

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The department of cultural affairs 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:

221—2.1(17A,22) Definitions. As used in this chapter:

“Agency.” In lieu of the words “(official or body issuing these rules)”, insert “department of cultural affairs”.

221—2.3(17A,22) Requests for access to records.

2.3(1) Location of record. In lieu of the words “(insert agency head)”, insert “director, department of cultural affairs”. Also in lieu of the words “(insert agency name and address)”, insert “Director, Department of Cultural Affairs, New Historical Building, 600 East Locust Street, Des Moines, Iowa 50319”.

2.3(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 a week, insert hours specified in Iowa Code section 22.4)”, insert “8 a.m. to 4:30 p.m., Monday through Friday except legal holidays”.

2.3(7) Fees.

c. Supervisory fee. In lieu of the words “(specify time period)”, insert “one-half hour”.

221—2.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words “(designate office)”, insert “director, department of cultural affairs”.

221—2.9(17A,22) Disclosures without the consent of the subject.

2.9(1) Open records are routinely disclosed without the consent of the subject.

2.9(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 2.10(17A,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.

221—2.10(17A,22) 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 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.

2.10(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.

221—2.11(17A,22) 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 agency disclosure of confidential records as provided in rule 2.7(17A,22).

2.11(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.

221—2.12(17A,22) Release to subject.

2.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 2.6(17A,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.

2.12(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.

221—2.13(17A,22) Availability of records.

2.13(1) *General.* Agency 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. Records are listed by category, according to the legal basis for withholding them from public inspection.

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

b. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

c. 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)

d. Any other records made confidential by law.

2.13(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 2.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

221—2.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 2.1(17A,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:

2.14(1) Personnel records. These records concern departmental employees and their families, as well as applicants for employment with the department. The system contains material on health, dental, life, and long-term disability insurance; pay and benefit documents; tax withholding; position description questionnaires; affirmative action and equal employment opportunity; disciplinary information; grievances and appeals; performance planning and evaluation; training; deferred compensation; workers' compensation; payroll records; and other materials relating to the employees of the department. Some of the information may be confidential under Iowa Code section 22.7(11) and other legal provisions. These records contain names, social security numbers and other identifying numbers, and are collected in paper form and through the state's automated data processing system.

2.14(2) Reserved.

221—2.15(17A,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 2.1(17A,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 2.13(17A,22). The records listed may contain information about individuals.

2.15(1) Council, board, and commission records. Agendas, minutes, and materials presented to the cultural affairs advisory council are available from the department of cultural affairs, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5 or which are otherwise confidential by law. 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 on an automated data processing system.

2.15(2) Administrative records. This includes documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions.

2.15(3) Publications. The office receives a number of books, periodicals, newsletters, government documents, annual reports and brochures related to its mission. 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 library division.

2.15(4) Office publications. This office issues a variety of materials including promotional and grants brochures and pamphlets, press releases, project and annual reports, and newsletters which may contain information about individuals, staff or members of boards, councils, or commissions.

2.15(5) Rule-making records. Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection.

2.15(6) Office manuals. Information in office manuals may be confidential under Iowa Code section 17A.2(7) "f" or other applicable provision of law.

2.15(7) All other records that are not exempted from disclosure by law.

221—2.16(17A,22) Data processing systems. None of the data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

221—2.17(17A,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the regulations 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 regulations of the agency.

These rules are intended to implement Iowa Code section 22.11.

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