

Technology

Filing Confidential

A New Policy Will Require Litigants to Remove Confidential Information from Filings

BY DANIEL J. SIEGEL

Court filings, both online and in paper form, often contain sensitive information, including Social Security numbers, financial account numbers, income tax returns, medical records numbers and birthdates. In many cases, the public can simply search a court's records and obtain the documents and the data they contain.

Although some Pennsylvania courts have limited the records available to civil cases, and some do not provide any online access, others provide online access to family court, criminal and other types of cases. In many cases, the courts' policies do not address how attorneys should handle documents containing confidential personal information. These differing policies have created confusion among attorneys, and the need for a standardized statewide policy.

Fortunately, the days of filings containing this type of sensitive information are almost certainly nearing an end in Pennsylvania because the Pennsylvania Supreme Court is expected to adopt policies and procedures to assure that personal and confidential information is not available to those who are not authorized to have it. Moreover, lawyers who do not use the requisite technology to deal with these changes – generally a product such as Adobe Acrobat Professional – will find themselves and their staffs scrambling for ways to do so.

The Administrative Office of



Pennsylvania Courts (AOPC) has created a proposed public access policy specifying which court records will be available electronically, which will only be available at the courthouse and which will not be made public. The goal of the policy is to assure that personal and confidential information is not available to those who are not authorized to have it. In short, instead of including these types of information and documents in their filings, litigants will be required to use a “Confidential Information Form,” or a “Confidential Document Form” and/or redact personal, sensitive information from the documents. The onus will be upon the filer, and not the particular court, to assure that all filings comply with the policy.

On February 6, 2015, the AOPC released the “proposed policy [that] for the first time establishes uniform standards for all appellate and trial courts in responding to requests from the public for case records. This includes how requests for access are to

be handled, establishment of fees, which information is considered confidential and other pertinent recommendations. It also builds upon existing policies governing access to magisterial district court case records, electronic case records and financial records.”

The policy, which contains an Explanatory Report outlining the reasons for the recommendations, is the product of a working group created by the Court Administrator of Pennsylvania with the approval of the Supreme Court. It recognizes the dangers of unfettered access to case filings and the concurrent need to create a uniform statewide policy applicable to all matters, including criminal, domestic relations, civil, juvenile, orphans' court and appellate cases. The working group is comprised of judges, appellate and local court administrators, representatives from the Pennsylvania Bar Association and the rules committees of the Supreme Court, and AOPC staff. I serve as the Pennsylvania Bar Association's

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representative on the working group, which is chaired by Commonwealth Court Judge Renée Cohn Jubelirer and Montgomery County Court of Common Pleas Judge Lois E. Murphy.

The proposed policy is an outgrowth of prior efforts by AOPC, including its “Electronic Policy and MDC Paper Policy,” which restricts access to Social Security numbers and financial account numbers. The proposed policy governs access to all (1) official paper case records of Pennsylvania appellate courts, the Courts of Common Pleas and Philadelphia Municipal Court, (2) the images of scanned or e-filed documents contained in the three statewide case management systems, (3) the images of scanned or e-filed documents in the case management systems of the various judicial districts and (4) case record information posted online by judicial districts by their own “local” case management systems. The policy is intended to create a more equitable and systematic approach to the case records filed in all of the affected courts.

One of the central themes of the proposal is that all cases will remain open to the public. However, the recommendations balance openness with the need to protect confidential information, and create procedures for requesting and obtaining access to records, as well as for responding to such requests.

The new regulations will prohibit a party from filing any court pleadings, documents or other legal papers that contain Social Security numbers, financial account numbers (although an account number may be identified by the last four digits when the account is the subject of the case and cannot otherwise be identified), driver’s license numbers, state identification (SID) numbers, a minor’s name and date of birth except when the minor is charged as a defendant in a criminal matter and the address and other contact information for abuse victims.

The policy also classifies as “confidential” certain documents, including (1) financial source documents,

(2) a minor’s educational records, (3) medical and psychological records, (4) Children and Youth Services’ records and (5) a Marital Property Inventory under Pa.R.C.P. No. 1920.33. “Financial source documents” include (1) tax returns, W-2 forms and schedules, (2) wage stubs, earning statements and other similar documents, (3) credit card statements, (4) financial institution statements, (5) check registers, checks or their equivalent and (6) loan application documents.

The working group proposed two approaches to maintaining the confidentiality of this information. Parties and their attorneys may list the information on a Confidential Information Form, which will be designed and published by the AOPC. The form will likely be similar to the Confidential Information form on the Unified Judicial System’s website at www.pacourts.us.

The alternative approach identified by the working group is for litigants and attorneys to file two versions of each document with the court – one with sensitive information redacted (the “redacted copy”) and the other with no information redacted (“unredacted copy”). The redacted copy would not contain any information prohibited under this policy but would be available for public inspection. On the other hand, the unredacted copy would not be available to the public.

There remain certain records that would not be available to the public under any circumstances, including (1) birth/case records under 20 Pa.C.S. § 711(9), (2) records concerning incapacity proceedings filed pursuant to 20 Pa.C.S. §§ 5501-5555, except for the docket and any final decree adjudicating a person as incapacitated and (3) transcripts in family court actions, as defined by Pa.R.C.P. No. 1931(a), lodged of record, excepting portions of transcripts when attached to a motion or other legal paper filed with the court. They also include any Confidential Information Forms or any unredacted versions of any pleadings, documents

Google Cardboard: DIY Virtual Reality Headset

Google Glass is not the only unusual personal device available from the people at Google. Google Cardboard, now in its second version, was released by Google as a low-cost, do-it-yourself virtual reality viewer. It can be purchased fully assembled or built using downloadable instructions.



Cardboard works by creating a simple cradle for smartphones allowing users to experience virtual reality through apps available from Google Play and the App Store. A relatively simple device, Cardboard is being targeted toward software developers and others interested in trying out virtual reality technology. Around \$20, it deeply undercuts more technologically advanced and powerful virtual reality headsets expected from Facebook, HTC and Sony which will cost in the neighborhood of \$1,500. ■

140-Character Limit Lifted for Twitter Direct Messaging



In a recent move, Twitter has decided to lift the 140-character limit imposed on its direct message function. Beginning in July, users may send direct messages of any length, similarly to the way they can communicate through instant messaging or group chat platforms. As private communication, direct messaging serves a different purpose for users than the quick bites of information displayed on a Twitter newsfeed. Besides individual users, companies that run part or all of their customer service on Twitter should benefit from the freedom to reach out with long detailed replies to customer complaints or other concerns. Standard tweets will continue to be limited to 140 characters. ■

The report also recommends that exhibits should be e-filed separately from pleadings and other legal papers.

or other legal papers, any documents filed with a Confidential Document Form cover sheet, as well as information sealed or protected pursuant to court order, information to which access is restricted by federal law, state law or state court rule. Finally, “[i]nformation presenting a risk to personal security, personal privacy or the fair, impartial and orderly administration of justice, as determined by the Court Administrator of Pennsylvania with the approval of the Chief Justice,” will also be excluded from the public.

Before developing the proposed policy, the working group studied and considered the types of records contained in criminal, domestic relations, civil, juvenile, orphans’ court and appellate matters, and then addressed each case type individually. The panel then considered existing legal restrictions and the public access policies in other jurisdictions before recommending which information and documents

should be considered confidential, and how access would be limited. The group also evaluated what information should be banned from online viewing by the public, but should nevertheless remain available for public inspection at a court facility, such as original and reproduced records filed in the appellate courts.

The Explanatory Report highlights the considerations that the working group considered when formulating the proposed policy. Perhaps the most difficult consideration the group addressed was to balance the need to assure the transparency of judicial records and proceedings with the security issues mentioned above that cannot be ignored in this Internet age. Finally, the committee focused on practical considerations, such as how redaction would be implemented and how to create the “best practices” that must be instituted statewide.

Among the suggestions offered is the use of software, such as Adobe Acrobat,

i.e., “optical character recognition” (OCR) software, which permits a reader to search documents, and facilitates the ability to “copy and paste” text from one document into another. The report also recommends that exhibits should be e-filed separately from pleadings and other legal papers to easily safeguard those that contain restricted information. Such actions will make the transition easier for attorneys and parties.

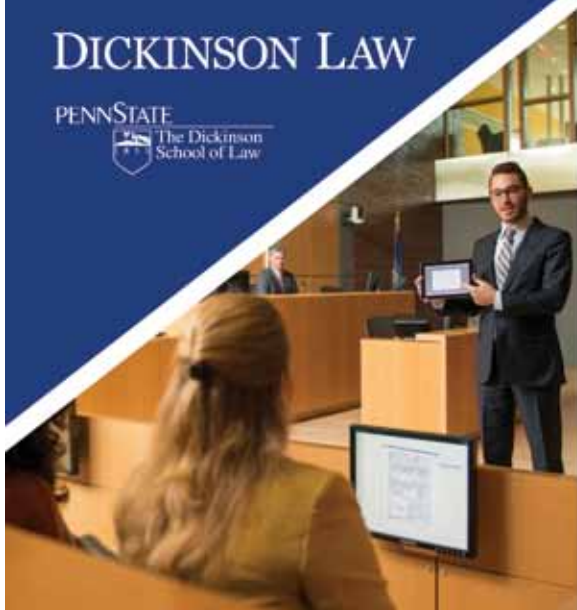
The public comment period ended on April 8, 2015. The working group met in May to review those comments and to finalize its recommendations. The final recommendations will be submitted to the Supreme Court for its consideration and issuance of final rules. ■

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