



Clerk, DC Court of Appeals  
430 E St NW  
Washington, DC 20001

April 12, 2021

**Re: Notice M274-21 Regarding How to Best Make Documents Filed in Court Electronically Available to the Public**

Network for Victim Recovery of DC (“NVRDC”) submits this comment in response to the February 12, 2021 District of Columbia Court of Appeals (“Court of Appeals”) Notice regarding making documents filed with the Court publicly available electronically.

I. Introduction

NVRDC is a non-profit organization in the District of Columbia that provides free legal, advocacy, case management, and therapeutic services to crime victims in the District. NVRDC attorneys represent hundreds of crime victims in DC Superior Court (hereinafter “Superior Court”) annually through Civil Protection Order proceedings and in the assertion of their rights as crime victims in criminal prosecutions.

On February 12, 2021 the Court of Appeals issued a Notice (hereinafter “Notice”) stating:

[t]his court is exploring how best to make documents filed in the court — briefs, appendices, transcripts, and record materials from trial-court and agency proceedings — electronically available to the general public to the extent feasible. The court intends to require that such materials be subject to appropriate redactions and other procedures to protect confidential and other sensitive information and to comply with any laws limiting or prohibiting the dissemination of such information.

The Notice further asked for comments and suggestions from the public and interested parties. Given our work representing and advocating for the rights of crime victims, NVRDC wishes to highlight several legal protections for victims under federal and local law that would be implicated by making filed documents publicly accessible.

While NVRDC generally supports the Court of Appeals’ interest in furthering access to justice by making court documents accessible, either online or through other means, all possible efforts *must* be made to protect the safety and privacy of crime victims, whose personal and confidential information is often contained in such documents. Increased access to information by the general public must not come at the expense of the privacy rights of crime victims in the District. While NVRDC strongly believes court records containing crime victims’ personal or confidential information should not be available to the general public in any format, we will focus our comment on the idea of making electronically filed court documents available online; however, we would

make these same arguments regarding access to such documents if a member of the general public were to physically go to the DC Court of Appeals and request access to such documents via a computer terminal or on paper. If the Court of Appeals makes electronically filed documents accessible to the general public, especially if that access is through the convenience of the internet, all private, confidential, and personal-identifying information (PII) of crime victims *must* be redacted pursuant to statutory rights of crime victims. Additionally, where the law is silent, NVRDC implores the Court to default to protecting such information of crime victims.

## II. Crime Victims Are Guaranteed Privacy Rights Under the DC Code and Federal Law.

Both DC and federal law create privacy protections specifically for crime victims. DC's Crime Victims' Bill of Rights provides that victims have the right to be treated with fairness and with respect for privacy.<sup>1</sup> The federal Crime Victims' Rights Act ("CVRA") also provides that a crime victim has "[t]he right to be treated with fairness and with respect for the victim's dignity and privacy."<sup>2</sup> Courts have found that a victim's interest in their privacy means private information about a victim may be withheld from a public docket or other publicly accessible documents.<sup>3</sup> Many courts have understood the right to privacy granted by the CVRA to require the redaction of victims' names from court records and public documents.<sup>4</sup> Publicly sharing private information about a victim of crime, such as their name, contact information, or even their status as a crime victim would be a violation of a victims' right to privacy.

In NVRDC's crime victims' rights practice, we often see victim information in court records. For example, Stay-Away Orders are frequently issued in criminal cases that order defendants to stay away from a victim or their home or business as a condition of pretrial release or sentencing. Often, victims' full names or their initials are used in these orders.<sup>5</sup> Having a victim's full name on a criminal case Stay-Away Order that is

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<sup>1</sup> D.C. Code §21-1901(b)(1).

<sup>2</sup> 18 U.S.C. § 3771(a)(8).

<sup>3</sup> See *Banks v. D.O.J.*, 757 F. Supp. 2d 13, 18-19 (D.C. Cir. 2010) (finding it was proper to redact victims' identifying information from criminal records sought in a Freedom of Information Act ("FOIA") request, noting that the victim's privacy interest was not outweighed by the public's interest in disclosure); *Kuffel v. U.S. Bureau of Prisons*, 882 F. Supp. 1116, 1123 (D.D.C. 1995) (finding that names and addresses of victims were exempt from disclosure in a FOIA request); *U.S. v. Madoff*, 626 F. Supp. 2d 420, 426 (S.D.N.Y. 2009) (stating that "presumption of access must be balanced against the victims' privacy rights" as expressed in CVRA); and *United States v. Patkar*, 2008 WL 233062 (D. Haw. Jan. 28, 2008) (holding that it was appropriate for the trial court to limit disclosure of materials that would cause damage to victim's reputation pursuant to victim's right to privacy under CVRA).

<sup>4</sup> See, e.g., *United States v. Clark*, 335 Fed. Appx. 181, 184 (3d Cir. July 7, 2009) (finding that redaction of names of victims and their family members from victim impact statements was consistent with provision of the CVRA guaranteeing victim's right to be treated with respect for dignity and privacy, and that there is no requirement a victim's identity be revealed when giving a victim impact statement). See also *United States v. Robinson*, 2009 WL 137319, (D. Mass. Jan. 20, 2009) (stating that, despite a general public right of access, a victim of crime has significant privacy interests in non-disclosure of identity to the public and such interests were statutorily protected by CVRA's privacy provision, and can outweigh public right of access).

<sup>5</sup> NVRDC has advocated with the Superior Court to ensure that such orders are not accessible through the Superior Court's online docket and that crime victims' names are not viewable in any online docket

available in an online, publicly accessible docket would violate victims' right to privacy. Even including a victim's initials could reveal a victim's identity, particularly in cases where a defendant and victim are related, since the docket would also contain the name of the defendant. Even if victims' did not have an explicit statutory privacy right, the protection of victims' privacy in court cases is a public interest issue that should be taken seriously.

Additionally, in many of the criminal cases in which NVRDC represents victims, we see subpoenas sought and granted pursuant to Rule 17(c)(3) of the Superior Court Rules of Criminal Procedure, which allows for subpoenas of victims' personal and confidential information when notice is provided to the victim and the victim is given an opportunity to respond to the subpoena, unless there are exceptional circumstances. Often these subpoenas are for mental health, medical, or education records of victims, as well as records of medical forensic exams of sexual assault and intimate partner violence victims. The litigation surrounding these records, as well as the records themselves, frequently contain privileged, confidential, and extremely private information about victims, including names of medical and mental health providers, victims' educational histories, their medical and mental health diagnoses, medical histories, detailed notes from therapy sessions, as well as private identifying information like a victim's name, patient or student identification numbers, phone numbers, or other contact information. All of this information must be carefully redacted in order to protect a victim's right to respect for their dignity and privacy. Failing to redact all of this information would violate that right and unnecessarily expose victims' private information to the public.

In addition to these specific documents, there are numerous other documents in criminal cases in which a victims' name or initials may appear, from charging documents to sentencing memoranda to transcripts of testimony. Transcripts of testimony would include a victim stating their name and often their address. Their home address could also be revealed in others' testimony if the crime occurred at the home of the victim. Every docket entry in a criminal case must be diligently reviewed to ensure that victims' federal and local rights to privacy are protected.

### III. The Violence Against Women Act Emphasizes the Importance of Victim Privacy and Imposes Obligations on Courts to Ensure that Personal Identifying Information of Victims is Not Published Online.

The Violence Against Women Act (VAWA) has placed specific limits on what information a court can put in an online public docket about victims of intimate partner violence, sexual assault, and stalking who seek protection orders, restraining orders, or injunctions. In the context of DC, this would apply to civil protection order, anti-stalking order,<sup>6</sup> and extreme risk protection order matters, as well as possibly in certain

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entries. We have seen much progress on this issue since we began advocating for victims' privacy in 2012.

<sup>6</sup> The Intrafamily Offenses and Anti-Stalking Order Amendment Act of 2020 created a new process for victims of stalking to request protection from the Superior Court. That Act is protected to become effective in late April 2021. D.C. Act 23-571.

other civil injunctions and restraining orders where the protected party is a victim of intimate partner violence, sexual assault, or stalking. VAWA states the following:

A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration or filing of a protection order, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.<sup>7</sup>

VAWA prohibits the disclosure of the names of a petitioner, respondent, locations of where the parties live and where the incidents in the petition occurred, and even details of the incidents, when those details could identify a petitioner.<sup>8</sup> Dockets in civil protection order cases in particular must be carefully reviewed and heavily redacted to ensure that any information that could reveal the name or location of an intimate partner, sexual assault/abuse, or stalking survivor is not available on an online docket.

IV. Even in Cases Other Than Criminal, Civil Protection Order, Anti-stalking Order, or Relevant Civil Cases Covered By VAWA, Victims' Personal Identifying Information Must Be Redacted in Order to Protect Victims' Privacy and Safety.

In addition to private information in criminal case and protection order cases, private, identifying information of victims may be in many other places in court dockets. For example, dockets in other cases often note related matters, such as in a domestic relations matter where the plaintiff and defendant are also parties to a civil protection order case, or in a criminal case where the victim and defendant are parties to a civil protection order case. These types of notations must additionally be redacted to prevent the disclosure of information about a protected party.

Even where no such notation exists, the private information of a victim on any public docket must be carefully reviewed and redacted to ensure that victim's privacy is not invaded and that they are safe. Under the DC Crime Victims' Bill of Rights and the CVRA, victims have a right to reasonable protection from the person who harmed them.<sup>9</sup> A victim may be a party to an unrelated case in which their address is on the public docket. Failing to redact this information could violate a victims' right to privacy or their right to reasonable protection, as information in unrelated cases could reveal

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<sup>7</sup> 18 U.S.C. §2265(d)

<sup>8</sup> In 2007 a group of organizations, attorneys, and law school faculty wrote a letter to the Superior Court in response to requests for comments regarding the issue of domestic violence cases being accessible on the Superior Court's online docketing system. That letter can be viewed online at [https://epic.org/privacy/dv/DC\\_Court\\_records.pdf](https://epic.org/privacy/dv/DC_Court_records.pdf). As of the date of this letter, Civil Protection Order cases and some felony domestic violence cases are **not** accessible on the Superior Court's online docket. NVRDC encourages the Court of Appeals to consider the recommendations made in that letter, especially the recommendations on page 13 regarding Fair Information Practices.

<sup>9</sup> DC Code §23-1901(b)(2); 18 U.S.C. § 3771(a)(1).

significant information about a victim. For example, where a victim of a crime or a civil protection order petitioner is also party to a landlord-tenant matter, their address could be revealed. On any number of dockets, a victim's home or work address may be listed for service purposes. All of this information must be redacted to ensure that victims are safe and their privacy is not invaded.

## V. Conclusion

The Court of Appeals has an affirmative obligation to ensure victims' are afforded their right to privacy.<sup>10</sup> Therefore, any sharing of filed documents (electronically filed or otherwise) that contain victim's information must be carefully reviewed and redacted in order for the Court to comply with its legal obligations to crime victims. If the Court of Appeals creates a publicly accessible platform with information from Superior Court cases, all case records, including pleadings, docket entries, and victim records, must be prudently reviewed and carefully redacted to fully protect the privacy and safety of crime victims. NVRDC thanks the Court of Appeals for its advocacy for access to justice and its diligent efforts to ensure the protection of crime victims privacy in the District.

Respectfully submitted,



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<sup>10</sup> "In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a)." 18 USC § 3771(b)(1). "(a) Officers or employees of the District of Columbia engaged in... the judicial process shall make their best efforts to see that victims of crime are accorded the rights described in subsection (b) of this section." DC Code § 23-1901(a).