

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[Prior to 2/22/89, Parole, Board of[615] Ch 14; see also 205—Ch 6]

The board of parole hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to public records and fair information practices printed in the first volume of the Iowa Administrative Code.

205—5.1(17A,22) Definitions. As used in this chapter:

“*Agency*” means the board of parole.

“*Confidential records*” are records, as defined under Iowa Code sections 22.7, 22.8, 904.601, 904.602 and 904.603, which are not disclosed to members of the public except by court order. This includes records which the board is prohibited by law from making available for inspection by members of the public and those exempt records which the board has determined not to disclose to members of the public.

“*Open records*” are those records which are not authorized or required to be kept confidential under Iowa Code sections 22.7, 22.8, 904.601, 904.602 or any other provision of the law.

205—5.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22. Agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

205—5.3(17A,22) Requests for access to records.

5.3(1) Location of record. A request for access to a record should be directed to the office where the record is kept. Records of current inmates, work releasees and parolees are maintained in the Board of Parole Office, Holmes Murphy Building, 420 Keo Way, Des Moines, Iowa 50309-1638, (515)242-5757.

5.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

5.3(3) Request for access. Requests for access to records may be made in writing, in person, or by telephone if the request is for open record information. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail requests shall include the name, address and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

5.3(4) Response to requests. The custodian is authorized to grant or deny access to the record according to the provisions of Iowa Code chapter 22, Iowa Code sections 904.601, 904.602, and 904.603 and this chapter. The decision to grant or deny access may be delegated to one or more designated employees. Unless the size or nature of the request requires time for compliance, the agency shall comply with the request as soon practicable. However, access to such a record may be delayed for one of the purposes authorized by Iowa Code sections 22.8(4), 22.10(4) or good cause. The agency shall promptly inform the requester of the reason for the delay. A request to review a confidential record shall be in writing and shall enumerate the specific grounds justifying access to the confidential record and to provide any proof necessary to establish relevant facts, request prior to receiving access to the record.

5.3(7) Fees.

c. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of five minutes. That hourly fee shall not be in excess of the hourly wage of an agency employee who ordinarily would be appropriate and suitable to perform this supervisory function.

205—5.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination.

5.5(5) *Request granted or deferred.* If a request for confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be placed in the agency public file in lieu of the original record. If the agency subsequently receives a request for access to the original record, the agency will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record.

205—5.6(17A,22) Procedure by which additions, dissents or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian or the board of parole. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.

205—5.7(17A,22) Consensual disclosure of confidential records.

5.7(1) *Consent to disclose by a subject individual.* To the extent allowed by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 205—5.4(17A,22).

5.7(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 agency 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.

5.7(3) *Obtaining information from a third party.* The board is required to obtain information to assist in making decisions regarding classification, programming, security and administrative management operational decision. Requests to third parties for this information may involve the release of confidential information about individuals. Except as provided by law, the board may make these requests only when the individual has authorized the release.

205—5.9(17A,22) Routine use. To the extent allowed by law, the following uses are considered routine uses of all agency records:

5.9(1) Disclosure to those officers, employees, and agents of the agency 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.

5.9(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.

5.9(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

5.9(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.

5.9(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.

5.9(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

205—5.10(17A,22) Disclosures without the consent of the subject.

5.10(1) Open records are routinely disclosed without the consent of the subject.

5.10(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 permitted by law and in the 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 the head 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.

205—5.11(17A,22) Release to subject.

5.11(1) The subject of a confidential record may file a written request to review confidential records about that person. However, the board 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 sections 22.7(18) and 904.602.
- 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.
- d. As otherwise authorized by law.

5.11(2) Where a record has multiple subjects with interest in the confidentiality of the record, the board may take reasonable steps to protect confidential information relating to another subject.

205—5.12(17A,22) Availability of records.

5.12(1) *Open records.* Board records are open for public inspection and copying unless otherwise prohibited by current rule of law.

5.12(2) *Confidential records.* The following records may be kept confidential. Records are listed by category, according to the legal basis for withholding them from public inspection.

- a. Sealed bids received prior to the time set for public opening of bids; (Iowa Code section 72.3)
- b. Tax records made available to the agency; (Iowa Code section 422.17, 422.20)
- c. Minutes of closed meetings of a government body; (Iowa Code section 21.5(4))
- d. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)"d";

e. Those portions of agency staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes, or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerance or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the agency.
- (Iowa Code section 22.7)

f. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa Rules of Civil Procedure 122(c), Federal Rule of Civil Procedure 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, and the Code of Professional Responsibility and case law.

g. Other records made confidential by law.

205—5.13(17A,22) Personally identifiable information.

5.13(1) This rule 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 this rule. For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

5.13(2) Litigation files. These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

5.13(3) Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

205—5.14(17A,22) Other groups of records available for public inspection—policies and procedures (excluding security) meeting minutes. This rule describes groups of records maintained by the board other than record systems as previously defined. These records are routinely available to the public. However, the board's file of these records may contain confidential information, as discussed in rule 5.12(17A,22). The following records are stored both as hard copy and in automated data processing systems unless otherwise noted.

5.14(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.

5.14(2) Board meeting records. Agendas, minutes and materials presented to the board are available from the office of the director except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4), or which are otherwise confidential by law. Board meeting records contain information about people who participate in meetings. The information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier.

5.14(3) Publications. News releases, annual reports, project reports, board newsletters, etc., are available from the board office. Board news releases, project reports, and newsletters may contain information about individuals, including board staff or members of the board councils or committees. This information is not retrieved by individual identifier.

5.14(4) Statistical reports. Periodic reports of the board for various board programs are available from the board office. Statistical reports do not contain personally identifiable information.

5.14(5) Grants. Records on persons receiving grants for various projects or programs are available through the office of the director. These records may contain information about employees or a grantee. This information is not retrieved by individual identifier and is not stored on an automated data processing system. The information is collected under the authority of Iowa Code chapter 904.

5.14(6) Published materials. The board uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law. These records are hard copy only.

5.14(7) Policy manuals. The board employees' manual, containing procedures describing the board's regulations and practices, is available. 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 office. Policy manuals do not contain information about individuals.

5.14(8) Other records. All other records that are not exempted from disclosure by law.

205—5.15(17A,22) Applicability. This chapter does not:

5.15(1) Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

5.15(2) Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

5.15(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.

5.15(4) Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5.15(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, 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 17A as amended by 1998 Iowa Acts, chapter 1202.

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