

Privacy Issues White Paper

**Florida Association of Court Clerks
Privacy Task Force**

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Public Records and Privacy

As the Internet has made it quicker and easier to access information stored and maintained by the Clerk of Circuit Court, questions and concerns about misuse of personal identifying information in those records have caused Florida's Clerks of Court to take a hard look at what should be public information and take steps to protect the public's confidential information.

Public Records – History and Background

Prior to the enactment of Florida's Constitution, anyone trying to trace the record of title to land might have to look in any number of places to gather the records. To create uniformity of where land records were recorded and maintained, Florida law designated the Clerk of Circuit Court as the official repository for these records.ⁱ The Clerk of the Circuit Court shall be the recorder of all instruments that he or she may be required or authorized by law to record in the county where he or she is clerk.

Daily, large volumes of information about businesses, persons, properties, finances, judgments, military discharges, and the like, are recorded in each county's Official Records. Chapter 28, Florida Statutes, governs what can or must be recorded.ⁱⁱ

Each of these documents may contain personal identifying information, such as social security numbers or bank account numbers. Clerks must accept those documents submitted for recording "as filed" and have no statutory authority to alter or amend their contents. The Clerk lacks the legal authority to make any changes or redact any of the information. Through that, the integrity of the information in a document is maintained.

Clerks are also charged with the responsibility of keeping all court records, such as case pleadings, letters, evidence and other documents that make up the court files. Court records often contain personal or sensitive information about the parties to the lawsuit or personal family matters. Most of these court records are public records.ⁱⁱⁱ

While Florida's constitution recognizes a person's right to privacy, Florida is also a state with strong roots in freedom of information – it being one of only two states where the people's right to the records of the government is set forth in its constitution. Article I, Section 24 of the Florida Constitution requires all records held by the counties, the judicial branch, and

constitutional officers be made available to any person who wishes to inspect or copy them.^{iv}

Conflicts Within The Law

Both the Florida Legislature and the Courts have addressed the conflict created between an individual's right to privacy with the public's right to information about its government when an individual files a document in the Clerk's Official Records or uses the Courts to address legal matters. Both the Legislature and the Courts have struggled to achieve a balance between the right to privacy and the public's right to know.

In an attempt to balance an individual's right to privacy with the public's right to know, the Florida Legislature has created over 450 statutory exemptions to its constitutional mandate of open public records. Examples range from such broad exemptions as making all adoption cases non-public, to the obscure such as keeping confidential the name of a donor to the Historic Pensacola Preservation Board.

On the other hand, the Legislature has created statutory requirements that a person's personal identifying information is placed in the public record. For example, Florida law requires that in an action where either party recovers a sum of money, the final judgment must contain the address and social security number of each person against whom the judgment is rendered, if such information is known. The judgment is placed in the court file and recorded in Official Records.^v

In a world where records were paper and only accessible by someone who made a trip to the courthouse and asked the Clerk for a court file or used a microfilm machine, the fact that this information was available to anyone seemed to have little significance. In effect, this kept the records in "practical obscurity."

The Modernization Of The Public Record

The Internet has created the opportunity to bring the public record "to the people" in the most cost effective and efficient manner. Anyone, anywhere, can access the public record, an action that appears to fit the constitutional mandate of making records available to the public.

Now records are available regardless of: a person's economic ability to travel to a place to view them; a person's ability to be at a place during

certain business hours; a person's disability that could have limited the actions necessary to travel and view files.

The Florida Supreme Court recognized the importance of the Internet as a tool for giving the public access to court records, and anticipated its usage to provide access, when on December 3, 1998 the Court entered an Administrative Order^{vi} and stated, in part

“...we do want our courts to develop a uniform means for greater public access to court records in this new age of technology.”

The Court went on to state:

“...beginning January 1999, the new Uniform Case Numbering System must be used when a clerk's office disseminates over the Internet for general public access any information regarding a past or present case within the clerk's responsibility.”

The Florida Legislature also recognized the value of disseminating the Official Records of the Clerks when it required all clerks to provide Internet access to the indexes to Official Records by January 1, 2002 and images of documents recorded by January 1, 2006.

Section 28.221, Florida Statutes states that:

The Legislature finds that a proper and legitimate state purpose is served by providing the public with access to public records and information on the Internet and hereby determines that the provisions of this section fulfill and further an important state interest.

No later than January 1, 2002, the county recorder in each county shall provide a current index of documents recorded in the official records of the county for the period beginning no later than January 1, 1990, on a publicly available Internet website which shall also contain a document requisition point for obtaining images or copies of the documents reflected in the index and which has the capability of electronically providing the index data to a central statewide search site.

By January 1, 2006, each county recorder shall provide for electronic retrieval, at a minimum, of images of documents referenced as the index required to be maintained on the county's official records website by this section. ^{vii}

As Clerks are complying with these mandates and images of these documents are making it to the web, people have begun to recognize that when these documents are viewable over the Internet, a person can, with relative anonymity, find and retrieve personal identifying information and use that information for illegal purposes.

Florida's Clerks of Court have been listening and share the concerns of the public. They have taken the first steps to protect personal information.

Long Term Solutions

The Florida Association of Court Clerks and Comptrollers created a Privacy and Confidentiality Task Force which has been meeting since June 2001.

The goals of the Task Force are to establish standards and guidelines for providing Internet access to Official Records and court records, which includes:

- ?? Identifying the types of personal identifying and sensitive information that may be found in documents recorded in Official Records and court records.
- ?? Identifying statutory provisions that create a right of a person or entity to have certain information confidential.
- ?? Examining different methods to keep personal identifying information from public records.
- ?? Assisting the Florida Legislature or Florida Supreme Court in drafting and adopting legislation or court rules to implement the most effective methods of protecting an individual's personal identifying information while balancing the public's right to know.

The Task Force recommended draft legislation that would place the burden on the filer of court records to redact confidential information and place it on a universal confidential information form that would be maintained confidential by the Clerks. The recommendation also proposes to place a similar burden of keeping confidential information out of documents recorded in Official Records.

Practical Protections

Florida's Clerks can assist the public in keeping personal or confidential information out of the public record, where possible, by doing the following:

- ?? Placing notices on the counters in the Clerk’s Office and in local bar association publications to request that Attorneys and the public should make every effort to make sure confidential information is not placed in documents that are to become public record.
- ?? Encouraging the use of forms, such as the “Notice of Social Security Number,” as the sole place social security numbers or other personal information are captured and placed in a file.
- ?? Assisting Chief Judge or Court Administration in reviewing forms adopted by your local judiciary to ensure that there are no fields requiring social security numbers.
- ?? Making the public aware before a document is filed that it may end up as one available on the Internet. Educating the filer that the confidential information should be placed only in the confidential “Notice of Social Security Number” form, or other forms that could be made available.
- ?? Encouraging Probate and Guardianship attorneys and judges to work together to ensure that bank account and other financial information is placed only in non-public probate pleadings. Until solutions are reached in this area, Clerks should consider keeping these records off the Internet because of the amount of critical personal information placed in these documents.

ⁱ Sec. 28.222, Florida Statutes

ⁱⁱ *ibid.*

ⁱⁱⁱ Sec 28.13, Florida Statutes

^{iv} Art. I, Sec. 24, Florida Constitution

^v Sec. 55.01, Florida Statutes

^{vi} Administrative Order Re: Uniform Case Numbering System, Florida Supreme Court, December 3, 1998.

^{vii} Subsections (1), (2), and (5) of section 28.221, Florida Statutes.