopardize the security of information, possessions, individuals, or property if subject to theft, tampering, improper use, illegal disclosure, trespass, or physical injury such as security plans or codes, checks and checking account numbers submitted as part of a transaction with the courts, and:

(a) *Unofficial Fiscal Notes.* Unofficial fiscal notes and related bill drafts thereof in the custody of the court provided that: (1) the request for an unofficial fiscal note is accompanied by a directive from the requester that the data be classified as not accessible to the public; and (2) the note and bill drafts have not become public through subsequent use in an introduced bill or any legislation, including amendments or a proposed bill offered

by any legislator. As used in this rule, an "unofficial fiscal note" has the meaning set forth in Minnesota Statutes, section 13.64.

(b) *Audit Trail Records.* Judicial branch audit trail records that link a user with any activity performed by the user on a Judicial Branch court technology system or application (including but not limited to Minnesota Government Access, Minnesota Public Access Courthouse, Electronic File and Serve, and the Electronic Medical Records System) are not accessible to the public, except to the extent that such records, when they indicate improper use of a court technology tool, are disclosed within a final audit report. Audit trail records may also be disclosed as provided in Rule 5, subdivision 13(e) or (f), of these Rules.

**Subd. 6. State Owned or Licensed Trade Secrets.** Records revealing a common law trade secret or a trade secret as defined in Minnesota Statutes, section 325C.01, that is owned or licensed by the state and is maintained by a court or court administrator; provided, that the following are accessible to the public: the existence of any contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.

**Subd. 7. Copyrighted Material.** Computer programs and related records, including but not limited to technical and user manuals, for which the judicial branch has acquired or is in the process of acquiring, a patent or copyright, or a license to use the same; provided, that the following are accessible to the public: the existence of any contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.

**Subd. 8. Competitive Bidding Records.**

(a) *Sealed Bids.* Sealed bids and responses to judicial branch bid or procurement requests or solicitations, including the number of bids or responses received, before the opening of the bids or responses at the time specified in the judicial branch request or solicitation.

(b) *Submission of Trade Secret.* Except as provided in subparagraph (c) of this subdivision, a common law trade secret or a trade secret as defined in Minnesota Statutes, section 325C.01, that is required to be submitted a judicial branch bid or procurement request provided that:

(1) the submitting party marks the document(s) containing the trade secret "CONFIDENTIAL";

(2) the submitting party submits as part of the bid or response a written request to maintain confidentiality; and

(3) the trade secret information is not publicly available, already in the possession of the judicial branch, or known to or ascertainable by the judicial branch from third parties.

(c) *Contract.* The existence of any resulting contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work, shall be accessible to the public.

**Subd. 9. Compliance Records.** Records and reports and drafts thereof maintained by the judicial branch information systems for purposes of compliance with Minnesota Statutes, section 546.27.

**Subd. 10. Library Records.** Records maintained by the State Law Library which: (a) link a patron's name with materials requested or borrowed by the patron or which links a patron's name with a specific subject about which the patron has requested information or materials; or (b) are submitted by a person applying for a borrower's card, other than the name of the person to whom a borrower's card has been issued.

**Subd. 11. Passport Records.** Passport applications and accompanying documents received by court administrators, and lists of applications that have been transmitted to the United States Passport Services Office.

**Subd. 12. Attorney Work Product.** The work product of any attorney or law clerk employed by or representing the judicial branch that is produced in the regular course of business or representation of the judicial branch.

**Subd. 13. Judicial Branch Internal Audit Records.** Information, notes, and preliminary drafts of reports relating to an audit or investigation, created, collected, and maintained by the internal auditor or audit committee of the judicial branch, or persons performing audits for the judicial branch; provided that upon the release of a final audit report by the judicial branch auditor or if the audit or investigation is no longer being pursued actively, such audit records shall be accessible to the public except as otherwise provided by applicable law or rule.

(a) *Auditor access; personnel records.* This subdivision does not limit in any way disclosures required under Minnesota Statutes, section 609.456 or 3.978, or public access to records classified as accessible to the public by Rule 5, subd. 1.

(b) *Confidential sources.* Records on an individual who supplies information for an audit or investigation, that could reasonably be used to determine the individual's identity, are not accessible to the public if the information supplied was needed for an audit or investigation and would not have been provided to the internal auditor or person performing audits without an assurance to the individual that the individual's identity would remain not accessible to the public.

(c) *Access to records by audit committee members.* Members of an audit committee have access to records that are collected or used by the judicial branch auditor and that have been classified as not accessible to the public only as authorized by resolution of the committee.

(d) *Unreleased records.* Records related to an audit but not released in a final audit report and that the judicial branch auditor reasonably believes will be used in litigation are not accessible to the public until the litigation has been completed or is no longer being actively pursued.

(e) *Review of Records.* If, before releasing a final audit report, the judicial branch auditor provides a person with records relating to the audit for the purpose of review and verification of the records, that person shall not disclose the records to anyone else unless and until the information becomes accessible to the public under these rules.

(f) *Duties Concerning Misuse of Public Money or Other Resources.* If the judicial branch auditor's examination discloses misuse of public money or other public resources, the judicial branch auditor may disclose records relating to the examination to the attorney general to assist in the recovery of money and other resources and to the appropriate prosecuting authority to assist in the prosecution of criminal proceedings as the evidence may warrant.

**Subd. 14. Other.** Matters that are made inaccessible to the public under:

- (a) state statute, other than Minnesota Statutes, chapter 13; or
- (b) federal law; or
- (c) rule or order of the Supreme Court.

The state court administrator shall maintain, publish and periodically update a partial list of administrative records that are not accessible to the public.

(Amended effective July 1, 2005; amended effective July 1, 2007; amended effective March 1, 2008; amended effective July 1, 2015; amended effective October 1, 2016; amended effective January 23, 2017.)

***Advisory Committee Comment - 2007***

*The 2005 changes to Rule 5, subd. 1, are based on policy applicable to employee records held by the executive branch. Minnesota Statutes 2004, section 13.43. There are, however, some subtle differences from executive branch policy, including the fact that judicial employee discipline is governed by a separate set of procedures and access provisions. See RULES OF THE BOARD ON JUDICIAL STANDARDS. In addition, judicial branch e-mail*

addresses are not accessible to the public unless individual employees authorize disclosure. Limiting access helps minimize the potential for ex parte contact prohibited by law. See MINN. CODE JUD. CONDUCT, CANON SECTION 3A(7).

The 2007 addition of Rule 5, subd. 2(a), is based on policy applicable to collective bargaining records held by the executive branch. Minnesota Statutes 2006, section 13.37, subdivision 1(c).

The 2005 changes to Rule 5, subds. 6, 7 and 8, reflect the existing practice. Trade secrets and copyrights are subject to state and federal law, and the specifics are generally clarified in procurement documents, from requests for bids to contracts, in the manner set forth in the rule. Once a vendor enters into a contract, the basic parameters of the contract relationship become accessible under Rule 5, subd. 1. These revisions provide notice to potential vendors of what to expect and are intended to ensure consistent results.

The 2005 changes to Rule 5, subd. 10, regarding State Law Library records provides consistent protection to information held by the library.

The 2005 addition of Rule 5, subd. 13, is based on policy applicable to executive branch audit records. See Minnesota Statutes 2004, sections 3.979 and 13.392. An internal audit function is being implemented by the judicial branch as part of the transition to state funding of district court administrative costs. The scope of the audit function is currently limited to financial audits but program audits could be added later. Subdivision 13 encompasses both types of audits.

Subd. 13 is not intended to provide a safe harbor to deny public access to records that would otherwise be accessible to the public. If an audit involves personnel records, for example, to the extent that those personnel records are accessible to the public in the hands of a supervisor or human resources office, they will continue to be accessible only from that source and would not be accessible from the auditor until a final audit report is released. Conversely, to the extent that any personnel records are not accessible to the public from the supervisor or human resources office, the records would remain off limits to the public even after the auditor releases a final report. Subd. 13, clause (a) includes an express reference to personnel records under Rule 5, subd. 1, as audits often involve personnel records.

Implementation of the audit function includes establishment of an audit committee to provide oversight and advice to the auditor. Although the structure of that committee has not yet been finalized, subd. 13(c) assumes that such a committee would exist and would have some access to the auditor's records via formal resolutions adopted by the committee. The requirement of a resolution prevents individual audit committee members from independently obtaining access to the auditor's records and places consistent limitations on re-disclosure to the extent that audit committee members obtain such records.

A confidential source clause is included under subd. 13(b) to protect individuals who want to cooperate with an audit or investigation. Subd. 13(d) addresses unreleased records when litigation is a concern. Subd. 13(e) allows the auditor to control the distribution of draft reports or record summaries to a specified "person." This process allows for verification of facts before the release of the final audit report.

The 2005 substitution of a periodically updated list for the former Appendix C in Rule 5, subd. 14 recognizes that the state court administrator maintains an updated list of statutes (and court rules and other legal authority) that identify administrative records that are not accessible to the public. The list is updated as necessary, whereas the former Appendix C became obsolete soon after it was first published. It is contemplated that the list will be posted on the main state court website ([www.courts.state.mn.us](http://www.courts.state.mn.us)) for access by the general public.

#### **Advisory Committee Comment - 2008**

The 2008 addition of subd. 13(f) is based on policy applicable to records of the legislative auditor. See Minnesota Statutes 2006, section 3.975 (legislative auditor). To the extent that misuse is uncovered as part of a personnel investigation, Rule 5, subd. 1(d),

*authorizes disclosure of the pertinent personnel records to law enforcement. Subd. 13(f) extends the same authority to the judicial branch auditor, who may be in a better position to report and assist law enforcement, particularly when misuse occurs in a court office that does not have the staff or technical ability to thoroughly investigate and report on the matter.*

***Advisory Committee Comment - 2015***

*Rule 5, subd. 5, is amended in 2015 to recognize that checks and checking account numbers submitted as part of a transaction with the courts contain sensitive financial information, the disclosure of which could lead to identity theft. Similar information such as credit card numbers and social security numbers are protected from public view either by statute or court rules. See Minnesota Statutes, section 480.237 (2014) (account numbers collected by the judicial branch in connection with credit cards, charge cards, debit cards or other methods of electronic funds transfer for government fees and payments ordered by the court); Minn. Gen. R. Prac. 11 (Social Security numbers and financial account numbers).*

*Rule 5, subd. 5, is also amended in 2015 to recognize that, as a state entity, the judicial branch participates in the creation of fiscal notes on proposed legislation. The amendment is intended to provide a uniform level of public access across all branches of government to fiscal notes and related legislative bill drafts. See Minnesota Statutes, section 13.64, subdivision 3 (2014) (governing public access to unofficial fiscal notes and related bill drafts held by executive branch agencies).*

***Advisory Committee Comment - 2016***

*Rule 5, subd. 5, is amended in 2016 to carry out the directive of the Minnesota Supreme Court to add a clause precluding public access to the audit trail logs that record system use of judicial branch computers systems. See Order Making Minnesota Judicial Branch Electronic Audit Trail Records Inaccessible to the Public, ADM10-8050 (Minn. S. Ct. filed January 6, 2016). This is similar to the protection afforded to State Law Library patrons under Rule 5, subd. 10, of these rules. In particular, use of Minnesota Government Access by court business partners reduces significant burdens on court staff who may otherwise be required to provide paper copies of records and assist with searches at the courthouse. A few government business partners were reluctant to use MGA, however, if an audit trail record were publicly available that might tip off opposing sides as to the information and issues they have been examining as they prepare their cases. This new clause provides essentially the same reassurance that is provided to users of State Law Library materials.*