

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[Prior to 3/30/94, Campaign Finance Disclosure Commission[121] Ch 10]

[Prior to 8/20/03, see 351—Ch 10]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

351—2.1(22,68A,68B) Definitions. As used in this chapter:

“*Confidential record*” means a record that is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records may include information discovered as the result of an investigation until such time as the final action of the board is ordered. Confidential records also include matters in litigation by the board and information conveyed as a result of the attorney/client relationship. Confidential records also include records or information contained in records that the board is prohibited by law from making available for examination by members of the public, and records or 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, by the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“*Custodian*” means the executive director of the Iowa ethics and campaign disclosure board, who is the person lawfully delegated authority by the policy-setting board 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 that identifies the individual and that 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 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.

351—2.2(22,68A,68B) 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.

351—2.3(22,68A,68B) Requests for access to records.

2.3(1) Location of record. A request for access to a record shall be directed to the Iowa Ethics and Campaign Disclosure Board, 510 East 12th Street, Suite 1A, 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.

2.3(2) Office hours. Records shall be made available from 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays. Records made available via the board’s Web site at www.iowa.gov/ethics are available at all hours and on all days.

2.3(3) Request for access. Requests for access to 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.

2.3(4) Granting access to records. The custodian is authorized to grant or deny access to the record according to the provisions of Iowa Code chapter 22 and this chapter. 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 chapter 22. The board shall promptly inform the requester of the reason for the delay.

2.3(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.

2.3(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.

2.3(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 one-half hour 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.

351—2.4(22,68A,68B) Procedures for access to confidential records. The following procedures for access to confidential records are in addition to those specified for all records in rule 351—2.3(22,68A,68B).

2.4(1) *Proof of identity.* A person requesting access to a confidential record shall be required to provide proof of identity.

2.4(2) *Requests.* A request to review a confidential record shall be in writing. A person requesting access to a confidential 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.

2.4(3) *Request denied.* When the custodian of a confidential 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.

351—2.5(22,68A,68B) Request for treatment of a record as a confidential record.

2.5(1) *Who may file request.* Any person 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 its

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 Iowa Code chapter 68A or 68B, does not preclude the board from treating it as a confidential record. The information may become a public record once the matter is resolved or dismissed.

2.5(2) *Form of request.* A request for the treatment of a record as a confidential record shall be in writing and shall be filed with the 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 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.

2.5(3) *Failure to request confidentiality.* If a person who has submitted business information to the board does not request confidential record treatment for all or part of that information, the custodian of records containing that information may assume that the person who submitted the information has no objection to its disclosure.

2.5(4) *Time.* A board decision with respect to the disclosure of all or parts of a record may be made when a request for its treatment as a confidential record is filed or when the board receives a request for access to the record.

2.5(5) *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.

2.5(6) *Effect of denied request.* If a request for confidential record treatment is denied, the board shall advise the requester in writing on the grounds the request was denied and treat the record as a confidential record for 30 days to allow the person requesting such treatment for the record an opportunity to seek injunctive relief. However, if the board determines that a 30-day delay is not in the public interest and furnishes the requester with a written copy of that determination, including the appropriate grounds, the record will be treated as a confidential record for at least three working days unless prior release of the record is necessary to avoid imminent peril to the public health, safety, or welfare. The board may extend the period of confidential record treatment of such a record beyond 30 days only if a court directs the board to treat the record as a confidential record or to the extent permitted by Iowa Code chapter 22 or with the consent of the person requesting access.

[Editorial change: IAC Supplement 4/8/09]

351—2.6(22,68A,68B) Procedure by which a subject may have additions, dissents or objections entered into the record. 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. However, any additions, dissents or objections entered into the record shall not be considered evidence in a contested case proceeding. The subject shall send the statement to the Executive Director, Iowa Ethics and Campaign Disclosure Board, 510 East 12th Street, Suite 1A, 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.

351—2.7(22,68A,68B) Consent to disclosure by the subject of a confidential record. The subject of a confidential record may consent to board disclosure to a third party of that portion of the record concerning the subject. The consent must be in writing and must identify the particular record that may be disclosed, 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 subject and, where applicable, the person to whom the record is to be disclosed must provide proof of identity.

351—2.8(22,68A,68B) Notice to suppliers of information. When the board requests persons to supply information about themselves, the board shall notify those persons of the use that will be made of the information, which persons outside the board 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. Notice may be given in this chapter, on the written form used to collect the information, in a separate fact sheet or letter, in brochures, in formal agreements or contracts, in handbooks or manuals, orally, or by other appropriate means.

351—2.9(22,68A,68B) Disclosure without the consent of the subject.

2.9(1) *Open record.* An open record is routinely disclosed without the consent of the subject.

2.9(2) *Partial open record.* If the board is prohibited from disclosing part of a document from inspection, that part will not be disclosed and the remainder will be made available for inspection.

2.9(3) *Disclosure of confidential record.* To the extent allowed by law, disclosure of a confidential record 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 defined in rule 351—2.10(22,68A,68B) or in the notice for a particular record system.

b. 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 the government agency or instrumentality has submitted a written request to the board specifying the record desired and the law enforcement activity for which the record is sought.

c. To the legislative services agency.

d. In response to a court order or subpoena.

e. 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.

f. 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.

g. Disclosures in the course of employee disciplinary proceedings.

351—2.10(22,68A,68B) Routine use.

2.10(1) *Defined.* “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. “Routine use” includes disclosures required to be made by statute other than Iowa Code chapter 22.

2.10(2) *Examples of routine uses.* To the extent allowed by law, the following are considered routine uses of all board records:

a. Disclosure to 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 initiative of the custodian, 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. Transfers of information within the board, to other state and federal agencies, or to local units of government as appropriate to administer the program for which the information is collected.

d. 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.

e. Any disclosure specifically authorized by the statute under which the record was collected or maintained, including disclosure to the general public of information contained in reports required to be filed by Iowa Code chapter 68A or 68B.

f. The following records are routinely disseminated to members of the public:

(1) Reports and statements filed by campaign committees as authorized by Iowa Code chapter 68A.

(2) Reports and statements filed by executive branch lobbyists as authorized by Iowa Code chapter 68B.

(3) Personal financial disclosure forms filed by designated persons in the executive branch as authorized by Iowa Code section 68B.35.

[Editorial change: IAC Supplement 4/8/09]

351—2.11(22,68A,68B) Consensual disclosure of confidential records.

2.11(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 351—2.7(22,68A,68B).

2.11(2) *Complaints to public officials.* A letter from a 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 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.

351—2.12(22,68A,68B) Release to subject.

2.12(1) *Filing of request.* The subject of a confidential record may file a written request to review a confidential record about that person as provided in rule 351—2.6(22,68A,68B). However, the board need not release the following records to the public:

a. The identity of a person providing information to the board need not be disclosed directly or indirectly to the subject 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 Iowa Code section 22.7(5).

d. As otherwise authorized by law.

2.12(2) *Multiple subjects.* 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 more than one subject.

351—2.13(22,68A,68B) Availability of records.

2.13(1) *General.* Board records are open for public inspection and copying unless otherwise provided by rule or law.

2.13(2) *Confidential records.* The following records may be withheld from public inspection:

a. Sealed bids received prior to the time set for public opening of bids under Iowa Code section 72.3.

b. Tax records made available to the board under Iowa Code sections 422.72 and 422.20.

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

d. Agendas, minutes and tape recordings of closed meetings of a government body pursuant to Iowa Code subsection 21.5(4).

e. Records that constitute attorney work product, 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. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, and the Code of Professional Responsibility.

f. Those portions of the board's staff manuals, instructions or other statements issued that set forth criteria or guidelines to be used by the 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.

g. 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."

h. Any other records made confidential by law.

2.13(3) Authority to release confidential records. The board may have discretion to disclose some confidential records that 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 that authorizes limited or discretionary disclosure as provided in rule 351—2.4(22,68A,68B). If the board initially determines that it will release such records, the board may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

351—2.14(22,68A,68B) Personally identifiable information. This rule describes the nature and extent of personally identifiable information that is collected, maintained, and retrieved by the board by personal identifier in record systems as defined in rule 351—2.1(22,68A,68B). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of information and 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. The record systems maintained by the board are:

2.14(1) Personnel files. The board maintains files containing information about employees, families and dependents, and applicants for positions with the board. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, 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).

2.14(2) Campaign finance organization statements. These records include the name and address of the campaign committee and the name and address of the committee officers. The name of the committee may contain a personal identifier. This information is collected pursuant to Iowa Code section 68A.201 or may be voluntarily submitted and is stored on paper and in an automated data processing system. The information stored in the data processing system does not match, collate or permit comparison with other data processing systems. The information contained in statements of organization is public information.

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351—2.15(22,68A,68B) Other groups of records. This rule describes groups of records maintained by the board other than record systems as defined in rule 351—2.1(22,68A,68B). These records are routinely available to the public. However, the board's files of these records may contain confidential information pursuant to rule 351—2.13(22,68A,68B). The records listed may contain information about individuals. Unless otherwise stated, the authority for the board to maintain the record is provided by Iowa Code chapters 22, 68A and 68B.

2.15(1) Rule making. Public documents generated during the promulgation of board rules, including notices and public comments, are available for public inspection. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

2.15(2) Board records. Agendas, minutes, and materials presented to the ethics and campaign disclosure board are available from the custodian, except those records concerning closed sessions that are exempt from disclosure under Iowa Code section 21.5 or that are otherwise confidential by law. Board records may contain information about persons who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

2.15(3) Publications. The board receives a number of books, periodicals, newsletters, and government documents. These materials would generally be open to the public but may be protected by copyright law. Most publications of general interest are available in the state library or law library. These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

2.15(4) Office publications. The board publishes instructional manuals, forms, form letters, calendars, and brochures. These publications are routinely made available to the public. This information is not stored in an automated data processing system.

2.15(5) Administrative records. These records include documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, office correspondence, and

printing and supply requisitions. Some of this information is in the state of Iowa automated data processing system.

2.15(6) *Decisions, orders, and opinions.* All final decisions, orders, and opinions are available for public inspection in accordance with Iowa Code section 17A.3. These records may contain personally identifiable information regarding individuals who are the subjects or requesters of the order, decision, or opinion. This information is collected pursuant to Iowa Code chapters 17A and 68B. This information is not stored in an automated data processing system.

2.15(7) *Policy manuals.* The board employees' manual, containing the policies and procedures for programs administered by the board, is available from the custodian except as noted in rule 351—2.14(22,68A,68B).

2.15(8) *Campaign finance disclosure reports.* These records contain information about campaign committees that include itemization of the source of contributions, a list of expenditures, itemization of fundraising events, debts incurred, donors of goods or services, loan transactions, and details of contracts with consultants. These records may include an individual's name and address. These records are required by Iowa Code section 68A.402 and may be voluntarily submitted. These records are available by paper and are accessible via the board's Web site at www.iowa.gov/ethics.

2.15(9) *Federal repository.* The board serves as the Iowa repository for public viewing of a variety of disclosure reports required to be filed under the jurisdiction of the Federal Election Commission. These records are accessible via the board's Web site at www.iowa.gov/ethics through a computer modem connected with the Federal Election Commission's database. The computer records are for viewing, and reports may be printed. The terminal does not permit these records to be changed or deleted. Reports are accessed by the name of the reporting committee. Information in this database does not match, collate, or permit comparison with other data processing systems.

2.15(10) *Executive branch lobbying reports.* The general assembly serves as the repository for public viewing of executive branch lobbyist registration statements and executive branch lobbyist client reports. These reports are accessible via the board's Web site at www.iowa.gov/ethics. The information disclosed on these reports is required by 2011 Iowa Code Supplement sections 68B.36 and 68B.38. This information does not match, collate, or permit comparison with other data processing systems.

2.15(11) *Personal financial disclosure.* The board serves as the repository for the filing of personal financial disclosure forms (Form PFD) for designated positions in the executive branch. These reports are available by paper and are also accessible via the board's Web site at www.iowa.gov/ethics. The information disclosed on these forms is required by Iowa Code section 68B.35. This information does not match, collate, or permit comparison with other data processing systems.

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351—2.16(22,68A,68B) Data processing systems. None of the data processing systems used by the board compare personally identifiable information in one record system with personally identifiable information in another record system.

351—2.17(22,68A,68B) Limitation of applicability. This chapter does not:

2.17(1) Require the board to index or retrieve records that contain information about a person by that person's name or other personal identifier.

2.17(2) Make available to the general public a record that would otherwise not be available to the general public under Iowa Code chapter 22.

2.17(3) Govern the maintenance or disclosure of, notification of or access to, a record in the possession of the board that is governed by the rules of another agency.

2.17(4) Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

2.17(5) Make available records compiled by the board 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 regulations of the board.

351—2.18(68B) Use of information prohibited. Pursuant to Iowa Code section 68B.32A(7), the information obtained from statements or reports filed with the board under Iowa Code chapter 68A, Iowa Code chapter 68B, Iowa Code section 8.7, or rules adopted by the board shall not be copied or otherwise used for any commercial purpose. For purposes of this rule, “commercial purpose” shall include solicitations by a business or charitable organization.

2.18(1) Exceptions. The following uses of information for solicitations are permissible:

a. Information used in newspapers, magazines, books, or other similar communications, so long as the principal purpose of such communications is for providing information to the public and not for other commercial purpose.

b. Soliciting political campaign contributions.

2.18(2) Sanctions. Any person violating this rule shall be subject to the board’s disciplinary process set out in Iowa Code chapter 68B and the board’s rules.

[Editorial change: IAC Supplement 4/8/09]

These rules are intended to implement Iowa Code chapters 22, 68A and 68B.

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