

Court Documents as Public Records

Overview

Most documents in the UCSF Industry Documents Library (IDL) have been obtained through court orders and other legal agreements. Many other documents have been acquired at the conclusion of trials after being filed with the court or introduced as evidence during the proceedings, after which time they are considered to be public records.¹

In the U.S., there is an overarching First Amendment and common-law public right of access to judicial documents and those submitted in open court. The Supreme Court addressed this issue in *Nixon v. Warner Commc'ns, Inc.* 435 U.S. 589, 597 (1978), finding that there was a qualified common-law right “to inspect and copy public records and documents, including judicial records and documents.”

Many states have their own public records laws that allow access to court records, subject to a few narrow exclusions such as a protective order or specific law that precludes disclosure (e.g., no access to juvenile or domestic abuse records). Several federal circuit courts have also addressed the issue.

1st Circuit - Maine, Massachusetts, New Hampshire, Rhode Island

The First Circuit has determined that the public has a right to access to information presented at civil trials and that there is a “presumptively paramount right of the public to know” the content of judicial records in civil cases, which may be overcome for “only the most compelling reasons.” *Federal Trade Comm'n. v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 408 n.4, 410 (1st Cir. 1987).

2nd Circuit - Vermont, New York, Connecticut

The Second Circuit recognizes a presumption of access to court records if submitted to a court for the purpose of adjudication. *See Lugosch v. Pyramid Co.*, 435 F.3d 110, 114 (2nd Cir. 2006).

3rd Circuit - Pennsylvania, New Jersey, Delaware

The Third Circuit recognizes a qualified common law right of access to documents referenced in trial and admitted into evidence. These documents become part of the record and are presumptively accessible to the public. *See Littlejohn v. BIC Corp.*, 851 F.2d 673 (3rd Cir. 1988).

¹ For the purposes of this document, court records are generally defined as documents that are filed with the court (e.g., pleadings, motions, orders, memoranda, briefs) and items that are introduced as evidence at trial.

4th Circuit - Virginia, West Virginia, North Carolina, South Carolina

The public's First Amendment right of access applies to exhibits offered into evidence at a civil trial. *See Level 3 Commc'ns, LLC v. Limelight Networks, Inc.*, 611 F. Supp. 2d 572, 579 (E.D. Va. 2009); *see also* U.S. Dist. Ct. Rules E.D. Va., Local Civil Rule 5(H) ("Trial exhibits, including documents previously filed under seal, and trial transcripts will not be filed under seal except upon a showing of necessity demonstrated to the trial judge.").

5th Circuit - Texas, Louisiana, Mississippi

The Fifth Circuit has recognized a common law right to inspect and copy judicial records, but that right is not absolute and will generally only apply to "original records." *Pratt v. Dennis*, 511 F.3d 483, 485 (5th Cir. 2007).

7th Circuit - Wisconsin, Illinois, Indiana

The Seventh Circuit recognizes a First Amendment and common law right to access records submitted into evidence in open court. *See In re Continental Illinois Sec. Litig.*, 732 F.2d 1302 (7th Cir. 1984); *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893 (7th Cir. 1994).

10th Circuit - Wyoming, Utah, Colorado, New Mexico, Kansas, Oklahoma

The 10th Circuit has found that "[i]t is clearly established that court documents are covered by a common law right of access." *McVeigh II*, 119 F.3d 806 (10th Cir. 1997) (citing *Nixon v. Warner Commc'ns*, 435 U.S. 589, 599 (1978)).

11th Circuit - Alabama, Georgia, Florida

The Eleventh Circuit has held that the public and press have a qualified common law right of access to trial records and items submitted as evidence during trial. *See Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1311 n.7 (11th Cir. 2001).

Document Disclosure Agreements

Other documents in IDL which do not fall under the general definition of "court records" have been authorized for public disclosure pursuant to legal agreements such as, *In re Insys Therapeutics Inc, et al.* Notice of Filing of Second Plan Supplement Pursuant to the Second Amended Joint Chapter 11 Plan (pg. 18); *Commonwealth of Massachusetts v. McKinsey and Company*, Assented-To Motion for Judgment (pg. 9); *In re Mallinckrodt PLC, et al.*, First Amended Joint Plan of Reorganization of Mallinckrodt PLC and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code (pg. 103). These disclosure provisions allow for the publication of specific categories of company records, subject to limited restrictions (e.g., privileged, trade secret).

In addition, some documents in IDL are works produced by US federal or state employees in the course of their employment. According to 17 USC § 105, most works of the US government, such as reports produced by Congress and federal agencies, are in the public domain in the US. Many US states have similar legislation that places works of state government in the public domain.

Additional Resources

The Common Law Right to Information

<https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=2258&context=facpub>

Access to Electronic Court Records: An Outline of Issues and Legal Analysis

<https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/legal-issues.pdf>

Public Access to Civil Court Records: A Common Law Approach

<https://scholarship.law.vanderbilt.edu/vlr/vol39/iss5/6/>

The information provided in this document does not, and is not intended to, constitute legal advice; instead, all information, content, and materials are for general informational purposes only

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