

## **How to Apply for Copies of Exhibits – Supreme Court of Western Australia**

The Court has the power in both its civil and criminal jurisdictions to allow third parties, including the media, access to court records. This policy relates to the power to allow the Court to release copies of documents, audio visual recordings or images tendered in evidence in civil and criminal cases (exhibits).

In criminal cases, the power is contained in the *Criminal Procedures Rules 2005* rule 51 (“CPR”). The *Criminal Investigation Act 2006* section 121 makes it an offence to broadcast all or part of a recording of an interview between a suspect and a police officer. Section 122 permits the Court to give directions as to the supply and broadcast of an audiovisual recording of an interview. This policy applies to applications for such directions, where the interview has become an exhibit.

In civil cases, the power is contained in the *Supreme Court Rules 1971* Order 67 rule 11 (“SCR”). In each case, the power may be exercised by a Judge or Registrar (“Judicial Officer”) and, in certain cases, by the Court’s Media Manager.

The Court will determine each application on a case-by-case basis. Issues which will be considered in determining if it is appropriate to release an exhibit include the victim’s interests and privacy, such as whether publication of the exhibit has the potential to embarrass or humiliate a victim (or a witness), whether the exhibit is of a graphic nature, whether the exhibit identifies a child, police undercover operative or protected witness; and whether proceedings or other related investigations are finalised.

### **Applications**

1. An application for an exhibit is to be made in writing, including by email.
2. The application should set out:
  - The matter number.
  - Where there is a current hearing, the name of the Judicial Officer presiding and the location of the hearing.
  - Specific details to identify the exhibit sought to be released, for example, exhibit number.
  - The grounds on which the application is made.
  - Whether the application is being made on the basis that any exhibit released will be pooled with any other media outlets and, if so, the name of those outlets.
  - Any relevant publication deadlines.
3. The application should be addressed and sent to the Court as follows:

<b>Type of application</b>	<b>Addressee</b>	<b>Fax</b>	<b>Email</b>
Criminal – Current trial or sentencing	Associate to presiding Judge	Perth: 9221 4436	Associate to Judge – <a href="#">see website</a>  cc:

			<a href="mailto:courttranscriptsc@justice.wa.gov.au">courttranscriptsc@justice.wa.gov.au</a>
Criminal – other	Principal Registrar	Perth: 9221 4436	Associate to Principal Registrar – <a href="#">see website</a> cc: <a href="mailto:courttranscriptsc@justice.wa.gov.au">courttranscriptsc@justice.wa.gov.au</a>
Civil – current trial	Associate to presiding Judge	Perth: 9221 4436	Associate to Judge – <a href="#">see website</a> cc: <a href="mailto:courttranscriptsc@justice.wa.gov.au">courttranscriptsc@justice.wa.gov.au</a>
Civil - other	Principal Registrar	Perth: 9221 4436	Associate to Principal Registrar – <a href="#">see website</a> cc: <a href="mailto:courttranscriptsc@justice.wa.gov.au">courttranscriptsc@justice.wa.gov.au</a>

4. Applications should have a reference line as follows:

**Release of exhibits – [case number] – [plaintiff/ accused name] – [Hearing details]**

For example:

**Release of exhibits – INS 1234 of 2010 – Jones - Trial before Justice Smith**

5. The Judicial Officer dealing with the application may require the applicant to notify interested persons of the application (see CPR r 51(4) (b)) and will also determine the costs associated with the application (CPR r 51(6B), SCR r 67(11)).

### **Criminal jurisdiction**

1. The Court will not usually release exhibits during a trial, at least not until the point in time where the jury has returned a verdict. Prior to that, the jury requires access to the exhibits as part of its deliberation processes. There is also the obvious risk of media reporting of the trial referring to the released material in a way which may impact on the jury's deliberation.

2. Where the application is made in the course of a trial, up to and including any sentencing, the request is to be made to the associate to the trial Judge. Contact details for associates are provided on the Court's [website](#).

3. If the application is made after trial, including any sentencing, it should be addressed to the Principal Registrar.

4. Media organisations are encouraged to send their request to the Court as soon as they identify an exhibit to which they would like access. The Court will endeavour to deal with the request so that if release is appropriate, it can be arranged as soon as possible, usually either immediately after the verdict has been handed down or after sentencing. Note: where an accused has been convicted after trial, the Court's preference is to release copies of exhibits immediately following the conclusion of the sentencing hearing, allowing time to copy the exhibits in between the end of the trial and the sentencing.

5. If there are no circumstances in which the Judge would release the information, then the Judge, through their associate, will advise the applicant of that decision.

If the Judge is of the view that it may be appropriate to release the exhibit, then the Judge may inform counsel either in open court or through their associate that a request has been made to determine whether the prosecution or the defence have any objections to the exhibit being released.

This approach will also apply to an application made to the Principal Registrar.

6. Where an exhibit is to be released, the Court will if practicable make copies of the exhibit. This may not be possible at circuit locations, which may mean that release cannot be made until the Judge has returned to Perth.

Where an exhibit requires editing prior to release, the Court will need to be satisfied that there is a process in place for this to occur, without compromising the exhibit. The Court will also need to be satisfied that editing the exhibit is practicable. An example is where the prosecutor or police media unit is able to provide edited or pixellated video footage using a copy exhibit.

7. Where one media organisation has been granted leave to inspect or obtain a copy of an exhibit, the Court's media manager may grant an oral application for access to the same material (CPR r51 (2), (3A)).

### **Civil jurisdiction**

Applications to access exhibits are to be made in accordance with the procedure set out above.