

Records Requests: When the Public Comes Calling



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Objectives



- Identify records
- Recognize and handle sensitive information
- Understand how to work with the media
- Know where to find records retention info
- Recognize common questions and scenarios

What is a record?

- Documents
- Papers
- Letters
- Maps
- Books
- Tapes
- Photographs
- Films
- Sound recordings



What is a record?

- Other materials, regardless of physical form or characteristics
- Made or received pursuant to law or in connection with the transaction of any official business by the court, and preserved or appropriate for preservation by the court as evidence of the organization, functions, policies, decision, procedures, operations or other governmental activities.

What is a record?

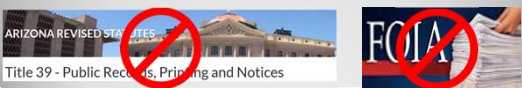
- *It's the message, not the messenger*
- Private service or device, day and time are irrelevant if the message is or can be perceived as work-related:
- Home phone or computer, texts, social media posts (Twitter, Facebook, LinkedIn, Instagram, Pinterest, SnapChat, What'sApp, Skype for Business, etc.)

Authority Over Court Records

- *Arpaio v. Davis 2009*

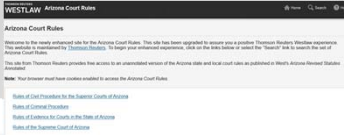


- Not A.R.S. Title 39
- Not the Freedom of Information Act



Authority Over Court Records

- What is Rule 123?
 - The primary source of authority governing *access* to the judicial records of the State of Arizona
 - Similar to but different from the executive branch public records law in statute
 - Governs case records and administrative records – paper and electronic



Authority Over Court Records

- Background of Rule 123
 - Adopted in the mid-90's, updated 2008, 2016, and due for a rewrite
 - "the records in all courts . . . are presumed to be open" (Rule 123(c)(1))
 - "Public access . . . may be restricted" for reasons of privacy, confidentiality, or because it is in the state's best interests. (Also Rule 123(c)(1))

Records Retention

- *Retention of Judicial Records*
 - Limited Jurisdiction: ACJA § 4-302
 - General Jurisdiction: ACJA § 3-402
 - Court of Appeals; ACJA § 2-201
 - Supreme Court; ACJA § 2-101
- *Access to Judicial Records*
 - Supreme Court Rule 123

Records Retention

- Check your retention schedule
- Correspondence and other matters might be “reference value served” which varies from immediate to forever

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 4: Limited Jurisdiction Courts
Chapter 3: Administration
Section 4-302: Records Retention and Disposition Schedule

A. **Definitions.** In this section, the following definitions apply:

“Case file” means all documents and other material filed with the clerk in an action or proceeding, either in paper or electronic format, including depositions, transcripts, and case financial records. *Case file* also includes case management system data but does not include exhibits submitted at a hearing or trial.

Public Records Considerations

- Records Requests
- Formal/Informal is custodian’s discretion
- Prompt acknowledgment of request and status updates until completion
- Written denial and appeals in Rule 123



Public Records Considerations

- Records Requests
- Rule 123(d)(4) (case records)
 - *Notes, memoranda or drafts thereof prepared by a judge or other court personnel at the direction of a judge and used in the process of preparing a final decision or order are closed.*

Public Records Considerations

- Records Requests
- Rule 123(e)(7) (the library rule)
Patron Records. Records maintained in any court law library, clerk's office or court that link a patron's name with materials requested or borrowed by the patron, or that link a patron's name with a specific subject about which the patron requested information or materials **are closed...**

Public Records Considerations

- Records Requests
- Okay to publicly say that records have been requested and which records were requested
- Okay to internally forward a records request that includes the requestor's identity
- Not okay to publicly identify who requested which records



Public Records Considerations

- Metadata
- *Metadata = information about the underlying document (author, date created, date modified, etc.)*
- Metadata is public record. However, metadata can include non-public information that can't be redacted.



Lake v. City of Phoenix, 222 Ariz. 547 (2009).

Public Records Considerations

- Redactions
 - If you entered or required the data (full DOB, full bank info, criminal history info, etc.) you have to redact
 - If the filing party filed into the public record with that info, you can-but don't have to-catch and correct it*



Issues with Records

- Storage
- Retention
- Sealing and unsealing
- Transmitting between agencies, courts, appeals, media, and how to access for those without technology
- Maintenance

Public Records Considerations

- Media



- This approach is frowned on

Public Records Considerations

- Media



- Judges should not speak about pending cases or give personal views
- Need a media contact: Court Administrator, Lead Clerk, or other designee if no PIO

Public Records Considerations

- Media



- Get specifics: What records during what timeframes?
- When is your deadline?
- How can you contact them and get the records to them?

Public Records Considerations

- Media



- Don't ask "why" unless the format of the records is an issue
- "Records" are documents and data, not thought processes – use written orders to your advantage
- For public trust and confidence in the courts, the media needs to understand what courts do

Public Records Considerations



- Media
 - Use Rules 122 (Courtroom) and 122.1 (Courthouse) to maintain safety and decorum – have copies for media and others
 - Can issue a model AO for individual courts

What Questions Do You Have?

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