

Sun Journal

December 15, 2017

Matthew Pollack, Executive Clerk
Maine Supreme Judicial Court
205 Newbury Street, Room 139
Portland, Maine 04101

Re: Recommendations presented to the court in the report of the Task Force on
Transparency and Privacy in Court Records
Comments by the Sun Journal, 104 Park Street, Lewiston, Maine 04243

Dear Mr. Pollack:

In 2014, when Chief Justice Leigh Saufley argued before the Legislature for \$15 million to create a public digital database to access court records, we cheered her on.

As she explained to lawmakers, “I can go online from anywhere and find the pending bills, the sponsors and committee assignments, the status of those bills, both in the committee and on the floor, the language of proposed amendments, committee hearing dates, and all written testimony.”

The Judicial Branch, she noted, seeks “nothing less for Maine people’s access to justice.”

It was a convincing argument and one in the public interest, and the Legislature agreed to spend \$15 million in public dollars to make it so.

But, what the Task Force on Transparency and Privacy in Court Records has recommended is far from the pitch made to the Legislature and, by extension, to the public.

We urge the Maine Supreme Judicial Court to reject the recommendations of the Task Force as presented based on principles of transparency, access and fairness.

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We support and echo comments submitted on behalf of the Maine Freedom of Information Coalition, on which the Sun Journal serves as a board member, on the points of: transparency

being the bedrock of our justice system; online access to court records would benefit the public; the risk of identify theft is without evidence; and the notion of “practical obscurity” is an unworthy argument. And, we support and echo comments of the Reporters Committee for Freedom of the Press on all points.

For these reasons, and for many others, we support public access to digital court records that are currently available in paper form — observing all hard-copy confidentiality rules and provisions in translating those records to digital form— in the public interest.

But, there’s really more to this than the basic yet precious principal of public access. There’s the very real value of having access to all court records across the state in digital form for academic research, for the media — and for the lawyers.

- In criminal cases, during many a sentencing phase, prosecutors and defense attorneys alike have wished aloud for access to statewide historic court records in order to prep sentencing recommendations. Knowing what sentences have been handed down in the past would help craft sentences now and in the future. Under the TAP recommendations, prosecutors will have the luxury of access to statewide sentencing history as a single agency under the Attorney General’s Office and on down to the various districts attorney offices. Defense attorneys, however, will not because their access will be limited to their own cases, not to all cases. That seems a very uneven and unfair way to handle sentencing research. Prosecutors get all; defendants get a sliver.
- The abundance of information available in court records is of tremendous value to researchers who may want to look at — for instance — the criminal side of the opioid crisis and its drivers: gender, geography, poverty, previous criminal background, addiction, what else? Hard to know without statewide digital access; TAP recommends that researchers might view dockets to see what pertinent records are available, but then would have to physically travel to all courts to access paper records, making researching this public health crisis through criminal records near impossible.

- From a media perspective, while digital access to court records would certainly make it easier and less expensive to perform our work, the more important point is that it would also make our work more accurate because we could see actual records from geographically-distant courts instead of relying on the interpretations of others who have seen the records and are called upon to comment. Greater accuracy better services the public, and is much more fair to defendants and plaintiffs alike.

- Please also consider the revenue stream that the TAP recommendations have left on the table. The media, academics, lawyers, the general public, can and do pay for public records contained in digital databases, both at the federal and state levels, and these processes produce revenue while reducing the workload of public employees.

If, for instance, a Sun Journal reporter were to read an online docket for an ongoing criminal case in the Androscoggin County Superior Court and — under the TAP recommendations — were then to hoof on down to the courthouse to access the records, a clerk would have to pull the file, monitor the access, make photocopies as requested, all the while interrupting the important work of the court. If that same reporter had access to the same records online, he would simply place an order for those records through a Sun Journal-registered account with the court, pay for the records and have instant access. Clerks would be spared the workload, and the court would collect the money.

This process works seamlessly at the federal level through PACER, where arguably personal financial, employment, health and family information is contained in any number of records without any increase in instances of identity theft, and at the state level through informe.org, where all manner of public records have been digitized and are available — again — without any increase in instances of identity theft reported in the two decades since its inception.

- And, finally, worth pointing out in the recommendations: words matter.

TAP persistently uses the word “broadcast” to support its position to overreach on digital privacy. Making digital records available by request is not broadcasting. Access would be by transaction

in which a person (perhaps a person with a registered account with a credit card on file) makes an active request for specific record stored on a digital shelf — which is, again, the same as the very workable and incident-free PACER and informe.org systems.

* * *

We couldn't agree more than when Chief Justice Saufley said, "The public deserves electronic access to its government."

It absolutely does.

But, if the recommendations of the Task Force on Transparency and Privacy in Court Records are adopted the public will be shut out of the very platform others will have access to.

Lawmakers and taxpayers were convinced to fund this project based on the assurance of public access, and to now deny that access is a direct affront to the public trust.

Sincerely,



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Sent by email: lawcourt.clerk@courts.maine.gov

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