

CHAPTER 3  
INFORMATION PRACTICES

[Prior to 3/30/94, see 210—Chapter 5]

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

**141—3.1(2C,22) Definitions.** As used in this chapter:

“*Agency*” means the office of ombudsman.

“*Confidential record*” means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records of information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record.

“*Custodian*” means the agency or a person lawfully delegated authority by the agency to act for the agency in implementing Iowa Code chapter 22.

“*Open record*” means a record other than a confidential record.

“*Personally identifiable information*” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

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

“*Record system*” means any group of records under the control of the agency 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.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

**141—3.2(2C,22) Statement of policy.** This chapter implements Iowa Code section 22.11 by establishing agency policies and procedures for the maintenance of records and access to records. The purpose of this chapter is to facilitate public access to open records and to guide agency determinations with respect to the handling of confidential records and the implementation of the Iowa fair information practices Act.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

**141—3.3(2C,22) Requests for access to records.**

**3.3(1) Location.** A request for access to a record should be directed to the ombudsman at the Office of Ombudsman, Ola Babcock Miller Building, 1112 E. Grand Avenue, Des Moines, Iowa 50319. The agency may also be reached at the following numbers: telephone (515)281-3592, 1-888-426-6283 (1-888-IA-OMBUD), TDD/TTY (515)242-5065, and fax (515)242-6007.

**3.3(2) Office hours.** Access to records shall be available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, except designated state holidays.

**3.3(3) Request for access.** Requests for access to records may be made in writing, in person, by telephone, by e-mail, or by facsimile (fax). Requests shall identify by name and description the particular records sought in order to facilitate the location of the record. Requests by mail, telephone, e-mail, or facsimile (fax) shall also include the name, address, e-mail, and telephone or fax number of the person requesting the information. A person shall not be required to give a reason for the request.

**3.3(4) Response to requests.**

*a.* Access to an open record of the agency shall be provided promptly upon request. If the size or nature of the request makes prompt access impracticable, the custodian shall comply with the request as soon as practicable. Access to an open record may be delayed for one of the purposes authorized by Iowa Code subsection 22.8(4) or 22.10(4). The custodian shall notify the requester of the reason for a delay in access to an open record and an estimate of the length of that delay and, upon request, shall provide such notice in writing.

*b.* The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code subsections 22.8(4) and 22.10(4), or that it is a

confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 141—3.4(2C,22) and other applicable provisions of law.

**3.3(5) Security of record.** Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. A person may not search or remove any record from agency files without permission from the custodian. A person may not cause damage or disorganization to any agency records.

**3.3(6) Copying.** A reasonable number of copies of a record may be made in the agency's office. If photocopy equipment is not available in the agency office, the custodian shall permit examination of the record in the office and shall arrange to have copies made as soon as practicable elsewhere.

**3.3(7) Fees.** To the extent permitted by law, the agency may charge fees in connection with the examination or copying and may waive payment of such fees when the imposition of fees is inequitable or when a waiver is in the public interest.

*a. Copying and postage costs.* Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at costs as determined by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged.

*b. Supervisory fee.* An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the time required is in excess of one-half hour. The hourly fee charged 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.

*c. Search fees.* If the request requires research or if the records cannot readily be retrieved by the agency, the requester will be advised of this fact. Reasonable search fees may be charged where appropriate. In addition, all costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.

*d. Advance deposit.* When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require the requester to make an advance payment to cover all or a part of the estimated fee. When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

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**141—3.4(2C,22) Access to confidential records.** Under Iowa Code section 22.7 or 2C.8 or other applicable provisions of law, the custodian may disclose certain confidential records to one or more members of the public, or may be authorized or required to release specified confidential records in certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 141—3.3(2C,22):

**3.4(1) Proof of identity.** A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

**3.4(2) Requests.** The custodian may require that a request to examine and copy a confidential record be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

**3.4(3) Notice to subject of record.** After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8 and may indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

**3.4(4) Request denied.** When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written

notification of the denial is desired, the custodian shall promptly provide such a notification which is signed by the custodian and which includes:

- a. The name and title or position of the custodian responsible for the denial; and
- b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to the requester.

**3.4(5) Request granted.** When the custodian grants a request for access to a confidential record, the custodian shall notify the requester and indicate any lawful restrictions imposed on the requester's examination and copying of the record.

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**141—3.5(2C,22) Requests to treat record as confidential.** The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7 or 2C.8, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

**3.5(1) Persons who may make request.** Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7 or 2C.8, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection or disclosure.

**3.5(2) Request.** A request that a record be treated as a confidential record and be withheld from public inspection shall be filed with the custodian in writing and shall set forth the factual and legal basis for the request. If possible, the request shall be accompanied by the original or a copy of the record, which identifies the parts of the record requested to be treated as confidential. A person filing such a request may be required to provide proof necessary to establish relevant facts.

**3.5(3) Failure to request.** Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record.

**3.5(4) Timing of decision.** A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection or disclosure is filed or when the custodian receives a request for access to the record by a member of the public.

**3.5(5) Request granted or deferred.** If the custodian grants the request or defers action on the request, 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 shall be made available for public inspection or disclosure in lieu of the original record.

**3.5(6) Request denied.** If the custodian denies the request, the custodian shall notify the requester in writing of that decision and the reasons for that decision. Upon application by the requester, the custodian may, in good faith, reasonably delay allowing examination or disclosure of the record so that the requester may seek injunctive relief under Iowa Code section 22.8 or other applicable provision of law. The custodian shall notify the requester in writing of the time period allowed for the requester to seek injunctive relief.

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**141—3.6(2C,22) Additions, dissents or objections to records.** Except as otherwise provided by law, a person may file a request with the custodian to review and, in addition, 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 a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. The requester shall send such request or written statement to the custodian. The request or written statement must be dated and signed by the requester and have the current address and telephone number of the requester or requester's representative.

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**141—3.7(2C,22) Notice to suppliers of information.** The agency shall notify persons completing agency forms of the use that will be made of personal information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be by rule, on the form used to collect the information, on a separate fact sheet or letter, in a brochure, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means. Notice is not required with discovery requests in litigation or administrative proceedings, subpoenas, or similar demands for information.

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**141—3.8(2C,22) Release to subject.**

**3.8(1)** The subject of a confidential record may file a written request to review confidential records about the person who is the subject of a confidential file, as provided in rule 141—3.6(2C,22). All information in case files, including the identity of a person providing the information to the agency, may be withheld from the subject pursuant to Iowa Code section 2C.8. The agency need not release records that are the work product of an attorney or are otherwise privileged and need not release records that are otherwise authorized by law.

**3.8(2)** When a record concerns multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

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**141—3.9(2C,22) Consensual disclosure of confidential records.** To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity.

**3.9(1) *Disclosure to legal counsel.*** Appearance of counsel on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

**3.9(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.

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**141—3.10(2C,22) Disclosure without consent of subject.**

**3.10(1) *Open records.*** Open records are routinely disclosed without the consent of the subject.

**3.10(2) *Confidential records.*** To the extent allowed by law, the agency may disclose confidential records without the consent of the subject of a confidential record. Following are instances where the agency may disclose confidential information without consent of the subject:

*a.* Disclosure to those officers, employees, or agents of the agency who need the information in the performance of their duties. The custodian of the record shall determine what constitutes legitimate need to use the confidential information.

*b.* Disclosure of information related to cases to complainants or other state or local governmental agencies, as appropriate to carry out the agency's statutory functions. The agency may disclose the identities of complainants or witnesses who appear before the agency, if disclosure will facilitate an inquiry or investigation by the agency or enable the agency to sufficiently present its investigative findings and conclusions.

*c.* Disclosure of any records, upon request, to the general assembly, any standing committee of the general assembly, or the governor, under Iowa Code section 2C.8, except that confidential information provided by other agencies shall not be disclosed.

- d. Release of critical reports, special reports, or annual reports to the general assembly or any of its committees, the governor, the news media, or interested members of the public.
- e. Disclosure of information to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.
- f. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigations and possible criminal prosecution, civil court action, or regulatory order.
- g. Disclosure of information to the appropriate authorities concerning the conduct of any public official or employee which warrants disciplinary proceedings.
- h. Disclosure of information to a recipient who has given to the agency written assurance that the record will be used solely as a statistical research or reporting record, if the information is transferred in a form that does not identify the subject.
- i. Disclosure of information to an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual, provided that notice of the disclosure is first transmitted to the last-known address of the subject.
- j. Disclosure of information to the legislative services agency.
- k. Disclosure of information in the course of an employee disciplinary proceeding.
- l. Disclosure of information in response to a court order.
- m. Any disclosure of information specifically authorized by the statute under which the record was collected or maintained.

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#### **141—3.11(2C,22) Availability of records.**

**3.11(1) *Open records.*** Agency records are open for public inspection and copying, unless otherwise provided by rule or law. This agency also has possession of records which may be open records but which are copies of records from other agencies, which have been filed in judicial or administrative proceedings, or which are available in the state law library. This agency may refer persons to the originating agency, the clerk of the appropriate court, or the law library for those records. This ensures that the requester receives a clean official copy of the record and protects the agency against unintended disclosure of confidential information.

**3.11(2) *Confidential records.*** Confidential records may be withheld from public inspection by the agency. The following confidential records are listed by category, according to the legal basis for withholding them from public inspection:

- a. All records, including case files, related to the statutory functions of the agency, which are confidential under Iowa Code section 2C.8.
- b. Records which are exempt from disclosure under Iowa Code section 22.7.
- c. Those portions of agency staff manuals, instructions or other statements issued, which set forth criteria or guidelines used by agency staff in making investigations or in the selection or handling of cases which will be or are being litigated, when their disclosure 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 agency. The agency also maintains some office or policy manuals provided by other agencies concerning the operations of those agencies. Some information in office manuals may be confidential under Iowa Code section 17A.2(11)(f), 17A.3(1)(d), or 2C.9(4) or other applicable law.
- d. 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) and 622.11, Iowa R.C.P. 122(c), 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.
- e. Any other records made confidential by law.

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**141—3.12(2C,22) Personally identifiable information.** This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal

identifier in the record systems and the means by which that information is stored. Unless otherwise stated, the authority to collect the information is provided by Iowa Code chapter 2C and the statutes governing the subject matter of the record. The agency maintains record systems that include case files, litigation files, personnel files, and applicant files.

**3.12(1) *Case files.*** Case files contain information related to complaints and information requests, stored in either paper form or electronically in a case management system. These files contain names and locations of persons who contacted the agency, methods of contact, agency staff members who handled the case files, the dates the files were opened and closed, the subjects of the contacts, and the agencies involved. The files also include notes and memoranda of agency staff members and may include research materials, correspondence, and documents provided by complainants or agencies involved in the complaint. These files are confidential pursuant to Iowa Code section 2C.8.

**3.12(2) *Litigation files.*** The litigation files contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. These files include pleadings, briefs, depositions, discovery materials, docket sheets, general correspondence, attorney-client correspondence, documents, memoranda, investigative information, research materials, witness information, attorney's notes, information compiled under the direction of the attorney, and case management records. These files may be stored in paper or electronic form. These files contain materials which are confidential as attorney work product and attorney-client communications or which are confidential under Iowa Code section 2C.8 or other applicable law, or because of a court order.

**3.12(3) *Personnel files.*** The personnel files contain information about the employees in the agency. These files include payroll records, information required for tax withholding, biographical information, medical information relating to disability, information concerning employee benefits, performance evaluations and reviews, disciplinary information, and other information concerning employer-employee relationships. These records may be stored in paper or electronic form. Some information in these records is confidential under Iowa Code section 22.7.

**3.12(4) *Applicant files.*** The applicant files contain information about applicants for positions with the agency. These files include biographical information, correspondence, equal employment opportunity and affirmative action data, and other preemployment materials. These files may be stored in paper or electronic form. Some information in these files is confidential under Iowa Code section 22.7 or other applicable law.

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**141—3.13(2C,22) Other groups of records.** This rule describes groups of records maintained by the agency other than record systems as defined in rule 141—3.12(2C,22). These records are not stored or retrieved by personal identifiers. These records are routinely available to the public; however, the agency's files of these records may contain some confidential information. Unless otherwise stated, the authority for this agency to maintain the record is provided by Iowa Code chapter 2C and the statutes governing the subject matter of the record.

**3.13(1) *Administrative records.*** The administrative records include documents concerning budget, administrative or personnel reports, purchasing, printing and supply requisitions, property inventory, time sheets, and office policies for employees.

**3.13(2) *Publications.*** Publications include a variety of books, periodicals, newsletters, government documents, and similar publications, which agency staff use as reference, research or resource materials. These materials are generally available for public examination but may be protected by copyright law.

**3.13(3) *Office publications.*** Office publications include a variety of documents issued by the agency, including pamphlets, news releases, critical reports, special reports, and annual reports. Critical reports and special reports are also maintained in some files within the case files record system. Critical reports, special reports, and annual reports may contain information about individuals.

**3.13(4) *Rule-making records.*** Rule-making records consist of official documents produced during promulgation of agency rules.

**3.13(5) *Office manuals.*** Agency staff may maintain office manuals which contain memoranda or statements of various policies and procedures related to performance of the agency's functions. The agency also maintains some office or policy manuals provided by other agencies concerning the operations of those

agencies. Some information in office manuals may be confidential under Iowa Code sections 17A.2(11)(f) and 17A.3(1)(d) or other applicable law.

**3.13(6) *Legal counsel research files.*** The agency's legal counsel maintains research files on a variety of legal issues related to the functions of the agency or specific case files. These files include copies of cases or other published materials, briefs, notes, and legal memoranda or opinions to agency staff. Some files regarding issues in particular cases may contain information about individuals. Some records in these files are confidential as attorney work product or attorney-client communications, or are confidential under Iowa Code section 2C.8 or other applicable law.

**3.13(7) *Form files.*** Form files contain various blank forms used by agency staff in the performance of agency functions.

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**141—3.14(2C,22) Data processing systems.** None of the data processing systems used by the agency compare personally identifiable information in one record system with personally identifiable information in another record system.

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**141—3.15(2C,22) Applicability.** This chapter does not:

**3.15(1)** Require the agency to index or retrieve records which contain information about an individual by that person's name or other personal identifier.

**3.15(2)** Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

**3.15(3)** Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the rules of another agency.

**3.15(4)** Make available records which have been 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.

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These rules are intended to implement Iowa Code sections 2C.8, 2C.9(4), and 22.11.

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