

# FAQ

## Personal Identifying Information in Court Filings

(revised April 19, 2022)

Note: changes since previous version are highlighted.

### General Rules

#### **What is the general rule regarding protected Personal Identifying Information (PII)?**

MCR 1.109(D)(9)(a) provides that protected personal identifying information “shall not be included in any public document or attachment filed with the court . . . except as provided by these rules[.]”

#### **What are the court rules, orders, or standards that address protecting PII?**

MCR 1.109(D)(9) and (10), MCR 8.119(H), and Administrative Order 1999-4. AO 1999-4 requires SCAO to develop standards regarding PII. Those standards can be found in the [Records Management Standards](#) and the relevant sections are summarized [here](#).

#### **When are these court rules effective?**

April 1, 2022.

#### **What information is considered “protected” PII?**

Not all PII is protected. MCR 1.109(D)(9)(a) provides that the following PII is protected:

- i. Date of birth,
- ii. Social security number or national identification number,
- iii. Driver’s license number or state-issued personal identification card number,
- iv. Passport number, and
- v. Financial account numbers.

However, PII that is not protected under MCR 1.109 may still be redacted, or be made confidential or nonpublic under the procedures in MCR 1.109(D)(10)(c)(ii).

#### **How are “confidential,” “nonpublic,” and “redact” defined in the court rules?**

MCR 1.109(H) defines these terms as follows:

- “‘Confidential’ means that a case record is nonpublic and accessible only to those individuals or entities specified in statute or court rule. A confidential record is accessible to parties only as specified in statute or court rule.”
- “‘Nonpublic’ means that a case record is not accessible to the public. A nonpublic case record is accessible to parties and only those other individuals or entities specified in statute or court rule. A record may be made nonpublic only pursuant to statute or court rule. A court may not make a record nonpublic by court order.”
- “‘Redact’ means to obscure individual items of information within an otherwise publicly accessible document.”

## What about the rules to protect social security numbers?

Dissemination of social security numbers by the courts is restricted to the purposes for which its use is authorized by federal or state law. When a court receives a request for copies of any public document filed on or after March 1, 2006, the court must review the document and redact all social security numbers on the copy. This requirement does not apply to certified copies or true copies when they are required by law, or copies made for those uses for which the social security number was provided. MCR 1.109(D)(10)(b). See also AO 2006-2.

## How is protected PII included on SCAO-approved forms?

There are four ways that protected PII is handled on SCAO-approved forms:

1. **Removed from SCAO Forms.** Protected PII is sometimes removed from forms because the information is not statutorily required or necessary for case processing.
2. **Remain on SCAO Forms.** Protected PII will remain on forms when the forms are:
  - Confidential or used in nonpublic cases; and
  - Prepared or issued by the court for public cases that require protected PII for use by an agency, such as the Michigan State Police for LEIN entry. The court is *not* required to redact protected PII from these forms, nor use any of the MC 97 forms, when submitting this required information to another agency. The court may, however, need to redact the protected PII from these forms if review is requested by the public.

Under MCR 8.119(H), “[i]f a public document prepared or issued by the court . . . contains protected personal identifying information, the information must be redacted before it can be provided to the public, whether the document is provided upon request via a paper or electronic copy, or direct access via a publicly accessible computer at the courthouse.” Accordingly, the clerk must redact the protected PII from a document prepared or issued by the court before the document is made available to the public.

3. **Split SCAO Forms.** Some forms are split into Part 1 and Part 2. Part 1 includes protected PII and is sent to some other entity according to the law, but must not be maintained in the public legal file. Part 2 does not include protected PII and is maintained in the public legal file.
4. **MC 97 Filer Forms.** Some public court forms include a note for the filer to put protected PII on a nonpublic form that is filed along with the public court form. These nonpublic forms, MC 97, MC 97a, and MC 97b, allow a filer to submit required protected PII to the court without making that information available to anyone who later requests a copy of the court record. The MC 97 forms should only be used by filers – they are not intended for use by courts.
  - a. **MC 97, Protected Personal Identifying Information:** Used when the case involves only one person whose protected PII is needed on a court form (such as a personal protection action, delinquency proceeding, or a criminal case) and that person is the defendant, respondent, or decedent.

- b. [MC 97a, Addendum to Protected Personal Identifying Information](#): Used when more than one person’s protected PII is needed (such as a name change proceeding or a guardianship proceeding) or when the person is not a defendant, respondent, or decedent.
- c. [MC 97b, Protected Personal Identifying Information](#): Used with form [JC 04b](#) in child protective proceedings only.

### **Does a new MC 97/MC 97a need to be filed with every new filing that requires protected PII to be included?**

No, a new form is not required to be filed by the same filer if the information has already been provided to the court. The MC 97 forms act as a “key” to protected PII and are used the first time that protected PII needs to be filed with the court. Any future filings that include fields for protected PII by the same filer should not be included on the form but rather reference back to the original MC 97 form.

*Example:* The first time a filer needs to list the dates of birth (DOB) for multiple children, they must file MC 97a and identify the corresponding “Ref. No.” in the public document being filed. If DOB is required in a future filing, the filer would list the child’s name and identify the “Ref. No.” from MC 97a that was previously filed with the court.

## **PII Responsibilities**

### **What responsibilities do parties and attorneys have to protect PII?**

According to MCR 1.109(D)(10)(a), the responsibility for excluding or redacting protected PII from documents filed with or offered to the court rests solely with the parties and their attorneys. Under MCR 1.109(D)(9)(d)(i), the party waives the protection of PII as to the party’s own protected PII by filing it in a public document and not providing it in the form and manner established under this rule. A party or attorney who files the social security number of another person could be held in contempt under Administrative Order No. 2006-2.

### **What is the court’s/clerk’s office responsibility regarding protected PII?**

1. **Filed Documents:** The clerk of the court is not required to review, redact, or screen documents at the time of filing for PII, protected or otherwise, whether filed electronically or on paper. For a document filed with or offered to the court, except as otherwise provided in the court rules, the clerk of the court is not required to redact protected PII from that document before providing a requested copy or direct access via a publicly accessible computer at the courthouse. MCR 1.109(D)(10)(a). Nothing in this rule prevents the clerk of the court from redacting protected PII included on forms in violation of the rule when a request is made by the public to view the record, though it is not currently required by court rule.
2. **Documents Prepared/Issued by Court:** If a public document prepared or issued by the court, on or after April 1, 2022, contains protected PII, the information must be redacted

before it can be provided to the public, whether the document is provided upon request via a paper or electronic copy, or direct access via a publicly accessible computer at the courthouse. MCR 8.119(H). A court making a copy of a *filed* document does not mean the document is prepared or issued by the court.

3. **Public Websites:** All protected PII must be redacted if the public documents are provided through a publicly accessible website regardless of the filing date. This includes protected PII on a document submitted for filing with a court, or a court prepared or issued document. MCR 8.119(H).
4. **Social Security Numbers:** The court/clerk's office is still required to redact social security numbers on copies of documents filed on or after March 1, 2006, unless an exception applies. AO 2006-2; MCR 1.109(D)(10)(b).

### Protecting PII

#### **Can a court protect someone's protected PII if it is included in a document filed with the court?**

If a party includes protected PII on a document in violation of the court rules, the court may, upon motion or its own initiative, seal the improperly filed documents and order new redacted documents be prepared and filed. MCR 1.109(D)(9)(d)(ii). Nothing in this rule prevents the clerk of the court from redacting protected PII included on forms in violation of the rule when a request is made by the public to view the record, though it is not currently required by court rule.

#### **Can a party or person request that their PII be protected?**

1. **Protected PII:** Protected PII contained in a document and filed with the court shall be redacted by the clerk of the court on written request by the person to whom it applies. The request must be processed promptly, does not require a motion fee, and may be accomplished by using [form MC 97r, Request for Redaction of Protected Personal Identifying Information](#). MCR 1.109(D)(10)(c)(i). MC 97r shall be maintained in the case file as a nonpublic document.
2. **Non-Protected PII:** PII that is not protected under MCR 1.109 may also be redacted or made confidential or nonpublic upon filing of an ex parte motion by a party or a person whose PII is in a public document filed with the court. The person to whom the PII applies may file form [MC 97m, Ex Parte Motion to Protect Personal Identifying Information](#), to identify the type of protection sought. The court may schedule a hearing on the motion and must use form [MC 97o, Order Regarding Ex Parte Motion to Protect Personal Identifying Information](#), to either deny the request or grant the request after determining whether the individual's privacy interest outweighs the public's interest in the information. MCR 1.109(D)(10)(c)(ii).

Upon a finding of just cause, and on the court's own motion or a party's motion, the court may order that any PII (not just PII listed as protected under the rule) be made *confidential*. The order shall identify the party, person, or entity to whom access is

restricted. If a party's home address or telephone number is made confidential, the order shall designate an alternative address for serving documents on that party or provide an alternative telephone number for making contact with that party for purposes of case activity. MCR 1.109(D)(9)(b)(vii).

## Consent and Records Checks

### **Can people consent to allowing other individuals to view their protected PII?**

Yes. A party may stipulate **in writing** to allow access to his or her protected PII to any person, entity, or agency. Unless otherwise provided in the court rules, the stipulation must be presented to the court when trying to access the protected PII. MCR 1.109(D)(9)(b)(v)(A).

### **What about “Authorized Individuals”?**

MCR 1.109(D)(9)(b)(v)(B) directs the State Court Administrative Office (SCAO) to maintain a list of authorized individuals (“LAI”) who may access a party's date of birth contained in a court record for the purposes of verifying that particular person's identity **without** presenting a written consent or stipulation to the court.

To be placed on the LAI, individuals must do the following:

1. Identify the entity for which they work.
2. Make an assurance that each time they seek to verify a party's date of birth, it will be in the course of their work and that they or their client have that particular person's written consent.
3. Submit proof of their employer's or hiring entity's current professional liability insurance in effect during the period when an authorized individual will be seeking date of birth information from a court.

Authorized individuals must update their assurance with the SCAO every six months and their proof of professional liability insurance each year to remain on the LAI. Courts must verify the identity of anyone who claims to be an authorized individual by ensuring the name on the individual's state-issued identification matches the name on SCAO's LAI. Please note the LAI only applies to authorized individuals who are verifying date of birth information – it does *not* authorize access to other types of protected PII. The LAI is publicly-available on the [One Court of Justice website](#) and identifies each authorized individual's full name, employer/hiring entity, email address, and the expiration date of their assurance and proof of professional liability insurance. Authorized individuals will be added and removed from the LAI in real time, so please consult the webpage each time you verify the identity of an authorized individual. Downloading or printing the LAI may not reflect current information.

Individuals on the LAI are not required to use ICHAT or other means to verify date of birth information contained in the court file.

### **Can I require an “Authorized Individual” to physically appear at the courthouse to present their identification and obtain court records?**

No, courts should not require these individuals to physically appear at the courthouse. Administrative Order 1999-4 states “[c]ase records under MCR 8.119(D) must be made available

electronically to the same extent they are available at the courthouse, provided that certain personal data identifiers are not available to the public.” Additionally, MCR 1.109(D)(9)(b)(v)(B)(3) only requires the court to verify the identity of anyone claiming to be an authorized user “by ensuring the name on the individual’s state-issued identification matches the name in SCAO’s authorized user list.” The rule does not specifically require this verification be completed in person.

### **If an “Authorized Individual” is providing a copy of their state-issued identification to a court via email or fax, may they redact their own PII from the identification?**

Yes. Courts are required to verify the person’s identity, and the only way to do that is to cross-check the **name** on their state-issued identification with the name in SCAO’s LAI. MCR 1.109(D)(9)(b)(v)(B)(3). Additionally, SCAO posts the email address for all authorized individuals on the LAI. For their own privacy, some authorized individuals are redacting information from electronic copies of their state-issued identification, except for their name and photograph.

### **Can I charge for a record check?**

- **Access Fee:** No. A court may not charge a fee to access public case history information or to retrieve or inspect a case document. MCR 8.119(J)(1).
- **Reproduction Fee:** Courts may charge a reproduction fee (or “copy fee”) for a document pursuant to MCL 600.1988, except when required by law or court rule to provide a copy without charge. A court may only charge for the actual cost of labor and supplies, and the actual use of the system to reproduce the document. This per page fee is established in each court’s Access to Records local administrative order. This cost **does not** include any costs associated with purchasing or maintaining the system or technology used to store, retrieve, and reproduce the document. MCR 8.119(J)(2) and (4). This fee cannot be assessed for the electronic reproduction of documents by someone using their own electronic device under MCR 8.115(C).

### **Are courts required to complete private forms or worksheets submitted by companies when requesting a records check?**

No. Courts are not required to complete, fill out, or sign any private forms or documents submitted by a company or individual requesting a record check or court document. Courts must only provide access to records as required by MCR 8.119(H) and the court’s Access, Inspection, Reproduction, and Creation of Court Records Local Administrative Order. However, courts should make every effort to facilitate, streamline, and simplify access to records authorized under the court rules.

For more information about PII in court filings, please [contact your Regional Administrative office](#).