

CHAPTER 18
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The alcoholic beverages division 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.

185—18.1(123,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "alcoholic beverages division".

185—18.3(123,22) Requests for access to records.

18.3(1) Location of record. In lieu of the words "(insert agency head)" insert "Chief, Licensing Bureau, Alcoholic Beverages Division, 1918 S.E. Hulsizer, Ankeny, Iowa 50021"; and in lieu of the words "(insert agency name and address)", insert "alcoholic beverages division at the above-stated address".

18.3(2) Office hours. In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays".

18.3(7) Fees.

c. Supervisory fee. In lieu of the words "(specify time period)", insert "thirty minutes".

185—18.9(123,22) Disclosures without the consent of the subject.

18.9(1) Open records are routinely disclosed without the consent of the subject.

18.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a.* For a routine use as defined in rule 18.10(123,22) or in any notice for a particular record system.
- b.* To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided, that, the record is transferred in a form that does not identify the subject.
- c.* To 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 an authorized representative 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.

185—18.10(123,22) Routine use.

18.10(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.

18.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

- a.* Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer

or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. 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 for matters in which it is performing services or functions on behalf of the agency.

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

e. 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.

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

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

(1) Information collected and maintained concerning ownership and location of establishments licensed under Iowa Code chapter 123.

(2) Information collected and maintained on licensees' and permittees' dramshop liability insurance.

(3) Information collected and maintained concerning the status of contested case matters in which disciplinary action has been taken against a licensee or permittee.

(4) Information collected and maintained identifying the names of distillers, vintners, and brewers, their employees, agents, representatives, and designated wholesalers.

(5) Information identifying the name and address of a licensee's, permittee's, wholesaler's, or certificate of compliance holder's registered agent for service of process.

(6) Information provided to the agency which identifies the names, addresses and telephone numbers of board members of organizations of interest to licensees and permittees.

(7) Information identifying the names and addresses of nonliquor related vendors (i.e., landlords) and the names and addresses of the agency's sublessees.

185—18.11(123,22) Consensual disclosure of confidential records.

18.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 18.7(123,22).

18.11(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 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.

185—18.12(123,22) Release to subject.

18.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 18.6(123,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5))

d. As otherwise authorized by law.

18.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

185—18.13(123,22) Availability of records.

18.13(1) General. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

18.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

- a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)
- b. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)
- c. Records which are exempt from disclosure under Iowa Code section 22.7.
- d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))
- e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "d."
- f. 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 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 agency. (See Iowa Code sections 17A.2 and 17A.3)

g. Records which constitute attorney work product, 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 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.

h. Any other records made confidential by law.

18.13(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 or discretionary disclosure as provided in rule 18.4(123,22). 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 18.4(3).

185—18.14(123,22) 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 record systems as defined in rule 18.1(123,22). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that 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 agency are:

18.14(1) Licensing records. Licensing records include, but are not limited to, information identifying ownership, location, form of business entity and statements concerning eligibility of applicants to hold liquor licenses and permits. These records are collected and maintained pursuant to Iowa Code sections 123.19, 123.29, 123.30, 123.33, 123.42, 123.56, 123.124, 123.125, 123.127 to 123.129, 123.135, 123.173, 123.175, 123.176, and 123.180. Licensing records are stored on microfiche, in an automated data processing system, and in extant form. The information stored in the automated data system does not match, collate or permit comparison with other data processing systems. The information contained in licensing records is public information.

18.14(2) Contested case matters. These records are collected and maintained pursuant to Iowa Code sections 17A.12, 17A.3(1) "d," 17A.3(2), 123.24, 123.39, 123.49, and 123.50. Contested case matters are stored on microfiche, and in extant form. The information stored does not match, collate or permit comparison with other data processing systems. The information contained in contested case matters

is public information. Contested case matters include all pleadings, motions, briefs, orders, transcripts, exhibits, and physical evidence utilized in the resolution of the matter.

18.14(3) *Waivers of rule and declaratory rulings.* Waivers of rule and declaratory rulings may contain information which identifies individuals. These records are maintained pursuant to Iowa Code section 17A.9 and rule 1.3(123,17A). Waivers of rule and declaratory rulings are stored on microfiche and in extant form. The method of storage does not match, collate or permit comparison with other data processing systems. The information contained in waivers of rule and declaratory rulings is public information.

18.14(4) *Purchase orders, invoices, account numbers and personal identification numbers.* Purchase orders and invoices include, but are not limited to, records of purchases of alcoholic liquor made by Class "E" liquor control licensees from the agency and related shipping and transmittal documents. Account numbers and personal identification numbers identify individual Class "E" liquor control licensees and provide the agency with a method of filling orders, shipping and obtaining payment for liquor from telephone orders by Class "E" liquor control licensees. These records are collected and maintained pursuant to Iowa Code sections 123.16, 123.24 and 123.30. Purchase orders are stored in extant form and in automated data processing systems. The automated data processing systems used to store these records do not match, collate, or permit comparison with other data processing systems except to the extent that such records may be used by warehouse personnel for inventory control, movement of alcoholic liquor within the warehouse, and filling and shipping orders to Class "E" liquor control licensees. The information contained in these records which identifies purchases made by individual Class "E" liquor control licenses is confidential pursuant to Iowa Code section 22.7.

18.14(5) *Bailment shipments.* Records of bailment shipments include, but are not limited to, information derived from suppliers concerning shipments of alcoholic liquor into the state warehouse facility, information generated internally concerning alcoholic liquor received from suppliers, information generated by the agency for accounting purposes concerning liquor purchases from suppliers, and information generated by the agency for purposes of inventory control. Records of bailment shipments may contain personally identifiable information on Class "E" liquor control licensees, and to the extent that such record contains information on purchases of liquor by individual Class "E" liquor control licensees, the record is confidential. These records are collected and maintained pursuant to Iowa Code section 123.30. Records of bailment shipments are stored in extant form and in automated data processing systems. The method of storage does not match, collate, or permit comparison with other data processing systems, except that comparisons may be made for purposes of agency tracking or auditing liquor inventory.

18.14(6) *Nonliquor related vendors.* Nonliquor related vendors include, but are not limited to, records of purchases of office supplies, warehouse supplies, trucks, trucking equipment and repairs, used in the internal operation of the agency. These records may contain personally identifiable information, and are collected and maintained pursuant to Iowa Code section 123.20. The information contained in these records is public information. These records are stored in extant form, and do not match, collate or permit comparison with automated data processing systems.

18.14(7) *Leases.* Leases include records related to agency subleasing of former state liquor stores, the names and addresses of sublessees and landlords, and information concerning the buildings. This information is collected and maintained pursuant to Iowa Code section 123.20, and is public information. The records are stored in extant form and do not match, collate or permit comparison with automated data processing systems.

18.14(8) *Inspections and audits of licensees' books and records.* Inspections and audits of licensees' books and records contain personally identifiable information relating to the operation of licensed establishments and beer and wine wholesalers' operations. These records are collected and maintained pursuant to Iowa Code sections 123.33, 123.138, and 123.185. These records are stored in extant form, and the manner of storage does not permit comparison with automated data processing systems. The information is public information, except to the extent that the records concerning purchases of liquor made by Class "E" liquor control licensees from the agency are confidential. To the extent that these

records may be used in anticipation of formal administrative proceedings, criminal or civil proceedings against a licensee or permittee, this chapter does not apply to these records.

18.14(9) *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, attorneys' 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.

18.14(10) *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, 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).

185—18.15(123,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 18.1(123,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 18.13(123,22). The records listed may contain information about individuals.

18.15(1) *Rule making.* Rule-making records may contain information about individuals making written or oral comments or proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

18.15(2) *Commission records.* Agendas, minutes, and materials presented to the alcoholic beverages commission are available at the central offices of the alcoholic beverages division, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Council and commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored in an automated data processing system.

18.15(3) *Publications.* News releases, annual reports, project reports, agency newsletters, etc., are available at the central offices of the alcoholic beverages division. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees. This information is not stored in an automated data processing system.

18.15(4) *Statistical reports and compilations.* Periodic reports of alcoholic liquor sales, statistics concerning statewide and regional consumption of liquor, wine, and beer, and lists of active and inactive licensees and permittees are available at the central offices of alcoholic beverages division.

18.15(5) *Policy manuals.* The agency employees' manual, containing the policies and procedures for programs administered by the agency, is available in every office of the agency. 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 Chief, Licensing Bureau, Alcoholic Beverages Division, 1918 S.E. Hulsizer, Ankeny, Iowa 50021. Policy manuals do not contain information about individuals.

18.15(6) *Other records.* All other records that are not exempted from disclosure by law.

185—18.16(123,22) Other records. The agency maintains a variety of records which do not generally contain information pertaining to named individuals. The agency maintains the following records, not heretofore listed, which do not generally contain personally identifiable information: inventory control reports, records of purchases by the agency from vendors, auditing data, budgetary information, reports of total licensing fees generated by class of licensee or permittee, reports of total number of licenses and permits issued, reports of total number of bottles sold or purchased, reports of gallons of alcoholic liquor sold or purchased, bills of lading, and manifests.

185—18.17(123,22) 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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