Montana Judicial Branch

**Administrative Policies**

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| **Subject: Records and Information Management** | **Policy No.: 1570** |
| **Chapter: 2-6-1001, MCA** | **Pages:** |
| **Section: General** | **Revision Date:** |
|  | **Effective Date: April 5, 2022** |

## **POLICY**

The Judicial Branch Records Management Plan provides a framework for proper records retention and disposal pursuant to applicable federal and state records management regulations and requirements.

The standardization of records management will ensure all Judicial Branch records are managed effectively and lawfully and that the integrity of the records is maintained.

This policy does not apply to case files and court records maintained and kept by the Clerk of the Supreme Court, Clerks of the District Court, Clerk of the Water Court, or Clerks of Courts of Limited Jurisdiction. Clerks of Court shall follow the procedures for maintaining and releasing public information as required by statute, the applicable local government, and/or the local government records committee. It does not apply to judicial deliberations as outlined in this policy. Youth court records are to be maintained in compliance with Judicial Branch Policy 1290.

1. **DEFINITIONS**

“Clerks of Court” are defined as the Clerk of the Supreme Court, Clerks of District Court, Clerk of the Water Court, or Clerks of Courts of Limited Jurisdiction. Case files and court documents (as defined in 3-1-114 MCA) maintained by Clerks of Court are exempt from this policy. Clerks of Court shall follow the MCA regulations and procedures developed by local government records committees that govern the retention and release of court records[[1]](#footnote-1).

“Confidential information” means information that is accorded confidential status or is prohibited from disclosure as provided by applicable law. The term includes information that is: constitutionally protected from disclosure because an individual privacy interest clearly exceeds the merits of public disclosure; related to judicial deliberations; necessary to maintain the security and integrity of court proceedings, secure facilities, or information systems owned by or serving the state; or designated as confidential by statute or through judicial decisions, findings, or orders.

“Essential record” means, as provided in 2-6-1002(4) MCA, a public record immediately necessary to respond to an emergency or disaster; begin recovery or reestablishment of operations during and after an emergency or disaster; protect the health, safety, and property of Montana citizens; or protect the assets, obligations, rights, history, and resources of a public agency, its employees and customers, and Montana citizens.

“Judicial Deliberations” includes, but is not limited to, documents, e-mails, or other records related to case discussions, draft opinions, legal research or communications among justices, judges, and their staff about case decisions and litigation. Judicial deliberations are not subject to either retention or disclosure requirements in this policy.

“Local government” means a city, town, county, consolidated city-county, special district, or school district or a subdivision of one of these entities.

“Local government records committee” means the committee provided for in 2-6-1201 MCA.

“Public information” means information prepared, owned, used, or retained by the judicial branch relating to the transaction of official business, regardless of form, except for confidential information that must be protected against public disclosure under applicable law.

“Public record” means public information that is fixed in any medium and is retrievable in usable form for future reference and designated for retention by the Judicial Branch. This includes but is not limited to matters related to judicial education, discussion of legislative and budget proposals, matters considered at a public meeting of the Supreme Court, and work conducted by Supreme Court commissions, unless specifically designated as confidential by statute or a court rule or order.

“Branch Information Supervisors” means supervisors designated by the Judicial Branch to be responsible for coordinating the efficient and effective management of the branch’s public records and information.

“State records committee” means the state records committee provided for in 2-6-1107 MCA.

“Youth Court records” means those records related to juveniles referred to the Youth Court either informally or formally. Such records are governed by statute and Judicial Branch Policy 1290.

1. **PROCEDURE**

Judicial Branch employees shall maintain public records in compliance with this policy. Public records must be maintained within applicable security, privacy, and public information requirements. Judicial Branch public records are and remain the property of the Judicial Branch. Public records must be delivered by outgoing public officers and employees to their successors and must be preserved, stored, transferred, destroyed or disposed of, and otherwise managed only in accordance with the provisions in 2-6-1001 MCA.

**3.1 COURT ADMINISTRATOR RESPONSIBILITIES**

The court administrator or designee is responsible for coordinating and managing the Records and Information Management (RIM) for the Judicial Branch. Coordination and management of the RIM includes:

* Providing training and information to all employees.
* Maintaining policies, procedures, schedules, and other documents pertaining to records.
* Ensuring updates are made to this policy to keep information current.
  1. **REQUESTS FOR INFORMATION**

A person requesting public information shall submit the request in writing to the court administrator or designee. The Judicial Branch may charge a fee relating to fulfilling the request for information. Any fee charged shall not exceed the actual cost of fulfilling the request in the most cost-efficient and timely manner possible. If a fee is charged, the fee must be collected in advance. Fees may include:

* Employee time for copying records. This cost shall be based on the pay rate of judicial assistant.
* Postage fees.
* Copy fees.

If an information request is denied, the denial shall be in writing and include a reason for the denial. Records that are determined to be confidential information shall not be released unless ordered by a court with proper jurisdiction in the matter.

**3.3 PROTECTION OF CONFIDENTIAL INFORMATION**

When the court administrator receives a request for information, the administrator or designee must review the documents prior to release to ensure confidential information is not contained in the document. If a document contains confidential information, the administrator or designee shall be responsible for determining whether the confidential information can effectively be redacted before the document is released or whether the entire document shall be withheld due to confidentiality reasons. This determination should be made by:

* Conferring with the Judicial Branch employee(s) or department(s) responsible for the document.
* Determining the effectiveness of redacting the confidential information in the document.
* Ensuring compliance with applicable law governing the document.
* Balancing confidentiality with public access to records.

**3.4 ESSENTIAL RECORDS**

The Montana Secretary of State (SOS) Records Management Division maintains “General Schedules” for common records among state agencies. The Judicial Branch, through this policy, adopts the retention schedule adopted by the SOS. Judicial Branch records should be categorized within the SOS “General Schedules” to ensure proper retention and disposal of records. Records that do not match any records in the “General Schedules” should be reviewed by the court administrator or designee to ensure proper identification. Exceptions to this schedule are noted in this policy. The schedule is linked: <https://sosmt.gov/records/state/>

**3.8 ARCHIVES**

Records that are deemed to have historic value must be transferred to the Montana Historical   
Society at the end of the retention period. Managers should consult with the court administrator to ensure proper transfer of relevant records.

**3.9 BREACH OF CONFIDENTIAL INFORMATION**

All employees are responsible for properly securing confidential information. Any employee who discovers a breach or potential breach of confidential information shall immediately notify his/her supervisor, court administrator, and/or an information technology supervisor. In a situation where confidential information maintained by the Judicial Branch is breached, the Judicial Branch shall:

* Take immediate action to identify the source of the breach and take appropriate corrective action to rectify the situation by properly securing the information.
* Make timely notification to law enforcement if appropriate.
* Initiate actions to determine the security of other confidential information under the control of the Judicial Branch.
* Make timely notification to people and entities whose confidential information was compromised. This notification should include:
  + Approximate date when the breach occurred.
  + Possible information that was compromised.
  + Steps the Judicial Branch is taking to correct the breach.
* Perform a self-check to determine what, if any, policies, procedures, and/or security measures need to be updated in order to properly secure confidential information.
* In a situation where the Judicial Branch is notified of a breach by a third party, the Judicial Branch has no independent duty to provide notification of the breach if the third party has provided appropriate notification of the breach. If the third party fails to make notification of the breach, the Judicial Branch shall make appropriate notification to the people and/or entities involved and may recover from the third-party reasonable costs for providing the notification (2-6-1503 MCA).

1. **CLOSING**

## Level of training required: All court officials and employees must complete required on-line training.

1. Reference MCA 3-1-114; 3-1-115; 3-2-402; 3-5-501through 3-5-513; 3-6-302; 3-10-501through 3-10-518; 3-11-206. [↑](#footnote-ref-1)