

CHAPTER 11
EXAMINATION OF PUBLIC RECORDS

655—11.1(17A,22,147,152,272C) Definitions.

“*Access to records*” means the general right of the public to examine and copy records. In subrule 11.2(9), it also means the right of the subject of a confidential record to authorize its release, in writing, to a named third party.

“*Confidential record*” means a record which is not available to members of the public except as specified in Iowa Code section 22.7 or other law forbidding disclosure. Nothing in this definition shall be construed to deny access to the public portions of a record which contains a mixture of public and confidential information, or to broaden the definition of confidential information to include an entire document.

“*Custodian of records*” means the executive director of the board or that official’s designee.

“*Disclosure*” means the availability or release of a record.

“*Individual*” means a living person. It does not include persons such as sole proprietorships, partnerships, corporations, or educational institutions. A business firm which is identified by the name of one or more persons is not an individual within the meaning of this part.

“*Open records*” are those records which are not authorized or required to be kept confidential under Iowa Code section 22.7 or any other provision of the law.

“*Personally identifiable information*” means information about or pertaining to an individual in a record which identifies the person by personal identifier such as the name of the individual, number, symbol or other unique retriever assigned to the individual and which is contained in a system of records as defined in this subrule.

“*Record,*” when used in these rules means “public record,” includes all records, documents, tapes or other information stored or preserved in any medium of or belonging to the board.

“*Release of information*” means granting access to examine records and providing copies as requested.

“*Subject of a record*” means an individual under whose name or other personal identifier a record is kept in a system of records.

“*System of records*” means any group of records under the control of the board from which a record is retrieved by personal identifier and all records or group of records that are not retrievable by personal identifier. Papers maintained by individual employees of the board which are prepared, maintained, or discarded at the discretion of the employee are not part of the system of records; provided, that the personal papers are not used by the employee or the board to determine any rights, benefits, or privileges of the individuals.

655—11.2(17A,22,147,152,272C) Public information and inspection of records.

11.2(1) Public information. Any interested person may examine public records of the board by making a written request. This request may be mailed or presented in person to the executive director or the designee at the office of the board. Records shall only be examined at the board office during the board’s regular business hours, Monday through Friday from 8 a.m. to 4:30 p.m., excluding legal holidays. Unless otherwise provided by law, all records other than confidential records, maintained by the board shall be made available for public inspection.

11.2(2) *Inspection of records.* Procedures governing requests for the inspection of records are set out in subrule 11.2(1).

11.2(3) *Board records routinely available for public inspection.* The board collects and maintains the following records that are routinely available for public inspection:

- a. Board calendars, agenda, newsletter, news releases and other information intended for the public.
- b. Board decisions, orders, opinions and other statements of law or policy issued by the board in the performance of its function.
- c. The records of rule-making proceedings.
- d. Annual reports of the board.
- e. Reports and materials filed with the board by nursing education programs and continuing education providers.
- f. Board minutes except those resulting from meetings in closed sessions in accordance with Iowa Code section 21.5.
- g. Rulings on requests for waivers of board rules.
- h. Information about licensees (rosters and mailing lists).
- i. All of the records that are not specifically exempted from disclosure from subrule 11.2(4).

The board files of public records listed above may contain confidential records. Any request to review confidential records must be made in accordance with subrule 11.2(4). In addition, the board records listed in “a,” “b,” “d,” “f,” “g,” “h,” and “i” of this subrule may contain personally identifiable information.

Various legal and technical publications relating to nursing are also available for inspection by the public in the board office.

11.2(4) *Records not routinely available for public inspection.* The following records are not routinely available for public inspection. These records are withheld as specified in Iowa Code section 22.7.

a. Materials that are specifically exempted from disclosure by statute in which the board may in its discretion withhold from public inspection. Any person may request permission to inspect particular records withheld from inspection under this subrule. At the time of the request, the board will notify all interested parties. If the request is to review materials under this subrule, the board will withhold the materials from public inspection for 14 days to allow the party who submitted the materials an opportunity to seek injunctive relief.

b. Records which the board is authorized to withhold from public inspection under Iowa law include, but are not limited to, the following:

(1) Hospital records, medical records, and professional counselor records of the conditions, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient.

(2) Peace officers’ investigative reports as specified in Iowa Code section 22.7, except where disclosure is authorized elsewhere in the Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual.

(3) Personnel records of board staff and board members which may be confidential pursuant to Iowa Code section 22.7(11). The board maintains files containing information about employees, their families and dependents, and applicants for positions with the board. The files may include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship.

(4) Information in a report to the state department of public health, to a local board of health, or to a local health department, which identifies a person infected with a reportable disease.

(5) Communications not required by law, rule, or procedure that are made to a government body or to any of its employees by identified persons outside of the government, to the extent that the government body receiving those communications from such persons outside of the government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. Notwithstanding this provision:

1. The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.

2. Information contained in the communication is public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.

3. Information contained in the communication is public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety and danger of any person. In any action challenging the failure of the lawful custodian to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the lawful custodian to demonstrate that the disclosure of that information would jeopardize an investigation or would pose a clear and present danger.

(6) Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy under Iowa Code section 17A.3(1)“d.”

(7) Materials exempt from public inspection under any other provision of state law.

11.2(5) *Materials specifically exempt from disclosure by statute and which the board is prohibited from making available for public inspection.* The board is required to withhold the following materials from public inspection:

a. Records which include all complaint files, investigation files, other investigation reports and all other investigative information in the possession of the board or peer review committee acting under the authorization of the board or its employees or agents which relate to licensee application or discipline are privileged and confidential and are not subject to discovery, subpoena or other means of legal compulsion for their release to persons other than the licensee or applicant, the board, its employees and agents involved in licensee discipline. For further information and exceptions, see Iowa Code section 272C.6(4).

b. Minutes and tape recordings of portions of board meetings held in closed sessions in accordance with Iowa Code section 21.5(4).

c. Criminal history or prior misconduct of the examination applicant.

d. Information relating to the contents of the licensure examination.

e. Information relating to the examination results other than final score except for information about the results of the examination given to the person who took the examination.

11.2(6) *Requests that materials or information submitted to the board be withheld from public inspection.* Any person submitting information or materials to the board may submit a request that part or all of the information or materials not be made available for public inspection pursuant to the following requirements:

a. Procedure. The request shall be attached to the materials to which it applies, each page of which shall be clearly marked confidential.

b. Content of the request. Each request shall contain a statement of the legal basis for withholding the materials from inspection and the facts to support the legal basis relied upon. The facts underlying the legal basis shall be supported by affidavit executed by a corporate officer (or by an individual, if not a business entity) with personal knowledge of the specific facts. If the request is that the materials be withheld from inspection for a limited period of time, the period shall be specified.

c. Compliance. If a request complies with the requirements of paragraphs "a" and "b" of this subrule, the materials will be temporarily withheld from public inspection. The board will examine the documents to determine whether the documents should be afforded confidentiality. If the request is granted, the ruling will be placed in a public file in lieu of the materials withheld from public inspection.

d. Request denied. If a request for confidentiality is denied, the documents will be held confidential for 14 days to allow the applicant an opportunity to seek injunctive relief. After the 14 days expire, the materials will be available for public inspection, unless the board is directed by a court to keep the material confidential.

11.2(7) *Procedures for the inspection of board records which are routinely available for public inspection.* The records requested must be reasonably described by the person requesting them to permit their location by staff personnel. Members of the public will not be given access to the area in which records are kept and will not be permitted to search the files.

Advance requests to have records available on a certain date may be made by telephone or by correspondence.

a. Search fees. An hourly fee will be charged for searching for requested records. The fee will be based upon the pay scale of the employee who makes the search. No search fee will be charged if the records are not located, the records are not made available for inspection, or the search does not exceed one-quarter hour in duration.

b. Written request. Written requests shall list the telephone number (if any) of the person making the request, and for each document requested shall set out all available information which would assist in identifying and locating the document. The request should also set out the maximum search fee the person making the request is prepared to pay. If the maximum search fee is reached before all the requested documents have been located and copied the requesting person will be notified. When the requesting person requests that the board mail copies of the material, postage and handling expenses should also be included. Fees shall be paid directly to the board prior to the release of the requested information.

c. Procedure for written request. Records will be produced for inspection at the earliest possible date following a request. Records should be inspected within seven days after notice is given that the records have been located and are available for inspection or as otherwise agreed upon. After seven days, the records will be returned to storage and additional charges may be imposed for having to produce them again.

d. Copies. Copies of public records shall be made by the board staff and the charge shall be \$.10 per page.

11.2(8) *Procedures for inspection of board records which are not routinely available for public inspections.* Any person desiring to inspect board records which are not routinely available for public inspection shall file a request for inspection meeting the requirements of this subrule.

a. Content of request. The records must be reasonably described by the person requesting them so as to permit their location by staff personnel. Requests shall be directed to the Executive Director of the board.

b. Procedure. Requests for inspection shall be acted upon as follows:

(1) If the board is prohibited from disclosing the records, the request for inspection will be denied with a statement setting forth the specific grounds for denial.

(2) If the board is prohibited from disclosing part of a document from inspection, that part will be deleted and the remainder will be made available for inspection.

(3) In the case of requests to inspect records not routinely available for public inspection under subrule 11.2(4) "a"(1) through (9), the board will notify all interested parties of the request to view the materials. The board will withhold the materials from public inspection for 14 days to allow the party who submitted the material an opportunity to seek injunctive relief. If the request is granted by the board, or is partially granted and partially denied, the person who submitted the records to the board will be afforded 14 days from the date of the written ruling in which to seek injunctive relief. If injunctive relief is not requested within this period, the records will be produced for inspection.

11.2(9) *Procedure by which the subject of a confidential record may have a copy released to a named third party.* Upon request which complies with the following procedures, the board will disclose a confidential record to its subject or to a named third party designated by the subject. Positive identification is required of all individuals making a request.

a. In person request. Subjects of a confidential record who request that information be given to a named third party will be asked for positive means of identification. If an individual cannot provide suitable identification, the request will be denied.

Subjects of a confidential record who request that information be given to a named third party will be asked to sign a release form before records are disclosed.

b. Written request. All requests by subject of a confidential board record for release of the information to a named third party sent by mail shall be signed by the requester and shall include the requester's current address and telephone number (if any). If positive identification cannot be made on the basis of the information submitted along with the information contained in the record, the request will be denied.

Subjects of a confidential record who request by mail that information be given to a named third party will be asked to sign a release form before the records are disclosed.

c. *Denial of access to the record.* If positive identification cannot be made on the basis of the information submitted or if data in the record are so sensitive that authorized access could cause harm or embarrassment to the individual to whom the record pertains, the board may deny access to the record pending the production of additional evidence of identity.

11.2(10) *Procedure by which the subject of a board record may have additions, dissents or objections entered into the record.* An individual may request an addition, dissent or any objection be entered into a board record which contains personally identifiable data pertaining to that individual. The request shall be acted on within a reasonable time.

a. *Content of the request.* The request must be in writing and addressed to the Executive Director of the board. The request should contain the following information:

- (1) A reasonable description of the pertinent record.
- (2) Verification of identity.
- (3) The requested addition, dissent or objection.
- (4) The reason for the requested addition, dissent or objection to the record.

b. *Denial of request.* If the request is denied, the requester will be notified in writing of the refusal and will be advised that the requester may seek board review of the denial within 20 working days after issuance of the denial.

11.2(11) *Advice and assistance.* Individuals who have questions regarding the procedures contained in these rules may contact the Executive Director of the board.

11.2(12) *Data processing system.* The board does not currently have a data processing system which matches, collates or permits the comparison of personally identifiable information in one record system with personally identifiable information on another record system.

655—11.3(17A,22,147,152,272C) Personally identifiable information.

11.3(1) *Collection of personally identifiable information.* This board is authorized to collect information, some of which is personally identifiable. The nature and extent of the personally identifiable information collected by the board, the legal authority for the collection of that information and a description of the means of storage are found in this section.

11.3(2) *Personally identifiable information.* The board maintains the following systems of records which may contain personally identifiable information:

a. *Rule making.* Rule-making records may contain information about individuals making written or oral comments or proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not retrieved by individual identifier, and is not stored in an automated data processing system.

b. *Board records.* Agendas, minutes and materials presented to all board members in preparation for board meetings are available from the Executive Director, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4).

c. *Publications.* News releases, annual reports, project reports, board newsletters, etc. are available from the office of the Executive Director.

Board news releases, annual reports, project reports, and newsletters may contain personally identifiable information about board staff or members of the board or committees. This information is not retrieved by individual identifier and is not stored on an automated data processing system.

d. Disciplinary reports. This information is available from the chief health professions investigator in the board office. These reports contain personally identifiable information about nurses who have had action taken by the board against their licenses. This information is retrieved by individual identifier and some of the information is stored on an automated data processing system. Some is stored as hard copy or microfilmed documents. This information is matched or compared with personally identifiable information in other record systems.

This information is dispersed pursuant to Iowa Code sections 272C.4, 272C.6 and Iowa Administrative Code, Nursing Board[655], 4.16(3)“c.”

e. Declaratory rulings. Records may contain information about individuals making the requests for declaratory rulings or comments from other individuals concerning the rulings. This information is collected pursuant to Iowa Code section 17A.9. This information is retrieved by the individual requesting the ruling or topic and is not stored on an automated data processing system.

f. Licensing.

(1) Records pertaining to licensure by examination may include:

1. Transcripts from nursing education programs. This information is collected pursuant to Iowa Code section 152.7.

2. Application for licensure by examination. This information is collected pursuant to Iowa Code sections 147.8 and 147.29.

3. Application for licensure by endorsement. This information is collected pursuant to Iowa Code section 147.44.

4. Birth certificates (part of previous requirement for licensure; no longer required). This information is collected pursuant to Iowa Code section 147.3.

5. References.

6. Past felony record. This information is collected pursuant to Iowa Code section 147.3.

7. Examination scores. This information is collected pursuant to Iowa Code section 152.7.

8. High school graduation or equivalency. This information is collected pursuant to Iowa Code section 152.7.

9. Certification for advanced registered nurse practice. This information is collected pursuant to Iowa Code section 152.1(2)“d.”

(2) Records pertaining to licensure by endorsement may include:

1. Transcripts from nursing education programs. This information is collected pursuant to Iowa Code section 152.7.

2. Application for licensure by endorsement. This information is collected pursuant to Iowa Code section 152.8.

3. Birth certificates (part of previous requirement; no longer required). This information is collected pursuant to Iowa Code section 147.3.

4. Past felony record. This information is collected pursuant to Iowa Code section 147.3.

5. Examination scores. This information is collected pursuant to Iowa Code section 152.7.

6. Disciplinary action taken by other boards of nursing. This information is collected pursuant to Iowa Code section 147.52.

7. High school graduation or equivalency. This information is collected pursuant to Iowa Code section 152.7.

8. Verification of licensure by another board of nursing. This information is collected pursuant to Iowa Code section 152.8.

(3) Licensure by renewal, reinstatement and reactivation.

1. Applications. This information is collected pursuant to Iowa Code sections 147.10 and 147.11.

2. Past felony record. This information is collected pursuant to Iowa Code section 147.3.

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

11.3(3) *Retrieval of personally identifiable information.* Personally identifiable information is retrieved by individual identifier and some of this information is stored in an automated data processing system. Some is stored as hard copy or microfilmed documents. All record systems maintained by the board and which contain personally identifiable information permit the comparison of personally identifiable information in one record system with personally identifiable information in another system.

11.3(4) *Board procedures for requesting information.* After July 1, 1988, the board shall notify persons supplying information requested by the agency of the use that will be made of the information, which persons outside the department might routinely be provided this information, which parts of the information requested are required and which are optional, and the consequences of failing to provide the information requested. This notification shall either appear on the form used to collect the information, or on a separate sheet accompanying the form.

655—11.4(17A,22,147,152,272C) Notice to suppliers of information. When the board requests a person to supply personal information, the board shall notify the person of the use that will be made of the information, which persons outside the board might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the requested information. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

11.4(1) *License and examination applicants.* License and examination applicants are requested to supply a wide range of information depending on the qualifications required for licensure or for sitting for an examination, as provided by statutes, board rules and application forms. Failure to provide the requested information may result in denial of the application. Some requested information, such as a college transcript, social security number, examination score, or criminal history, is confidential under state or federal law, but most of the information contained in license or examination applications is treated as public information freely available for public examination.

11.4(2) *Home address.* License applicants and licensees are requested to provide their home addresses. These addresses are treated as open records. If a license applicant or licensee has a basis to shield a home address from public disclosure, such as a domestic abuse protective order, written notification should be provided to the board office. Absent a court order, the board does not have a basis under Iowa Code chapter 22 to shield the home address from public disclosure, but the board shall refrain from placing the home address on its Web site and may notify the applicant or licensee before the home address is released to the public to provide an opportunity for the applicant or licensee to seek injunction.

11.4(3) License renewal. Licensees are requested to supply a wide range of information in connection with license renewal, including continuing education information, criminal history and disciplinary actions, as provided by statutes, board rules and application forms, both on paper and electronically. Failure to provide requested information may result in denial of the application. Most information contained on renewal applications is treated as public information freely available for public examination, but some information, such as criminal history, may be confidential under state or federal law.

11.4(4) Investigations. Licensees are required to respond to board requests for information involving the investigation of disciplinary complaints against licensees. Failure to timely respond may result in disciplinary action against the licensee to whom the request is made. Information provided in response to such a request is confidential pursuant to Iowa Code section 272C.6(4), but may become public if introduced at a hearing that is open to the public, contained in a final order, or filed with a court of judicial review.

655—11.5(17A,22,147,152,272C) Rosters. Rosters of licensees shall be made available to the public in accordance with Iowa Code chapter 22 and sections 147.8 and 147.43.

11.5(1) Roster information and forms may be accessed via the board's Web site under "General Information" and "Rosters" or may be requested from the board office.

11.5(2) Completed forms may be returned to the board office by either electronic means or in hard copy and must include a signed Purchase of Roster Agreement form to ensure that the materials or publications shall not be published in any manner which could be construed by the public to mean that the board or any of its employees support, endorse, or approve the materials or publications to be disseminated.

11.5(3) A fee of \$40 per data set shall be charged for a roster in electronic format, based on the hourly wage of the office employee processing the request. A fee shall be assessed for a roster in hard-copy format, based on the rate of charge set by the outside vendor and the hourly wage of the office employee producing the roster. The fee shall be paid directly to the board and shall be considered a repayment receipt as defined in Iowa Code section 8.2. The roster shall not be released until payment or purchase order has been received.

11.5(4) The executive director may authorize the release of a roster of Iowa licensees without cost in the case of any emergency whereby the interest of the public warrants immediate access to health care personnel.

11.5(5) State agencies that request a roster of Iowa licensees in hard-copy format will be invoiced at cost as an expenditure correction. State agencies that request the roster in electronic format will be provided an electronic file of the roster at no cost.

These rules are intended to implement Iowa Code chapters 147, 152 and 272C.

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