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Reporters Committee censures Colorado courts' blanket file sealing

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Almost half of Colorado's 22 judicial districts have closed public access to domestic relations and probate files, saying that they must withhold confidential information contained within and do not have the administrative resources to redact the sensitive information from public files.

"While we sympathize with state courts that have financial difficulty managing the case files, the fact is the law presumes that citizens have a right of access to civil and criminal court records," said Reporters Committee Executive Director Lucy A. Dalglish. "Colorado officials must act swiftly to ensure the public maintains its ability to oversee the operations of the publicly funded system."

Ten judicial districts in Colorado sealed their records in response to an April 2005 Colorado Supreme Court Chief Justice Directive requiring courts to deny public access to confidential information in court records. Because the courts believed they did not have resources to redact the confidential information from the public files and the Directive creates an exception for courts that cannot do so "due to limited resources," each of the ten districts limits access to domestic relations and probate files to the parties and their attorneys. Third parties must get a party's permission or make a written request to the court to gain access to these records.

Colorado Supreme Court Justice Alex Martinez headed the Public Access Committee that issued a public access policy adopted by an April 2005 Supreme Court Directive.

The April 2005 Directive orders court administrators to seal material required to be withheld by state or federal law. The State Court Administrator's Office says that sealing confidential information such as social security numbers will help prevent identity theft and curb commercial requests by entities trolling for customers, though court officials know of no instances of criminals using Colorado court information to steal identities and do not track the number of requests commercial entities make for probate or domestic relations files.

Martinez told the Reporters Committee that the courts are "between a proverbial rock and a hard place in terms of access versus protecting private information and attempting to do that without the proper resources."

The Reporters Committee calls on the courts to revise their orders, and respectfully notes that administrative duties -- as costly as they may be -- are an aspect of the courts' First Amendment obligation to accommodate the public's access to court records.

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