

**STATE OF VERMONT
VERMONT SUPREME COURT
DECEMBER TERM, 2023**

**Emergency Order Replacing Order Promulgating Amendments to Rule 6(a), (b), and (c) of
the Vermont Rules for Public Access to Court Records**

Pursuant to the Vermont Constitution, Chapter II, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That the order promulgated on October 11, 2023, and effective on January 1, 2024, amending Rule 6(a), (b), and (c) of the Vermont Rules for Public Access to Court Records, be replaced with this order amending Rule 6(a), (b), and (c) as follows (new matter underlined; deleted matter struck through):

RULE 6. CASE RECORDS

(a) **Policy.** The public has access to all judicial-branch case records, in accordance with the provisions of this rule, except as provided in subdivision (b).

(b) **Exceptions.** The public does not have access to the following judicial-branch case records:

(1) Records and information which by statute, court rule, or other source of law, including by order of the court, are designated confidential, sealed, or expunged, or to which access is prohibited by a similar term. An appendix to this rule lists all statutes and court rules containing a prohibition or restriction on public access, existing on the date of promulgation of this rule, and a summary of the extent and terms of the prohibition or restriction. Annually before January 1 of each year the Court Administrator will update the list in the appendix.

(2) Records of the issuance of a search warrant and the warrant, including but not limited to the application, supporting affidavit(s), any testimony, and inventory, until the date filing of the return of the warrant, unless sealed by order of court pursuant to a motion filed under this rule; ~~and records of the denial of a search warrant, unless opened.~~ If a search warrant is denied, access is only by order of the court.

~~(3) Reports prepared by the Department of Corrections and furnished to the court concerning a decision to admit an inmate into a furlough program administered by the Department, except that the public has access to a summary of the contents of the report and the recommendation of the Department. Where the Department has not included a summary and recommendation in a separate section with the report, the report is subject to public access.~~

(4) 3) Any information collected from an individual that is created or received by a health-care provider, health plan, employer, or health-care clearinghouse, as defined in 42 U.S.C. § 1320d, that relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual; any ~~Evaluations~~ evaluations of competency to stand trial and/or sanity; and any reports of genetic testing filed in connection with a family division proceeding. If a record contains other relevant

information and the individually identifiable health information can be redacted, the filer must do so.

(~~5~~ 4) The information and supporting affidavits filed to initiate a criminal proceeding if the judicial officer does not find probable cause for all charges joined in the information pursuant to Rule 4(b) or 5(c) of the Rules of Criminal Procedure.

(~~6~~ 5) Information obtained from a person during his or her risk assessment or needs screening pursuant to 13 V.S.A. § 7554c.

(~~7~~ 6) The following financial information: any federal, state, or local income tax return; Records containing financial information furnished to the court in connection with an application to waive filing fees and service costs, not including the affidavit submitted in support of the application; and affidavits of income and assets as provided in 15 V.S.A. § 662 and Rules 4.0-4.2 of the Vermont Rules for Family Proceedings.

(~~8~~) Any federal, state, or local income tax return.

(~~9~~ 7) In a proceeding seeking an order of protection pursuant to 15 V.S.A §§ 1103, 1104, 12 V.S.A. §§ 5133, 5134, or 33 V.S.A. § 6931:

(A) a complaint and affidavit filed by plaintiff until the defendant has an opportunity for a hearing pursuant to 15 V.S.A. § 1103(b) or § 1104(b) or 12 V.S.A. § 5133(b) or § 5134(b). A temporary order of protection is publicly accessible. If the court denies temporary relief, and the plaintiff does not pursue the case, the complaint, affidavit, and order denying relief remain not publicly accessible. If the court denies temporary relief and the plaintiff files a notice of intent to pursue the case, the order denying temporary relief is not publicly accessible until the defendant has an opportunity for a hearing;

(B) information provided to the court for notification purposes including an address, telephone number, email address, or other contact information as provided by the plaintiff pursuant to V.R.F.P. 9(b) or V.R.C.P. 80.10(b), whenever provided, unless plaintiff has consented to public access to the information. For purposes of this subparagraph, public access includes access by the defendant or the defendant's lawyer;

(C) information provided to the court for notification purposes including an address, telephone number, or email address as provided by an unrepresented defendant pursuant to V.R.F.P. 9(g), whenever provided, unless defendant has consented to public access to the information. For purposes of this subparagraph, public access includes access by the plaintiff or the plaintiff's lawyer.

(~~10~~) Analysis of the DNA of a person if filed in connection with a family division proceeding.

(~~11~~) Affidavits of income and assets as provided in 15 V.S.A. § 662 and Rules 4.0-4.2 of the Vermont Rules for Family Proceedings.

(~~12~~) Records from a juvenile proceeding that are filed with the court or admitted into evidence in a divorce or parentage proceeding.

~~(13) A record created by a health or mental health professional that contains a description of a patient's health or mental health symptoms, the results of an examination or evaluation of the health or mental health of an individual, a descriptive diagnosis of the health or mental health of an individual, or a description of a course of medical or psychological treatment or recommended course of treatment of an individual.~~

(14 ~~8~~) The following personally identifying ~~data elements~~ information filed in a case record that is otherwise publicly accessible under these rules: (i) A social security number; (ii) A passport number; (iii) A taxpayer identification number; (iv) A financial account number, including a credit or debit card number; or (v) In a criminal case, the name of an alleged victim, who was a minor on the date of the offense. In lieu of a social security, passport, taxpayer identification or financial account number, the filer may include the last four digits of that number. In lieu of the name of an alleged minor victim, the filer may include the initials of the first and last name of the minor.

(15 ~~9~~) ~~Any records representing judicial~~ Judicial work product, including without limitation notes, memoranda, research results or drafts prepared by a judge or by other court personnel on behalf of a judge.

(16 ~~10~~) Records produced in discovery unless used at trial or in connection with a request for action by the court. Only the portion of the record used at trial or in connection with the request for action by the court is publicly accessible.

(17 ~~11~~) Any transcript, court reporter's notes, or audio or ~~videotape~~ video recording of a proceeding to which the public does not have access. Unless otherwise directed by the presiding judge, ~~data elements~~ information specified in Rule 6(b)(14 ~~8~~) that appears in a transcript of a public proceeding, or in reporter's notes or an audio or video recording of a public proceeding, need not be redacted from the transcript, notes, or recording before it is disclosed to the public.

(18 ~~12~~) Any evidence offered or admitted in a proceeding to which the public does not have access.

(19 ~~13~~) Any information provided in a potential juror's written responses to questionnaires related to jury service other than a juror's name and town of residence, absent a finding of good cause for disclosure of further information by the court. In assessing good cause, the court must weigh the public interest in the release of the information sought against any harm as a result of disclosure. All information contained in a juror questionnaire is available to the parties in a case in which the juror is being considered for service, except for supplemental information supplied to determine whether the individual meets the mental and physical demands of jury service for any individual who has been excused based upon that information. Attorneys and self-represented parties may make record reference to information contained in a juror questionnaire during jury selection and in the exercise of challenges, whether in open court or in individual and segregated circumstances. Disclosure may occur in such other aspects of proceedings as authorized by the court. Upon disclosure, such information becomes publicly accessible.

(20 ~~14~~) Motions for ex parte relief, including supporting materials and attachments, until issuance of, and in accordance with, the court's decision and order on the motion. Such records become public upon the court's decision and order unless all or some portion thereof is specifically designated by the court to remain publicly inaccessible consistent with Rule 9.

~~(21 15)~~ Records that are the subject of any motion made for purposes of seeking in camera review until issuance of, and in accordance with, the court’s decision and order on the motion. Such records become public upon the court’s decision and order unless all or some portion thereof is specifically designated by the court to remain publicly inaccessible consistent with Rule 9.

~~(22 16) Records containing trade~~ Trade secrets and other confidential business information, as defined in 1 V.S.A. § 317(c)(9) and 9 V.S.A. § 4601(3), and as required by 9 V.S.A. § 4605.

(17) Proposed exhibits prefiled with the court for the purpose of and prior to a trial or evidentiary hearing. Prefiled proposed exhibits offered or admitted into evidence are publicly accessible unless another exception in these rules applies.

(c) **Records Introduced into Evidence.** The exceptions to public access contained in Rule 6(b)(2), ~~(4 3)~~, and ~~(5 4)~~, ~~(8)~~, ~~(10)~~ or ~~(13)~~ and the exception to public access for federal, state, and local income tax returns contained in Rule 6(b)(6), no longer apply if the record covered by the exception is admitted into evidence by the court.

Reporter’s Notes—2024 Amendment

The amendments discussed herein are the result of a comprehensive review of the exceptions to public access contained in Rule 6. Certain exceptions were deleted because they did not reflect actual practice. Other exceptions have been combined by type. A general purpose of the amendments is to assist filers in determining whether a particular record must be redacted or filed separately pursuant to V.R.P.A.C.R. 7.

Rule 6(a) is amended to clarify that the rule applies to judicial-branch case records, as that term is defined in Rule 2.

There are three main categories of exceptions to public access to court records: case types that are not publicly accessible by statute, specified records that are exempted from public access by statute or other law, and information within a case record that is exempted from public access by statute or other law. Individual exceptions have been amended where necessary to clarify whether an exception is based on case type or is targeted at certain types of records or information within records.

Rule 6(b)(1) is amended to reflect that in some cases, it is information within a record, as opposed to the entire record, that is designated as confidential or otherwise exempt from public access. The provision is also amended to clarify that a record may be exempted by court order or through the process of sealing or expungement.

Rule 6(b)(2) is amended to clarify that records of the issuance of a search warrant include “related materials, such as the application, supporting affidavit and inventory.” In re Essex Search Warrants, 2012 VT 92, ¶ 16, 192 Vt. 559, 60 A.3d 707. The exception is also amended to clarify that motions to seal search warrants and related material are governed by the procedures and standards set forth in In re Sealed Documents, 172 Vt. 152, 772 A.2d 518

(2001), and related cases. Such motions are not subject to the procedure set forth in V.R.P.A.C.R. 9.

Former subdivision (b)(3) is deleted because it appears that the Department of Corrections does not provide furlough reports to the court. The remaining exceptions are renumbered to reflect this deletion and the other deletions discussed below.

Former paragraphs (b)(4), (10), and (13) all contained exceptions for individual medical or mental-health records or information. To simplify the rule, these health-related exceptions are combined into new paragraph (b)(3). New paragraph (b)(3) contains the provisions formerly listed in (b)(4), (10), and (13). The phrase “analysis of the DNA of a person” is amended to “reports of genetic testing,” consistent with the wording of the parentage statute. See 15C V.S.A. § 614 (stating that “[a] report of genetic testing for parentage is exempt from public inspection and copying under the Public Records Act”). In place of the court-created exception in former (b)(13), which addressed confidentiality of health and mental-health records, new paragraph (b)(3) incorporates the definition of “individually identifiable health information” from the federal Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320(d)(6), to make the exception consistent with existing laws protecting patient privacy that are broadly applicable and well known to practitioners. The provision clarifies that if the record contains relevant information other than the individually identifiable health information, the filer should redact the individually identifiable health information. As previously, the exception to public access contained in this provision no longer applies if the record is formally admitted into evidence. See V.R.P.A.C.R. 6(c).

Former paragraphs (b)(7), (8), and (11) all contained exceptions for certain financial information concerning an individual or corporation that may be submitted to the court. To simplify the rule, these exceptions are combined into new paragraph (b)(6), which contains all the provisions formerly listed in (7), (8), and (11). The removal of the words “[r]ecords containing” from the provision related to financial information submitted in support of applications to waive filing fees is not intended to alter existing law. Consistent with current practice, both the application and the affidavit remain publicly accessible.

Because the substance of former paragraphs (8), (10), (11), and (13) are incorporated into new paragraphs (b)(3) and (6), these paragraphs are deleted.

Former (b)(12), which made records of juvenile proceedings that are filed with the court or admitted into evidence in a divorce or parentage proceeding exempt from public access, is deleted as unnecessary because the Legislature has made such records not publicly accessible by statute. See 33 V.S.A. § 5117(c)(3) (“The public shall not have access to records from a juvenile proceeding that are filed with the court or admitted into evidence in the divorce or parentage proceeding or in the probate proceeding.”).

Former (b)(14) is renumbered as (b)(8). The term “data elements” is replaced with “information” to make the language consistent with other provisions of the rule.

Former (b)(15) is renumbered as (b)(9). The words “Any records representing” are removed to simplify the wording of the exception. The phrase “without limitation” is added to the definition of judicial work product to clarify that the listed examples are not exclusive.

Former (b)(16) is renumbered as (b)(10). The provision is amended to clarify that the use of a portion of a discovery record at trial does not make the entire record or records publicly accessible. Only the record or portion of a discovery record that is actually used at trial becomes accessible to the public. For example, the use of one interrogatory answer at trial does not make all interrogatory answers publicly accessible.

Former (b)(17) is renumbered as (b)(11). The phrase “audio or videotape” is amended to “audio or video recording” to reflect updates in courtroom technology. The phrase “data element” is replaced with “information” for consistency with wording throughout the rules.

Former (b)(18) is renumbered as (b)(12). The term “introduced” is amended to “offered or admitted” for clarity and to be consistent with the wording of new paragraph (b)(17).

Former paragraphs (b)(19) to (b)(21) are renumbered as (b)(13) to (15).

Former (b)(22) is renumbered as (b)(16). The phrase “Records containing” is deleted because the purpose of the exception is to target specific information. A record may contain both trade secrets and information that is otherwise publicly accessible. If a record contains otherwise publicly accessible information, the trade-secret information must be redacted if practicable.

New Rule (b)(17), exempting proposed prefiled exhibits from public access, is added. With the advent of the Judiciary’s electronic-case-records-management system and the increased use of remote hearings, many courts now require parties to electronically file proposed exhibits before the trial or evidentiary hearing at which the exhibits may be used. New Rule 6(b)(17) is added to clarify that prefiled exhibits are not publicly accessible until they are offered into evidence at the trial or evidentiary hearing. The rule does not change the status of records that are otherwise publicly accessible and does not apply to records attached in support of motions. For example, a record filed in support of a motion for summary judgment is ordinarily publicly accessible and remains so even if the same exhibit is later prefiled in anticipation of trial. Once a prefiled exhibit is offered or admitted into evidence, it is publicly accessible, unless some or all of it is separately made confidential by another provision in this rule or another source of law. If a prefiled exhibit contains

information that must be redacted under this rule or another source of law, it is the filer's responsibility to redact the information prior to filing the exhibit.

Rule 6(c) is amended to reflect that the exceptions contained in former paragraphs (b)(10) and (13) are now found within Rule 6(b)(3), and the exception contained in former (b)(8) is now found within (b)(6). The effect and scope of this provision are unchanged.

Former Location	Subject Matter	New Location
(1)	Records designated confidential by law	(1)
(2)	Search warrant records	(2)
(3)	Department of Corrections furlough reports	Deleted
(4)	Competency and sanity evaluations	Renumbered as (3)
(5)	Information and supporting affidavits filed to initiate criminal proceeding	Renumbered as (4)
(6)	Risk assessment/needs screening information obtained under 13 V.S.A. § 7554c	Renumbered as (5)
(7)	Financial information in application to waive filing fees and costs	Renumbered as (6)
(8)	Federal, state, or local income tax returns	Deleted and incorporated into new (6)
(9)	Complaint and affidavit seeking order of protection	Renumbered as (7)
(10)	DNA analysis in family division proceedings	Deleted and incorporated into new (3)
(11)	Affidavits of income and assets as provided in 15 V.S.A. § 662 and V.R.F.P. 4.0-4.2	Deleted and incorporated into new (6)
(12)	Juvenile proceeding records filed or admitted in divorce or parentage proceeding	Deleted
(13)	Health or mental health records	Deleted and incorporated into new (3)
(14)	Personally identifying information	Renumbered as (8)
(15)	Judicial work product	Renumbered as (9)
(16)	Records produced in discovery	Renumbered as (10)
(17)	Transcripts and other records of confidential proceedings	Renumbered as (11)
(18)	Evidence introduced in confidential	Renumbered as (12)

	proceedings	
(19)	Information in juror questionnaires	Renumbered as (13)
(20)	Motions for ex parte relief	Renumbered as (14)
(21)	Records subject to in camera review	Renumbered as (15)
(22)	Trade secrets	Renumbered as (16)

Note: New (17), governing prefiled exhibits, is added as part of these amendments.

6. That the amendments to Rule 6, as revised by this order, be prescribed and promulgated, effective on January 1, 2024. The Reporter’s Notes are advisory.

7. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 11th day of December, 2023.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice