

CHAPTER 10
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The professional licensure division of the public health department 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.

645—10.1(17A,22) Definitions. As used in this chapter:

“*Board*” means a particular professional licensing board.

645—10.3(17A,22) Requests for access to records.

10.3(1) Location of record. In lieu of the words “(insert agency head)”, insert “board administrator” or the particular agency office where the record is kept. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the Professional Licensure Division, Lucas State Office Building, Des Moines, Iowa 50319-0075.

10.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. excluding Saturdays, Sundays and legal holidays.

10.3(7) Fees.

c. Search and supervisory fee. An hourly fee may be charged for actual agency expenses in searching for and supervising the examination and copying of requested records when the time required is in excess of one hour. The custodian shall prominently post in agency offices the hourly fees to be charged for search and supervision of records. That hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

645—10.5(17A,22) Request for treatment of a record as a confidential record and its withholding from examination.

10.5(7) This rule does not allow a person to request confidential record status for records of licensee disciplinary proceedings which are required by law to be public records.

645—10.6(17A,22) Procedures by which additions, dissents, or objections may be entered into certain records. In lieu of the words “(designate office)” insert “the board administrator”.

645—10.9(17A,22) Disclosures without the consent of the subject.

10.9(1) Open records are routinely disclosed without the consent of the subject.

10.9(2) To the extent allowed by law, disclosure of confidential records occurs without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without consent of the subject:

a. For a routine use as defined in rule 10.10(17A,22) or in the notice for a particular record system.
b. To a recipient who has provided the board 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. Investigative information in the possession of a licensing board or its employees or agents which relates to licensee discipline may be disclosed to appropriate licensing authorities within this state, the appropriate licensing authority in another state, the District of Columbia, or territory or country in which the licensee is licensed or has applied for a license. If the investigative information in the possession of a licensing board or its employees or agents indicates a crime has been committed, the information shall be reported to the proper law enforcement agency.

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.

645—10.10(17A,22) Routine use.

10.10(1) Defined. “*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.

10.10(2) To the extent allowed by law, the following uses are considered routine uses of all board records:

a. 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.

b. 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.

c. Disclosure to the department of inspections and appeals and the attorney general’s office for the matters in which it is performing services or functions on behalf of the board.

d. Transfers of information within the board office and among board members, to other state boards and departments, or to local units of government as appropriate to carry out the board’s statutory authority.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the board is operating a program lawfully.

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

g. Disclosure to the public and news media of pleadings, motions, orders, final decisions and informal settlements filed in licensee disciplinary proceedings.

h. 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.

645—10.11(17A,22) Consensual disclosure of confidential records.

10.11(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 10.7(17A,22).

10.11(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 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.

645—10.12(17A,22) Release to subject.

10.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 10.6(17A,22). However, the board need not release the following records to the subject:

a. All information in licensee complaint and investigation files maintained by the board for purposes of licensee discipline is required to be withheld from the subject prior to the filing of formal charges and the notice of hearing in a licensee disciplinary proceeding.

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. As otherwise authorized by law.

10.12(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.

645—10.13(17A,22) Availability of records.

10.13(1) General. Board records are open for public inspection and copying unless otherwise provided by rule or law.

10.13(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. All information in complaint and investigation files maintained by the board, or peer review committee acting under the authorization of 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.

b. 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.

c. Criminal history or prior misconduct of an applicant for licensure, pursuant to Iowa Code section 147.21(1).

d. Information relating to the contents of an examination for licensure, pursuant to Iowa Code section 147.21(2).

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 pursuant to Iowa Code section 147.2(3).

f. Minutes and tape recordings of portions of board meetings held in closed sessions, pursuant to Iowa Code section 21.5(4).

g. Records which are exempt from disclosure under Iowa Code section 22.7.

h. 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.*”

i. Those portions of board staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by board 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:

(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 board. (All under Iowa Code sections 17A.2 and 17A.3)

j. Information in nonlicensee and investigation files maintained by the board which are otherwise exempt from disclosure under Iowa Code section 22.7 or other provisions of the law.

k. Records made confidential under any other provision of law.

10.13(3) 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 discretionary disclosure as provided in rule 10.4(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 10.4(3).

645—10.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the board by personal identifier in record systems as defined in rule 10.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information, and the means of storage of that information. The board does not use a data processing system to match, collate, or permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the board are:

10.14(1) *Records of board disciplinary hearings.* These records contain information about licensees who are the subject of a board disciplinary proceeding or other action. This information is stored on paper, and electronically in the event the hearing is tape recorded.

10.14(2) *Complaint reports.* These records contain information about licensees and the people they serve. This information is collected pursuant to Iowa Code sections 272C.3 and 272C.4. This information is stored on paper only.

10.14(3) *Investigative reports.* These records contain information about the subjects of board investigations and the activities of board investigators. The records may include a variety of attachments such as interviews, audits, medical records, exhibits, police reports, and investigators' comments, conclusions and recommendations. This information is collected pursuant to Iowa Code sections 272C.3, 272C.4, and 272C.5. This information is stored on paper and electronically.

10.14(4) *Declaratory rulings.*

10.14(5) *Licensure records.* These records contain information about the licensee including any or all of the following: transcripts, collected pursuant to Iowa Code section 147.19; application for licensure by examination, collected pursuant to Iowa Code sections 147.29 through 147.43; birth certificates, collected pursuant to Iowa Code section 147.3; references, collected pursuant to Iowa Code section 147.3; past felony record, collected pursuant to Iowa Code section 147.3; high school graduation or equivalency records, collected pursuant to Iowa Code section 147.29; examination scores, collected pursuant to Iowa Code section 147.34; continuing education records, collected pursuant to Iowa Code section 272C.2. In the case of licensure by endorsement the board collects verification of licensure by another board pursuant to Iowa Code section 147.47. This information is stored on paper or microfilm only.

10.14(6) *Information on nonlicensee complaint and nonlicensee investigation files maintained by the board.* This information is collected pursuant to Iowa Code chapter 147. This information is stored on paper only.

645—10.15(22) *Other groups of records routinely available for public inspection.* This rule describes groups of records maintained by the board other than record systems as defined in rule 10.2(17A,22). These records are not maintained or retrieved by personal identifiers. These records are routinely available to the public. However, the board's files of these records listed in subrules 10.14(1) to 10.14(6) may contain information about individuals. The only information stored electronically is names, addresses, current status of licenses, licensee number and statistical information pertaining to individuals. All other information is stored on paper. These records include:

1. Records of board rule-making procedures. Rule-making records may contain information about individuals making written or oral comments or proposed rules.

2. Agendas, minutes and materials presented to the board 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). These records may contain information about individuals who participate in board meetings.

3. Publications. News releases, annual reports, project reports, board newsletters, etc. are available from the office of the board. Brochures describing various board programs are available at local offices of the board.

Board news releases, project reports, and newsletters may contain information about individuals, including board members or staff.

4. Statistical reports. Statistical reports do not contain personally identifiable information.

5. Board decisions, final orders or agreements, advisory opinions and other statements of law or policy issued by the board in the performance of its functions. These records are open pursuant to Iowa Code section 272C.6(4) except for information that is confidential pursuant to subrule 10.13(2) "c."

6. Financial reports pertaining to the board's budget including its revenues and expenses. This information is stored electronically and on paper.

7. Blank forms utilized by the board and its staff in the performance of its function. This information is stored on paper only.

8. A record inventory of all categories of information and records maintained by or on behalf of the board. This inventory is stored on paper only.

9. All other records that are not exempted from disclosure by law.

645—10.16(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 rules 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 rules of the agency.

These rules are intended to implement Iowa Code section 22.11.

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