



## Michigan Supreme Court

State Court Administrative Office

### Trial Court Services Division

Michigan Hall of Justice

P.O. Box 30048

Lansing, Michigan 48909

Phone (517) 373-4835

Steven D. Capps  
Director

### MEMORANDUM

DATE: February 11, 2010

TO: Chief Judges  
Court Administrators  
County Clerks  
Friends of the Court

FROM: Steven D. Capps, Director  
Trial Court Services

RE: SCAO Administrative Memorandum 2010-01  
Revision of Nonpublic and Limited Access to Records Chart and Clarifying  
Access to Federal Law Enforcement Agencies

---

The State Court Administrative Office has revised the [Nonpublic and Limited Access to Records chart](#) to include access for federal law enforcement agencies whenever a “law enforcement agency” or “law enforcement personnel” are included in the Michigan statute. After doing further research, we conclude that the Michigan statutes cited in our Nonpublic and Limited Access to Records Chart do not exclude federal law enforcement agencies from having the same access to the records in question as state law enforcement agencies. In addition, Michigan statutes acknowledge the fact that there are federal law enforcement officers that are employed by federal law enforcement agencies.<sup>1</sup>

There are numerous federal agencies responsible for the enforcement of federal law. Many of these federal agencies fall under the authority of the Department of Justice or the Department of Homeland Security. In the “Glossary” section of the revised Nonpublic and Limited Access to Records Chart, the federal law enforcement agencies with which courts may

---

<sup>1</sup> MCL 761.1 states:

p) "Federal law enforcement officer" means an officer or agent employed by a law enforcement agency of the United States government whose primary responsibility is enforcing laws of the United States.

come in contact include the agencies listed in Table 1.<sup>2</sup> The U.S. Coast Guard should also be included in this list.<sup>3</sup>

Table 1

<b>Federal agencies employing 500 or more full-time officers with authority to carry firearms and make arrests, September 2004</b>
Agency
U.S. Customs and Border Protection
Federal Bureau of Prisons
Federal Bureau of Investigation
U.S. Immigration and Customs Enforcement
U.S. Secret Service
Drug Enforcement Administration
Administrative Office of the U.S. Courts
U.S. Marshals Service
U.S. Postal Inspection Service
Internal Revenue Service, Criminal Investigation
Veterans Health Administration
Bureau of Alcohol, Tobacco, Firearms and Explosives
National Park Service
U.S. Capitol Police
Bureau of Diplomatic Security, Diplomatic Security Service
U.S. Fish and Wildlife Service, Division of Law Enforcement
USDA Forest Service, Law Enforcement & Investigations

There are other federal agencies that may have access to some of these records pursuant to Federal Statute. 5 U.S.C § 9101 permits specific covered agencies (Department of Defense, Department of State, Department of Transportation, Office of Personnel Management, Central Intelligence Agency, and Federal Bureau of Investigation) access to confidential records on individuals under investigation by that covered agency for the purpose of determining eligibility for any of the following:

1. Access to classified information.
2. Assignment to or retention in sensitive national security duties.
3. Acceptance or retention in the armed forces.
4. Appointment, retention, or assignment to a position of public trust or a critical or sensitive position while either employed by the Government or performing a government contract.

Access for these purposes by a “covered agency” can only be granted ***with the written consent of the individual under investigation***. If a covered agency is also a law enforcement agency (e.g. the FBI), the federal statute still requires that agency to have the written consent of the individual if it seeks information for the purposes outlined above. Michigan statutes, however, do not

<sup>2</sup> July 2006, NCJ 212750 U.S. Department of Justice Office of Justice Programs

<sup>3</sup> 14 USC states in part: “The Coast Guard shall enforce or assist in the enforcement of all applicable Federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States; shall engage in maritime air surveillance or interdiction to enforce or assist in the enforcement of the laws of the United States”

require the consent of the individual for law enforcement agencies seeking access to determine whether an employee has violated conditions of employment or whether an applicant meets criteria for employment.

SCAO has also made some other revisions in the language. These revisions include the following:

- We have distinguished between records in which access is restricted by statute and records that have been sealed by court order under MCR 8.119(F).
- We have changed the response suggested to the public from court employees when someone inquires about information on a case that is non-public or contains non-public information.
  - For cases or records in cases that are non-public pursuant to MCR 8.119F) the suggested response is: “Only court orders and opinions in this case are accessible to the public”.
  - For cases or records that are non-public pursuant to a specific statute or court rule, the suggested response is “There is no public record”.
  - For cases in which specific information is non-public pursuant to statute or court rule, the suggested response may include that reference. For example, “Victim home and work addresses and telephone numbers are non-public by statute.”

Our chart specifically identifies the entities that have access to confidential records and the purpose of that access under the statute. If you have any questions regarding these changes, please contact Jim Inloes at [inloesj@courts.mi.gov](mailto:inloesj@courts.mi.gov), Jill Booth at [boothj@courts.mi.gov](mailto:boothj@courts.mi.gov), or Jennifer Warner at [warnerj@courts.mi.gov](mailto:warnerj@courts.mi.gov).