

Frequently Asked Questions

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1. INTRODUCTION

This document describes in general terms the public's access to court records and the restrictions on this access. It is meant to be a guide, not a legal document.

The public's access to court records is governed by two fundamental rights guaranteed by the Montana Constitution: the Public's Right To Know, Article II, Section 9, and the Right of Individual Privacy, Article II, Section 10. In 2005, the Montana Supreme Court began the process to establish the policy and rules to govern electronic access to Montana's Court Records. A Task Force was created to study this issue and propose rules.

The Montana Supreme Court accepted public comment on the proposed rules. Montana Supreme Court Order No. AF 06-0377 adopted the Rules Relating to the Privacy and Public Access to Court Records in Montana. These rules will be referred to as Privacy Rules.

It is important that everyone understand these rules. Every party to a case is required to understand and comply with these rules.

The Privacy and Access Rules become effective on July 1, 2008.

Sources and Examples:

Montana Supreme Court Order No. AF 06-0377

2. WHAT IS THE PURPOSE OF THE PRIVACY AND PUBLIC ACCESS TO COURT RECORDS IN MONTANA?

The purpose of these rules is to provide a comprehensive framework for a policy on public access to court records. These rules provide for access in a manner that:

- (a) Maximizes accessibility to court records,
- (b) Supports the role of the judiciary,
- (c) Promotes governmental accountability,
- (d) Contributes to public safety,
- (e) Minimizes risk of injury to individuals,
- (f) Protects individual privacy rights and interests,
- (g) Protects proprietary business information,
- (h) Minimizes reluctance to use the court to resolve disputes,
- (i) Makes most effective use of court and clerk of court staff,
- (j) Provides excellent customer service, and
- (k) Does not unduly burden the ongoing business of the judiciary.

Sources and Examples:

Privacy Rules § 1.0

3. WHO DO THE RULES APPLY TO?

These Rules apply to litigants, attorneys, to members of the public, and to judges, clerk of courts and court personnel.

Sources and Examples:
Privacy Rules § 1.0

4. ARE COURT RECORDS OPEN TO THE PUBLIC?

Court records in cases filed in Montana Courts are generally open to the public. Anyone may request to see a court record. You may look at court records for any reason. In general, it does not matter what you will use the information for. You do not have to be a party in the case. You may look at both pending and finished cases.

5. WHY ARE COURT RECORDS GENERALLY OPEN TO THE PUBLIC?

There are several reasons why court records are open to the public. Some reasons are for the benefit of the parties in a case, some are for the benefit of people even if they are not parties, and others are for the benefit of the public generally.

One important reason court records are open to the public is to allow the public to see what the courts are doing and how the courts work. This benefits the parties by helping to make sure that everyone is treated the same. And, it also helps people have confidence in the courts as being a fair and safe place to go to resolve disputes. Being able to see court records also allows people to protect themselves against people, businesses, or organizations that have hurt others, including through criminal activity. Finally, being able to see court records helps people know what they can and cannot do when dealing with each other.

Sources and Examples:
Privacy Rules § 1.0.

6. WHY SOME COURT RECORDS ARE NOT OPEN TO THE PUBLIC?

Sometimes, court records contain information that someone could use to injure someone else. Some examples include: intimidation or physical violence towards victims, witnesses, or jurors, repeated domestic or sexual violence, stalking, identity theft, and housing or employment discrimination.

7. ARE THERE SPECIFIC STATE STATUTES THAT DETERMINE WHETHER A COURT RECORD OR HEARING OR TRIAL IS CONFIDENTIAL?

Yes. There are specific statutes which determine whether a specific type of court record, case, or hearing or trial is confidential.

You are responsible for making sure that you follow all statutes that give specific requirements for confidentiality. Some of these statutes are listed below:

a. Parental Rights Based Upon Abuse or Neglect of the Child.

These types of cases are brought under Title 41 Chapter 3 of the Montana Code Annotated. Court records in these actions are confidential and not available to the public, unless the court "finds disclosure to be necessary for the fair resolution of the issue before it." § 41-3-205, MCA.

b. Involuntary Commitment Proceedings.

Court records are to be kept separate by the Court Clerk. If an individual has been involuntarily committed, the records must be sealed five days prior to the individual's release. The Court will only allow access to a sealed record in this case for good cause shown. § 53-21-103, MCA.

c. Formal Youth Court Records.

Court records in formal youth court cases are generally available to the public. § 41-5-215 (1), MCA

Court records that deal with social, medical, and psychological records are confidential and not available to the public. § 41-5-215 (2), MCA

Formal Youth Court records are sealed on the youth's 18th birthday, or when the Court has extended jurisdiction and that time has ended. § 45-5-216, MCA

Under § 45-5-216(4), MCA there are certain exceptions to the general rule of sealing a youth court record.

Medical records, fingerprints, DNA records, photographs, and youth traffic records are not be sealed, but are not available to the public.

Records in any case that the youth did not fulfill all requirements of the court's judgment or disposition.

Any reports to be reviewed for an adoption pre placement evaluation under § 42-3-203, MCA. Court records regarding a youth court adjudication of a minor in possession of alcohol where treatment is required. This conviction must be reported to Health and Human Services. § 45-5-624(7), MCA

The information covered by § 46-23-508, MCA for any case where a youth is required to register as a sexual offender under Title 46, Chapter 23 of MCA

d. Informal Youth Court Records.

Informal youth court records are confidential and are not available to the public. These records will be destroyed when the youth reaches 18, or upon termination of extended jurisdiction. § 41-5-216 (7)

e. Conciliation Proceedings.

In dissolution (divorce) proceedings when the parties have entered into conciliation proceedings. Title 40, Chapter 3, MCA All district court hearings or conferences under this chapter shall be confidential and the public does not have access unless opened to inspection by court order. § 40-3-116, MCA

f. Parentage Proceedings.

All hearings or trials to determine the parentage of a child are confidential and not open to the public. § 40-6-120, MCA

The only court record that is available for inspection is the final judgment. All other court records would only be available under certain limited circumstances. § 40-6-120, MCA

g. Adoption Proceedings.

All court records concerning adoption are confidential and are not available to the public. These records may only be viewed by court order under certain limited circumstances. § 42-6-101, MCA

h. Proceedings Regarding the Abuse or Neglect of Elderly Persons and Persons with Developmental Disabilities.

These cases are confidential and not available to the public. These records may only be viewed by court order under certain circumstances. Only the people who are listed in the statute can have access to these records. § 52-3-813, MCA

i. Proceedings Under Parental Notice of Abortion Act.

All cases under this statute are confidential and not available to the public. A minor petitioning to judicially bypass parental notification may file a petition using a pseudonym or initials. § 50-20-212(3), MCA

This statute has been enjoined from enforcement by the Lewis and Clark County, First Judicial District Court of Montana. *Wickland v. State*, 1999 Mont. Dist. LEXIS 1116. (This is not available online without a subscription. To get a copy of this order you may contact the Montana State Law Library or the Clerk of District Court for the Lewis and Clark County, First Judicial District to obtain a copy of this order. First Judicial District)

j. Guardianship and Conservatorship Proceedings.

These cases are open to the public. The incapacitated person may request that the hearing be closed to the public. § 72-5-315 (4), MCA

k. Grand Jury Proceedings.

All grand jury proceedings are closed to the public. § 46-11-307, MCA

Only a District Court can order disclosure to the public of grand jury proceedings under certain circumstances. § 46-11-317, MCA

l. Investigative Subpoena Proceedings.

All proceedings relating to an investigative subpoena are closed to the public. The same secrecy and disclosure provision of a grand jury proceeding apply to investigative subpoena proceedings. § 46-4-304, MCA

m. Dissolution of Marriage, Criminal Conversation or Seduction.

Courts are authorized to exclude everyone from a hearing or trial, except the officers of the court, the parties, their witnesses, and counsel for the parties. § 3-1-313 (2), MCA Even though a particular hearing may be closed to the public, the court records relating to these types of cases are accessible to the public.

n. Supervision Proceedings by Insurance Commissioner.

All records of the proceedings of actions taken under § 33-2-1321, MCA § 33-2-1321 and § 33-2-1322, MCA are confidential and not available to the public, unless the district court orders otherwise. § 33-2-1323, MCA

o. Minor's names.

State law requires the disclosure of a minor's identity in some circumstances. Disclosure may be required by a specific statute or it may be required because a statute is applicable to both adults and minors and there is no exception for the disclosure of a minor's identity. For example, traffic violations.

Sources and Examples:
Privacy Rules § 1.0

8. WHO HAS ACCESS WITHOUT LIMITATION TO COURT RECORDS?

There are several classifications of people whose access is not limited by the Privacy Rules.

- (a) Court or clerk of court employees;
- (b) People or entities, private or governmental, who assist the court in providing court services;
- (c) Agencies whose access to court records is defined by another statute, rule, order or policy, and
- (d) The parties to a case or their lawyers regarding access to the court record in their case.

Sources and Examples:
Privacy Rules § 2.0

9. WHAT ARE COURT RECORDS?

Court records include any document, information, exhibit, or other thing filed in a court case by the parties or their lawyers. It also includes documents prepared by the court in a case. Court records also include any information in a computer case management system that is used by the court and clerk of court to track cases. Examples of court records are: complaints, petitions, answers, motions, transcripts, calendars, minutes of a court proceeding, and court orders, decrees, or judgments.

Sources and Examples:
Rules section 3.10(a)

10. WHAT SHOULD I KNOW ABOUT PUBLIC ACCESS TO MY CASE IF I AM A PARTY?

Anyone who is a party in a case should be aware that information they or their attorney provide to the court, or that other parties or their attorneys provide to the court, is generally accessible to the public. There are few exceptions. You can ask to limit or prohibit public access to information in your case. However, the basis for a judge to restrict public access to court records is quite limited.

It is the responsibility of the person filing a document to make sure that the document follows the law when sensitive personal information is involved. The Court or Clerk of Court will not review documents submitted for filing to see if it has information that should not be there, or information which should be protected from public access.

Sources and Examples:
Privacy Rules § 4.10
Privacy Rules § 4.50

11. ARE THERE SOME KINDS OF INFORMATION I SHOULD NOT PUT IN A DOCUMENT I AM FILING?

You should not include the following information in any document filed with the court, unless the information is required by law or ordered by the court to be included:

Full Dates of Birth of any person
Full Social Security Numbers
Financial Account Numbers
Full Names of Minor Children (unless made by public by law)

If required this information may be filed on a sensitive data sheet which will be treated by the Court as confidential information.

In addition, medical reports, financial documents and evaluative reports may be protected by filing a specific motion to seal. The court will make a determination as to whether the information should be protected for cause.

Sources and Examples:
Privacy Rule § 4.50
See Sample Motions

12. WHAT COURT RECORDS CAN I SEE?

Court records are kept in the court where the case was filed. Certain information may also be available on-line. To locate a court, use the Montana Judicial Branch - Court Locator at: courts.mt.gov/locator.mcp

13. WHAT COURT RECORDS CAN I SEE ON-LINE?

Currently, there are only limited court records that are available online. The Montana Supreme Court briefs and opinions are available. Montana Supreme Court opinions

14. IS INFORMATION ABOUT JURORS AVAILABLE TO THE PUBLIC?

Yes. The Clerk of the District Court keeps the master list of jurors for the current jury term. This master list is available for inspection at the courthouse.

15. IS INFORMATION ABOUT WITNESSES AVAILABLE TO THE PUBLIC?

Some information is available in some case regarding witnesses. Some courts enter this information electronically into the court's case management system. Additionally, witness information may be contained in certain documents filed in a court file.

16. HOW LONG ARE COURT RECORDS KEPT?

Court records are generally kept for very long periods and for this reason are available to the public for a long time. There are some types of cases which after a period of time, may be destroyed. There are some types of cases which must be permanently retained.

Sources and Examples:

For District Court Cases see Schedule 12 Clerk of District Court Record Retention Schedule

For Courts of Limited Jurisdiction see Schedule 10 of Courts of Limited Jurisdiction Record Retention Schedule

17. HOW FAR BACK DO THE CASES ON-LINE GO?

Most court cases are not yet available on a web site or through a subscription service.

Montana Supreme Court briefs and opinions go back to 1973.

18. WHAT COURT RECORDS ARE NOT AVAILABLE FOR THE PUBLIC TO SEE?

There are certain types of cases, documents, and information that the public is not allowed to see. Restrictions on public access help protect people's privacy and may also protect them from harm. Public access is usually restricted because these court records contain sensitive personal information as determined by federal or state law, court rules, or a court order in a case. Although some court records cannot be seen by the general public, there will still be an indication that the court record exists, even if you cannot see the court record itself.

Sources and Examples:
Privacy Rule § 4.10(b)

19. SOME CASES ARE CLOSED BY JUDICIAL ORDER

There are some cases where a judge has ordered that some or all of the court records in the case shall not be available to the public. Such an order is based on a specific request to the court, and a court's decision that the individual's right to privacy outweighs the public's right to know.

20. ARE THERE SOME RECORDS THAT ARE ONLY AVAILABLE AT THE COURTHOUSE?

The Privacy Rules do not distinguish between records that are available at a courthouse and records that will be available on-line. Currently, in order to view a specific court record, you must contact the court where the case is pending.

Sources and Examples:
Privacy Rules § 4.50.

21. WHERE CAN I SEE THE PAPER COURT FILES?

To view court records in person, go to the court where the case was filed. The records you can see at this location are only for those cases filed in this court. You cannot look at court records from another court at this location.

Use the court locator to find the address of the court.

You should go to the Court Clerk's office and ask to view the record. Each court has rules about how and when a court record may be viewed. Court records may be only viewed and may not be taken from the Clerk's office. This is done to prevent someone from taking documents from, adding documents to, or changing documents in a court file.

22. WHERE CAN I SEE ELECTRONIC COURT RECORDS?

Currently, very few records are available on-line.

There are courts that have public terminals. You will be able to see certain records through these public terminals. You will need to contact the specific court to determine whether they have a public terminal.

Sources and Examples:

Privacy Rules § 4.50.

23. WHO OWNS THE INFORMATION IN THESE COURT RECORDS?

Although court records are open to the public, they may contain information in which a party or someone else has a copyright or other proprietary right. Use of such information is allowed only to the extent permitted by law, and the fact that it is in a court record does not free you from legal limitations regarding the use of the information.

24. IF I CANNOT GET TO THE COURTHOUSE OR I DON'T HAVE ACCESS TO A COMPUTER, CAN I REQUEST A RECORDS SEARCH BY FAX OR MAIL?

Yes. You must contact the individual court to request a records search by fax or mail. Use the Montana Judicial Branch - Court Locator.

25. WILL I HAVE TO PAY TO SEE OR TO GET A COPY FOR COURT RECORDS?

There is no fee to view a court record at the courthouse. There are fees for copies and faxing.

The fees that a District Court charges are set by statute.
§ 25-1-201, MCA

A Court of Limited Jurisdiction sets its own schedule for record searches and copies. You will need to contact the individual court to determine the fees.

26. HOW CAN I GET COPIES OF COURT RECORDS?

You can get copies of the original of court records that are open to the public at the location where the court records are kept. You will have to pay a fee to the court clerk to get copies of court records.

You may also get a certified copy which is an official stamp which certifies that the copy is a true and correct copy of the original.

You cannot get a copy of court records that are not open to the public unless there is a court order that says you may have a copy.

You will not be able to remove a court file to make copies. You will have to make the copies at the court.

27. CAN I OBTAIN COPIES OF COURT RECORDS IN A WHOLE GROUP OF CASES, RATHER THAN JUST ONE CASE?

Obtaining information about a group of cases, as opposed to just one, is called "bulk distribution." Bulk distribution means getting all, or a large amount, of the court's electronic records.

You need to contact the Montana Supreme Court Administrator's office about bulk distributions.
Contact Information

Sources and Examples:
Privacy Rule § 4.30

28. CAN I OBTAIN SUMMARY INFORMATION ABOUT A SELECTED GROUP OF CASES?

Summary information about a group of cases is referred to as "compiled information." This usually involves a report generated by a computer that summarizes characteristics of a select group of cases. To see what information might be available from reports, please contact the Montana Supreme Court Administrators Office. Contact Information

Sources and Examples:
Privacy Rule § 4.40

29. CAN I CORRECT THE INFORMATION IN A COURT RECORD?

Every effort is made to provide accurate and current information. However, court records can and do contain errors or old information. Only the court can change information in a court record. A company or service which keeps the court's records or makes copies of court records available for you to see cannot change the court record.

If you feel the information is in error, you must file a written request with the court where the case was filed. Your written request cannot be longer than two pages and you must serve it on all the parties to the case.

When the Court Clerk receives your written request to correct an error, it may:

- a) Correct a clerical error, no court order is required.
- b) Ask the court to informally consider the request.
- c) Forward the request to the party who submitted the record containing a clerical error

Whether the information is changed depends on the type of error argued and what the law is about changing information.

Sources and Examples:
Privacy Rule § 8.50

30. HOW CAN I ASK TO SEE RESTRICTED INFORMATION IN COURT RECORDS?

Anyone can request to obtain access to restricted information in a court record. However, access will not always be given. You must file a written motion to access restricted information. The court will review your motion and determine if access will be allowed. The court will determine whether you can see only pieces of information, only certain documents, or the entire court file. The court may impose certain restrictions on your access, for example, that you can only view the information at the courthouse or that you cannot show the information to anyone else.

31. CAN I GIVE THE INFORMATION I GET FROM COURT RECORDS TO OTHER PEOPLE?

In general, you can share the information you get from court records to other people. If you use it to commit a fraud or to injure an individual, you could be charged with a crime.

32. IS THE INFORMATION ABOUT A VICTIM OF A CRIME CONFIDENTIAL?

If you are a victim of a crime, you may request that your information be kept confidential. If you make this request to law enforcement, they are prohibited from disclosing your name, telephone number, or address to the public. However, they are required to disclose the location of the crime. If the crime occurred at your house, this address will be disclosed. § 44-5-311, MCA

You may request a court keep your information confidential by filing a Motion to Keep Certain Information Confidential.