

Response to Questionnaire for International Association of Judges
Submitted by the Federal Judges Association
on behalf of the U.S. Delegation to the IAJ

1. In your jurisdiction is a court considered to be a data controller for data protection law purposes in all, or any, of the following situations:

a. When performing its judicial functions?

Generally, the clerk of court is responsible for maintaining the records of each individual federal court to include the docket, calendar, and other records, including electronic documents. The clerk has custody of a court's records and papers, whether in hard copy or electronic form, but redaction of personal data is primarily the responsibility of the filers. All court records are presumed to be public unless otherwise ordered by the court or as prescribed by statute.

b. For purposes connected with the administration of justice, including the publication of a judgment or court decision, or a list or schedule of proceedings or of hearings in proceedings?

The clerk of court is responsible for maintaining court records and for serving notices of court orders or judgments in each individual case.¹ The clerk is not responsible for redaction of sensitive data for documents filed by parties in a case.

c. For purposes connected with the efficient management and operation of the courts and for statistical purposes?

No.

¹ The exception to the clerk of court serving orders relates to the service of subpoenas in civil actions, which is provided for in Rule 45 of the Federal Rules of Civil Procedure. These subpoenas are issued for the purposes of taking testimony of a witness or having that person produce documents in connection with the litigation, whether at trial, a hearing, or the taking of a deposition.

2. In your jurisdiction does a data subject (e.g. a party to litigation, a witness, or a party whose interests may be affected by the litigation) have a right to information regarding the processing of their personal data by or on behalf of the courts?

Data submitted to the court as part of a judicial proceeding is presumed public information and can be accessed by the public through the Federal Judiciary's electronic records database and filing system, PACER (Public Access to Court Electronic Records, at <https://pacer.uscourts.gov>, unless otherwise restricted by the court, i.e., sealed by an order of the court. In the situation of PACER, users are made aware of the system's privacy policy that describes how information is collected and stored in the system. See Privacy | PACER: Federal Court Records (uscourts.gov). Data subjects can request that a court restrict access to their data via a motion filed with the court.

3. In your jurisdiction does a data subject whose personal data is published in a court document, such as a judgment, have the right to seek rectification of allegedly inaccurate or inappropriately disclosed personal data?

Data subjects can file a motion with the court to modify a judgment, remove a court opinion or other document from public access, or rectify inaccuracies in the record.

4. In your jurisdiction is personal data contained in a judgment or decision of a court, or in a list or schedule of proceedings or hearings, generally made accessible to the public? If so, are there exceptions and what are they? If not, is there a redaction requirement, or alternative requirement, to be implemented before a judgment/list/schedule can be published so as to safeguard the rights of data subjects?

No. Court dockets, documents, opinions are generally presumed to be public; however, they must be redacted to remove personal identifiers prior to posting on PACER. There are various rules governing proceedings in federal courts that implement the E Government Act's requirement for confidentiality by the redaction of personal identifiers in electronic case files.² See Federal Rule of Appellate Procedure 25(a), Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, and Federal Rule of Criminal Procedure 49.1. Transcripts of court proceedings available electronically must also comply with these redaction requirements, and there is a policy of the Judicial Conference of the United States, the governing body of the Federal Judiciary, that specifies the procedure for attorneys and court reporters/transcribers to accomplish the required redactions.

² There are three standards that apply when considering the confidentiality of court documents. First are the standards applied to the confidentiality of discovery materials under Federal Rule of Civil Procedure 26. Second, there is a presumption of a common law right of access to court documents. Third, the First Amendment to the U.S. Constitution provides a right of public access that attaches to civil and criminal cases.

First, Federal Rule of Civil Procedure 26(c) permits the Court to enter a protective order "for good cause" on motion by a party "from whom discovery is sought." Fed. R. Civ. P. 26(c). Good cause requires a showing that disclosure will work a clearly defined and serious injury to the party seeking closure and the burden of justifying sealing is on the party seeking the order. Pansy v. Borough of Stroudsburg, 23 F.3d 772, 786–87 (3d Cir. 1994).

Second, in civil cases (as well as in criminal cases), a common law right of access attaches to judicial proceedings and records. A judicial record is a document that has been filed with the court or otherwise somehow incorporated or integrated into a federal court's adjudicatory proceedings. In re Avandia Mktg., Sales Practices & Prod. Liab. Litig., 924 F.3d 662 (3d Cir. 2019) (quotation marks and internal citations omitted).

Third, there is the First Amendment. Although the public and the press have a First Amendment right of access to civil trials, it is not settled whether the First Amendment applies to all court records. A First Amendment right of access is evaluated under strict scrutiny and requires a much higher showing. In re Avandia Mktg., Sales Practices & Prod. Liab. Litig., 924 F.3d 662 (3d Cir. 2019) (quotation marks and internal citations omitted).

5. How are complaints addressed in your jurisdiction concerning alleged breaches by the courts of the rights of data subjects? Does your jurisdiction have a person or body with special responsibility for the supervision of data processing operations of courts when acting in their judicial capacity?

Complaints may be submitted to the clerk of court of the particular court within which the alleged breach arose or the Administrative Office of the U.S. Courts for review and consideration. Depending on the nature and magnitude of the breach, the matter may be addressed by the individual federal court where the breach occurred and/or by the Administrative Office of the U.S. Courts.

6. In your experience have data protection rules impacted adversely on your judicial independence? If so, how have they done so?

No.