



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 13, 2011

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Title	Agenda Item Type
Public Records: Impact of Rule 10.500 on the Judicial Branch	Information Only
Submitted by	Date of Report
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### Executive Summary

Rule 10.500 (Public access to judicial administrative records), effective January 1, 2010, established comprehensive public access provisions applicable to administrative records maintained by the California judiciary. Under subdivision (e)(4)(E) of the rule, “[by] January 1, 2012, the Judicial Council will review and evaluate the numbers of requests received, the time necessary to respond, and the fees imposed by judicial branch entities for access to records and information.” This report provides the available required information for initial consideration by the council; a more thorough report on the impact of the rule will follow later in 2012, after internal data and court-supplied data through the end of calendar year 2011 have been collected and analyzed.

### Previous Council Action

On December 15, 2009, the council took the following actions toward the implementation of rule 10.500<sup>1</sup> of the California Rules of Court:

1. Adopted rules 10.500 and 10.501, which provide public access to nondeliberative and nonadjudicative court records and budget and management information relating to the administration of the courts, effective January 1, 2010.

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<sup>1</sup> See Attachment A for full text of rule 10.500.

2. Adopted a fee structure<sup>2</sup> to be imposed under subdivision (e)(4) of rule 10.500.
3. Approved a one-time allocation of \$1.5 million from the Trial Court Trust Fund to reimburse superior courts for specified expenses incurred between January 1, 2010, and December 31, 2011, in responding to requests for public access to judicial administrative records under rule 10.500 and as provided in the Fee Guidelines and procedures and guidelines issued by the Administrative Office of the Courts (AOC).
4. Adopted rule 10.501, which requires the maintenance of certain superior court budget and management information as set forth previously in rules 10.802(a) and 10.802(b).
5. Repealed rule 10.802, on maintenance of and public access to budget and management information, now superseded by rule 10.501.
6. Amended rule 10.803, on information access disputes, to reflect the adoption of rules 10.500 and 10.501.
7. Directed the Supreme Court, Courts of Appeal, superior courts, and AOC to maintain records on requests for public access to judicial administrative records and information, including the time, cost, and type of court resources spent in responding to requests received, as well as costs recovered.
8. Directed the AOC to report to the council by January 1, 2012, on the number of requests received by the branch, the time necessary to respond to these requests, the fees imposed by judicial branch entities for access to records and information, and the impact of rule 10.500 on both the public's access to records and information and on the judicial branch entities' ability to carry out and fund core judicial operations.

## **Background**

On July 28, 2009, Governor Arnold Schwarzenegger signed Senate Bill X4 13 (Stats. 2009–10, 4th Ex. Sess., ch. 22), which, among other provisions, addresses public access to administrative records of the judicial branch. SB X4 13 added section 68106.2 to the Government Code, clarifying the public's right to access certain administrative records held by the AOC and the superior courts. SB X4 13 also requires the Judicial Council by January 1, 2010, to adopt rules of court applicable to the judicial branch that “provide public access to nondeliberative or nonadjudicative court records, budget and management information.”

Rule 10.500 of the California Rules of Court, effective January 1, 2010, implements the requirements of SB X4 13 by establishing comprehensive public access provisions applicable to judicial administrative records held by the judicial branch, i.e., the superior and appellate courts, the Judicial Council, and the AOC. The rule provides that judicial administrative records, as distinct from “adjudicative” records, are open to the public unless specifically exempt. Adjudicative court records—such as those prepared for, filed for, or used in a court proceeding

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<sup>2</sup> See Attachment F for fee guidelines.

or in judicial deliberations—are exempt from disclosure under the rule because they are governed by a large body of case law.

In January 2010, to implement the provisions of rule 10.500 internally, the AOC developed the Public Access to Judicial Administrative Records (PAJAR) project,<sup>3</sup> administered by the AOC Court Programs and Services Division (CPAS). PAJAR itself is unfunded, insofar as the AOC did not receive any additional staff or funding resources to perform the expanded duties created by rule 10.500. As the number and nature of requests received under rule 10.500 continue to evolve, the AOC continues modifying PAJAR procedures and developing best practices for implementation of the rule.

## **Summary of Findings**

### **Impact of Rule 10.500 on the AOC and Appellate Courts**

***Nonroutine and Noncomplex Requests.*** Before turning to requests addressed under rule 10.500, we first note that the public requests numerous administrative records from the AOC on a daily basis. Examples of this type of request include requests for records already available on the California Courts website, information packets (such as those on how to become an interpreter), and printed material for the public (e.g., brochures, reports, publications). After the enactment of rule 10.500, the AOC began dividing records requests into two categories for the purpose of internal processing and tracking: (1) requests for clearly public routine or noncomplex administrative records, and (2) requests for administrative records that are otherwise nonroutine and/or complex. Assigned staff in the appropriate divisions automatically respond to the former as they have always done. Because these requests are so numerous and were addressed by staff in the daily course of business prior to the enactment of rule 10.500, they are not currently tracked as requests made under the rule.

***Number and Types of Nonroutine and Noncomplex Requests Received.*** Under the PAJAR process, the AOC tracks all requests made to it for administrative records held by the Supreme Court, the Courts of Appeal, or the AOC and that may not be public in nature or that are otherwise nonroutine or complex. The following data summarize requests for this type of record for the 22-month period covering January 1, 2010, to October 31, 2011:

- Number of requests received: 491
- Number of requests pending: 16
- Number of requests cancelled: 25
- Number of commercial requests: 187

See Attachment B for a table of requests sorted by division, consulting division, and calendar year.

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<sup>3</sup> The Supreme Court and Courts of Appeal have since agreed that requests directed to them under rule 10.500 will also be handled through the AOC's PAJAR process.

Requesters asked for a range of material including financial records, requests for proposals, executed contracts, salary and benefit information, appellate case statistics, court construction information, Court Case Management System (CCMS) records, and council and committee records. Requesters have included special interest groups, attorneys, the media, both federal and state government agencies, private businesses, and the general public.

It bears noting that for the first 22 months following the effective date of rule 10.500, AOC staff attempted, in responding to requests made pursuant to the rule, to respond to all questions presented, even where those questions asked for information beyond the rule's scope.<sup>4</sup> Over time, as interest in topics such as judicial branch funding and CCMS grew, the number and complexity of such "outside the scope" requests also grew, resulting in the expenditure of significant amounts of staff time in responding. Given this complication, as well as the need for accurate data on requests received and responded to within the scope of rule 10.500, the chair of the Executive and Planning Committee reported at the council's October 2011 business meeting that the council had directed staff going forward to comply strictly with the requirements of rule 10.500 and not exceed those requirements in responding to requests made under the rule. The AOC has since followed that directive.

**Response Time.** The following data address the 22-month period covering January 1, 2010, to October 31, 2011:

- Average time necessary to respond: 18.7 days
- Minimum response time: 1 day
- Maximum response time: 279 days

As the data demonstrate, the time needed to respond to a request under rule 10.500 varies greatly depending on the specific nature of the request. Factors that affect response times include, but are not limited to:

- The complexity of the records requested (including whether the records are held across multiple AOC offices or divisions);
- The clarity of the request and any need for staff to follow up with the requester to clarify the request;
- The age of the information requested, i.e., whether materials need to be manually retrieved from storage;
- Whether the request asks for materials of which some are and some are not covered by the scope of the rule;<sup>5</sup>
- Whether the requested materials contain information that is confidential or exempt under the rule and must therefore be reviewed by the AOC's Office of the General Counsel to determine if the request should be denied or the record redacted; and

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<sup>4</sup> See Attachment C for examples of such requests received by the AOC in fiscal year 2010–2011.

<sup>5</sup> See the discussion above about requests for information outside the scope of rule 10.500; see also Attachment C.

- The total number of requests received at or near the same time that affect the responding divisions.

***Fees Imposed and Fiscal Impact.*** A discussion of the impact of the rule must begin with a consideration of the staff resources necessary for the intake and processing of, and responding to, the requests received. One court services analyst in the Court Programs and Services Division (CPAS) serves as PAJAR project lead, with duties that include reviewing, logging, tracking, and coordinating requests on a full-time basis. One administrative coordinator supports the analyst on a part-time basis. The assistant director of CPAS oversees the entire PAJAR project. Attorneys in the Office of the General Counsel provide legal consultation on requests that raise legal issues or seek information that may be exempt under the rule. The attorneys assist the Supreme Court, Courts of Appeal, and superior courts on request, while providing legal guidance on all requests to the AOC that may have legal ramifications. The General Counsel and a managing attorney are frequently involved in this effort, and providing this guidance comprises a significant portion of the workload of two full-time attorneys. Lastly, each AOC regional and division office has designated at least two staff persons on an as-needed basis to coordinate the compilation of response records held by that division or office. Those staff members all have other full-time duties, and their role in responding to requests under the rule is in addition to and on top of those duties.

The foregoing is relevant because while rule 10.500 allows the AOC to charge all requesters for costs of duplication, postage, and other materials (such as data CDs), many of the other costs incurred in administering the rule are not recoverable.<sup>6</sup> In particular, the amount of time that staff members and attorneys spend reviewing, researching, redacting, and compiling records is not reimbursable for noncommercial requests.

### **Impact of Rule 10.500 on the Superior Courts**

In November 2011, the AOC surveyed 16 superior courts about public requests for records made to those courts from January 1, 2010, to October 31, 2011. AOC staff worked with the leaders of the Court Executives Advisory Committee to identify and survey small, medium, and large courts that likely received requests for records during the last two calendar years. The following 14 courts participated in the survey:

1. Superior Court of Contra Costa County
2. Superior Court of Glenn County
3. Superior Court of Los Angeles County
4. Superior Court of Marin County
5. Superior Court of Merced County
6. Superior Court of Nevada County
7. Superior Court of Orange County

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<sup>6</sup> From the rule's effective date to the present, the AOC has charged requesters only a modest amount—less than \$10,000 total—for these allowable costs.

8. Superior Court of San Diego County
9. Superior Court of San Mateo County
10. Superior Court of Santa Clara County
11. Superior Court of Santa Cruz County
12. Superior Court of Trinity County
13. Superior Court of Tuolumne County
14. Superior Court of Ventura County

Two of the small courts surveyed did not respond with data. For full results of the survey, see Attachment D.

***Number and Types of Requests Received.*** The following data address the 22-month period covering January 1, 2010, to October 31, 2011:

- Total number of requests received: 426
- Number of requests for financial records: 85 (20% of requests)
- Number of requests for case statistics: 116 (27% of requests)
- Number of requests for case-related financial information (e.g., trust account information): 41 (10% of requests)
- Number of requests for personnel records: 85 (20% of requests)
- Number of requests for complaints against/qualifications of court professionals: 10 (2% of requests)
- Number of other requests: 86 (20% of requests)
- Number of commercial requests: 98 (23% of requests)

***Response Time.*** The following data address the 22-month period covering January 1, 2010, to October 31, 2011:

- Minimum response time: 30 minutes<sup>7</sup>
- Maximum response time: 26 days

***Fees Imposed and Fiscal Impact.*** As noted above, the council has approved a one-time allocation of \$1.5 million from the Trial Court Trust Fund to reimburse superior courts for specified rule 10.500–related expenses incurred between January 1, 2010, and December 31, 2011, as provided in the Fee Guidelines and other procedures and guidelines issued by the Administrative Office of the Courts. Attachment E indicates the amount funded from this allocation to reimburse superior courts through September 30, 2011:

- Number of requests for reimbursement: 61
- Requested reimbursement amount: \$ 82,562.73
- Actual reimbursed amount: \$35,309.15

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<sup>7</sup> Please note that we did not include a statistic for “average time necessary to respond” because the surveyed courts measured this in varying units—hours, days, etc. Our follow-up analytical report on the impact of rule 10.50 will address this issue in more depth.

- Amount remaining in fund: \$1,464,690.85
- Percent of fund used: 2.4 percent

Criteria and other guidelines for reimbursement are outlined in Attachment F.

### **Next Steps**

For the AOC and the appellate courts, PAJAR has been a successful program that has met the judicial branch's goals of transparency, accountability, effective and high-quality customer service, provide comprehensible, timely, and accurate answers to the public. Staff, with direction from the council, continues to modify internal practices and procedures to make the process more efficient and reduce response time. The information presented in this report is preliminary and intended to address the mandate of rule 10.500(e)(4)(E). Once staff has complete data through the end of calendar year 2011 and we have received additional data from the superior courts, we anticipate returning to the council with a more thorough report analyzing the full impact of the rule on the judicial branch.

### **Attachments**

1. Attachment A: Rule 10.500 of the California Rules of Court
2. Attachment B: Public Requests for Judicial Administrative Records Made to the AOC
3. Attachment C: Examples of Requests for Public Access to Judicial Administrative Records Received by the AOC in Fiscal Year 2010–2011
4. Attachment D: Public Requests for Judicial Administrative Records Made to Select Superior Courts
5. Attachment E: Reimbursement to Superior Courts for the Provision of Judicial Administrative Records
6. Attachment F: Guidelines for Reimbursement of Trial Court Staff Costs Related to Noncommercial Requests for Judicial Administrative Records





# 2011 California Rules of Court

## Rule 10.500. Public access to judicial administrative records

### (a) Intent

- (1) The Judicial Council intends by this rule to implement Government Code section 68106.2(g), added by Senate Bill X4 13 (Stats. 2009-10, 4th Ex. Sess. ch. 22), which requires adoption of rules of court that provide public access to nondeliberative and nonadjudicative court records, budget and management information.
- (2) This rule clarifies and expands the public's right of access to judicial administrative records and must be broadly construed to further the public's right of access.

### (b) Application

- (1) This rule applies to public access to judicial administrative records, including records of budget and management information relating to the administration of the courts.
- (2) This rule does not apply to, modify or otherwise affect existing law regarding public access to adjudicative records.
- (3) This rule does not restrict the rights to disclosure of information otherwise granted by law to a recognized employee organization.
- (4) This rule does not affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state, nor does it limit or impair any rights of discovery in a criminal case.
- (5) This rule does not apply to electronic mail and text messages sent or received before the effective date of this rule.

### (c) Definitions

As used in this rule:

- (1) "Adjudicative record" means any writing prepared for or filed or used in a court proceeding, the judicial deliberation process, or the assignment or reassignment of cases and of justices, judges (including temporary and assigned judges), and subordinate judicial officers, or of counsel appointed or employed by the court.
- (2) "Judicial administrative record" means any writing containing information relating to the conduct of the people's business that is prepared, owned, used, or retained by a judicial branch entity regardless of the writing's physical form or characteristics, except an adjudicative record. The term "judicial administrative record" does not include records of a personal nature that are not used in or do not relate to the people's business, such as personal notes, memoranda, electronic mail, calendar entries, and records of Internet use.
- (3) "Judicial branch entity" means the Supreme Court, each Court of Appeal, each superior court, the Judicial Council, and the Administrative Office of the Courts.

- (4) "Judicial branch personnel" means justices, judges (including temporary and assigned judges), subordinate judicial officers, members of the Judicial Council and its advisory bodies, and directors, officers, employees, volunteers, and agents of a judicial branch entity.
- (5) "Person" means any natural person, corporation, partnership, limited liability company, firm, or association.
- (6) "Writing" means any handwriting, typewriting, printing, photographing, photocopying, electronic mail, fax, and every other means of recording on any tangible thing any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations, regardless of the manner in which the record has been stored.

**(d) Construction of rule**

- (1) Unless otherwise indicated, the terms used in this rule have the same meaning as under the Legislative Open Records Act (Gov. Code, § 9070 et seq.) and the California Public Records Act ( Gov. Code, § 6250 et seq.) and must be interpreted consistently with the interpretation applied to the terms under those acts.
- (2) This rule does not require the disclosure of a record if the record is exempt from disclosure under this rule or is the type of record that would not be subject to disclosure under the Legislative Open Records Act or the California Public Records Act.

**(e) Public access**

(1) *Access*

- (A) A judicial branch entity must allow inspection and copying of judicial administrative records unless the records are exempt from disclosure under this rule or by law.
- (B) Nothing in this rule requires a judicial branch entity to create any record or to compile or assemble data in response to a request for judicial administrative records if the judicial branch entity does not compile or assemble the data in the requested form for its own use or for provision to other agencies. For purposes of this rule, selecting data from extractable fields in a single database using software already owned or licensed by the judicial branch entity does not constitute creating a record or compiling or assembling data.
- (C) If a judicial administrative record contains information that is exempt from disclosure and the exempt portions are reasonably segregable, a judicial branch entity must allow inspection and copying of the record after deletion of the portions that are exempt from disclosure. A judicial branch entity is not required to allow inspection or copying of the portion of a writing that is a judicial administrative record unless that portion is reasonably segregable from the portion that constitutes an adjudicative record.
- (D) If requested, a superior court must provide a copy of the certified judicial administrative record if the judicial administrative record requested has previously been certified by the superior court.

(2) *Examples*

Judicial administrative records subject to inspection and copying unless exempt from disclosure under subdivision (f) include, but are not limited to, the following:

- (A) Budget information submitted to the Administrative Office of the Courts after enactment of the annual Budget Act;
- (B) Any other budget and expenditure document pertaining to the administrative operation of the courts, including quarterly financial statements and statements of revenue, expenditure, and reserves;

- (C) Actual and budgeted employee salary and benefit information;
- (D) Copies of executed contracts with outside vendors and payment information and policies concerning goods and services provided by outside vendors without an executed contract;
- (E) Final audit reports; and
- (F) Employment contracts between judicial branch entities and their employees.

(3) *Procedure for requesting records*

A judicial branch entity must make available on its public Web site or otherwise publicize the procedure to be followed to request a copy of or to inspect a judicial administrative record. At a minimum, the procedure must include the address to which requests are to be addressed, to whom requests are to be directed, and the office hours of the judicial branch entity.

(4) *Costs of duplication, search, and review*

- (A) A judicial branch entity, on request, must provide a copy of a judicial administrative record not exempt from disclosure if the record is of a nature permitting copying, subject to payment of the fee specified in this rule or other applicable statutory fee. A judicial branch entity may require advance payment of any fee.
- (B) A judicial branch entity may impose on all requests a fee reasonably calculated to cover the judicial branch entity's direct costs of duplication of a record or of production of a record in an electronic format under subdivision (i). The fee includes:
  - (i) A charge per page, per copy, or otherwise, as established and published by the Judicial Council, or as established by the judicial branch entity following a notice and comment procedure specified by the Judicial Council, representing the direct costs of equipment, supplies, and staff time required to duplicate or produce the requested record; and
  - (ii) Any other direct costs of duplication or production, including, but not limited to, the costs incurred by a judicial branch entity in retrieving the record from a remote storage facility or archive and the costs of mailing responsive records.
- (C) In the case of requests for records for commercial use, a judicial branch entity may impose, in addition to the fee in (B), a fee reasonably calculated to cover the actual costs of staff search and review time, based on an hourly rate for salary and benefits of each employee involved.
- (D) For purposes of this rule:
  - (i) "Commercial use" means a request for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is being made. A request from a representative of the news media that supports its news-dissemination function is not a request for a commercial use.
  - (ii) "Representative of the news media" means a person who regularly gathers, prepares, collects, photographs, records, writes, edits, reports, or publishes news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public for a substantial portion of the person's livelihood or for substantial financial gain.
  - (iii) "Search and review time" means actual time spent identifying and locating judicial administrative records, including material within documents, responsive to a request; determining whether any portions are exempt from disclosure; and performing all tasks necessary to prepare the records for disclosure, including redacting portions exempt from

disclosure. "Search and review time" does not include time spent resolving general legal or policy issues regarding the applicability of particular exemptions.

- (E) By January 1, 2012, the Judicial Council will review and evaluate the numbers of requests received, the time necessary to respond, and the fees imposed by judicial branch entities for access to records and information. The Judicial Council's review will consider the impact of this rule on both the public's access to records and information and on judicial branch entities' ability to carry out and fund core judicial operations.

(5) *Inspection*

A judicial branch entity must make judicial administrative records in its possession and not exempt from disclosure open to inspection at all times during the office hours of the judicial branch entity provided that the record is of a nature permitting inspection.

(6) *Time for determination of disclosable records*

A judicial branch entity, on a request that reasonably describes an identifiable record or records, must determine, within 10 calendar days from receipt of the request, whether the request, in whole or in part, seeks disclosable judicial administrative records in its possession and must promptly notify the requesting party of the determination and the reasons for the determination.

(7) *Response*

If a judicial branch entity determines that a request seeks disclosable judicial administrative records, the judicial branch entity must make the disclosable judicial administrative records available promptly. The judicial branch entity must include with the notice of the determination the estimated date and time when the records will be made available. If the judicial branch entity determines that the request, in whole or in part, seeks nondisclosable judicial administrative records, it must convey its determination in writing, include a contact name and telephone number to which inquiries may be directed, and state the express provision of this rule justifying the withholding of the records not disclosed.

(8) *Extension of time for determination of disclosable records*

In unusual circumstances, to the extent reasonably necessary to the proper processing of the particular request, a judicial branch entity may extend the time limit prescribed for its determination under (e)(6) by no more than 14 calendar days by written notice to the requesting party, stating the reasons for the extension and the date on which the judicial branch entity expects to make a determination. As used in this section, "unusual circumstances" means the following:

- (A) The need to search for and collect the requested records from multiple locations or facilities that are separate from the office processing the request;
- (B) The need to search for, collect, and appropriately examine a voluminous amount of records that are included in a single request; or
- (C) The need for consultation, which must be conducted with all practicable speed, with another judicial branch entity or other governmental agency having substantial subject matter interest in the determination of the request, or with two or more components of the judicial branch entity having substantial subject matter interest in the determination of the request.

(9) *Reasonable efforts*

- (A) On receipt of a request to inspect or obtain a copy of a judicial administrative record, a judicial branch entity, in order to assist the requester in making a focused and effective request that reasonably describes an identifiable judicial administrative record, must do all of the following to the extent reasonable under the circumstances:

- (i) Assist the requester in identifying records and information responsive to the request or to the purpose of the request, if stated;
  - (ii) Describe the information technology and physical location in which the records exist; and
  - (iii) Provide suggestions for overcoming any practical basis for denying inspection or copying of the records or information sought.
- (B) The requirements of (A) will be deemed to have been satisfied if the judicial branch entity is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that helps identify the record or records.
- (C) The requirements of (A) do not apply to a request for judicial administrative records if the judicial branch entity makes the requested records available or determines that the requested records are exempt from disclosure under this rule.

(10) *No obstruction or delay*

Nothing in this rule may be construed to permit a judicial branch entity to delay or obstruct the inspection or copying of judicial administrative records that are not exempt from disclosure.

(11) *Greater access permitted*

Except as otherwise prohibited by law, a judicial branch entity may adopt requirements for itself that allow for faster, more efficient, or greater access to judicial administrative records than prescribed by the requirements of this rule.

(12) *Control of records*

A judicial branch entity must not sell, exchange, furnish, or otherwise provide a judicial administrative record subject to disclosure under this rule to a private entity in a manner that prevents a judicial branch entity from providing the record directly under this rule. A judicial branch entity must not allow a private entity to control the disclosure of information that is otherwise subject to disclosure under this rule.

**(f) Exemptions**

Nothing in this rule requires the disclosure of judicial administrative records that are any of the following:

- (1) Preliminary writings, including drafts, notes, working papers, and inter-judicial branch entity or intra-judicial branch entity memoranda, that are not retained by the judicial branch entity in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure;
- (2) Records pertaining to pending or anticipated claims or litigation to which a judicial branch entity is a party or judicial branch personnel are parties, until the pending litigation or claim has been finally adjudicated or otherwise resolved;
- (3) Personnel, medical, or similar files, or other personal information whose disclosure would constitute an unwarranted invasion of personal privacy, including, but not limited to, records revealing home addresses, home telephone numbers, cellular telephone numbers, private electronic mail addresses, and social security numbers of judicial branch personnel and work electronic mail addresses and work telephone numbers of justices, judges (including temporary and assigned judges), subordinate judicial officers, and their staff attorneys;
- (4) Test questions, scoring keys, and other examination data used to develop, administer, and score examinations for employment, certification, or qualification;

- (5) Records whose disclosure is exempted or prohibited under state or federal law, including provisions of the California Evidence Code relating to privilege, or by court order in any court proceeding;
- (6) Records whose disclosure would compromise the security of a judicial branch entity or the safety of judicial branch personnel, including but not limited to, court security plans, and security surveys, investigations, procedures, and assessments;
- (7) Records related to evaluations of, complaints regarding, or investigations of justices, judges (including temporary and assigned judges), subordinate judicial officers, and applicants or candidates for judicial office;
- (8) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the judicial branch entity related to the acquisition of property or to prospective public supply and construction contracts, until all of the property has been acquired or the relevant contracts have been executed. This provision does not affect the law of eminent domain;
- (9) Records related to activities governed by Government Code sections 71600 et seq. and 71800 et seq. that reveal deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy or that provide instruction, advice, or training to employees who are not represented by employee organizations under those sections. Nothing in this subdivision limits the disclosure duties of a judicial branch entity with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision;
- (10) Records that contain trade secrets or privileged or confidential commercial and financial information submitted in response to a judicial branch entity's solicitation for goods or services or in the course of a judicial branch entity's contractual relationship with a commercial entity. For purposes of this rule:
  - (A) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:
    - (i) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
    - (ii) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy;
  - (B) "Privileged information" means material that falls within recognized constitutional, statutory, or common law privileges;
  - (C) "Confidential commercial and financial information" means information whose disclosure would:
    - (i) Impair the judicial branch entity's ability to obtain necessary information in the future; or
    - (ii) Cause substantial harm to the competitive position of the person from whom the information was obtained.
- (11) Records whose disclosure would disclose the judicial branch entity's or judicial branch personnel's decision-making process, provided that, on the facts of the specific request for records, the public interest served by nondisclosure clearly outweighs the public interest served by disclosure of the record; or
- (12) If, on the facts of the specific request for records, the public interest served by nondisclosure of the record clearly outweighs the public interest served by disclosure of the record.

**(g) Computer software; copyrighted materials**

- (1) Computer software developed by a judicial branch entity or used by a judicial branch entity for the storage or manipulation of data is not a judicial administrative record under this rule. For purposes of this rule

"computer software" includes computer mapping systems, computer graphic systems, and computer programs, including the source, object, and other code in a computer program.

- (2) This rule does not limit a judicial branch entity's ability to sell, lease, or license computer software for commercial or noncommercial use.
- (3) This rule does not create an implied warranty on the part of any judicial branch entity for errors, omissions, or other defects in any computer software.
- (4) This rule does not limit any copyright protection. A judicial branch entity is not required to duplicate records under this rule in violation of any copyright.
- (5) Nothing in this subdivision is intended to affect the judicial administrative record status of information merely because the information is stored in a computer. Judicial administrative records stored in a computer will be disclosed as required in this rule.

**(h) Waiver of exemptions**

- (1) Disclosure of a judicial administrative record that is exempt from disclosure under this rule or provision of law by a judicial branch entity or judicial branch personnel acting within the scope of their office or employment constitutes a waiver of the exemptions applicable to that particular record.
- (2) This subdivision does not apply to disclosures:
  - (A) Made through discovery proceedings;
  - (B) Made through other legal proceedings or as otherwise required by law;
  - (C) Made to another judicial branch entity or judicial branch personnel for the purposes of judicial branch administration;
  - (D) Within the scope of a statute that limits disclosure of specified writings to certain purposes; or
  - (E) Made to any governmental agency or to another judicial branch entity or judicial branch personnel if the material will be treated confidentially.

**(i) Availability in electronic format**

- (1) A judicial branch entity that has information that constitutes an identifiable judicial administrative record not exempt from disclosure under this rule and that is in an electronic format must, on request, produce that information in the electronic format requested, provided that:
  - (A) No law prohibits disclosure;
  - (B) The record already exists in the requested electronic format, or the judicial branch entity has previously produced the judicial administrative record in the requested format for its own use or for provision to other agencies;
  - (C) The requested electronic format is customary or standard for records of a similar type and is commercially available to private entity requesters; and
  - (D) The disclosure does not jeopardize or compromise the security or integrity of the original record or the computer software on which the original record is maintained.

- (2) In addition to other fees imposed under this rule, the requester will bear the direct cost of producing a record if:
- (A) In order to comply with (1), the judicial branch entity would be required to produce a record and the record is one that is produced only at otherwise regularly scheduled intervals or;
  - (B) Producing the requested record would require data compilation or extraction or any associated programming that the judicial branch entity is not required to perform under this rule but has agreed to perform in response to the request.
- (3) Nothing in this subdivision shall be construed to require a judicial branch entity to reconstruct a record in an electronic format if the judicial branch entity no longer has the record available in an electronic format.

**(j) Public access disputes**

- (1) Unless the petitioner elects to proceed under (2) below, disputes and appeals of decisions with respect to disputes with the Judicial Council, Administrative Office of the Courts, or a superior court regarding access to budget and management information required to be maintained under rule 10.501 are subject to the process described in rule 10.803.
- (2) Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any judicial administrative record under this rule.
- (3) Whenever it is made to appear by verified petition that a judicial administrative record is being improperly withheld from disclosure, the court with jurisdiction will order the judicial branch entity to disclose the records or show cause why it should not do so. The court will decide the case after examining the record (in camera if appropriate), papers filed by the parties, and any oral argument and additional evidence as the court may allow.
- (4) If the court finds that the judicial branch entity's decision to refuse disclosure is not justified under this rule, the court will order the judicial branch entity to make the record public. If the court finds that the judicial branch entity's decision was justified, the court will issue an order supporting the decision.
- (5) An order of the court, either directing disclosure or supporting the decision of the judicial branch entity refusing disclosure, is not a final judgment or order within the meaning of Code of Civil Procedure section 904.1 from which an appeal may be taken, but will be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of an order under this subdivision, a party must, in order to obtain review of the order, file a petition within 20 days after service of a written notice of entry of the order or within such further time not exceeding an additional 20 days as the court may for good cause allow. If the notice is served by mail, the period within which to file the petition will be extended by 5 days. A stay of an order or judgment will not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court will be cited to show cause why that is not in contempt of court.
- (6) The court will award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed under this subdivision. The costs and fees will be paid by the judicial branch entity and will not become a personal liability of any individual. If the court finds that the plaintiff's case is clearly frivolous, it will award court costs and reasonable attorney fees to the judicial branch entity.

*Rule 10.500 adopted effective January 1, 2010.*

**Advisory Committee Comment**

**Subdivision (a).** By establishing a public access rule applicable to all judicial administrative records, the proposed rule would expand public access to these records. The Judicial Council recognizes the important public interest in access to records and information relating to the administration of the judicial branch. The Judicial Council also recognizes the importance of the privacy rights of individuals working in or doing business with judicial branch entities and the public's interest in an effective and independent judicial branch of state government. The

report on this rule includes the Judicial Council's findings on the impact of this rule on these interests, and how these interests are protected by the rule.

**Subdivisions (b)(1) and (b)(2).** This rule does not apply to adjudicative records, and is not intended to modify existing law regarding public access to adjudicative records. California case law has established that, in general, subject to specific statutory exceptions, case records that accurately and officially reflect the work of the court are public records open to inspection. (*Estate of Hearst* (1977) 67 Cal.App.3d 777, 782–83.) However, documents prepared in the course of adjudicative work and not regarded as official case records, such as preliminary drafts, personal notes, and rough records of proceedings, are not subject to public access because the perceived harm to the judicial process by requiring this material to be available to the public is greater than the benefit the public might derive from its disclosure. (*Copley Press, Inc. v. Superior Court* (1992) 6 Cal.App.4th 106.)

**Subdivision (c)(2).** The application of this rule is intended to reflect existing case law under the California Public Records Act that exempts from the definition of "public record" certain types of personal records and information. The concept was first discussed in the California Assembly and establishes that if personal correspondence and information are "unrelated to the conduct of the people's business" they are therefore not public records. (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 774, citing Assembly Committee on Statewide Information Policy California Public Records Act of 1968, section B, page 9, Appendix to Assembly Journal (1970 Reg. Sess.)) Case law has further established that only records necessary or convenient to the discharge of official duty, or kept as necessary or convenient to the discharge of official duty, are public records for the purposes of the California Public Records Act and its predecessors. (*Braun v. City of Taft* (1984) 154 Cal.App.3d 332; *City Council of Santa Monica v. Superior Court* (1962) 204 Cal.App.2d 68.)

**Subdivision (e)(4).** The fees charged by a judicial branch entity under this rule are intended to allow the entity to recover an amount not to exceed the reasonable costs of responding to a request for records or information. In accordance with existing practice within the judicial branch and the other branches of government, the Judicial Council intends agencies and entities of the executive and legislative branches of the California state government to receive records or information requested from judicial branch entities for the agency's or entity's use free of charge. This subdivision is intended to provide, however, that requesters of records or information for the purpose of furthering the requester's commercial interests will be charged for costs incurred by the judicial branch entity in responding to the request, and that such costs will not be a charge against the budget of the judicial branch of the state General Fund.

**Subdivision (f)(3).** In addition to the types of records and information exempt from disclosure under the corresponding provision of the California Public Records Act, Government Code section 6254(c), this provision includes a further nonexclusive list of specific information that is exempt under this rule. The rule does not attempt to list each category of information that is specific to judicial branch entities and that may also be exempt under this rule. For example, although they are not specifically listed, this provision exempts from disclosure records maintained by any court or court-appointed counsel administrator for the purpose of evaluating attorneys seeking or being considered for appointment to cases.

**Subdivision (f)(10).** The definition of "trade secret" restates the definition in Civil Code section 3426.1.

**Subdivision (f)(11).** This subdivision is intended to reflect California law on the subject of the "deliberative process" exemption under the California Public Records Act, which is currently stated in the Supreme Court's decision in *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325 and the later Court of Appeal decisions *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159 and *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.

**Subdivision (j)(1).** Under current rule 10.803 a petitioner may file a writ in a superior court regarding a dispute with a superior court or the Administrative Office of the Courts with respect to disclosure of records and information required to be maintained under current rule 10.802. The writ petition must be heard on an expedited basis and includes a right to an appeal. The statutory authority for the hearing process set forth in current rule 10.803, Government Code section 71675(b), does not extend this procedure to other disputes with respect to public access. The rule provides that petitioners with a dispute with any other judicial branch entity, or with respect to records that are not required to be maintained under rule 10.802, may follow the procedure set forth in (j)(2) through (j)(6), which is equivalent to the dispute resolution procedure of the California Public Records Act. A petitioner eligible for the dispute resolution process set out in current rule 10.803 may also elect to proceed with his or her dispute under the procedure set forth in (j)(2) through (j)(6).



## Public Requests for Judicial Administrative Records Made to the AOC

**January 1, 2011 to November 1, 2011**

# of requests received	288
# of requests closed	247
# of requests still pending	16
# of requests cancelled	25
Average time necessary to respond	21.3 days
Minimum time of response	1 day
Maximum time of response	201 days
# of requests flagged as Commercial	137

### # of requests by Division

Administrative Services Unit	1
Appellate and Trial Court Judicial Services Unit	28
Center for Families, Children & the Courts	10
Education	1
Executive Office Programs	69
Executive Office	2
Finance	84
Human Resources	17
Information Services	2
Office of Court Construction and Management	46
Office of Governmental Affairs	1
Office of the General Counsel	20
Office of Emergency Response and Security	1
Trial Court Administrative Services	4
Southern Regional Office	2
Bay Area Northern Coastal Regional Office	0
Northern Central Regional Office	0
Superior Courts	0

### # of requests by Consulting Division

Administrative Services Unit	0
Appellate and Trial Court Judicial Services Unit	1
Center for Families, Children & the Courts	5
Education	1
Executive Office Programs	15
Executive Office	2
Finance	14
Human Resources	8
Information Services	1
Office of Court Construction and Management	5
Office of Governmental Affairs	1
Office of the General Counsel	21
Office of Emergency Response and Security	0
Trial Court Administrative Services	0
Southern Regional Office	2
Bay Area Northern Coastal Regional Office	1
Northern Central Regional Office	0
Superior Courts	211

**January 1, 2010 to December 31, 2010**

# of requests received	203
# of requests closed	194
# of requests still pending	0
# of requests cancelled	0
Average time necessary to respond	16.1 days
Minimum time of response	1 day
Maximum time of response	279 days
# of requests flagged as Commercial	50

## # of requests by Division

Administrative Services Unit	1
Appellate and Trial Court Judicial Services Unit	23
Center for Families, Children & the Courts	6
Education	4
Executive Office Programs	49
Executive Office	1
Finance	46
Human Resources	8
Information Services	5
Office of Court Construction and Management	32
Office of Governmental Affairs	0
Office of the General Counsel	18
Office of Emergency Response and Security	0
Trial Court Administrative Services	1
Southern Regional Office	4
Bay Area Northern Coastal Regional Office	5
Northern Central Regional Office	0
Superior Courts	0

Note: twenty-two requests were assigned to CCMS, not designed as a division in the database

Note: total of payments by requesters = \$8,675.42. None of these monies were allocated to the PAJAR project

## # of requests by Consulting Division

Administrative Services Unit	0
Appellate and Trial Court Judicial Services Unit	2
Center for Families, Children & the Courts	0
Education	0
Executive Office Programs	9
Executive Office	0
Finance	5
Human Resources	1
Information Services	1
Office of Court Construction and Management	2
Office of Governmental Affairs	0
Office of the General Counsel	10
Office of Emergency Response and Security	0
Trial Court Administrative Services	0
Southern Regional Office	0
Bay Area Northern Coastal Regional Office	0
Northern Central Regional Office	0
Superior Courts	173

**Examples of requests for public access to judicial administrative records  
received by the Administrative Office of the Courts in FY 10-11  
Prepared by Chad Finke, Director, Court Programs and Services Division**

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**EXAMPLE 1<sup>8</sup>**

I am writing to request information about the \$16 million from Deloitte and your public comments as to Deloitte crediting the Administrative Office of the Courts for delays in the “long-awaited” CCMS project.

The State Auditor found in her February review of CCMS that there were quality issues detected during testing that caused a delay in CCMS.

Please identify all of the quality issues that were detected during testing that contributed to the 10 month delay.

What has the AOC done, or directed to be done, to determine the costs resulting from the delay caused by these quality issues?

Who determined the costs resulting from the delay caused by each of the quality issues?

Please identify who employed each of the persons who determined each of the costs resulting from the delay at the time each person made such determination.

Please set forth the costs attributable to each quality issue detected during the testing that contributed, in whole or in part, to the 10 month delay.

With respect to the statement that “the \$16 million covers what the branch paid for services and equipment that weren’t used during the delay,” please provide the following:

A list of all of the services and equipment included in this reference;

A list showing the costs associated with each specific service and equipment included in this reference;

With respect to the statement that the 10-month delay “was in large part due to some internal issues Deloitte had with staffing and internal management,” please provide the following:

All of the written information Justice Bruiniers had that caused him to know that the 10 month delay was in large part due to internal issues on the part of Deloitte.

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<sup>8</sup> These examples are all excerpted verbatim from actual requests received in FY 10-11, although formatting has been altered for the sake of readability. Personal identifying information about the requesters has been redacted.

Specifically identify the “internal issues with staffing” that Justice Bruiniers references.

Specifically identify the “internal issues with management” that Justice Bruiniers references.

With respect to the statement that “Deloitte had to do some internal reorganizing to get things back on track and they did that,” please provide the following:

What did Deloitte have to get back on track as reported to the AOC and or Judicial Council?

When did the AOC realize that Deloitte had to get these things on track?

Did the AOC document this finding in writing?

If so, please provide a copy of the writing documenting this finding.

If the AOC did not document this finding in writing, please explain why this finding was not documented.

Was the authority to negotiate with Deloitte as to the delay caused by these quality issues delegated to someone or some entity?

If so, to whom?

If so, was this authority in writing?

If this authority was in writing, please provide a copy of the writing.

If it was not in writing, please so state.

Who approved the \$16 million amount?

What information was supplied to whoever approved the amount before the approval to accept this amount was given?

Has the Judicial Council approved the \$16 million amount?

Who approved that the amount would be a credit, rather than a check/ cash in the amount of \$16,000,000?

What information was supplied to whoever approved that the amount would be a credit rather than a check/cash?

Did the AOC ever demand that Deloitte write a check/cash?

If so, please provide proof that this demand was made.

If no demand for cash was made, please explain why not.

Has the Judicial Council approved the amount being received in the form of a credit rather than by check/cash?

If so, please provide the information that was provided to the Judicial Council for it to consider this matter.

If the Judicial Council has not approved the amount being received in the form of a credit, rather than by check/cash why not?

What does the AOC mean when it states that Deloitte has agreed to credit the AOC \$16 million for delays?

Specifically, is there an outstanding invoice, or invoices, to which the “credit” is to be applied? If so, please provide a copy of this invoice (s).

Or, is this credit being applied to future services?

If so, please identify with specificity the future services to which this credit is being applied.

Is the AOC going to receive this “credit” even if CCMS is not deployed?

The AOC states that the “\$16 million credit will be used to support CCMS deployment.” Does this mean that receipt of the “credit” is conditional on CCMS being deployed?

Who decided not to negotiate for cash payment being made to reimburse the taxpayers for the delay that Justice Bruiniers stated was caused by Deloitte?

Did the negotiations with respect to the “credit” include discussions regarding extending the warranty?

If so, please provide any documents that reflect that these discussions occurred.

If the negotiations with respect to the “credit” to compensate for the delay caused by the quality issues did not include discussions regarding extending the warranty, please state the reasons why the subject of extending the warranty did not occur.

**EXAMPLE 2**

[I]n reading a news report today I became aware of an “emergency fund” controlled by the AOC. The below excerpt from the article authored by Cheryl Miller discusses it.

New attention has also been focused on \$9.8 million in emergency funds controlled by the Judicial Council. State law requires the council to keep a small pot of money available to help courts that are financially stressed, damaged by natural disasters or overwhelmed by a heavy caseload.

The council last dipped into that money in 2009 to help Plumas County Superior Court with \$40,000 to open its new courthouse, said Philip Carrizosa, a spokesman for the Administrative Office of the Courts. Council members are "very stringent" in tapping the emergency funds, he said, and "it's not at all clear that this fund is available to make up for reduced funding."

I am seeking information about the history of this fund. When the fund was created? Under what specific statutory authority it exists? In addition, please provide information about any and all depletions of this fund that have taken place since its inception. For any depletion or expenditure of funds please provide the following:

1. What reason was given for the request?
2. Who made the request?
3. What manner was the request was made (written, oral, some other method)?
4. Copies of documentation reflecting the request.
5. The county or other entity requesting the funds.
6. How much money was requested? AND
7. What amount was provided?

Additionally I am asking the AOC to provide me any request for funds that was rejected (I am seeking ANY information about rejected requests whether the request was for security measures to protect the life of a judge, court construction or maintenance, CCMS, technical support, or any other reason.)

As to each request which was turned down please provide:

1. What reason was given for the request?
2. Who made the request?
3. What manner was the request was made (written, oral, some other method)?
4. Copies of documentation reflecting the request.
5. The county or other entity requesting the funds.
6. How much money was requested? AND
7. Copies of any letter, e-mail, memo, note or any other documentation reflecting the reason the request was denied.

If there were any other depletion of funds from this emergency fund, please indicate where the money went, the amount of money diverted from the fund, the reason the money was removed from the fund and how, if at all the money was spent.

### EXAMPLE 3

I note that at the same time the Judicial Council entered the “one year freeze”, July 22, 2011 they also authorized the following recommendations from the TCBWG:

#### **Recommendation**

The Trial Court Budget Working Group (TCBWG) recommends that, for FY 2011–2012, the council:

1. Approve allocation of \$28.351 million for projects and programs from the Modernization Fund (\$6.204 million) and the Improvement Fund (\$22.147 million);
2. Approve allocation of \$19.070 million for ongoing services for trial courts from the Modernization Fund (\$0.755 million), the Improvement Fund (\$10.122 million), and the TCTF (\$8.193 million);
3. Approve allocation of \$65.544 million for statewide technology infrastructure maintenance and operations from the Modernization Fund (\$11.698 million), the Improvement Fund (\$22.004 million), and the TCTF (\$31.842 million);
4. Approve allocation of \$5.716 million for statewide technology infrastructure projects from the TCTF; and
5. Delegate authority to the Administrative Director of the Courts to adjust allocations of funds to courts and for approved programs and projects, as needed, to address unanticipated needs and contingencies. Any adjustments will be reported to the council after the end of the fiscal year.

Since the authority to allocate funds was delegated directly to the AOC, please include in your reply . . . how much of each of the above listed amounts was spent, directed to, committed to, encumbered to or otherwise depleted on CCMS. Please also provide the precise reason for the spending on CCMS projects in light of the concurrent declaration of a “one year freeze.”

### EXAMPLE 4

[I]f there was any other depletion of funds from this emergency fund, please indicate where the money went, the amount of money diverted from the fund, the reason the money was removed from the fund

and how, if at all, the money was spent. In case I was not sufficiently clear, what I am seeking here is information about what exactly was done with the remaining balance in the emergency fund account at the end of each year. If the money was spent, I am asking for a detailed accounting of what the money was spent on and who received the money. If the money was placed into another account, I would like details of the annual balance of that account and whether any money has been spent from that account. If money was spent from the account, I am requesting a detailed accounting of what the money was spent on and who received the money.

The funds allocated from the emergency fund for San Francisco this year were subject to several conditions, including repayment of funds and a timeline for repayment. These conditions were the subject of considerable debate at the last Judicial Council meeting. For all money previously paid out through the fund from 2001 to 2010, please provide all of the conditions placed upon allocating the funds to the various courts receiving money and the specific terms for repayment of the money for each allocation.

Please also provide information regarding the following:

1. If there were no conditions placed on funds expended, please indicate why not.
2. If there were no terms for repayment of funds from this account prior to the allocation to San Francisco, please explain why not.
3. What written criteria are there for determining what counties should be given these funds?
4. What written procedures set forth the criteria and review process that ensures consistency and fairness in the decision-making process?
5. Are all counties required to go through the same process to attempt to obtain these “emergency funds?”
6. Has any distribution of money from the emergency fund been made based on an oral request for money as opposed to written requests?
7. If so, please indicate which distribution or distributions were made based on an oral request.
8. Please also indicate how such distribution or distributions based on oral requests were evaluated and authorized.
9. For the time period in question, who within the AOC has had the primary responsibility for dealing with these funds?

Also, for each occasion an amount was approved for payment whether based on oral or written request, please provide the following:

1. The person or persons who reviewed the request.
2. The person or persons who authorized the payment of money from the fund.
3. When the payment was authorized.
4. Whether the Judicial Council approved the payment of funds, and if so when and how they authorized the payment.
5. Whether the Judicial Council delegated authority to anyone in the AOC to deplete this fund in any manner and, if so, who was that authority given to.

6. As to each of the above items, please provide any documentation, writing, or correspondence of any kind that reflects, supports, or relates to each of the above items.

### EXAMPLE 5

In reviewing information from the AOC in connection with “CCMS spending”, I am finding significant discrepancies in the amounts reported in various documents. There are also great differences reported by the AOC, Judicial Council members, and committee members when asked about how much has been expended on the CCMS project. It is apparent that the cost of the system varies depending on the specific terms one uses when calculating the cost of CCMS. The difficulties appear similar to the ones encountered by the State Auditor causing her to conclude the AOC “presented expenditures to date and the cost to complete the project in three separate exhibits located on different pages that correspond to different project elements, making it difficult for report users to identify the total cost of the project.”

In an effort to secure an accurate figure of the true cost of the computer project I am requesting to know how much money has been spent or is scheduled to be spent, encumbered, or otherwise committed to the case management project since its inception. I am requesting information on all aspects of spending and expenses related to the case management system whether AOC terminology is “CCMS Core Product”, “V-2”, “V-3”, “V-4”, “CCMS Non-Core product”, “Interim Case Management Systems (ICMS)”, “DMS”, “CCTC”, “Hosting”, “Server”, “Statewide Reporting Data Warehouse”, “Code Development”, “Program”, “CCMS Program”, “CCMS Division”, “Deployment”, “Systems”, “Transition Programs”, “Ancillary Development”, “Development Vendor”, “Project Support”, “Personnel”, “Independent Contractor”, “Employee”, “Applications Analysts”, “Business Applications Analyst”, “Temporary Employee”, “Critical” or “Key” Personnel”, “Consulting”, “Maintenance and Operation”, “Incidental”, “Justice Partner Data Exchange Costs”, “Development Vendor”, “Southern Regional Office”, “IT Division”, “IS or Information Systems”, “Data Integration”, “Data Conversion”, “Configuration Management”, “Configuration Maintenance”, “Change Business Processes”, “Convert Data”, “Helpdesk”, “Business Process”, “Training”, “End User Support”, “AOC Finance Personnel Support”, “AOC Department of Communications Support”, “AOC Department of Governmental Affairs Support” or any other terminology relating to expenditures associated with creating a case management system and the related parts and functions of the system (both the core and non-core) including but not limited to external components that include E-Filing, DMS as well as data exchanges with justice partners, both state and local, for the California Judiciary.

Please include in the total those things referenced by the state auditor as appropriately included in the total but previously excluded from cost estimates including “time senior executives spend on CCMS”, “money that has been spent or will be spent for the criminal system and support costs for the civil system and CCMS until CCMS is fully deployed”, “costs that the superior courts have already incurred to implement the interim versions”, “costs that superior courts will incur [or have incurred] to implement CCMS”, “costs that superior courts will incur [or have incurred] to implement CCMS”, “costs that state and local government justice partners will incur [or have incurred] to integrate their systems with

CCMS”, cost of “staff that performed a role in the statewide case management project”, and costs to superior courts of “their past and future costs related to the statewide case management project.”

I am seeking an accurate accounting of how much money has actually been or is scheduled to be spent, encumbered, allocated to, or otherwise committed to the case management system commonly referred to as CCMS. I am seeking the total amounts whether incurred by the individual counties or courts for support, fixes to, development of, implementing, or “work arounds” for the case management system, CCTC, DMS or any of its various parts and applications. I am also asking for an accounting of any money spent or scheduled to be spent, encumbered, allocated to, or otherwise committed by or through the AOC for development, deployment or any other reason on the entire case management system.

I would greatly appreciate you promptly providing the requested information or let me know who can access and provide a total and accurate figure. Courts across our state are currently cutting staff, shortening hours and restricting access to justice to the taxpayers who pay for the judiciary. If it is not possible to accurately determine the amount spent in connection with pursuing a state-wide case management system, please inform me why an accurate accounting is not possible.

Next, in reviewing the California State Auditor’s report on the CCMS project, auditor Elaine Howle, CPA noted:

“To ensure that the financial implications of the statewide case management project are fully understood, the AOC should report to the Judicial Council, the Legislature, and stakeholders a complete accounting of the costs for the interim systems and CCMS. This figure should be clear about the uncertainty surrounding some costs, such as those that the AOC and superior courts will incur for deployment of CCMS. Also, the AOC should require superior courts to identify their past and future costs related to the project, particularly the likely significant costs that superior courts will incur during CCMS deployment, and include these costs in the total cost. Further, the AOC should be clear about the nature of the costs that other entities, such as justice partners, will incur that are not included in its total. Finally, the AOC should update its cost estimate for CCMS on a regular basis as well as when significant assumptions change.”

Please provide me with any and all reports prepared by the AOC that comply with this portion of the Auditor’s report.

Finally, the State Auditors report contained the following Table:

**Table 3  
Expenditures Reported to the Legislature in Compliance With State Law Compared With the Administrative Office of the Courts’ Internal Estimates of Total Costs for the Statewide Case Management Project (In Millions)**

<b>DATE REPORTED</b>	<b>EXPENDITURES REPORTED TO</b>	<b>ADMINISTRATIVE OFFICE OF THE</b>
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	<b>LEGISLATURE AS REQUIRED BY STATE LAW</b>	<b>COURTS' INTERNAL COST ESTIMATE FOR THE OVERALL PROJECT</b>
December 2005	\$179	\$365
January 2007	271	490
April 2008	466	1,587
January 2009	744	1,587

Please provide me with copies of the reports to the Legislature reflecting the reported expenditure of \$744,000,000 as of January 2009. Additionally please provide any and all more current reports to the Legislature for "Expenditures Reported to the Legislature in Compliance With State Law" related to the CCMS project.



# Public Requests for Judicial Administrative Records Made to Select Superior Courts

Court	Total Number of Requests Received	Average Amount of Time to Process a Request (From Date Opened to Date Closed)	Number of Requests for Financial Records (e.g., Court Contracts, Bids)	Number of Requests for Case Statistics (e.g., Compi-lations of or Searches for Particular Case Types)	Number of Requests for Personnel Records (e.g., Salaries and Expense Reimburse-ments)	Number of Requests for Qualifications of or Complaints Against Court Professionals (e.g., Mediators and Investigators)	Number of Other Requests	Number of Commercial Requests	Impact on Court's Ability to Carry Out and Fund Core Judicial Operations
Contra Costa	46	26 days	10	19	5	1	7	15	Substantial
Glenn	12	3 hrs	0	1	3	n/a	6	0	n/a
Los Angeles	82	8 days	15	10	18	2	32	5	This program requires 5% of a senior administrator's time.
Marin	28	5 days	0	7	6	2	5	6	minimal
Merced	1	390 mins	1	0	0	0	0	0	none
Nevada	4	2 hours	1	1	1	1	0	0	None
Orange	49	23	20	3	11	0	9	32	No significant impact
San Diego	89	8 days	16	41	23	0	4	17	
San Mateo	35	1 to 4 hours	6	9	4		2	5	Significant
Santa Clara	40	7 days	5	15	6	0	7	18	minimal
Santa Cruz	10	2 hours	4	2	2	0	0	0	minimal
Trinity	14; time not tracked from date rec'd to closed	30 mins to 1 hour	6	2	1		3		Disruptive to core operations; response to requests outside working hours
Tuolumne	5	1		1	2		2		minimal
Ventura	25	10 days	1	5	3	4	9		core is undefined
<b>TOTAL</b>	<b>426</b>	<b>24</b>	<b>85</b>	<b>116</b>	<b>85</b>	<b>10</b>	<b>86</b>	<b>98</b>	



**Reimbursement to Superior Courts for the Provision of Judicial Administrative Records  
(2nd Qtr FY 2009-2010 thru 1st Qtr 2011-2012)**

<b>Court</b>	<b>Number of Requests</b>	<b>Actual Cost</b>	<b>Amount Reimbursed</b>
Alameda	2	10,682.80	2,351.21
Butte	4	1,951.04	1,715.06
Humboldt	1	483.24	483.24
Imperial	1	29.39	16.56
Inyo	3	82.01	38.63
Kern	1	7,347.72	2,748.13
Los Angeles	2	24,406.59	8,542.38
Madera	1	487.92	264.88
Marin	2	1,191.23	802.92
Merced	1	655.20	215.22
Monterey	3	833.11	736.87
Nevada	2	196.52	102.09
Placer	1	575.64	575.64
Riverside	5	3,064.74	1,920.38
Sacramento	2	613.50	430.43
San Diego	3	3,316.57	1,258.18
San Francisco	9	5,174.18	2,662.60
San Joaquin	2	7,654.31	2,864.02
San Mateo	1	125.94	66.22
Shasta	5	6,103.57	2,536.23
Solano	2	111.75	82.78
Sonoma	1	220.70	55.18
Tulare	2	3,618.18	2,566.03
Tuolumne	1	55.91	55.91
Ventura	2	2,896.41	1,688.61
Yolo	1	284.00	264.88
Yuba	1	400.56	264.88
<b>Total:</b>	<b>61</b>	<b>82,562.73</b>	<b>35,309.15</b>

<b>Funds Available per Judicial Council:</b>	<b>1,500,000.00</b>
<b>Amount Reimbursed through 1st Qtr FY 2011-12:</b>	<b>(35,309.15)</b>
<b>Funds Remaining:</b>	<b>1,464,690.85</b>



## **Guidelines for Reimbursement of Trial Court Staff Costs Related to Non-Commercial Requests for Judicial Administrative Records**

### Background

California Rules of Court, Rule 10.500, which took effect January 1, 2010, implements Government Code section 68106.2(g), added by Senate Bill X4 13 (Stats. 2009, ch. 22), which requires adoption by the Judicial Council of rules of court that provide public access to nondeliberative and nonadjudicative court records, including budget and management information.

At its December 15, 2009 business meeting, the Judicial Council approved one-time funding of up to \$1.5 million from statewide special funds to reimburse superior courts for the cost, calculated on an hourly basis, of search and review time of personnel in excess of 2 hours spent responding to individual non-commercial requests for judicial administrative records during the period January 1, 2010 to December 31, 2011, subject to available appropriations. The following information is intended to provide assistance to trial court staff regarding reimbursement of specific staff costs related to responses to the requests.

### Costs Eligible for Reimbursement

Criteria for eligibility for reimbursement from the Administrative Office of the Courts (AOC) for judicial administrative record requests include the following:

- The costs for which reimbursement may be sought through this AOC process are those for staff time spent on search and review of records in response to a request for judicial administrative records. Only search and review time in excess of two (2) hours per request may be reimbursed. This criterion was approved by the Judicial Council and is stated in section (c)(i) of the Rule 10.500 Fee Guidelines. Under rule 10.500(e)(4)(D)(iii), “search and review time” includes time spent on the following: identifying and locating records; determining whether any portions are exempt from disclosure; and performing all tasks necessary to prepare the records for disclosure, including redacting portions exempt from disclosure. It does not include time spent resolving general legal or policy issues regarding the applicability of particular exemptions. No other costs are eligible for reimbursement through this process.
- The request for records was not for commercial use. Under Rule 10.500(e)(4)(D)(i), “[c]ommercial use’ means a request for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. A request from a representative of the news media that supports its news-dissemination function is not a request for commercial use.” If staff is not certain of the purpose for the request, staff should ask the requester to explain the purpose and/or use of the information being requested. Costs for requests for commercial use (e.g., requests from companies that package and resell that information to the public and requests from companies that seek information about the companies’ competitors’ contracts with the judicial branch entity)

may be directly charged to the person or entity requesting the information and, therefore, are not eligible for reimbursement through this process.

### Reimbursement Process and Form

Reimbursement will be made to courts on a quarterly basis. An Excel form has been created for courts to provide specific information to the AOC for the purposes of reimbursement of these search and review costs. Courts will be reimbursed at the lesser of their actual cost (based on the salary and specific benefits of the person(s) doing the search and review) or the standard hourly rate. A standard hourly reimbursement rate of \$33.11 has been established based on the average mid-step salary and specific benefits for a superior court legal process clerk in fiscal year 2009–2010. AOC staff will monitor reimbursement requests and, depending on the level and flow of requests, may recommend to the Administrative Director of the Courts pro-rating reimbursements based on total reimbursement requests or some other method to make the process equitable for all courts. Instructions for completing the form follow.

At the top of the Reimbursement Form, please select your court and appropriate report period, and provide contact information.

In box (1) of the form, indicate the number of non-commercial requests for public access to judicial administrative records for which the response took staff more than two hours of search and review time to complete.

In box (2), indicate the total time **in excess of two hours**, in minutes, spent by staff on search and review in responding to individual non-commercial requests for access to judicial administration records. For example, if there were 3 requests in which each request required 2 ½ hours staff search and review time, your court would enter 30 minutes for each request (or 90 minutes).

In box (3), indicate on the form the actual cost of the person(s) performing the work for the time over the first two hours of search and review. For example, if a budget analyst making \$37.50 an hour (salary and specific benefits) spends a total of 3 hours each on two of the requests and a court clerk that makes \$28.125 an hour (salary and specific benefits) spends 2-½ hours on the third request, the total in box (3) would be \$51.56 (\$37.50 + \$14.062). The calculation of this cost should only include salary and the following benefits: retirement, Social Security, Medicare, medical, dental, and vision benefits.

In box (4), a comparison will be made between courts' actual costs and the costs for the same length of time worked at the standard rate of \$33.11. Courts will be reimbursed at the lesser of the two costs in boxes (2) and (3), subject to availability of funds.

The presiding judge or court executive officer shall certify, at the bottom of the form, that the information provided is accurate.

Reimbursement forms are to be sent via e-mail by the due date to Vicki Muzny at [vicki.muzny@jud.ca.gov](mailto:vicki.muzny@jud.ca.gov). The signed form may be sent via e-mail or by fax (415) 865-4331.

Due Dates for Submission of Reimbursement Forms

Please note, if the due date is missed, requests will still be reimbursed if funding is available.

May 2, 2010:	For the period January through March 2010
July 31, 2010:	For the period April through June 2010
October 31, 2010:	For the period July through September 2010
January 31, 2011:	For the period October through December 2010
April 30, 2011:	For the period January through March 2011
July 31, 2011:	For the period April through June 2011
October 31, 2011:	For the period July through September 2011
January 31, 2012:	For the period October through December 2011

