

**POLICY DIRECTIVE NO. 9 (Adopted June 18, 1993)**

**POLICY RELATING TO RECORDS INSPECTION REQUESTS**

This policy is issued in accordance with NMSA 1978, Section 35-7-1 to provide guidelines for implementing the Inspection of Public Records Act. This policy serves the purpose of the Act, which is to make available to the public, as part of the routine duties of the courts, the greatest possible information about the affairs of the magistrate courts and the official acts of the judges and clerks.

The time requirements set forth in this directive are mandated by statute. Because penalties of \$100 per day of noncompliance can be imposed, it is essential that the courts give priority to responding to written requests for records inspection. All written requests are deemed denied if the records are not provided for inspection within 15 calendar days of receipt of the request; the only exception is a request that is extremely burdensome or broad. A denial of a written request requires a written explanation.

**Records Custodian--Oral and Written Requests**

Each presiding judge shall designate a clerk to serve as records custodian.

The records custodian shall receive and respond to written requests for records inspection according to the time frames set forth in this policy.

The presiding judge may appoint a clerk to respond to oral requests for records inspection. The records custodian also may be responsible for oral requests. To expedite records inspection upon an oral request, the courts are encouraged to allow any available clerk to respond to the request when the demand is made.

**General Guidelines--Oral and Written Requests**

The courts shall provide reasonable opportunities to inspect all public records or portion of records that are not confidential during regular business hours.

The courts shall not require a reason for records inspection.

The courts shall not require that requests be submitted in writing.

The courts shall make the photocopier available to requesters who need copies of the records. The courts shall collect copying costs in advance of supplying the records requested when photocopies are made. The courts shall charge \$.50 per page as set forth in NMSA 1978, Section 35-6-1.

If a requester reasonably cannot be present to inspect the records in person, and requests instead that copies of the records be mailed, the records custodian shall prepare the copies of the records according to the procedures specified under the heading "Responding to Written Requests for Records Inspection.

### **Confidential Records--Oral and Written Requests**

Confidential records are those records that are either

1. Determined by law to be confidential or
2. Determined by the judge to be confidential\* only after
  - (a) confidentiality has been requested and
  - (b) the judge has weighed the reason for confidentiality against the public's right to inspection and
  - (c) the judge has found that the interests asserted in favor of confidentiality outweigh the public's right to records inspection.

\* A request for confidentiality shall be granted only if confidentiality is necessary to protect a significant, specific and disclosed interest. For example, law enforcement may request that an affidavit in support of a search warrant be kept confidential. The judge would question the reasons for confidentiality. Law enforcement may respond that disclosure would jeopardize an on-going investigation and may endanger sources. The interests asserted would be protection of the identity of informants and the identity of a suspect who has not yet been charged with a crime. In such a case, the judge would find that the interests stated in support of confidentiality outweigh the public's right to inspection.

Confidential information shall be placed in an envelope marked "Confidential" and removed from the file prior any public inspection.

\* PLEASE CONTACT THE AOC IF WE MAY BE OF ASSISTANCE  
WHEN A CLAIM OF CONFIDENTIALITY IS ASSERTED OR A  
DETERMINATION OF CONFIDENTIALITY IS CHALLENGED.

The public information contained on a requested record that also contains confidential information shall be provided. The court must strike out the confidential information so that the public information may be provided.

### **Responding to Oral Requests for Records Inspection**

The courts shall respond to oral requests for records inspection immediately or as soon thereafter as possible. The time requirements of this policy are applicable only to written requests.

### **Responding to Written Requests for Records Inspection**

The records custodian shall respond immediately to a written request for records inspection.

1. A written request is received when it is delivered to the court, not to the records custodian.
2. If the records cannot be provided immediately, the custodian shall make the records available within 3 business days.
3. If the records cannot be made available for inspection within 3 business days after receipt, within 3 business days of receipt the custodian shall give written notice of when the records will be available.
4. The custodian shall provide records for inspection no later than 15 calendar days after receipt of the request unless the request is extremely burdensome or broad.
5. If a request is extremely burdensome or broad, the custodian shall give written notice within 15 calendar days of receipt that additional time is needed. The records must be provided within a reasonable time.

If the request is for a record that is not available at the court:

1. The custodian shall contact the agency who maintains the record immediately and
2. The custodian shall respond in writing within 3 days of the request to advise the requester where the record can be found.

If the requester requires that copies be mailed to the return address on the request:

1. Priority must be given to requests where copies must be mailed. The custodian shall immediately prepare the copies, determine the costs and postage and indicate the amount on the 3-day notice.
2. Within 3 business days of receipt of the request, unless the request is extremely burdensome or broad, the custodian shall mail the requester written notice that shall indicate the total amount to be paid (postage and copying costs) and that all costs must be paid in advance by cashier's check or money order.
3. Upon receipt of the prepaid costs, the custodian shall include a receipt for the copying and postage costs with the records and mail the receipt with the copied records.
4. If the request is extremely burdensome or broad, within 15 calendar days of receipt, the custodian shall give written notice to the requester that more time will be needed to respond.

#### **Denying Written Requests for Records Inspection**

Within 15 calendar days of receipt of the request, the custodian shall send the requester written notice of denial of the records inspection request.

The denial must briefly explain the reason for denial.

The denial must state the name and title of the person responsible for denial.

#### **Administrative Form--Written Requests**

The Administrative Office of the Courts will supply the courts with an administrative form that will expedite responses to written requests. This form provides for a 3-day notice that the records are available at another location, a 3-day notice that costs must be paid in advance of mailing requested copies, a 3-day notice of the date set for records inspection, a 15-day notice that more time is needed for an extremely burdensome or broad request, and a 15-day notice of denial. A copy of the form follows.

This policy applies to all magistrate courts.

FORM

RESPONSE TO WRITTEN REQUEST FOR INSPECTION OF PUBLIC RECORDS

Name: \_\_\_\_\_ Telephone No: \_\_\_\_\_  
Address: \_\_\_\_\_ Date of Receipt  
\_\_\_\_\_ of Request: \_\_\_\_\_

You have requested to inspect court records pursuant to the Inspection of Public Records Act. The following applies to your request:

\_\_ The requested records have been determined to be confidential in whole or in part. Only portions not found to be confidential are available to you.

\_\_ The requested records are not available immediately. By law, these records must be provided for inspection no later than 15 calendar days after receipt of your request. These records will be available for your review on \_\_\_\_\_. [This notice to be given to requester within 3 business days of receipt of request.]

\_\_ The request is considered extremely burdensome or broad. Additional time will be required to provide these records. The records will be available for your review on \_\_\_\_\_. [This notice to be given within 15 calendar days of receipt of request.]

\_\_ The requested records are not available at this court. You may inspect these records at \_\_\_\_\_. [This notice to be given within 3 business days of receipt of request.]

\_\_ Request is denied. Attached is written explanation. [This notice to be given within 15 calendar days of receipt of request.]

\_\_ The copies of records you have requested to be mailed are now available. The charge is as follows:

\_\_\_\_\_ copies at \$.50/page, \$\_\_\_\_\_ + postage, \$\_\_\_\_\_ =  
\$\_\_\_\_\_ (TOTAL DUE)

This charge must be paid in advance by cashier's check or money order payable to the magistrate court. A receipt will be provided with the records. [This notice to be given within 3 business days of receipt of request.]

\_\_\_\_\_  
Records Custodian

\_\_\_\_\_  
Date