

CHAPTER 7
FAIR INFORMATION PRACTICES

The Iowa public information board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to fair information practices which are published on the Iowa general assembly's Web site at <https://www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf>.

497—7.1(17A,22) Definitions. As used in this chapter:

“Agency” means the Iowa public information board.

“Confidential records” means records, as defined under Iowa Code section 22.7 or any other provision of law, which are not disclosed to members of the public unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release the records. 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 lawfully determined not to disclose to members of the public.

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

“Record” means the whole or a part of a “public record” as defined in Iowa Code section 22.1 that is owned by or is in the physical possession of the board.

“Record system” means any group of records under the control of the board from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

497—7.2(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 board determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The board is committed to the policies set forth in Iowa Code chapter 22, and board staff shall cooperate with members of the public in implementing the provisions of that chapter.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

497—7.3(17A,22) Requests for access to board records.

7.3(1) Location of record. A request for access to a board record shall be directed to the Iowa Public Information Board, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. If the requested record is not on file in the board office, the custodian will arrange for it to be retrieved from state archives and made available in the board office.

7.3(2) Office hours. Records of the board shall be made available during customary office hours of 8 a.m. to 4:30 p.m. on Monday through Friday, excluding Saturdays, Sundays, and legal holidays. Records made available via the board's Web site at <https://ipib@iowa.gov/> are available at all hours and on all days.

7.3(3) Request for access. Requests for access to board records may be made in writing, in person, or by telephone. 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.

7.3(4) Granting access to records. The custodian is authorized to grant or deny access to the board's record according to the provisions of Iowa Code chapter 22, this chapter or any other provision of law. The decision to grant or deny access may be delegated to one or more designated employees. Access to an open record shall be granted immediately upon request. If the size or nature of the request requires time for compliance, the board shall comply with the request as soon as possible. However, access to such a record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4). The board shall promptly inform the requester of the reason for the delay.

7.3(5) *Security of record.* No person shall, without permission, search or remove any record from board files. Examination and copying of records shall be done under the supervision of board staff. Records shall be protected from damage and disorganization.

7.3(6) *Copying.* A reasonable number of copies may be made in the board office unless printed copies are available. If copying equipment is not available in the office where a record is kept, the board shall permit its examination in that office and shall arrange to have copies promptly made elsewhere. Records made available on the board's Web site may be copied without restriction.

7.3(7) *Fees.*

a. Copying costs. Price schedules for regularly published records and for copies of records not regularly published shall be posted by the board. Copies may be made by or for members of the public at cost as determined and posted by the custodian of the record. The cost of postage and of other services provided in connection with the request may be charged as appropriate.

b. Search and supervisory fee. An hourly fee may be charged for actual board expenses in searching for, and supervising the examination and copying of, requested records. The fee shall be based upon the pay scale of the employee involved and other actual costs incurred. No fee shall be charged if the records are not made available for inspection, or if the time required does not exceed three hours in duration, or if the time required for the search was the result of a board error or a record-keeping problem. The board shall post the hourly fees to be charged in routine cases for search and supervision of records. The board shall give advance notice to the requester if it will be necessary to use an employee with a higher hourly wage in order to find or supervise the particular records in question, and shall indicate the amount of that higher hourly wage to the requester.

c. Advance deposits.

(1) The board may require a requester to make an advance deposit of the estimated fee.

(2) When a requester has previously failed to pay a fee charged under this subrule, the board may require advance payment of the full amount of any estimated fee before the board processes a new or pending request for access to records from that requester, as well as payment in full of the amount previously owed.

[ARC 0741C, IAB 5/15/13, effective 7/1/13; ARC 1091C, IAB 10/16/13, effective 11/20/13]

497—7.4(17A,22) Procedures for access to confidential records. The following procedures for access to confidential records are in addition to those specified for all board records in rule 497—7.3(17A,22).

7.4(1) *Proof of identity.* A person requesting access to a confidential record shall be required to provide proof of identity if access to the record is restricted to a particular person or class of persons.

7.4(2) *Requests.* A request to review a confidential board record shall be in writing. A person requesting access to a confidential board record may be required to sign a certified statement or affidavit enumerating the specific grounds justifying access to the confidential record and to provide any proof necessary to establish relevant facts. Such request may be referred to the full board for consideration.

7.4(3) *Request denied.* When the custodian of a confidential board record or the board denies a request for access to a confidential record, in whole or in part, the requester shall be notified in writing. The denial shall be signed by the custodian of the confidential record and shall include:

a. The name and title or position of the person or persons responsible for the denial and a brief citation to the statute or other provision of law that prohibits disclosure of the record;

b. A brief citation to the statute vesting discretion in the custodian to deny disclosure of the record; and

c. A brief statement of the grounds for the denial to this requester.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

497—7.5(17A,22) Requests for treatment of a government record as a confidential record and its withholding from examination by the board.

7.5(1) *Board to maintain confidential status of government records.* If, pursuant to the board's investigation of a complaint, the record of a government body comes into the board's possession, either pursuant to the government body's voluntary response to the board's request or in response to a board subpoena, and if the government body makes a claim that all or part of the record constitutes a

confidential record under Iowa Code section 22.7 or other provision of law, the board shall maintain the confidential status of the record or part of the record until the claim is adjudicated as hereafter provided. If a person provides the board with a government record without the apparent authority of the lawful custodian, the board shall confirm the authenticity of the record with the government body and shall inquire of the government body if it makes claim that all or part of the record constitutes a confidential record under Iowa Code section 22.7 or other provision of law. If the government body makes claim that all or part of the record constitutes a confidential record, the board shall maintain the confidential status of the record or part of the record until the claim is adjudicated as hereafter provided.

7.5(2) *Who may file request.* Any person, including a government body, who would be aggrieved or adversely affected by disclosure of all or a part of a record to members of the public may file a request, as provided in this rule, for the record's treatment as a confidential record. Failure of a person to request confidential record treatment for all or part of a record, such as information obtained in the course of a board investigation or to achieve voluntary compliance with 2012 Iowa Acts, chapter 1115, does not preclude the board from treating the record as a confidential record. The information may become an open record once the matter is resolved or dismissed.

7.5(3) *Form of request.* A request for the treatment of a government record as a confidential record shall be in writing and shall be filed with the board custodian of the record. The request shall include the specific grounds justifying confidential record treatment for all or part of the record; the specific provision of law that authorizes such confidential record treatment; and the name, address, and telephone number of the person authorized to respond to any board action concerning the request. A person, including a government body, filing such a request shall attach a copy of the record in question. The material to which the request applies shall be physically separated from any materials to which the request does not apply. The request shall be attached to the materials to which it applies. Each page of the material to which the request applies shall be clearly marked confidential. If the original record is being submitted to the board by the person requesting confidentiality at the same time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are a confidential record. A request for treatment of all or portions of a record as a confidential record for a limited time period shall also specify the precise period of time for which such confidential record treatment is requested.

7.5(4) *Failure to request confidentiality.* If a person, including a government body, who has submitted business information to the board does not request confidential record treatment for all or part of that information, the board custodian of records containing that information may assume that the person who submitted the information has no objection to its disclosure.

7.5(5) *Time.* A board decision with respect to the confidentiality of all or parts of a record may be made when a request for the record's treatment as a confidential record is filed or when the board receives a request for access to the record, or when a complaint alleging a violation of Iowa Code chapter 22 is resolved by the board.

7.5(6) *Effect of granted request.* 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 board decision will be placed in the public file in lieu of the original record.

7.5(7) *Board denial of request for confidential record treatment.* If the board determines that the record of a government body which is claimed to be confidential in whole or in part is not entitled to confidential treatment under Iowa Code chapter 22 or under other applicable provisions of law or applicable precedent, the board may enter its decision denying the request for confidential record treatment. If the record is the subject of a pending complaint, the board may withhold an order addressing confidentiality until the complaint is resolved. Upon resolution of the complaint, the board may enter an order concluding the record is confidential, or directing the government body to release the record, or any part thereof which the board determines not to be entitled to confidential record treatment. [ARC 0741C, IAB 5/15/13, effective 7/1/13]

497—7.6(17A,22) Procedure by which additions, dissents or objections may be entered into certain records. Except as otherwise provided by law, the subject shall have the right to have a written statement of additions, dissents or objections entered into the record. The subject shall send the statement to the

Executive Director, Iowa Public Information Board, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. The statement shall be dated and signed by the subject and shall include the subject's current address and telephone number.

[ARC 0741C, IAB 5/15/13, effective 7/1/13; ARC 1091C, IAB 10/16/13, effective 11/20/13]

497—7.7(17A,22) Consensual disclosure of confidential records.

7.7(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.

7.7(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.

7.7(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. 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.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

497—7.8(17A,22) Routine use. To the extent allowed by law, the following uses are considered routine uses of all agency records:

7.8(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.

7.8(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.

7.8(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

7.8(4) Transfers of information within the agency, to other state agencies, or to units of local government as appropriate to administer the program for which the information is collected.

7.8(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.

7.8(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

497—7.9(17A,22) Disclosures without the consent of the subject.

7.9(1) Open records are routinely disclosed without the consent of the subject.

7.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances when 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 services agency under Iowa Code section 2A.3.
- f. Disclosures in the course of employee disciplinary proceedings.
- g. In response to a court order or subpoena.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

497—7.10(17A,22) Release to subject.

7.10(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 section 22.7(18).
- 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.

7.10(2) When 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.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

497—7.11(17A,22) Availability of records.

7.11(1) *Open records.* Board records are open for public inspection and copying unless otherwise prohibited by current rule or law.

7.11(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. Records obtained under subpoena or through a board investigation that are confidential under Iowa Code section 22.7 or any another provision of law;
- b. Minutes of closed meetings of a governmental body (Iowa Code section 21.5(4));
- c. 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";
- d. 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;
- e. Records which constitute attorney work product, or 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 Rule of Civil Procedure 1.503(3), 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, the Code of Professional Responsibility and case law; or

f. Other records made confidential by law.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

497—7.12(17A,22) Personally identifiable information.

7.12(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:

a. Describes the legal authority for the collection of that information and the means of storage of that information; and

b. 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.

7.12(2) Complaint files. These records are the complaints filed with the board alleging a violation of Iowa Code chapter 21 or 22. The complaint will include a description of the facts on which the complaint is based and the name of the person filing the complaint.

7.12(3) Records of telephone inquiries. Records of the telephone inquiries may be kept for statistical reasons or to inform the board of the nature and volume of informal, verbal advice.

7.12(4) 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.

7.12(5) 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, and tax withholding information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

497—7.13(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 497—7.12(17A,22). The following records are stored both as hard copy and in automated data processing systems unless otherwise noted.

7.13(1) *Rule-making records.* 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.

7.13(2) *Board meeting records.* Agendas, minutes and materials presented to the board are available from the office of the executive 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.

7.13(3) *Publications.* News releases, annual reports, project reports, board newsletters, and related documents 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. This information is not retrieved by individual identifier.

7.13(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.

7.13(5) *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.

7.13(6) *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.

7.13(7) Other records. All other records that are not exempt from disclosure by law are available from the board office.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

497—7.14(17A,22) Applicability. This chapter does not:

7.14(1) Require the agency to index or retrieve records which contain information about an individual by that person's name or other personal identifier.

7.14(2) Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

7.14(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.

7.14(4) 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.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

These rules are intended to implement Iowa Code chapters 17A and 22.

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