



New England  
**First Amendment** Coalition

Executive Office of the Trial Court  
One Pemberton Square  
Boston, MA 02108  
Attn: Hon. Jeffrey A. Locke

*SENT VIA EMAIL TO EXECOF@JUD.STATE.MA.US*

December 21, 2023

Dear Hon. Jeffrey A. Locke,

I'm writing on behalf of the New England First Amendment Coalition.<sup>1</sup> NEFAC is a non-profit organization that advocates for public access to government, including the judicial system and its records. Our Board of Directors includes many leading journalists and media attorneys in the state.

We want to bring to the court's attention what we believe is a violation of its rules on accessing electronic records and ask that this violation be immediately remedied. According to the Uniform Rules on Public Access to Court Records Rule 5: Remote Access to Electronic Court Records<sup>2</sup>, certain information about criminal cases must be accessible to the general public. Rule 5(2)(i)(A-D) requires the state to provide electronic access to the following information about criminal cases unless there is a specific court order prohibiting disclosure<sup>3</sup>:

- (A) The full name of each defendant and the related case or case number(s) by court department and division;
- (B) The name and mailing address of each attorney who has entered an appearance and of each self-represented litigant;
- (C) The docket of a specific case; and
- (D) Calendar information.

As of today, much of this information appears to be missing for members of the general public searching criminal cases using the state's online court records portal.<sup>4</sup> (This doesn't seem to be case for attorneys and other non-attorneys granted elevated access to the system). While docket and calendar information for criminal cases in Superior Court appear to be available online for those without an attorney login, the same information is not provided for Boston Municipal Courts and District Courts where the majority of cases are heard.

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<sup>1</sup> More information about the New England First Amendment Coalition can be found at nefac.org.

<sup>2</sup> See <https://www.mass.gov/trial-court-rules/uniform-rules-on-public-access-to-court-records-rule-5-remote-access-to-electronic-court-records> (last visited Dec. 4, 2023).

<sup>3</sup> Despite inquiries with court officials, our organization is unaware of any court order, rule or specific policy prohibiting the publishing of criminal docket case information online.

<sup>4</sup> We are aware that docket information to all criminal cases can be accessed electronically through courthouse kiosks. We believe "electronic court records" as intended by the court either does or should include the state's online court records system found at masscourts.org.

Image 1 is an example of a criminal case as visible to the general public. The entry does not show the mailing address of each attorney or any calendar information as required by Rule 5. The display also omits the docket or history of the case, which would ordinarily show a listing of each event that occurred and the judge's rulings.

In contrast, Image 2 shows a Superior Court case. Displayed is the mailing address of the attorney, as well as all other docket information.

In addition to being in violation of the court's rules, these omissions are problematic for other reasons. They force journalists to regularly call court clerks with simple questions about when a specific hearing is scheduled, the status of a particular case or how a judge has ruled on a given motion. Multiple calls are often needed before someone at the court can be found to provide this information. Not only is this an unnecessary burden on journalists, but on court clerks as well.

The omissions also pose problems for those outside newsrooms. Members of the public, including defendants in criminal cases, must rely on preoccupied clerks, other court employees and attorneys to provide the time and location of hearings. Complying with Rule 5 will avoid this inconvenience and prevent confusion.

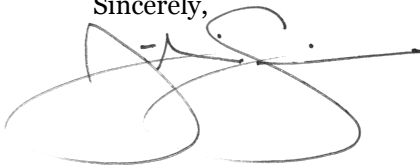
It should be also noted that the First Amendment and Massachusetts caselaw provide a presumptive right to judicial criminal records. In the Uniform Rules on Public Access to Court Records<sup>5</sup>, the Trial Court itself cites several cases to recognize "general principles of publicity" applying to court records. The court states that:

*"[M]ost court records are presumptively public documents unless required to be withheld from public inspection by statute, court rule, standing order, case law, or court order."*

Here we have a rule — Rule 5 — that does not require information to be withheld but instead mandates its disclosure. We understand that Trial Court departments are considering a formal recommendation that may favor additional criminal case calendars and dockets online at some point in the future. Respectfully, we believe that the court should not wait for an internal recommendation before following its own rules.

We appreciate your consideration of this issue and thank you for your time. If we can provide additional information or be of any assistance as you consider this request, please let us know.

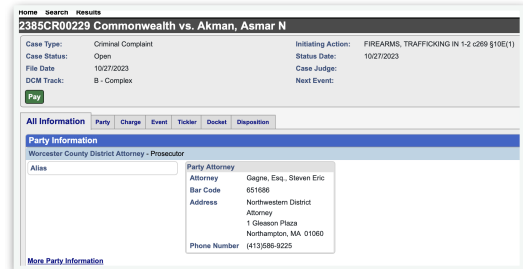
Sincerely,



**Justin Silverman**  
Executive Director



**Image 1**



**Image 2**

<sup>5</sup> See note on Rule 1(c), General Policy <https://www.mass.gov/trial-court-rules/uniform-rules-on-public-access-to-court-records-rule-1-scope-and-definitions> (last visited Dec. 4, 2023).