



JUSTICE ADMINISTRATIVE COMMISSION

PUBLIC RECORDS REQUEST POLICY

SPECIFIC AUTHORITY

- Florida Constitution: Article 1, Section 24
- Florida Statutes: s. 43.16, Chapter 119
- 2023 Government-in-the-Sunshine Manual

OBJECTIVE

To provide access to public records as quickly as is reasonably possible.

OVERVIEW

The Justice Administrative Commission (JAC) is committed to providing access to public records. Section 119.01(1), F.S., provides “It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.”

JAC administratively serves the Offices of State Attorney, Public Defender, Criminal Conflict and Civil Regional Counsel, Capital Collateral Regional Counsel, and the Statewide Guardian Ad Litem Program of Florida (ss. 27.511, 27.702, and 43.16 F.S.). Services provided to these judicial-related offices (JROs) are primarily in the areas of accounting, budget, financial services, and human resources. Although JAC serves these offices, JAC does not direct, supervise, or control these offices. JAC also provides compliance and financial review of bills for services provided by private court-appointed attorneys and associated due process vendors representing indigent citizens (ss. 27.40, 27.425, 27.5304, 27.5305, and 27.710, F.S.).

I. DEFINITIONS

Confidential Information: Not subject to inspection or copying by the public and may be released only to those persons or entities specifically designated by statute, court order, or in some cases, written authorization.

Custody of a Public Record: Supervision and control over a document or legal responsibility for its care. The fact that a public employee temporarily possesses a record does not necessarily mean that the person has custody of the record as defined by s. 119.07, F.S.

Exempt Information: Information not subject to inspection by the public, but may be disclosed at the discretion of the JAC. When deciding whether exempt information should be disclosed, JAC's General Counsel (General Counsel) must determine whether the release of the information would undermine the exemption's purpose.

Extensive Use of JAC Resources: When the nature or volume of a response to a public records request to be inspected or copied requires more than one (1) hour of JAC technological, clerical, or supervisory resources.

Judicial-Related Offices (JROs): The offices served by JAC including the: 20 Offices of State Attorney, 20 Offices of Public Defender, 5 Offices of Criminal Conflict and Civil Regional Counsel, 3 Offices of Capital Collateral Regional Counsel, and the Statewide Guardian Ad Litem Program of Florida.

Public Records: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency (s. 119.011(12), F.S.).

Public Records Coordinator (Coordinator): An employee designated to coordinate JAC's response to a public records requests on behalf of JAC and to act as Records Custodian. The Coordinator's duties are to receive, log, acknowledge, coordinate a response, and respond to public records

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requests on behalf of JAC in accordance with this Policy. The statutory obligation of the Coordinator is to provide access to, or copies of, responsive public records. The Coordinator has authority to respond to public records requests on behalf of JAC only.

II. PUBLIC ACCESS TO JAC RECORDS

Only the Coordinator may respond to public records requests made of JAC. Any request received by any JAC employee for public records must be immediately referred to the Coordinator for response.

A. Submission of Public Records Request

JAC accepts a public records request in the following manners: in person, by phone, email, regular mail, or via the JAC website (see below). All incoming public records related correspondence shall be delivered to the Coordinator.

Via	Access
Email	publicrecords@justiceadmin.org
JAC Website	https://www.justiceadmin.org
Phone	(850) 488-2415
Regular Mail	JAC Public Records Coordinator 227 North Bronough Street, Suite 2100 Tallahassee, FL 32301
In Person	227 North Bronough Street, Suite 2100 Tallahassee, FL 32301

A public records request does not have to be made in person or in writing as a prerequisite for completing a request. If the individual making the request chooses not to submit the request in writing, JAC shall ask the requester for as much information regarding the request as possible (e.g., name; contact

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information, whether telephone number, email, or mailing address; documents requested; and any additional information). Furthermore, the individual making the request is not required to disclose their identity, provide information about the reason for the request, or explain how the records will be used. To respect the anonymity of the requester, JAC shall attempt to gather as much information as possible without compromising the requester's identity.

It is the policy of the JAC that upon receipt of a public records request requiring assistance and/or safeguarding of records during inspection, the Coordinator will determine the appropriate location, personnel, and, if necessary, the charge for such assistance or for performing a review of the requested records.

The JAC does not honor "standing" public records requests for future copying or production. See Inf. Op. to Worch, June 15, 1995.

B. JAC's Response to a Request

A public records request of JAC records will be promptly acknowledged. If a request is insufficiently clear to conduct a meaningful search, JAC will request further clarification in order to provide responsive records or otherwise respond in a timely manner.

To ensure that JAC can provide access to responsive records promptly, the Coordinator may request specific information about the request, including:

- Record name;
- Case number;
- Date range; and
- Any other clarifying information allowing JAC to conduct an appropriate search.

The Public Records Act does not require JAC to generate or create records not maintained by JAC. Records responsive to a public records request that are available as of the date the request is received will be provided. If the

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request calls for production of a voluminous amount of documents or requires an extensive and time consuming search, the Coordinator will follow the procedures outlined in the section entitled “Charging for Requests,” below. Should there be some hindrance to providing the requested records, the Coordinator will notify the requester. Upon independent review to determine the most appropriate method of data collection, the Coordinator will either determine whether the request will require a charge, as outlined below, or work with the necessary JAC staff to compile the records requested. The Executive Director and the General Counsel will be informed of all complex requests. If the Coordinator believes the records requested are not public records under Chapter 119, Florida Statutes, the General Counsel will be consulted for confirmation.

C. Charging for Requests

If the response to a public records request requires “extensive use of agency resources,” s. 119.07(4), F.S., authorizes a special service charge in addition to the actual cost of duplication. In determining whether a special service charge is warranted, the Coordinator shall consider whether the nature or volume of a public records request response requires extensive use of JAC resources. The special service charge must be reasonable and based on the cost actually incurred by JAC for such extensive use of JAC resources. The charge for clerical or supervisory assistance will be no greater than the hourly rate (based on salary, including benefits) of the lowest paid personnel capable of providing such services. If fees are imposed for copies and/or a special service charge, the requester will be provided an estimated cost(s) in order for them to determine whether or not they would like JAC to proceed with preparing the response to their request based on the fee estimate communicated. Full payment will be collected before producing the records responsive to the request. If the actual costs incurred are less than the amount paid, JAC will refund the overpayment to the requester. Prior to responding to the request, the Coordinator may work with the requester to clarify their request. By clarifying a request, JAC may be able to provide more responsive records and reduce costs to the requester.

As authorized by s. 119.07(4), F.S., the JAC will charge 15 cents for single-sided physical copies and an additional 5 cents for double-sided physical copies for any request where the volume exceeds 100 copies.

Material	Cost
One-sided Copy	\$0.15 per page
Double-sided Copy	\$0.20 per page

In no instance will any JRO served by the JAC be charged for a public records request. In other circumstances, including requests from other state or federal entities, any applicable charges may be waived at the discretion of JAC’s Executive Director or General Counsel.

D. Confidential/Exempt Information

1. JAC Records

If the requested record is confidential or exempt from public disclosure by statute, case law, or other basis, the record may not be disclosed and the requester will be informed that the record is confidential and/or exempt from disclosure, along with the citation to the applicable statute, case law, or other basis, establishing the exemption. If only part of the record is confidential and/or exempt, JAC will redact the confidential and/or exempt information and provide the remaining record to the requester along with the citation(s). With requests of this nature, the Coordinator will work closely with the General Counsel or designee to determine whether the redaction of such information is consistent with statute, case law, or other basis. The Coordinator is responsible for the redaction of any readily apparent confidential or exempt information (e.g., Social Security Numbers and bank account numbers). A public records request is not confidential or exempt.

JAC encourages all JROs it serves, to highlight confidential or exempt information and cite the statutory, case law, or other basis for exemption when submitting documents to JAC. Doing so will alert JAC that the record contains confidential or exempt information. If the confidential or exempt

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information is not necessary for JAC to process a bill for payment, JAC encourages redaction of that information prior to submission to JAC.

2. JAC Records – Received from JROs

JAC administratively serves 49 JROs which either prosecute or represent defendants in court. Because JAC's services to these JROs are administrative in nature, JAC is often unable to determine whether specific information in a record originating from a JRO is confidential and/or exempt. Additionally, JAC does not want to compromise the prosecution of a case or a defendant's constitutional rights. Accordingly, when a public records request involves records that originated at an office administratively served by JAC, the affected JRO will be notified and a copy of the responsive records will be provided to the JRO for review and further redaction before final release to the requester. The notification may include an anticipated release date for the public records request. The affected JRO shall propose redaction of any confidential or exempt information and provide JAC the statutory citation supporting the confidentiality or exemption. Because JAC must provide access to the records within a reasonable amount of time, JAC relies on the JRO's prompt review and proposed redaction to comply with the law. If the JRO is unable to respond by the anticipated release date, the JRO must notify the Coordinator.

The General Counsel shall review the JRO's proposed redactions for consistency with the Public Records Act or other provisions of Florida law. If the General Counsel has concerns regarding a proposed redaction, the General Counsel shall consult with the JRO. See Board of Trustees, Jacksonville Police & Fire Pension Fund v. Curtis Lee, 189 So. 3d 120 (Fla. 2016) (holding there is no "good faith" exception to an award of attorney fees in a public records lawsuit). As the entity liable under Ch. 119, F.S., JAC is ultimately responsible for determining whether to disclose information or claim an exemption when responding to a public records request. See Chandler v. City of Sanford, 121 So. 3d 657 (Fla. 5th DCA 2013); Op. Att'y Gen. Fla. 1988-25 (1988).

Law enforcement agencies requesting that JAC confidentially provide information and/or documents during an active criminal surveillance or investigation must serve JAC with a subpoena or protective order directing that JAC not disclose the request. Under these circumstances, JAC will not notify the JRO(s) affected by the request or of JAC's response until JAC is notified that the criminal investigation has been determined inactive by the law enforcement agency or the protective order is lifted by the court.

III. JAC Records Requests from Court-Appointed Attorneys and Vendors

JAC provides compliance and financial review of bills for services provided by private court-appointed attorneys and associated due process vendors (vendors) to indigent persons. JAC does not require the submission of confidential or exempt information to process vendor bills. Furthermore, Florida Statutes and JAC's Court-Appointed Attorney (Registry) and Due Process Vendor contracts contain provisions providing that when JAC requires the review or submission of additional supporting documentation to process or verify a bill, any confidential or exempt information contained in the supporting documentation may be redacted.

A. Court-Appointed Attorneys

JAC's Court-Appointed Registry Attorney Contract (Registry Contract) addresses public records, and provides:

To the extent that Attorney's records constitute public records under Florida law, Attorney must comply with the requirements of Ch. 119, F.S., and other provisions of Florida law relating to public records. Attorney is solely liable for any fee or costs assessed against Attorney if Attorney fails to comply with a request for public records pursuant to Florida law. In assessing whether records possessed by Attorney constitute public records, Attorney should be familiar with *Kight v. Dugger*, 574 So. 2d 1066 (Fla. 1990), which concluded that files held in

furtherance of representation of an indigent client are not public records.

B. Due Process Vendors

JAC's Due Process Vendor Contract also addresses public records, and provides:

To the extent that Vendor's records constitute public records under Florida law, Vendor must comply with the requirements of Ch. 119, F.S., and other provisions of Florida law relating to public records. Vendor is solely liable for any fee or costs assessed against Vendor if Vendor fails to comply with a request for public records pursuant to Florida law. Vendor should consult with Attorney prior to disclosure of records to ascertain whether the records may be protected by the attorney-client privilege, work product privilege, or the principles set forth in *Kight v. Dugger*, 574 So. 2d 1066 (Fla. 1990), which concluded that files held in furtherance of representation of an indigent client are not public records.

IV. Records Requests from JROs Related to JRO Records

A. Two Types of Records Requests

JAC receives many records requests which typically take two forms. The first is a "Request for Information"; this is when a JRO requests information or records related to their own office. The second is a "Public Records Request"; this is when a JRO requests records pertaining to other JRO(s). When JAC receives a public records request from a JRO for records concerning other JRO(s), JAC will notify all JROs affected by the request.

B. Public Records Request related to the Offices of the State Attorney and the Offices of the Public Defender.

When JAC receives a public records request concerning several JROs, JAC notifies the affected JROs of the request; sends each JRO its own records for review; compiles the reviewed and redacted records; and provides the compiled response to the requester. Often these requests give rise to additional public records requests for JAC's compiled response. These additional public records requests result in further notification emails from JAC. As a result, JAC's procedure concerning these types of requests are as follows:

The Offices of State Attorney

When a public records request encompasses most or all of the 20 Offices of State Attorney (SA), the person designated by the Florida Prosecuting Attorneys Association (FPAA) will request the complete response from JAC, copy the SA offices affected by the request, and then disseminate the request and the response to the FPAA or SA offices affected by the request. The person designated shall be the FPAA President's Executive Director, unless the FPAA notifies JAC's Executive Director and/or General Counsel in writing of an alternative designee.

The Offices of Public Defender

When a public records request encompasses most or all of the 20 Offices of Public Defender, each JRO is welcome to request a copy of the compiled response from JAC. Please note that each request will be treated as a separate public records request and all affected JROs will be notified.

To ensure more timely responses during the legislative session, designees of the Florida Public Defender Association (FPDA) President may make public records request for information related to all or some FPDA members (19 PDs). When such requests are received, JAC will compile and submit the responsive records to the FPDA designee. In turn, the FPDA designee will notify the affected PD offices of the request and JAC's response. If the request involves an office that is not a member of the FPDA, JAC will notify that office of the request and the response.

C. What JAC Cannot Do

JAC cannot respond to a public records request made of any JRO it serves. Moreover, JAC cannot provide legal advice to a JRO on how to respond to a public records request. Additionally, JAC cannot respond or correspond with a public records requester on behalf of a JRO. Because JAC's records may not be the same as the records in a JRO's custody, JAC cannot provide JAC's records in response to a public records request made of a JRO because they are not responsive to the request. See Chandler v. City of Sanford, 121 So. 3d 657 (Fla. 5th DCA 2013). Under s. 119.07(1)(a), F.S., any party having custody of a public record is responsible for allowing a requester access to that record at a reasonable time under reasonable conditions.

V. Records Retention

All public records requests are archived in JAC's Electronic Document Management System. Public records requests, responses, and related documentation will be maintained for a minimum of one fiscal year by the Coordinator, in accordance with records retention requirements for "Information Request Records" and "Correspondence & Memoranda: Administrative" as published in the *Florida Department of State, General Schedule for State Government Agencies GS1-SL*.