

3.3 Access to Information, Records and Things Held by the Court

1. The legislation relating to access, and the procedure for applying for access, to information, records and other things held by the Court differs according to the type of proceedings.
2. Access to information, documents and other things held by the Court involves balancing three competing principles: open justice, privacy and practicality.
3. Any person using the Court's website may access any information and records on the website, if the website is being used lawfully (O 67B r 11(1)).
4. Any person who is an authorised user of the Court's electronic case management system (ECMS) may access information or records related to a proceeding if the ECMS, when used lawfully, allows access (O 67B r 11(2); see also Practice Direction 1.1.4 - Registration as an authorised user of the ECMS).

General Division (Civil proceedings and General Division Appeals) and Court of Appeal proceedings

5. The regimes for access to information, records and other things held by the Court are contained in O 67B of the Rules.
6. The regimes differ depending on whether the person seeking access is a party or a non-party to a proceeding in which the information, record or other thing held by the Court is sought. In the case of non-parties, the regimes also differ depending on whether or not the person seeking access is a media representative; and whether the proceeding was commenced before 1 March 2018, or on or after 1 March 2018 (see O 67B r 2(1), (2) and O 67B Div 7; see also the further discussion below).
7. Order 67B of the Rules does not apply to certain types of documents: subpoenaed records (O 67B r 2(3)(a)(i)); records not formally admitted into evidence as an exhibit or marked for identification (O 67B r 2(3)(a)(ii)); information, records or things no longer held by the Court (O 67B r 2(3)(b)); administrative records sent or received by the Court (O

67B r 2(3)(c)(i)); documents not filed (O 67B r 2(3)(c)(ii)); and documents which are not part of an index or other record of all cases in the Court (O 67B r 2(3)(c)(iii)).

8. Order 67B of the Rules does not affect any right to be given access to information or a record or a thing that a person has under any other legislation (O 67B r 3).
9. It should be noted that O 67B does not prevent the Court from releasing, on its own initiative, any information, record or thing to any person, on any terms and conditions and in any manner, it thinks fit (O 67B r 4). The Court may also make an order on its own initiative, or on the application of any person, to restrict access (O 67B r 5).

Parties to a proceeding

10. Divisions 1 - 6 and 8 of O 67B of the Rules apply to any party to a proceeding seeking access to information or a record or any other thing held by the Court, whether or not due to a court order.
11. The general rule is that unless a party's access is restricted, the party is entitled to access:
 - (a) the information listed in the Tables in O 67 r 6 of the Rules;
 - (b) a filed document;
 - (c) a list of exhibits;
 - (d) an exhibit;
 - (e) a list of things tendered but not admitted into evidence;
 - (f) any of the things on that list in the previous sub-par; and
 - (g) transcript (O 67B r 7).
12. A party's access may be restricted by legislation or an order made by any court in Australia (O 67B r 7(1)).

13. A party who seeks access to information or a record or any other thing held by the Court that is not listed at par 11 above may only have access to it with the permission of the Court (O 67B r 8).
14. Order 67B r 9 specifies when the Court may give permission for access and the matters that will be taken into consideration in determining whether to grant access to a party.

Non-parties to a proceeding commenced before 1 March 2018

15. The rights of a non-party seeking access to information or a record or other thing held by the Court in respect of a proceeding commenced before 1 March 2018 are set out in O 67B Div 7.
16. A non-party is entitled, where no legislation prevents it and upon payment of any prescribed fee, to inspect and be given a copy of a writ; a statement of claim; an originating application under the *Corporations Act 2001* (Cth); an appeal notice; a judgment; or an order, in respect of a proceeding commenced before 1 March 2018 (O 67B r 16).
17. Any other filed document not referred to in par 16 above may only be accessed with the leave of the Court or a registrar (O 67B r 16(1)(e)).
18. An application for leave should be made by letter addressed to the Principal Registrar, and need not be served on any person. It should describe clearly the filed document the subject of the application; the proceeding in which the document was filed; and the reasons why access is sought. It should be emailed to the associate: Associate.Principal.Registrar@justice.wa.gov.au, and copied to the Supreme Court Registry: central.office@justice.wa.gov.au.
19. An application for leave will be taken to be an interlocutory application in the proceeding, even though the applicant is a non-party to that proceeding. The application for leave will be a filed document in the proceedings and will be visible to all parties via the ECMS. The application for leave may be the subject of a non-party application for access.

Non-parties to a proceeding commenced on or after 1 March 2018

20. The general rule is that unless a non-party's access is restricted, a non-party is entitled to access the information listed in the Tables in O 67B r 6 of the Rules.
21. A non-party to a proceeding is only entitled to access additional information to that referred to at par 20 above if given permission by the Court or the media manager (O 67B Div 4) (see further discussion below in relation to applications to the media manager).
22. Order 67B r 9 specifies when the Court may give permission for access and the matters that will be taken into consideration in determining whether to grant access to a non-party.
23. If the thing the non-party seeks to access is an exhibit, copy of an exhibit or an exhibit list, further information is available on the Court's [website](#).

Non-party applications made to the media manager

24. The media manager is the person who, on behalf of the Court, manages its relations with media organisations (O 67B r 1).
25. A media representative is a person who is employed by a media organisation, such as a newspaper, radio, television or internet news website that does and has as its principal purpose the dissemination of news or information (O 67B r 1).
26. Order 67B r 10 provides when the media manager may give permission to access information, and what matters will be taken into consideration in determining whether to grant access. In particular, if one media representative has been given permission, and another media representative (who is not a party or an employer of a party) subsequently makes an application, the media manager must grant permission on the same terms and conditions (O 67B r 10(3), (4)).

When an oral application for access may be made

27. A person may only make an oral application to the Court for access if the person is entitled to the information under O 67B Div 3 (that is, if there is no restriction on access, and the information is of a type referred to in pars 11 or 20 above, as those pars apply to parties or non-parties) and there is no fee payable in respect of the application (O 67B r 11(7)).
28. A media representative may apply orally to the media manager for access if entitled to the information under O 67B r 6 (that is, the information referred to above in par 20 that is available to non-parties as a right) (O 67B r 11(8)).
29. A media representative must give the media manager the case number of the proceeding in which the information sought is held by the Court (O 67B r 11(8)). The contact details for the media manager are available on the Court's [website](#).
30. If a non-party seeks access to an exhibit, copy of an exhibit or an exhibit list, further information about making an application is available on the Court's [website](#).
31. Every application must be made in accordance with O 67B r 11. In particular, the applicant must clearly describe the information, record or thing to which access is sought; and the proceeding to which it relates.

When a written application for access may be made

32. If a person seeks access to information under O 67B Div 3 or 4, and there is a fee payable in relation to the application, the application **must** be made by a letter to the Principal Registrar, except where the document sought is a transcript. Where a person seeks access to transcript, see par 35 below.
33. A person **may** also apply for access by a letter to the Principal Registrar where they seek access to information under O 67B Div 3 and no fee is payable in respect of the application. However, they may also make an application orally in those circumstances (see pars 27 - 31 above).
34. Applications by a letter addressed to the Principal Registrar should be emailed to the associate:
Associate.Principal.Registrar@justice.wa.gov.au, and copied to the

Supreme Court Registry: central.office@justice.wa.gov.au. If there is a prescribed fee, the fee must accompany the letter (O 67B r 11(10)). The Credit Card Payment Authority form at Practice Direction 1.2.3.2 should be used.

35. Written applications for transcript must be made using the application for transcript form on the Court's [website](#). The application is to be emailed to the Court Transcript Officer at courttranscriptSC@justice.wa.gov.au. If the applicant is entitled to access transcript or permission is granted to obtain a copy of the transcript, it will be provided once the applicable fee has been paid.
36. If a non-party seeks access to an exhibit, copy of an exhibit or an exhibit list, further information about making an application is available on the Court's [website](#).
37. The application will be taken to be an interlocutory application in the proceeding, whether or not the applicant is a party to the proceeding (O 67B r 11(4)). The application will be a filed document in the proceeding and will be visible to all parties via the ECMS. The application may be the subject of a non-party application for access.

General Division (Criminal) and Single Judge Appeal proceedings

38. The power to allow parties and non-parties access to information, records and other things held by the Court is contained in the *Criminal Procedure Rules 2005 (WA) (CPR)*.
39. There are provisions of the *Criminal Procedure Act 2004 (WA) (CPA)* and *Criminal Investigation Act 2006 (WA) (CIA)* that also apply to the release, or prohibition on the release, of information, records or things held by the Court.

Entitlements and access to transcript - parties

40. An accused is entitled to receive, free of charge and as soon as it is available, one copy of the record, or of the certified transcript of the record, of any proceedings directly concerning him or her (CPR r 43(1)).
41. The Office of the Director of Public Prosecutions (DPP) is entitled to receive, free of charge and as soon as it is available, one copy of the

- record, or of the certified transcript of the record, of any proceedings in which the DPP is involved (CPR r 43(2)).
42. During a criminal trial, as soon as it becomes available, any electronic record (or the certified transcript of the record) will be emailed to each accused and the DPP. For this to occur, each accused and the DPP must provide to the associate to the judge hearing the trial an email address to which they want the transcript sent. The email address should be provided as early as possible in the proceeding.
 43. Any questions about the availability or collection of transcript during trial should be directed to the associate to the judge hearing the trial. The contact details for the associates to judges of the Court can be found on the Court's [website](#).
 44. To obtain a copy of any transcript pertaining to a criminal hearing that is not a trial, a party that is entitled to receive that transcript should apply using the application for transcript form on the Court's [website](#), which is to be emailed to the Court Transcript Officer at courttranscriptSC@justice.wa.gov.au.
 45. A party may apply to a registrar of the Court for additional copies of the record or the transcript to which the party is entitled (CPR r 43(3)). A registrar may determine the cost of the additional copies. The copies will be provided once the applicable fee has been paid (CPR r 43(4)). The Credit Card Payment Authority form at Practice Direction 1.2.3.2 should be used.

Entitlements and access to transcript – non-parties

46. A non-party may apply to the Court to inspect or obtain a copy of the record, or the certified transcript of the record, of any criminal proceeding (CPR r 51(1)).
47. There is one circumstance in which an application for transcript by a non-party may be made orally to the media manager. That is where the non-party applicant is an employee of a media organisation (as defined in CPR r 51(1A)) and the Court has already granted permission to another such person to inspect or obtain a copy. The media manager may grant the application if satisfied that the Court has already granted permission to another employee of a media organisation to inspect or obtain a copy,

but must otherwise refuse the application (CPR r 51(2)). The contact details for the media manager are available on the Court's [website](#).

48. In all circumstances other than that referred to in par 47 above, a non-party must apply to the Court using the application for transcript form on the Court's [website](#). The application is to be emailed to the Court Transcript Officer at courttranscriptSC@justice.wa.gov.au. The application may be dealt with by a judge or registrar (CPR r 51(4A)). Should the non-party be granted permission to obtain a copy of the transcript, it will be provided once the applicable fee for supplying the copy has been paid (CPR r 51(6B)). There is no fee for supplying a copy of transcript required for the purposes of a child sexual abuse action or a claim under the National Redress Scheme (CPR r 51(6C)). The non-party should indicate on the application for transcript form that the application is for one of those purposes.

Entitlements and access to exhibits and copies of exhibits

49. The DPP has a duty under Pt 4 Div 4 of the CPA to disclose to an accused person confessional materials, evidentiary materials and other documents that may assist the accused's defence, prior to trial. Those disclosed materials and documents may become exhibits if the matter goes to trial and they are tendered as evidence by the DPP.
50. Section 170 of the CPA provides for the retention and release of exhibits by the Court. Every exhibit tendered in evidence in the Court must not be released by the Court to any person until at least 31 days after the day on which the matter is determined or dismissed, except-
 - (a) under an order of the Court;
 - (b) where the Court considers the exhibit is dangerous to retain (in which case the Court may dispose of it or release it to a person who is entitled to custody of it);
 - (c) where the Court considers it is impractical or inconvenient to retain the exhibit (in which case the Court may release it to a person who is entitled to custody of it); or

- (d) where the Court considers that it is necessary for a person who is entitled to custody of an exhibit to have use of it (in which case the Court may release it to that person).
- 51. After 31 days the Court may release an exhibit to a person who in the Court's opinion is entitled to custody of it, or the Court may require the person who tendered it in evidence to collect it (CPA s 170(5)).
- 52. Rule 51 of the CPR empowers the Court to allow non-parties, including the media, to access copies of exhibits. Under the CIA s 121, it is an offence to broadcast all or part of a recording between a police officer and a suspect, unless the broadcast is under a direction of the Court. Section 122 of the CIA permits the Court to give directions as to the supply and broadcast of an audio-visual recording of an interview.
- 53. Further information on the relevant legislation; the Court's policy on releasing exhibits and copies of exhibits to non-parties; and how a non-party may make an application for access to an exhibit or copy of an exhibit, is available on the Court's [website](#).

Other information, records or things held by the Court

- 54. Rule 51(1) of the CPR empowers the Court to allow non-parties, including the media, to inspect or obtain a copy of any other record in the possession of the Court, including documents in both paper and electronic form.
- 55. There is one circumstance in which an application for records by a non-party may be made orally to the media manager. That is where the non-party applicant is an employee of a media organisation (as defined in CPR r 51(1A)) and the Court has already granted permission to another such person to inspect or obtain a copy. The media manager may grant the application if satisfied that the Court has already granted permission to another employee of a media organisation to inspect or obtain a copy, but must otherwise refuse the application (CPR r 51(2)). The contact details for the media manager are available on the Court's [website](#).
- 56. In all circumstances other than that referred to in par 55 above, a non-party must apply to the Court in writing and must set out the grounds of the application (CPR r 51(2A)(b)). The application is to be emailed to the Central Office at central.office@justice.wa.gov.au. The application may be dealt with by a judge or registrar (CPR r 51(4A)). Should the non-party

be granted permission to obtain a copy of the information, record or thing, it will be provided once any applicable fee has been paid.

