

Regulatory Analysis

Notice of Intended Action to be published: 493—Chapter 4
“Public Records and Fair Information Practices”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 13B.4(8)

State or federal law(s) implemented by the rulemaking: Iowa Code section 13B.4 and chapters 22 and 815

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

May 6, 2025
2 p.m.

Via videoconference:
meet.google.com/gbm-frju-oxh
Or dial: (US) +1 563.293.1803
PIN: 316 603 891#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the Office of the State Public Defender no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.218.2445
Email: kswaim@spd.state.ia.us

Purpose and Summary

This proposed rulemaking repromulgates administrative rules based on the requirements of Executive Order 10. Chapter 4 adopts the Fair Information Practices segments of the Uniform Rules of Agency Procedure and details whether certain groups of records are confidential and how one may go about obtaining consent for certain groups of records.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

• **Classes of persons that will bear the costs of the proposed rulemaking:**

There are no expected additional costs to the State or individuals.

• **Classes of persons that will benefit from the proposed rulemaking:**

The Office of the State Public Defender, indigent persons represented by court-appointed attorneys, contract attorneys, and the general public will benefit.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

• **Quantitative description of impact:**

Not applicable. There are no expected additional costs to the State or individuals.

• **Qualitative description of impact:**

Not applicable.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**
There are no expected additional costs to the State.
 - **Anticipated effect on state revenues:**
There is no anticipated effect.
4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**
Not applicable.
5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**
Not applicable.
6. **Alternative methods considered by the agency:**
- **Description of any alternative methods that were seriously considered by the agency:**
No alternative methods were considered.
 - **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**
No viable alternative was identified. The information and process set forth in this chapter are largely driven by existing statute.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is no expected impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 493—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The state public defender adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to petitions for rulemaking, which are published at www.legis.iowa.gov/docs/Rules/Current/UniformRules.pdf on the general assembly’s website.

493—4.1(17A,22) Definitions. As used in this chapter:

“Agency.” In lieu of the words “(official or body issuing these rules)”, insert “state public defender”.

493—4.3(17A,22) Requests for access to records.

4.3(1) Location of record. In lieu of the words “(insert agency head)”, insert “state public defender”. In lieu of the words “(insert agency name and address)”, insert “Office of the State Public Defender, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321”.

4.3(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., Monday through Friday, except legal holidays”.

4.3(7) Fees.

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

493—4.6(17A,22) Procedures by which additions, dissents, or objections may be entered into certain records. In lieu of the words “(designate office)”, insert “the office of the state public defender”.

493—4.9(17A,22) Disclosures without the consent of the subject.

4.9(1) Open records are routinely disclosed without the consent of the subject.

4.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. The following are instances where disclosure, if lawful, will generally occur without the consent of the subject:

a. For a routine use as defined in rule 493—4.10(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 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.

d. To the legislative services agency under Iowa Code section 2A.3.

e. Disclosures in the course of employee disciplinary proceedings.

f. In response to a court order or subpoena.

493—4.10(17A,22) Routine use.

4.10(1) “Routine use” means the disclosure of a record without the consent of the subject or subjects for a purpose that 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 under Iowa Code chapter 22.

4.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. 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.

b. 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.

c. 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.

d. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

493—4.11(17A,22) Consensual disclosure of confidential records.

4.11(1) Consent to disclosure by a subject individual. To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records.

4.11(2) *Complaints to public officials.* A letter from the subject of a confidential record to a public official that 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.

493—4.12(17A,22) Release to subject.

4.12(1) A written request to review confidential records may be filed by the subject of the record. 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. More information can be found in Iowa Code section 22.7(5).

d. Others authorized by law.

4.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the state public defender may take reasonable steps to protect confidential information relating to another subject.

493—4.13(17A,22) Availability of records.

4.13(1) *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

4.13(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. Sealed bids received prior to the time set for public opening of bids pursuant to Iowa Code section 72.3.

b. Tax records made available to the agency pursuant to Iowa Code sections 422.20 and 422.72.

c. Records that are exempt from disclosure under Iowa Code section 22.7.

d. Minutes of closed meetings of a government body pursuant to Iowa Code section 21.5(4).

e. 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.*"

f. Records that constitute attorney work product, that constitute attorney-client communications, or that are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11; Iowa Rule of Civil Procedure 1.503; the rules of evidence; the Code of Professional Responsibility; and case law.

g. Criminal investigative reports pursuant to Iowa Code section 22.7(5).

h. A claim for compensation and reimbursement for legal assistance and supporting documents submitted to the state public defender for payment of costs incurred in the legal representation of an indigent person pursuant to Iowa Code section 13B.4B, except as disclosure is authorized under that section.

i. Any other records considered confidential by law.

493—4.14(22) Personally identifiable information. The state public defender maintains systems of records that contain personally identifiable information.

4.14(1) By authority of Iowa Code chapter 13B, the appellate defender division maintains information and records relating to criminal and postconviction relief cases that are being appealed. Records contain names and identifying numbers of persons involved in these cases. Case information is stored in a data processing system and may be compared with information in any data processing

system. By authority of Iowa Code section 915.36, the names of child victims shall not be disclosed. Confidential juvenile records under Iowa Code section 232.147 shall not be disclosed except as otherwise permitted by law. Presentence investigation reports in the possession of any public defender are confidential records pursuant to Iowa Code section 901.4.

4.14(2) *Litigation files.* Litigation files or records contain information regarding litigation or anticipated litigation, which include judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney's notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials that 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 to obtain copies of pleadings and other documents filed in litigation should obtain them from the clerk of the appropriate court that maintains the official copy.

4.14(3) *Contracts.* Contractual agreements are maintained by the state public defender. These records contain personally identifiable information when the agreement is with a specific individual. In those instances, the records include the name, address, and social security number of the contracting attorney. Other information in these records may include the proposal of the contracting attorney, budget figures, correspondence, and business information. Personally identifiable information is contained in a data processing system and may be compared with information in any data processing system.

4.14(4) *Personnel files.* Personnel files contain information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

493—4.15(17A,22) Other groups of records. Other groups of records are maintained by the state public defender. These records are routinely available to the public; however, the agency's files may contain confidential information. The records may contain information about individuals. All records are stored on paper and in some cases in automated data processing systems.

4.15(1) *Rulemaking.* Rulemaking 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 available for public inspection and is not stored in an automated data processing system.

4.15(2) *Statistical reports.* Periodic reports on the state public defender system and the delivery of indigent defense services are available from the office of the state public defender.

These rules are intended to implement Iowa Code sections 17A.3, 22.7 and 22.11.