

# But isn't that confidential?

*A conversation about court “data” related to crime victims.*

Suzanne Elwell, Office of Justice Programs  
Minnesota Alliance on Crime webinar  
September 26, 2018

# Agenda

---

- Introduction
  - Why a court data presentation?
  - Goals of presentation
  - What do we mean by court “data”
- Data conversation
  - Rules, statutes, specific examples, and practices

# Why a court data presentation?

---

- There are misunderstandings regarding the protections on victim information.
- Advocates need to know what information in court records is accessible to the public so they can better assist the victims they work with.
- It's complicated, confusing, and confounding.

# Goals

---

- Gain a basic understanding of the accessibility by the public of victim information in case records.
- Become familiar with the court rules and statutes that apply to victim information.
- Understand strategies available to protect victim information or minimize the impact on victims.

# What do you mean by court “data”?

## Case record information

- Submitted petitions, motions, pleadings, and forms submitted by the parties (trial court level and appellate level)
- Information submitted by others (e.g. court services personnel)
- Orders of the court
- Categorization of case record (e.g. sealed, confidential)
- Information in the Register of Actions

# Register of Actions

## REGISTER OF ACTIONS CASE No. 27-CR-18-10435

State of Minnesota vs CHARLES EDWARD KENNEDY

Case Type: Crim/Traf Mandatory  
Date Filed: 04/25/2018  
Location: Hennepin Criminal/Traffic/Petty  
Downtown

### PARTY INFORMATION

Defendant **KENNEDY, CHARLES EDWARD**  
2526 JAMES AVE N  
MINNEAPOLIS, MN 55411

Male  
DOB: 08/25/1965

Lead Attorneys  
**ARNAV KRISHNA DUTT**  
Public Defender  
612-596-7781(W)

Dawn Knutson  
612-673-2164(W)

Jurisdiction **State of Minnesota**  
NONE

### CASE INFORMATION

Charges: **KENNEDY, CHARLES EDWARD**

1. Domestic Assault-Misdemeanor-Intentionally Inflicts/Attempts to Inflict Bodily Harm on Another
2. Domestic Assault-Misdemeanor-Commits Act to Cause Fear of Immediate Bodily Harm or Death
3. Disorderly Conduct - Offensive/Abusive/Boisterous/Noisy/Obscene
4. Theft-Take/Use/Transfer Movable Prop-No Consent
5. Theft-Indifferent to Owner Rights

Statute	Level	Date	Disposition	Level of Sentence
609.2242.1(2)	Misdemeanor	04/25/2018	06/11/2018 Dismissed	
609.2242.1(1)	Misdemeanor	04/25/2018	06/11/2018 Dismissed	
609.72.1(3)	Misdemeanor	04/25/2018	06/11/2018 Dismissed	
609.52.2(a)(1)	Misdemeanor	04/25/2018	06/11/2018 Dismissed	
609.52.2(a)(5)(i)	Misdemeanor	04/25/2018	06/11/2018 Dismissed	

### EVENTS & ORDERS OF THE COURT

#### DISPOSITIONS

05/02/2018 **Plea** (Judicial Officer: Peralta, Nelson L.)  
1. Domestic Assault-Misdemeanor-Intentionally Inflicts/Attempts to Inflict Bodily Harm on Another  
Not guilty

# Today's focus

## Victim identifying information

- Name, home address, work address, phone, age/DOB, and other information that might identify a victim.
- **Not including** financial related (tax, banking, business accounts, etc.) or “restricted identifiers” (e.g. partial or full SSN, employer identification number, partial financial account numbers). There is no public access to this information.

# Applicability of MGDPA

The Minnesota Government Data Practices Act (chapter 13) governs “government entities,” which does not include the judiciary.\* (Minn. Stat. § 13.90)

The judicial branch has its own set of rules related to data which govern access to court data by the public.

\*With some exceptions, e.g. court services data (Minn. Stat. § 13.84).



# MGDPA – Impact of court process

---

Data classified as private or confidential under the MGDPA may be made public through filings or presentation/testimony in open court.

**Example: Law enforcement data contained in complaints, discussion of probation violation reports or assessments of the defendant during court proceedings.**

# Victim identification

The only provision that places a protection on a victim's identity applies to minor victims of criminal sexual conduct in criminal cases (not including 5<sup>th</sup> degree).

Identifiable information related to victims (adult and minors) in cases involving other charges comes under the presumption that it is accessible to the public.

Rule of Pub. Access 4, subd. 1(m)(1); Minn. Stat. § 609.3471

# Presumption

---

## General Policy Regarding Access to Court records

All records of the courts and court administrators **are presumed public** and open to the public for inspection or copying.

Court records are accessible to the public unless there is a court rule, statute, or court order that provides otherwise.

# Public access to records

---

Look to two main online sources for guidance:

The Rules of Public Access to the Records of the Minnesota Judicial Branch govern access by the public to court records.

The limitations on public access to case records are summarized in a table on the Minnesota Judicial Branch (MJB) website.

# How do people access case records?

## Minnesota Public Access (MPA) – Remote View

- Remote access by **public** at a computer outside the courthouse.

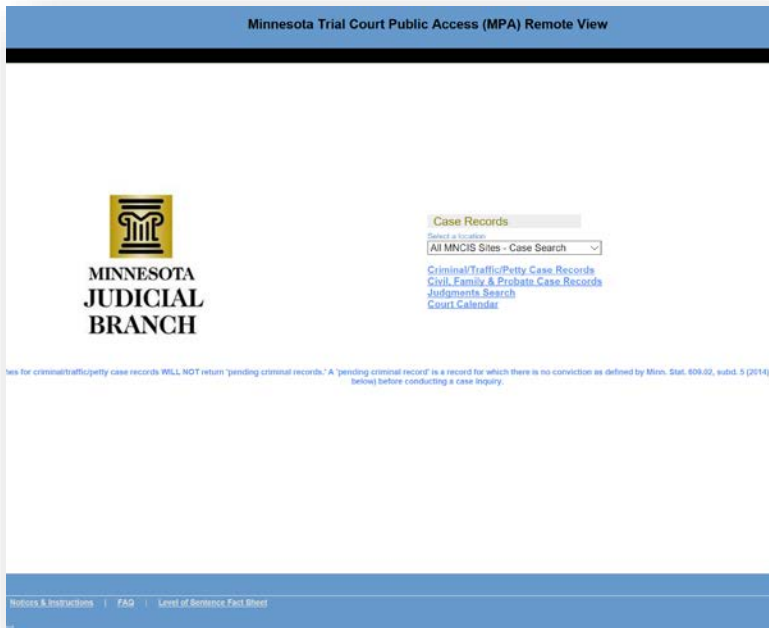
## Minnesota Public Access (MPA) – Courthouse View

- Access by **public** using computer at the courthouse

## Minnesota Government Access (MGA) – Remote View

- Remote access to court records by **government subscribers**.

# MPA – Remote View



# MPA – Remote View

A person accessing MPA remotely can access public records, with some limitations, including:

- (1) a name search will not yield cases that are “pending” (for which there is no conviction);

*Note: a person can look up a pending criminal case using the specific case number.*

- (2) information which identifies the victim or from which the identity of the victim can be ascertained is not displayed.
- (3) there is no access to court documents; and
- (4) the public cannot access OFP and HRO cases.

Rule of Public Access 8, subd. 2, governs remote access to case records. Limitations on remote access can be found at the end of the [table](#) guide on the MJB website summarizing public access to case records.

# MPA – Remote View


---

Court documents are currently not viewable in MPA Remote View, however, the register of actions (a listing of case activity) will indicate what documents have been filed, including confidential documents.



# MPA – Courthouse View

Minnesota Trial Court Public Access (MPA) Courthouse View



MINNESOTA  
JUDICIAL  
BRANCH

MANDPS-JPI

View ID

\*\*\*\*\*

Password

Sign On

been identified where some name searches are returning an error message. Searches for criminal/traffic/property case records exclude all Hennepin County payable citations except: 1) those that result in a court appearance; and 2) (in the link below) before conducting a case inquiry.

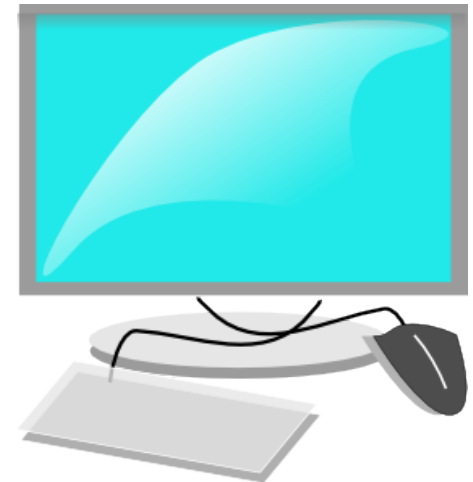
[Instructions](#) | [FAQ](#) | [Level of Sentences Fact Sheet](#)



# MPA – Courthouse View

A person going to the courthouse and using the terminal in the public area will be able to access MPA-Courthouse View, which includes all public court data and viewable links to public court documents.

A victim's name may appear in this view in court notes and public documents.



# Remote View vs. Courthouse View

## MPA – Remote View

OTHER EVENTS AND HEARINGS	
04/25/2018	Tab Charge E-Filed
04/26/2018	Arraignment (10:30 AM) (Judicial Officer Peralta, Nelson L.) Result: Held
04/26/2018	Application for Public Defender Index # 1
04/26/2018	Bail Study Index # 2
04/26/2018	Order Granting Public Defender Index # 3 (Judicial Officer: Peralta, Nelson L.)
04/26/2018	Order for Conditional Release Index # 4 (Judicial Officer: Peralta, Nelson L.)
04/26/2018	Interim Condition for KENNEDY, CHARLES EDWARD
	- Stay a reasonable distance away from victim's residence
	- No contact with victim(s)
	- Remain law-abiding
	- Make all future court appearances
	- Post bond with conditions \$1,000.00
	- Post Bond without conditions \$10,000.00
	- Cash alternative with conditions \$100.00
04/27/2018	Law Enforcement Notice of Release and Appearance Index # 5
05/02/2018	Pre-trial (10:00 AM) (Judicial Officer Kappelhoff, Mark) Result: Held
05/02/2018	Notice of Hearing Index # 6
05/02/2018	Tab Charge Index # 7
05/02/2018	Demand for Jury Trial Index # 8
06/06/2018	Witness List Index # 9
06/06/2018	Notice of Evidence and Identification Procedures Index # 10
06/06/2018	Notice of Intent to Impeach Index # 11
06/11/2018	Jury Trial (8:30 AM) (Judicial Officer Kappelhoff, Mark) Result: Held
06/11/2018	Cash Bond Ordered Refunded Index # 12 (Judicial Officer: Peralta, Nelson L.)

## MPA – Courthouse View

OTHER EVENTS AND HEARINGS	
04/25/2018	Tab Charge E-Filed
04/26/2018	Arraignment (10:30 AM) (Judicial Officer Peralta, Nelson L.) Result: Held
04/26/2018	Application for Public Defender Index # 1
04/26/2018	Bail Study Index # 2
04/26/2018	Order Granting Public Defender Index # 3 (Judicial Officer: Peralta, Nelson L.)
04/26/2018	Order for Conditional Release Index # 4 (Judicial Officer: Peralta, Nelson L.)
	Victim Info- Pub 2
04/26/2018	Interim Condition for KENNEDY, CHARLES EDWARD
	- Stay a reasonable distance away from victim's residence
	- Stay away from a three-block radius except with a police escort.
	- No contact with victim(s)
	Name
	- Make all future court appearances 5-2-2018 @ 10 am
	- Post bond with conditions \$1,000.00
	- Post Bond without conditions \$10,000.00
	- Cash alternative with conditions \$100.00
04/27/2018	Law Enforcement Notice of Release and Appearance Index # 5
05/02/2018	Pre-trial (10:00 AM) (Judicial Officer Kappelhoff, Mark) Result: Held
05/02/2018	Notice of Hearing Index # 6
05/02/2018	Tab Charge Index # 7
05/02/2018	Demand for Jury Trial Index # 8
06/06/2018	Witness List Index # 9
	State's Witness List
06/06/2018	Notice of Evidence and Identification Procedures Index # 10
	Rule 7.01 Notice
06/06/2018	Notice of Intent to Impeach Index # 11
	Impeachment Notice
06/11/2018	Jury Trial (8:30 AM) (Judicial Officer Kappelhoff, Mark) Result: Held

# MGA - Government Access

Government agencies have the ability to access court records remotely. The extent of access depends on the specific agency.

- Some MGA users can only see public information and documents
- Some designated government subscribers, like prosecutors and public defenders, have access to certain confidential documents relevant to their work.

See: [Minnesota Government Access \(“New MGA”\) Confidential Document Access](#) on the MJB website.

# OFP & HRO – Pre-service

Court records related to OFP and HRO petitions are not accessible by the public until after the respondent has been served.

- After service, court records related to OFP and HRO petitions are accessible to the public.
- If a petition for an OFP is denied or withdrawn, the petition is not accessible to the public or the respondent named in the petition.

Rule of Pub. Access 4, subd. 1(a), Minn. Stat. § 13.80.

# OFP – Confidential address

The petitioner in an OFP proceeding can request that their address be identified as “confidential” in court records and documents. [Minn. Stat. § 518B.01, subd. 3\(b\)](#)

**What happens to addresses on other case records?**

# OFP – Confidential address

- The confidential address applies only to the case in which the request is made.
- If a person had a court case **prior to** the OFP filing, the addresses associated with those prior cases will not be changed to confidential.
- The granting of the request for a confidential address to be used in an OFP case **does not extend to future cases.** (Current address will be used.)

# Safe at Home Address

SAH participants must provide their SAH address (which is a P.O. Box and a lot number) for any criminal or civil cases they become involved in after they enroll in the program.

**What happens to addresses on other case records?**



# Safe at Home Address

When a case is filed, the court data system automatically updates the “party record” (if one exists because of prior involvement in a criminal or civil case) to include the SAH address.

**Important:** Court documents from other cases that might list the person’s physical address **will not be** changed (e.g. motions, court hearing notices, service of process, etc.).

# VIS and PSI – publicly accessible?

**YES**

**VICTIM IMPACT  
STATEMENT**

Minn. Stat. § 611A.038

**NO**

**VICTIM INPUT  
INTO PSI**

Minn. Stat. §§ 611A.037,  
609.115, 609.2244, Minn.  
R. Crim. P 27.03, subd.  
1(B)(5).

# DANCOs

---

A DANCO is a public court order. There are no statutory or rule provisions for protecting the name of the protected party(ies) or addresses in a DANCO.

# Name change

---

Name change records are accessible by the public.

Victims can submit an affidavit when filing their petition to request that the name change case be confidential or sealed. The affidavit must state the reasons for the request. The court has the ability to order that the case be confidential or under seal.

*Witness protection program?*

# HIV test request

A victim can make a confidential request that the offender convicted of a CSC or other certain offenses in which there has been exposure to bodily fluids be ordered to undergo an HIV exam.

The prosecutor's motion is considered *in camera* and any information related to the request, the test order, and the test results may not appear in any court record.

# Appellate records

---

Appellate documents (like motions and briefs) are public.

**Practice issue:** Under, Rule of Civil Appellate Procedure 112.03, parties are required to “take reasonable steps to prevent the disclosure of confidential information” in otherwise publicly accessible documents submitted on appeal.

# Practices

- Criminal complaints - Prosecutors
  - Use pseudonyms like “Child 1” or “Victim 1.” (Required for minor CSC victims; permitted for other victims.)
- Civil filings - Parties
  - Use pseudonyms and be mindful of information included in petitions, motions, etc.
  - There are some protections in dissolution, custody, and support matters to seal records to protect welfare of the child.
  - Option of filing motion to have a document deemed confidential or sealing a record (but must have a basis to do so).

# Practices

---

## Court personnel

Rule 8, subdivision 2(b):

Recommends that court personnel preparing judgments, orders, appellate opinions and notices limit the disclosure of party address and telephone numbers, and information that either specifically identifies the individual or from which the identity of the individual can be ascertained, to what is necessary and relevant for the purposes of the document.



# Identifying information

## MPA - Remote Access

Does not display “information **which identifies** the victim or from which the identity of the victim **can be ascertained.**”

## Minor CSC victims

Data which “**specifically identifies** a victim who is a minor” in court records not accessible to the public.

# Identifying information

## Types of identifying information

- Name, initials, age/DOB
- Home address, work address
- Employment title, employer name
- Relationship to offender (spouse, niece, grandchild, employee, neighbor, patient, parishioner, student)

*Combination of these?*

*Depends on the location?*

# What does “confidential” mean?

A confidential document means a document that will not be accessible to the public, but will be accessible to court staff and, where applicable, to certain governmental entities as authorized by law, court rule, or court order.

Rule of General Practice 14.01(a)(1)

Note: Not the same meaning as under MGDPA.

# What does “sealed” mean?

---

A document that is not accessible to the public but will be accessible to court staff with only the highest security level clearance.

Rule of General Practice 14.01(a)(9)

# Making a record confidential/sealed

---

Can't I just write "confidential" on the top of my document?



# Making a record confidential/sealed

## When Documents May Be Filed as Confidential or Under Seal

A party may submit a document for filing as a "confidential document" or "sealed document" only if one of these circumstances exists:

- (a) The court has entered an order permitting the filing of the particular document or class of documents under seal or as confidential.
- (b) This rule or any applicable court rule, court order, or statute expressly authorizes or requires filing under seal or as confidential.
- (c) The party files a motion for leave to file under seal or as confidential not later than at the time of submission of the document.

The court may require a filing party to specify the authority for asserting that a filing is a "confidential document" or "sealed document."

# Making a record confidential/sealed

- Determine if there is a statute or rule that governs the document or record in question. If not, prepare an explanation for why the court document or record should be confidential or sealed.
- Prepare a motion to the court requesting that document or record be sealed or deemed confidential.
- Submit that motion prior to or with the document.

# Making a record confidential/sealed

## E-Filing

With e-filing system, person filing a document has the responsibility to identify a document as confidential, and identify on what basis within the court rules, statute, or a court order that it should be designated as confidential or under seal.

## Filing in Person

Same process: Person filing a document has the responsibility to identify a document as confidential, and identify on what basis within the court rules, statute, or a court order that it should be designated as confidential or under seal.



# Making a record confidential/sealed

Seek guidance from court administration staff.

Follow up with court administration after submission of motion.



Star Tribune, April 3, 2017

# Making a record confidential/sealed

## TIMING

**Documents:** A request to make a specific document confidential must be done before or at the same time as the time the document is filed. A request cannot be made after the document is filed.

**Case:** A request to make the entire case confidential can be done at any time.

And finally . . .

---

QUESTIONS?

# Contact Information

44



## **Suzanne Elwell, Director**

Crime Victim Justice Unit

651-201-7312

[suzanne.elwell@state.mn.us](mailto:suzanne.elwell@state.mn.us)

Office of Justice Programs

Minnesota Department of Public Safety

445 Minnesota Street, Suite 2300

St. Paul, MN 55101-1515

651-201-7300 • 888-622-8799

[ojp.dps.mn.gov](http://ojp.dps.mn.gov)