

CHAPTER 5  
PUBLIC RECORDS AND  
FAIR INFORMATION PRACTICES

The engineering and land surveying examining board of the professional licensing and regulation division hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first Volume of the Iowa Administrative Code.

**193C—5.1(17A,22) Definitions.** As used in this chapter:

“*Agency.*” In lieu of the words “(agency issuing these rules)”, insert “Iowa engineering and land surveying examining board”.

“*Custodian.*” In lieu of the words “the agency”, insert “the Iowa engineering and land surveying examining board”.

**193C—5.3(17A,22) Requests for access to records.**

**5.3(1) Location of record.** In lieu of the words “(insert agency head)”, insert “Iowa engineering and land surveying board”. In lieu of the words “(insert agency name and address)”, insert “Iowa Engineering and Land Surveying Examining Board, 1918 S.E. Hulsizer, Ankeny, Iowa 50021”.

**5.3(2) Office hours.** In lieu of the words “(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)”, insert “8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays”.

**5.3(7) Fees.**

*c. Supervisory fee.* In lieu of the words “(specify time period)”, insert “one-half hour”.

**193C—5.7(17A,22) Consent to disclosure by the subject of a confidential record.** In lieu of the words “(Additional requirements may be necessary for special classes of records.)”, insert “This rule does not allow the subject of a record which is confidential under Iowa Code section 272C.6(4) to consent to its release.”

**193C—5.9(17A,22) Disclosures without the consent of the subject.**

**5.9(1)** Open records are routinely disclosed without the consent of the subject.

**5.9(2)** To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

*a.* For a routine use as defined in rule 5.10(17A,22) or in the notice for a particular record system.

*b.* To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

*c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

**5.9(3)** Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code chapter 252J or 598.

**193C—5.10(17A,22) Routine use.** “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22. To the extent allowed by law, the following uses are considered routine uses of all board records:

**5.10(1)** Disclosure to those officers, employees, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.

**5.10(2)** Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

**5.10(3)** Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the board.

**5.10(4)** Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

**5.10(5)** Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

**5.10(6)** Any disclosure specifically authorized by the statute under which the record was collected or maintained.

**5.10(7)** Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlement filed in licensee disciplinary proceedings.

**5.10(8)** Transmittal to the district court of the record in a disciplinary hearing, pursuant to Iowa Code section 17A.19(6), regardless of whether the hearing was open or closed.

**5.10(9)** Names and addresses of licensed engineers and land surveyors, branches of licensure, date of licensure, and status of licensure are routinely disclosed to the public upon request.

**5.10(10)** Names and certificate numbers of engineers-in-training and land surveyors-in-training are routinely disclosed to the public upon request.

**193C—5.11(17A,22) Consensual disclosure of confidential records.**

**5.11(1)** *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 5.7(17A,22).

**5.11(2)** *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official’s intervention on behalf of the subject in a matter that involves the board may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

**193C—5.12(17A,22) Release to subject.**

**5.12(1)** The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 5.6(17A,22). However, the agency need not release the following records to the subject:

- a.* The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.
- b.* Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.
- c.* Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5))
- d.* All information in complaint and investigation files maintained by the board for purposes of licensee discipline are required to be withheld from the subject prior to the filing of formal charges and the notice of hearing in a licensee disciplinary proceeding.
- e.* Confidential personnel records of professional engineers and land surveyors pursuant to Iowa Code section 22.7(11).
- f.* As otherwise authorized by law.

**5.12(2)** Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

**193C—5.13(17A,22,542B) Availability of records.**

**5.13(1)** *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

**5.13(2)** *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

- a.* Personal related information in confidential personnel records of professional engineers and land surveyors pursuant to Iowa Code section 22.7(11).
- b.* Personal related information in confidential personnel records of applicants for professional engineering or land surveying licensure pursuant to Iowa Code section 22.7(11).
- c.* All information in complaint and investigation files maintained by the board for purposes of licensee discipline is confidential in accordance with Iowa Code section 272C.6(4), except that the information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges and a notice of hearing.
- d.* The record of a disciplinary hearing which is closed to the public pursuant to Iowa Code section 272C.6(1) is confidential under Iowa Code section 21.5(4). However, in the event a record is transmitted to the district court pursuant to Iowa Code section 17A.19(6) for purposes of judicial review, the record shall not be considered confidential unless the district court so orders.
- e.* Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination (Iowa Code section 542B.32).
- f.* Criminal history or prior misconduct of an applicant for licensure (Iowa Code section 542B.32).

- g. Information relating to the contents of an examination for licensure pursuant to Iowa Code sections 542B.32 and 22.7(19).
- h. Minutes of closed meetings of the board (Iowa Code section 21.5(4)).
- i. Information or records received from a restricted source and any other information or records made confidential by law.
- j. Records which constitute attorney work products, attorney-client communications, or which are otherwise privileged pursuant to Iowa Code sections 22.7, 622.10, and 622.11.

**193C—5.14(17A,22) Authority to release confidential records.** The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 5.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

**193C—5.15(17A,22) Personally identifiable information.** This subrule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 5.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information. All records are stored on paper only unless otherwise indicated. The record systems maintained by the agency are:

**5.15(1)** Information in complaint and investigation files maintained by the board for purposes of licensee discipline. This information is required to be kept confidential pursuant to Iowa Code section 272C.6(4). However, it may be released to the licensee once a disciplinary proceeding is commenced by the filing of formal charges and the notice of hearing.

**5.15(2)** Information on nonlicensee investigation files maintained by the board. This information is a public record except to the extent that certain information may be exempt from disclosure under Iowa Code section 22.7 or other provision of law.

**5.15(3)** The following information regarding licensee disciplinary proceedings:

- a. Formal charges and notices of hearing.
- b. Complete records of open disciplinary hearings. If a hearing is closed pursuant to Iowa Code section 272C.6(1), the record is confidential under Iowa Code section 21.5(4).
- c. Final written decisions imposing sanctions, including informal stipulations and settlements.

**5.15(4)** Licensure. Records pertaining to licensure by examination may include:

- a. Transcripts from engineering and land surveying education programs. This information is collected pursuant to Iowa Code section 542B.13.
- b. Application for examination. This information is collected pursuant to Iowa Code section 542B.13.
- c. References. These may be requested from applicants pursuant to Iowa Code section 542B.13.
- d. Past felony record. This information is collected pursuant to Iowa Code section 542B.13.
- e. Examination scores. This information is collected pursuant to Iowa Code section 542B.14, and is stored in a data processing system as well as paper.

**5.15(5)** In addition to the above records, records pertaining to licensure by comity may include:

- a. Disciplinary actions taken by other boards of engineering and land surveying. This information is collected pursuant to Iowa Code section 542B.13.
- b. Verification of licensure by another board of engineering or land surveying. This information is collected pursuant to Iowa Code section 542B.20.

**5.15(6)** Licensure by renewal or reinstatement. Records are stored on paper and in a data processing system.

*a.* Renewal forms. This information is collected pursuant to Iowa Code section 542B.18.

*b.* Continuing education records. This information is collected pursuant to Iowa Code section 272C.2.

**193C—5.16(17A,22) Other groups of records.** This rule describes groups of records maintained by the agency other than record systems as defined in rule 5.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in subrule 5.13(2). In addition, the records listed in subrule 5.13(2), paragraphs "a" to "d," may contain information about individuals. All records are stored both on paper and in automated data processing systems unless otherwise noted.

**5.16(1)** Rule making. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

**5.16(2)** Board records. Agendas, minutes, and materials presented to the board members in preparation for board meetings are available from the office of the board, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored in an automated data processing system.

**5.16(3)** Publications. News releases, annual reports, project reports, agency newsletters, etc., are available from the office of the board. Information concerning examination and licensure is available from the board office. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees. This information is not stored in an automated data processing system.

**5.16(4)** Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to subrule 5.13(2), paragraphs "c" and "d." These records may contain information about individuals collected under the authority of Iowa Code section 542B.22.

**5.16(5)** Policy manuals. The agency employees' manual, containing the policies and procedures for programs administered by the agency, is available in the office of the agency. Subscriptions to all or part of the employees' manual are available at the cost of production and handling. Requests for subscription information should be addressed to the board's office. Policy manuals do not contain information about individuals.

**5.16(6)** All other records that are not exempted from disclosure by law.

**193C—5.17(17A,22) Data processing system.** The data processing systems used by the board permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

**193C—5.18(17A,22) Applicability.** This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of, or access to, records in the possession of the agency which are governed by the regulations of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

These rules are intended to implement Iowa Code section 22.11 and Iowa Code chapter 252J.

[Filed 5/13/88, Notice 3/23/88—published 6/1/88, effective 7/6/88]

[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]

[Filed 5/2/96, Notice 1/3/96—published 5/22/96, effective 6/26/96]

[Filed 3/6/97, Notice 11/20/96—published 3/26/97, effective 4/30/97]