

761—4.9(22) Confidential records. This rule describes the types of departmental information or records that are confidential. This rule is not exhaustive. A citation of the legal authority for confidentiality follows each description.

As related to particular types of confidential information or records, this rule also includes exceptions to confidentiality, the rights of certain persons to have access, and permissible disclosures.

Descriptions:

4.9(1) Hospital, medical and professional counselor records of the condition, diagnosis, care or treatment of present or former patients or counselees. (Iowa Code section 22.7)

a. This category of records includes but is not limited to hospital, medical and professional counselor records of present or former departmental employees.

b. Notwithstanding this subrule, State of Iowa Employers Work Injury Report forms are not confidential.

c. The subject of a hospital, medical or professional counselor record has the right of access to it.

4.9(2) Trade secrets which are recognized and protected by law. (Iowa Code section 22.7)

a. The person who furnished the trade secret information has the right of access to this information.

b. Reserved.

4.9(3) Records which constitute attorney work product, attorney-client communications, or that are otherwise privileged. (Attorney work product is confidential under Iowa Code sections 22.7, 622.10 and 622.11, Iowa R. C. P. 1.503(3), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.)

a. This category of records includes but is not limited to:

(1) Investigations conducted in anticipation of tort claims or other litigation.

(2) Records directly related to threatened litigation over title.

b. Reserved.

4.9(4) Peace officers' investigative reports, except where disclosure is required or authorized by the Iowa Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident are not confidential except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or would pose a clear and present danger to the safety of an individual. (Iowa Code section 22.7)

4.9(5) Reports to the department which, if released, would give advantage to competitors and serve no public purpose. (Iowa Code section 22.7)

a. Examples of records which could in the proper circumstances be determined to be within this category include but are not limited to:

(1) Financial reports filed by contractors for departmental use in determining their eligibility to bid on projects advertised for letting. This includes financial information from these reports that is stored on computer.

(2) Documents submitted by firms for departmental use in certifying their eligibility as disadvantaged business enterprises.

(3) Prequalification forms filed with the department under rule 761—20.8(307). This includes the selection committee's working papers; however, the final selection committee report is not confidential once it has been approved by the appropriate division director. Selection committee activities may also fall under subrule 4.9(20).

(4) Financial reports filed with the department for the purpose of seeking certificates of self-insurance under Iowa Code section 321A.34.

(5) Copies of agreements between sign owners and landowners filed with the department in support of the issuance of outdoor advertising permits.

(6) Copies of private contracts between railroads and shippers or other private parties.

(7) Barge terminal surveys which ask for shipping and financial information from barge companies.

b. The subject of the record has the right of access to it.

4.9(6) Criminal identification files, except for the records of current and prior arrests. (Iowa Code section 22.7)

a. The custodian may disseminate criminal identification data to a peace officer, a criminal justice agency, or a state or federal regulatory agency if the custodian is satisfied that the need to know and the intended use are reasonable.

b. The custodian shall also comply with Iowa Code chapter 692.

4.9(7) Personal information in confidential personnel records of present or former departmental employees. (Iowa Code section 22.7)

a. Submission by an employee of an employment application form shall constitute authorization for the release of a copy of the employee's complete personnel records to the selecting authority.

b. Confidential personnel information relating to a particular program shall be released to that agency or company which is administering the program.

c. The subject of a personnel record has the right of access to it.

4.9(8) Communications not required by law, rule or procedure that are made to the department by identified persons outside of government, to the extent that it could reasonably be believed that those persons would be discouraged from making the communications if they were made available for general public examination. (Iowa Code section 22.7)

a. This category of records includes but is not limited to exit interviews for voluntary terminations.

b. Exceptions to confidentiality:

(1) A communication is not confidential if its author consents to its release.

(2) Information in a communication that can be disclosed without identifying its author or enabling others to ascertain that identity is not confidential.

(3) Information in a communication that indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act is not confidential unless disclosure would plainly and seriously jeopardize a continuing investigation or would pose a clear and present danger to the safety of any person.

c. The author of a communication has the right of access to it.

4.9(9) Examinations, including but not limited to cognitive and psychological examinations for law enforcement officer candidates administered by or on behalf of a government body, to the extent that their disclosure could reasonably be believed by the lawful custodian to interfere with the accomplishment of the objectives for which they are administered. (Iowa Code section 22.7)

4.9(10) Information concerning the nature and location of an archaeological resource or site if, in the opinion of the state archaeologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. (Iowa Code section 22.7)

4.9(11) Information concerning the nature and location of an ecologically sensitive resource or site if, in the opinion of the director of the department of natural resources after consultation with the state ecologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. (Iowa Code section 22.7)

4.9(12) Those portions of the department's staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by departmental 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 tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons who are in an adverse position to the department. (Iowa Code sections 17A.2 and 17A.3)

4.9(13) The detailed minutes and tape recording of a closed session of the commission. However, if the closed session regards a real estate purchase, the minutes and tape recording shall be available for public inspection when the transaction discussed is completed. (Iowa Code section 21.5)

4.9(14) Vehicle accident reports submitted to the department by drivers and peace officers. (Iowa Code sections 321.266 and 321.271)

a. However, access shall be granted to those persons authorized by Iowa Code section 321.271.

b. Rescinded IAB 1/8/03, effective 2/12/03.

4.9(15) All information filed with the court for the purpose of securing a warrant for an arrest until the arrest has been made and the warrant has been returned. (Iowa Code section 804.29)

4.9(16) All information filed with the court for the purpose of securing a warrant for a search until the warrant has been executed and returned. (Iowa Code section 808.13)

4.9(17) Information obtained by the department from the examining of reports or records required to be filed or kept under the provisions of Iowa Code chapter 452A, except where disclosure is authorized by chapter 452A. (Iowa Code section 452A.63)

4.9(18) Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

4.9(19) Except as required by Iowa Code section 6B.45, the parcel file for a right-of-way acquisition until title has passed to the state and all contract and relocation claims have been paid. (Iowa Code section 22.7)

4.9(20) Those records which, if disclosed, would diminish competition or would give an improper advantage to persons who are in an adverse position to the department. These records shall be kept confidential until the transaction to which they relate is consummated. However, if disclosure would reveal information which would hinder future competition, the records shall be kept confidential. (Iowa Code sections 17A.2, 17A.3, 22.7 and 313.10, Iowa Code chapter 553, and rules 761—Chapter 20)

a. Examples of records which could, in the proper circumstances, be determined to be within this category include but are not limited to:

- (1) Detailed estimates of the cost of a proposed contract.
- (2) Economic analyses for determining pavement types.
- (3) Negotiations for a proposed contract.
- (4) Methodology for determining unfair bidding practices or bid rigging.
- (5) Price quotations solicited.
- (6) The value of points assigned to a bid rating formula prior to the time set for public opening of bids.

(7) Laboratory testing reports of suppliers' products. These may also be trade secrets. The subject of the report has the right of access to it.

b. Reserved.

4.9(21) Income tax forms or rental, income or expense statements furnished by relocatees as documentation for relocation assistance payments. (Iowa Code sections 22.7 and 422.20, 5 U.S.C. §§ 552 and 552a)

a. The subject of the form or statement has the right of access to it.

b. Reserved.

4.9(22) Audit reviews for determining EEO contract compliance. (Iowa Code section 22.7, 5 U.S.C. §§ 552 and 552a)

a. The subject of the audit review has the right of access to it.

b. Reserved.

4.9(23) Tax records made available to the department. (Iowa Code section 422.20)

4.9(24) Personal information in motor vehicle records. (Iowa Code section 321.11 and 18 U.S.C. § 2721 et seq.)

a. This information may be disclosed only as provided in Iowa Code section 321.11, 18 U.S.C. § 2721 et seq., and 761—Chapters 415, 610 and 611.

b. The subject of the personal information has the right of access to the information.

4.9(25) A report received by the department from a physician or optometrist regarding a person who has been diagnosed as having a physical or mental condition which would render the person physically or mentally incompetent to operate a motor vehicle in a safe manner. (Iowa Code section 321.186)

4.9(26) Certain records regarding undercover driver's licenses issued to peace officers, as specified in 761—Chapter 625. (Iowa Code sections 22.7 and 321.189A)

a. The subject of the record and the head of the law enforcement agency employing the subject have the right of access to the record.

b. Reserved.

4.9(27) Records related to confidential plates issued for government vehicles. (Iowa Code section 321.19)

- a. The head of the agency to which the vehicle is assigned has the right of access to the record.
- b. Reserved.

4.9(28) Data processing software developed by the department. (Iowa Code section 22.7)

- a. The custodian may provide, restrict or prohibit access to this software in accordance with Iowa Code section 22.3A.
- b. Reserved.

4.9(29) Records containing information that would disclose, or might lead to the disclosure of, private keys used in a digital signature or other similar technologies as provided in Iowa Code chapter 554D, and records which, if disclosed, might jeopardize the security of an electronic transaction pursuant to Iowa Code chapter 554D. (Iowa Code section 22.7)

4.9(30) The portion of a record request that contains an Internet protocol number which identifies the computer from which a person requests a record. However, such record may be released with the express written consent of the requester. (Iowa Code section 22.7)

4.9(31) Certified transcripts of labor payrolls (also known as certified payroll records) filed by contractors for federal-aid construction contracts, in accordance with the following paragraphs. (Iowa Code section 22.7, 5 U.S.C. §§ 552 and 552a, 42 U.S.C. § 405)

- a. The social security numbers in a certified payroll record are confidential. The record itself may be confidential if its release would give advantage to competitors and serve no public purpose.

- b. The prime contractor and subcontractor, if applicable, that filed the record have the right of access to it.

- c. Certified payroll records shall be released to the U.S. Department of Labor and Federal Highway Administration during investigations.

- d. The custodian may release a certified payroll record with social security numbers withheld to representatives of the Iowa Labor Management Work Preservation Fund.

- e. The custodian may release a certified payroll record with social security numbers withheld to persons outside the department other than the persons listed in paragraphs “b” to “d” according to the following procedure:

- (1) The request for the record must be in writing.

- (2) The custodian shall send a copy of the request by registered mail to the prime contractor. If the request is for subcontractor information, the custodian shall send copies of the request to both the subcontractor and prime contractor.

- (3) The requested record shall not be released until 14 calendar days have expired from receipt of the request by the contractor(s). This gives the contractor(s) an opportunity to seek an injunction.

4.9(32) Information concerning an open or pending railroad accident investigation conducted on behalf of or in conjunction with the Federal Railroad Administration or National Transportation Safety Board to the extent necessary to prevent denial of funds, services or essential information from the United States government. (Iowa Code section 22.9)

4.9(33) All other information or records that by law are or may be confidential, with the following exceptions:

- a. Records of the departmental library.

- b. Reserved.

This rule is intended to implement Iowa Code chapters 22, 553 and 692; Iowa Code sections 6B.45, 17A.2, 17A.3, 21.5, 72.3, 313.10, 321.11, 321.19, 321.186, 321.189A, 321.266, 321.271, 422.20, 452A.63, 602.10112, 622.10, 622.11, 804.29 and 808.13; 5 U.S.C. §§ 552 and 552a; and 18 U.S.C. § 2721 et seq.