

D R A F T
FOR DISCUSSION ONLY

Redaction of Personal Information from Public Records Act

[Proposed new title: Redaction of Judicial Officer Personal Information Act]

Uniform Law Commission

June 12, 2024 Informal Session



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By
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ON UNIFORM STATE LAWS

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Redaction of Personal Information from Public Records Act

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Redaction of Personal Information from Public Records Act

Table of Contents

Prefatory Note 1
Section 1. Title 5
Section 2. Definitions..... 5
Section 3. Scope..... 7
Section 4. Redaction Procedure 8
Section 5. Appeal of Denial of Access 11
Section 6. Uniformity of Application and Construction 11
[Section 7. Repeals; Conforming Amendments] 11
Section 8. Effective Date 12

1 **Redaction of Personal Information from Public Records Act**

2 **Prefatory Note**

3 State governments owe a variety of duties to their citizens and residents. For example, the
4 business of the state is typically carried out through legislative and administrative activities such
5 as proceedings and recordkeeping. These activities generally are open and accessible to
6 encourage transparency and accountability in government actions. States also owe citizens
7 protection against harm, non-discrimination in laws, and an ability to exercise their rights, among
8 other duties.

9
10 Most states have redaction laws, giving a wide range of officials and citizens an
11 opportunity to have various pieces of personal information redacted from otherwise publicly
12 accessible records. Numerous state legislative proposals in recent years, both new legislation and
13 amendments to existing systems, highlight the on-going concern about the ease with which
14 personal information can be found through public records. Bringing clarity and uniformity to the
15 public record redaction process, within a constitutional framework, is an important reason for the
16 ULC to consider drafting this act.

17
18 Ensuring a secure judiciary is part of the basic obligation of the state to protect its
19 citizens. A secure judiciary helps shield the integrity of the judicial system and furthers the rule
20 of law by reducing threats against judges that could impact their decisions. The objective of the
21 drafting committee is to write an act that allows some modest level of security to judicial
22 officers—judges—by making certain personal information unavailable via redaction from
23 publicly accessible electronic public records. By redacting personal information, the possibly
24 violent actions of a person acting irrationally against a judge can be allayed by the time and
25 access barriers imposed by limited electronic information. It is anticipated that the necessity of
26 actually traveling to a governmental office to obtain the information from unredacted records,
27 and the potential of being identified as the individual who seeks the information, will allow the
28 heat of passion to cool. However, by redacting information in the name of security, potential
29 conflicts with governmental openness and information access have been identified. Resolving
30 these conflicts is the challenge facing the Drafting Committee.

31
32 In the process of drafting this text, the following set of issues arose that identified the
33 questions faced by the Drafting Committee. These issues will form the main focus of the
34 Informal Session:

- 35
- 36 1. whether the project is sufficiently limited in scope to address First Amendment
 - 37 issues;
 - 38 2. whether a state’s limitation of access to information in its possession restricts freedom
 - 39 of expression;
 - 40 3. if a state’s limitation of access to information in its possession does restrict freedom
 - 41 of expression, can the reason for the restriction withstand strict scrutiny; and
 - 42 4. whether the project, as narrowed for First Amendment purposes, provides enough
 - 43 value to support enactment.

1 The Drafting Committee seeks input during the Informal Session on the sense of the
2 Commission as to how to resolve these questions. Depending on the comments and conversation
3 during the Informal Session, this draft act may be moved forward in its present state, amended
4 and moved forward, returned to the Drafting Committee for further consideration, or tabled.
5

6 **What this Act Does**

7 This act provides a level of protection between an individual who is or was a judicial
8 officer and someone seeking the judicial officer’s personal information. Using state-determined
9 procedures, a judicial officer can request redaction—removal—of certain personal information
10 from electronic public records. At no time is access to the unredacted public record unavailable,
11 but physically visiting the appropriate governmental entity’s office is necessary to consult the
12 unredacted public record. The category of officials who may request redaction is restricted to
13 judicial officers. The type of information that can be redacted is narrowly defined. Procedures
14 are not specified, leaving significant state discretion in implementation. The draft act balances
15 judicial officer safety with public access to information.
16

17 Redacting information from publicly accessible records creates a time barrier; the longer
18 someone has to think about carrying out a threatening or violent act, the expectation is that they are
19 less likely to do so. Time to calm down and realize the potential consequences of threats or
20 violence is important. This is an extremely limited but very important approach to providing
21 protection to key government officials.
22

23 It is important to note that nothing in this draft act prohibits the use of any legally,
24 legitimately obtained information. The draft act does not criminalize the use of legally obtained
25 information.
26

27 **Why Judges?**

28 The judicial system—the court—is the final stop in resolving legal disputes.
29 Determinations of what really happened in a given situation and what should be done about it are
30 made in court. Determinations of whether a person committed a crime and what the punishment
31 should be are made in court. Resolutions of child custody disputes, property questions, probate
32 and inheritance issues, business controversies, civil rights, and countless other matters are made
33 in court. The judicial system is integral to maintaining order and protecting the rule of law—the
34 bedrock of the US constitutional system of government.
35

36 Judges are the faces of the court and the judicial system; they are high profile and easily
37 identified. Citizens come in contact with judges in very personal and impactful ways. Judges
38 preside over court procedures and trials, determining due process and litigants’ rights. Judges
39 ultimately decide “winners” and “losers,” not always to the agreement of litigants or the public.
40 To a great extent, the work of judges shapes and determines the public’s attitudes about the court
41 system, the justice system, and the rule of law.
42

43 Because of their clear role in deciding controversies and high visibility, judges can be
44 particularly susceptible to attempts to influence their actions or retribution for their decisions,

1 including by threats of violence. A judge who willingly or unwillingly accedes to a threat
2 damages the integrity of the judicial system and the rule of law. Known threats against judges
3 and court personnel are being tracked in several jurisdictions. Statistics from the Texas Office of
4 Court Administration showed 87 threats against court personnel in 2023.¹ Connecticut judges
5 have received nearly 80 threats since 2016.² New York investigated “a total of 485 judicial
6 threats, inappropriate communications, and other incidents” in 2023.³ In South Dakota, Supreme
7 Court Chief Justice Steven Jensen reported that “40 threats to judges were reported in 2023, with
8 two “credible” threats to the lives of judges.”⁴ Washington State reported a 63.2% increase in
9 threats to judicial staff from 2017 to 2021 (collection of statistics began in 2017).⁵ Indiana’s
10 Judicial Conference reported that “[a]lmost every judicial officer in the state could attest to at
11 least one incident of violence or viable threat of violence directed toward that judicial officer or a
12 close colleague.”⁶

13
14 The citizenry must have faith in the integrity, the honesty, and the fairness of the judicial
15 system for it to work. Judicial officers need protection both at work and in their personal lives.
16 There is a compelling government interest in protecting the judicial system and its officers.

17 18 **Why redaction?**

19 Plans for making courthouses more secure have long been available. Several reputable
20 organizations have produced courthouse security plans, including the National Center for State
21 Courts (NCSC) and the Conference of Chief Justices/Conference of State Court Administrators.⁷
22 The NCSC also offers security assessments of court buildings and personal security and safety
23 training programs. Recommendations from these organizations are visible at courthouses around
24 the country: restricted entrances, visitor ID checks, metal detectors and x-ray machines, locked
25 corridors, elevators that only stop at certain floors or are operated by ID cards, security guards,
26 restricted parking and entrances for judges, and similar measures have brought a degree of
27 security to those who work in and visit court facilities. In particular, these plans help provide
28 security for judicial officers at their place of work.

29
30 But states are challenged to offer protection to individual judges away from the
31 courthouse. Whether at their homes or driving their cars, judges are vulnerable to identification,

¹ “Texas Court Reported Security Incidents Fiscal Year 2023 Summary of Statistics.”

² [Connecticut News Junkie, Legislature Considers New Felony for Threatening Judges \(3-15-23\)](#).

³ [Bloomberg Law, “Shell-shocked” Courts Review Security as Threats Increase \(1-8-24\)](#).

⁴ [South Dakota Unified Judicial System, 2024 State of the Judiciary](#).

⁵ [Washington, Washington Courts Incident Reports 2020-22](#) .

⁶ [Judicial Conference of Indiana, 2020 Forward: Strategic Plan for the Next Decade](#) (“Almost every judicial officer in the state could attest to at least one incident of violence or viable threat of violence directed toward that judicial officer or a close colleague.”)

⁷ See [“Steps to Best Practices for Court Building Security.”](#) (2016) The Courthouse: A Guide to Planning and Design, “[Security](#),” and “[Steps to Best Practices for Court Building Security](#)” and the “[Court Security Resource Guide](#)” sub-site, all from NCSC. See [Court Security Handbook - Ten Essentials Elements for Court Security and Emergency Preparedness](#) from the Conference of Chief Justices .

1 stalking, and potential harm.⁸ While the financial burden on a jurisdiction to provide round-the-
2 clock security for its present and former judicial officials would be crushing, states can provide
3 some security in the face of threats by making it harder to find a judge’s residence or identify the
4 judge’s vehicle.

5
6 Redaction of personal information is a process that is completely within the state’s
7 control. The draft act should be no- or low-cost in implementation. It is a small step but useful in
8 helping deter violence against judges. Redaction of the personal information of judicial officers
9 from electronic public records means that a disgruntled litigant, an overwrought family member,
10 a violent citizen, or anyone thinking irrationally in the aftermath of court proceedings is not able
11 to identify judicial residences or vehicles on the spur of the moment. The necessity of traveling
12 to a government office to access unredacted records may well be enough of a burden to allow for
13 a cooling-off period for a heated state of mind.

14
15 Redaction is a common process in states across the country. Almost every state has a
16 process by which some of an individual’s personal information can be removed from publicly
17 accessible records. This is, admittedly, a small step; the widespread availability of information
18 on the internet makes it unlikely that personal information such as addresses, phone numbers,
19 and car license plate numbers can be completely hidden. But making it more difficult to find this
20 information through searching electronic public records while sitting at home can mitigate some
21 degree of threat and danger. The extra step of going to the seat of government, requesting certain
22 information, and possibly providing identifying information on a form, imposes a small but real
23 burden to help deter crimes.

24 **Conclusion**

25
26 Bringing the credibility and reputation of the Uniform Law Commission to a carefully
27 tailored redaction process is a way to assist state governments in carrying out their duty of
28 protection to key state officials. Many states are discussing this issue or have some level of
29 redaction already but there is no uniformity in approach or procedures. The ULC can help by
30 bringing standardization and clarity to state laws, a priority of the Commission.

31
32 Redaction of information from public records brings with it constitutional issues. A
33 highly limited redaction law such as that proposed here is a modest step but one that should be
34 Constitutionally acceptable, given the competing state interests. This draft act helps states reduce
35 their risk of Constitutional challenges by providing some guidance on how to offer some security
36 to judges.

37
38 Providing access to redaction of personal information in electronic public records to
39 judicial officers only does not mean that other state officials are less important or less deserving
40 of protection from the state. There is no lack of concern about other state officials or citizens.
41 This draft act is a recognition of the role of judges in the integrity of the entire system of
42 government and the preservation of the rule of law. This is a limited step where recent history of
43 violence is a matter of great concern.

⁸ Julie Kocurek, [“I’m a Texas judge. A defendant shot me. That shouldn’t happen.”](#) (Opinion), Houston Chronicle, March 26, 2024 (paywalled).

1 **Redaction of Personal Information from Public Records Act**

2 **Section 1. Title**

3 This [act] may be cited as the Redaction of Personal Information from Public Records
4 Act. [Proposed new title: Redaction of Judicial Officer Personal Information Act.]

5 **Section 2. Definitions**

6 In this [act]:

7 (1) “Custodian” means a governmental entity with the duty under law of this state
8 to take custody of or maintain a record.

9 (2) “Electronic” means relating to technology having electrical, digital, magnetic,
10 wireless, optical, electromagnetic, or similar capabilities.

11 (3) “Electronic public record” means an electronic record that a custodian makes
12 generally accessible, without restriction, to the public.

13 (4) “Governmental entity” means a state or local governmental subdivision,
14 agency, or instrumentality of this state.

15 (5) “Judicial officer” means an individual who is or was appointed or elected to
16 hear and decide legal matters in a state or local court of this or another state. The term does not
17 include an individual who is or was appointed to hear and decide legal matters in a federal court.

18 (6) “Person” means an individual, estate, business or nonprofit entity, or other
19 legal entity. The term does not include a governmental entity.

20 (7) “Personal information” means an individual’s name together with the
21 individual’s:

22 (A) home address or property parcel number of any residence;

23 (B) personal phone number;

1 (C) driver license number; or

2 (D) license plate number.

3 (8) “Public record” means a record as defined in [cite to state’s freedom of
4 information act or similar statute].

5 (9) “Record” means information:

6 (A) inscribed on a tangible medium; or

7 (B) stored in an electronic or other medium and retrievable in perceivable
8 form.

9 (10) “Redaction” means removal of personal information. “Redact” has a
10 corresponding meaning.

11 (11) “State” means a state of the United States, the District of Columbia, Puerto
12 Rico, the United States Virgin Islands, or any other territory or possession subject to the
13 jurisdiction of the United States.

14 **Legislative Note:** *A state may insert its own definition of custodian, for example as found in its*
15 *freedom of information act or similar statute.*

16
17 *A state may clarify the definition of judicial officer by listing specific job titles used for its*
18 *judicial officers, for example noting that “trial and appellate court judges,” “special court*
19 *judges,” “Supreme Court justices,” “magistrates” or “magistrate-judges” are specifically*
20 *included.*

21
22 *A state may insert its own definition of personal information, for example if there is a standard*
23 *or known term used in other state legislation.*

24
25 *A state should insert its own definition of public record as found in its freedom of information act*
26 *or similar statute.*

27

28

Comment

29 Several definitions used in this act are standard in Conference acts, including
30 “electronic,” “person,” “record,” and “state.” These words, so defined, have been used in other
31 acts promulgated by the Conference, including notably the Uniform Electronic Transactions Act
32 (UETA), which has been adopted by 49 states, the District of Columbia, and the U.S. Virgin

1 Islands. (The definition of “state” in UETA includes a second sentence regarding Indian tribes
2 and Alaskan villages that is not part of this act’s definition.) The use of these terms in the same
3 manner in several acts leads to a consistency within the laws of each state adopting the several
4 acts, in addition to the sought-after uniformity among states.
5

6 The definition of “custodian” anticipates that an already-existing governmental entity has
7 been charged to maintain the electronic public record from which redaction of personal
8 information is sought. It may be that a governmental entity will need to appoint a custodian—an
9 office or an individual—to maintain specific records. The custodian is the governmental entity
10 responsible for the implementation of this act. Even if the governmental entity contracts out for
11 the creation or maintenance of a database, the custodian retains responsibility.
12

13 The definition of “electronic public record” clarifies the type of record covered by this
14 act. The definition of electronic public record is a combination of already-existing ULC
15 definitions of “electronic” and “record” with the state’s definition of “public record.”
16

17 The definition of “governmental entity” means a unit, subdivision, or agency of the
18 government at any level, state-wide, county, or local, and includes special districts, political
19 subdivisions, and all other organizing units of government. The reference to “instrumentality” in
20 the phrase “governmental subdivision, agency, or instrumentality” includes a corporation or
21 other entity created by a government.
22

23 The definition of “judicial officer” is narrowly written to include only those elected or
24 appointed to hear and decide legal matters in a state or local court. The definition intentionally
25 excludes administrative law judges, which are not officers of the judicial branch of government
26 and whose work is typically considered quasi-judicial in nature. Federal judicial officers are
27 similarly excluded; the federal government has statutes and processes that cover the federal
28 judiciary. Judicial officers from a state other than the enacting state are included in the [act’s]
29 coverage; if a judicial officer from another state has personal information in the public records of
30 the enacting state, for example the address or parcel number of a residence, that judicial officer
31 may seek redaction of that personal information. As noted in the comments to Section 4 of this
32 act, a state may require proof that any applicant for redaction is or was a judge via presentation
33 of a certificate of election, commission, or appointment.
34

35 The definition of “public record” will be supplied by each state, using the definition
36 found in the state’s freedom of information act, sunshine law, or public records, open records,
37 open public records, governmental records or similar statute. However the public records are
38 referred to, the key elements include that the record is required to be kept or maintained by a
39 governmental entity and made generally accessible to the public.
40

41 “Redaction” means removing or obscuring information. Redaction in this act applies only
42 to the specified personal information in the record, not the entire record. Redacted information
43 can be returned to the record, unlike information that is expunged or otherwise deleted
44 permanently.
45

46 **Section 3. Scope**

1 (a) This [act] applies to a judicial officer’s personal information in an electronic public
2 record.

3 (b) This [act] does not affect the application of [cite to state’s freedom of information act
4 or similar statute].

5 **Comment**

6 This act is narrowly tailored to apply only to very specific personal information of a
7 narrow category of state officials—judicial officers. Information about judicial officers other
8 than that listed in this act can be requested under the state’s existing freedom of information act
9 or similar legislation.

10
11 This act only applies to electronic public records that can be accessed remotely by any
12 person with a computer, tablet, or cell phone and an internet connection. This act does not apply
13 to tangible or electronic public records available at the governmental entity’s offices; those
14 records remain unredacted and may be accessed as described in state procedures.

15
16 This act supersedes any common law right of access to government records.

17
18 **Section 4. Redaction Procedure**

19 **Option 1**

20 (a) An individual who is or was a judicial officer may request redaction of personal
21 information in an electronic public record.

22 (b) The request must be in writing and:

23 (1) affirm that the individual is or was a judicial officer;

24 (2) specify the personal information to be redacted;

25 (3) specify the electronic public record from which the information should be
26 redacted; and

27 (4) be submitted to the custodian.

28 **Option 2**

29 (a) An individual who is or was a judicial officer and has a specific articulable reason to

1 believe there is a threat to the individual’s physical safety may request redaction of personal
2 information from an electronic public record.

3 (b) The request must be in writing and:

4 (1) affirm that the individual is or was a judicial officer;

5 (2) state the personal threat to the individual’s physical safety;

6 (3) specify the personal information to be redacted;

7 (4) specify the electronic public record from which the information should be
8 redacted; and

9 (5) be submitted to the custodian.

10 **End of Options**

11 (c) The custodian shall redact the personal information not later than [10] days after the
12 request.

13 (d) The request is [not a public record] [exempt from disclosure] for the purpose of [cite
14 to state’s freedom of information act or similar statute].

15 (e) Redaction of personal information from an electronic public record under this section
16 continues for [one year] and thereafter the custodian must restore the personal information to the
17 electronic public record unless the judicial officer submits a new request under this section.

18 (f) If there is any change to the personal information of the judicial officer in the
19 electronic public record, the judicial officer may submit a new request under this section for
20 redaction of the personal information that changed.

21 (g) A judicial officer whose personal information is redacted from an electronic public
22 record under this section may request restoration of the redacted personal information by
23 providing notice in writing to the custodian. On receipt of the notice, the custodian shall restore

1 the personal information to the electronic public record under this section.

2 **Legislative Note:** Two options are presented because of the constitutional questions raised in the
3 drafting session. In Option 1, no showing of threat is required for a judicial official to have
4 personal information redacted. The status of being a judicial officer is sufficient. The
5 constitutional issue raised is that of the Richmond case--a threat to a class of individuals is not
6 adequate to meet strict scrutiny.

7
8 In Option 2, the judicial official must have a “specific articulable reason” to fear for the judicial
9 official’s physical safety. This may be a more constitutionally sound approach with its narrowly
10 tailored grounds to avoid arbitrary and capricious charges of a First Amendment violation,
11 including the requirement that the applicant must sign an affidavit. However, this option does
12 not account for the reportedly anecdotal situation that the most dangerous threats come from
13 those who are not readily identifiable or even known to the judicial officer until they act.

14
15 Subsection (d) recognizes that, under either option, an enacting state must decide how to
16 designate the redaction request within its existing disclosure laws to ensure confidentiality. The
17 choices in Subsection (d), that the redaction request is “[not a public record]” or is “[exempt
18 from disclosure]” are not mutually exclusive. The information in a redaction request will include
19 the personal information for which redaction is sought. In Option 2, the request will likely
20 contain the name of a threatening person, information from law enforcement agencies describing
21 a threat, or specific events that lead to the articulable threat against the judicial officer. Because
22 of the nature of this information, the redaction request must remain confidential or there is no
23 benefit to the redaction process.

24
25

Comment

26 In either option, an enacting state determines the specifics of the procedures for
27 implementing the act. This preserves state discretion and authority and allows the state to
28 conform the redaction request procedures with any other, similar state processes. In any event,
29 the burden is on the judicial officer to identify which record(s) and what personal information is
30 to be redacted.

31

32 Efficiency and clarity in redaction procedures would be enhanced if the state’s
33 administrative court office or other centralized office develops a form or checklist for a judicial
34 officer’s redaction request. A form or checklist would also aid in the ministerial process of
35 redaction. There should be some kind of oversight or review of the redaction request to ensure its
36 completion; if Option 2 is adopted, the enacting state review may choose to include a
37 determination of the sufficiency of the threat relied upon.

38

39 The following items are among the procedural details the state should consider including
40 in its redaction request procedures:

41

- 42 • The number of days the custodian has to redact the information;
- 43 • The amount of time (months? years?) a redaction is in effect;
- 44 • The point at which redaction becomes effective, for example when the request is

1 submitted properly, when the request is received by the custodian, or when the
2 redaction actually occurs. This determines when a subsequent redaction request must
3 be made or when the redacted material is restored to the electronic public record;
4 • How redacted material is restored to the electronic public record;
5 • Whether a judicial officer must provide proof of status, for example by submitting a
6 commission, certificate of election, official appointment letter, or other proof of
7 office.
8

9 **Section 5. Appeal of Denial of Access**

10 A person that is denied access by a custodian to personal information redacted from an
11 electronic public record under this act may file an appeal. The procedure for appeal is governed
12 by [cite to state’s administrative procedure act, freedom of information act or similar statute].

13 *Legislative Note: The state determines the specific appellate procedure used to appeal denial of*
14 *access to personal information redacted from an electronic public record. No new bureaucracy*
15 *or procedures are recommended.*
16

17 **Comment**

18 An enacting state determines how an appeal of denial of access to redacted information is
19 handled. The appeal is not whether the information was redacted properly; redaction is a
20 ministerial act with no discretion. The appeal is whether the person requesting redaction did not
21 qualify for redaction (that is, the person is or was not a judicial officer) or there was no
22 articulable threat.
23

24 There is no need to create a new bureaucracy or a new procedure for appeals; the default
25 should be to an already existing appellate procedure such as in the state’s administrative
26 procedure act, freedom of information act, or similar statute. Some modification of the existing
27 procedure may be necessary. Using an existing state framework promotes efficiency and state
28 discretion and autonomy.
29

30 **Section 6. Uniformity of Application and Construction**

31 In applying and construing this uniform act, a court shall consider the promotion of
32 uniformity of the law among jurisdictions that enact it.

33 **[Section 7. Repeals; Conforming Amendments**

34 (a) . . .

35 (b) . . .]

1 **Legislative Note:** *A state should examine its statutes to determine whether conforming revisions*
2 *are required by provisions of this act relating to [state freedom of information act or similar*
3 *legislation, judicial privacy or safety acts, or similar legislation].*

4
5

Comment

6 An enacting state may place this act in a government code or a courts or judiciary code or
7 similar statutory unit rather than the state freedom of information act (or similar legislation) to
8 reduce any possible confusion between the provisions of the several statutes.

9

10 **Section 8. Effective Date**

11 This [act] takes effect . . .

12

Comment

13 Additional time may be needed beyond the usual date of effectiveness of its statutes for a
14 state to prepare policies and procedures to redact judicial officer personal information, restore
15 redacted personal information, provide for appeals of denial to access to redacted materials in
16 electronic public records, and identify and implement all necessary infrastructure for this act.